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

### **REPORT**

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92<sup>nd</sup> meeting

Strasbourg, 26–29 November 2019

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**Texts adopted at the meeting**

**CDDH (2019)R92 Addendum 1**

CDDH Report on the place of the European Convention on Human Rights in the European and international legal order

**CDDH (2019) R92 Addendum 2**

Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration

**CDDH (2019) R921 Addendum 3**

CDDH Feasibility study on a legal instrument on the prohibition of the trade in goods used for torture or other cruel, inhuman or degrading treatment or punishment and for the death penalty

**CDDH (2019) R92 Addendum 4**

CDDH Report 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

## SUMMARY

1. The Steering Committee for Human Rights (CDDH) held its 92<sup>nd</sup> meeting from 26 to 29 November 2019 in Strasbourg with Mr Hans-Jörg BEHRENS (Germany) in the Chair. The Agenda, as adopted, appears in Appendix I. The list of participants is contained in Appendix II.
2. At this meeting the CDDH, in particular:
  - (a) Adopted its comments on the following Recommendations of the Parliamentary Assembly (see Appendix III):
    - *Recommendation 2158 (2019) – “Ending coercion in mental health: the need for a human rights-based approach”;*
    - *Recommendation 2160(2019) – “Stop violence against, and exploitation of, migrant children”;*
    - *Recommendation 2161(2019) – “Pushback policies and practice in Council of Europe member States”;*
    - *Recommendation 2162 (2019) – “Improving the protection of whistleblowers all over Europe”;*
    - *Recommendation 2163 (2019) – “Ombudsman institutions in Europe – the need for a set of common standards”;*
    - *Recommendation 2164 (2019) – “Protecting and supporting the victims of terrorism”;*
  - (b) Organised its work in response to the terms of reference received from the Committee of Ministers for the Intergovernmental Programme of Activities 2020–2021 (see Appendix IV) ;
  - (c) Exchanged views on the High-level Conference on Environmental Protection and Human Rights (see Appendix IX);
  - (d) Exchanged views with EU Trade Commissioner, Ms Cecilia MALMSTRÖM;
  - (e) As regards the System of the European Convention on Human Rights:
    - (i) Adopted the CDDH Report on the place of the European Convention on Human Rights in the European and international legal order and the executive summary therein (document CDDH(2019)R92 Addendum 1);
    - (ii) Adopted the CDDH Contribution to the evaluation provided for by the Interlaken Declaration (document CDDH(2019)R92 Addendum 2);
  - (f) As regards the development and promotion of human rights:
    - (i) Adopted the CDDH Feasibility study on a legal instrument concerning the trade in goods used for torture or other cruel, inhuman or degrading treatment or punishment and the death penalty (document CDDH(2019)R92 Addendum 3);
    - (ii) Adopted the CDDH Report 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 (document CDDH(2019)R92 Addendum 4);

- (g) As regards bioethics, exchanged views and supported the decisions of the Bioethics Committee (DH-BIO) concerning the organisation of its activities for 2020-2021 as part of its draft Strategic Action Plan on Human Rights and Technologies in Biomedicine 2020-2025;
- (h) Took note of the information provided by its focal points to other bodies and proceeded to the renewal of the mandates (see [Appendix XI](#));
- (i) Agreed on the personalities to be invited to future meetings;
- (j) Exchanged views on the status of signatures and ratifications of the conventions for which the CDDH is responsible;
- (k) Held elections (see [Appendix XII](#));
- (l) Took note of the current status of the publications of the work of the CDDH and the publications envisaged ([Appendix XIII](#));
- (m) Adopted its calendar of meetings for 2020 and its draft calendar for 2021 ([Appendix XIV](#)).

## MEETING REPORT

1. The Steering Committee for Human Rights (CDDH) held its 92<sup>nd</sup> meeting from 26 to 29 November 2019 in Strasbourg under the Chairmanship of Mr Hans-Jörg BEHRENS (Germany).

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

2. After the opening of the meeting by the Chair, the CDDH adopted its agenda as it appears in Appendix I below and agreed with the order of business proposed by the Bureau.
3. The Director General of the Directorate General of Human Rights and Rule of Law (DGI), Mr Christos GIAKOUMOPOULOS, delivered a speech during which he stressed the important place of the CDDH in intergovernmental co-operation within the Council of Europe and pointed out that the Steering Committee, which has accompanied the Convention and its protocols for over 40 years, will be associated with the commemoration of the 70<sup>th</sup> anniversary of the Convention in November 2020. During his speech, the Director General:
  - (i) took stock of the CDDH's achievements in 2018-2019<sup>1</sup>;
  - (ii) referred to the mandate of the Steering Committee for 2020-2021, which will relate in particular to: work towards the accession of the EU to the Convention; family(based care for unaccompanied and separated migrant children; the environment and human rights; artificial intelligence and human rights as well as, where appropriate, the drafting of a legal instrument concerning the trade in goods used for torture and other cruel, inhuman or degrading treatment or punishment and for the death penalty;
  - (iii) expressed the hope that the CDDH would adopt the various draft texts appearing on its agenda during its present meeting.
4. The CDDH thanked the Director General for his address and welcomed the support which he continuously provides to intergovernmental work in the field of human rights.

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<sup>1</sup> In this context, he welcomed: (a) the work carried out in the framework of the Interlaken process, the intense debates concerning the place of the Convention in the European and international legal order; (b) the conclusions of the CDDH concerning the protection of social rights, enhancement of the space of civil society, protection and promotion of the institution of the Ombudsman, reconciliation of freedom of expression with other rights and freedoms, seeking alternatives to detention in the context of migrants; (c) the organisation of practical workshops on the protection of the elderly, victims of terrorist acts, access to public documents; (d) the follow-up of the work on bioethics; (e) the follow-up to several recommendations of the Committee of Ministers; (f) the comments of the CDDH on numerous recommendations of the Parliamentary Assembly; (g) the publications.

**ITEM 2: RECOMMENDATIONS OF THE PARLIAMENTARY ASSEMBLY**

5. In the light of the Bureau's suggestions, the CDDH adopted its comments on six Parliamentary Assembly Recommendations communicated to it by the Committee of Ministers<sup>2</sup> (see [Appendix III](#) below).

**ITEM 3: IMPLEMENTATION OF THE TERMS OF REFERENCE OF THE CDDH FOR 2018-2019 AND PREPARATIONS FOR 2020-2021****FINALISATION OF WORK FOR 2018-2019**

6. The CDDH exchanged views on the finalisation of work concerning its mandate for 2018–2019. It welcomed, in particular:
- i. finalisation of the work concerning the system of the Convention, in particular that which led to the draft Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration and to the draft CDDH Report on the place of the European Convention on Human Rights in the European and international legal order;
  - ii. the adoption by the Deputies on 16 October 2019 of Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution<sup>3</sup> and noted that a publication of this instrument accompanied by a selection of national good practices, in the light of the contributions received from the members of the CDDH in September 2019, will be prepared shortly;
  - iii. the publication and dissemination of the work it completed in 2019 concerning in particular (i) the protection of social rights<sup>4</sup>; (ii) the links between freedom of expression and other human rights<sup>5</sup> and (iii) alternatives to detention in the context of migration: promoting efficiency in terms of results<sup>6</sup> (see [Appendix XIII](#) below).

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<sup>2</sup> 1351<sup>st</sup> and 1357<sup>th</sup> of the Deputies' meetings.

<sup>3</sup> Adopted by the Committee of Ministers on 16 October 2019 at the 1357<sup>th</sup> meeting of the Ministers' Deputies. The Secretariat will soon publish this text with a selection of national good practices. The Ministers' Deputies appreciated that the CDDH had taken into account all 25 "Principles for the Protection and Promotion of the Institution of the Ombudsman" ("the Venice Principles") adopted on 19 March 2019 by the European Commission for democracy through law. It is recalled that the CDDH has actively contributed to the drafting of these Principles, in particular through the Chair of the CDDH-INST and the representative of the CDDH with the Venice Commission.

<sup>4</sup> Publication Improving the protection of social rights in Europe:  
 VOLUME I - Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe  
 VOLUME II – Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe.

<sup>5</sup> Publication of the 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.

<sup>6</sup> Publication of the Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results.

## ORGANISATION OF WORK FOR 2020–2021

7. As regards the terms of reference for 2020-2021 (see [Appendix IV](#) below), the CDDH organised the work on to the system of the Convention (item 3.1), the development and promotion and of human rights (3.2) and the EU accession to the ECHR (3.3).

### 3.1. Organisation of the work on the system of the Convention

8. With a view to submitting to the Committee of Ministers, before 31 December 2021, its proposals on effective processing and resolution of cases relating to inter-State disputes, the CDDH decided to set up a **DH-SYSC Drafting Group on effective processing and resolution of cases relating to inter-State disputes (DH-SYSC-IV)**.

9. The CDDH gave the DH-SYSC-IV the following terms of reference:

“In the light, in particular, of the reflections carried out during the elaboration of (i) the Contribution of the CDDH to the evaluation provided for by the *Interlaken Declaration*; (ii) the follow-up given by the CDDH to the relevant paragraphs of the *Copenhagen Declaration* and (iii) the CDDH Report on the place of the European Convention on Human Rights in the European and international legal order, the DH-SYSC Drafting Group on effective processing and resolution of cases relating to inter-State disputes (DH-SYSC-IV) is called upon to elaborate proposals on how to handle more effectively cases related to inter-State disputes, as well as individual applications arising from situations of conflict between States, without thereby limiting the jurisdiction of the Court, taking into account the specific features of these categories of cases, *inter alia* regarding the establishment of facts. In this context and under the supervision of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC), the Group is tasked to prepare:

- (a) a draft CDDH report to be submitted to the forthcoming high-level expert conference on inter-State disputes in the framework of the ECHR system to be held in spring 2021 under the auspices of the German Chairmanship of the Committee of Ministers<sup>7</sup> (deadline: 15 October 2020);
- (b) a draft final activity report of the CDDH for the Committee of Ministers containing the reflections and possible proposals of the Steering Committee in this field (deadline: 15 October 2021).”

10. The CDDH designated the eleven member States<sup>8</sup> which may send an expert at the expense of the Organisation, it being understood that the Group is, as usual, open to the participation of all member States.

11. The CDDH elected Mr Alain CHABLAIS (Switzerland) Chair of DH-SYSC-IV.

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<sup>7</sup> The spring 2021 event could have a similar format as the seminars held in Kokkedal (Denmark) and should be prepared by *Pluricourts (Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order)*, represented notably by Professor Geir ULFSTEIN, Faculty of Law, University of Oslo, Norway) in close co-operation with the Secretariat and the Chair of the CDDH.

<sup>8</sup> Armenia, Azerbaijan, Croatia, Georgia, Germany, Greece, Netherlands, Russian Federation, Serbia, Slovenia, Switzerland (Chair). See [Appendix XII](#) below.



12. In order to submit to the Committee of Ministers, before 31 December 2021, its proposals on enhancing the national implementation of the system of the Convention, the CDDH decided to set up a **DH-SYSC Drafting Group on enhancing the national implementation of the system of the European Convention on Human Rights (DH-SYSC-V)**.

13. The CDDH gave the DH-SYSC-V the following mandate:

“In the light, in particular, of the reflections carried out during the elaboration of (i) the Contribution of the CDDH to the evaluation provided for by the *Interlaken Declaration*; (ii) the CDDH Report on measures taken by the member States to implement relevant parts of the *Brussels Declaration* and (iii) the CDDH Report on the place of the European Convention on Human Rights in the European and international legal order, the DH-SYSC Drafting Group on enhancing the national implementation of the system of the European Convention on Human Rights (DH-SYSC-V) is called upon to explore possible ways and means to enhance the national implementation of the system of the European Convention on Human Rights, in order to assist the State authorities involved in the operation of the Convention and in the process of the execution of judgments to fulfil their mission in the best possible way, in the light of existing national best practices. In this context and under the supervision of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC), the Group is tasked to:

- (a) prepare, in co-operation with *Pluricourts*<sup>9</sup>, the Seminar scheduled for 9 June 2020 at the 93<sup>rd</sup> meeting of the CDDH;
- (b) develop draft guidelines covering all of the action at national level expected from States Parties to prevent and remedy violations of the Convention, accompanied by a Guide of existing national best practices (deadline: 15 October 2021);
- (c) update the Recommendation (2002)<sup>13</sup> 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 (deadline: 15 October 2020);

All work should be conducted in a prospective and, as far as possible, innovative way, in close cooperation with representatives of the legal profession, civil society and academic research (deadline: 15 October 2021).”

14. The CDDH agreed that issues arising at the stage of the execution of judgments and decisions in cases concerning the extraterritorial application of the Convention were covered by the terms of reference of the DH-SYSC-V.

15. The CDDH designated the ten member States<sup>10</sup> which may send an expert at the expense of the Organisation, it being understood that the Group is, as usual, open to the participation of all member States.

16. The CDDH elected Mr. Vít A. SCHORM (Czech Republic) Chair of DH-SYSC-V.

17. The calendar for the work of the DH-SYSC-IV, the DH-SYSC-V and the DH-SYSC is provided in Appendix XIV below.

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<sup>9</sup> *Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order*, Oslo (Norway).

<sup>10</sup> Czech Republic (Chair), Estonia, Finland, France, Italy, Norway, Poland, Portugal, Spain, United Kingdom. See Appendix XII below.

### 3.2. Organisation of the work on the development and promotion of human rights

18. The CDDH noted that the work of the CDDH-INST will be completed in 2020 and that of the CDDH-MIG in 2020 or 2021 (see item 5.1 below). It also exchanged views on the work it will conduct during the biennium on human rights and the environment (see point 5.3 below) and, where appropriate, on the prohibition of trade in goods used for torture and the death penalty (see point 5.4 below).
19. In addition, the CDDH exchanged views on the terms of reference received from the Committee of Ministers so that it (i) prepares, before 31 December 2021, a Handbook on human rights and artificial intelligence; (ii) contributes to any standard-setting work that may be undertaken in this area within the Organisation. Regarding this activity, the CDDH:
- (i) was informed of the results of the 1<sup>st</sup> meeting of the Ad Hoc Committee on Artificial Intelligence (CAHAI, 18–20 November 2019);
  - (ii) noted that the Steering Committee on the Media and Information Society (CDMSI) envisages to adopt a draft Recommendation to member States on the human rights impacts of algorithmic systems, to be submitted shortly to Committee of Ministers. The CDDH expressed the wish to be able to submit any comments on this text before its transmission to the Committee of Ministers.<sup>11</sup>
20. The CDDH decided to set up a Drafting Group on human rights and artificial intelligence (**CDDH-INTEL**). At its 93<sup>rd</sup> meeting (June 2020), it will adopt the specific terms of reference for the Group, in particular in the light of the developments which will have taken place by then within the CAHAI. On this occasion, it will appoint the ten member States, including the Chair of the Group, who may send an expert at the expense of the Organisation, it being understood that the Group is, as usual, open to the participation of all member States.

### 3.3. Organisation of the work on the EU accession to the ECHR

21. The CDDH noted that, on 5 November 2019, the Secretary General was officially informed by the European Commission that the European Union stood ready to resume the negotiations on its accession to the European Convention on Human Rights. On 13 November 2019, the Secretary General informed the Ministers' Deputies of this communication and indicated that she would make proposals on the format in which these negotiations could be conducted, as well as on the financial implications of this work.
22. In the light of this information, the CDDH proposed that the continuation of the ad-hoc terms of reference given to it by the Ministers' Deputies in June 2012, with a few adjustments to take into account the work already carried out. It also proposed to resume the negotiations in the same format, i.e. an ad hoc negotiating group 47+1, with, if necessary, meetings of drafting groups between two plenary meetings.
23. The draft ad hoc terms of reference which the CDDH proposed to the Committee of Ministers read as follows:

“The Deputies approved the continuation of the ad hoc terms of reference of the Steering Committee for Human Rights (CDDH) to finalise as a matter of priority, in co-operation with the representatives of the European Union, in an ad hoc group

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<sup>11</sup> The draft CDMSI Recommendation was sent to the CDDH participants on 6 December 2019 (email: 15:12) for possible comments (deadline 10 January 2020).

47+1,<sup>12 13</sup> and on the basis of the work already conducted, the legal instruments setting out the modalities of accession of the European Union to the European Convention on Human Rights (ETS No. 5), including its participation in the Convention system and, in this context, to examine any related issue.”

24. Subject to the adoption of these *ad hoc* terms of reference by the Committee of Ministers, the CDDH elected Ms Tonje MEINICH (Norway), Chair of the Ad hoc Group 47+1 and noted three plenary meetings for this group in its calendar for the next year, the first meeting being scheduled for 24–27 March 2020 (see [Appendix XIV](#) below).

#### **ITEM 4: SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

##### **4.1 The place of the Convention in the European and international legal order**

25. In the absence of the Chair of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC), Ms Brigitte OHMS (Austria), the Chair of the DH-SYSC-II Drafting Group, Ms Florence MERLOZ (France), reported on the work carried out by that Drafting Group during its seven meetings as well as by the Committee of Experts at its 5<sup>th</sup> meeting (15-18 October 2019, document DH-SYSC(2019)R5) on the draft CDDH Report on the place of the European Convention on Human Rights in the European and international legal order (document DH-SYSC(2019)R5Addendum1).
26. She stressed the difficulty of the topics covered and the diversity of views expressed by the numerous Delegations participating in the meetings, in particular on the topic of State responsibility and extraterritorial application of the Convention, as well as the spirit of compromise adopted by all Delegations which had allowed the Drafting Group and the Committee of Experts to finalise its work.
27. The CDDH examined the text of the draft CDDH Report on the place of the European Convention on Human Rights in the European and international legal order (document DH-SYSC(2019)R5Addendum1) in the light of the written comments received (document CDDH(2019)29). Upon completion of its examination, it adopted the Report as it appears in document CDDH(2019)R92Addendum1.
28. In this context, the CDDH examined the draft executive summary of this report elaborated by an informal *ad hoc* group composed of interested Delegations in the DH-SYSC,<sup>14</sup> including the suggestions made by the Bureau at its 102<sup>nd</sup> meeting (13-15 November 2019; document CDDH-BU(2019)R102Addendum) in the light of the written comments received (document CDDH(2019)38).

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<sup>12</sup> This wording shall not be understood as falling within the scope of Article 4 of Resolution [CM/Res\(2011\)24](#) on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

<sup>13</sup> The Registry of the European Court of Human Rights and the Committee of Legal Advisers on Public International Law (CAHDI) are entitled to participate in this work as observers. Modalities for other observers are to be decided by the ad hoc group 47+1.

<sup>14</sup> See the meeting report DH-SYSC(2019)R5, § 11 and the letter of the Chair of the DH-SYSC to the Chair of the CDDH regarding the executive summary.

29. At the end of its examination, the CDDH adopted the executive summary, which will be part of the above-mentioned report.
30. Three Delegations<sup>15</sup> expressed their disagreement with a total of eight specific paragraphs of the report, including the executive summary, and one Delegation<sup>16</sup> disagreed with the content, format and timing of the declaration of another Delegation, as indicated in the footnotes to the paragraphs concerned,<sup>17</sup> and submitted Declarations on the Report. **These Declarations appear in Appendices V, VI, VII and VIII to this meeting report CDDH(2019)R92.**
31. The CDDH sincerely thanked the DH-SYSC-II and the DH-SYSC, and in particular their Chairpersons, Rapporteurs, Contributors and *ad hoc* experts, as well as the Secretariat, for the work accomplished on the subject. It noted that this Report will be transmitted to the Committee of Ministers for information and possible follow-up.

#### 4.2 Follow-up to the Interlaken Declaration

32. The CDDH recalled that:
- (i) the Interlaken Declaration (2010) invited the Committee of Ministers to decide, before the end of 2019, whether the measures adopted in the course of the process of reform of the system of the European Convention on Human Rights had proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes would be necessary;<sup>18</sup>
  - (ii) the CDDH was charged with drafting a Contribution to this evaluation provided for by the Interlaken Declaration;
  - (iii) at its 90<sup>th</sup> meeting (27–30 November 2018), the CDDH adopted a preliminary draft table of contents and gave guidance to its Secretariat for the preparation of its Contribution.<sup>19</sup>
33. In the absence of the Chair of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC), Ms Brigitte OHMS (Austria), the Chair of the CDDH and the Secretariat reported on the work carried out by the Committee of Experts at its 5<sup>th</sup> meeting (15-18 October 2019, document DH-SYSC(2019)R5) on the draft Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration (document DH-SYSC(2019)R5 Addendum 2). It was recalled that:
- (i) at its meeting in October, the DH-SYSC had examined the draft Contribution paragraph by paragraph and adopted it;

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<sup>15</sup> Republic of Azerbaijan, the Republic of Moldova and the Russian Federation.

<sup>16</sup> Republic of Armenia.

<sup>17</sup> The Delegation of the Republic of Azerbaijan disagreed with the manner in which the CDDH proposed to indicate its Delegation's view in the footnote n° 175 of the CDDH report. The matter was therefore decided by voting.

<sup>18</sup> See the Interlaken Declaration of 19 February 2010 of the High Level Conference on the Future of the European Court of Human Rights, Implementation of the Action Plan, point 6.

<sup>19</sup> See document CDDH(2018)R90, § 24 (i) and Appendix VII.

- (ii) the Contribution included additional elements<sup>20</sup> based on the request made by the Ministers' Deputies following the high-level Conference on the reform of the Convention system held in Copenhagen on 12-13 April 2018.
34. The CDDH examined the text of its draft Contribution in the light of the comments received by the participants in the CDDH meetings (document CDDH(2019)30).
  35. At the end of its examination, it adopted the Contribution as it appears in the document CDDH(2019)R92 Addendum 2.
  36. The CDDH sincerely thanked the DH-SYSC, and in particular its Chair, as well as the Secretariat of the Committee of Experts and the Service for the execution of judgments, for the work accomplished on the subject. It noted that the Contribution is to be transmitted to the Committee of Ministers for information and possible follow-up.

#### **4.3 Exchange of information regarding the implementation of the Convention and the execution of the Court's judgments**

37. The CDDH noted that its DH-SYSC Committee of Experts, in accordance with its terms of reference for 2018-2019, has been mandated “[c]oncerning the implementation of the Convention and execution of the Court’s judgments [to] ensure that information is exchanged regularly - in order to assist member States in developing their domestic capacities and facilitate their access to relevant information (see paragraph 29 (a) i) of the Brighton Declaration and paragraph C. 1. g) of the Brussels Declaration); to this end, [to] consider the different means to promote quicker exchange of information and experiences, to reinforce the status of the government agents, of the co-ordinators (c.f. para. 1 CM/Rec(2008)2), and to provide sufficient means to the state authorities involved in the functioning of the Convention and in the process of the execution of judgments”.
38. The Secretariat reported on the discussion the DH-SYSC had held thereupon with members of the Department for the Execution of Judgments of the European Court of Human Rights at the 5<sup>th</sup> DH-SYSC meeting in October 2019 concerning the exchange of information regarding the implementation of the Convention and the execution of the Court’s judgments.<sup>21</sup> A background paper had been drawn up to prepare that exchange of views (document DH-SYSC(2019)06).

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<sup>20</sup> The Ministers' Deputies, at their meeting on 30 May 2018, invited the CDDH to include the following additional elements in its future *Contribution to the evaluation provided for by the Interlaken Declaration*:

- (i) a comprehensive analysis of the Court's backlog, identifying and examining the causes of the influx of cases from States Parties in order to identify the most appropriate solutions at the level of the Court and States Parties;
- (ii) proposals on how to facilitate the expeditious and efficient handling of cases, in particular repetitive cases, which the parties are ready to settle by friendly settlement or unilateral declaration;
- (iii) proposals on how to deal more effectively with cases relating to inter-State disputes, as well as individual applications arising from situations of conflict between States, though without limiting the jurisdiction of the Court, taking into account the specificities of these categories of cases, in particular with regard to fact-finding; and
- (iv) questions relating to the situation of judges of the European Court of Human Rights after the end of their term of office, mentioned in paragraphs 154 and 159 of the CDDH 2017 Report on the selection and election of judges of the European Court of Human Rights (document CM(2018)18-add1). See for further details of the CDDH's work in this respect CDDH(2019)R91, §§ 25-28.

<sup>21</sup> On this occasion, the DH-SYSC exchanged views with Ms Clare OVEY, Deputy Head of the Department for the Execution of Judgments of the European Court of Human Rights, and with Ms Stéphanie FLECKINGER, Head of the Central Office of the same Department, who presented the HUDOC-EXEC database (see for more details document DH-SYSC(2019)R5, §§ 17-19 and Appendix V for the text of Ms Ovey's presentation).

39. The Secretariat further informed the CDDH that an informal thematic debate may be held in the Committee of Ministers on the execution process in the nearer future which may allow identifying good practices in this respect.

#### **4.4 Other issues**

40. The CDDH welcomed the adoption by the Ministers' Deputies of Recommendation CM/Rec(2019)5 of the Committee of Ministers to member States on the system of the European Convention on Human Rights in university education and professional training,<sup>22</sup> prepared by its DH-SYSC III Drafting Group.
41. It was informed about the proposals being considered within the Council of Europe to commemorate the upcoming 70<sup>th</sup> anniversary of the European Convention on Human Rights and noted that it is envisaged to associate the CDDH to this event in November 2020.
42. The CDDH was also informed of recent and forthcoming staff changes within the Secretariat of the DH-SYSC and its Drafting Groups.
43. Finally, the Chair informed the CDDH about his participation in the Conference of Ministers of Justice on *Digital challenges to justice in Europe*, organised within the framework of the French Presidency of the Committee of Ministers on 14 and 15 October 2019.

### **ITEM 5: DEVELOPMENT AND PROMOTION OF HUMAN RIGHTS**

#### **5.1 Civil society and national human rights institutions (CDDH-INST)**

44. The Chair of the Drafting Group on Civil Society and National Human Rights Institutions (CDDH-INST), Ms Krista OINONEN (Finland) recalled the adoption, on 16 October 2019, of Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution, which had been drafted by the CDDH-INST. She further noted that, on the basis of the structure adopted last June by the CDDH, the Group will prepare a revision of Recommendation No. R(97)14 on the establishment of independent national institutions for the promotion and protection of human rights.
45. The CDDH underlined the topicality of this revision with a view to consolidating the civil society space.
- i. It noted that a preliminary draft text prepared by the Chair with the support of the Secretariat will be transmitted by 10 January 2020 to the participants in the CDDH for possible comments by 14 February 2020.

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<sup>22</sup> Adopted by the Committee of Ministers on 16 October 2019 at the 1357<sup>th</sup> meeting of the Ministers' Deputies. This instrument drafted by the CDDH appears to be a key legal tool for the HELP Programme since it substantiates its mandate and it values clearly its current contribution for preventing violations and promoting human rights in Europe through university education and professional training on the Convention system. The HELP Programme is disseminating the adoption of the Recommendation to HELP focal and info points as well as partner universities. The HELP Programme will also contribute to assess the implementation of the Recommendation no later than five years after its adoption.

- ii. It also took note of the holding of a consultation meeting in Brussels on 6 February 2020 organised by the European Network of National Human Rights Institutions (ENNHRI) in which the Chair of the CDDH-INST and the Secretariat would participate in order to gather useful elements for the revision of the Recommendation.
- iii. In the light of the comments received by the CDDH participants and the results of the above-mentioned meeting, the CDDH-INST will finalise the draft revised Recommendation at its next meeting on 4-6 March 2020 which would also be its last meeting.<sup>23</sup>

## 5.2 Human Rights and Migration (CDDH-MIG)

46. The Chair of the Drafting Group on Migration and Human Rights (CDDH-MIG), Mr Morten RUUD (Norway), reported on the work accomplished during the 7<sup>th</sup> meeting by the CDDH-MIG (23-24 October 2019). He pointed out that the CDDH-MIG has started its new work on family-based care for unaccompanied and separated migrant children. After inviting experts in this field to participate in an interactive panel discussion, the Group agreed to develop a document of no more than 30 pages setting out the relevant international legal standards and key practical considerations for effective implementation of family-based care. To this end, the Group:
- i. approved a draft table of contents and a work plan for 2020;
  - ii. decided that a first draft document would be sent by end of January 2020 to the members of the CDDH for possible comments along with an invitation to share examples of practices and / or challenges / suggestions that might further enrich the text.
47. The CDDH approved the CDDH-MIG's work plan for 2020 and the draft table of contents on family-based care for unaccompanied and separated migrant children. The CDDH noted that the particular challenges faced by frontline countries should be taken into due consideration by the CDDH-MIG in its future work.
48. Furthermore, the CDDH noted that its *Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results* is now available in print in both English and French. The CDDH welcomed the CDDH-MIG for its visible and useful work in this important area.
49. Upon the request of one Delegation, the CDDH discussed whether victims of religion-based violence should be added to the indicative list of vulnerable groups in chapter 1.6 of the Practical Guidance but decided to stick to the text as already agreed upon.

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<sup>23</sup> It is envisaged that representatives of ENNHRI, the Global Alliance of National Human Rights Institutions (GANHRI) and one or more national human rights institutions will participate in this meeting.

### 5.3 Human Rights and Environment (CDDH-ENV)

50. The representative of the Delegation of Georgia informed the CDDH of the state of preparation of the High-level Conference on Environmental Protection and Human Rights to be held in Strasbourg on 27 February 2020 and which is placed under the aegis of the Georgian Presidency of the Committee of Ministers. This event will bring together officials of ministerial rank of the governments of the 47 Council of Europe member States. They will examine the existing links between human rights and environmental protection and how to take these links into account in their national policies. The draft Programme of the Conference appears in Appendix IX below.
51. The CDDH welcomed this initiative, which constitutes an excellent basis for the work to be carried out in 2021 on human rights and the environment. He noted that the future Chair of the CDDH is among the speakers and that a consultant expert, Professor Elisabeth LAMBERT<sup>24</sup>, is preparing an introductory report (see summary in document CDDH(2019)32). Finally, he noted that the event was organised in close collaboration between the Directorates General DGI and DG II, with the CDDH Secretariat as coordinator of contributions from various Council of Europe entities.
52. The CDDH decided to set up a Drafting Group on Human Rights and Environment (**CDDH-ENV**) and elected Ms Kristīne LĪCIS (Latvia) Chair of the Group, asking her to participate in the Conference of 27 February 2020. In the light in particular of the results of this event, the CDDH will adopt the specific terms of reference for the CDDH-ENV at its 93<sup>rd</sup> meeting (June 2020). On this occasion, it will designate the nine other member States which may send an expert at the expense of the Organisation, it being understood that the Group is, as usual, open to the participation of all member States.

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

53. The CDDH exchanged views with the EU Trade Commissioner, Ms Cecilia MALMSTRÖM concerning the trade in goods used for the death penalty, torture or other cruel, inhuman or degrading treatment or punishment. She reported on the EU's work and encouraged the Council of Europe to give a favourable follow-up to the CDDH's feasibility study with a view to drawing up a legal instrument to strengthen international regulations prohibiting this trade.
54. The CDDH sincerely thanked the Commissioner and fully shared the concerns expressed during the exchange of views.
55. The CDDH also met its consultant expert, Dr Michael CROWLEY<sup>25</sup>, author in co-operation with the Secretariat of the draft feasibility study requested by the Committee of Ministers. The consultant presented document CDDH(2019)31 which contains the study.
56. The CDDH welcomed the excellent quality of this document. It considered that the study should go beyond the proposal of a political declaration, by clearly indicating the need to proceed rapidly, within the Council of Europe, to the drafting of a non-binding legal instrument in the form of a Recommendation of the Committee of Ministers to member States. As far as possible, the Recommendation should include appendices such as an indicative list of goods to be checked and the network of national focal points in this field.

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<sup>24</sup> CNRS Research Professor, SAGE, Faculty of Law, University of Strasbourg.

<sup>25</sup> Research Associate, University of Bradford (United Kingdom), Omega Research Foundation.



57. At the end of its examination, the CDDH:

- i. Adopted its CDDH Feasibility study on a legal instrument concerning the trade in goods used for torture or other cruel, inhuman or degrading treatment or punishment and for the death penalty (document CDDH (2019) R92Addendum 3) and decided to transmit it to the Committee of Ministers for information and possible follow-up decisions;
- ii. Subject to the decision that the Committee of Ministers will take on this subject in February 2020, appointed two experts from the CDDH, namely Ms Nicola WENZEL (Germany) and Mr Chanaka WRICKEMASINGHE (United Kingdom) to constitute, with the consultant expert and the Secretariat, the drafting team which, where appropriate, would be responsible for preparing a preliminary draft text for consideration by the CDDH in June 2020.

## **ITEM 6: FOLLOW-UP TO ACTIVITIES CARRIED OUT BY THE CDDH**

### **6.1 Social rights**

58. The Chair of the former Drafting Group on Social Rights (CDDH-SOC), Mr Vít A. SCHORM (Czech Republic), presented the follow-up given by the Committee of Ministers to the second CDDH Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe (CDDH(2019)R91Addendum3), which the CDDH had already adopted at its 91<sup>st</sup> meeting (18-21 June 2019). Publications of both the first and the second CDDH reports on *Improving the protection of social rights in Europe* have been issued in the meantime.

59. The CDDH noted that:

- i. The Chair of the CDDH-SOC had presented the second report in the joint meeting of the Rapporteur Group on Human Rights (GR-H) and the Rapporteur Group on Social and Health Questions (GR-SOC) held in July 2019, as these two groups had been entrusted by the Committee of Ministers to examine the follow-up to be given to the report;
- ii. As a follow-up to this meeting, the Secretariat of the European Social Charter had then been charged with preparing initial suggestions to improve the protection of social rights in Europe on the basis of that report and in consultation with the European Committee on Social Rights and the Governmental Committee of the European Social Charter and the European Code of Social Security. These suggestions are currently being examined within the two above-mentioned Rapporteur Groups;
- iii. The French Presidency of the Committee of Ministers had organised the Seminar "*Reinforcing social rights protection in Europe: to achieve greater unity and equality*", held in Strasbourg on 19 September 2019. The Chair of the former CDDH-SOC and the expert of France provided information on the results of this event which had gathered more than 250 participants and during which attention had been paid to the CDDH's work on social rights. This had also been the case at the Conference on social rights which had been held the following day at the University of Strasbourg.

60. The CDDH expressed its satisfaction with regard to the follow-up given to its work on social rights. Having regard also to the fact that the CDDH had been mandated by the Committee of Ministers to follow, inter alia, the implementation of the European Social Charter and the

different Protocols thereto, the CDDH agreed that the topic of social rights should remain on its agenda and appointed Mr Vít A. SCHORM (Czech Republic) as its new Rapporteur for social rights (see also item 9 below).

## 6.2 Human rights and business

61. The Secretariat reported on the progress on the Platform, whose public page is now available on the CDDH website.
62. As to the contents of the Platform, the CDDH took note of the number of replies received to the questionnaire sent by the Secretariat (CDDH(2019)06) and invited the Delegations to: (a) send more information;<sup>26</sup> (b) ask their respective agents responsible for their National Action Plan and for human rights and business issues to register on the Platform; (c) communicate these enrolment details to the Secretariat ([douglas.maxwell@coe.int](mailto:douglas.maxwell@coe.int) with [DGI-CDDH@coe.int](mailto:DGI-CDDH@coe.int) in copy) in order for the participants to be given access to the collaborative space.<sup>27</sup>
63. Finally, the CDDH took note of the information provided by the Secretariat on:
  - (i) the recent panel co-hosted by the Council of Europe and the European External Action Service (EEAS) at the UN Forum on Business and Human Rights on 27 November 2019;
  - (ii) the conference on *Business and Human Rights – Towards a Common Agenda for Action* organised by the Finnish Chairmanship of the European Council in Brussels on 2 December 2019 in which two members of the Secretariat would participate;
  - (iii) the forthcoming update of the HELP course on business and human rights;
  - (iv) the possibility to organise technical workshops for member States' Representatives on this subject.

## 6.3 Combating discrimination on grounds of sexual orientation or gender identity

64. Mr Jeroen SCHOKKENBROEK, Director of Anti-Discrimination (Directorate General of Democracy, DGII), presented the draft CDDH Final Report on the implementation of Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination based on sexual orientation or gender identity, prepared by the Unit "Sexual orientation and gender identity" (SOGI).
65. The CDDH welcomed the very large number of contributions received as well as the work carried out by the Secretariat concerned. One Delegation in particular expressed its deep satisfaction for the way in which the follow-up exercise was conducted.
66. The CDDH examined the draft text and made some changes to it. The Delegation of Poland made an interpretative declaration regarding the text. It appears in [Appendix X](#) below. For its part, the Delegation of the Russian Federation reiterated that it dissociated itself from the content of the comments on this Recommendation for the reasons expressed in the

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<sup>26</sup> 11 replies received by the member States and 4 from National Human Rights Institutions.

<sup>27</sup> See document CDDH(2019)33 for more information as well as the instructions in document CDDH(2019)01.

declaration appended to the report of the 69<sup>th</sup> meeting of the CDDH (document CDDH(2009)019, Appendix IV) and did not participate in their adoption.<sup>28</sup>

67. Following this examination, the CDDH adopted its CDDH Report 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, as it appears in document CDDH(2019)R92 Addendum 4 and decided to transmit it to the Committee of Ministers for information and possible follow-up decisions.
68. By transmitting this report, the CDDH considered that it has fulfilled the mandate entrusted to it. Like for the other recommendations of which it is the author, the CDDH concluded that it has provided the necessary work for supervising the implementation of this instrument and that, in the future, this task should belong to the Council of Europe bodies specifically responsible for issues relating to sexual orientation and gender identity and to the fight against discrimination.
69. Finally, the CDDH noted with interest the Round Table on hate speech and homophobic and transphobic violence (Paris, 26 September 2019) organised by the SOGI Unit in cooperation with the European Network of LGBTI Government Focal Points and under the aegis of the French Presidency of the Committee of Ministers, on the occasion of the 25<sup>th</sup> anniversary of the European Commission against Racism and Intolerance (ECRI). This event made it possible in particular to take stock of the situation in Europe following the evaluation of the implementation of Recommendation CM/Rec(2010)5.

#### **6.4 Access to official documents**

70. The Secretariat informed the CDDH of the current state of affairs regarding the Convention on Access to Official Documents, CETS No. 205 (Tromsø Convention), which will enter into force on the date of the deposit of the next instrument of ratification by a member State. In this respect, the CDDH took note of the preparations for a forthcoming signature of this instrument by Armenia.

### **ITEM 7: GENDER EQUALITY**

71. The CDDH exchanged views with its Rapporteur for gender equality, Mr Philippe WERY (Belgium) and with Ms Cécile GREBOVAL, Secretariat of the Gender Equality Commission (GEC), on the work of the GEC to address current challenges and to remove obstacles to achieving concrete and de facto gender equality within member States and the Organisation. The Rapporteur had participated in the GEC's meeting on 13-15 November 2019, where he had presented the CDDH's work with a particular gender equality dimension, such as freedom of expression, female genital mutilation and forced marriage as well as migration.

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<sup>28</sup> In respect of the Declaration made by the Delegation of Poland, it was agreed that a footnote which will appear in the abridged report of this meeting will mention the present meeting report, in which the text of the Declaration appears in Appendix X below. For its part, the Declaration made by the Delegation of the Russian Federation will mention the report of the 69<sup>th</sup> meeting of the CDDH, document CDDH(2009)019, Appendix IV.

72. The Gender Equality Rapporteur referred to the work that had been carried out by the Secretariat of the Gender Equality Commission (GEC) in consultation with the CDDH Secretariat, with a view to prepare a document that can provide useful guidance to the CDDH and its subordinated bodies so that, at the beginning of each activity, gender equality parameters are duly taken into account.
73. The CDDH reiterated the importance it attaches to gender equality issues, its support to the work of the GEC and its appreciation to its Rapporteur's active and very constructive role played in this regard. It considered that the above-mentioned guidance document may constitute an excellent tool to ensure that a gender dimension will be included in its work during the next biennium as well as for the stock-taking exercise at the end of the biennium. It invited its Rapporteur as well as other experts engaged in this area to cooperate with the Secretariats of the GEC and the CDDH in finalising the document, which should include, as a priority, a short checklist with questions and considerations to ensure that the gender equality dimension is taken into account in all its work. Such a list could also be a useful tool for other steering committees and bodies within the Council of Europe.

#### **ITEM 8: BIOETHICS**

74. Ms Laurence LWOFF, Secretary of the Committee on Bioethics (DH-BIO), presented the work carried out at the 16th meeting (19-20 November 2019, document DH-BIO(2019)abrRAP16). She referred in particular to:
- (i) The general support expressed by the DH-BIO for the work initiated during the consultation meeting with Delegations held on 14 October 2019 with a view to the presentation of a revised draft Additional Protocol to the Oviedo Convention on the protection of the human rights and dignity of persons with mental disorders with regard to involuntary placement and involuntary treatment at the next plenary meeting of the DH-BIO (2-5 June 2020); the decision to entrust the Bureau with organising the further drafting process;
  - (ii) The adoption of the DH-BIO comments on Parliamentary Assembly of the Council of Europe (PACE) Rec 2158 (2019) – “Ending coercion in mental health: the need for a human rights-based approach”;
  - (iii) The decision of the Representatives of the Parties to the Oviedo Convention, by unanimity of the votes cast with two abstention, to submit a request for an advisory opinion relating to the interpretation of Articles 7 and 26 of the Oviedo Convention, to the European Court of Human Rights under Article 29 of the Oviedo Convention;
  - (iv) The organisation, on 26 November 2019, of a round table with organisations representing persons with lived experience, health care professionals and social workers as well as human rights associations to which the CPT, the Office of the Council of Europe Human Rights Commissioner, the Council of Europe Conference of INGOs and the PACE will also participate, the aim of which is to refine the scope of, of a study on good practices in mental health - how to promote voluntary measures;
  - (v) The adoption, by unanimity, of the Guide to Public debate on human rights and biomedicine which aims at facilitating the implementation of Article 28 (Public debate) of the Oviedo Convention;

- (vi) The adoption of the Strategic Action Plan on Human Rights and Technologies in Biomedicine (2020-2025) aiming at addressing priority human rights challenges raised by new technological developments (e.g. in genetics and genomics, in brain technologies and artificial intelligence) as well as by the evolution of practices in the health care field (e.g. when it comes to vulnerable older persons, children or persons with mental health problems); The decision to organise a conference on 2 June 2020 at the 17<sup>th</sup> plenary meeting (2-5 June 2020) for the launching of the Strategic Action Plan.

75. The CDDH took note of the decisions taken by the DH-BIO and expressed support for the Strategic Action Plan on Human rights and Technologies in Biomedicine (2020–2025) and the actions foreseen in its framework.

#### **ITEM 9: CONVENTIONS**

76. The CDDH exchanged views on the status of signatures and ratifications of treaties under its responsibility, and in particular the status of ratification of Protocol No. 15 to the European Convention on Human Rights, in the light of the information contained in document CDDH(2019)16Rev3. The Secretariat pointed out the fact that the said document also compiled information given by the different member States concerning the intention to ratify, as well as progress made regarding the signature and ratification of the different treaties.

#### **ITEM 10: CDDH FOCAL POINTS AND RAPPORTEURS**

77. The CDDH exchanged views with Ms María de Fátima GRAÇA CARVALHO (Portugal) on her participation in the 94<sup>th</sup> meeting of the European Committee on Legal Co-operation (CDCJ) (16-15 November 2019) and with Ms Krista OINONEN (Finland) on her participation in the 1<sup>st</sup> meeting of the Ad Hoc Committee CAHA1 which she had attended in respect of Finland (18-20 November 2019).

78. For his part, the Chair informed the CDDH of his meeting with the GR-H in September 2019, during which he had presented, at the request of the French Presidency of the Committee of Ministers, the state of progress of work concerning the future Contribution of the CDDH to the Interlaken process. He also provided information on his participation, on behalf of the CDDH, in the Conference of Ministers of Justice on the theme *Digital challenges to justice in Europe* (October 14-15, 2019) also organised by the French Presidency.

79. Finally, the CDDH established the list of its focal points within other bodies and of its Rapporteurs for the next biennium. It appears in Appendix XI below.

#### **ITEM 11: INVITEES**

80. The CDDH addressed an invitation to the new Secretary General, Ms Marija PEJČINOVIĆ BURIĆ, for an exchange of views at the 93<sup>rd</sup> meeting (June 2020). It would also like to meet in June 2020 the Council of Europe Commissioner for Human Rights, Ms. Dunja MIJATOVIĆ and, at its 94<sup>th</sup> meeting (November 2020), the future President of the European Court of Human Rights.

**ITEM 12: ELECTIONS**

81. The CDDH held elections for the Chair and the Vice-Chair of the Steering Committee as well as for four members of its Bureau. It also held elections for the Chair of the Committee of experts on the System of the European Convention on Human Rights (DH-SYSC) and confirmed the elected Chair of the DH-BIO (see [Appendix XII](#) below).
82. In particular, the CDDH welcomed its newly elected Chair, Mr. Morten RUUD (Norway) and wished him every success in fulfilling his mandate.

**ITEM 13: PUBLICATIONS**

83. The CDDH welcomed the quality and speed of the publication of the texts of which the CDDH is the author and, in particular, the very clear and attractive manner in which recent publications appear on the website of the Steering Committee. A list of publications is provided in [Appendix XIII](#) below.
84. It expressed its gratitude to the Secretariat and noted that the latter continued to make efforts to make the work and documents of the Steering Committee on its website even more visible and easier to access. It encouraged the Secretariat to ensure that the CDDH web page is accessible directly from the homepage of the Council of Europe's general website.

**ITEM 14: CALENDAR**

85. The CDDH adopted the calendar as it appears in [Appendix XIV](#) below. It noted in particular that the meeting dates of the Ad Hoc Group "47+1", responsible for the works with a view to the future accession of the EU to the Convention, have already been approved by EU negotiators.

**ITEM 15: OTHER BUSINESS**

86. The CDDH noted that the Secretariat will communicate in due course an information document on the situation in Europe concerning conscientious objection to compulsory armed military service, under preparation within the European Office of Conscientious Objection (BEOC). The CDDH will be invited to exchange views on this subject at its 93<sup>rd</sup> meeting (June 2020).

**ITEM 16: ACKNOWLEDGMENTS**

87. This meeting being the last one chaired by Mr Hans-Jörg BEHRENS (Germany), the CDDH expressed its high appreciation for his commitment and for the exemplary manner in which he led the work of the plenary meetings of the CDDH, of its Bureau and its CDDH-EXP Drafting Group. It welcomed the fact that his election to the Chair of the DH-SYSC will allow him to continue to bring his expertise and competence to the work of the CDDH and its Bureau, in which he will, as usual, be invited to participate.
88. The CDDH also expressed its gratitude to the members whose mandate within the CDDH and its Bureau were coming to the end.

89. In noting that Ms Florence MERLOZ (France), Chair of the DH-SYSC-II, and Ms Dorothee VON ARNIM, member of the CDDH Secretariat and Head of the Unit on the system of the ECHR, had been called upon to take up new duties and consequently they would no longer participate in the work of the Steering Committee, the CDDH warmly thanked them for their accomplished work and wished them all the best in their future activities.

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## Appendix I

**Agenda***(92<sup>nd</sup> meeting of the CDDH (26–29 November 2019))*The agenda and documents for the meeting are available at [www.coe.int/cddh](http://www.coe.int/cddh)

	<b>ITEM 1: OPENING OF THE MEETING, ADOPTION OF THE AGENDA AND ORDER OF BUSINESS</b>
CDDH(2019)26	Annotations on the draft agenda and order of business
<a href="#">CDDH(2019)R91</a>	Report of the 91 <sup>st</sup> CDDH meeting (18–21 June)
<a href="#">CDDH-BU(2019)R102</a>	Report of the 102 <sup>nd</sup> Bureau meeting (Paris, 13–15 November 2019)
	<b>ITEM 2: RECOMMENDATIONS OF THE PARLIAMENTARY ASSEMBLY</b>
<a href="#">CDDH(2019)27</a>	Texts of the Recommendations and elements for possible comments
	<b>ITEM 3: IMPLEMENTATION OF THE TERMS OF REFERENCE OF THE CDDH FOR 2018–2019 AND PREPARATION FOR 2020–2021</b>
CDDH-BU(2019)R102 (see above)	Suggestions by the Bureau
	<b>3.1 Organisation of the work on the system of the Convention</b>
	<b>3.2 Organisation of the work on the development and promotion of human rights</b>
CDDH(2019)26 Appendix III	Terms of reference of the CDDH, DH-SYSC and DH-BIO for 2020–2021 and proposals for the organisation of the future work by the Secretariat
<a href="#">CDDH(2019)35</a>	Information note on the Council of Europe's work on Artificial Intelligence
	<b>3.3 Organisation of the work on the EU accession to the ECHR</b>
	<b>ITEM 4: SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS</b>
	<b>4.1 The place of the Convention in the European and international legal order</b>
<a href="#">DH-SYSC(2019)R5</a>	Report of the 5 <sup>th</sup> DH-SYSC meeting (15–18 October 2019)
<a href="#">DH-SYSC(2019)R5Addendum1</a>	Draft CDDH report on the place of the European Convention on Human Rights in the European and international legal order



<a href="#">CDDH(2019)29</a> ( <i>bilingual</i> )	Comments on the draft CDDH report on the place of the European Convention on Human Rights in the European and international legal order
<a href="#">CDDH(2019)R91Addendum7</a>	Draft chapters of the future CDDH Report on the place of the European Convention on Human Rights in the European and international legal order provisionally adopted by the CDDH at its 91 <sup>st</sup> meeting (18-21 June 2019)
<a href="#">CDDH(2019)37</a>	Executive summary prepared by an <i>ad hoc</i> Group of experts of the DH-SYSC concerning the draft CDDH report on the place of the European Convention on Human Rights in the European and international legal order
	<a href="#">Letter by Ms Brigitte OHMS</a> , Chairperson of the DH-SYSC, to the CDDH
<a href="#">CDDH(2019)38</a> ( <i>bilingual</i> )	Compilation of comments received on the executive summary prepared by an <i>ad hoc</i> Group of experts of the DH-SYSC concerning the draft CDDH report on the place of the European Convention on Human Rights in the European and international legal order ( <i>document CDDH(2019)37 above</i> )
<a href="#">DH-SYSC-II(2019)R7</a>	Report of the 7 <sup>th</sup> DH-SYSC-II meeting (17–20 September 2019)
	<b>4.2 Follow-up to the Interlaken Declaration</b>
<a href="#">DH-SYSC(2019)R5Addendum2</a>	Draft Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration
<a href="#">CDDH(2019)30</a> ( <i>bilingual</i> )	Comments on the draft Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration
<a href="#">CDDH(2018)R90 Appendix VII</a>	Draft table of contents of the Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration, as approved by the CDDH at its 90 <sup>th</sup> meeting (27–30 November 2018)
<a href="#">CDDH-BU(2019)R101Addendum</a>	Draft additional elements resulting from the Copenhagen Declaration that should be reflected in the future Interlaken follow-up report
<a href="#">CDDH(2019)R91Addendum2</a>	Report on measures taken by the member States to implement relevant parts of the Brussels Declaration
<a href="#">Publication</a> ( <a href="#">CDDH(2015)R84Addendum1</a> )	CDDH report on the longer-term future of the system of the European Convention on Human Rights
	<b>4.3 Exchange of information regarding the implementation of the Convention and the execution of the Court's judgements</b>
DH-SYSC(2019)R5 (see above - item 4)	Report of the 5 <sup>th</sup> DH-SYSC meeting (15–18 October 2019)

<a href="#">DH-SYSC(2019)06</a>	Background paper for a discussion on the exchange of information regarding the implementation of the Convention and the execution of the Court's judgments
	<b>4.4 Other issues</b>
	<b>ITEM 5: DEVELOPMENT AND PROMOTION OF HUMAN RIGHTS</b>
	<b>5.1 Civil society and national human rights institutions (CDDH-INST)</b>
<a href="#">CDDH-INST(2019)R5</a>	Report of the 5 <sup>th</sup> CDDH-INST meeting (27 February–1 <sup>st</sup> March 2019)
	Suggestions by the Bureau for the organisation of the work at the forthcoming CDDH-INST meeting (March 2020)
	<b>5.2 Human Rights and migration (CDDH-MIG)</b>
<a href="#">CDDH-MIG(2019)R7</a>	Report of the 7 <sup>th</sup> meeting (23–24 October 2019)
	<b>5.3 Human Rights and Environment (CDDH-ENV)</b>
CDDH(2019)32	State of preparation of the high-level Conference <i>Environmental Protection and Human Rights</i> , organised under the aegis of the Georgian Chairmanship of the Committee of Ministers (Strasbourg, 27 February 2020)
	<b>5.4 Prohibition of the trade in goods used for torture and death penalty</b>
<a href="#">CDDH(2019)31</a>	Revised draft of a feasibility study of a legal instrument on the prohibition of the trade in goods used for torture and the death penalty
<a href="#">CDDH(2019)31 Addendum</a>	Drafting proposals received from member States
	<b>ITEM 6: FOLLOW-UP TO ACTIVITIES CARRIED OUT BY THE CDDH</b>
	<b>6.1 Social rights (CDDH-SOC)</b>
	Information on the follow-up to the CDDH-SOC work
	<b>6.2 Human Rights and business</b>
CDDH(2019)33	Online Platform on Human Rights and Business - Information provided by the Secretariat
	<b>6.3 Combating discrimination on grounds of sexual orientation or gender identity</b>
CDDH(2019)28	Revised draft CDDH Report on the implementation of the Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity

	<b>6.4 Access to official documents</b>
CDDH(2019)34	Information provided by the Secretariat
	<b>ITEM 7: GENDER EQUALITY</b>
CDDH(2019)36	Information provided by the Secretariat
	<b>ITEM 8: BIOETHICS</b>
	Decisions of the 16 <sup>th</sup> meeting of the Committee on bioethics (DH-BIO) (19–21 November 2019)
	Strategic Action Plan on Human Rights and Technologies in Biomedicine
	<b>ITEM 9: CONVENTIONS</b>
<a href="#">CDDH(2019)16Rev3</a>	Information provided by the Secretariat
	<b>ITEM 10: FOCAL POINTS AND CDDH RAPPORTEURS</b>
	Focal points representing the CDDH in other bodies/events: information provided by the focal points
	<b>ITEM 11: INVITEES</b>
CDDH(2019)R91(see above)	1. Report of the 91 <sup>st</sup> CDDH meeting (18–21 June 2019)
	<b>ITEM 12: ELECTIONS</b>
CDDH(2019)R91(see above) Appendix IX	Report of the 91 <sup>st</sup> CDDH meeting (18–21 June 2019)
CDDH-BU(2019)R102	Report of the 102 <sup>nd</sup> Bureau meeting (Paris, 13–15 November 2019)
<a href="#">CM/Res(2011)24</a>	CM Resolution on committees working methods
<a href="#">CDDH(2017)17</a>	Procedure for elections within the CDDH
	<b>ITEM 13: PUBLICATIONS</b>
CDDH(2019)26 Appendix VI	Information provided by the Secretariat
	<b>ITEM 14: CALENDAR</b>
CDDH(2019)26 Appendix VII	Proposals from the Secretariat
	<b>ITEM 15: OTHER BUSINESS</b>
	<b>ITEM 16: ACKNOWLEDGMENTS</b>

## Appendix II

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## Appendix III

**Comments by the CDDH on Recommendations  
of the Parliamentary Assembly**

*(adopted at its 92<sup>nd</sup> meeting (26–29 November 2019))*

**I. RECOMMENDATION 2158 (2019) – “ENDING COERCION IN MENTAL HEALTH: THE NEED FOR A HUMAN RIGHTS-BASED APPROACH”**

***CDDH comments***

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly Recommendation 2158 (2019) – “Ending coercion in mental health: the need for a human rights-based approach”, a subject on which the CDDH has already expressed itself in the past.
2. It commends to the Committee of Ministers the comments provided by the Committee on Bioethics (DH-BIO) at its 16<sup>th</sup> meeting (Strasbourg, 19-21 November 2019), which read as follows:
  1. At its 1351bis meeting at Deputies level, the Committee of Ministers agreed to communicate Recommendation 2158 (2019) – “Ending coercion in mental health: the need for a human rights-based approach” to the Steering Committee for Human Rights (CDDH) and to the Committee on Bioethics (DH-BIO), for information and possible comments “by the exceptional deadline of 6 December 2019, due to the sensitive issues involved”.
  2. The DH-BIO examined the recommendation at its 16<sup>th</sup> plenary meeting (19 – 21 November 2019).
  3. In its recommendation, the Assembly calls on the Committee of Ministers to “prioritise support to member States to immediately start to transition to the abolition of coercive practices in mental health settings” and to “redirect efforts from the draft of the additional protocol [concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment] to the drafting of guidelines on ending coercion in mental health”.
  4. The DH-BIO is of the opinion that it is of particular importance to carefully analyse any evolution of the situation concerning involuntary measures in the mental health care field, in particular as it comes to an “overall increase in the use of involuntary measures in mental health settings” in Europe evoked in the Parliamentary Assembly’s Resolution 2291 (2019). It agrees with the Parliamentary Assembly’s assessment of the need to reduce recourse to coercive measures in mental health care. The DH-BIO sees its work in the area of protecting human rights in mental health care as a contribution to reaching this shared aim.
  5. The DH-BIO made a Recommendation in 2004 to improve the protections namely against involuntary measures and has assessed the impact of this text on legislation and practices. It was in light of this assessment that the Committee agreed to prioritise a legally binding instrument to improve the protections against involuntary measures.
  6. The DH-BIO recalls the task with which it has been entrusted by the Committee of Ministers to conduct the work for the protection of human rights in the biomedical field. It reaffirms its commitment to promoting the rights and self-determination of all persons, and their participation in all decisions relating to their treatment and care.
  7. Against this background, the DH-BIO perceives the current elaboration of a legal instrument safeguarding the rights of persons with regard to involuntary measures in the field of mental health as one of the tools to ensure that measures implemented without the person’s consent or assent are only used subject to strict criteria and only as a last resort, thus contributing to the effective reduction of recourse to such measures.

8. At the same time, the DH-BIO considers that certain provisions contained in such legal instrument could strengthen the State's commitment to ensure the availability of a wide selection of appropriate, less restrictive and intrusive primary measures in mental health care.

9. The DH-BIO appreciates the Parliamentary Assembly's support for its future work aimed at collecting "Good practices in mental healthcare – how to promote voluntary measures". The DH-BIO sees this work, which it intends to launch with the participation of relevant stakeholders, as a complementary tool towards the same aim.

10. With regard to the "continued widespread opposition to the pursuance of work on an additional protocol" and reference to a perceived incompatibility with the CRPD, the DH-BIO refers to its comments on Recommendation 2091 (2019) and considers that the current draft text is not in conflict with other international instruments, and in particular with the Convention on the Rights of Persons with Disabilities. On the contrary, this draft proposes, as called for in the Recommendation, to adopt an approach which is founded on Human Rights, in line with the Convention on the Rights of Persons with Disabilities. These two international instruments, which have a different scope, would thus be complementary.

11. In view of the opinions received and the oral statements given by representatives of INGOs invited to the relevant sessions of its plenary meetings, the DH-BIO has decided that the current draft text had to be carefully reviewed, having particular regard to strengthening measures promoting autonomy in mental health care.

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## **II. RECOMMENDATION 2160 (2019) – “STOP VIOLENCE AGAINST, AND EXPLOITATION OF, MIGRANT CHILDREN”**

### ***CDDH comments***

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly Recommendation 2160 (2019) – “Stop violence against, and exploitation of, migrant children”. It draws attention to the work envisaged by its drafting Group on Human Rights and Migration (CDDH-MIG) which could help to find solutions to stop violence against, and exploitation of, migrant children: in 2020, the Group is expected to draft a non-binding document on family-based care for unaccompanied and separated children. This document will outline the relevant international legal standards and key practical considerations for effective implementation. Given the diversity of situations, it will contain a selection of good national practices in this area. The text should be adopted by the CDDH in November 2020 for transmission to the Committee of Ministers.
2. The particularly vulnerable situation of non-accompanied and separated children will be the backdrop for this work which could, as appropriate, provide a basis for considering the possibility raised by the Assembly in paragraph 6.2. of its Recommendation.

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### III. RECOMMENDATION 2161 (2019) - "PUSHBACK POLICIES AND PRACTICE IN COUNCIL OF EUROPE MEMBER STATES"

#### **CDDH comments**

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly Recommendation 2161 (2019) – “Pushback policies and practice in Council of Europe member States”. It draws attention to the fact that, following the previous work of the Parliamentary Assembly,<sup>29</sup> the Committee of Ministers adopted in 2009 its Guidelines on human rights protection in the context of accelerated asylum procedures<sup>30</sup>. The drafting of this text had been entrusted to the CDDH.
2. These Guidelines reaffirm that asylum seekers enjoy the guarantees set out in the European Convention on Human Rights in the same way as any other person within the jurisdiction of States Parties, in accordance with Article 1 of the Convention. The Guidelines are applied *mutatis mutandis* in procedures whereby a State may declare an application inadmissible without considering the merits of the claim.<sup>31</sup>
3. Regarding the invitation made by the Assembly in its Recommendation 2161 (2019) to work on guidelines on ensuring access to rights of migrants arriving at borders or attempting to arrive there,<sup>32</sup> the CDDH recalls that the above-mentioned Guidelines of the Committee of Ministers set out a framework of minimum procedural guarantees<sup>33</sup> which must be granted for asylum seekers and underline that asylum seekers have the right to *an individual and fair examination* of their applications by the competent authorities.<sup>34</sup> Moreover, the Guidelines:
  - recall all the minimum procedural guarantees that asylum seekers should enjoy;<sup>35</sup>
  - recall in particular the rights of the most vulnerable asylum seekers;<sup>36</sup>
  - clarify concepts such as *safe country of origin* and *safe third country*, and recall the right of asylum seekers to have an effective opportunity to rebut the presumption of security of their country of origin or that of the third country,<sup>37</sup> as

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<sup>29</sup> Resolution 1471 (2005) and Recommendation 1727 (2005) on “Accelerated asylum procedures in Council of Europe member states”, and the related report by the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe.

<sup>30</sup> 1062<sup>nd</sup> meeting of the Ministers’ Deputies, 1<sup>st</sup> July 2009.

<sup>31</sup> See Guideline I (*definition and scope*).

<sup>32</sup> See paragraph 4.6. of the Recommendation of the Parliamentary Assembly 2161 (2019) “Pushback policies and practice in Council of Europe member States”.

<sup>33</sup> For example, guidelines IV (procedural guarantees), V (the safe country of origin concept), VI (the safe third country concept), VII (*non-refoulement* and return), VIII (quality of the decision-making process), IX (time for submitting and considering asylum applications), X (right to effective and suspensive remedies), XI (detention), XII (social and medical assistance), XIII (protection of private and family life) and XV (increased protection).

<sup>34</sup> Guideline II, § 2.

<sup>35</sup> Guideline IV, *supra*.

<sup>36</sup> For example, guideline III (Vulnerable persons and complex cases);

<sup>37</sup> Guidelines V and VI, cited above.

well as the right to an effective and suspensive remedy for asylum seekers whose applications have been rejected;<sup>38</sup>

- stress in particular the obligation of the State receiving an asylum application "to ensure that the return of the asylum seeker to his/her country of origin or any other country will not expose him/her to a real risk of the death penalty, torture or inhuman or degrading treatment or punishment, persecution, or serious violation of other fundamental rights which would, under international or national law, justify the granting of protection ".<sup>39</sup> It is also reiterated, as in Article 4 of Protocol No. 4 of the Convention, that collective expulsion of aliens is prohibited.<sup>40</sup>

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#### IV. RECOMMENDATION 2162 (2019) – “IMPROVING THE PROTECTION OF WHISTLE-BLOWERS ALL OVER EUROPE”

##### *CDDH comments*

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly’s Recommendation 2162 (2019) – “Improving the protection of whistle-blowers all over Europe”. Whistleblowing represents an important means in the fight against corruption and tackling gross mismanagement in the public and private sectors. The protection of whistle-blowers is a fundamental aspect of freedom of expression and freedom of conscience.
2. The CDDH recalls that recent developments within the Council of Europe member States and within the European Union as regards the existing practices and/or standards on the protection of whistle-blowers are addressed in the “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”, prepared by the CDDH and transmitted to the Committee of Ministers for information at its 1357<sup>th</sup> meeting (16 October 2019).<sup>41</sup>
3. The CDDH shares the opinion of the Parliamentary Assembly on the importance to maintain coherence between the Council of Europe’s approach reflected in Recommendation CM/Rec(2014)7 of the Committee of Ministers<sup>42</sup> and the EU’s approach reflected in the proposal for a directive of the European Parliament and of the European Council on the protection of persons reporting on breaches of Union law.

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<sup>38</sup> Guideline X cited above.

<sup>39</sup> Guideline VII cited above.

<sup>40</sup> Since the entry into force of Protocol No. 4, the Court has found a violation of Article 4 of Protocol No. 4 in only six cases (*Čonka v. Belgium*, Application No. 51564/99, final judgment on 05/05/2002, *Georgia v. Russia (I)* Application No. 13255/07 [GC], judgment final on 03/07/2014, *Shioshvili and Others v. Russia*, Application No. 19356/07, Judgment final on 20 / 03/2017, *Berdzenishvili and Others v. Russia*, Applications Nos 14594/07 and following, judgment final on 20/03/2017, *Hirsi Jamaa and Others v. Italy* [GC], Application No. 27765/09, judgment final on 23 / 02/2012 and *Sharifi and Others v. Italy and Greece*, Application No. 16643/09, judgment final on 21/01/2015. For some of these cases, the Court also found a violation of Article 4 of the Protocol No. 4 in relation to Article 13 (right to an effective remedy); (e.g. *Čonka v. Belgium*, *Georgia v. Russia (I)*, *Hirsi Jamaa and Others v. Italy*, *Sharifi and Others v. Italy and Greece*, cited above).

<sup>41</sup> See document [CM\(2019\)148](#), §§ 361-373.

<sup>42</sup> CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistle-blowers, adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers’ Deputies.

4. As regards the Assembly's invitation to the Committee of Ministers to begin preparations for negotiating a binding legal instrument in the form of a Council of Europe Convention in this field which would draw on, *inter alia*, the above-mentioned European directive and the Council of Europe acquis on this matter, namely Recommendation CM/Rec2014(7) and the above-mentioned CDDH Guide, the CDDH notes that this issue will be considered by the European Committee on Legal Co-operation (CDCJ). The CDDH expresses its availability to, if appropriate, co-operate with the CDCJ in this field.

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## V. RECOMMENDATION 2163 (2019) – “OMBUDSMAN INSTITUTIONS IN EUROPE – THE NEED FOR A SET OF COMMON STANDARDS”

### *CDDH comments*

1. The Steering Committee for Human Rights (CDDH) takes note with interest of the current debate in Europe on the Ombudsman institutions and, in this context, of the Parliamentary Assembly's Recommendation 2163 (2019) – “Ombudsman institutions in Europe – the need for a set of common standards”.
2. Further to the invitation appearing in paragraph 1.5, the CDDH recalls that its draft Recommendation on the development of the Ombudsman institution has been adopted by the Committee of Ministers on 16 October 2019 as Recommendation CM/Rec(2019)6.<sup>43</sup> This instrument is in compliance with the Venice Principles adopted by the European Commission for Democracy through Law on 19 March 2019. The CDDH considers it crucial to ensure wide dissemination and awareness-raising among national authorities to the standards contained in the recommendation and in the Venice Principles. To this end, the International Ombudsman Institute, with which the CDDH cooperated closely in the preparation of the CM Recommendation, could play an important role.
3. The CDDH expresses its serious concern about the challenging working conditions, threats, pressures and attacks which Ombudsman institutions and their staff are at times exposed to in member State. As indicated in the above-mentioned Recommendation of the Committee of Ministers CM/Rec(2019)6, “Member States should take all measures necessary to protect Ombudsman institutions against threats and harassment. Any cases of alleged reprisal or intimidation against Ombudsman institutions and their staff, or against individuals who co-operate or seek to co-operate with them, should be promptly and thoroughly investigated and the perpetrators brought to justice.” (see paragraph 7).
4. The CDDH stresses the importance of continuing support to Ombudsman institutions in all their diversity (national, regional and local Ombudsman institutions, including those dealing with specific thematic issues). A continuous strengthening of these institutions needs to be ensured and any measures which might weaken them must be avoided.
5. Concerning follow-up, the CDDH recalls that the Committee of Ministers will examine the implementation of Recommendation CM/Rec(2019)6 no later than five years after its adoption.
6. Finally, the CDDH recalls that, according to its terms of reference for 2020-2021, it will revise in 2020 Recommendation No. R(97)14 of the Committee of Ministers to member States on the establishment of independent national institutions for the promotion and

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<sup>43</sup> This recommendation was adopted by the Committee of Ministers on 16 October 2019 at the 1357<sup>th</sup> meeting of the Ministers' Deputies.

protection of human rights. This exercise will certainly contribute to a better knowledge of the action conducted by Ombudsman institutions.

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## **VI. RECOMMENDATION 2164 (2019) – “PROTECTING AND SUPPORTING THE VICTIMS OF TERRORISM”**

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly’s Recommendation 2164 (2019) – “Protecting and supporting the victims of terrorism”. Noting that the Committee of Ministers has requested its Committee on Counter-Terrorism (CDCT) to draft an opinion on this Recommendation at its 4<sup>th</sup> meeting (19-21 November 2019), the Bureau of the CDDH would like to send the following elements to the CDCT, so that the work already conducted by the CDDH is also reflected.
2. The Bureau notes that the draft CDCT opinion rightly mentions the Revised Guidelines of the Committee of Ministers on the protection of victims of terrorist acts (2017) which was prepared by the Steering Committee for Human Rights (CDDH). In this respect, it would be useful to also mention the Workshop “Protection of Victims of Terrorist Acts”, organised under the aegis of the French Presidency of the Committee of Ministers in Strasbourg on 20 June 2019 at the 91<sup>st</sup> CDDH plenary meeting. This mention could take the form of a footnote (see below).
3. As regards the possibility expressed in the last paragraph of the draft CDCT opinion of a cooperation between the CDDH and the CDCT in order to examine the feasibility of a European Charter of the Rights of the Victims of Terrorism, as proposed by the Parliamentary Assembly in paragraph 4.3. of its Recommendation 2164 (2019), the CDDH will consider the issue at its 92<sup>nd</sup> CDDH meeting (26-29 November 2019) and will identify appropriate means for this co-operation. It could be established in the form of participation in the work of the CDCT of a contact person designated by the CDDH and a member of the Secretariat.

For information of the CDDH

*Opinion of the Council of Europe Committee on Counter-Terrorism (CDCT) on Recommendation 2164 (2019) “Protecting and supporting the victims of terrorism” of the Parliamentary Assembly*

This text was adopted by the CDCT at its 4<sup>th</sup> meeting (19-21 November 2019)

1. On the occasion of its 1357<sup>th</sup> meeting on 16 October 2019, the Committee of Ministers (Ministers’ Deputies) agreed to communicate Recommendation 2164 (2019) – “Protecting and supporting the victims of terrorism” – to the Committee on Counter-Terrorism (CDCT) for information and possible comments by 22 November 2019.
2. The CDCT examined the aforesaid Recommendation during its 4<sup>th</sup> Plenary meeting on 19 – 21 November 2019, and adopted the following opinion:
3. The CDCT agrees with the Parliamentary Assembly that it is essential to give a strong international dimension to the assistance to victims of terrorism – not only in Europe, but globally.
4. As regards the situation of victims of terrorism in Europe, the CDCT considers that there is a need to further deepen coordination and cooperation in this field between the Council of Europe and the European Union, both in order to exploit synergies and to avoid unnecessary duplication of work. Cooperation between the two Organisations could, inter alia, take place in the form of concrete joint projects to develop and implement common standards.

5. To this end the member States of the Council of Europe have already taken a number of important steps through the adoption of the **Revised Guidelines of the Committee of Ministers on the protection of victims of terrorist acts (2017)**<sup>44</sup>, the **assessment of the implementation of Article 13 of the Council of Europe Convention on the Prevention of Terrorism (CETS No 196)** carried out by the Consultation of the Parties to the aforesaid Convention, and the resulting prioritisation of efforts by the CDCT to address **the situation of persons who become victims of terrorist attacks perpetrated outside the territories of their own States** (activity 3.3 of the Council of Europe Counter-Terrorism Strategy (2018 – 2022). Finally, the CDCT has at its 3<sup>rd</sup> Plenary meeting (14 – 15 May 2019) decided to establish a **network of contact points for the exchange of procedural information regarding the legal standing of victims of terrorism**. This network, which became operational on 1 November 2019, is intended to become global, incorporating not only member States of the Council of Europe, but all interested States around the world.
6. The CDCT will, as in the past, on a regular basis hold exchanges between its members and participants concerning the legal situation of victims of terrorism in the Council of Europe member States, as well as on best practices in assisting and compensating such victims.
7. As regards the proposal by the Parliamentary Assembly on the adoption of a European charter of the rights of the victims of terrorism, cf. paragraph 4.3. of the Parliamentary Assembly Recommendation 2164 (2019), the Committee considers that the Steering Committee for Human Rights (CDDH) and the CDCT in cooperation could examine the feasibility of such an undertaking by the Council of Europe and report thereon to the Committee of Ministers.

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<sup>44</sup> In this context, it is worth also mentioning the Workshop “*Protection of Victims of Terrorist Acts*” organised by and under the aegis of the French Presidency of the Committee of Ministers in Strasbourg on 20 June 2019. This Workshop gave the opportunity to exchange experience and good practices between Governments and representatives of the civil society concerning the implementation of the Guidelines. The Programme can be found in document CDDH(2019)R91, Appendix VI. The proceedings will be published soon.



## Appendix IV

**Terms of reference of the CDDH, DH-SYSC and DH-BIO  
for 2020 - 2021**

*(as adopted by the Committee of Ministers  
at its 1361<sup>st</sup> meeting, 19-21 November 2019)*

**Steering Committee for Human Rights (CDDH)**

*Set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.*

**Type of committee:** Steering Committee

Terms of reference valid from: **1 January 2020 until 31 December 2021**

**PILLAR/ PROGRAMME/SUB-PROGRAMME**

**Pillar:** Human Rights

**Programme:** Effective ECHR implementation

**Sub-programme:** Effectiveness of the ECHR System at national and European level / Bioethics

**MAIN TASKS**

Under the authority of the Committee of Ministers, and bearing in mind the Council of Europe legal standards as well as the relevant jurisprudence of the European Court of Human Rights, the CDDH will conduct the intergovernmental work of the Council of Europe in the human rights field and will advise and give its legal expertise to the Committee of Ministers on all questions within its field of competence. In particular, the CDDH will:

- (i) work on the protection, development and promotion of human rights in Europe to:
  - (a) contribute to enhancing the protection of human rights by improving the effectiveness of the control mechanism of the European Convention on Human Rights and the implementation of the Convention at national and European levels, this work being a permanent priority for the CDDH;
  - (b) provide effective responses at the normative and general policy levels to the challenges posed to human rights in European societies;
- (ii) follow the implementation of the non-binding instruments that it has prepared as well as conventions for which it has been given supervision by the Committee of Ministers;
- (iii) advise other bodies of the Organisation to ensure that their activities concerning human rights duly reflect the requirements of the Convention and the case-law of the Court;
- (iv) contribute to co-operation and support activities to national initiatives in the field of the protection, development and promotion of human rights;
- (v) without prejudice to the missions of intergovernmental committees of the Council of Europe that already follow the work of monitoring mechanisms, follow the activities of the relevant monitoring and other bodies protecting human rights;
- (vi) where necessary, co-ordinate transversal intergovernmental activities in the field of human rights including bioethics;
- (vii) hold an exchange of views annually in order to evaluate its activities and advise the Committee of Ministers and the Secretary General on future priorities in its sector, including possible new activities and those that might be discontinued;
- (viii) take due account of gender and children's rights perspectives and of Roma and Traveller<sup>[3]</sup> issues, building cohesive societies, promoting and protecting rights of persons with disabilities in the performance of its tasks;
- (ix) in accordance with decisions CM/Del/Dec(2013)1168/10.2 of the Committee of Ministers, carry out, at regular intervals, within the limits of the available resources and bearing in mind its priorities, an examination of some or all of the conventions for which it has been given responsibility,<sup>[4]</sup> in co-operation, where appropriate, with the relevant convention-based bodies, and report back to the Committee of Ministers;
- (x) contributes to the achievement of the UN 2030 Agenda for Sustainable Development, in particular with regards to Goal 3: Good health and well-being and Goal 16: Peace, Justice and Strong institutions.

**SPECIFIC TASKS**

- (i) Orient and oversee the work of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC) (see DH-SYSC terms of reference).
- (ii) Provide effective responses to the challenges that European societies face in terms of human rights, both normatively and politically, by ensuring as much as necessary appropriate co-ordination and co-operation with relevant conventional and monitoring bodies and other Council of Europe bodies involved. Where appropriate, develop a draft non-binding instrument of the Committee of Ministers (e.g. declaration, recommendation, guidelines) on the prohibition of trade in goods used for torture and the death penalty.
- (iii) On the basis of work conducted in 2018-2019, prepare one or more draft non-binding instruments of the Committee of Ministers or other tools (for example a recommendation, guidelines, good practice handbook) concerning human rights issues in the context of migration.
- (iv) On the basis of work conducted in 2018-2019, proceed to 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.
- (v) On the basis of developments in the member States, within the Council of Europe and in other fora, update the Handbook on Human Rights and the Environment and, if appropriate, develop a draft non-binding instrument of the Committee of Ministers (e.g. recommendation, guidelines) recalling existing standards in this field.
- (vi) On the basis of developments in the member States, within the Council of Europe and in other fora, prepare, if appropriate, a Handbook on Human Rights and Artificial Intelligence and contribute to possible standard-setting work which would be undertaken within the Organisation.
- (vii) Organise, as necessary, thematic debates on the situation of member States with regard to the right of access to official documents, in particular with regard to the signing and ratification of the 2009 Tromsø Convention (CETS No. 205).
- (viii) Supervise from the human rights perspective the intergovernmental work in the field of bioethics (see DH-BIO terms of reference).
- (ix) Review progress towards the United Nations Sustainable Development Goals (UNSDGs), as evidenced by monitoring mechanisms and promoted through standard-setting and exchange of experiences and good practices.

**COMPOSITION****Members:**

Governments of member States are invited to designate one or more representatives of the highest possible rank in the field of human rights.

The Council of Europe will bear the travel and subsistence expenses of one representative from each member State (two in the case of the State whose representative has been elected Chair).

Each member of the committee shall have one vote. Where a government designates more than one member, only one of them is entitled to take part in the voting.

In accordance with decisions CM/Del/Dec(2013)1168/10.2 of the Committee of Ministers, in cases where there is no convention-based body including all the Parties, non-member States are invited to take part, with a right to vote, in the committee meetings pertaining to the conventions to which they are Parties.

**Participants:**

The following may send representatives, without the right to vote and at the charge of their corresponding administrative budgets:

- Parliamentary Assembly of the Council of Europe;
- Congress of Local and Regional Authorities of the Council of Europe;
- European Court of Human Rights;
- Council of Europe Commissioner for Human Rights;
- Conference of INGOs of the Council of Europe;
- Committees or other bodies of the Council of Europe engaged in related work, as appropriate.

The following may send representatives, without the right to vote and without defrayal of expenses:

- European Union (one or more representatives, including, as appropriate, the European Union Agency for Fundamental Rights (FRA));
- Observer States to the Council of Europe: Canada, Holy See, Japan, Mexico, United States of America;

- other international organisations (Organisation for Security and Co-operation in Europe (OSCE) / Office for Democratic Institutions and Human Rights (ODIHR), Office of the United Nations High Commissioner for Human Rights).

**Observers:**

The following may send representatives, without the right to vote and without defrayal of expenses:

- Belarus;
- non-member States with which the Council of Europe has a Neighbourhood Partnership including relevant co-operation activities;
- European Network of National Human Rights Institutions (ENNHRI);
- Non-governmental organisations (Amnesty International, International Commission of Jurists (ICJ), European Trade Union Confederation (ETUC), International Federation of Human Rights (FIDH), European Roma and Travellers Forum<sup>45</sup>).

**WORKING METHODS**

**Plenary meetings:**

48 members, 2 meetings in 2020, 4 days

48 members, 2 meetings in 2021, 4 days

**Bureau meetings:**

8 members, 2 meetings in 2020, 2 days

8 members, 2 meetings in 2021, 2 days

The Committee will also appoint from amongst its members a Gender Equality Rapporteur, a Children's Rights Rapporteur, a Rapporteur on the Rights of Persons with Disabilities and a Rapporteur on Roma and Traveller Issues.

The rules of procedure of the Committee are governed by Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods. Whenever appropriate, it will prioritise environmentally sound working methods, such as virtual meetings facilitated by information technology and written consultations.

Subject to the agenda, the Chairs of the subordinate structures to the CDDH may be invited to attend CDDH Bureau and/or plenary meetings.

**SUBORDINATE STRUCTURE(S)**

The CDDH supervises its subordinate bodies:

- Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC) (see separate terms of reference) and Drafting Groups;
- Committee on Bioethics (DH-BIO) (see separate terms of reference).

\* \* \*

<sup>45</sup> The term "Roma and Travellers" is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term "*Gens du voyage*", as well as persons who identify themselves as Gypsies. The present is an explanatory footnote, not a definition of Roma and/or Travellers.

## **Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC)**

*Set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.*

**Type of committee:** Subordinate Body

Terms of reference valid from: **1 January 2020 until 31 December 2021**

### **PILLAR/PROGRAMME/SUB-PROGRAMME**

**Pillar:** Human Rights

**Programme:** Effective ECHR implementation

**Sub-Programme:** Effectiveness of the ECHR system at national and European level

### **SPECIFIC TASKS**

The specific tasks will be carried out in light of the Committee of Ministers' decisions on the follow-up to the evaluation set out by the Interlaken Declaration.

- (i) Develop proposals to improve the effective processing and resolution of cases relating to inter-State disputes.
- (ii) Enhance the national implementation of the system of the European Convention on Human Rights, in order to assist the State authorities involved in the operation of the Convention and in the process of the execution of judgments to fulfil their mission in the best possible way, in the light of existing national best practices. To this end, develop guidelines covering all of the action at national level expected from States Parties to prevent and remedy violations of the Convention, accompanied by a Guide of existing best practices and update Recommendation (2002)13 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.

### **COMPOSITION**

#### **Members:**

Governments of member States are invited to designate one or more representatives of the highest possible rank in the field of human rights.

The Council of Europe will bear the travel and subsistence expenses of one representative from each member State (two in the case of the State whose representative has been elected Chair).

Each member of the committee shall have one vote. Where a government designates more than one member, only one of them is entitled to take part in the voting.

#### **Participants:**

The following may send representatives, without the right to vote and at the charge of their corresponding administrative budgets:

- Parliamentary Assembly of the Council of Europe;
- Congress of Local and Regional Authorities of the Council of Europe;
- European Court of Human Rights;
- Council of Europe Commissioner for Human Rights;
- Conference of INGOs of the Council of Europe;
- HELP Network Consultative Board;
- Committees or other bodies of the Council of Europe engaged in related work, as appropriate.

The following may send representatives, without the right to vote and without defrayal of expenses:

- European Union (one or more representatives, including, as appropriate, the European Union Agency for Fundamental Rights (FRA));
- Observer States to the Council of Europe: Canada, Holy See, Japan, Mexico, United States of America;
- other international organisations (Organisation for Security and Co-operation in Europe (OSCE) / Office for Democratic Institutions and Human Rights (ODIHR), Office of the United Nations High Commissioner for Human Rights, Office of the United Nations High Commissioner for Refugees).

**Observers:**

The following may send representatives, without the right to vote and without defrayal of expenses:

- Belarus;
- non-member States with which the Council of Europe has a Neighbourhood Partnership including relevant co-operation activities;
- Non-governmental organisations (Amnesty International, European Trade Unions Confederation (ETUC), International Commission of Jurists (ICJ), International Federation of Human Rights (FIDH), European Roma and Travellers Forum, Open Society Justice Initiative (OSJI)), as well as the European Network of National Human Rights Institutions (ENNHRI).

**WORKING METHODS****Plenary meetings:**

48 members, 2 meetings in 2020, 3 days

48 members, 2 meetings in 2021, 3 days

The Committee will also appoint a Gender Equality Rapporteur from amongst its members.

The rules of procedure of the Committee are governed by Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

Whenever appropriate, it will prioritise environmentally sound working methods, such as virtual meetings facilitated by information technology and written consultations.

## Committee on Bioethics (DH-BIO)

*Set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods*

**Type of committee:** Subordinate body

Terms of reference valid from: **1 January 2020 until 31 December 2021**

### PILLAR/PROGRAMME/SUB-PROGRAMME

**Pillar:** Human Rights

**Programme:** Effective ECHR implementation

**Sub-programme:** Bioethics

### SPECIFIC TASKS

- (i) Under the authority of the Committee of Ministers, the DH-BIO carry out the tasks assigned to the Steering Committee on Bioethics (CDBI) by the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Convention on Human Rights and Biomedicine).
- (ii) Finalise a draft additional Protocol on the protection of human rights and dignity of persons with mental disorders with regard to involuntary placement and involuntary treatment.
- (iii) Launch and follow the implementation of the Strategic Action Plan 2020 – 2025 with a particular focus on human rights challenges raised by new technologies, such as neurotechnologies.
- (iv) Carry out a study on “good practices in mental health care – how to promote voluntary measures”.
- (v) Map legislation and best practices with a view to preparing a guide for health care professionals on children’s participation in the decision-making process in the biomedical field.
- (vi) Examine the ethical and legal issues raised by development in genome editing technologies in relation to Article 13 of the Convention on Human Rights and Biomedicine.
- (vii) Ensure the dissemination of the training course on essential principles for the protection of human rights in the biomedical field intended for legal and health professionals in non-official languages in the framework of the HELP programme.
- (viii) Launch a Guide on Public Debate and ensure its dissemination, including in non-official languages.
- (ix) Hold an exchange of views annually in order to evaluate its activities and advise the Committee of Ministers and the Secretary General on future priorities in its sector including possible new activities and those that might be discontinued.

### COMPOSITION

#### Members:

Governments of the member States are invited to designate one or more representatives of the highest possible rank, with appropriate expertise in the various aspects of bioethics, in particular legal, medical and scientific aspects, including in relation to emerging technologies, and able to consider these from a human rights perspective.

The Council of Europe will bear the travel and subsistence expenses of one representative from each member State (two in the case of the State whose representative has been elected Chair).

Each member of the committee shall have one vote. Where a government designates more than one member, only one of them is entitled to take part in the voting.

In accordance with decisions CM/Del/Dec(2013)1168/10.2 of the Committee of Ministers, in cases where there is no convention-based body including all the Parties, non-member States are invited to take part, with a right to vote, in the committee meetings pertaining to the conventions to which they are Parties.

#### Participants:

The following may send representatives, without the right to vote and at the charge of their corresponding administrative budgets:

- Parliamentary Assembly of the Council of Europe;
- Council of Europe Commissioner for Human Rights;
- Conference of INGOs of the Council of Europe;
- Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD);
- Steering Committee on the Rights of the Child (CDENF);
- European Committee on Legal Cooperation (CDCJ);
- Committee on Transplantation of Organs and Tissues (CD-P-TO);
- Committee on Blood Transfusion (CD-P-TS);
- Committees or other bodies of the Council of Europe engaged in related work, as appropriate.

The following may send representatives, without the right to vote and without defrayal of expenses:

- European Union;
- Observer States to the Council of Europe: Canada, Holy See, Japan, Mexico, United States of America;
- other international organisations: WHO, UNESCO, OECD and European Science Foundation (ESF).

**Observers:**

The following may send representatives, without the right to vote and without defrayal of expenses:

- Australia, Israel;
- the Conference of European Churches (KEK);
- other non-governmental organisations, including professional organisations, which could be invited by the DH-BIO to attend specific meetings of the DH-BIO in accordance with CM/Res(2011)24.

**WORKING METHODS**

**Plenary meetings:**

48 members, 2 meetings in 2020, 4 days

48 members, 2 meetings in 2021, 4 days

**Bureau meetings:**

7 members, 2 meetings in 2020, 2 days

7 members, 2 meetings in 2021, 2 days

The Chair or Vice-Chair of the DH-BIO may be invited to attend the meetings of the CDDH and its Bureau in order to inform on progress with its work.

The Committee will also appoint a Gender Equality Rapporteur from amongst its members.

The rules of procedure of the Committee are governed by Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

Whenever appropriate, it will prioritise environmentally sound working methods, such as virtual meetings facilitated by information technology and written consultations.

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## Appendix V

**Declaration made by the Delegation of the Republic of Armenia in response to the  
Declaration made by the Delegation of the Republic of Azerbaijan regarding the  
CDDH Report on the place of the European Convention on Human Rights  
in the European and international legal order  
(CDDH(2019)R92 Addendum1)<sup>46</sup>**

*(at the 92<sup>nd</sup> CDDH meeting, Strasbourg, 26–29 November 2019)*

The Republic of Armenia deplores the content, the format and the timing of the declaration made by the Delegation of the Republic of Azerbaijan on the *CDDH Report on the place of the European Convention on Human Rights in the European and International legal order*.

The Republic of Armenia considers that the declaration of the Republic of Azerbaijan contains misrepresentation of a judgment of the Court and misinterpretation of ECtHR case-law. It undermines the work done by the experts of the drafting group under the CDDH and questions the analysis shared by the vast majority of Member States on an issue that the Group was mandated to address by highlighting existing problems affecting the system of the ECHR.

In general terms, Armenia disagrees with the practice of presenting politically motivated declarations on documents of the CDDH, especially when such declarations are submitted at the very last moment. Armenia regrets the fact that it was compelled to reply to such a declaration of Azerbaijan and believes that the existing practice of declarations should be reviewed and be reserved only to substantial comments on the content of the report. Otherwise such practice may lead to a situation where each and every Member State would attach its politically motivated declarations to any given document and at any given time, thus undermining the very essence of the inter-governmental cooperation in the CDDH.

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<sup>46</sup> Note of the Secretariat: The paragraph numbers referred to are the numbers as they appeared in document DH-SYSC(2019)R5 Addendum 1.



## Appendix VI

**Declaration made by the Delegation of the Republic of Azerbaijan regarding the wording of paragraphs 133 and 134 of the CDDH Report on the place of the European Convention on Human Rights in the European and international legal order (CDDH(2019)R92 Addendum1)<sup>47</sup>**

*(at the 92<sup>nd</sup> CDDH meeting, Strasbourg, 26–29 November 2019)*

1. The Republic of Azerbaijan does not share the assessment of the way the facts were presented in paragraph 133 and 134 regarding the *Chiragov* case and the context in which this case was referred to in those paragraphs.

2. After examining the cases of *Ilascu*, *Catan* and *Chiragov* paragraph 133 concludes with the following statement:

*“Thus, the threshold for establishing jurisdiction in these cases seems to **reduce** the requirements of the effective control test. Furthermore, the broad formulation of the elements necessary for the Court to conclude that a State had jurisdiction, as shown above, **could make it difficult for States to foresee** the exact scope of their obligations under the Convention [emphasis added]”*

3. Such assessment in the Report does not reflect the true interpretation given by the Court with regard to the decisive influence and effective control applied in *Chiragov* case. Regrettably, the Committee previously removed the reference to the finding of the Court in the present case about the high degree of integration between Armenia and the “NKR” from the paragraph for no apparent objective reason despite the objections raised by the Delegation. The Delegation states that this finding constitutes an important criterion which was used by the Court for the first time and led it to conclude that Armenia exercised effective control over the so-called “NKR” territory. The Republic of Azerbaijan considers that the reference was deliberately deleted, so as to make *Chiragov* appear to correlate with the conclusion formulated in the last two sentences of paragraph 133.

4. *Chiragov* is a classic case of an effective control of an area. Indeed, the Court has characterised this case as “its leading case on the matter” (see *Muradyan v Armenia*, no. 11275/07, § 126, 24 November 2016). The judgment was reaffirmed later in *Muradyan v Armenia*, no. 11275/07, ECHR 2016 and *Zalyan and Others v Armenia*, nos. 36894/04 and 3521/07. Both *Muradyan* and *Zalyan* confirmed that Armenia is under an obligation to secure in the occupied Nagorno-Karabakh region and surrounding territories of Azerbaijan the rights and freedoms set out in the Convention and is responsible under the Convention in respect of “the acts of its own soldiers or officials operating in Nagorno Karabakh” and “the acts of the local administration which survives by virtue of Armenian military and other support” (see *Muradyan*, at § 126).

5. While in *Chiragov* the Court did not examine the question of the attribution of the acts on account of which the applicants have been deprived of their possessions, it had established the existence of a high degree of integration between the “NKR” and Armenia. As Judge Motoc stated in her concurring opinion in *Chiragov* “[a] State may perhaps have been able to prove the involvement of the Armenian armed forces in the acts of the authorities of the “NKR”, but for an individual wishing to assert their fundamental rights that would have been very difficult, if not impossible...The Court’s logic is much easier to discern in the present case than in the earlier cases: even if it does not examine the question of attribution and does not seek to establish the actual participation of the Armenian forces in the acts that resulted in the applicants being

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<sup>47</sup> Note of the Secretariat: The paragraph numbers referred to are the numbers as they appeared in document DH-SYSC(2019)R5 Addendum 1.

deprived of their possessions, the exercise of jurisdiction by the defendant State has been convincingly established here”.

6. In this respect, the present case looks to be the closer to the criterion of effective control, imposed by the ICJ. Even if the words “complete control” are not used by the Court, it does use “occupation” and “high degree of integration”. As Judge Motoc put it quite strongly, *Chiragov* “represents one of the strongest returns to general international law”.

7. In addition, we must also remain mindful of the Convention’s special character as a human rights treaty, as confirmed by the Court’s case law and rightly putted in paragraphs 136 and 154 of the present Report. As paragraph 154 goes, the Court’s mandate “differs both from that of the ICJ and that of the ICTY, and the Court regularly stresses ‘the special character of the Convention as an instrument of European public order (*ordre public*) for the protection of individual human beings”.

8. Furthermore, the Republic of Azerbaijan considers that the conclusion in paragraph 133, especially in the part where it is argued that the requirements of the effective control test have been reduced in *Ilascu, Catan* and *Chiragov*, is regrettable. In fact, *Ilascu, Catan* and *Chiragov*, as well as, preceding cases concerning the TRNC have been the dominant and leading cases concerning the test of effective control of an area. The Report itself does not indicate any other ECtHR cases concerning this test. In this circumstances, it is unclear how the requirements are reduced and what is actually the point from where it is reduced. There has been no case in the Court’s jurisprudence so far, which applied stronger requirement for effective control test than one applied in *Ilascu, Catan, Chiragov* or cases concerning the TRNC. It cannot be argued that any stricter requirements exist in general international law. In any case, the Convention’s special character as a human rights treaty should be taken into account.

9. The statement then continues that the broad formulation “could make it difficult for States to foresee the exact scope of their obligations”. The statement, however, does not provide any clarification how such “difficulty” arises. While finding jurisdiction using “the State agent authority and control” test might in certain circumstances be completely fact dependent and possibly entail uncertainties – in anyway the Republic of Azerbaijan does not agree that hypothetic uncertainties should be enough to conclude in favour of the narrowing of the application of this test – the effective control of an area test, especially an area within the European *espace juridique*, is usually, if not always, an established and a well-known fact. In *Chiragov*, for example, the Court referred to immense number of sources in finding the effective control, including relevant resolutions of the UN Security Council, UN General Assembly, PACE and European Parliament, all of which confirmed the fact of occupation.

10. Moreover, given that the above cases concerned areas within the European legal space, it is unclear how more stringent requirements would benefit foreseeability or legal certainty. At the same time, finding lack of effective control in such cases would inevitably result in creation of legal vacuums in the European *espace juridique* itself. Such scenario would even go beyond the *Bankovic* case with its strict approach.

11. In light of the above, the Delegation proposes to remove the aforementioned conclusion from paragraph 133. The reference to *Chiragov* should also be removed as a whole from the said paragraph.

12. As to paragraph 134, the Delegation proposes to delete the word “only” from the first sentence and add the words “which consequently leads to effective control of such territory” after the words “breakaway territory”, as the cases referred to are not only about decisive influence, but also about effective control. Furthermore, the Report states that a respondent State is obliged to secure Convention rights on the territory under its effective control and then continues that “[t]his category of cases [*Ilascu, Catan, Chiragov*] may cause difficulties for the States at the stage of the execution of judgments”. The Delegation is of the view that securing the Convention rights over an area of which a State exercises effective control is vital in avoiding a gap or vacuum in human rights’ protection and the Court’s approach on this matter has been

relatively straightforward (see, for example, *Cyprus v. Turkey* [GC], no. 25781/94, § 78, 10 May 2001, *Guzelyurtlu and others v. Cyprus and Turkey* [GC], no. 36925/07, 29 January 2019, §§ 188, 190, 193-196).

13. Thus, the Delegation proposes rephrasing the relevant sentence of paragraph 134 as follows: “While this is consistent with the desirability of the Court to avoid a gap or vacuum in human rights’ protection, this category of cases may cause difficulties for the States at the stage of the execution of judgments.”

14. Taking into account the aforementioned, the Republic of Azerbaijan proposes the following amendments to the paragraphs 133 and 134 of the Report:

133. Several other judgments further developed the scope of the States’ jurisdiction where they were found to have effective control of an area and in particular in cases where that control was found to be exercised not directly, but through a subordinate administration. In several cases concerning the existence, within the territory of a Contracting State, of an entity which is not recognised by the international community as a sovereign State, with the support of the respondent State, the Court had not only had regard to the strength of the State’s military presence in the area. In *Ilaşcu* the Court did not require effective control, considering “decisive influence” to be a sufficient requirement for establishing jurisdiction. In *Catan*, even though no direct involvement of the agents of the respondent State was established,<sup>167</sup> the Court nevertheless concluded that the respondent State exercised “effective control and decisive influence” over the separatist administration, which was found to continue in existence “only because of Russian military, economic and political support”. In *Chiragov*, the Court found not only that the respondent State’s military support continued to be decisive for the continued control over the territories in question, but that the “Republic of Nagorno-Karabakh” (the “NKR”) survived “by virtue of the military, political, financial and other support” given to it by Armenia.<sup>169</sup>

No direct action by the respondent State in relation to the impugned act was thus found to be necessary in this group of cases in order for the acts to come within the respondent States’ jurisdiction. Thus, the threshold for establishing jurisdiction in these cases seems to reduce the requirements of the effective control test. Furthermore, the broad formulation of the elements necessary for the Court to conclude that a State had jurisdiction, as shown above, could make it difficult for States to foresee the exact scope of their obligations under the Convention.<sup>170</sup>

134. In this category of cases, where a respondent State does not have direct territorial control, but only decisive influence over the administration of a breakaway territory which consequently leads to effective control of such territory, the consequences of a finding of jurisdiction are considerable. The respondent State is under the obligation to secure on such a territory the full range of Convention rights in the sense of an obligation to achieve the result required by the Convention, and not only as an obligation of means, that is, to do what is possible to achieve that result.<sup>171</sup> While this is consistent with the desirability of the Court to avoid a gap or vacuum in human rights’ protection, this category of cases may cause difficulties for the States, at the stage of the execution of judgments. However, the unconditional character of the obligation to execute the Court’s judgments under Article 46 of the Convention must be recalled. It has been decided that this aspect relating to the execution of judgments will not be addressed as it goes beyond the scope of the Report on the interaction between the Convention and general international law and the analysis of the risk of fragmentation arising from diverging interpretations which are to be addressed in the present report.

## Appendix VII

**Declaration made by the Delegation of the Republic of Moldova regarding the wording of paragraph 133 of the CDDH Report on the place of the European Convention on Human Rights in the European and International legal order**  
(CDDH(2019)R92 Addendum1)<sup>48</sup>

*(at the 92<sup>nd</sup> CDDH meeting, Strasbourg, 26–29 November 2019)*

**The Republic of Moldova proposed the following text:**

133. Several other judgments further developed the scope of the States' jurisdiction where they were found to have effective control of an area and in particular in cases where that control was found to be exercised not directly, but through a subordinate administration. In several cases concerning the existence, within the territory of a Contracting State, of an entity which is not recognised by the international community as a sovereign State, with the support of the respondent State, the Court had not only had regard to the strength of the State's military presence in the area. In *Ilaşcu* the Court did not require effective control, considering "decisive influence" to be a sufficient requirement for establishing jurisdiction. In *Catan*, even though no direct involvement of the agents of the respondent State was established [insert footnote: reference to paragraph 123 of the current report], the Court nevertheless concluded that the respondent State exercised "effective control and decisive influence" over the separatist administration, which was found to continue in existence "only because of Russian military, economic and political support".<sup>49</sup>

Nevertheless, it is to be noted that the development of the Courts' assessment from *Ilaşcu* case to *Catan* case occurred due to the changes of the situation in the transnistrian region of the Republic of Moldova which took place after the events described in *Ilaşcu*. In *Catan*, the Court explained the way in which the respondent state (Russian Federation) transformed its decisive influence in the transnistrian region through all of its means of support (military, economic and political) to the separatist regime, which determined not just a decisive influence but an effective control.

[...]

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<sup>48</sup> *Note of the Secretariat*: The paragraph numbers referred to are the numbers as they appeared in document DH-SYSC(2019)R5 Addendum 1.

<sup>49</sup> *Catan and Others*, cited above, § 122.

## Appendix VIII

**Declaration made by the Delegation of the Russian Federation regarding the  
CDDH Report on the place of the European Convention on Human Rights in the  
European and international legal order  
(CDDH(2019)R92 Addendum1)<sup>50</sup>**

*(at the 92<sup>nd</sup> CDDH meeting, Strasbourg, 26–29 November 2019)*

In 2016 the Committee of Ministers of the Council of Europe entrusted the CDDH with an ambitious task “to carry out a detailed analysis of all questions relating to the place of the Convention in the European and international legal order and on the medium-term and longer-term prospects” in light of the conclusions of the 2015 CDDH Report on the longer-term future of the System of the ECHR. The 2015 CDDH Report explicitly indicated a number of challenges to the effectiveness of the Convention system. However, despite the considerable amount of work carried out by the DH-SYSC-II, DH-SYSC and CDDH and numerous interested parties, the 2019 CDDH Report in some extremely important aspects falls short of its goal – namely, to fully address possible solutions of the revealed problems.

Of particular concern is the silence of the Report on possible ways of overcoming the challenges posed by certain aspects of the practice of the European Court of Human Rights (ECtHR) regarding the issues of State responsibility and extraterritorial application of the ECHR. The Report indeed acknowledges<sup>51</sup> that the Court does not make clear whether it applies the International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) – that largely codify customary rules of international law on this subject – and explicitly<sup>52</sup> states that in some cases (in particular, *Ilașcu v. Moldova and Russia*, *Catan v. Moldova and Russia*) the ECtHR departed from these rules and made no distinction between the terms “jurisdiction” and “attribution of conduct”<sup>53</sup>.

Nevertheless, as regards possible ways of overcoming these challenges the Report is “beating around the bush”. Instead of stressing the need for the ECtHR to more consistently apply relevant rules of general international law, including those codified in ARSIWA in cases concerning attribution of conduct to the respondent State, the Report merely requests the Court to give “detailed reasoning” on these issues in its case-law.

It should also be noted that according to the official commentary of the ILC to ARSIWA, these Articles “are concerned with the whole field of State responsibility”. Thus “they are not limited to breaches of obligations of a bilateral character” and “apply to the whole field of the international obligations of States, whether the obligation is owed to one or several States, to an individual or group, or to the international community as a whole”.

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<sup>50</sup> *Note of the Secretariat: The paragraph numbers referred to are the numbers as they appeared in document DH-SYSC(2019)R5 Addendum 1.*

<sup>51</sup> See paragraph 176 of the CDDH report on the place of the European Convention on Human Rights in the European and international legal order.

<sup>52</sup> See paragraph 180 of the CDDH report on the place of the European Convention on Human Rights in the European and international legal order.

<sup>53</sup> See paragraph 184 of the CDDH report on the place of the European Convention on Human Rights in the European and international legal order.

There being no specific provisions on issues of State responsibility in the Convention (*lex specialis*)<sup>54</sup>, the Russian Federation sees no valid reason for the Court not to follow general rules of international law as confirmed by the ILC and the International Court of Justice (ICJ). Opting for a different conclusion in the CDDH Report basically means admitting the possibility – and desirability – of fragmentation of international law.

This approach cannot be tolerated in the report that is supposed to formulate proposals to minimize fragmentation in the international legal order and enhance the authority of the Convention system<sup>55</sup> in view of the importance for States of legal certainty<sup>56</sup> in key questions of the application of the Convention. It has been stressed on many occasions that the goal set by the Committee of Ministers was to prepare a truly comprehensive analytical report, rather than to a large extent a simple description of the Court's case-law.

The Russian Federation notes that the ECtHR in some instances has developed the Convention to a point that is markedly different from its prevailing understanding and interpretation at the time when most of the States joined this treaty. Due to the consensual basis of States' obligations in the international law of treaties this trend is alarming and needs careful and sensitive consideration. When the ECtHR deviates from general international law in such fundamental and overarching issues as State responsibility it creates uncertainty for the Contracting Parties to the Convention, who are left unaware of the scope of their obligations under the ECHR. Providing legal certainty is central to the legitimacy of the ECtHR and the maintenance of its effectiveness and authority as an independent and competent judicial institution.

Accordingly, to make the Report well-balanced and comprehensive, and to inform the relevant actors of different consequences and challenges emanating from certain ECtHR's decisions, the Russian Federation suggested to add the following substantive recommendations corresponding to the challenges already identified in the Report.

1. The need to preserve the authority of the Court was enshrined in the Copenhagen Declaration<sup>57</sup> and in the report of the CDDH on the longer-term future of the system of the ECHR<sup>58</sup>. The Russian Federation considers it an important issue that had to be reflected in the concluding part of the subchapter "State responsibility and extraterritorial application of the European Convention on Human Rights" and of the Report as a whole. One of the key challenges that threaten the authority of the Court lies in fragmentation of international law due

<sup>54</sup> See paragraph 140 of the CDDH report on the place of the European Convention on Human Rights in the European and international legal order.

<sup>55</sup> See Report of the 2<sup>nd</sup> DH-SYSC-II meeting (20–22 September 2017), document DH-SYSC-II(2017)R2, paragraph 13.

<sup>56</sup> See Report of the 3<sup>rd</sup> DH-SYSC meeting (10–12 May 2017), document DH-SYSC(2017)R3, paragraph 11(iv).

<sup>57</sup> "The quality and in particular the clarity and consistency of the Court's judgments are important for the authority and effectiveness of the Convention system" (par.27 of the Declaration).

<sup>58</sup> "While acknowledging that the interpretation of the Convention is a prerogative of the Court itself, the CDDH noted that an interpretation of the Convention which is at odds with other instruments of public international law (such as international humanitarian law) could have a detrimental effect on the authority of the Court's case law and the effectiveness of the Convention system as a whole." (par.186 of the CDDH report); "The authority of the Court is vital for its effectiveness and for the viability of the Convention system as a whole. These are contingent on the quality, cogency and consistency of the Court's judgments, and the ensuing acceptance thereof by all actors of the Convention system, including governments, parliaments, domestic courts, applicants and the general public as a whole." (par. 195(ii) of the CDDH report).

to application by the Court of its own requirements for establishing jurisdiction<sup>59</sup> and lack of clear distinction between jurisdiction and responsibility in the Court's decisions.<sup>60</sup> This approach goes against the rules of general international law and practice of other international courts, including the ICJ. Therefore the Russian Federation suggested that paras. 5 and 11 of the Executive summary and paras. 185 and 426 of the CDDH Report be strengthened by referencing the need that the Court, in the interest of preserving its authority, more consistently applied relevant rules of general international law, including those codified in the ARSIWA.

2. The Russian Federation also regrets that the Report falls short of admitting that the Court in its judgment in the case *Catan and Others v. Moldova and Russia* not merely developed, but significantly expanded the factors inherent in the determination of the existence of "effective control". Compared to general international law, this threshold was dramatically lowered by the ECtHR, thus deviating from the approach of the ILC and the ICJ<sup>61</sup>. Moreover, the Court not only found Russia responsible while openly admitting the absence of any evidence of Russian involvement in the alleged violations<sup>62</sup>, but also made no distinction between jurisdiction and responsibility<sup>63</sup>. Despite these obvious inconsistencies – acknowledged even in the Report itself<sup>64</sup> – the latter still fails to qualify the *Catan* decision as contradictory in paragraph 122 or 133. The Russian Federation stresses that this approach of the ECtHR, divergent from general international law, causes unavoidable difficulties for States in determining the scope of

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<sup>59</sup>See, *inter alia*, paras. 133, 136, 178 of the draft report.

<sup>60</sup>See, *inter alia*, paras. 90, 135, 184, 426 of the draft report.

<sup>61</sup> Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States of America*), 27 June 1986; Application of the Convention on the Prevention and Punishment of the Crime of Genocide, (*Bosnia and Herzegovina v Serbia and Montenegro*) 26 February 2007.

<sup>62</sup> See *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, 19 October 2012, paragraphs 114 ("The Court accepts that there is no evidence of any direct involvement of Russian agents in the action taken against the applicants' schools.") and 149 ("The Court notes that there is no evidence of any direct participation by Russian agents in the measures taken against the applicants. Nor is there any evidence of Russian involvement in or approbation for the "MRT"'s language policy in general. Indeed, it was through efforts made by Russian mediators, acting together with mediators from Ukraine and the OSCE, that the "MRT" authorities permitted the schools to reopen as "foreign institutions of private education" (see paragraphs 49, 56 and 66 above).").

<sup>63</sup> Partly dissenting opinion of Judge Kovler in *Catan and Others v. the Republic of Moldova and Russia* [GC] ("... as in the earlier cases of *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, ECHR 2004-VII) and *Ivanțoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011), I do not share the conclusions of the majority regarding a number of points. In those cases I expressed my disagreement with the methodology of the analysis (wrong parallels with a Cyprus-type conflict), the (somewhat selective) presentation of the facts, the analysis (both disputable and disputed by a number of specialists) of the concepts of "jurisdiction" and "responsibility"..."); B.Bowring, 'Case commentary: *Catan v Moldova and Russia*: geopolitics and the right to education, and why "no person" is in fact a child'. *International Justice* 1 (9), 2014, pp. 44-59 ("... the ECtHR has opened itself to serious criticism in its judgments in the three cases, *Ilaşcu*, *Ivanțoc*, and now *Catan*, in which it has attributed responsibility to Russia through faulty and inadequate reasoning"); M. Milanović, '*Catan and Others*'. *European Journal of International Law: Talk!*, 21 October 2012 ("Is the Court here saying that Russia was responsible for **everything** that the MRT did, i.e. that all of its acts were attributable to Russia, by virtue of some ECHR-specific rule of attribution? Not only would this go against what the ILC and the ICJ had to say on the matter, but this would also contradict the earlier passages in **Catan** in which the Court draws the distinction between jurisdiction and responsibility. [...] In effect, the Court would appear to have treated this case in exactly the same way as if Russian authorities were directly involved in the closing of the schools, and that just does not seem right to me.").

<sup>64</sup> See paragraphs 133 and 135 of the draft Report.

their obligations under the Convention, as well as at the stage of the execution of judgments in situations of extraterritoriality.

3. The Russian Federation proposed to address in the Report's chapter on State responsibility and extraterritorial application of the ECHR challenges relating to the execution of judgments of the Court. This proposal was rooted in the goals of DH-SYSC-II, namely to formulate proposals to minimize fragmentation in the international legal order and enhance the authority of the Convention system<sup>65</sup> in view of the importance for States of legal certainty<sup>66</sup> in key questions of the application of the Convention. It was agreed<sup>67</sup> that the Report should be drafted in "an objective and neutral approach, without limiting the necessary analysis of the challenges". Therefore all challenges relating to the place of the ECHR in the European and international legal order had to be addressed in the Report. However certain problematic aspects relating to the execution of judgments in situations of extraterritoriality were ignored in the Report despite the fact that similar issues of execution arose in the DH-SYSC-II discussions of subtheme on the interaction between the resolutions of the Security Council and the ECtHR judgments and were mentioned in the text of the Report.

The Russian proposal covered only one specific category of cases where due to the Court's broad interpretation of extraterritorial jurisdiction the respondent State is required to undertake certain action in the territory of other sovereign States, when no military intervention of a State or overall control were present. In these situations elimination of the violations of the Convention established by the ECtHR can result in a violation of generally binding principles of State sovereignty and non-interference with internal affairs. The analysis of this line of case-law is reflected in the Report, but the immanent consequence of these holdings is lacking. However, this consequence may affect any Member State having economic interests and/or insignificant military presence in some region abroad, since it can be held responsible for human rights violations there despite the lack of control over the local authorities. It also seems that such decisions compromise the very institution of mediating and peaceful settlement. This may negatively affect the authority of the Convention system and has an impact on legal certainty for States and therefore had to be mentioned in the Report among the challenges. The absence of this analysis makes the Report one-sided and incomplete.

These and other long-standing proposals that have been expressed at all stages of the work, however, were not upheld. Therefore the Russian Federation regrets to state that considerable efforts by the CDDH, DH-SYSC, DH-SYSC-II and other interested parties over a period of almost 3 years did not fully achieve the goals assigned by the Committee of Ministers.

The same issues arose in respect of the Executive summary of the CDDH Report. The summary to such an extensive Report ended up being an empty shell and the Russian Federation sees practically no added value in it since it does not describe the main findings reflected in the main body of the Report.

The proposals of the Russian Federation regarding the text of the draft CDDH Report and its Executive summary aimed at making the text more clear, balanced and reflecting a wide range of issues and concerns that are voiced among the Member-States and scholars, were not upheld. Unwillingness to add important clarifications, factual statements and even direct citations from CDDH Reports of 2015 and 2019 (while using extensive citations of the ECtHR cases), as well as references to eminent scholars, the ICJ and the ILC, was covered up by questionable reasoning – all of them were deemed unnecessary or inappropriate, too short or too long, too general or too straightforward.

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<sup>65</sup> Report of the 2nd meeting of the DH-SYSC-II, paragraph 13.

<sup>66</sup> Report of the 3rd meeting of the DH-SYSC-II, paragraph 11(iv).

<sup>67</sup> Report of the 3rd meeting of the DH-SYSC-II, paragraph 10(iii).



## Amendments proposed by the Delegation of the Russian Federation

### **Paragraph 4 of the Executive summary**

Adjust its wording as follows:

“This sub-section takes as its starting point the rules on treaty interpretation contained in Articles 31-33 of the Vienna Convention on the Law of Treaties (VCLT), which are broadly regarded as reflecting the rules of customary international law and the fact that the ECHR is a part of public international law. The report considers how the Court has applied the VCLT rules, but also methods of interpretation which it has developed beyond the provisions of the VCLT. Noting that the Court uses dynamic interpretative approaches, the report acknowledges that traditional rules of treaty interpretation and the consensual nature of international law place limits on them. It is therefore important that the Court explains **and keeps** its methods of interpretation within these limits and that the outcome is predictable and understandable for the States Parties in order to avoid a risk of fragmentation of the international legal order. **The Court cannot, by means of an evolutive interpretation, derive from the Convention and its Protocols a right that was not included therein at the outset<sup>68</sup>.**”

### **Paragraph 5 of the Executive summary**

Adjust its wording as follows:

“This sub-section reviews the case-law of the Court under Article 1 of the Convention in two respects. Firstly questions of the application of the Convention to actions of State beyond its own territory. Secondly questions of attribution of an internationally wrongful act, and in particular when a State can be held responsible under the Convention for the acts of another actor. The sub-section reviews the relevant case-law, bearing in mind the complexity and the sensitivity of the issues raised. Given that in these cases Article 1 serves as a threshold provision determining whether the Convention should apply or not to a given case the importance of clarity, consistency and predictability in the case-law is emphasised. **It is noted that even though the ECHR does not contain any provision that expressly differs from the general regime of the responsibility of States<sup>69</sup>, the Court has developed its own notion of jurisdiction for the purpose of Article 1<sup>70</sup>. In some cases, the Court’s threshold for establishing jurisdiction seems to reduce the requirements of the effective control test<sup>71</sup>, being less stringent than the degree of control which must be exercised in order for the conduct to be attributable to the State under the case-law of the International Court of Justice<sup>72</sup> and the Articles on State Responsibility for Internationally Wrongful Acts adopted by the International Law Commission<sup>73</sup>. Furthermore, the Court does not always clearly distinguish between “jurisdiction” in the sense of Article 1 ECHR on the one hand, and attribution of conduct under the law of state responsibility on the other hand<sup>74</sup>. The broad formulation of the elements necessary for the Court to conclude that a State had jurisdiction and evolutive interpretation of the scope of Article 1 could make it difficult for States to foresee the exact scope of their obligations under the**

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<sup>68</sup> Paragraph 76 of the CDDH Report.

<sup>69</sup> Paragraph 140 of the CDDH Report.

<sup>70</sup> Paragraph 136 of the CDDH Report.

<sup>71</sup> Paragraph 133 of the CDDH Report.

<sup>72</sup> Paragraph 154 of the CDDH Report.

<sup>73</sup> Paragraph 180 of the CDDH Report.

<sup>74</sup> Paragraph 184 of the CDDH Report.

Convention and thus to fulfil them<sup>75</sup>. In cases, where a respondent State does not have direct territorial control, but only decisive influence over the administration of a breakaway territory, the consequences of a finding of jurisdiction are considerable and may cause difficulties for the States at the stage of the execution of judgments<sup>76</sup>. In situations of extraterritoriality, which usually concern politically sensitive areas including questions of national security, a clear methodology and interpretation of the applicable rules is of utmost importance in order to guarantee legal certainty”.

### **Paragraph 122**

Replace the first sentence with the following:

“In relation to the Court’s category of extraterritorial application on the basis of “effective control of an area”, there has been significant expansion as regards the factors the Court will consider, notably in the contradictory<sup>77</sup> Court’s judgment in *Catan and Others v. the Republic of Moldova and Russia*<sup>78</sup>.”

### **Paragraph 185**

Adjust its wording as follows:

“Apparent inconsistencies in the Court’s interpretation of “jurisdiction” will result in unpredictability and uncertainty among the States as to how their actions might be qualified by the ECtHR. Providing legal certainty is central to the legitimacy of the ECtHR and the maintenance of its effectiveness and authority as an independent and competent judicial institution. In view of the foregoing, and in order to avoid a risk of fragmentation of the international legal order, as well as in the interest of preserving the authority of the Court’s decisions, it would be desirable if the Court more consistently applied relevant rules of general international law, including those codified in ARSIWA in cases concerning attribution of conduct to the respondent State before it.”

### **Paragraph 426**

Adjust its wording as follows:

“Legal certainty as regards the applicable rules concerning the interpretation of the ECHR, and its relationship with other rules of international law, for example international humanitarian law, as well as clarity and consistency in the application by the Court of general rules of international law on State responsibility, is of great importance for the States Parties. As the ECtHR itself found on many occasions, as follows from Article 31 § 3 (c) of the 1969 Vienna Convention on the Law of Treaties, the ECHR cannot be interpreted in a vacuum and should as far as possible be interpreted in harmony with other rules of international law of which it forms part, including those relating to the international protection of human rights.”

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<sup>75</sup> Paragraphs 133 and 138 of the CDDH Report.

<sup>76</sup> Paragraph 134 of the CDDH Report.

<sup>77</sup> See also Partly dissenting opinion of Judge Kovler in *Catan and Others v. the Republic of Moldova and Russia* [GC]; B.Bowring, 'Case commentary: *Catan v Moldova and Russia*: geopolitics and the right to education, and why "no person" is in fact "a child". *International Justice* 1 (9), 2014, pp. 44-59; M. Milanović, 'Catan and Others'. *European Journal of International Law: Talk!*, 21 October 2012.

<sup>78</sup> *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, 19 October 2012.

## Appendix IX

**High Level Conference on Environmental Protection and Human Rights**

*Organised under the aegis of the Georgian Chairmanship of  
Committee of Ministers of the Council of Europe  
Strasbourg, 27 February 2020*

**DRAFT PROGRAMME****Welcome address and official opening**

9:00 – 9:05	Mr Levan Davitashvili, Minister of Environment Protection and Agriculture of Georgia
9:05 – 9:10	Ms Marija Pejčinović-Burić, Secretary General of the Council of Europe
9:10 – 9:15	President of the Parliamentary Assembly (elections end of January 2020) <b>(tbc)</b>
9:15 – 9:20	Mr Laurent Fabius, President of the Constitutional Council (France)
9:20 – 9:30	<i>Photo of participants</i>

**Introductory presentations**

9:30 – 9:40	Professor David R. Boyd, United Nations Special Rapporteur on Human Rights and the Environment
9:40 – 9:50	Professor Elisabeth Lambert, University of Strasbourg

**Session I – *Environmental protection and protection of human rights: Are they contradictory or complementary?***

9:50 – 9:55	Mr Linos-Alexandre Sicilianos, President of the European Court of Human Rights
9:55 – 10:00	Mr Giuseppe Palmisano, President of the European Committee of Social Rights
10:00 – 11:00	<b>Statements by Heads of national Delegations (3' each)</b>
11:00 – 11:10	<i>Musical interlude</i>
11:10 – 11:30	<i>Coffee break</i>

**Session II – *The role of elected representatives and civil society***

11:30 – 11:35	Ms Dunja Mijatović, Commissioner for Human Rights
11:35 – 11:40	Mr Anders Knape, President of the Congress of Local and Regional Authorities <b>(tbc)</b>

11:40 – 11:45 Ms Anna Rurka, President of the Conference of INGOs

**11:45 – 13:00 Statements by Heads of national Delegations (3' each)**

*13:00 – 14:45 Official lunch at the Restaurant Bleu of the Council of Europe offered to the Delegations and speakers by the Georgian Chairmanship of the Committee of Ministers*

### **Session III – The way forward**

14:45 – 14:48 Mr Christos Giakoumopoulos, Director General, Directorate General Human Rights and Rule of Law (DG I)

14:48 – 14:51 Mr Sławomir Buczman, Chair of the European Committee on Criminal Problems (CDPC)

14:51 – 14:54 Ms/Mr..., Chair of the Steering Committee for Human Rights (CDDH)

**14:54 – 15:45 Statements by Heads of national Delegations (3' each)**

*15:45 – 16:10 Coffee break*

16:10 – 16:13 Ms Snežana Samardžić-Marković, Director General, Directorate General of Democracy (DG II)

16:13 – 16:16 Ms Jana Durkosova, Chair of the Standing Committee of the Bern Convention

16:16 – 16:19 Ms Krisztina Kincses, Chair of the Council of Europe Conference on the European Landscape Convention

16:19 – 16:22 Ms Anja Olin Pape, Chair of the Joint Council on Youth (CMJ) and the Advisory Council on Youth (CCJ)

**16:22 – 17:00 Statements by Heads of national Delegations (3' each)**

### **Declaration of the Georgian Chairmanship**

**17:00 – 17:10 Declaration presented by Mr. Levan Davitashvili, Minister of Environment Protection and Agriculture of Georgia**

*17:10 End of the Conference*

17:15 – 17:45 Press Point

*17:45 – 18:45 Reception offered to all participants by the Georgian Chairmanship of the Committee of Ministers, accompanied by a Concert*

## Appendix X

**Declaration by the Delegation of the Republic of Poland  
concerning the CDDH report on the implementation of the 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 (CDDH (2019) R92Addendum4)**

*(at the 92<sup>nd</sup> CDDH meeting, Strasbourg, 26–29 November 2019)*

Interpretative Declaration - Poland considers that the Report 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 (document CDDH(2019)R92Addendum4) does not alter paragraphs 25-28 of the Appendix No. 1 to the 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. In particular, para. 126 of the present Report does not impose an obligation on member States to introduce in their domestic law the institution of same-sex unions or the legislation providing for the recognition and protection of same-sex unions.

## Appendix XI

**CDDH focal points and Rapporteurs to other bodies**

*(list adopted by the CDDH at its 92<sup>nd</sup> meeting, 26-29 November 2019)*

**FOCAL POINTS OF THE CDDH WITH OTHER BODIES**

1. Committee on Bioethics (DH-BIO): Ms Brigitte KONZ (Luxembourg)
2. Commission for Democracy through Law (Venice Commission): Ms Brigitte OHMS (Austria)
3. European Commission for the Efficiency of Justice (CEPEJ): Mr Vít A. SCHORM (Czech Republic)
4. Committee of Legal Advisers on Public International Law (CAHDI): Ms Zinovia STAVRIDIS (Greece)
5. European Committee on Legal Co-operation (CDCJ): Ms Maria de Fátima GRAÇA CARVALHO (Portugal)
6. Steering Committee on Media and Information Society (CDMSI):
7. Ad hoc Committee of experts on Roma and Traveller Issues (CAHROM): Ms Svetlana GELEVA (North Macedonia)
8. Advisory Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD): Ms Brigitte OHMS (Austria)
9. Council of Europe Committee on Counter-Terrorism (CDCT): Mr. Chanaka WICKREMASINGHE (United Kingdom)
10. Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ("Lanzarote Committee"): Ms Brigitte KONZ (Luxembourg)
11. Ad Hoc Committee for the Rights of the Child (CAHENF): Ms Brigitte KONZ (Luxembourg)
12. European Committee on Democracy and Governance (CDDG): Ms Krista OINONEN (Finland)
13. Steering Committee on Anti-discrimination, Diversity and Inclusion (CDADI):
14. Committee of Experts on the Administrative Retention of Migrants (CJ-DAM): Mr Morten RUUD (Norway)
15. Ad hoc Committee on Artificial Intelligence (CAHAI): Mr Tigran H. GALSTYAN (Armenia)

**CDDH RAPPORTEURS**

1. CDDH Rapporteur for gender equality: Mr Philippe WERY (Belgium)
2. CDDH Rapporteur on children's rights: Ms Brigitte KONZ (Luxembourg)
3. CDDH Rapporteur for the rights of persons with disabilities: Ms Brigitte KONZ (Luxembourg)
4. CDDH Rapporteur on Roma and Traveller issues: Ms Svetlana GELEVA (North Macedonia)
5. CDDH Rapporteur for social rights: Mr Vít A. SCHORM (Czech Republic).

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## Appendix XII

**Composition of the Bureau and of working Groups, Presidencies and Rapporteurs**

*(following the elections that took place during the 92<sup>nd</sup> meeting of the CDDH, 26-29 November 2019)*

<b>BUREAU OF THE CDDH</b>	<b>END OF THE MANDATE</b>	<b>REFERENCES</b>
Mr Morten RUUD (Norway), Chair	31 December 2020 (elected for 1 year, renewable once)	92 <sup>nd</sup> meeting of the CDDH (November 2019)
Ms Kristīne LĪCIS (Latvia), Vice-Chair	31 December 2020 (elected for 1 year, renewable once)	92 <sup>nd</sup> meeting of the CDDH (November 2019)
Ms Maris KUURBERG (Estonia), Member	31 December 2021 (elected for 2 years, not renewable)	90 <sup>nd</sup> meeting of the CDDH (November 2018)
Ms Krista OINONEN (Finland), Member	31 December 2021 (elected for 2 years, not renewable)	92 <sup>nd</sup> meeting of the CDDH (November 2019)
Mr Jan SOBCZAK (Poland), Member	31 December 2021 (elected for 2 years, renewable once)	92 <sup>nd</sup> meeting of the CDDH (November 2019)
Mr Alfonso BREZMES (Spain), Member	31 December 2021 (elected for 2 years, renewable once)	92 <sup>nd</sup> meeting of the CDDH (November 2019)
Mr Alain CHABLAIS (Switzerland), Member	31 December 2021 (elected for 2 years, renewable once)	92 <sup>nd</sup> meeting of the CDDH (November 2019)
Mr Chanaka WICKREMASINGHE (United Kingdom), Member	31 December 2021 (elected for 2 years, renewable once)	90 <sup>th</sup> meeting of the CDDH (November 2018)
<b>CHAIRS</b>		
<b>DH-BIO</b> Ms Tesi ASCHAN (Sweden)	31 December 2020 (elected for 1 year, not renewable)	16 <sup>th</sup> meeting of the DH-BIO (November 2019) 92 <sup>nd</sup> meeting of the CDDH (November 2019)
<b>DH-SYSC</b> Mr Hans-Jörg BEHRENS (Germany)	31 December 2021 (elected for 1 year, renewable once)	92 <sup>nd</sup> meeting of the CDDH (November 2019)
<b>DH-SYSC-IV</b> Mr Alain CHABLAIS (Switzerland)	31 December 2021	92 <sup>nd</sup> meeting of the CDDH (November 2019)
<b>DH-SYSC-V</b> Mr Vít A. SCHORM (Czech Republic)	31 December 2021	92 <sup>nd</sup> meeting of the CDDH (November 2019)
<b>"47 + 1"</b> Ms Tonje MEINICH (Norway)	31 December 2021	92 <sup>nd</sup> meeting of the CDDH (November 2019)
<b>CDDH-MIG</b> Mr Morten RUUD (Norway)	31 December 2020	88 <sup>th</sup> meeting of the CDDH (December 2017)
<b>CDDH-INST</b> Ms Krista OINONEN (Finland)	31 December 2020	88 <sup>th</sup> meeting of the CDDH (December 2017)

<b>CDDH-ENV</b> Ms Kristīne LĪCIS (Latvia)	31 December 2021	92 <sup>nd</sup> meeting of the CDDH (November 2019)
<b>RAPPORTEURS</b>		
<b>Prohibition of the trade in goods used for torture and death penalty</b> <sup>79</sup>	Ms Nicola WENZEL (Germany) Mr Chanaka WICKREMASINGHE (United Kingdom)	
<b>DRAFTING GROUPS</b>		
<b>DH-SYSC-IV</b> <sup>80</sup>	<b>DH-SYSC-V</b>	
Armenia	Czech Republic ( <i>Chair</i> )	
Azerbaijan	Estonia	
Croatia	Finland	
Georgia	France	
Germany	Italy	
Greece	Norway	
Netherlands	Poland	
Russian Federation	Portugal	
Serbia	Spain	
Slovenia	United Kingdom	
Switzerland ( <i>Chair</i> )		

<b>CDDH-MIG</b>	<b>CDDH-INST</b>
Armenia	Armenia
Bulgaria	Azerbaijan
Czech Republic	Finland ( <i>Chair</i> )
Greece	Ireland
Iceland	Montenegro
Italy	Poland
Latvia	Russian Federation
Norway ( <i>Chair</i> )	Slovenia
Spain	Spain
Turkey	North Macedonia

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<sup>79</sup> Subject to the decision to be taken by the Ministers' Deputies in February 2020 on the continuation of the work in this field.

<sup>80</sup> 10 member States + Chair (Switzerland)



## Appendix XIII

**Publications**

*(list adopted by the CDDH at its 92<sup>nd</sup> meeting, 26–29 November 2019)*

The following documents were published in 2019:

1. *The individual application under the ECHR - Procedural guide*
2. *Improving the protection of social rights in Europe:*  
*Volume I - Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe*  
*Volume II – Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe*
3. *Good and promising practices on the way of reconciling freedom of expression with other rights and freedoms, in particular in culturally diverse societies - Practical guide*
4. *Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results*
5. *Protection of victims of terrorist acts - Revised guidelines of the Committee of Ministers, compilation and overview of measures and practices in place in member States, Proceedings of the Seminar (20 June 2019).*

It is planned to publish the following documents in 2020:

1. *Contribution to the evaluation foreseen by the Interlaken Declaration - Final report of the CDDH*
2. *CDDH Report on the place of the European convention on Human rights in the European and international legal order*  
*Appendix: Proceedings of the Brainstorming Seminar organised for launching the work of the drafting Group DH-SYSC II*
3. *University education and professional training on the ECHR - Practical guide*
4. *Protection and promotion of the civil society space in Europe - Recommendation of the Committee of Ministers, compilation and overview of measures and practices in place in member states, Proceedings of the Seminar (29 November 2018)*
5. *Promotion of the human rights of older persons – follow-up of Recommendation CM/Rec(2014)2 of the Committee of Ministers, compilation and overview of measures and practices in place in member States, Proceedings of the Workshop (21 June 2018)*
6. *Strengthen international regulations against trade in goods used for torture and the death penalty - Feasibility study*
7. *Human Rights and Environment - Manual (3<sup>rd</sup> edition).*

## Appendix XIV

**Calendar of meetings of the CDDH and its subordinate bodies  
for 2020 and draft calendar for 2021**

*(as adopted by the CDDH at its 92<sup>nd</sup> meeting, 26–29 November 2019)*

<b>2020</b>	
<i>Opening of the Judicial Year</i>	31 January
1 <sup>st</sup> meeting of the drafting Group on the effective Processing and Resolution of cases relating to inter-State Disputes (DH-SYSC-IV)	19-21 February
<i>High-Level Conference on the Environmental Protection and Human Rights under the aegis of the Georgian Chairmanship of the Committee of Ministers</i>	Strasbourg, 27 February
6 <sup>th</sup> meeting of the drafting Group on Civil Society and National Human Rights Institutions (CDDH-INST)	4–6 March
1 <sup>st</sup> meeting of the CDDH <i>ad hoc</i> negotiation Group and the European Commission on the Accession of the European Union to the European Convention on Human Rights (“47+1”)	24–27 March
8 <sup>th</sup> meeting of the drafting Group on Migration and Human Rights (CDDH-MIG)	31 March–2 April
1 <sup>st</sup> meeting of the drafting Group on enhancing the national implementation of the system of the European Convention on Human Rights (DH-SYSC-V)	15–17 April
103 <sup>rd</sup> meeting of the Bureau of the Steering Committee for Human Rights (CDDH-BU)	Paris, 19–20 May
2 <sup>nd</sup> meeting of the CDDH <i>ad hoc</i> negotiation Group and the European Commission on the Accession of the European Union to the European Convention on Human Rights (“47+1”)	26–29 May
17 <sup>th</sup> meeting of the Committee on Bioethics (DH-BIO)	2–5 June
<i>Meeting of Government Agents with the Registry of the Court</i>	8 June
<i>Pluricourts Seminar</i> within the CDDH meeting	Strasbourg, 9 June
93 <sup>rd</sup> meeting of the Steering Committee for Human Rights (CDDH)	9–12 June
2 <sup>nd</sup> meeting of the drafting Group on the effective Processing and Resolution of cases relating to inter-State Disputes (DH-SYSC-IV)	9–11 September
3 <sup>rd</sup> meeting of the CDDH <i>ad hoc</i> negotiation Group and the European Commission on the Accession of the European Union to the European Convention on Human Rights (“47+1”)	29 September – 2 October
9 <sup>th</sup> and final meeting of the drafting Group on Migration and Human Rights (CDDH-MIG)	13–15 October
2 <sup>nd</sup> meeting of the drafting Group on enhancing the national implementation of the system of the European Convention on Human Rights (DH-SYSC-V)	14–16 October
104 <sup>th</sup> meeting of the Bureau of the Steering Committee for Human Rights (CDDH-BU)	28–29 October
<i>Meeting of Government Agents with the Registry of the Court</i>	3 November
6 <sup>th</sup> meeting of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC)	4–6 November

18 <sup>th</sup> meeting of the Committee on Bioethics (DH-BIO)	November
94 <sup>th</sup> meeting of the Steering Committee for Human Rights (CDDH)	[Athens, 24–27] November

2021	
<i>Opening of the Judicial Year</i>	January
3 <sup>rd</sup> meeting of the drafting Group on the effective Processing and Resolution of cases relating to inter-State Disputes (DH-SYSC-IV)	February
1 <sup>st</sup> meeting of the drafting Group on Human Rights and the Environment (CDDH-ENV)	February
1 <sup>st</sup> meeting of the drafting Group on Human Rights and Artificial Intelligence (CDDH-INTEL)	March
3 <sup>rd</sup> meeting of the drafting Group on enhancing the national implementation of the system of the European Convention on Human Rights (DH-SYSC-V)	April
2 <sup>nd</sup> meeting of the drafting Group on Human Rights and the Environment (CDDH-ENV)	May
105 <sup>th</sup> meeting of the Bureau of the Steering Committee for Human Rights (CDDH-BU)	May
7 <sup>th</sup> meeting of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC)	May
19 <sup>th</sup> meeting of the Committee on Bioethics (DH-BIO)	May/June
<i>Meeting of Government Agents with the Registry of the Court</i>	June
95 <sup>th</sup> meeting of the Steering Committee for Human Rights (CDDH)	June
4 <sup>th</sup> meeting of the drafting Group on the effective Processing and Resolution of cases relating to inter-State Disputes (DH-SYSC-IV)	September
2 <sup>nd</sup> meeting of the drafting Group on Human Rights and Artificial Intelligence (CDDH-INTEL)	September
4 <sup>th</sup> meeting of the drafting Group on enhancing the national implementation of the system of the European Convention on Human Rights (DH-SYSC-V)	October
8 <sup>th</sup> meeting of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC)	October
106 <sup>th</sup> meeting of the Bureau of the Steering Committee for Human Rights (CDDH-BU)	October
20 <sup>th</sup> meeting of the Committee on Bioethics (DH-BIO)	October/November
<i>Meeting of Government Agents with the Registry of the Court</i>	November
96 <sup>th</sup> meeting of the Steering Committee for Human Rights (CDDH)	November