



CDDH-BU(2019)R101

03/06/2019

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

REPORT

101st meeting
Helsinki (Finland), 15-17 May 2019

1. The Bureau of the Steering Committee for Human Rights (CDDH-BU) held its 101st meeting from 15 to 17 May 2019 in Helsinki, chaired by Mr Hans-Jörg BEHRENS (Germany). The list of participants appears in Appendix I.

PREPARATION FOR THE 91st PLENARY MEETING OF THE CDDH (18-21 June 2019)

2. The Bureau agreed with the draft agenda CDDH(2019)OJ1 and the draft order of business of the CDDH meeting (see Appendix II below).

3. **Document CDDH(2019)04, containing the draft annotated agenda and order of business, formed the basis for its discussions. In this respect, the Bureau noted that:**

(a) In the light of the results of the present Bureau meeting, a revised version of the draft annotated agenda and order of business CDDH(2019)04 will be circulated to all CDDH participants. It will contain, in particular, in Appendices, the Secretariat's proposals for the preparation of:

- (i) the draft 2020-2021 terms of reference of the CDDH and DH-SYSC and
- (ii) the draft 2020-2021 calendar, taking into account the budgetary situation of the Organisation. The Bureau suggested that, at the beginning of the plenary meeting, the Director General of the DGI should briefly outline this situation and exchange views with the participants;

(b) Since the agenda involves the adoption of a considerable number of draft texts, it will be necessary for delegations to prepare in advance any drafting proposals they may wish to propose for discussion when a particular text is presented on the screen. According to the usual practice in the CDDH, the Chair will propose, as appropriate, the discussion and adoption of a given draft text either paragraph by paragraph or section by section, or even chapter by chapter.

- (i) Insofar as the texts have been communicated in advance to delegations for comments, editorial proposals received in writing will be given priority during the discussion.
- (ii) As for the proposals made in the room, they should be of an editorial nature and be accompanied, if necessary, by very brief explanations. The Bureau suggested that substantive debates on issues on which all delegations have already had the opportunity to speak before the plenary meeting and which were the subject of a detailed review by the relevant drafting group should not be reopened in plenary.
- (iii) Finally, the Bureau suggested limiting itself to the discussion and adoption of the draft texts as proposed by the relevant groups, without introducing to the plenary proposals that have never been examined before.

4. [The Bureau agreed to allow the participation of the Conference of European Churches (CEC) in the work of the CDDH in June on items 5 (Development and promotion of human rights) and 8 (Bioethics) of the draft agenda.]

5. The Bureau examined the **Parliamentary Assembly Recommendation 2145(2019 - *Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach?***¹ It considered that the subject addressed in this text would be open to comment by the CDDH. Following a detailed review, it suggested the draft comments presented in Appendix III below as a basis for the discussion of the CDDH in June.

¹ Recommendation adopted by the PACE at its winter session (21-25 January 2019) and communicated by the Ministers' Deputies to the CDDH at their 1336th meeting (6-7 February 2019) for information and possible comments.

6. Regarding the **implementation of the terms of reference of the CDDH for 2018-2019** and the work for the next biennium **2020-2021** (item 3 of the agenda), the Bureau inquired about the current budgetary situation of the Organisation and the implications for the work of the CDDH in terms of financial and human resources. With this information in mind, the Bureau exchanged views on the work that the CDDH could undertake during the next biennium.

7. The Bureau considered that work on the Convention system, as decided by the Committee of Ministers following the Interlaken follow-up report, as well as the finalisation of the on-going work of the CDDH-MIG and CDDH-INST, should be the priority in 2020. As for any work to be carried out in the area of the prohibition of trade in goods that could be used for the death penalty, torture or ill-treatment, it would not require the creation of a specific drafting group.

8. With regard to the work for 2021, the Bureau considered that, in addition to those concerning the ECHR system, the CDDH could undertake, subject to the necessary human and financial resources, work in the field of human rights and the environment and that of human rights and artificial intelligence.

9. Finally, the Bureau recalled that the CDDH will adopt in June its formal proposals for the elaboration of the draft terms of reference 2020-2021 for the CDDH and DH-SYSC, for consideration by the Committee of Ministers in November. To this end, the draft annotated agenda (CDDH(2019)04)Rev. will contain in Appendix V a proposal from the Secretariat that could serve as a basis for the discussion at the June meeting.

ITEM 4: SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

4.1 The place of the Convention in the European and International legal order (DH-SYSC II)

10. The Bureau took note of the progress of the work of the DH-SYSC-II and supported the proposal made by the Chairperson of the group that the CDDH provisionally adopts in June several sections of the future report². In view of the number of items to be addressed in June, it also agreed to suggest that sub-theme ii) of Theme 1)³ and Theme 3⁴ should not be addressed by the CDDH in June, but should be transmitted directly to the DH-SYSC for consideration by the latter at its meeting in October, with a view to their subsequent transmission to the CDDH for consideration and adoption in November.

4.2 The ECHR in university education and professional training (DH-SYSC-III)

11. The Bureau welcomed the draft Recommendation Rec(2019)... on the ECHR in university education and professional training and considered that the CDDH should be in a position to adopt it in June, with a view to its transmission to the Committee of Ministers.

² Sub-themes i) and iii) of Theme 1; sub-theme iv) of Theme 1; Theme 2. See draft annotated agenda of the plenary meeting, document CDDH(2019)04, §11.

³ *State responsibility and extraterritorial application of the ECHR.*

⁴ *The challenge of interaction between the ECHR and the legal order of the EU and other regional organisations.*

4.3 Follow-up work on the *Interlaken Declaration* - Preparation of the CDDH final report

12. The Bureau noted that the draft CDDH *Contribution to the evaluation provided for by the Interlaken Declaration* will be prepared by the Secretariat during the summer. It considered it very useful to send then the draft at the same time to the participants in the CDDH and DH-SYSC meetings for possible comments, in view of the DH-SYSC meeting in October. This meeting will be largely devoted to consolidating the draft report, which will then be transmitted to the CDDH for discussion and adoption in November.

13. In the context of the decisions to be taken in early 2020 by the Committee of Ministers further to the Interlaken follow-up report, the Bureau noted with interest a proposal by *Pluricourts* to hold a brainstorming meeting with the CDDH, which could notably include, where appropriate, a substantive contribution to possible work on the effective treatment of inter-State cases and individual applications lodged to the Strasbourg Court arising from situations of inter-State conflicts. The Bureau suggested that the CDDH invites representatives of *Pluricourts* to its June 2020 meeting to exchange views on such an event, both in terms of contents and format. The event could, for instance, be organised in April 2021 in Germany, in the framework of the German Chairmanship of the Committee of Ministers, and take the form of a specific event of the CDDH, like the meetings that took place in Kokkedal (Denmark). The event would be prepared by joint work of *Pluricourts* with other research institutes and in cooperation with the CDDH Secretariat.

4.4 Follow-up work on the *Brussels Declaration*

14. The Bureau welcomed the draft report on *measures taken by the member States to implement relevant parts of the Brussels Declaration* (CDDH(2019)17) prepared by the Secretariat and considered that the CDDH should be in a position to adopt it in June, in view of its transmission to the Committee of Ministers for information.

4.5 Follow-up work on the *Copenhagen Declaration*

15. The Bureau proceeded to a detailed examination of the additional elements resulting from the Copenhagen Declaration that should be reflected in the future Interlaken follow-up report. At the end of its examination, it suggested that the CDDH uses, as a basis for its discussion in June, the text contained in the Addendum to its present meeting report (CDDH-BU(2019)R101 Addendum). This text constitutes a consolidated version by the Bureau of a first draft prepared by the Secretariat. The CDDH is invited to discuss and provisionally adopt these elements in June, so that the Secretariat can reflect them in an appropriate way in the draft Interlaken follow-up report that it will prepare during summer.

4.6 Update of the Guide to Good Practices accompanying Recommendation CM/Rec(2010)3 on effective remedies in the face of excessive length of proceedings

16. The Bureau noted that this item could be included as one of the activities that the CDDH could propose to the Committee of Ministers further to the Interlaken report.

4.7 Organisation of work at the next DH-SYSC meeting (October 2019)

17. The Bureau exchanged views with the Chairperson of the DH-SYSC and considered that the meeting on 16-18 October should focus primarily on the consolidation of the draft report currently in preparation by DH-SYSC-II and on the draft Interlaken follow-up report.

ITEM 5: DEVELOPMENT AND PROMOTION OF HUMAN RIGHTS

5.1 Social rights (CDDH-SOC)

18. The Bureau welcomed the draft second *Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe* (CDDH-SOC(2019)R4 Addendum) and considered that the CDDH should be able to adopt it in June for its transmission to the Committee of Ministers for information, together with the first report (legal analysis) already adopted by the CDDH. The Bureau noted that, in principle, the transmission of these two reports could be done in good time for the Conference on Social Rights scheduled for 19 September 2019 by the French Chairmanship of the Committee of Ministers.

5.2 Civil society and national human rights institutions (CDDH-INST)

19. The Bureau welcomed the draft Recommendation on the development of the Ombudsman institution and considers that the CDDH should be in a position to adopt it in June with a view of its transmission to the Committee of Ministers. It also noted that a draft compilation of national good practices, prepared by a consultant, should be sent to CDDH participants in time for the June meeting. If necessary, this compilation could be appended to the draft Recommendation. The Bureau noted that, in principle, the transmission of this draft instrument to the Committee of Ministers could be done in good time for the Conference on the Protection and Promotion of the Institution of the Ombudsman scheduled for 5 September 2019 by the French Chairmanship of the Committee of Ministers.

20. With regard to the work to be carried out by the CDDH-INST on the revision of Recommendation No. R(97)14 of the Committee of Ministers to member States on the establishment of independent national institutions for the promotion and protection of human rights, the Bureau noted that, due to current budgetary constraints, the Drafting Group should not meet in September as initially planned. The Bureau proposed that the work of the CDDH-INST be finalised during one or two meetings in 2020.

5.3 Human Rights and Migration (CDDH-MIG)

21. The Bureau welcomed the finalisation of the revised draft *Practical Guidance on Alternatives to immigration detention: Fostering effective results* (CDDH-MIG(2019)01Rev). It considers that the CDDH should be in a position to adopt it in June, with a view to its transmission to the Committee of Ministers for information.

22. With regard to the work to be carried out by the CDDH-MIG during the next biennium, the Bureau noted that a consultation has been launched with the CDDH with a view to identifying priorities. On this basis, the CDDH will decide in June on the work to be carried out in 2020, within the framework of one or two CDDH-MIG meetings.

5.4 Freedom of expression and links with other human rights (CDDH-EXP)

23. The Bureau welcomed the finalisation of the draft *Guide to good and promising practices on the way of reconciling freedom of expression with other rights and freedoms, in particular in culturally diverse societies* (document CDDH(2019)02). It considered that the CDDH should be in a position to adopt it in June, with a view to its transmission to the Committee of Ministers for information, accompanied, if necessary, by the compilation of measures and practices in force in the member States prepared by the CDDH-EXP.

ITEM 6: FOLLOW-UP OF ACTIVITIES CARRIED OUT BY THE CDDH

6.1 Human rights and business

24. The Bureau was informed about the progress of the Online Platform for human rights and business and noted that a practical demonstration of the conditions of access to it would take place at the CDDH meeting in June, followed by an exchange of views with the participants.

6.2 Prohibition of trade in goods used for torture and the death penalty

25. The Bureau was informed about the state of preparation, by a consultant expert and the Secretariat, of the draft feasibility study requested by the Ministers' Deputies on the possible drafting of a legal instrument on the prohibition of trade in goods used for torture and the death penalty. According to the Bureau, the CDDH should exchange views on this subject in June and return to the draft study in November, with a view to its possible adoption and transmission to the Committee of Ministers. If it were to give a positive result, the draft instrument could be prepared by the Secretariat for discussion and possible adoption in 2020.

6.3 Victims of terrorist acts

26. The Bureau exchanged views on the state of preparation of the Workshop on the Protection of Victims of Terrorist Acts on 20 May, under the auspices of the French Chairmanship of the Committee of Ministers. It appreciates the number of replies sent by Member States concerning national experiences and practices in this field. The analysis of this information by the Secretariat will provide a basis for discussion at the Workshop.

6.4 Access to public documents

27. The Bureau noted that the CDDH will be informed in June of the raising-awareness event on the Tromsø Convention which took place on 6 March 2019 in Strasbourg under the auspices of the Finnish Chairmanship of the Committee of Ministers.

6.5 Combat discrimination based on sexual orientation or gender identity

28. The Bureau took note of the follow-up work on the implementation of Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity. It appreciated the number of replies sent by Member States and considered that the

CDDH should be able to adopt in June the draft progress report prepared on this basis by the Sexual Orientation and Gender Identity Unit (SOGI), with a view to its transmission to the Committee of Ministers.

ITEM 7: GENDER EQUALITY

29. The Bureau exchanged views on the contribution of the CDDH over the last ten years to equality policies of the Council of Europe, as well as on future prospects. It complemented the information contained in document CDDH(2019)14 and invited the Equality Policy Advisor and the CDDH Rapporteur on Equality to exchange views with the CDDH on this subject in June.

ITEM 8: BIOETHICS

30. The Bureau exchanged views on work foreseen in the agenda of the next meeting of the Committee on Bioethics (DH-BIO, 4-7 June 2019). The Bureau noted the holding on 4 June, during the DH-BIO meeting, of a Seminar on the public debate on bioethics, under the auspices of the French Chairmanship of the Committee of Ministers. The Secretary of the DH-BIO will report to the CDDH in June on the results of the meeting and will in particular present the priorities envisaged by the DH-BIO for the next biennium.

ITEM 9: CONVENTIONS

31. The Bureau invited the CDDH to examine the situation in June, in particular with regard to Protocols Nos. 15 and 16.

ITEM 10: FOCAL POINTS

32. The Bureau invited the CDDH to review in June the list of its focal points with a view to its possible updating.

ITEM 11: INVITEES

33. The Bureau welcomed the meetings planned by the CDDH in June, with a view to discussing the work of the EU Fundamental Rights Agency, on the one hand, and the human rights implications of advances in artificial intelligence on the other.

ITEM 12: PUBLICATIONS

34. The Bureau commended the efforts of the Secretariat regarding the publications planned for 2019, both in electronic and printed form.

ITEM 13: CALENDAR

35. The Bureau noted that the Secretariat will circulate a draft calendar for 2020-2021, to be considered in June, in which it will distinguish between the meetings that must take place in any event and those that will depend on whether or not the contingency plan envisaged by the Organisation is implemented in the event of insufficient budgetary resources.

ITEM 14: OTHER BUSINESS***Human rights and environment***

36. The Bureau noted that a high-level conference would be envisaged within the Council of Europe in 2020, under the auspices of the Georgian Chairmanship of the Committee of Ministers, on the challenges posed to human rights by environmental protection issues. It is expected that the CDDH and its Secretariat will be associated in this event.

ITEM 15: ACKNOWLEDGMENTS

37. The Bureau expressed its gratitude to the Finnish authorities and in particular to Ms Krista OINONEN, Bureau member, for the excellent organisation and warm welcome of the participants in this meeting, held in parallel to the celebration in Helsinki of the 70th anniversary of the Council of Europe.

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Appendix I

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Appendix II

Draft order of business

of the 91st preliminary CDDH meeting (Strasbourg, 18–21 June 2019)

(revised in the light of the 101st Bureau meeting, May 2019)

Bureau meeting: Tuesday 18 June, 9:00, Agora building, 6th floor

TUESDAY 18 June	WEDNESDAY 19 June	THURSDAY 20 June	FRIDAY 21 June
09:30	09:30	09:30	09:30
Item 1 : OPENING Item 2 : RECOMMANDATIONS PACE Item 4 : ECHR SYSTEM 4.2 DH-SYSC-III 4.3. Follow-up Interlaken 4.4. Follow-up Brussels 4.5. Follow-up Copenhagen	Item 5 : DEVELOPMENT AND HR PROMOTION 5.1 CDDH-SOC 5.2. CDDH-INST 5.3 CDDH-MIG	6.3 Victims of terrorist acts (preparation Workshop) 6.4 Access to official documents Item 7 : GENDER EQUALITY Item 8 : BIOETHICS Item 11 : INVITEE (Mr Peter Hoffmann)	Point 11 : INVITEE (Mr Jan Kleijssen) Item 9 : CONVENTIONS Item 12 : PUBLICATIONS Item 13 : CALENDAR Item 10 : FOCAL POINTS Item 14 : OTHER BUSINESS
13:00 Lunch break	13:00 Lunch break	12:30 Lunch break	13:00 End of the meeting
4.6 Rec CM(2010)3 4.7. DH-SYSC 4.1 DH-SYSC-II	14:30 6.5 Discrimination 5.4 CDDH-EXP Item 3 : TERMS OF REFERENCE 2020-2021 Item 6 : MONITORING OF CDDH ACTIVITIES 6.1 HR and Business 6.2 Prohibition of the trade in good used for torture and death penalty	14:00 Workshop on the protection of victims of terrorist acts	
18:00 End of session	18:00 End of session	17:50 Vin d'honneur offered by the French Chairmanship of the CM	

Appendix III

**Draft comments suggested by the Bureau
for consideration by the CDDH at its meeting of June 2019
concerning Recommendation of the Parliamentary Assembly 2145(2019) -
*Withdrawing nationality as a measure to combat terrorism:
a human rights-compatible approach?***

Text of the Recommendation

1. Referring to its [Resolution 2263 \(2019\)](#) “Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach?”, the Parliamentary Assembly recommends that the Committee of Ministers:
 - 1.1. prepare a comparative study on Council of Europe member States’ laws allowing for the deprivation of nationality, with special focus on deprivation of nationality as a measure to combat terrorism;
 - 1.2. draft guidelines on the criteria to be set up for the deprivation of nationality and on other counter-terrorism measures that could be used instead.

Draft comments by the CDDH

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2145 (2019) “*Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach?*”, and of Resolution 2263(2019) that accompanies it.
2. Bearing in mind that the European Convention on Human Rights or its Protocols do not guarantee the right to nationality/citizenship⁵ and that, as a result, member States enjoy a wide margin of appreciation when deciding whether to grant or withdraw nationality, the CDDH wishes to recall that, in its case-law, the Court drew attention to the fact that nationality is an element of the person's identity under Article 8 of the Convention,⁶ but also on the fact that such a measure should be legal, devoid of arbitrariness⁷ and not have a discriminatory effect.⁸
3. In the same vein, the CDDH wishes to recall the Guidelines of the Committee of Ministers on human rights and the fight against terrorism, adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Ministers' Deputies, which provide that:

⁵ Although legal doctrine makes a distinction between these two concepts, in the present comments, they are used interchangeably.

⁶ See, for example, *Mennesson v. France*, Application No. 65192 judgment of /11, judgment of 26 June 2014; *Genovese v. Malte*, Application No. 53/24/09, judgment of 11 October 2011, §33.

⁷ See, for example, *Ramadan v. Malta*, Application No. 76136/12, judgment of 21 June 2016.

⁸ *Biao v. Denmark*, Application No. 38590/10, judgment of 24 May 2016.

- (i) all measures taken by States to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision;
- (ii) all measures taken by States to combat terrorism must be lawful;
- (iii) when a measure restricts human rights, restrictions must be defined as precisely as possible and be necessary and proportionate to the aim pursued.

4. While noting that the issues concerning counter-terrorism measures relate more directly to the Steering Committee on Counter-Terrorism (CDCT) and the European Committee on Legal Co-operation (CDCJ), the CDDH considers that withdrawing nationality, as a measure to combat terrorism, may potentially raise objective human rights concerns, in particular under Article 8 of the Convention.

5. The CDDH expresses its availability, if necessary:

- (i) to make comments on any comparative study that would focus on existing laws in the member States regarding deprivation of nationality in the fight against terrorism;
- (ii) to cooperate in the possible drafting of guidelines (if the comparative study leads to a positive conclusion on the desirability of drafting such guidelines) on the criteria to be applied for the withdrawing nationality in the context of the fight against terrorism and on alternative measures that could be envisaged.

* * *