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Addendum VI

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

**Study on possible future priority areas for development and promotion of
human rights in the Council of Europe**

Introduction

1. In accordance with its terms of reference for the biennium 2012/2013, the CDDH is *inter alia* asked to conduct a study to identify possible other priority areas for development and promotion of human rights in the Council of Europe and to formulate, as appropriate, proposals for specific activities to be carried out by the CDDH in the biennium 2014/2015.

1) The impact of the economic crisis on human rights in Europe

2. The impact of the economic crisis on the enjoyment of human rights in Europe has increasingly been a topic of debate within the Council of Europe and in other regional and international human rights bodies. The crisis may affect human rights under various aspects. As the Secretary General of the Council of Europe pointed out, “human rights in Europe have been hit hard by the crisis”, and “in such a situation, it is particularly important that the ground rules we have agreed on are respected also in times of crisis so that human rights remain constant. In these times of turmoil, we need, more than ever, solid points of reference.”¹

3. Increasing long-term unemployment, which may lead to living conditions of poverty and social marginalisation, can have detrimental effects on human rights (including, but not limited to, housing and homelessness, access to health, access to justice). At the same time as the crisis there has been an increase in social tensions and in the expression of xenophobic and discriminatory attitudes against vulnerable groups (like migrants, minorities etc.).

4. The European Committee of Social Rights already took several decisions last year in respect of Greece, concluding that some of the austerity measures were not in conformity with the Charter. Other austerity measures may have a particular impact on vulnerable groups like older persons and disabled persons. Moreover, the bodies entrusted to ensure the implementation of Human Rights at the national level are also under pressure of diminished public spending, and budgets for justice were cut in several countries.

5. The severe economic crises risks engendering situations of extreme poverty which may in themselves give rise to breaches of the political and civil rights set out in the Convention, notably those relating to human dignity and physical integrity, as well as respect for the home and private and family life. At the same time poverty may limit the ability of those affected to avail themselves of other Convention rights. At a recent seminar on ‘Implementing the European Convention on Human Rights in times of economic crisis’ organised by the European Court of Human Rights on the occasion of the opening of the judicial year of the Court, former Judge Françoise Tulkens raised the question of the place of the right to housing in the Convention. Economic difficulties may also impact on States’ capacity both to pay compensation where violations have been found and to take the necessary remedial action, particularly in situations of structural or systemic violation. The Parliamentary Assembly already adopted various resolutions and recommendations, such as Recommendation 1910 on the impact of the global economic crisis on migration in Europe and Recommendation 1911 on women and the economic and financial crisis.

6. In this context, reference may also be made to the 2005 Activity report of the CDDH “Working Group on Social rights” (document GT-DH-SOC(2005)006) and to the 2008

¹ Thorbjørn Jagland, speech on “Human Rights in Times of Crisis in Europe”, European Policy Centre, Brussels, 29 January 2013.

publication “Recent developments in the field of social rights” (document CDDH(2008)006) by Ms Chantal GALLANT (Belgium), who was, at the time, CDDH rapporteur on social rights.

7. The Committee of Ministers may consider carrying out further action in this area by at least three means: a) studying the issue further in order to identify possible specific areas for action, in view of the elaboration of a non-binding instrument; b) drafting a Committee of Ministers declaration on protection of human rights in times of crisis; c) re-examining existing Committee of Ministers recommendations, such as Recommendation No. R (2000) 3 on the right to the satisfaction of basic material needs of persons in situations of extreme hardship, or Recommendation No. (93)1 on access to justice for the very poor.

2) Support to the implementation of the Convention at national level

a. Human rights training for legal professionals

8. A proposal in this respect, based on document CDDH(2013)005rev presented at the 77th meeting of the CDDH, has been discussed at the last meeting of the Committee of Experts on the Reform of the Court (DH-GDR), as part of the possible activities related to the reform of the Court for the biennium 2014-2015 (see document DH-GDR(2013)009 and the report of the meeting).

b. The role of national human rights structures for the promotion and protection of human rights

9. Another proposal aiming at supporting the implementation of the Convention at national level, in line with Paragraph 9 of the Brighton Declaration, could consist in the elaboration of a guide of good practice addressed to national structures for the promotion and protection of human rights.

10. The Council of Europe has been historically very active in supporting the establishment and the promotion of the role of independent national structures for the promotion and the protection of human rights. To mention a few examples, the Committee of Ministers adopted Recommendation (97)14 on the establishment of independent national institutions for the promotion and protection of human rights, and Resolution (97)11 on co-operation between member states’ national institutions for the promotion and protection of human rights, and between them and the Council of Europe. The mandate of the Commissioner for Human Rights also refers explicitly to the facilitation “of the activities of national ombudsmen or similar institutions in the field of human rights”, and the links with the Commissioner and his office are also expressed very clearly in the Berlin Declaration adopted in 2004 at the end of the 3rd Round Table of National Human Rights Institutions.

11. So far, however, the Council of Europe has not been specifically active in the elaboration of documents aiming at providing practical guidance or support to the action of these structures in order to strengthen their effectiveness and impact, which is also of particular importance since these structures have been affected, in several countries, by budgetary restrictions. Such guidance could be based on examples coming from all Council of Europe member states, collected under the form of a guide to good practice.

12. Action in this area could build, inter alia, on the work carried out by the EU Agency for fundamental rights (FRA), which in 2010 published a report underlining the need for additional support to improve the effectiveness and impact of these structures, and in 2012 a Handbook on

the establishment and accreditation of National Human Rights Institutions in the European Union. The Handbook includes a step-by-step guide of the accreditation process, with examples of concrete practices related to such issues as their powers, independence and mandate.

13. The Committee of Ministers could consider drafting a Council of Europe guide of good practices regarding the establishment and functioning of national human rights structures or certain aspects thereof.

3) Detention of asylum seekers and irregular migrants

14. In 2010, the Committee of Ministers adopted a reply to Parliamentary Assembly Recommendation 1900 (2010) on “The detention of asylum seekers and irregular migrants in Europe”. The CDDH had been involved in the preparation of this reply.

15. At the time, expressing awareness and concern about the vulnerable situation of asylum seekers and irregular migrants and noting that deprivation of liberty may increase their vulnerability, the Committee of Ministers had recalled the relevant case-law of the Court under Article 5§1(f) of the Convention and existing Committee of Ministers’ instruments, namely the “Twenty guidelines on forced return” (2005), Recommendation Rec(2003)5 on measures of detention of asylum seekers, and the “Guidelines on human rights protection in the context of accelerated asylum procedures” (2009), indicating that these instruments responded “to a very large extent” to the Assembly’s recommendations.

16. For these reasons, the Committee of Ministers did not, at that time, give instructions for the preparation of rules on minimum standards of conditions of detention of irregular migrants and asylum seekers, nor for the preparation of a recommendation on the circumstances in which detention is legally permissible.

17. However, it also indicated that it would consider “asking the CDCJ to carry out a study on how Recommendation Rec(2003)5 on measures of detention of asylum seekers and the “Twenty guidelines on forced return” have been implemented in member states. The study should aim also at identifying best practices as regards alternatives to detention of irregular migrants and asylum seekers, with a view to the elaboration of a report or a draft recommendation on this issue. The CDDH should be associated with this work”. Finally, the Committee of Ministers considered that at that time it was “too early” to assess the implementation of its “Guidelines on human rights protection in the context of accelerated asylum procedures” which were adopted in 2009.

18. This activity was eventually not carried out by the CDCJ, and several years have now passed since the adoption of the 2009 Guidelines. Moreover, further consideration of this topic may also be appropriate given the current situation, when cuts on the state expenditure may affect very vulnerable groups such as prisoners, asylum seekers and irregular migrants (see also item 1 above).

19. The Committee of Ministers may consider exploring again this issue in line with the previous indications given in 2009 with a view to a) identifying minimum standards for the detention of irregular migrants and asylum seekers (which could take the form of guidelines or a Committee of Ministers recommendation); b) drafting a recommendation on the circumstances in which detention is legally permissible; c) review the implementation of the “Twenty guidelines on forced return”.

4) Protection of freedom of expression

20. Another possible area for consideration could be related to freedom of expression, under various aspects. A number of proposals related to the phenomenon of hate speech have already been outlined in the feasibility study on human rights in culturally diverse societies (see document CDDH(2013)17).

21. As Commissioner Muižnieks noted to the Committee of Ministers in November, there is currently a particular focus on the freedom of expression online, in relation to which there is an emerging trend of increased restriction. The CDMSI is of course taking forward work under the Council of Europe's Internet Governance Strategy.

22. There may be, however, a wider perspective that could be further examined in relation to the laws, standards and best practices that serve to protect the freedom of expression, and in particular those especially vulnerable when exercising their freedom of expression (journalists, bloggers, etc.). The Council of Europe has already been active in this area in the past through the adoption of various texts, such as the Declaration of the Committee of Ministers on promoting freedom of expression and information in the new information and communications environment, adopted on 26 September 2007, Resolution 1535 (2007) and Recommendation 1783 (2007) of the Parliamentary Assembly on threats to the lives and freedom of expression of journalists, and Recommendation 1950 of the Parliamentary Assembly (2011) on the protection of journalists' sources.

23. The question of safety of journalists is very high in the agenda of the CDMSI, and not only with respect to new technologies. On March 2012, the Committee of Ministers held a thematic debate on "Safety of journalists", on the basis of discussion paper by the Secretary General of the Council of Europe.² The Secretary General also stressed, in his report on the implementation of the Declaration of the Committee of Ministers on measures to promote the respect of Article 10 of the European Convention on Human Rights, that "it should be a priority to establish a subordinate expert group in 2014" in this area. A declaration on protection of journalism and safety of journalists and other media actors is in preparation, and a work plan encompassing various initiatives to strengthen the protection of journalists, other media professionals and bloggers, both as regards preventive measures and effective investigation, taking into account the work conducted by other international organisations, has been adopted by the CDMSI at its last meeting on 23-26 April 2013. The theme will also be discussed at the upcoming Conference of Council of Europe ministers responsible for media and information society (Belgrade, 7-8 November) in view of the possible adoption of a Resolution by the Conference.

24. Media freedom, independence and diversity, including in particular the protection of journalists, are also amongst the priority areas of interest for the Commissioner for Human Rights (see for example his Human Rights comment of 3 May 2013 on "Press freedom in the digital age: new threats, new challenges"³).

² [http://www.coe.int/t/dghl/standardsetting/media/CDMSI/SG%20Inf%20\(2012\)6_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/CDMSI/SG%20Inf%20(2012)6_en.pdf)

³ <http://humanrightscomment.org/2013/05/03/press-freedom/>

25. Further Council of Europe work in this area is to be carried out in the light of the wider international context, and of initiatives undertaken by other actors. For instance, the UNESCO adopted a Plan of Action on the Safety of Journalists and the issue of Impunity, and a Resolution on the Safety of Journalist has been adopted by the Human Rights Council at its 21st Session, on 27 September 2012. Account should also be taken of the EU initiative to prepare “Guidelines on freedom of expression online and offline, including the protection of bloggers and journalists” which is scheduled to begin in 2013.

26. The Committee of Ministers may therefore give the CDDH a mandate to pursue its reflection in view of the identification of possible areas related to the protection of freedom of expression which do not fall within the remit of the CDMSI. Any further action in these areas should not encroach upon CDMSI’s mandate and be carried out in close cooperation with the latter.

Conclusions

27. The CDDH underlines that as regards the promotion and development of human rights during the next biennium, it will, as a matter of priority, pursue and finalise the work already in progress in the field of corporate social responsibility and of culturally diverse societies, subject to the decisions to be taken in respect of these activities by the Committee of Ministers.

28. The CDDH is also aware that the budgetary situation for the next biennium will allow only a very restricted number of additional subjects to be dealt with. It notes however that, should the Committee of Ministers retain any of the proposals made in the present study, sufficient resources should be made available for the organisation of meetings of drafting groups of limited composition, whenever this is necessary for carrying out this work.

29. Any of the activities proposed will be carried out having due regard to the need to avoid any overlapping with the work of other bodies, both within the CoE and outside it. Therefore, part of the future work in any of these areas will be devoted to a more thorough analysis of CoE and international standards existing and in preparation and to the precise identification of issues in which the CoE, and the CDDH in particular, could provide specific added value.

30. In the light of the above, the CDDH proposes, for the next biennium, and in addition to the activities to be carried out in the field of corporate social responsibility and of culturally diverse societies to carry out, in order of priority, the following work :

- A feasibility study on possible action on the impact of the economic crisis on human rights in Europe, in view of the revision of existing instruments, the elaboration of a non-binding instrument, or the elaboration of a Committee of Ministers declaration on this theme.
- As regards the implementation of the Convention at national level, in particular with respect to the possible revision of Committee of Ministers’ Recommendation Rec(2004)4 on the European Convention on Human Rights in university education and professional training, any further activity should be considered in the context of the ongoing work on the Court reform and the implementation of the Brighton Declaration.