COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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Strasbourg, 27 September 2002
DH-PR(2002)011

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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COMMITTEE OF EXPERTS FOR THE IMPROVEMENT OF PROCEDURES FOR THE PROTECTION OF HUMAN RIGHTS (DH-PR)

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REPORT

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52nd meeting, 11-13 September 2002

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Introduction

1. The Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) held its 52nd meeting at Strasbourg, from 11-13 September 2002. The meeting was chaired by Mr Roeland BÖCKER (Netherlands). The list of participants appears in Appendix I. The agenda as adopted appears in Appendix II.

2. During the meeting, the DH-PR, in particular:

(i) took part in a meeting with the Reflection Group CDDH-GDR to take stock of the Seminar *"Partners for the Protection of Human Rights: Reinforcing Interaction between the European Court of Human Rights and National Courts"* (Strasbourg, 9-10 September 2002) ;

(ii) continued its work on the improvement of the implementation of the Convention in law and in practice in member States. In this context, it in particular elaborated a draft explanatory memorandum on the draft recommendation on the publication and dissemination in the member States of the text of the Convention and of the case-law of the Court (Appendix III) ;

(iii) continued the work on several items resulting from the report of the Evaluation Group set up by the Committee of Ministers to examine ways and means of guaranteeing the effectiveness of the Court. In this context, it in particular adopted a draft resolution on the practice of friendly settlements (Appendix IV);

(iv) transmitted its contribution to the monitoring exercise on the functioning of the judiciary to the CDDH.

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I. SEMINAR AND MEETING WITH THE CDDH-GDR

3. The results of the Seminar as analysed during the joint meeting of the DH-PR and the Reflection Group CDDH-GDR (11 September 2002, morning) will be reflected in the relevant section of document CDDH (2002) 014 (draft interim report, which will be examined during the 54th meeting of the Steering Committee, 1-4 October 2002, with a view to transmitting it to the Committee of Ministers CDDH[1].)

II. MEETING OF THE DH-PR

Item 1: Opening of the meeting and adoption of the agenda

4. See introduction.

Item 2: Improving the implementation of the Convention in law and in practice in member States

[1] The draft interim report contains an overview of the work carried out by the CDDH and its related bodies during the period 1 January – 4 October 2002 as regards the ad hoc terms of reference assigned to it by the Committee of Ministers.

(Follow-up to the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000))

5. The DH-PR took note of the wish of the Bureau of the CDDH, communicated to it by the Secretariat, that the various issues examined under this heading be dealt with separately and not, as the DH-PR had considered as an option, in a "global" recommendation.

6. Consideration of this item was part of the follow-up to the texts adopted at the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000), and in particular of the wide terms of reference given to the DH-PR during the 51st meeting of CDDH (27 February – 1 March 2002) concerning the follow-up to paragraph 14 of Resolution No. I of the Conference.

7. The DH-PR observed that following the 109th Ministerial Session (7-8 November 2001), the Ministers' Deputies, during their 773rd meeting (21 November 2001), requested the CDDH to accelerate its work in this field. With this background, the DH-PR discussed in turn:

(i) the publication and dissemination of the text of the Convention and of the case-law of the Court;
(ii) the existence of effective remedies at national level, including means of compensation for violations found by national authorities;
(iii) systematic screening of the compatibility of draft legislation, regulations and administrative practice with the standards laid down in the Convention;
(iv) signatures and ratifications of the protocols to the Convention.

(i) Publication and dissemination of the text of the Convention and of the case-law of the Court

8. Further to the decision taken at its 51st meeting (20-22 March 2002, DH-PR (2002) 006, paragraph 18), a draft explanatory memorandum had been prepared by the Secretariat and circulated to the members of the DH-PR for comments. The result was contained in document DH-PR (2002) 010 rev, which was now examined by the Committee.

9. The experts considered the draft text prepared by the Secretariat. They decided to add a mention, in the introduction, of the work already carried out over the years, both at governmental and private level, in order to ensure the dissemination and publication of the Court's case-law. They also decided to explain more clearly in the explanatory memorandum that the publication and dissemination of the Convention and of the judgments and decisions of the Court ultimately aim at ensuring that the Convention, as interpreted by the Court, is effectively applied by domestic courts and authorities. The special efforts needed in order to ensure that this is really the case, not only in the higher judicial and administrative instances, but also in lower courts and authorities were emphasised.

10. A lengthy discussion was engaged with regard to the link between dissemination / publication, on the one hand, and professional training / university teaching, on the other hand, so as to ensure that the Convention, as interpreted by the Court, is implemented at domestic level.

11. The strong support for additional efforts in this area, manifested notably by the representatives of the national jurisdictions, at the Seminar on the interaction between the Strasbourg Court and the national courts was noted. All experts agreed that, without such

training, publication and dissemination lost much of their effectiveness. There was, however, disagreement as to whether this important aspect should be included, albeit in very summary form, already in the present draft recommendation text or whether the CDDH should not rather be seized in order to develop a comprehensive recommendation for the Committee of Ministers on the subject.

12. Some experts noted that the two avenues were not mutually exclusive. One expert submitted a proposal for a new sub-paragraph to the draft recommendation and a corresponding additional paragraph to the explanatory report[2]. The DH-PR felt that it was up to the CDDH to decide on which manner it would prefer to address the issues related to training. It could (i) mention them in a paragraph within the present draft recommendation, with training being perceived as a condition for an efficient dissemination of the Convention and case-law of the court and/or (ii) devote a separate legal instrument to questions related to training.

13. Following this debate, the DH-PR decided to transmit to the CDDH, for examination and possible adoption at its 54th meeting (1-4 October 2002) :

- the draft recommendation prepared at its last meeting ;
- the draft explanatory memorandum prepared during this meeting.

Both texts appear in Appendix III.

(ii) Existence of an effective remedy at national level, including means of compensation for violations found by national authorities

14. The DH-PR examined this item in the light of the contributions submitted by 15 experts and of the preliminary analysis prepared by the Secretariat (documents DH-PR (2002) 1 rev, Addenda 1 and 2). The experts decided to continue work at its next meeting, with a view to adopting a draft recommendation to be transmitted to the CDDH.

15. As regards the scope of such a text, the experts noted the general scope of the conclusions of the Rome Conference and of their own mandate. They also noted the important developments in the Court's case-law following the *Kudla* judgment (26 October 2000). They recalled, however, the complexity of the general question of the effectiveness of domestic remedies and the fact that their work so far had concentrated on the question of the remedies available in cases of allegations of unreasonably lengthy proceedings.

16. The experts agreed that the draft recommendation should emphasise the question of remedies in length of proceedings cases. The more general requirements of Article 13 should also be highlighted. Following a discussion on the aim of the recommendation, it was stressed

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2 This proposal reads as follows :
New sub-paragraph (vi) :
« encouraging continuous training for judges, lawyers, police officers and prison officers on the Convention and the case-law of the Court, particularly through relevant courses and seminars in the curricula of law faculties, schools of magistrature or other appropriate institutions. »
Paragraph for the explanatory memorandum :
« Given the technical nature of the Convention and the Court's case-law, the professional training of those groups of persons who are required to apply the Convention in their daily lives is particularly important if the impementation of the Convention is to be assured in the domestic legal order. » Therefore, it is necessary to promote the knowledge of the Convention's law by those groups.

that the exercise did not aim at developing the contents of this provision, but rather at ensuring that States took measures to review their legal systems in the light of the Court's existing case-law to ensure that they provide, whether as a result of legislation or developments of the case-law of the courts, effective remedies as required by Article 13. The importance of such a review at this juncture as a contribution to the limitation of the number of complaints to Strasbourg was underlined.

17. Following this debate, the DH-PR decided to continue this discussion with a view to the adoption, during its next meeting, of a draft recommendation and explanatory memorandum to transmit to the CDDH.

18. Experts were invited to send any comments/proposals on the text to the Secretariat (DH-PR (2002) 001rev, addendum I) before 31 October 2002.

(iii) Systematic screening of the compatibility of draft legislation and regulations, as well as of administrative practice, with the standards fixed by the Convention

19. The background to this agenda item is set out under section II of document DH-PR (2002) 2rev. It contains the responses sent by 31 experts to a questionnaire of the Secretariat, as well as Secretariat's conclusions and suggestions following the information received.

20. Experts noted with interest the different procedures adopted in order to ensure the conformity of draft legislation with the standards of the Convention.

21. It was stressed that any possible text should be very carefully worded so as to take into account the variety of constitutional traditions and not be too prescriptive. Experts expressed their global approval of the idea of a set of good practices. On this subject they asked the Secretariat to complete and to precise further the practices appearing in document DH-PR (2002) 002 rev.

22. Following this debate, the DH-PR decided to continue this discussion with a view to elaborating a set of good practices during its next meeting to transmit to the CDDH. The experts were invited to submit their proposals for good practices to be included in this document, in particular those corresponding to their national experience. The experts who wished to complete information contained in document DH-PR (2002) 002 rev, were invited to do so before 31 October 2002.

(iv) State of signature and ratification of the Protocols to the Convention

23. The DH-PR took note of the information contained in the updated tables as of 15 August 2002 (document DH-PR (2002) 005 rev.).

Item 3: Guaranteeing the effectiveness of the European Court of Human Rights
(In particular, elaboration of elements for the interim report by the CDDH to be submitted to the Committee of Ministers)

24. The DH-PR continued its consideration of ways and means of guaranteeing the effectiveness of the European Court of Human Rights, notably in the light of the report by the Evaluation Group set up for this purpose by the Committee of Ministers[3] and bearing in mind

[3] Evaluation Group tasked with studying possible means guaranteeing the effectiveness of the European Court of Human Rights. The Evaluation Group's report is available on the Committee of Ministers' website:

in particular : the report of the 4th meeting of the CDDH Reflection Group (28 February – 1 March 2002, CDDH-GDR (2002) 5); the exchanges of views during the Seminar on the interaction between the Strasbourg's Court and national courts; the results of the joint meeting with the CDDH-GDR.

25. It was recalled that the DH-PR had decided to examine in turn:

(i) the conclusion of friendly settlements before the Court;
(ii) a possible protocol to the Convention stipulating that judges to the Court be elected for a single term of office;
(iii) how "clone cases" should be dealt with; and
(iv) the possibility of transferring certain matters of procedure, at present dealt with in the Convention, to a separate instrument which could be amended in accordance with a more straightforward procedure.

26. A Working Group chaired by Mr Linos-Alexander SICILIANOS (Greece), Vice-Chair of the DH-PR, met on 13-14 June 2002 to begin consideration of these issues (GT-DH-PR (2002) 004). The relevant extracts from the report of this meeting appear below as an introduction to each theme.

(i) Friendly settlements

(Possible Resolution/Recommendation encouraging Governments to conclude friendly settlements before the European Court of Human Rights (Chapter VIII, §62 of Evaluation Group report)
(Report of the 51st meeting of the DH-PR (20-22 March 2002), DH-PR (2002) 006 (§§ 40-47))

27. Extract from the report of the GT-DH-PR (2002) 004:

> "The working group discussed the appropriateness of elaborating a draft recommendation encouraging governments to conclude friendly settlements before the European Court of Human Rights, in the light of the discussion held during the last meeting of the DH-PR (see Report of the 51st meeting of the DH-PR (20-22 March 2002), document DH-PR (2002) 006 (§§ 40-47)).
>
> Several members of the working group expressed hesitations about the idea. They pointed inter alia to the fact that a friendly settlement is a voluntary act concluded between two parties and that it was therefore difficult to conceive a recommendation directed only to the Government and not to the other parties.
>
> As regards the Court, it was recalled that according to the Convention if the Court declares an application admissible, it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and its protocols (Article 38, paragraph 1b). The experts also noted that if it pushed too hard for a friendly settlement in an important case, the underlying problems may not be resolved which could lead to other similar cases in the future and in a delay in dealing with the

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http://cm.coe.int/stat/E/Public/2001/rapporteur/clcedh/2001egcourt1.htm. The report is also reproduced in document DH-PR (2002) 7 addendum.

problem. It was therefore not considered appropriate to make any recommendations on this subject to the Court. However, as the point was made that practices varied considerably in different Sections of the Court with respect to friendly settlements, the working group suggested that the DH-PR take the initiative to a letter, to be written by the Chair of the CDDH to the President of the Court, to draw his attention to this matter so that practices could be harmonised**.**

This being said, in view of the obvious importance of friendly settlements as manifested by their general increase over recent years, the working group decided, to suggest to the DH-PR that a draft resolution be elaborated for the Committee of Ministers on the subject. The resolution, which should not contain any recommendation, should simply recall that the possibility of friendly settlements was provided for in the Convention, that the conclusion of a friendly settlement was a matter at the discretion of the parties to a case, that friendly settlements in some cases could alleviate the workload of the Court, that the number of friendly settlements had increased in recent years (which could be noted with satisfaction) and that examining the possibility of concluding a friendly settlement was of special importance in clone cases and other cases raising no issue of principle or of changes to domestic legislation."

28. Accordingly, the working group drew up a preliminary draft resolution with a view to its examination by the DH-PR. In this connection, the Committee of experts hold an exchange of views with Mr Michael O'BOYLE, Section Registrar. During this exchange, the following items in particular were raised :

(i) the globally positive experience of friendly settlements as a means not only to alleviate the Court's case-load, but also to allow a rapid solution to complaints to the satisfaction of both applicants and governments;

(ii) the importance of a proactive approach, including in particular concrete proposals, on the part of the Court;

(iii) the co-ordination efforts undertaken by the Court in order to ensure consistent practices among its sections as regards the conclusion of friendly settlements;

(iv) the large number of friendly settlements (approx. 20%) in which governments were not able to meet the deadlines for payments or in which otherwise there arose other payment problems and the importance of the Committee of Ministers' execution control;

(v) the more and more frequent use of friendly settlements before admissibility – and in this connection the problem posed by such settlements, given that, as things stood, they are not controlled either by the Court or by the Committee of Ministers;

(vi) the importance of ensuring disincentives for unreasonable refusals, both on the part of applicants and their lawyers, to accept friendly settlement proposals made by the Court;

(vii) the importance of the undertakings by governments to take general measures and/or individual measures over and above the payment of a sum of money, where this was necessary to allow for a friendly settlement with respect for human rights;

(viii) the advantages (reassuring for the applicant) and disadvantages (media did not always distinguish between friendly settlements and findings of violations) of having friendly settlements in the form of a judgment rather than in a less formal document;

(ix) the possibility of striking cases off the list on the basis of undertakings by the government (payment, individual measures and/or general measures) of such a nature as to deprive the applicant of victim status and in some way, of respect for his human rights.

29. With this exchange of views in mind, the DH-PR examined the preliminary draft resolution drawn up by the GT-DH-PR. It agreed to amend the text in order to highlight (i) the advantages of friendly settlements not only for the Court but also for the applicants; (ii) the importance of such settlements.

30. At the end of this discussion, the DH-PR decided to forward to the CDDH, for examination and possible adoption at its 54th meeting (1-4 October 2002), the text of the draft resolution as it appears in Appendix IV.

(ii) Election of judges

(Possible protocol to the Convention providing for the election of the judges of the Court for a single, fixed term of not less than nine years, without possibility of re-election (Chapter XI, § 20 (b) of Evaluation Group report)

31. Extract from the report of the GT-DH-PR (2002) 004:

> "Several experts agreed that the principle of non-renewable terms of office might contribute to ensure greater independence among judges. Certain experts were concerned about making new changes so soon after the establishment of the new Court. They would prefer to wait in order to be able to evaluate the need for changes better.
>
> All experts underlined that judges' independence was also linked to many other factors than the term of office, including the quality of the procedure for nominating and electing candidates.
>
> On this last point reference was made to the work already done by the Parliamentary Assembly and the Committee of Ministers, particularly through Resolution 1200(1996) and Recommendation 1295(1996) on "Procedure for examining candidatures for the election of judges to the European Court of Human Rights", and Recommendation 1429(1999) on "National procedures for nominating candidates for election to the European Court of Human Rights". Mention was also made of the Committee of Ministers decision of 28 May 1997 to introduce an informal procedure for examining candidatures before transmitting them to the Assembly.
>
> If the idea of a non-renewable term of office were to be retained by the CDDH, the 9-year term proposed by the Evaluation Group was considered to be the best solution.
>
> Attention was however drawn to the link between the length of terms of office and the continuity within the Court. It was noted that with a 9-year term one third of the judges, ie at present 15 judges, would be renewed every 3 years. An expert proposed a ten-year term to ensure the renewal of a quarter of the judges, ie 11 judges, every 2½ years. Another proposed 12-year terms, drawing in particular on the experience of the

German Constitutional Court, with the possibility of renewing ¼ of the judges, ie 11 judges every 3 years.

Two experts mentioned that the current provision for re-election could be restricted to once only, in order to allow two 6-year terms on the model of the CPT. Other experts noted that this last possibility would mean breaking with the principle of a single term of office as a means of ensuring the independence of the Court.

Attention was drawn to the important issue of the transition to a new system of terms of office. It was noted that according to the system already established under the old convention, the judges were currently divided into groups. Under the previous system there had been three groups, while there were now only two. Thus the terms of office of 19 judges were due to expire in October 2004 and those of 21 judges in October 2007. The post of judge in respect of Spain would soon be filled, since the present judge had reached the age of 70. The posts of judges in respect of Armenia and Azerbaijan had not yet been filled."

32. The DH-PR will continue examination of this item at its 53rd meeting (April 2003) in the light of a document which the Secretariat will prepare on the practical consequences of 9-year terms of office.

(iii) Clone cases

(Treatment of "clone cases" (CDDH-GDR (2001) 10, Activity report, Part A (i and ii), and Report DH-PR (2001) 10, § 14))

33. Extract from the report of the GT-DH-PR (2002) 004:

"The working group concluded that it was first of all for the Court to identify rapidly different kinds of cases, notably repetitive cases or "clone cases". It suggested that these be defined as cases concerning a specific piece of legislation or a specific practice that the Court has already pronounced itself on in a judgment. The importance of not classifying cases involving allegations of serious human rights violations as repetitive cases was stressed.

It noted that under the Convention (Article 37, paragraph 1), the Court had the possibility to strike repetitive cases out of its list if a State had taken general measures of a nature to remedy the situation and had recognised the violation of the Convention and also, either put in place adequate national compensation mechanisms, or offered the applicant proper just satisfaction before the Court (as the case might be including pecuniary or non-pecuniary damage or limited to legal costs).

The importance of ensuring execution control by the Committee of Ministers of any undertakings made by the Government was pointed out. In this context the group noted the practice according to which striking out decisions in cases of this kind take the form of a judgment transmitted to the Committee for such control.

In this context the group noted the stress laid, both at the Ministerial Conference in Rome in November 2000 and at the Ministers 109th session in Strasbourg in November 2001, on States providing effective domestic remedies for all Convention violations. It also noted that the Ministers had requested, at the latter meeting, that their Deputies should in the context of their execution control use all the means at

their disposal to ensure the expeditious and effective implementation of the Court's judgments, including in particular those involving issues generating repetitive applications.

Reference was made to the Court's own new emphasis on the existence of effective domestic remedies in the Kudla case against Poland. Considering the importance of this new jurisprudence for the handling of repetitive cases the experts expressed great interest in its future development by the Court. The recent introduction of a general remedy for Convention violations in a number of States (e.g. Croatia and Slovakia) in line with the requirements of this judgment was noted.

It was accepted, however, that it was often not possible to give legislation adopted to comply with a judgment by the Court retroactive effect so as to provide effective remedies for other pending or possible cases. This was, however, not always so and reference was made notably to the Italian experience in the form of the Pinto-legislation under which a national remedy with retroactive effect has been provided for in length of proceedings-cases, thus allowing the Court to send back thousands of cases for exhaustion of this new remedy. The experts also noted that national jurisdictions always have the possibility to take the case-law of the Court into account in similar cases in order to harmonise their case-law with the interpretations made by the Court.

On the question how to deal with repetitive cases that did not fall under the above categories, there was a general consensus in the working group that the proposal made by the CDDH-GDR last year, which is contained in document CDDH-GDR (2001) 10 (§ 7), was to be preferred as compared to the proposal of the Evaluation Group. The idea was that certain straightforward cases be decided (admissibility and merits) in a summary procedure: Opinions differed somewhat on how such a procedure should be construed, on whether the now existing Chambers of the Court would deal with the cases or Committees of three judges, on how compensation issues would be dealt with etc. It was considered important that Governments be able to request that a case be dealt with under the normal procedure in case they found that there was a question of a serious violation or a question of interpretation of the Convention".

34. The DH-PR decided to examine this question together with that of the execution of judgments. It would resume discussions at its next meeting.

(iv) Treatment of certain matters of lesser importance

(Possibility to transfer certain matters of lesser importance now dealt with in the ECHR to a separate instrument capable of amendment by a simpler procedure (Chapter XI, § 20 (c) of Evaluation Group report))

35. To avoid any misunderstandings, the DH-PR decided to change the current title ("matters of lesser importance") to "questions of procedure". It will give prioritiy to the examination of this item at its next meeting. At this stage, it took note of the discussions of the working group (see below: Extract from the report of the GT-DH-PR (2002) 004):

"The working group observed that these matters principally concerned questions of procedure. It preferred this term which it would use in the future. It then considered the issue of transferring certain of these matters, now dealt with in the Convention, to a separate instrument capable of amendment by a simpler procedure as mentioned in paragraph 88 of the

Report of the Evaluation Group. It noted that reference was made to a possible Statute of the Court which it would be possible for the Committee of Ministers to amend by a simpler procedure with the agreement of the Court. The example mentioned in the Report was to regulate matters such as the number of members of a chamber of the Court in this Statute.

The working group was not convinced prima facie about the usefulness of this proposal. It nevertheless decided that the proposal merited further examination. Some experts were of the opinion that it could lead to a situation of legal insecurity for the Court.

The working group instructed the Secretariat to draw up a list of matters that could possibly be dealt with in a Statute of the Court for the next meeting of the DH-PR, taking into account the procedures for adoption of statutes of other international courts".

36. Having taken note of the hesitations expressed, the DH-PR instructed the Secretariat to draw up a list of questions which might be dealt with in a Statute of the Court for the next meeting of the DH-PR, taking into account the procedures for adoption of statutes of other international courts.

Item 4: Contribution to the monitoring exercise on the functioning of the judicial system

(i) Fairness of prosecution proceedings in member States

(ii) Court proceedings before military courts in member States

37. Following this discussion, the DH-PR considered that it had completed the task conferred to it by the CDDH. By transmitting the latest information collected, it considered that it would now be for the CDDH to decide on the procedure to be followed.

38. National experts who wished to complete the information contained in documents DH-PR (2002) 8 rev.II and 9 rev. were invited to do so before 27 September 2002 .

Item 5 : Items to be placed on the agenda of the next meeting

39. The DH-PR decided to give priority at its next meeting to the item "Guaranteeing the effectiveness of the European Court of Human Rights" and in this context, to examine (i) the questions concerning the election of judges; (ii) certain matters of procedure. Following an exchange of views, the following items were placed on the agenda of its next meeting:

1. Guaranteeing the effectiveness of the European Court of Human Rights

(i) Election of judges

(ii) Treatment of certain matters of procedure

2. Follow-up to a seminar of the CDDH-GDR on the reform of the Court (26-28 February 2003) (see Item 6 below)

3. Improvement of the implementation of the Convention in the law and practice of the member States

(i) Existence of an effective remedy at national level, including means of compensation for violations found by national authorities

(ii) Systematic screening of the compatibility of draft legislation and regulations, as well as of administrative practice, with the standards fixed by the Convention

4. Exchanges of views (subject to the time available)

(i) on the implementation of Recommendation n° R (2000) 2 of the Committee of Ministers to member States concerning the re-examination or re-opening of certain cases at the domestic level following judgments of the European Court of Human Rights

(ii) on the replies of the Committee of Ministers to Parliamentary Assembly Recommendations 1477 (2000) and 1546 (2001) (execution of judgments)

(iii) on recent developments concerning the application of the revised Rules (January 2001) of the Committee of Ministers for the supervision of the execution of the judgments of the Court)

40. A summary of the various contributions which are expected from experts in preparation for the next meeting appears in Appendix V.

Item 6: Other business - Seminar on the reform of the Court

41. The DH-PR took note that a Seminar on the reform of the Court was planned for 26-28 February 2003. It expressed its wish to participate in the Seminar, given that the subject matter to be addressed also concerned its own work.

Item 7 : Dates of the next meetings

42. Subject to decisions which will be taken by the CDDH at its 54th meeting (1-4 October 2002) with regard to the possible participation of the DH-PR in the work of the Seminar on the reform of the Court (26-28 February 2003 ; see previous paragraph), the DH-PR took note of the following dates, currently retained by the CDDH for its next meetings :

- 53rd meeting of the DH-PR: 23-25 April 2003

- 54th meeting of the DH-PR: 10-12 September 2003.

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42. As he was at the end of his second and last term of office, the DH-PR thanked its chairman Mr Roeland Böcker (the Netherlands) for the excellent manner in which he had led the work of the Committee.

It noted that:

- the CDDH will hold an election for the Chair of the DH-PR at its 54th meeting (1-4 October 2002);

- the DH-PR will hold an election for its Vice-Chair at its 53rd meeting (23-25 April 2003).

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Appendix I

LIST OF PARTICIPANTS / LISTE DE PARTICIPANTS

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EUROPEAN COMMISSION/COMMISSION EUROPEENNE
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*** * ***

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INTERNATIONAL COMMISSION OF JURISTS/COMMISSION INTERNATIONALE DE JURISTES
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INTERNATIONAL FEDERATION OF HUMAN RIGHTS (FIDH)/ FEDERATION INTERNATIONALE DES LIGUES DES DROITS DE L'HOMME
Apologised/Excusé

EUROPEAN COORDINATING GROUP FOR NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS/ GROUPE DE COORDINATION EUROPEENNE DES INSTITUTIONS NATIONALES POUR LA PROMOTION ET LA PROTECTION DES DROITS DE L'HOMME

* * *

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Mme Michèle COGNARD, Administrative Assistant/Assistante administrative

* * *

Interpreters/Interprètes

Mme Anne CHENAIS
Mme Pascale MICHLIN
Mr Christopher TYCZKA

* * *

Appendix II

AGENDA

Joint meeting with the CDDH-GDR to take stock of the Seminar *«Partners for the Protection of Human Rights : Reinforcing Interaction between the European Court of Human Rights and National Courts» (Strasbourg, 9-10 September 2002)*

Item 1 : Opening of the meeting and adoption of the agenda

Draft agenda : DH-PR (2002) OJ 002

Report of the 51st meeting of the DH-PR (20-22 March 2002) : DH-PR (2002) 006

Report of the 53 rd meeting of the CDDH (25-28 June 2002) : CDDH (2002) 010

Item 2 : Improving the implementation of the Convention in law and in practice in member States
(Follow-up to the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000))

(i) Publication and dissemination of the text of the Convention and the Courts' case-law

Draft recommendation: Report of the 51st meeting of the DH-PR (20-22 March 2002): DH-PR (2002) 006, Appendix III

Draft explanatory memorandum, with observations transmitted by experts : DH-PR (2002) 010 rev

(ii) Existence of an effective remedy at national level, including means of compensation for violations found by national authorities

National information (updated : 15 August 2002) : DH-PR (2002) 001 rev

Ideas for the work of the DH-PR: DH-PR (2002) 001 rev Addendum I

Summary of the informations submitted by the experts: DH-PR (2002) 001 rev Addendum II

(iii) Systematic screening of the compatibility of draft legislation and regulations, as well as of administrative practice, with the standards fixed by the Convention

National information (updated : 15 August 2002) : DH-PR (2002) 002 rev

(v) State of signatures and ratifications to the Convention

Table (situation as of 15 August 2002) : DH-PR (2002) 005 rev

Item 3 : Guaranteeing the effectiveness of the European Court of Human Rights: Elaboration by the DH-PR of elements for the interim report by the CDDH to be submitted to the Committee of Ministers concerning :

(i) Friendly settlements;

(ii) election of judges;
(iii) "clone cases" and
(iv) the treatment of certain matters of lesser importance

Report of the DH-PR Working Group (meeting of 13-14 June 2002) : GT-DH-PR (2002) 004

Elements for the future interim report : CDDH-GDR (2002) 007 Addendum

Report of the 51st meeting of the DH-PR (20-22 March 2002) : DH-PR (2002) 006

Report of the 53rd meeting of the CDDH (25-28 June 2002) : CDDH (2002) 010

Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights (EG/Court (2001) 1) (27 September 2001)
http://cm.coe.int/stat/E/Public/2001/rapporteur/clcedh/2001egcourt1.htm

Item 4 : Contribution to the monitoring exercise on the functioning of the judicial system

(i) Fairness of prosecution proceedings in member States

National information and analysis of the Secretariat : DH-PR (2002) 008 rev II

(ii) Court proceedings before military courts in member States

National information and analysis of the Secretariat : DH-PR (2002) 009 rev

Item 5 : Other business (subject to the time available)

(i) Seminar on the reform of the Court

(ii) « *Tour de table* » on the implementation of Recommendation n° R (2000) 2 of the Committee of Ministers (re-examination or re-opening of certain cases at the domestic level following judgments of the Court)

Text of the Recommendation and of the explanatory memorandum

(iii) Exchange of views on the Committee of Ministers' reply to Recommendation 1477 (2000) of the Parliamentary Assembly (execution of the judgments of the Court)

Text of the Recommendation, opinion of the CDDH and reply of the Committee of Ministers to the Parliamentary Assembly (CM/Del/Dec(2002)779, January 2002)

(iv) Exchange of views on recent developments concerning the application of the revised Rules (January 2001) of the Committee of Ministers for the supervision of the execution of the judgments of the Court

Rules adopted in January 2001 by the Ministers' Deputies for the application of Article 46, paragraph 2 of the Convention

Item 6 : Items to be placed on the agenda of the next meeting

<u>Item 7</u> : Dates of the next meetings

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Appendix III

Draft Recommendation of the Committee of Ministers 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

prepared by the DH-PR at its 51st meeting , 20-22 March 2002

The Committee of Ministers, in accordance with Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress ;

Considering the importance of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") as a constitutional instrument for the European public order, including the case-law of the European Court of Human Rights ("the Court") ;

Considering that easy access to the Court's case-law is essential for the effective implementation of the Convention at national level, in particular 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 have been 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;*"[4]

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 organisation are English and French,

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the Court to review its practice on publication and dissemination of its judgments and decisions;

[4] Resolution I "Institutional and functional implementation of the protection of human rights at national and European levels", part A, paragraph 14 iii.

the member States to review:

(i) their practice on publication and dissemination of the text of the Convention in the language(s) of the country ;

(ii) their practice on publication and dissemination of the Court's judgments and decisions,

in the light of the following considerations.

* * *

(a) *The importance for the Court to:*

(i) make its judgments and decisions immediately available in an electronic database on the Internet;

(ii) make rapidly accessible, in both paper and electronic form (CD-Rom, DVD, etc.), its judgments, important decisions on admissibility and information notes on case-law;

(iii) indicate rapidly and in an appropriate manner, in particular in its electronic database, the judgments and decisions which constitute significant developments of its case law;

(b) *The importance for member States to rapidly :*

(i) ensure 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;

(ii) ensure that, whether as a result of private or state initiatives, judgments and decisions which constitute relevant case-law developments, or which require special implementation measures on their part as respondent States, are 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, Internet sites, information notes from competent ministries, law journals and other media commonly used by the legal community;

(iii) encourage where necessary the production of text books and other publications in the language(s) of the country facilitating knowledge of the Convention system and the main case-law of the Court, with a view to ensuring that such works are regularly published and sufficiently accessible, in paper and / or electronic form;

(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 to case-law through the Internet;

(vi) ensure, 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;

(vii) ensure 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.

(viii) consider the possibility of co-operating, with a view to including, in a common database, all Court judgments or decisions available in the same non-official language of the Council of Europe.

* * *

Draft explanatory memorandum

elaborated by the DH-PR at its 52nd meeting,
11-13 September 2002

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 is addressed to these two categories. The first part, which raises some specific points falling within its sphere of competence, is addressed to the Court, and the second part of the recommendation is addressed to the member States.

As regards the Court

8. It is stressed in the preamble that, in line with Article 12 of the Statute of the Council of Europe, all judgments as well as important decisions should be available in both official languages. The Court's workload ought not to result in a practice according to which judgments are made available only in one of the two languages.

9. The Recommendation invites the Court to review its practice on publication and dissemination of its judgments and decisions, in particular on the following three points:

(i) making its judgments and decisions immediately available in an electronic database on the Internet;

10. The term "immediately" in this context means that the normal practice should be that judgments are made available on the internet on the day of their delivery and decisions as soon as they become public.

(ii) making rapidly accessible, in both paper and electronic form (CD-Rom, DVD, etc.), its judgments, important decisions on admissibility and information notes on case-law;

11. The Recommendation underlines the importance of rapid publication of judgments, important admissibility decisions and information notes on case-law. That these should be not only in paper form, but also in electronic form, is essential for their effective dissemination.

(iii) indicating rapidly and in an appropriate manner, in particular in its electronic database, the judgments and decisions which constitute significant developments of its case law;

12. The Recommendation is based on the idea that it is for the Court to assess the texts and draw appropriate attention to those judgments and decisions which it considers need to be more widely known at the European level. This could be achieved *inter alia* by the notification or "flagging" of these texts on the Court's Internet site. It is important that it be possible, even without knowing the names of the parties to a specific case, to successfully search the website, in order to find the judgments or decisions which are relevant for a given theme, principle or research area.

As regards member States

13. The Recommendation invites the member States to review their practice on publication and dissemination of the text of the Convention 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;

14. 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.

15. 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 schools or other public or private institutions.

16. 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) ensure that, whether as a result of private or state initiatives, judgments and decisions which constitute relevant case-law developments, or which require special implementation measures on their part as respondent States, are 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, Internet sites, information notes from competent ministries, law journals and other media commonly used by the legal community;

17. 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.

18. 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)).

19. In the interest of efficiency, the stress should be on those important judgments and decisions, knowledge of which is necessary with a view to satisfactory 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.

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

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

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

(iii) encouraging where necessary the production of text books and other publications in the language(s) of the country facilitating knowledge of the Convention system and the main case-law of the Court with a view to ensuring that such works are regularly published and sufficiently accessible, in paper and / or electronic form;

23. 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.

24. 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;

25. 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 this case-law through the Internet;

26. 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 private bodies 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;

27. 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;

28. 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 to co-operate with a view to including, in a common database, all Court judgments or decisions available in the same non-official language of the Council of Europe.

29. 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.

* * *

Appendix IV

Draft Resolution
concerning the practice in respect of friendly settlements

elaborated by the DH-PR at its 52nd meeting,
11-13 september 2002

The Committee of Ministers,

1. Recalling that the European Convention on Human Rights must continue to play a central role as a constitutional instrument of European public order ;

2. Having noted the significant increase in the number of individual applications lodged with the European Court of Human Rights ;

3. Recalling that Article 38, § 1, of the Convention provides that if the Court declares an application admissible, it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto;

4. Noting in this respect with interest the increasing practice of resorting to friendly settlements in order to solve repetitive cases or cases not raising any question of principle or of changes of the domestic legal situation;

5. Considering that the conclusion of a friendly settlement, while being a question entirely within the discretion of the parties to the case, may constitute a means of alleviating the workload of the Court, as well as a means of providing a rapid and satisfactory solution for the parties ;

UNDERLINES the importance :

- of giving further consideration to the possibilities of concluding friendly settlements and,

- if friendly settlements are concluded, of the terms of such settlements being duly fulfilled.

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Appendix V

Contributions requested from experts to be sent by e-mail to M. Mikael Poutiers
Adminstrator
Human Rights Intergovernmental Co-operation Division

Before 27 September 2002: Contribution to the monitoring exercise on the functioning of the judicial system (i) Fairness of prosecution proceedings in member States; (ii) Court proceedings before military courts in member States

The DH-PR considered that it had completed the task conferred to it by the CDDH. By transmitting the latest information collected , it considered that it would now be for the CDDH to decide on the procedure to be followed. National experts who wish to complete the information contained in documents DH-PR (2002) 8 rev. and 9 rev. are invited to do so before 27 September 2002 .

Before 30 October 2002

Existence of an effective remedy at national level, including means of compensation for violations found by national authorities

The document DH-PR (2002) 1 rev. contains contributions which were submitted by 15 experts and the preliminary analysis carried out by the Secretariat. Those experts who still wish to send in national contributions are invited to do so before 31 October 2002.

The DH-PR decided to continue this discussion with a view to the adoption, during its next meeting, of a draft recommendation and explanatory memorandum to transmit to the CDDH. Element prepared by the Secretariat to this end, appear in document DH-PR (2002) 001rev, Addendum I. Experts are invited to send in their comments/proposals on the text to the Secretariat before 31 October 2002.

Systematic screening of the compatibility of draft legislation and regulations, as well as of administrative practice, with the standards fixed by the Convention

Document DH-PR (2002) 2 rev. contains the responses sent by 31 experts to a questionnaire of the Secretariat, as well as Secretariat's conclusions and suggestions following the information received. Experts wishing to complete the information contained in document DH-PR (2002) 002 rev. were invited to do so before 31 October 2002.

The DH-PR will continue this discussion with a view to elaborating a set of good practices during its next meeting to transmit to the CDDH. The experts were invited to submit their proposals for good practices to be included in this document, in particular those corresponding to their national experience. The experts who wish to complete information contained in document DH-PR (2002) 002 rev, are invited to do so, also before 31 October 2002.