

DH-SYSC-IV(2022)R5  
07/04/2022

STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

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COMMITTEE OF EXPERTS ON THE SYSTEM OF THE EUROPEAN CONVENTION  
ON HUMAN RIGHTS

(DH-SYSC)

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**DRAFTING GROUP ON THE EFFECTIVE PROCESSING AND RESOLUTION OF  
INTER-STATE DISPUTES**

**(DH-SYSC-IV)**

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**MEETING REPORT**

5<sup>th</sup> meeting (hybrid format)

5-7 April 2022

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

1.        The Drafting Group on effective processing and resolution of cases relating to inter-State disputes (DH-SYSC-IV) held its 5<sup>th</sup> meeting in Strasbourg from 5 to 7 April 2022 in a hybrid format with 10 delegations present in the meeting room and 12 delegations participating via the KUDO online platform. The meeting was chaired from Strasbourg by Mr Alain CHABLAIS (Switzerland). The list of participants appears in [Appendix I](#).

2.        The Chair noted that further to consultations with the Vice-Chair and the Secretariat, it had been agreed that the exchange of views with the invited experts (see paragraph 2 of document [DH-SYSC-IV\(2020\)R2](#)) would not take place in the present meeting. Instead, the time allocated to it would be dedicated to a discussion of the consequences of the Russian Federation ceasing to be a party to the European Convention on Human Rights (the Convention), as a result of the cessation of its membership of the Council of Europe. The Chair invited the Drafting Group to consider the desirability of holding the exchange of views with invited expert under item 4 of the agenda (see paragraph 10 below).

3.        The Drafting Group adopted the agenda (as it appears in [Appendix II](#)) and the order of business (as it appears in [Appendix III](#)).

**ITEM 2:                    EXCHANGE OF VIEWS ON POSSIBLE IMPLICATIONS OF THE CESSATION OF THE MEMBERSHIP OF THE RUSSIAN FEDERATION OF THE COUNCIL OF EUROPE FOR THE PROCESSING OF CASES RELATING TO INTER-STATE DISPUTES BY THE COURT**

4.        The Chair recalled that the Russian Federation will cease to be a Party to the Convention on 16 September 2022, as determined by the [Resolution](#) of the Court on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the Convention, followed by the Committee of Ministers' [Resolution CM/Res\(2022\)3](#) on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe. The large majority of the pending inter-State applications and around 20% of pending individual applications relating to inter-State conflicts are against the Russian Federation. A number of questions arise regarding the processing of these cases, such as the participation of the Russian Federation in the proceedings before the Court, the level of priority that will be assigned to cases against it and the possibility of new methods being put in place to process them.

5.        Mr Anders MANSSON, from the Registry, reaffirmed that the Court remains competent to deal with all pending cases against or concerning the Russian Federation as well as new applications that may be lodged against the Russian Federation under the conditions specified by the Court in its Resolution mentioned above. However, the question how these cases will be processed is very complex and currently under examination by the Court and the Registry. Referring to one of the recent Court's Press Releases on the expansion of interim measures in relation to Russian military action in Ukraine ([ECHR 116 \(2022\)](#)), Mr MANSSON observed that the Russian Federation had not replied to some of the recent Rule 39 questions addressed to it by the Court.

6. The Drafting Group recognised the complexity of the questions raised by this unprecedented situation for the processing of pending inter-State applications and related individual applications. However, it considered that until the Court had published its strategy for handling cases against the Russian Federation, the full consequences of this new situation for its work would not be clear. The Drafting Group therefore agreed to formulate proposals regarding the processing of cases relating to inter-State disputes in view of the current caseload and the present working methods of the Court, on the basis of the draft elements that will be examined under item 3 of the agenda. The Secretariat informed the Drafting Group that the CDDH, subject to approval by its Bureau, would hold a general exchange of views on the consequences of the Russian Federation ceasing to be a party to the Convention at its 96<sup>th</sup> meeting (14- 17 June 2022). The Drafting Group will remain open to adapting and changing its draft report in the light of any instructions from the CDDH and further information on the Court's approach to cases relating to inter-State conflicts that involve the Russian Federation.

**ITEM 3: EXAMINATION OF ELEMENTS FOR THE DRAFT CDDH REPORT ON THE EFFECTIVE PROCESSING AND RESOLUTION OF CASES RELATED TO INTER-STATE DISPUTES**

7. The Drafting Group examined the elements for the draft CDDH Report on the effective processing and resolution of cases related to inter-State disputes (document DH-SYSC-IV(2022)01) prepared by the Co-Rapporteurs in consultation with the Chair and the Vice-Chair and with the support of the Secretariat. Taking into account the comments submitted before the meeting (document DH-SYSC-IV(2022)02) as well as discussions during the meeting, the Drafting Group approved the elements as they appear in Appendix IV. It decided to ask the Co-rapporteurs to elaborate on this basis, under the guidance of the Chair and the Vice-Chair and with the support of the Secretariat, the draft CDDH Report on the effective processing and resolution of cases related to inter-State disputes for examination and possible adoption at its 6<sup>th</sup> meeting (20-22 September 2022).

**ITEM 4: DISCUSSION OF GENDER EQUALITY ASPECTS OF THE WORK OF DH-SYSC-IV**

8. The Drafting Group considered that the draft elements for the draft CDDH Report on the effective processing and resolution of cases related to inter-State disputes do not raise any gender equality issues.

**ITEM 5: DISCUSSION OF WORK TO BE CARRIED OUT AFTER THE 5<sup>th</sup> MEETING INCLUDING THE POSSIBILITY OF HOLDING THE EXCHANGE OF VIEWS WITH INVITED EXPERTS**

9. The Drafting Group discussed the organisation of its work until its 6<sup>th</sup> meeting. It agreed that the first draft of the CDDH report on the effective processing and resolution of cases related to inter-State disputes should be circulated via email to the Drafting Group on 8 June 2022 for comments by 8 July 2022. The revised draft report which will be prepared by the Co-rapporteurs should be examined by the Drafting Group at its 6<sup>th</sup> meeting with a view to its adoption and transmission to the DH-SYSC for possible adoption at its 8<sup>th</sup> meeting (18-20 October 2022) and

further transmission to the CDDH for possible adoption at its 97<sup>th</sup> meeting (6- 9 December 2022).

10. As it would be finalising its work at its 6<sup>th</sup> meeting, the Drafting Group agreed that it would not be productive to hold an exchange of views with invited experts at that meeting. However, it agreed to invite comments from the following experts, Ms Isabella RISINI, Mr Jernej LETNAR ČERNIČ, Mr Philip LEACH and Mr Geir ULFSTEIN, on the draft CDDH Report on the effective processing and resolution of cases related to inter-State disputes at the same time as the members of the Drafting Group. The experts' comments will be considered by the Co-rapporteurs.

**ITEM 6: ANY OTHER BUSINESS**

11. No other business was discussed.

**ITEM 7: ADOPTION OF THE MEETING REPORT**

12. At the end of its meeting, the Drafting Group adopted the present meeting report in English and in French.

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Appendix I

**List of participants**

**MEMBERS**

<b>ALBANIA</b>	<b>Ms Monika LAMCE</b> Deputy to the Permanent Representative of Albanian to the Council of Europe Representative of the Albanian Advocature in Strasbourg
<b>ARMENIA</b>	<b>Ms Karine VARDANYAN</b> Attaché, Division des Traités Multilatéraux Internationaux Département des Traités et du Droit International Ministère des Affaires Étrangères d'Arménie  <b>Mr Liparit DRMEYAN</b> Head of Office of the Representative of The Republic of Armenia on International Legal Matters  <b>Mr Igor MIRZAKHANYAN</b> Legal Expert at the Office of the Representative of the Republic of Armenia on International Legal Matters  <b>Ms Ntiana LEONIDI</b> Chief specialist at the Department for Representation of Interests of Armenia before the ECtHR, Office of the Representative of The Republic of Armenia on International Legal Matters
<b>AZERBAIJAN</b>	<b>Mr Habib ABDULLAYEV</b> Head of the Human Rights Division Department for Work with Law Enforcement Bodies Administration of President of the Republic of Azerbaijan  <b>Ms Zhala IBRAHIMOVA</b> Deputy to the Permanent Representative of the Republic of Azerbaijan to the Council of Europe  <b>Mr Şahin ABBASOV</b> Senior consultant of the Human Rights Division Department for Work with Law Enforcement Bodies Administration of President of the Republic of Azerbaijan
<b>CROATIA</b>	<b>Ms Štefica STAŽNIK</b> Representative Office of the Representative of the Republic of Croatia before the European Court of Human Rights
<b>CYPRUS</b>	<b>Ms Theodora CHRISTODOULIDOU</b> Counsel A of the Republic of Cyprus Law Office of the Republic of Cyprus
<b>CZECH REPUBLIC</b>	<b>Ms Martina JIRSOVÁ</b> Advisor at the Office of the Czech Government Agent

<b>FINLAND</b>	<b>Ms Satu SISTONEN</b> Deputy Director, Legal Counsellor Unit for Human Rights Courts and Conventions Legal Service
<b>GEORGIA</b>	<b>Mr Tamta SHAMATAVA</b> Chief Specialist/Legal Adviser of the Litigation Unit of the Department of State Representation in International Courts, Ministry of Justice of Georgia
<b>GERMANY</b>	<b>Dr. Hans-Jörg BEHRENS</b> LL.M. (London) Head of Unit IVC1, Human Rights Protection; Government Agent before the ECtHR, Federal Ministry of Justice  <b>Dr. Kathrin MELLECH, MLE</b> Legal Advisor, Federal Ministry of Justice
<b>GREECE</b>	<b>Mr Elias KASTANAS</b> Senior Legal Counselor Legal Department, Ministry of Foreign Affairs of the Hellenic Republic
<b>REPUBLIC OF MOLDOVA</b>	<b>Mr Victor LĂPUȘNEANU</b> Head of the Council of Europe and Human Rights Division Ministry of Foreign Affairs and European Integration
<b>NETHERLANDS</b>	<b>Ms Anne AAGTEN</b> LLM Legal Officer Ministry of Foreign Affairs, Legal Affairs Department International Law Division
<b>NORWAY</b>	<b>Mr Morten RUUD</b> Special adviser Norwegian Ministry of Justice and Public Security Legislation Department, Oslo
<b>POLAND</b>	<b>Ms Magdalena BOROWSKA</b> Legal and Treaty Department Ministry of Foreign Affairs
<b>ROMANIA</b>	<b>Ms Adriana-Mihaela BARBIERU</b> Co-agent of the Government before the ECHR Permanent Representation to the Council of Europe
<b>SERBIA</b>	<b>Mr Aleksandar V. GAJIĆ</b> PhD, Chief Legal Advisor at the Ministry of Foreign Affairs and Professor at the Faculty of Law, University of Belgrade
<b>SLOVENIA</b>	<b>Ms Jasna FURLANIČ</b> Expert International Law Department , Ministry of Foreign Affairs of the Republic of Slovenia
<b>SPAIN</b>	<b>Ms Heide NICOLÁS</b> Agent of the Kingdom of Spain before de ECtHR Area of Humen Rights of the Constitutional & Human Rights department, Ministry of Justice, Madrid

<b>SWEDEN</b>	<b>Ms Helen LINDQUIST</b> Deputy Director, Ministry for Foreign Affairs, Department for International Law, Human Rights and Treaty Law, Stockholm
<b>SWITZERLAND (Chair)</b>	<b>Mr Alain CHABLAIS</b> Dr. iur., Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ, Agent du Gouvernement suisse devant la Cour européenne des droits de l'Homme  <b>Mr Adrian SCHEIDEGGER</b> Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ, Agent suppléant du Gouvernement suisse devant la Cour européenne des droits de l'Homme
<b>TURKEY</b>	<b>Ms Aysen EMÜLER</b> Legal Expert Permanent Representation of Turkey to the Council of Europe, Strasbourg
<b>UNITED KINGDOM</b>	<b>Mr James GAUGHAN</b> Legal Directorate, Foreign, Commonwealth and Development Office

#### PARTICIPANTS

<b>Registry of the European Court of Human Rights</b>	<b>Mr Anders MANSSON</b> Lawyer, Registry
<b>Delegation of the European Union to the Council of Europe</b>	<b>Ms Aurelia BEIKÜFNER</b> Legal Affairs Trainee
<b>Conference of INGOs of the Council of Europe</b>	<b>Mr Jeremy MCBRIDE</b>

#### OBSERVERS

<b>HOLY SEE</b>	<b>Mr Louis-Marie BONNEAU</b>
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#### SECRETARIAT

<b>DGI – Human Rights and Rule of Law Council of Europe F-67075 Strasbourg Cedex</b>	<b>Mr David MILNER</b> Secretary of the CDDH Head of the Human Rights Intergovernmental Co-operation Division  <b>Ms Elvana THACI</b> Secretary of the DH-SYSC-IV Administrator Human Rights Intergovernmental Cooperation Division
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	<p><b>Ms Sarah BELHADJ MILED</b> Assistant lawyer Human Rights Intergovernmental Cooperation Division</p> <p><b>Mr Nicolas DOMAGALSKI</b> Assistant Human Rights Intergovernmental Cooperation Division</p>
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#### **INTERPRETERS**

<p><b>Mr Grégoire DEVICTOR</b></p> <p><b>Mr Jean-Jacques PEDUSSAUD</b></p> <p><b>Mr Nicolas GUITTONNEAU</b></p>
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## Appendix II

### **Agenda**

1. Opening of the meeting and adoption of the agenda and order of business	DH-SYSC-IV(2022)OJ1REV <a href="#">DH-SYSC-IV(2022)OT1REV</a>
2. Exchange of views on possible implications of the cessation of the membership of the Russian Federation of the Council of Europe for the processing of cases relating to inter-State disputes by the Court.	Resolution <a href="#">CM/Res(2022)2</a> <a href="#">ECHR 092 (2022)</a>
3. Examination of elements for the draft CDDH report on the effective processing and resolution of cases related to inter-State disputes	<a href="#">DH-SYSC-IV(2022)01</a>
4. Discussion of gender equality aspects of the work of DH-SYSC-IV	<a href="#">CDDH(2020)13</a>
5. Discussion on work to be carried out after the 5th meeting of DH-SYSC-IV including the possibility of holding the exchange of views with invited experts	
6. Other business	
7. Approval of the meeting report	DH-SYSC-IV(2022)R5

### **Reference documents**

Resolution <a href="#">CM/Res(2021)3</a> on intergovernmental committees and subordinate bodies, their terms of reference and working methods	<a href="#">CM/Res(2021)3</a>
<a href="#">Terms of reference of DH-SYSC</a> and DH-SYSC-IV	<a href="#">DH-SYSC-IV(2020)01</a>
Report of the 95th meeting of the CDDH (23-26 November 2021)	<a href="#">CDDH(2021)R95</a>
Report of the 94 <sup>th</sup> meeting of the CDDH (15-18 June 2021)	<a href="#">CDDH(2021)R94</a>
Report of the 6 <sup>th</sup> meeting of DH-SYSC (26-28 October 2021)	<a href="#">DH-SYSC(2021)R6</a>
Progress report 2020-2021 on the effective processing and resolution of cases relating to inter-State disputes	<a href="#">DH-SYSC(2021)R6 Addendum</a>
Report of the 4 <sup>th</sup> meeting of DH-SYSC-IV (22-24 September 2021)	<a href="#">DH-SYSC-IV(2021)R4</a>
Report of the 3 <sup>rd</sup> meeting of DH-SYSC-IV (14-16 April 2021)	<a href="#">DH-SYSC-IV(2021)R3</a>
Report by the Plenary Court on “Proposals for a more efficient processing of inter-State cases” submitted to the CDDH	<a href="#">CDDH(2019)22</a>

Overview of inter-State cases before the European Court of Human Rights

[Non-paper](#)

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

[CDDH\(2019\)R92Addendum1](#)

## Appendix III

### **Order of business**

#### **Tuesday 5 April 2022**

- 10:00 – 10:30      **Items 1:** Opening of the meeting, adoption of the agenda and of the order of business.
- 10:30 – 12:30      **Item 2:** Exchange of views on possible implications of the cessation of the membership of the Russian Federation of the Council of Europe for the processing of cases relating to inter-State disputes by the Court.
- 12:30 – 14:00      *Lunch break*
- 14:00 – 16:30      **Item 3:** Examination of elements for the draft CDDH report on the effective processing and resolution of cases related to inter-State disputes.

#### **Wednesday 6 April 2022**

- 10:00 – 12:30      **Item 3:** *Continued*
- 12:30 – 14:00      *Lunch break*
- 14:00 – 16:30      **Item 3:** *Continued*

#### **Thursday 7 April 2022**

- 10:00 – 12:00      **Item 3:** *Continued*
- 12:00 – 12:30      **Item 4:** Gender equality
- 12:30 – 14:00      *Lunch break*
- 14:00 – 14:30      **Items 5 and 6:** Discussion of work to be carried out after the 5th meeting of the Drafting Group including the possibility of holding the exchange of views with invited experts.
- 14:30 – 16:30      **Item 7:** Approval of the meeting report

## Appendix IV

### **Elements for the draft CDDH report on the effective processing and resolution of cases related to inter-State disputes**

#### **I. Introduction**

- The caseload challenge – the growing number of inter-State applications and the high number of individual applications relating to inter-State disputes, in particular in the context of conflict situations, add to the overall high number of pending applications<sup>1</sup> thereby threatening to jeopardise the longer-term effectiveness of the control system of the European Convention on Human Rights (“the Convention”). A number of complex questions arise regarding the processing of inter-State cases and related individual applications by the European Court of Human Rights (“the Court”) as a consequence of the fact that the Russian Federation will cease to be a Party to the Convention as of 16 September 2022. The DH-SYSC-IV will be following possible decisions of the Court on the subject matter and make any changes necessary to its draft report.
- The control system of the Convention is founded on a unique balance of roles and responsibilities of the Court, the States Parties and the Committee of Ministers, under the Preamble, Articles 19, 32 and 46 of the Convention and legal principles set out in the Convention and interpreted by the Court.
- Recalling the mandate given to the CDDH by the Committee of Ministers.
- Statement of the fundamental considerations and principles underpinning the conclusions and proposals of the report:
  - The main goal is to explore how to handle more effectively cases related to inter-State disputes as well as individual applications arising from situations of conflict between States, particularly in view of the caseload challenges facing the Court. The real measure of effective processing of cases relating to inter-State disputes is the Court’s ability to fulfil its role under the Convention – namely to ensure the observance by State Parties of their obligations under the Convention and to deliver individual justice in cases of human rights violations – rather than the quantity of judgments and decisions delivered each year.
  - Acknowledging the specific purpose of Article 33 of the Convention – bringing before the Court an alleged violation of the public order of Europe; denouncing violations by another State Party of the human rights of its nationals or other victims; invoking the Court’s jurisdiction to establish the existence of a pattern of Convention violations by another State Party and to put an end to them and prevent their recurrence.

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<sup>1</sup> In January 2022 the number of pending applications before a judicial formation was 70 150.

- No limitation to be placed on the Court's jurisdiction – recalling the Copenhagen Declaration.
  - The Court is the master of its own proceedings – exclusive competence regarding admissibility and assessment of evidence and procedure for considering just satisfaction issues.
- Preview of conclusions and proposals highlighting their nature and addressees.<sup>2</sup>

## II. Procedural aspects and administrative measures

- Issue statement: the caseload challenge – 13 pending inter-State applications<sup>3</sup>, (mostly linked to inter-State conflicts) and over 11000 individual applications related to inter-State disputes – is resource- and time-consuming for the Judges and the Registry as well as for the States Parties concerned.<sup>4</sup> This challenge is compounded by the fact that these cases raise complex issues regarding their grouping and processing.
- CDDH's review and analysis of the Court's case-management policies and measures it has taken to address these challenges.
- Prioritisation of inter-State cases over pending individual applications that are linked to inter-State cases or inter-State disputes.<sup>5</sup>
  - Requesting Parties in inter-State proceedings to submit all relevant documents, referred to in their observations in one of the two official languages of the Court – envisaged/possible amendment of Rule 46 § g to this effect.<sup>6</sup> The analysis of this issue should: (i) distinguish between, on the one hand, translation of documents by the applicant State upon a request by the Court pursuant to Rule 46 § g and, on the other hand, translation of documents by the respondent State in application of other Rules (e.g. Rule 34 § 5); (ii) consider specifying obligations of both the applicant and respondent Parties to translate documents in full or partially; and (iii) reflect on possible consequences when the Parties do not comply with the requests of the Court to translate documents
  - Immediate communication of an inter-State case for purposes of time efficiency – i.e. avoiding the preparation of a summary of facts which are usually disputed at this stage of the proceedings.<sup>7</sup>

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<sup>2</sup> The Court has played a key role in addressing large-scale human rights violations dealing with legal questions pertaining to the Convention while the political dimension is left to the other Council of Europe bodies. It is the collective responsibility of these bodies to use the political means at their disposal and explore new ones to address the root causes and the consequences of inter-State conflict situations.

<sup>3</sup> The number of pending inter-State applications is subject to confirmation by the Registry.

<sup>4</sup> Progress Report 2020 – 2021 on the effective processing and resolution of cases relating to inter-State disputes (DH-SYSC(2021)R6 Addendum, (the "[Progress Report 2020 – 2021](#)"), §§ 17-19.

<sup>5</sup> *Ibid.*, §§ 3; 21;56;59.

<sup>6</sup> *Ibid.*, §§ 36-38. Further information to be requested from the Registry regarding the state of play of the envisaged amendment of Rule 46 § g.

<sup>7</sup> [CDDH\(2019\)22](#), §§ 14; 32/1.

- Flexibility in handling questions of admissibility and merits, where they are closely linked, at the same time – envisaged/possible amendment of Rule 51§5 to this effect.<sup>8</sup>
  - Chamber relinquishing an inter-State case to the Grand Chamber having regard to the priority and sensitive nature of the case.<sup>9</sup>
  - Creation of a specific Conflicts' Unit within the Registry.
- The CDDH's analysis of the issue of differences in admissibility criteria between inter-State applications and individual applications.
  - The CDDH's analysis of the issue of the need to distinguish between the procedural right of a State Party to lodge an inter-State application concerning violations of substantive rights of particular victims (standing under Article 33) and the requirement for an applicant to have victim status in order to bring an individual application (standing under Article 34)<sup>10</sup> (including whether it would be useful to clarify the reasons for finding that the Court lacks jurisdiction to examine *ratione personae* applications lodged under Article 33).
  - Possible conclusions/proposals: The Court's case-management policies regarding inter-State cases and related individual applications continue to evolve. The CDDH supports their further development by the Court on the basis of an evaluation of the effectiveness of recent measures, notably in reducing backlog whilst maintaining the appropriate quality of examination of all applications.<sup>11</sup>
  - The Committee of Ministers could encourage the Court to continue to evaluate and streamline its case-management policies and working methods concerning:
    - The prioritisation of inter-State applications and the adjournment of related individual applications.
    - The translation of documents.
    - The immediate communication of inter-State cases, relinquishment to the Grand Chamber, and hearings on admissibility.
    - Structural changes and the project-focused approach in the Registry.
  - On the basis of the results of this evaluation, the Committee of Ministers could also encourage the Court to consider, where appropriate, the codification of relevant practices and methods in the Rules of Court.

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<sup>8</sup> [CDDH\(2019\)22](#), §§ 18; 32/1.

<sup>9</sup> [CDDH\(2019\)22](#), §§ 19; 32/1

<sup>10</sup> *Ibid.*, § 51.

<sup>11</sup> *Ibid.*, §135.

### III. Practice regarding the establishment of facts

- Issue statement: inter-State cases and related individual applications raise exceptional difficulties for the Court regarding the establishment and assessment of the evidence, in particular in cases concerning armed conflicts and their consequences. The Court has often to act as a first instance court. The parties' observations and annexes are lengthy. At times the respondent Government/s fail to provide the Court with all the necessary facilities.<sup>12</sup>
- CDDH's analysis of Court's practices to address these challenges:
  - Reliance on hearings with witnesses in Strasbourg, especially in cases concerning armed conflicts. Analysis whether fact-finding missions which were mostly carried out in the past are relevant in today's circumstances. Possible references to previous work on relevant practices of other international tribunals regarding fact-finding missions. Consideration of the question whether hearings of witness through remote participation technology is desirable.<sup>13</sup>
  - Evolving practice of admitting reports of independent actors as evidence noting the criteria elaborated by the Court regarding the reliability of such reports (authority and reputation of their authors, seriousness of the investigations, consistency of their conclusions and corroboration by other sources).<sup>14</sup>
  - Examination of State Parties' obligation to furnish all the necessary facilities to the Court under Article 38 of the Convention, with appropriate inferences being drawn when such obligations are not met.<sup>15</sup>
  - Adjusting the processing of inter-State applications according to geographical and time criteria or to the legal issues raised on the basis of further information to be provided from the Registry.<sup>16</sup> The analysis should note that this practice relates to the grouping by the Court of cases brought by different State Parties against another State Party which raises procedural questions for some of the State Parties concerned, such as whether there will be separate admissibility decisions concerning different State Parties and whether they are expected to cooperate with each other for example when observations are presented.

Possible conclusions/proposals: The Court is adapting its case-processing regarding the examination of alleged large-scale human rights violations relating to conflict-situations.<sup>17</sup>

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<sup>12</sup> Ibid., §§ 76-78.

<sup>13</sup> Ibid., §§ 99-106;107-110.

<sup>14</sup> Ibid., §§ 79-81, 93.

<sup>15</sup> Ibid., §§ 83-89.

<sup>16</sup> Ibid., [CDDH\(2019\)22](#), §§ 25, 32/2.

<sup>17</sup> [Progress Report 2020 – 2021](#), §§ 138-139.

The Committee of Ministers could:

- Reaffirm the member States' commitment to the principle that the Court is the master of its own procedure in proceedings concerning both inter-State and individual applications. At the same time, however, it must be emphasised that the Court should give due account to those procedural proposals of the State Parties which may contribute to a more efficient handling of the inter-State application.
- Call on member States Parties in proceedings concerning inter-State applications and related individual applications to comply with their obligations under Article 38, as interpreted by the Court.
- Invite the Court to consider evaluating the impact on fact-finding of the adjusted processing of inter-State applications.

#### **IV. Practice regarding just satisfaction**

- Issue statement: long intervals of time between the judgement on the merits in inter-State cases and the judgment on just satisfaction; identification of individual victims in inter-State cases concerning large-scale violations of the Convention.<sup>18</sup>
- CDDH's review and analysis of the Court's practice to address these challenges:
  - Court's consideration/taking into account of request by a State Party concerned to postpone the matter of just satisfaction to a later stage of the proceedings.
  - Fixing a time-limit in the operative part of the judgement on the merits for the parties' exchange of observations on just satisfaction.<sup>19</sup>
  - Given the complexity of the Article 41 procedure, requesting the applicant government at the outset to submit a clearly identifiable list of individual victims, to be followed by an exchange of observations between the Parties.<sup>20</sup>
  - Examination of the States' Parties obligation to cooperate with the Court under Article 38 of the Convention for the proper administration of justice.<sup>21</sup>
- The CDDH's analysis of the issue of a risk of double recovery by individuals found to be victims of and awarded just satisfaction for the same violation in both inter-State and individual cases.<sup>22</sup>

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<sup>18</sup> Ibid., §§ 114-115;116

<sup>19</sup> Ibid § 116., [CDDH\(2019\)22](#), § 30.

<sup>20</sup> Ibid., §§ 114-116; [CDDH\(2019\)22](#), § 31

<sup>21</sup> Ibid., § 116.

<sup>22</sup> Ibid., § 114.



- Possible conclusions/proposals: The CDDH underlines that, according to the Court's case-law, Article 41 of the Convention applies to both inter-State and individual applications; just satisfaction is afforded in an inter-State case always for the benefit of the victim; application of Article 41 requires early identification of all individual victims notably in inter-State cases relating to armed conflicts. The CDDH supports the Court's practice to request the list of victims at the outset of the just satisfaction procedure and to fix a time-limit for the exchange of observations in the operative part of the judgment on the merits.<sup>23</sup>

The Committee of Ministers could:

- Express support for Court's practice to request the list of victims at the outset of the just satisfaction procedure, notably in inter-State cases relating to armed conflicts, and invite the Court to consider the desirability and feasibility of codifying this practice in the Rules of Court.
- Call on States Parties to inter-State and related individual cases to comply with their obligations under Article 38 at the stage of just satisfaction.
- Invite the Court to evaluate the impact of setting time limits for the Parties' exchange of observations on just satisfaction.

## V. Friendly settlement

- Issue statement: the sensitive nature and political aspects of inter-State cases often prevent their friendly settlement.
- CDDH's review and analysis of the Court's practice on friendly settlement as well as settlements relating to inter-State proceedings before the Court:
  - Recalling friendly settlements under ex-Article 28 § b) and Article 39 as a solution to some inter-State cases (*Denmark, France, Norway, Sweden and the Netherlands v. Turkey; Denmark v. Turkey*) as well as settlements in some other cases (*Greece v. United Kingdom (I); Greece v. United Kingdom (II); Denmark, Norway, Sweden v. Greece*).<sup>24</sup>
  - Several aspects of the friendly settlement procedure highlight opportunities for considering a variety of measures to remedy the alleged violations of the Convention.<sup>25</sup>
  - Friendly settlement in inter-State cases could be incentivised if a framework of negotiations is put in place by the Court, indicating a timetable for negotiations and elements relevant to the settling the case in compliance with human rights.<sup>26</sup>

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<sup>23</sup> Ibid., § 140.

<sup>24</sup> Ibid., §§122-126

<sup>25</sup> Ibid., §§ 119-120; 141.

<sup>26</sup> Ibid., §127.

- The potential of the pilot judgment procedure in cases relating to inter-State disputes as a means of facilitating their friendly settlement.<sup>27</sup>
- Possible conclusions/proposals: The Committee of Ministers could:
  - Affirm the potential of Article 39 of the Convention to resolve inter-State cases.
  - Review political tools at its disposal aimed at stimulating political dialogue between the member States concerned.

## **VI. General conclusions**

- The main aim, following the Copenhagen Declaration, is to handle more effectively cases related to inter-State disputes as well as individual applications arising from situations of conflict between States.
- The CDDH's analysis of the Court's case-management policies, practice and administrative measures highlights their potential to accelerate and streamline the processing inter-State applications and individual applications related to inter-State disputes. These measures should continue to be developed by the Court at its discretion on the basis of an evaluation of their effectiveness.
- Responding to large-scale violations of human rights in situations of conflicts is the responsibility of the Council of Europe as a whole. The examination of mechanisms other than proceedings before the Court that the Council of Europe may use to respond to this challenge is beyond the scope of the present report.

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<sup>27</sup> Ibid., §§131-134.