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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

COMMITTEE OF EXPERTS ON THE SYSTEM OF THE EUROPEAN
CONVENTION ON HUMAN RIGHTS
(DH-SYSC)

**DRAFTING GROUP ON ENHANCING THE NATIONAL
IMPLEMENTATION OF THE SYSTEM OF THE EUROPEAN
CONVENTION ON HUMAN RIGHTS**

(DH-SYSC-V)

**Draft Recommendation CM/Rec(2021)... of the Committee of Ministers to
member States on the publication and dissemination of the European
Convention on Human Rights, the case-law of the European Court of Human
Rights and other relevant texts**

Note

This draft has been prepared by the Secretariat under the supervision of the Chair of the DH-SYSC-V for consideration and possible finalisation by the Drafting Group at its 2nd meeting (29-31 March 2021) with a view to its transmission to the CDDH for possible adoption at its 94th meeting (16-18 June 2021).

Draft Recommendation CM/Rec(2021)... of the Committee of Ministers to member States on the publication and dissemination of the European Convention on Human Rights, the case-law of the European Court of Human Rights and other relevant texts

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

Recalling the essential role of the system of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, “the Convention”) in the effective protection of human rights, the rule of law and democracy in Europe;

Recalling the obligation of States Parties under Article 1 of the Convention to secure the rights and freedoms enshrined in the Convention to everyone within their jurisdiction;

Considering that knowledge of the Convention system is a *sine qua non* condition for its viability and effectiveness since it facilitates the implementation of the Convention at the national level through enabling conformity of national decisions with the Convention, preventing violations of the Convention as well as the execution of the Court’s judgments and, therefore, requires the continued engagement and commitment of the States Parties to promote and strengthen such knowledge;

Building on the Brussels Declaration which called on the States Parties to promote the accessibility to the Court’s judgments, action plans and reports as well as to the Committee of Ministers’ decisions and resolutions, by developing their publication and dissemination to the stakeholders concerned, so as to involve them further in the judgment execution process; and by translating or summarising relevant documents, including significant judgments of the Court;

Building on the Copenhagen Declaration which called on States Parties, as part of their responsibility to implement and enforce the Convention at the national level, to promote translation of the Court’s case law and legal materials into relevant languages which contributes to a broader understanding of Convention principles and standards;

Recalling the Committee of Ministers’ Decision ‘Securing the long-term effectiveness of the system of the European Convention on Human Rights’ adopted on 4 November 2020 which resolved to ensure the continued effectiveness of the Convention system and called upon all States Parties, *inter alia*, to abide by the judgments of the Court rendered against them, to ensure the promotion and effective implementation of the Convention, and to translate and disseminate the Court’s case law at national level;

Recalling Recommendation Rec(2002)13 of the Committee of Ministers to member States on the publication and dissemination in member States of the text of the European Convention on Human Rights and the case-law of the European Court of Human Rights and welcoming the work undertaken by the States Parties so far to implement this recommendation:

Taking into account that since Recommendation Rec(2002)13 was adopted the Convention has become an integral part of the domestic legal order in all its State Parties, the number and diversity of cases decided by the Court has significantly increased together with the number of authorities concerned whether national, regional or local;

Stressing the need that the member States' action to implement the Convention at the national level takes into account the developments in the Convention system during the decade of reforms in the course of the Interlaken process as well as the evolving character of the notion of texts that are relevant to the Convention system;

Having regard to the current diversity of practices in the member States in relation to the translation and dissemination of the Court's case-law and the need in several member States to have guidance on the main principles for such translation and dissemination so that the case-law can be effectively known and that the relevant national authorities can apply it;

Acknowledging the central contribution of the HUDOC databases in ensuring the continued effectiveness of the Convention system as well as the challenges faced by national authorities and other actors who do not have access to these systems or do not know the official languages of the Council of Europe;

Acknowledging the significant opportunities that information and communication technological developments offer to promote enhanced knowledge of the Convention system at the national level;

Stressing the need to continue to engage with national human rights institutions, Ombudsman institutions, equality bodies and other human rights structures in the implementation of the Convention as well as civil society organisations to promote knowledge of the system of the Convention at the national level;

Emphasising the importance of strengthening the Council of Europe support for member States in the implementation of the Convention at national level, including through co-operation projects such as the HELP Programme (Human Rights Education for Legal Professionals);

Taking into consideration the diversity of traditions and practices in Member States with regard to the publication and dissemination of the texts that are relevant to the Convention system;

Recommends that the governments of member States:

- i. Ensure that the publication and dissemination of texts relevant to the Convention system comply with the principles set out in the appendix of this Recommendation which replaces Recommendation Rec(2002)13;
- ii. Ensure by appropriate means and actions a wide dissemination of this Recommendation in their language(s) to relevant authorities and stakeholders.

Appendix to Draft Recommendation CM/Rec(2021)... of the Committee of Ministers to member States on the publication and dissemination of the European Convention on Human Rights, the case-law of the European Court of Human Rights and other relevant texts

1. Use of terms

For the purposes of this Recommendation:

1.1. Major texts of the Convention system include:

- (i) The text of the Convention and the case-law of the Court in which the member State concerned is a Party, in particular the well-established case-law, which is understood within the meaning of Article 28 § 1(b) of the Convention¹ as interpreted by the Court to include case-law in which a particular issue has been addressed by a Grand Chamber judgment, a pilot judgment, a leading judgment or a recent final Chamber judgment concerning that particular issue in that member State.²
- (ii) The case-law of the Court, or legal summaries or excerpts thereof, in which the member State is not a Party, however, it considers that the publication and dissemination of such case-law contributes to addressing systemic or structural problems identified by the Court as giving rise to repetitive cases in respect of that member State, to the prevention of violations of the Convention in its jurisdiction or to the development of its national system of protection of human rights.
- (iii) Factsheets elaborated by the Registry of the Court on the case-law and pending cases in respect of the member State concerned.
- (iv) Decisions and resolutions of the Committee of Ministers in the context of the supervision of execution of judgments of the Court in respect of the member State concerned as well as the relevant action plans.
- (v) Recommendations of the Committee of Ministers to member States concerning the prevention of violations of the Convention and the effective execution of the Court's judgments, notably Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings; Recommendation CM/Rec(2008)2 on effective means to be implemented at domestic level for the rapid execution of judgments of the European Court of Human Rights; Recommendation Rec(2004)6 on the improvement of domestic remedies; Recommendation No. R(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights.

¹ "Well-established case-law" normally means case-law which has been consistently applied by a Chamber. Exceptionally, however, it is conceivable that a single judgment on a question of principle may constitute "well established case-law", particularly when the Grand Chamber has rendered it. This applies, in particular, to repetitive cases, which account for a significant proportion of the Court's judgments [...]. Parties may, of course, contest the 'well established' character of case-law before the committee." See the Explanatory Report of Protocol No.14, § 68.

² According to the policy decision of the Plenary Court of June 2017 the notion of "well-established case-law" (WECL) refers to case-law in which the particular issue has been addressed, in relation to the State concerned, by a Grand Chamber judgment, or – at Chamber level – by a pilot judgment or a leading judgment. Also, a recent (and final) Chamber judgment concerning the specific issue in the State in question will suffice to apply the WECL procedure." See the document entitled "Follow-up to the CDDH Report on the Longer-Term Future of the system of the European convention on Human Rights – Information from the Court, document [DD\(2018\)60](#), § 12.

- (vi) Recommendations and Resolutions and accompanying reports of the Parliamentary Assembly of the Council of Europe, reports of the Council of Europe monitoring and advisory bodies and the Commissioner for Human Rights wherever such reports are issued in respect of the member State concerned.

1.2. Other texts relevant to the Convention system include:

- (i) The well-established case-law of the Court concerning different States, which is understood, within the meaning of Article 28 § 1(b) of the Convention³ as interpreted by the Court,⁴ to include case-law addressing issues of relevance to the national context of the concerned member State.
- (ii) Guidelines and materials elaborated by the Registry of the Court such as case-law guides or factsheets by articles of the Convention or by themes.
- (iii) Recommendations of the Committee of Ministers to member States concerning the protection and promotion of the rights and freedoms set forth in the Convention in various areas whenever this contributes to eliminate the systemic or structural problems highlighted by the Court in respect of the member State concerned or this is considered as reinforcing the implementation of the Convention in that member State.
- (iv) Thematic reports, analyses, comments or materials issued by Council of Europe monitoring and advisory bodies whenever pertinent to reinforcing the implementation of the Convention in the member State concerned.

1.3. Non-State stakeholders include national human rights institutions (NHRIs) within the meaning of the Recommendation CM/Rec(2021)... of the Committee of Ministers to member States on the development and strengthening of the effective, pluralist and independent national human rights institutions, civil society organisations, academia and associations of legal professionals.

2. General principles

- 2.1. Member States should ensure that the major texts of the Convention system are published and disseminated rapidly or in due time in their entirety and in exceptional cases justified by the national context in the form of substantial summaries or excerpts thereof together with appropriate references to the original texts in the language(s) of the country.
- 2.2. Member States, taking into account the diversity of their national situations, should ensure that all national authorities which are responsible for the implementation of the Convention, in particular judges, public prosecutors, law enforcement officials, the administration of the penitentiary system, legal advisers of the governments or parliaments, social authorities, and where appropriate non-State stakeholders, have

³ See note 1 above.

⁴ According to the policy decision of the Plenary Court of June 2017 “there can be well-established case-law where there are at least three recent and relevant judgments concerning different States. In line with the policy, the WECL procedure may be applied to different types of case: high-priority cases; cases pertaining to key/core Convention rights; cases that are factually complex and/or raise multiple Convention grounds; and cases that were communicated at Chamber level prior to the adoption of the policy.” See document entitled “Follow-up to the CDDH Report on the Longer-Term Future of the system of the European convention on Human Rights – Information from the Court, document [DD\(2018\)60](#), § 12.

access to the major texts of the Convention system while having due regard to their fields of competence and responsibilities.

- 2.3. Member States should ensure that national authorities directly involved in the execution of a judgment or decision of the Court to which they are a respondent State are rapidly informed about the Court's judgment or decision by means of making available copies thereof, where appropriate with an explanatory note or circular.
- 2.4. Member States should assess, on a regular basis, the desirability and feasibility of publishing and disseminating other texts relevant to the Convention system (paragraph 1.2. above) and on this basis identify and prioritise the relevant texts to be published and disseminated in their own language(s). This assessment should be based on the needs of the national authorities to know other texts relevant to the Convention system having due regard to their fields of competence and responsibilities and should be carried out in consultation and co-operation with relevant non-State stakeholders.
- 2.5. Member States should take the appropriate measures to disseminate the texts referred to in sections 1.1. and 1.2. above to non-State stakeholders.

3. Means of publication and dissemination

- 3.1. Member States should ensure that the major texts of the Convention system and, wherever applicable, other texts relevant to the Convention system are accessible free of charge in printed or electronic formats where the relevant national authorities expect to find material relevant to the Convention system, for example official gazettes, newsletters or information bulletins from competent ministries, law journals and other media used by the legal community, internet websites or through other information and communication technologies (ICT).
- 3.2. Member States should ensure that when the publication and dissemination of major texts of the Convention system, as well as other texts relevant to the Convention system wherever available, is realised via the internet or ICTs the persons who do not have access to such tools can have other means to access to the texts, such as in printed form.

4. Multi-stakeholder co-ordination and co-operation

- 4.1. Member States should proactively and regularly co-operate with relevant non-State stakeholder and, wherever appropriate, with private sector actors with a view to undertaking or co-ordinating initiatives and activities aimed at publishing and disseminating the texts referred to in sections 1.1. and 1.2., seeking efficiencies and synergies in the allocation of financial resources and complementing each other's work.
- 4.2. Member States should promote multi-stakeholder dialogues and meetings between national authorities and non-State stakeholders regarding themes and issues of relevance in their national context addressed in the text which have been published and disseminated with a view to facilitating their understanding and implementation by national authorities.

5. Quality

- 5.1. Member States should ensure that translations of the major texts of the Convention system, in particular relevant case-law of the Court or summaries thereof, and wherever applicable texts relevant to the Convention system, are carried out or by professionals or on the basis of reliable and duly supervised electronic methods.
- 5.2. Member States should encourage initiatives by universities and non-State stakeholders to ensure the rigour of translations in relation to the original English or French versions and the quality of the networks for publishing and disseminating the texts.

6. Council of Europe resources

- 6.1. Member States should facilitate access to the major and relevant texts to the Convention system by means of promoting and facilitating effective access to the resources made available by the Council of Europe such as HUDOC databases, the HELP as well as the websites of the various bodies and services of the Council of Europe.
- 6.2. Member States should, whenever pertinent, pay particular attention to seeking and making full use of the assistance that can be provided by the Council of Europe regional or country-specific co-operation programmes both in terms of translating major and relevant texts to the Convention system and training of relevant national authorities.