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**BUREAU OF THE STEERING COMMITTEE
FOR HUMAN RIGHTS
(CDDH-BU)**

REPORT

95th meeting

Paris, 26-27 May 2016

INTRODUCTION

1. The Bureau of the Steering Committee for Human Rights (CDDH-BU) held its 95th meeting from 26 to 27 May 2016 in Paris with Ms Brigitte KONZ (Luxembourg) as Chair. The list of participants appears in Appendix I.

2. The meeting was devoted to the preparation of the High-level Seminar and the 85th plenary meeting of the CDDH (Strasbourg, 13-17 June 2016). This meeting report is to be read in light of the draft annotated agenda and order of business sent to all participants in the CDDH on 18 May 2016.

3. Concerning the High-level Seminar, it exchanged views with Ms Krista OINONEN (Finland), the contact person appointed to prepare this event together with the Secretariat. The Bureau appreciated the draft programme and the quality of the invited keynote speakers. It suggested that the Seminar would not result at this stage in formal follow-up decisions and that no debate and adoption of conclusions should take place after the summing-up to be done by the Director General of DGI. The proceedings will be published.

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

4. The Bureau agreed on the draft agenda and order of business as appears in document CDDH(2016)OJ1, Appendices I and II.

5. The Bureau will not meet after the High-level Seminar but the following day, Wednesday 15 June at 9:00 in AGORA building, 6th floor.

6. [The Bureau accepted the request from the Conference of European Churches (CEC) to participate in the work on item 2 (Recommendations of the Parliamentary Assembly), item 5 (Development and Promotion of Human Rights), item 6 (Bioethics) and item 9 (Invitees) of the draft agenda.]

7. With respect to the various texts that the CDDH is called on to examine at its plenary session in June with a view to their possible adoption, the Bureau suggested that CDDH participants wishing to submit drafting proposals send them by [Friday 10 June at 18:00] to the Secretariat (DGI-CDDH@coe.int). Following the established practice, the CDDH will examine in priority the drafting proposals received. The relevant texts are the following:

- (i) Draft CDDH comments on Recommendations of the Parliamentary Assembly 2085(2016) “Strengthening the protection and role of human rights defenders in Council of Europe member States” and 2091 (2016) “The case against a Council of Europe legal instrument on involuntary measures in psychiatry” (item 2 of the draft annotated agenda);
- (ii) Draft report on measures taken by member States to implement the relevant parts of the Brighton Declaration (item 3.1);

- (iii) Draft legal analysis on female genital mutilations and forced marriage adopted by the Drafting group CDDH-MF at its 1st meeting (27-29 April 2016) (item 5.2);
- (iv) Draft Recommendation on the processing of personal health-related data for insurance purposes, including data resulting from genetic tests (item 6.1).

ITEM 2: RECOMMENDATIONS OF THE PARLIAMENTARY ASSEMBLY

8. Concerning Recommendation 2091(2016) “The case against a Council of Europe legal instrument on involuntary measures in psychiatry”, the Bureau proposed to the plenary the draft comments which appear in Appendix II to this report. The Bureau invited the CDDH participants to enter into contact with their counterparts from DH-BIO (the mailing list will be communicated by the Secretariat of the CDDH) in order to achieve co-ordination with the comments that the DH-BIO will adopt during its meeting from 31 May to 3 June 2016.

9. Concerning Recommendation 2085(2016) “Strengthening the protection and role of human rights defenders in Council of Europe member States”, the Bureau proposed that the Secretariat prepares a very brief text referring to the ongoing work within the CDDH-INST.

ITEM 3: SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS (DH-SYSC)

10. The Chair of the Committee of Experts on the system of the European Convention on Human Rights (DH-SYSC), Ms Isabelle NIEDLISPACHER (Belgium), presented to the Bureau the work carried out by the Committee during its 1st meeting (25-27 April 2016).

- (i) The Bureau welcomed the draft report on the measures taken by member States to implement the relevant parts of the Brighton Declaration and proposed to the CDDH to adopt it with a view to its transmission to the Committee of Ministers. It took note that most of the conclusions of the draft report concern issues which are already under consideration within the DH-SYSC. It would be appropriate to signal this while transmitting the report to the Committee of Ministers, in order to avoid new decisions which would overlap with the ongoing work. The same approach will be followed for the future exercise concerning the follow-up to the Brussels Declaration.
- (ii) Regarding the follow-up to the CDDH report on the longer-term future of the Convention system, the Bureau was informed of the guidance provided by the DH-SYSC to its Drafting Group DH-SYSC-I in charge of the work regarding the process of selection and election of judges of the Court, as well as of the very fruitful exchange of views which was held within the DH-SYSC with all the actors concerned by this process. The Bureau:
 - a. proposed that the CDDH endorses the guidance given by the DH-SYSC to the DH-SYSC I ;

- b. recalled that the working methods of the DH-SYSC I should correspond to those which are normally followed by the others groups working under the CDDH or the DH-SYSC;
 - c. recalled that the DH-SYSC asked the DH-SYSC I to take into consideration the work and reflections of all the actors concerned, while ensuring the appropriate level of confidentiality. The Chair of the Group and the Secretariat will ensure this, notably when drafting the meeting reports.
- (iii) The Bureau proposed to the CDDH to endorse the guidance provided by the DH-SYSC to its Drafting Group DH-SYSC-REC in charge of the work related to Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights. This guidance concerned :
 - a. The preparation of the document which will contain good practices in member States and the first stock taking of the implementation of the Recommendation;
 - b. The results of the 1st meeting of the DH-SYSC-REC.

The DH-SYSC will discuss the follow-up of this work during its next meeting (8-10 November 2016).

- (iv) Finally, the Bureau proposed that the Chair of the DH-SYSC briefly presents to the CDDH :
 - a. the exchange of views held by the DH-SYSC on the verification of the compatibility of legislation with the Convention and on the follow-up that will be given;
 - b. the results of its “tour de table” on the state of signatures and ratifications of Protocols Nos. 15 and 16 to the Convention and on the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights.

The Bureau welcomed the two exercises conducted and proposed that the DH-SYSC focuses, on its next “tour de table”, on the difficulties encountered.

ITEM 4: EUROPEAN UNION ACCESSION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

11. The Bureau noted that this item is on the agenda for information purposes. Two brief presentations concerning the current state of the work are expected, followed by an exchange of views with the CDDH: Mr Ambassador Jari VILEN, Head of the Delegation of the European

Union to the Council of Europe, and Mr Jörg POLAKIEWICZ, Director of the Legal Advice and international public law of the Council of Europe.

ITEM 5: DEVELOPMENT AND PROMOTION OF HUMAN RIGHTS

12. The Bureau exchanged views with the Rapporteur and the Chair of the CDDH drafting Group on female genital mutilations and forced marriage (CDDH-MF), Mr Rob LINHAM (United-Kingdom) on the outcome of the 1st meeting of the Group (27-29 April 2016, CDDH-MF(2016)02). The Bureau welcomed the quality of the draft legal analysis prepared at the meeting and recalled that the CDDH is called to examine it with a view to its adoption in June. Since the same person has been appointed Chair and Rapporteur of the CDDH-MF, the Bureau suggests to the CDDH to decide that the potential participation of a second representative of his country to the work of the Group will also be at the expense of the CDDH budget.

13. The Bureau proposed to the CDDH that the 3rd meeting of the CDDH-MF, foreseen for November 2016, will be held at the beginning of 2017 in order to allow more time to prepare the final documents. Finally, due to the comments provided by the Group on the fight against domestic violence (GREVIO) concerning the relevance of the ongoing work within the CDDH-MF, the Bureau agreed that it would be appropriate that the Chair of the CDDH-MF participate in the next meeting of the GREVIO and that their Chair, in turn, is invited to participate in a forthcoming CDDH meeting. The Bureau is convinced of the complementarity of the respective work and of the possibility to achieve it in a constructive and coordinated way. The Bureau also suggested that the new Ad hoc Committee for the Rights of the Child (CAHENF) as well as the Committee of the Parties on the Protection of Children against Sexual Exploitation and Sexual Abuse (“Lanzarote Committee”) be invited to appoint a representative at the meetings of the CDDH-MF.

14. The Bureau proceeded to consecutive exchanges of views with the Rapporteur on social rights, Ms Chantal GALLANT (Belgium), the Rapporteur on freedom of expression linked to others human rights, Ms Kristine LICE (Latvia), the Rapporteur on migration, Mr Frank SCHÜRMANN (Switzerland) and the Rapporteur on civil society and national human rights institutions, Ms Krista OINONEN (Finland). It considered that the various outlines presented by the Rapporteurs (which appear in the draft annotated agenda CDDH(2016)OJ1, Appendices IV, VI, VII and VIII) constitute a good basis for the drafting of the respective legal analyses and noted with satisfaction that these outlines are the outcome of an important coordinated work conducted by the Rapporteurs and the Secretariat with other concerned bodies. With regard to this work, the Bureau proposed the following approach:

- (i) The outlines will be presented by the Rapporteurs to the plenary in June in order to receive possible guidance from the CDDH. Furthermore, CDDH participants wishing to make specific drafting proposals on an individual basis concerning one or another outline will be invited to send them by Friday 15th July 2016 to the Secretariat (DGI-CDDH@coe.int), who will forward them to the concerned Rapporteur. Each Rapporteur will assess the prospect to incorporate the suggestions and, if needed, will consult with the Chair;

- (ii) The draft legal analyses will be prepared by Rapporteurs at the latest by [Friday 4 November 2016] and sent out to the CDDH participants for their possible drafting proposals. These proposals should reach the Secretariat before [Friday 18th November 2016];
- (iii) The draft legal analyses will be examined by the Bureau on 24-25 November 2016 and then by the CDDH on 6-9 December 2016, with a view to their adoption. Following the established practice, the CDDH will examine in priority the drafting proposals received.

15. With regard to the elections for the various drafting Groups (social rights (CDDH-SOC), freedom of expression and links to others human rights (CDDH-EXP), migration (CDDH-MIG) and civil society and national human rights institutions (CDDH-INST)) and for their respective chairmanship, the Bureau proposed the following approach:

- (i) The CDDH is invited to adopt the rule establishing that, if the same person assumes the capacity of Chair and Rapporteur, the potential participation of a second representative of his/her country will also be at the expense of the CDDH budget;
- (ii) For practical reasons related to the preparation of the meetings, the Bureau urged the CDDH to proceed in June with the elections of the chairmanships for these groups, without waiting for the Group itself to proceed to such election on the first day of the meeting;
- (iii) The Bureau recalled that all member States which participate in the CDDH drafting Group meetings, either at the expense of the Council of Europe budget or at their own expense, are on an equal footing in all respects.

16. Finally, concerning the future event on human rights and business, the Bureau was informed of the preparation of a meeting in autumn 2016, at the initiative of civil society, aiming to raise awareness of member States of Recommendation CM/Rec(2016)3 of the Committee of Ministers on human rights and business. The Bureau welcomed this initiative that could contribute to the preparation of the High-level Seminar that the CDDH will organise in June 2017 according to the terms of reference received from the Committee of Ministers. The Bureau would prefer that the civil society initiative be held outside the building of the Council of Europe in order to avoid any misunderstanding with the 2017 High level Seminar, which will be an official activity of the Council of Europe. It asked the Secretariat to inform the plenary in June on this initiative, in order to determine the level of participation of the CDDH in this event.

ITEM 6: BIOETHICS (DH-BIO)

17. The Bureau recalled that the draft Recommendation on “the processing of personal health-related data for insurance purposes, including data resulting from genetic tests” was adopted by the DH-BIO unanimously and it is now submitted to the CDDH for adoption and transmission to the Committee of Ministers. The CDDH participants are invited to contact their counterparts of the DH-BIO on this issue as well as on the issue on the draft comments of the CDDH on the Parliamentary Assembly Recommendation mentioned in paragraph 8 above.

ITEM 7: REVIEW OF THE GUIDELINES ON PROTECTION OF VICTIMS OF TERRORIST ACTS

18. The Bureau considered that work in this field should be entrusted preferably to CODEXTER with the possible participation of the CDDH. It instructed the Secretariat to enquire on the approach that the Committee of Ministers would adopt to follow up on the decisions of the 126th Session of the Committee of Ministers (Sofia, 18 May 2016) on this issue and to inform it at the plenary session in June.

ITEM 8: EXPERTS REPRESENTING THE CDDH IN OTHER BODIES

19. The Bureau exchanged views with the Secretariat on the new European Social Cohesion Platform (PECS) and on the new Ad hoc Committee for the Rights of the Child (CAHENF). Relevant information will be provided at the plenary session in June. The Bureau considered it useful for the CDDH to be represented before those two bodies and to appoint its representatives in June.

20. Furthermore, the member of the Bureau and CDDH representative to the Committee of the Parties (“Lanzarote Committee”) on the Protection of Children against Sexual Exploitation and Sexual Abuse, M. Joan FORNER ROVIRA (Andorra) confirmed that he would participate in the 15th meeting of the Committee (Strasbourg, 14-17 June 2016).

ITEM 9: INVITEES

21. The Bureau invited the CDDH to decide in June on the personalities to be invited at its forthcoming meetings. According to the decision taken in December 2015, priority will be given to exchanges of views with the Chairpersons from other steering and ad hoc committees in order to strengthen co-operation in implementing the activities foreseen for the biennium.

ITEM 10: REVIEW OF COUNCIL OF EUROPE CONVENTIONS

22. The Bureau welcomed ratification by Estonia, on 28 January this year, of the Council of Europe Convention of 2009 on the access of public documents, which brings the number of ratifications to 8. Its entry into force requires 10 ratifications. The Bureau considered that the Secretariat could contact, on a bilateral basis, the experts of the 6 member States who have already signed this instrument and who would be likely, for this reason, to proceed to its ratification soon.

23. Furthermore, the Secretariat will inform the plenary on its contacts with the Treaty Office with a view to re-organising the list of treaties appearing in the current terms of reference of the CDDH.

ITEM 11: ELECTIONS

24. See paragraph 15 above.

ITEM 12: CALENDAR OF MEETINGS

25. See paragraph 13 above.

ITEM 13: OTHER ISSUES

26. The Bureau took note of the current list of steering committees and other intergovernmental co-operation bodies of the Council of Europe. Further to the CDDH request in December 2015, the Secretariat will circulate this information during the plenary session in June.

27. Concerning the issue of prenatal sex selection, the Bureau invited the CDDH to bear in mind without fixing, at this stage, a date for possible work of the CDDH.

28. Concerning follow-up to Recommendation CM/Rec(2010)4 of the Committee of Ministers to member States on human rights of members of armed forces, the Bureau recalled that the CDDH is expected to examine it in the course of this biennium. It suggested that this item be noted in the agenda of the next CDDH meeting in view of work to be undertaken in 2017.

29. Concerning follow-up to Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity, the Bureau recalled that the Committee of Ministers will come back to this issue in 2018.

ITEM 14: ACKNOWLEDGMENTS

30. When learning that Mr Arto KOSONEN (Finland), one of the most experienced and active members of the CDDH, will be participating in meetings of the Steering Committees for the last time in June, the Bureau suggested to organise a diner in town on Thursday 16 June 2016 to express the gratitude of the Steering Committee. The Secretariat was instructed to send information in this respect to all CDDH participants.

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Appendix I

LIST OF PARTICIPANTS

95th meeting of the CDDH-BU (Paris, 26-27 May 2016)

ANDORRA

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

AUSTRIA

Ms Brigitte OHMS, Deputy Government Agent before the European Court of Human Rights, Federal Chancellery, Wien

GERMANY

Mr Hans-Jörg BEHRENS, Government Agent before the European Court of Human Rights, Bundesministerium der Justiz und für Verbraucherschutz, Berlin

GREECE

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

LATVIA

Ms Kristine LICE, Government Agent before the European Court of Human Rights, Ministry of Foreign Affairs, Riga

LUXEMBOURG

Ms Brigitte KONZ, Juge de Paix directrice, Luxembourg, Chair of the CDDH

NORWAY

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

UNITED KINGDOM

Mr Rob LINHAM, Assistant Director for Europe and Domestic Human Rights, Ministry of Justice, London

OTHER PARTICIPANTS

Ms Isabelle NIEDLISPACHER, Co-Agent du Gouvernement de la Belgique auprès de la Cour européenne des droits de l'homme, Chair of the DH-SYSC

Ms Chantal GALLANT, Attachée, Co-Agent du Gouvernement de la Belgique auprès de la Cour européenne des droits de l'homme, Rapporteur of the CDDH-SOC

Ms Krista OINONEN, Ministry for Foreign Affairs of Finland, Contact person for the preparation of the High-level Seminar on Human Rights in culturally diverse societies, Rapporteur of the CDDH-INST

Mr Frank SCHÜRMANN, Agent du Gouvernement de la Suisse auprès de la Cour européenne des droits de l'homme, Rapporteur of the CDDH-MIG

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 Mikhail LOBOV, Head of the Human Rights Policy and Development Department

Mr Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division,
Secretary of the CDDH

Ms Irène KITSOU-MILONAS, Head of the Unit on the system of the European Convention on Human Rights, Human Rights Intergovernmental Cooperation Division, Secretary of the DH-SYSC

Ms Corinne GAVRILOVIC, Assistant, Human Rights Intergovernmental Cooperation Division

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INTERPRETERS

Mr Philip MINNS
Ms Marianne de SUSBIELLE
Mr Christine VICTORIN

Appendix II

**Recommendation 2091(2016) of the Parliamentary Assembly
“The case against a Council of Europe legal instrument
on involuntary measures in psychiatry”**

**Proposal for CDDH comments put forward by the Bureau
(95th meeting, Paris, 26-27 May 2016)**

1. The Steering Committee for Human Rights (CDDH) notes that Article 14 of the United Nations Convention on the Rights of Persons with Disabilities is interpreted by the committee established under this convention as prohibiting any deprivation of liberty on the basis of a mental disability. Consequently, any national mental health law providing for a deprivation of liberty on the basis of such a criterion would be incompatible with the convention.
2. The CDDH also notes that, stemming from this interpretation, the Parliamentary Assembly of the Council of Europe, recommends the Committee of Ministers to¹ :
 - (i) withdraw the proposal to draw up an additional protocol concerning the protection of human rights and dignity of persons with mental disorders with regard to involuntary placement and involuntary treatment;
 - (ii) instead focus its work on promoting alternatives to involuntary measures in psychiatry, including by devising measures to increase the involvement of persons with psychosocial disabilities in decisions affecting their health.
3. Whilst the CDDH shares the Assembly’s willingness to do the utmost to promote alternatives, it nevertheless notes that involuntary measures in psychiatry continue to be provided for in the laws of member States and regularly applied. Bearing in mind this reality, the CDDH notes the need to ensure that in all circumstances, involuntary measures are embedded with the guarantees required by the European Convention on Human Rights so as to (i) safeguard the human rights of the person concerned², and in particular provide the possibility for the right to an effective remedy against such a measure and (ii) prevent violations of the Convention similar to those already found by the European Court of Human Rights in many occasions. It underlines that this is the purpose of the additional Protocol under discussion in the DH-BIO³.

¹ Recommendation 2091(2016) of the Parliamentary Assembly “The case against a Council of Europe legal instrument on involuntary measures in psychiatry”.

² Involuntary measures, in particular placement, raise important human rights questions especially concerning Article 5 §1(e) (right to liberty and security), but also in some cases Articles 3 (prohibition of torture and inhuman or degrading treatment) and 8 (protection of private and family life) of the European Convention on Human Rights.

³ The CDDH has already had the opportunity to express its opinion on the preparation of such a protocol in 2009 (document CDDH (2009) 008).

4. Given that the Court regularly receives applications revealing violations of the ECHR as a result of involuntary measures, the CDDH considers that an additional Protocol to the Oviedo Convention would be a realistic and effective tool to define the indispensable legal guarantees to prevent such violations in our member States. Such an instrument would aim at better protecting the rights of the persons concerned both in law and in practice.
5. Finally, if the CDDH is convinced that involuntary measures should be exceptional and only be envisaged in the absence of alternatives, it is also convinced that the drawing up of a judicial instrument to lay down such measures within the Council of Europe would not diminish in any way the credibility of the Organisation, but would on the contrary encourage the progressive transition to a more uniform application of voluntary measures in psychiatry by the member States, in accordance with the spirit of the United Nations Convention on the Rights of Persons with Disabilities.