

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

### **Recommendation Rec(2002)13 of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights**

*(Adopted by the Committee of Ministers on 18 December 2002  
at the 822nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering the importance of the European Convention on Human Rights (hereafter referred to as “the Convention”) as a constitutional instrument for safeguarding public order in Europe, and in particular of the case-law of the European Court of Human Rights (hereafter referred to as “the Court”);

Considering that easy access to the Court’s case-law is essential for the effective implementation of the Convention at national level, as it enables to ensure the conformity of national decisions with this case-law and to prevent violations;

Considering the respective practices of the Court, of the Committee of Ministers in the framework of its control of the execution of the Court’s judgments, and of the member states with respect to publication and dissemination of the Court’s case-law;

Considering that member states were encouraged, at the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000), to “*ensure that the text of the Convention is translated and widely disseminated to national authorities, notably the courts, and that the developments in the case-law of the Court are sufficiently accessible in the language(s) of the country*”;

Taking into account the diversity of traditions and practice in the member states as regards the publication and dissemination of judicial decisions;

Recalling Article 12 of the Statute of the Council of Europe, according to which the official languages of the Council of Europe are English and French,

Recommends that the governments of the member states review their practice as regards the publication and dissemination of:

- the text of the Convention in the language(s) of the country,

- the Court's judgments and decisions,

in the light of the following considerations.

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It is important that the governments of member states:

i. ensure that the text of the Convention, in the language(s) of the country, is published and disseminated in such a manner that it can be effectively known and that the national authorities, notably the courts, can apply it;

ii. ensure that judgments and decisions which constitute relevant case-law developments, or which require special implementation measures on their part as respondent states, are rapidly and widely published, through state or private initiatives, in their entirety or at least in the form of substantial summaries or excerpts (together with appropriate references to the original texts) in the language(s) of the country, in particular in official gazettes, information bulletins from competent ministries, law journals and other media generally used by the legal community, including, where appropriate, the Internet sites;

iii. encourage where necessary the regular production of textbooks and other publications, in the language(s) of the country, in paper and/or electronic form, facilitating knowledge of the Convention system and the main case-law of the Court;

iv. publicise the Internet address of the Court's site (<http://www.echr.coe.int>), notably by ensuring that links to this site exist in the national sites commonly used for legal research;

v. ensure that the judiciary has copies of relevant case-law in paper and/or electronic form (CD-Rom, DVD, etc.), or the necessary equipment to access case-law through the Internet;

vi. ensure, where necessary, the rapid dissemination to public bodies such as courts, police authorities, prison administrations or social authorities, as well as, where appropriate, to non-state entities such as bar associations, professional associations etc., of those judgments and decisions which may be of specific relevance for their activities, where appropriate together with an explanatory note or a circular;

vii. ensure that the domestic authorities or other bodies directly involved in a specific case are rapidly informed of the Court's judgment or decision, for example by receiving copies thereof;

viii. consider the possibility of co-operating, with a view to publishing compilations, in paper or in electronic form, of Court judgments and decisions that are available in non-official languages of the Council of Europe.

## explanatory memorandum

### Background

1. The European Convention on Human Rights entered into force on 3 September 1953. Since then, important efforts have been carried out in order to ensure the publication and dissemination of the Convention and the case-law of the European Court of Human Rights, at governmental and parliamentary level as well as at non-state (publishers, bar associations, universities, human rights institutes, individuals ...) level.
2. Nevertheless, the increase in the number of member states of the Council of Europe and the evolution of the case-law of the Court have made further measures necessary at the European level, in order to ensure that the efforts correspond to the new needs.
3. Accordingly, the European Ministerial Conference on Human Rights, held in Rome on 3-4 November 2000 to commemorate the 50th anniversary of the Convention encouraged member states to “ensure that the text of the Convention is translated and widely disseminated to national authorities, notably the courts, and that the developments in the case-law of the [European Court of Human Rights] are sufficiently accessible in the language(s) of the country” (Resolution I, paragraph 14. (iii)).
4. As part of the follow-up to the Conference, the Ministers' Deputies, at their 736th meeting (10-11 January 2001), instructed the Steering Committee for Human Rights (CDDH) to examine ways and means of assisting member states with a view to a better implementation of the Convention in their domestic law and practice (...) (Decision N° 9). The CDDH gave the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) the task of considering the follow-up to these terms of reference.
5. DH-PR has recognized the importance of the publication and dissemination in the member states of the text of the Convention and of the case-law of the Court, in order to allow national authorities, and in particular judges, to efficiently implement the Convention as interpreted by the Court. Accordingly, the DH-PR decided, at its 49th meeting (25-27 April 2001) to elaborate a draft recommendation on this subject.
6. The text of the draft recommendation was elaborated by the DH-PR during its 50th (26-29 September 2001) and 51st meetings (20-22 March 2002). It was examined by the CDDH during its 54th meeting (1-4 October 2002) and transmitted to the Committee of Ministers for adoption.
7. The accessibility of the Court's case-law depends on the effort of the Court as well as on that of the member states. Therefore, the draft recommendation should be read keeping in mind the draft Resolution of the Committee of Ministers on the publication and dissemination of the case-law of the European Court of Human Rights, which states the need for administrative measures to be taken within the Court to facilitate access to important judgments and decisions.

8. The Recommendation invites the member states to review their practice on publication and dissemination of the text of the Convention, (including the Protocols thereto ratified by each state) in the language(s) of the country by:

(i) ensuring that the text of the Convention, translated into the language(s) of the country, is published and disseminated in such a manner that it can be effectively known and that the national authorities, notably the courts, can apply it;

9. On this matter, member states could follow national practice on the publication of legislation. However, as the question of how the Convention is published is closely linked to that of dissemination, it should be envisaged to publish the Convention in such a form (leaflet, brochure, etc.), so that it can be easily and widely disseminated.

10. As far as dissemination is concerned, a requirement would be that the text of the Convention be accessible in both paper and electronic form in the main libraries, in the courts and in the documentation centres or the Internet sites of the Government and/or Parliament. Dissemination of the Convention to the larger public would be of great value, for example through universities or professional training centers or other public or private institutions.

11. The Recommendation also invites the member states to examine their practice on publication and dissemination of the Court's judgments and decisions. It takes account of the diversity of traditions and practice in the member states as regards the publication and dissemination of judicial decisions. It notes in particular that some states have a strong tradition whereby civil society caters for this function, just as it does for the national courts (for instance, through specialist private publishing houses, university centres, etc). In other states, this is not the case, for a variety of reasons, and the public authorities have to use their own resources to publish and disseminate the case-law (for instance, some ministries ensure the dissemination of Court judgments and decisions by means of information bulletins for the courts and authorities, in a number of states the judgments are published in the official gazette and in others the supreme courts publish them). With these basic considerations as a background, member states are invited to take a number of measures, evoked in the recommendation.

(ii) ensuring that, whether as a result of state or private initiatives, judgments and decisions which constitute relevant case-law developments, or which require special implementation measures on their part as respondent states, are rapidly and widely published, in their entirety or at least in the form of substantial summaries or excerpts (together with adequate references to the original texts) in the language(s) of the country, in particular in official gazettes, information notes from competent ministries, law journals and other media commonly used by the legal community, including, where appropriate, the Internet sites;

12. The recommendation underlines the necessity that the important judgments and decisions be made available in the national language(s). However, it notes that it is often enough to provide a summary of the case in the national language.

13. It is not considered realistic or necessary to ask Contracting states to ensure the publication and dissemination of all judgments and decisions. In fact, the

Recommendation does not even ask the Court to publish all judgments and decisions, which is in line with its present practice according to which the Court selects the more important judgments and decisions for publication. It must be emphasised that many cases relate to specific problems or are repetitive cases, not adding significantly to the development of the case-law. These cases do not normally merit publication. In this connection, the current practice of the Committee of Ministers in supervising the enforcement of judgments can be noted. This practice does not require the respondent state to publish judgments solely highlighting various administrative shortcomings, without providing clarifications on the content of the rights protected by the Convention. It is therefore often considered sufficient to disseminate such judgments to the authorities directly concerned (see below under (vii)).

14. In the interest of efficiency, the stress should be on those important judgments and decisions, knowledge of which is necessary for the application of the Convention at the national level. However, an effort from member States to publish these judgments and decisions rapidly and widely is requested.

15. The Recommendation gives a number of examples of where these judgments and decisions could be published, such as official gazettes, information notes from competent ministries, law journals and other media commonly used by the legal community, including, where appropriate, the Internet sites. As mentioned above, national practices on the publication of judgments must guide the member states' choice in this respect.

16. In this context, the contribution of the Council of Europe Information Offices existing in certain member states is underlined.

17. The interference between publication and dissemination must be underlined. In many cases publication also leads to the desired dissemination.

(iii) encouraging where necessary the regular production of text books and other publications, in the language(s) of the country, in paper and/or electronic form, facilitating knowledge of the Convention system and the main case-law of the Court ;

18. The Recommendation stresses the importance of publications at the national level analysing the Strasbourg decisions (textbooks explaining the Convention and the main judgments, etc) and of ensuring their effective dissemination. It may be that in some countries publications of this kind are already sufficiently catered for through private initiatives or within the framework of the existing research programmes of the universities.

19. It is not sufficient to simply provide a mass of information; it has to be assessed and an appropriate commentary added. Furthermore, such works should be regularly published and sufficiently accessible, in paper and/or electronic form. As a means of achieving this goal could be mentioned providing financial assistance for research and publication on the Convention to the national law faculties, etc.

(iv) publicising the Internet address of the Court's site (<http://www.echr.coe.int>), notably by ensuring that links to this site exist in the national sites commonly used for legal research;

20. The Recommendation does not concern the setting up of new national databases which reproduce judgments in one of the official languages of the Council of Europe (Internet sites, etc.) in so far as the HUDOC data base managed by the Council of Europe provides with the essential information. The Recommendation rather invites member States to refer users to the HUDOC data base from the national sites commonly used for legal research.

(v) ensuring that the judiciary has copies of relevant case-law in paper and / or electronic form (CD-Rom, DVD, etc.), or the necessary equipment to access to case-law through the Internet;

21. This is perhaps one of the most important elements in the Recommendation, if the aim of the effective implementation of the Convention on the national level is to be achieved. The judiciary must have access to the case-law, but must also, in their training as judges, be informed about the relevance and importance of the texts and about how to access them. An effort must be made in member states in this regard.

(vi) ensuring, where necessary, rapid dissemination to public bodies such as courts, police authorities, prison administrations or social authorities, as well as, where appropriate, to non-state entities such as bar associations, professional associations etc., of those judgments and decisions which may be of specific relevance for their activities, where appropriate together with an explanatory note or a circular;

22. This means that each member state is to make sure that all the main judgments and decisions affecting its own national system (usually necessitating the adoption of general measures) are rapidly disseminated to public bodies such as courts, police authorities, prison administrations or social authorities, as well as, where appropriate, to non-state entities such as bar associations, professional associations etc. Whenever it is considered appropriate the judgments and decisions should be accompanied by an explanatory note or a circular.

(vii) ensuring that the domestic authorities or other bodies directly involved in a certain case are rapidly informed of the Court's judgment or decision, e.g. by receiving copies thereof;

23. In this connection, the current practice of the Committee of Ministers in supervising the enforcement of judgments, according to which states are invariably requested to disseminate judgments to the authorities directly involved in the case, can be noted. This is of importance in order to guide the necessary administrative reforms.

(viii) considering the possibility of co-operating with a view to including, in a common compilation, in paper or in electronic form, Court judgments and decisions that are available in the same non-official language of the Council of Europe.

24. In the light of the efforts made by the Council of Europe to assist certain states in setting up data bases containing translations of judgments into certain languages, the Recommendation encourages the creation of such databases (for instance, Russian and German), on a more general scale. It proposes that countries with the same or partly the same national language(s) co-operate in this respect.