

SECRETARIAT GENERAL

DIRECTORATE GENERAL
HUMAN RIGHTS AND RULE OF LAW

HUMAN RIGHTS DIRECTORATE

*HUMAN RIGHTS INTERGOVERNMENTAL COOPERATION
DIVISION*

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

DH-SYSC-V(2021)R2
09/04/2021

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)

MEETING REPORT

2nd meeting

29-31 March 2021 via video-conference

ITEMS 1 AND 2: OPENING OF THE MEETING, ADOPTION OF THE AGENDA AND THE ORDER OF BUSINESS

1. The Drafting Group on enhancing the national implementation of the system of the European Convention on Human Rights (DH-SYSC-V) held its 2nd meeting in Strasbourg from 29 to 31 March 2021 by videoconference due to the measures related to the COVID-19 pandemic. The meeting was chaired by Mr Vit A. SCHORM (Czech Republic) from Prague. The list of participants appears in Appendix I.
2. The Drafting Group adopted the agenda (see Appendix II) and the order of business (see Appendix III).
3. Mr Vit A. SCHORM, Chair of the DH-SYSC-V, addressed a welcome message to the Group.

ITEM 3: 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

4. The Drafting Group examined the draft Recommendation ([document DH-SYSC-V\(2021\)01](#)) as well as amendments submitted by delegations prior to the meeting (document DH-SYSC-V(2021)04).
5. Having revised the text of the draft Recommendation, the Drafting Group decided to transmit the result, as it appears in Appendix IV, to the CDDH for possible adoption at its 94th meeting (16-18 June 2021).

ITEM 4: DRAFT GUIDELINES OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE PREVENTION AND REMEDYING OF VIOLATIONS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

6. The Drafting Group examined a set of preliminary draft guidelines ([document DH-SYSC-V\(2021\)02](#)). It held an exchange of views with the consultant Mr Fredrik SUNDBERG whom it thanked for his contribution to the discussions of the meeting. The DH-SYSC-V discussed some changes to the preliminary draft guidelines which appear in Appendix V.
7. The Russian Federation submitted comments on and amendments to the preliminary draft guidelines as well as a statement which appears in Appendix VI, in which the Russian Federation disagreed that the issues arising at the stage of execution of judgements and decisions concerning the extraterritorial application of the Convention covered by the Terms of reference of the DH-SYSC-V have not been examined by the Drafting Group. The Group agreed that the way these issues are to be tackled needs to be raised in the CDDH.
8. In view of the fact that a full reading of preliminary draft guidelines could not be completed due to time limitations the Drafting Group decided to continue the examination of a revised text at its 3rd meeting (6-8 October 2021) to be prepared by the Secretariat on the basis of comments and amendments provided by delegations and observers by 30 June 2021.

ITEM 5: PREPARATION OF A SEMINAR ON THE IMPLEMENTATION OF THE CONVENTION AT THE NATIONAL LEVEL

9. The DH-SYSC-V discussed the draft programme of the Seminar on the effective implementation of the European Convention on Human Rights – enhancing domestic dialogue and co-ordination ([document DH-SYSC-V\(2021\)03](#)). The Drafting Group took note that the draft programme has been discussed and agreed in principle with PluriCourts. The Drafting Group was invited to put forward by the end of April 2021 any suggestions they have for proposed speakers to the Seminar.

ITEM 6: GENDER EQUALITY

10. The DH-SYSC-V had an exchange of views on the gender equality dimension of their work on the basis of the thematic form on gender equality agreed by the CDDH (document CDDH(2020)13). It noted that in respect of the draft recommendation (item 3 above) the gender equality aspects relate to the groups of disabled persons and of older women. In respect of draft guidelines (item 4) it noted some relevant aspects to their implementation such as the upholding the judgments of the Court concerning discrimination issues as well as the protection of the rights of older women. The Drafting Group envisages to continue further its reflections on the gender equality dimension of its work.

ITEM 7: ORGANISATION OF FUTURE WORK

11. The DH-SYSC-V discussed plans for the holding of its meetings in 2021 and agreed with the draft roadmap prepared by the Secretariat (document DH-SYSC-V(2020)04REV). The Drafting Group took note that the CDDH will adopt Terms of reference for the 2022-2025 quadrennium.

ITEM 8: ANY OTHER BUSINESS

12. No other business was discussed.

ITEM 9: ADOPTION OF THE MEETING REPORT

13. At the end of its meeting, the Drafting Group adopted the present meeting report in the two official languages of the Organisation.

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Appendix I**Liste of participants****MEMBERS**

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| ALBANIA | Ms Monika LAMCE Deputy to the Permanent Representative of Albanian to the Council of Europe Representative of the Albanian Advocature in Strasbourg |
| ARMENIA | Ms. Zoya Tovmasyan Attaché of Treaties and International Law Department Ministry of Foreign Affairs of the Republic of Armenia |
| AZERBAIJAN | Ms Saadat Novruzova Senior Consultant Human Rights Unit Law Enforcement Bodies Department Administration of the President of the Republic of Azerbaijan |
| BOSNIA AND HERZEGOVINA | Ms. Harisa BAČVIĆ Acting Agent of the Council of Ministries of Bosnia and Herzegovina before the European Court of Human Rights, Head of the Office Ms. Jelena CVIJETIĆ Acting Agent Ms. Monika MIJIĆ Acting Agent |
| CZECH REPUBLIC | Mr Vít A. SCHORM Government Agent before the EctHR, Ministry of Justice, Vyšehradská 16, 128 10 Praha 2 |
| FINLAND | Ms Katja FOKIN Legal Officer Unit for Human Rights Courts and Conventions (OIK-40) Legal Service, Ministry for Foreign Affairs of Finland |
| FRANCE | Mme Karen ROCHET Rédactrice, Sous-direction des droits de l'homme Direction des Affaires juridiques Ministère de l'Europe et des Affaires étrangères |
| GERMANY | Dr. Malek Radeideh Legal Officer Division IV C 1 (Human rights) Federal Ministry of Justice and Consumer Protection Mohrenstr. 37 10117 Berlin GERMANY |
| GEORGIA | Mr Giorgi Baidze Specialist of the Department of State Representation to International Courts Ministry of Justice of Georgia |
| HUNGARY | Ms Monika WELLER Senior legal adviser Ministry of Justice, Budapest |

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| ITALY | <p>Ms Emma RIZZATO</p> <p>Ms Maria Aversano</p> |
| REPUBLIC OF MOLDOVA | <p>Mr Oleg Rotari Expert</p> <p>Ms Doina Maimescu Substitute member</p> <p>Ms Mihaela Martinov Guceac Deputy to the Permanent Representative</p> <p>Mr Andrei Ursu Second Secretary of the Council of Europe and Human Rights Division of the Ministry of Foreign Affairs and European Integration</p> |
| NORWAY | <p>Ms. Helle Aase Falkenberg Legal Adviser Ministry of Justice and Public Security Department of Legislation</p> <p>Mr. Isa Rama Adviser, Norwegian Ministry of Justice and Public Security, Department of Legislation, Oslo</p> <p>Mr. Morten Ruud Special Adviser and Chair of the CDDH</p> |
| POLAND | <p>Mr Jan SOBCZAK Government Agent, Acting Director, Department for Proceedings before International Human Rights Protection Bodies, Ministry of Foreign Affairs, ul. Krywulta 2, 00-370 Warsaw</p> <p>Ms Agata Rogalska-Piechota Co-Agent of the Government of Poland in cases and proceedings before the European Court of Human Rights Head of Criminal Proceedings Section Legal and Treaty Department, Ministry of Foreign Affairs</p> |
| PORTUGAL | <p>Ms Ana Garcia Marques Lawyer, Portuguese Government Agent's Office, Rua do Vale do Pereiro, 2, Lisboa</p> |
| ROMANIA | <p>Mr Mihail MITOSERIU Head of office Office for the Execution of ECHR Judgments - Government Agent of Romania for the ECHR</p> |
| RUSSIAN FEDERATION | <p>Ms Olga Zinchenko</p> <p>Third Secretary of the Department for Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs of the Russian Federation</p> <p>Mr Stanislav KOVPAK Deputy to the Permanent Representative</p> <p>Mr Roman SEDOV</p> |

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| | Senior legal expert Ministry of Justice of the Russian Federation |
| SPAIN | Ms Heide Nicolás Agent of the Kingdom of Spain before de ECtHR Area of Human Rights of the Constitutional & Human Rights department, Ministry of Justice, Madrid |
| SWEDEN | Ms Helen Lindquist Deputy Director, Ministry for Foreign Affairs, Department for International Law, Human Rights and Treaty Law, Stockholm |
| SWITZERLAND | Mr Adrian Scheidegger Agent suppléant du Gouvernement suisse devant la Cour européenne des droits de l'homme, le CAT, le CEDR, le CEDAW et le CDE, Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ, Représentation de la Suisse devant la Cour européenne des droits de l'homme, le CAT, le CEDR, le CEDEF et le CDE, Bundesrain 20, Bern |
| TURKEY | Mr Yakup Yildirim Legal counselor Représentation Permanente de Turquie Ms Duygu Çelik Experte juridique Ministère des Affaires Etrangère Ms Aysen Emuler Legal Expert |
| UNITED KINGDOM | Mr Michael Johnstone Ministry of Justice, London Mr Thibault Dufétel |

PARTICIPANTS

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| Committee of Ministers | Ms Geneviève MAYER Deputy to the Secretary of the Committee of Ministers |
| Department for the Execution of Judgments of the European Court of Human Rights | Mr Pavlo PUSHKAR Head of Division Department for the Execution of Judgments of the European Court of Human Rights |
| Conference of INGOs of the Council of Europe | Mr Jeremy McBride |
| CCBE | Mr Piers GARDNER Chair of the CCBE's Permanent delegation to the European Court of Human Rights, Strasbourg |

OBSERVERS

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| European Network of National Human Rights Institutions (ENNHRI) | Ms Simona DRENIK-BAVDEK Human Rights Ombudsman Slovenia Ms Katrien MEUWISSEN ENNHRI Secretariat, Brussels Ms Sophia LANE ENNHRI Secretariat, Brussels |
| HOLY SEE | M. Grégor PUPPINCK 4 quai Koch, Strasbourg |

CONSULTANTS

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| Mr Fredrik SUNDBERG |
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SECRETARIAT

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| DGI – Human Rights and Rule of Law Council of Europe F-67075 Strasbourg Cedex | Mr Alfonso DE SALAS Secretary of the CDDH Head of Division Human Rights Intergovernmental Cooperation Division Ms Elvana THACI Administrator Secretary of the DH-SYSC-V Human Rights Intergovernmental Cooperation Division Ms Sarah BELHADJMILED Assistant lawyer Human Rights Intergovernmental Cooperation Division Mr Nicolas DOMAGALSKI Assistant lawyer Human Rights Intergovernmental Cooperation Division Ms Corinne GAVRILOVIC Assistant Human Rights Intergovernmental Cooperation Division Ms Nektaria PAPADAKI Trainee Human Rights Intergovernmental Cooperation Division |
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INTERPRETERS

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| Ms Lucie DE BURLET Mr Jean-Jacques PEDUSSAUD Ms Gillian WAKENHUT |
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Appendix II**Annotated Agenda**

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| Item 1. | Opening of the meeting | |
| | <i>The Chairperson, Mr Vit A. Schorm (Czech Republic) will open the meeting.</i> | |
| Item 2. | Adoption of the agenda and order of business | DH-SYSC-V(2021)OJ1annotated DH-SYSC-V (2021)OT1 |
| Item 3. | 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 | DH-SYSC-V(2021)01 |
| | <i>The Drafting Group will be invited to examine the draft Recommendation with a view to its possible finalisation and transmission to the CDDH for possible adoption.</i> | |
| Item 4. | Draft Guidelines to prevent and remedy violations of the Convention at the national level | DH-SYSC-V(2021)02 |
| | <i>The Drafting Group will be invited to discuss and consolidate the draft Guidelines.</i> | |
| Item 5. | Preparation of a seminar on the implementation of the Convention at the national level to be co-organised by the CDDH and the Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order (PluriCourts), University of Oslo | DH-SYSC-V(2021)03 |
| | <i>The Drafting Group will be invited to discuss the draft programme of the Seminar and any other related preparations.</i> | |
| Item 6. | Gender equality | CDDH(2020)13 |
| | <i>The Drafting Group will be invited to discuss follow-up to the decision of the CDDH to endorse a thematic form on gender equality and to invite all its subordinate groups to address its questions in the context of implementing their mandate.</i> | |
| Item 7. | Organisation of future work | DH-SYSC-V(2020)04REV |
| | <i>The Drafting Group is invited to discuss and take all the necessary decisions regarding the organisation of its future work.</i> | |
| Item 8. | Any other business | |
| Item 9. | Approval of the meeting report | |

Reference documents

Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

[CM/Res\(2011\)24](#)

Terms of reference of the DH-SYSC-V during the 2020-2021 biennium - Extracts of the terms of reference given by the Committee of Ministers to the CDDH and DH-SYSC regarding the work of the DH-SYSC-V and relevant extracts of the 92nd CDDH meeting report.

[DH-SYSC-V\(2020\)01](#)

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

[CDDH\(2019\)R92Addendum2](#)

Decisions of the Committee of Ministers – “Securing the long-term effectiveness of the European Convention on Human Rights: assessment of the Interlaken Process and the way forward” (4 November 2020)

[CM/Del/Dec\(2020\)130/4](#)

Report of the 93rd CDDH meeting (14-16 December 2020)

[CDDH\(2019\)R93](#)

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****Monday 29 March 2021**

- 10:00 - 10:15 **ITEMS 1 and 2:**
Opening of the meeting
Adoption of the Agenda and Order of Business
- 10:15 - 11:00 **ITEM 3:**
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
- Examination of document DH-SYSC-V(2021)01 with a view to its finalisation.
- 11:00 - 11:30 *Coffee break*
- 11:30 - 12:30 **ITEM 3: Continuation**
- 12:30 - 14:00 *Lunch break*
- 14:00 - 16:30 **ITEM 3: Continuation**

Tuesday, 30 March 2021

- 09:30 - 11:00 **ITEM 4:**
Draft Guidelines of the Committee of Ministers to member States on the prevention and remedying of violations of the European Convention on Human Rights
- Examination of document DH-SYSC-V(2021)02.
- 11:00 - 11:30 *Coffee break*
- 11:30 - 12:30 **ITEM 4: Continuation**
- 12:30 - 14:00 *Lunch break*
- 14:00 - 16:30 **ITEM 4: Continuation**

Wednesday, 31 March 2021

- 09:30 – 11:00 **ITEM 4: Continuation if necessary.**

11:00-11:30 *Coffee break*

11:30 - 12:30 **ITEM 5: Preparation of a seminar on the implementation of the Convention at the national level to be co-organised by the CDDH and the Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order (*PluriCourts*), University of Oslo**

- Discussion of document DH-SYSC-V(2021)03

ITEM 6: Gender equality

- Discussion of document CDDH(2020)13

12:30 – 14:00 *Lunch break*

14:00 – 16:30 **ITEM 7: Organisation of future work**

- Discussion of document DH-SYSC-V(2020)04REV

ITEM 8: Any other business

ITEM 9: Approval of the meeting report

Appendix IV**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 judgments of the European Court of Human Rights (“the Court”) 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 of 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 at the domestic level; 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 and 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 for the member States' action to implement the Convention at the national level to take into account the developments in the Convention system during the decade of reforms in the course of the Interlaken process as well as the increased number 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 by appropriate means and actions that the texts relevant to the Convention system are accessible, in particular that their publication and dissemination 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 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. Main principles governing the publication and dissemination

- 1.1. Member States should ensure 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 in the language(s) of the member State concerned.

- 1.2. Member States should ensure that the texts of the Convention and the Protocols thereto are published and disseminated in full.
- 1.3. Member States should also ensure that the case-law of the Court in which the member State concerned is a Party is published and disseminated in due time either in full or, when justified by the national context, in the form of summaries or excerpts thereof together with references to the original texts (e.g. through hyperlinks).
- 1.4. Member States, taking into account the diversity of their national situations, should facilitate access to the texts referred to above of the national authorities responsible for the implementation of the Convention, in particular judges, public prosecutors, law enforcement officials, the administration of the penitentiary system, social authorities, national human rights institutions (NHRIs)¹ and, where appropriate, other structures and institutions, while having due regard to their fields of competence and responsibilities.
- 1.5. Member States should publish and disseminate the case-law of the Court in which the member State concerned is not a Party whenever they deem that this contributes to addressing complex or structural domestic problems or is otherwise relevant for the application, within their jurisdiction, of the Convention and the Protocols thereto. Where full translation of such case-law is not possible, summaries with references to the original texts (e.g. through hyperlinks) should be ensured.
- 1.6. Member States should ensure that all judgments and decisions of the Court to be executed in their respect are duly and rapidly disseminated to relevant actors in the execution process. They should ensure that the same actors are also rapidly informed, in a format deemed appropriate, of the decisions and resolutions of the Committee of Ministers in the context of the execution of judgments of the Court [as well as action plans submitted by that member State]. Member States should also publish these texts of the Committee of Ministers [and action plans] in a format deemed appropriate.
- 1.7. Member States should as far as possible publish and disseminate the following texts:
 - 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.
 - Rules of Court and Practice Directions issued by the President of the Court as well as the Rules of the Committee of Ministers for the supervision of the execution of

¹ Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions

judgments of the Court and of the terms of friendly settlements, and directions given as to the Committee's working methods.

- 1.8. Member States should assess the desirability and feasibility of publishing and disseminating other texts, namely:
- Materials elaborated by the Registry of the Court on the case-law or by articles of the Convention or by themes as well as materials and guides elaborated by the Council of Europe's Department for the Execution of Judgments with respect to execution issues.
 - 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 pertinent to reinforcing the implementation of the Convention in the member State concerned, and in particular where this contributes to addressing complex or structural problems at the domestic level.
 - 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, as well as 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, and in particular where this contributes to addressing complex or structural problems at the domestic level.

On the basis of this assessment, member States should identify and prioritise the texts concerned, taking into account the needs of the national authorities to know other texts relevant to the Convention system. Where appropriate, this assessment should be carried out in consultation and co-operation with relevant stakeholders including NHRIs, civil society organisations, academia and associations of legal professionals, notably bar associations.

2. Means of publication and dissemination

- 2.1. Member States should ensure that the texts referred to in points 1.1. and 1.2. and, wherever applicable, other texts referred to above, are accessible in electronic and/or printed form, without barriers taking into account the provisions of the Convention on the rights of persons with disabilities [and other accessibility requirements].
- 2.2. While access to the texts in electronic form and to those referred to in point 1.1. in printed form should be ensured free of charge, the person applying for access in printed form to other texts may be charged a fee which should be reasonable and not exceed the actual costs of reproduction and delivery of the documents.
- 2.3. When the publication and dissemination of the texts are realised primarily in electronic form, Member States should facilitate access to these texts to the persons who cannot avail themselves of electronic means, such as by providing them with the documents in printed form.

- 2.4. Member States should, as appropriate, encourage the regular production of textbooks and other publications, in printed and/or electronic form, facilitating the knowledge of the Convention system and the case-law of the Court.

3. Co-ordination and co-operation

- 3.1. Member States should consider the possibility of co-operating, with a view to publishing compilations, in printed or in electronic form, including databases, of Court judgments and decisions that are available in non-official languages of the Council of Europe.
- 3.2. Member States should consider proactively and regularly co-operating with relevant stakeholders, mentioned in point 1.8., and wherever appropriate, with actors of the private sector, with a view to undertaking or co-ordinating initiatives and activities aimed at publishing and disseminating the texts referred to above, seeking efficiencies and synergies in the allocation of financial resources and complementing each other's work.
- 3.3. Member States, where appropriate, should promote multi-stakeholder dialogues and meetings between national authorities and, where appropriate, other actors, regarding themes and issues of relevance in their national context addressed in the texts which have been published and disseminated, with a view to facilitating their understanding and implementation by national authorities.

4. Quality of translations

- 4.1. Member States should ensure that their translations into the language(s) of their country are carried out by professionals or on the basis of reliable electronic methods.

5. Council of Europe resources

- 5.1. For the purposes of the implementation of this recommendation, Member States should promote and facilitate effective access to the resources made available by the Council of Europe, such as HUDOC databases, the HELP programme as well as the publicly available parts of the websites of the various bodies and services of the Council of Europe.
- 5.2. 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 as regards the implementation of this Recommendation and carrying out training of relevant national authorities on the system of the Convention.

Appendix V

Preliminary draft
**Guidelines of the Committee of Ministers to member States on the prevention and
remedying of violations of the European Convention on Human Rights**

*(Adopted by the Committee of Ministers on ...202...
at the 1...st meeting of the Ministers' Deputies)*

PREAMBLE

The Committee of Ministers,

- [1] Considering that the *Interlaken process* 2010-2019 has confirmed the central role played by the European Convention of Human Rights ("the Convention") in maintaining and fostering democratic security and improving interstate cooperation and good governance across the European continent;
- [2] Recalling that acceptance of the Convention, including the compulsory jurisdiction of the European Court of Human Rights ("the Court") and the binding nature of its judgments, is a requirement for membership of the Organisation and that in accordance with the principle of subsidiarity, the member States have the primary responsibility to secure the rights and freedoms defined and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court;
- [3] Considering the member States' firm and enduring commitment to secure its long term effectiveness and highlighting in this respect the decision taken at the Ministerial Session in Athens on 4 November 2020;
- [4] Recalling that the Committee of Ministers could note already in 2004 that the Convention had become part of the domestic legal orders in all member States;
- [5] Recalling the important results achieved as regards the national implementation of the Convention during the *Interlaken process*, including improved incorporation, domestic remedies and parliamentary procedures as well as regards the domestic capacity for rapid implementation by domestic authorities, subject to the Committee of Ministers' supervision, of the judgments and decisions of the Court;
- [6] Bearing in mind that, despite the progress achieved at national level, the **Convention** system continues to face significant and enduring challenges and **delays**, notably linked to situations of blockages, the persistence of serious or widespread violations, to systemic and structural problems in the member States, to the situation in Europe's unresolved conflict zones or post conflict zones; and bearing in mind the increasing number of inter-state applications brought before the Court in recent years;
- [7] Bearing in mind also that there is a continuing influx of big numbers of repetitive applications to the Court and of applications related to matters covered by well-established case law, not infrequently highlighting structural problems;
- [8] Recalling in this respect that in its decision "*Securing the long-term effectiveness of the system of the European Convention on Human Rights*" adopted in Athens, 4 November 2020, the Committee of Ministers stressed the need for further efforts and called notably upon all member States to (i) give full effect to the principle of subsidiarity by complying with their obligations to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention; (ii) abide by the Court's judgments rendered against them and honour their undertakings in friendly settlements and (iii) agreed to continue to enhance the efficiency of the process of supervision of the execution of the judgments;

- [9] Recalling the range of Recommendations it has adopted with a view to assisting member States in ensuring efficient domestic implementation of the Convention and the judgments of the Court, and to facilitating the adoption, by member States, of responses to the numerous challenges facing their societies respectful of the values of the Council of Europe and the rights and freedoms protected by the Convention;
- [10] Recalling also the Recommendations and Resolutions of the Parliamentary Assembly of the Council of Europe ("the Parliamentary Assembly") to improve parliamentary procedures and the numerous relevant indications and recommendations given by other Council of Europe institutions and bodies;
- [11] Underlining that national decision makers should more proactively take the Convention requirements into account to better prevent all violations foreseeable on the basis of the Court's case law and provide redress to victims without there being a need for a specific Court judgment against the State in each case;
- [12] Stressing that such a proactive attitude from member **States involves in particular the development of parliamentary**, executive and judicial capacity to respond to relevant well established case-law by the Court even where developed against other member States, and thus of structures for identifying such case-law and **where appropriate** ensuring ~~speedy~~ translation and dissemination of relevant judgments and decisions or other materials and for education and training;
- [13] Convinced of the importance for member States of:
- (i) ~~Constantly~~ Encouraging a wide national dialogue to discuss matters related to the national implementation of the Convention in face of both continuing and new challenges, in particular as regards efficient prevention of violations and redress in case violations are established;
 - (ii) Encouraging experience sharing with other member States and full use of the many possibilities offered by the Council of Europe to assist national efforts to secure the good implementation of the Convention and the **rapid** execution of the Court's judgments and decisions, through dialogue with its different institutions, the expertise developed by monitoring and advisory bodies and the possibilities of cooperation and assistance programs and activities;
 - (iii) Maintain a continued dialogue with Council of Europe institutions and expert bodies, including in the framework of the execution of Court judgments and decisions and of the Council of Europe's cooperation activities;
- [14] Recalling the Committee of Ministers commitment to continue to engage in a more intensive and effective dialogue with respondent States ~~in the context of~~ **at** its supervision of the execution of the Court's judgments, at its special Human Rights meetings and in other appropriate formats, aimed at improving the assessments, advice, recommendations or other guidance given in its decisions and resolutions, and stressing the collective dimension of the supervision process which implies an active approach by all member States, ~~in particular~~ **primarily** through their representatives in the Committee of Ministers;
- [15] Noting the necessity of reinforcing the domestic execution process and the resources devoted thereto in view of continuing problems revealed in the context of the Committee of Ministers' supervision; thereof, including slowness in developing effective remedies to prevent repetitive cases, and frequent problems related to the effective handling not only of more important complex or structural problems, but also of many, in principle "easy" cases remaining for lengthy periods under the Committee's standard supervision, notwithstanding the expectation that cases placed thereunder should be settled ~~speedily~~ **rapidly**;

- [16] Noting that a number of situations have also revealed that the judiciary or executive authorities may not be capable of providing redress for violations established within the existing legal and/or constitutional framework, and that it is therefore necessary to ensure in all States that procedures are in place ensuring that legislative or other pertinent action is engaged so that these obstacles can be overcome;
- [17] Recalling the close links which exist between good national implementation of the Convention and the good functioning of the supervisory system set up and the shared responsibility between the States Parties, the Court and the Committee of Ministers in this respect;
- [18] Expressing the conviction that it is necessary to adopt general guidelines for the further improvement of the national implementation of the Convention, both in general and as regards the domestic capacity to rapidly abide by judgments by the Court in cases to which States are parties,

ADOPTS THE FOLLOWING GUIDELINES

which provide practical advice and recommendations aimed at assisting the member States in their efforts to

- give full effect to the principle of subsidiarity by complying with their obligations to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention;
- abide by the Court's judgments rendered against them and honour their undertakings in friendly settlements and in unilateral declarations;
- [to be further completed] ensure the wide dissemination of the guidelines among all competent authorities and **relevant** stakeholders involved in preventing and remedying violations of the European Convention on Human Rights, and
- translate, where necessary, the guidelines into the official language(s) of the country.

I. PREVENTING AND REMEDYING VIOLATIONS OF THE CONVENTION THROUGH GOOD NATIONAL IMPLEMENTATION

Guideline 1 - ~~General considerations~~ **Ensure a positive global framework**

1. Member States should, in the light of progress made in the course of the Interlaken process, continue, and where necessary enhance, their efforts to ensure that the policies and actions of all domestic authorities, be they legislative, executive or judiciary, comply with their obligations as regards human rights, respect for the rule of law and the principles of democracy inherent in the Convention.
2. Member States should notably better ascertain the existence of effective domestic remedies, capable of integrating all relevant case-law of the Court, **also that developed against other States**, for all persons, physical or legal, with arguable claims that their Convention rights have been violated.
3. Member States should maintain the efforts in the same vein to enhance the verification of the Convention conformity of draft laws, existing laws and administrative practice, the involvement of their parliaments and their capacity to react **swiftly** to systemic or other problems revealed through domestic procedures.
4. Member States should, in order to provide adequate protection of the rights and freedoms guaranteed, also ensure effective access to legal services provided by an independent legal profession, promote the work and **ensure** the independence of NHRIs. **They should also ensure that NGOs, lawyers and all human rights Defenders** are protected from unnecessary, unlawful or arbitrary interferences in their work in favour of the Convention system, as **reflected** in existing recommendations².

² Reference to recommendations ...

5. Member States should, when implementing the Convention, take into account the different general recommendations adopted by the Committee of Ministers over the years with a view to enhance implementation, notably:
- Recommendation Rec(2002)13 of the Committee of Ministers to member states 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 (presently being revisited);
 - Recommendation Rec(2004)5 of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights ;
 - Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies;
 - 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.
6. Member States should also take into account the Committee of Ministers numerous other relevant recommendations and guidelines, such as the recommendation on human right and business or the guidelines on human rights in culturally diverse societies. They should also take into account that a **good full** implementation of these instruments is also an important contribution to the national capacity to ensure rapid execution of the Court's judgments, and that the same is true also for many recommendations and/or advice emerging from other Council of Europe institutions or bodies.
7. Member States should further enhance co-operation and experience exchanges in between them, integrating the Court's relevant case-law and, as appropriate, ~~other relevant~~ **using the expertise of** Council of Europe ~~norms and expertise~~. They should avail themselves, wherever useful, of the cooperation and assistance facilities offered by the Council of Europe. ~~[All Member States who have not signed or ratified Protocol N° 16 are also invited to intensify national dialogue with a view to enabling ratification~~ **[include reference to relevant paragraph of the Athens Declaration]**.
8. Member States should pay particular attention to address, taking into account the situation in each state, the main general problems ~~presently~~ before the Committee of Ministers in the context of its supervision of the execution of the Court's judgments, **. The notably key violations presently burdening the Convention institutions are** linked with:
- the right to life and the protection against torture and ill-treatment, most importantly by the police and other security forces, including ineffective criminal investigations into events and the absence of effective remedies;
 - excessive length of judicial proceedings, lack of judicial independence, unfair proceedings and non enforcement of judicial decisions;
 - lack of respect for private life, notably in the handling of family matters, including the care of children, and in the context of the organization and implementation of secret surveillance measures;
 - freedom of expression, religion, assembly and association.
 - interferences with property rights;
 - expulsion or extradition, including the quality of relevant procedures and the ~~handling~~ **treatment** of vulnerable persons, notably children.
- 8.bis. Member States should also pay attention to address delays in the execution of judgments and decisions of the Court including as regards payments due;**
9. Member States' special attention is also required vis à vis all situations in which they exercise jurisdiction in the sense of the Convention outside of the national territory,

especially in Europe's conflict zones or post conflict zones, to ensure that all individuals under their jurisdiction in such areas are guaranteed Convention protection.

Guideline 2 - Extend awareness raising and training on the Convention system

10. [Member States should, considering the Convention's status as part of their domestic legal orders, ensure speedy publication, where necessary in translation to the local language(s), of relevant case law of the Court on the sites usually used for publication of other judgments and decisions of importance for the implementation and understanding of domestic law.] **(reconsider the paragraph in the light of the draft recommendation on the dissemination of the texts relevant to the Convention system)**
11. [Member States should also, similarly, publish and disseminate in adequate form relevant practice from the Committee of Ministers as regards the requirements of the execution of Court judgments and the Committee's recommendations to the Member States on different Convention related issues. They should also ensure that other relevant texts such as recommendations, opinions and advice from other Council of Europe institutions or bodies are easily accessible to central, regional and local authorities as well as to civil society at large. A major aim should be to ensure that domestic authorities, be they central, regional or local, have easy access to all information relevant for good implementation of the Convention and capacity to integrate this information in their activities.³] **(reconsider the paragraph in the light of the draft recommendation on the dissemination of the texts relevant to the Convention system)**
12. Member States should **support and as far as possible** reinforce university education and professional training on the Convention system, especially as regards the well-established case law of the Court and the requirements related to the execution of the judgments of the Court.
13. Member States should, when organising relevant university and training events, **as deemed appropriate support** ~~promote an appropriate~~ participation of Council of Europe experts and possibilities of experience exchanges with other states.
14. Member States should take action to further raise domestic awareness also with respect to the possibilities of cooperation and assistance activities offered by the Council of Europe.
15. Member States should ~~notably ensure that~~ **consider raising awareness with authorities and other stakeholders**, as well as interested parts of civil society **with a view to encouraging them to** make full use of the facilities offered by the HELP programme and its different online courses on a wide variety of Convention issues – many already available in several languages beyond the official languages of the Council of Europe.
16. Member States should as regards the HELP programme consider contributing to the translation of ~~relevant~~ **relevant** courses **related to the Convention** into their national language(s) if such translation has not already taken place.
17. Member States should ~~secure~~ **encourage** and further develop existing practices of study and other visits, notably of parliamentarians, legal counsels to parliament, judges, prosecutors, chiefs of police, prison administrations, government agent offices, **NHRIs** and others to Strasbourg to meet and discuss with the departments engaged in the implementation of the Convention and the execution of the Court's judgments.
18. Member States should **where applicable** ~~ensure that~~ **provide** relevant judicial and other authorities **as well as NHRIs with adequate** means to **allow them/ authorities and institutions** carry out such visits.

³ It is recalled that the draft Recommendation is being prepared and examined by DH-SYSC-IV under another item of its mandate. The text above is based on existing proposals and will have to be checked against the text finally adopted and adapted thereto.

Guideline 3 - Improve domestic remedies

19. Member States should ensure that domestic remedies exist and are organised in such a way as to avoid to the extent possible any lacuna, whether as regards the possibility to submit any arguable claims of a violation of the Convention to an independent authority providing adequate procedural safeguards, to obtain a decision on the merits taking full account of all relevant case-law from the Court, or to obtain adequate redress for any violation established, whether monetary or, where still possible and useful, in the form of specific individual measures, such as release from unlawful detention, the resumption of criminal investigations with a view to rectify shortcomings established, or the annulment of extradition or expulsion orders adopted notwithstanding serious risks of violations of Articles 2 or 3 of the Convention in the receiving country.
20. Member States should also ensure, as appropriate, that decisions by courts or other independent bodies acting as effective remedies contain sufficient reasons to inspire the confidence of those concerned and the public, promote the development of coherent domestic practices and positions and provide a good basis for a possible subsequent review by the Court, or, by the Committee of Ministers in the context of its supervision of a possible execution process under Article 46 of the Convention.
21. Member States are encouraged to consider, in the context of their reflections, the generally positive experiences from countries having put in place a general remedy competent to deal with all kinds of Convention complaints.
22. Member States should enhance their efforts to ensure as soon as possible after a systemic problem has been revealed, whether in domestic proceedings or as a result of a judgment of the Court, that effective remedies are in place to handle to the extent possible repetitive applications, or that other efficient solutions are put in place to handle such applications, be it by legislative measures or ad hoc arrangements.
23. Member States should, taking into account the continuing high numbers of new systemic violations in areas covered by well established case-law from the Court, enhance, wherever necessary, the capacity of courts and other authorities to pro-actively prevent and remedy all such clearly foreseeable violations without awaiting a specific judgment against the State.
24. Member States should devote priority attention to the existence of effective remedies in respect of the most frequent problems today revealed in the cases brought before the Committee of Ministers for supervision of their execution, most notably the problem of ineffective investigations into alleged violations of Articles 2 and 3 of the Convention, in particular by the police or other security forces.
25. Member States should constantly bear in mind that in addition to the obligation of ascertaining the existence of effective remedies in the light of the case-law of the Court, they have the general obligation to solve any general problem underlying violations found.

Guideline 4 - Further action to facilitate the direct application of the Convention and relevant case-law of the Court

26. Member States should, over and above the matters dealt with above, examine their legal systems in the light of the results of the Interlaken process with a view to ensuring that the constitutional and legislative framework surrounding the incorporation of the Convention as a constituent part of the domestic legal order is such that it effectively promotes the direct application of the Convention and the relevant case law of the Court by national courts and authorities.

27. Member States should, in line herewith, also take all other measures necessary to ensure the active implementation of the Convention and relevant case-law of the Court throughout the domestic judicial system so as to improve its capacity to proactively prevent foreseeable violations of the Convention.
28. Member States should in this vein also be encouraged to enhance their efforts to follow possible developments of the Court's case law as a result of cases brought against other Member States, with a view to intervene, where deemed appropriate, as *amicus curiae* to ensure that also their national concerns receive consideration by the Court.
29. Member States should ensure, if notwithstanding the direct application of the Convention and relevant case law of the Court, a conflict would arise with national legislative or constitutional provisions, or in case a legislative void is discovered, that rapid procedures exist to engage necessary parliamentary action to ensure a Convention compliant solution.
30. Member States should, in the light hereof, adopt measures encouraging judicial and other authorities involved to use the avenues at their disposal to draw attention to the problem, for example by indications in their judgments and/or decisions, and, where this is possible and appropriate, also by exercising their right of legislative initiative.
31. Member States should ensure an environment surrounding judicial activity (e.g. as regards the existence of adequate research and support structures, the understanding of the imperatives of judicial discipline, the possibilities of careers and the exposure to disciplinary or other responsibility) encouraging the taking into account of the Convention requirements as developed in relevant case-law of Court, even if developed in cases against other Member States.
32. Member States should in the same vein ensure that there exists in all major central, regional and local authorities regularly confronted with issues linked with the implementation of the Convention, support structures capable of providing quality advice as to the Convention requirements as these emerge from the case law of the Court, and, in other less exposed authorities, at least easy access to such advice, e.g. through the coordinator office, and that internal policies promote the integration of the well-established case law requirements in day to day work.
33. Member States should also ensure the existence of an independent corps of lawyers, well trained in the Court's case-law and in the functioning of the Convention system, able to efficiently assist individuals and authorities in the efforts to secure respect for the rights and freedoms guaranteed by the Convention.

Guideline 5 - Improve verification of the Convention conformity of draft laws, existing laws and administrative practices

34. Member States should enhance their efforts to give full effect to the Convention through a continuous adaptation of national standards and norms in accordance with those of the Convention, in the light of the case law of the Court.

a. Draft laws

35. Member States should ensure that draft legislation prepared by the Government related to matters covered by the Convention is sent to Parliament only after a thorough scrutiny of its Convention conformity, taking into account all relevant case-law of the Court.
36. Member States should to this effect ensure that adequate structures are developed to ensure rigorous scrutiny of such draft legislation, involving or associating, as

appropriate, also different competent and independent bodies, including NHRI's, relevant NGO's and national organisations of lawyers.

37. Member States should also ensure the existence of parliamentary structures with special responsibility for the respect of human rights and the Convention in particular, including the Convention conformity of draft legislation, and that such structures have access to independent expertise.
38. Member States are encouraged to consider requiring the engagement of a special parliamentary procedure, or other safeguards, if the bodies entrusted with assessing the Convention conformity of draft legislation would find evident that a certain proposal would violate the Convention.

b. Existing laws

39. Member States should ensure that there exist procedures allowing for a regular assessment of the Convention conformity of laws in force, be it in the context of judicial proceedings (e.g. by the possibility for judges to refrain from applying a certain law found to lead to results contrary to the Convention, or by otherwise addressing the Convention conformity in the reasoning of judgments or, where this may be accepted, e.g. in constitutional proceedings, by the possibility to declare the legislation at issue null and void or inapplicable), or through other procedures, most notably in the context of ordinary governmental or parliamentary scrutiny of the adequacy of legislation, but possibly also through the putting in place of specialised procedures, e.g. within the coordination structures adopted to facilitate the execution of the judgments of the Court or special parliamentary committees and procedures.
40. Member States should ensure that procedures exist that allow conclusions with respect to the Convention conformity of existing legislation or other norms are given due consideration with a view to the rapid adoption of the changes necessary to achieve a Convention compliant situation.

c. Practice

41. Member States should ensure that authorities, whether central, regional or local, that are regularly confronted with Convention issues, such as courts, prosecutors, police, customs, authorities competent for the registration of churches or more generally of associations, or the handling of announced peaceful assemblies, broadcasting authorities, immigration authorities, authorities responsible for protecting privacy or public access to official documents, or social authorities responsible for child and family questions, have the necessary capacity to regularly assess the Convention conformity of regulations, practice directions or unwritten procedures, whether in the form of internal expertise or easy access to outside expertise.

d. Encourage use of Council of Europe assistance and expertise

42. Member States are encouraged to ensure that the examination of the Convention conformity of draft laws, existing laws and domestic practices is carried out wherever deemed appropriate in cooperation with, or taking into account, Council of Europe expertise.

Guideline 6 - Better Parliamentary involvement

43. Member States should, in line with the resolutions of the Parliamentary Assembly, continue to promote the fundamental role parliaments must play in guaranteeing and protecting human rights by encouraging them to establish appropriate internal structures

to ensure rigorous and regular monitoring of the State's compliance with international human rights obligations.

44. Member States are encouraged to enhance their support for the initiatives of the Parliamentary Assembly to enhance the knowledge of the Convention system and the case-law of the Court of parliamentarians and the legal staff of all relevant Parliamentary committees and departments.

Guideline 7 - Strengthen the role of NHRIs, NGOs and other key bodies

45. Member States which have not already done so, should be encouraged to consider the establishment or strengthening of effective, pluralist and independent national human rights institutions.
46. Member States should, when taking action relevant for the national implementation of the Convention, promote the inclusion, where appropriate, of the concerns of NHRI's, relevant NGO's, and representative organisations of lawyers
47. Member States should, in line with recent Committee of Ministers Recommendations and other relevant texts and initiatives, notably from the Parliamentary Assembly and the Commissioner for Human Rights, ensure a safe and enabling environment for those engaged in the defense of human rights and effective protection against threats, unlawful actions and arbitrary reprisals, including from state authorities. Member States should ensure rapid and efficient investigations into any such unlawful action. Member States should take particular care to guarantee the independence and impartiality of Ombudspersons, including through adequate nomination procedures and terms of office.
48. Member States should continue to encourage participation of NHRI's, relevant NGO's and representative organisations of lawyers in the activities of the Council of Europe related to the implementation of the Convention, e.g. through participation in specialised fora organised under the auspices of the Council of Europe, observer status in relevant steering committees or other special arrangements.

Guideline 8 - Develop domestic capacity to deal rapidly with systemic problems revealed in domestic procedures

49. Member States are encouraged, in view of the encouraging results obtained by the coordinating structures and procedures put in place to handle notably general problems revealed in the context of the supervision of the execution of the Court's judgments, to consider whether these structures and procedures could not be extended also to situations where violations pointing at general problems are established in national procedures or whether not the setting up of other similar procedures could prove of value.

Guideline 9 - Promote experience sharing in the implementation of the Convention

50. Member States should, when confronted with issues related to the implementation of the Convention, promote, to the greatest extent possible, exchanges of experiences and the development of synergies *between the authorities within their jurisdiction* concerned wherever a solution could be facilitated by common or concerted action.
51. Member States should in parallel explore all opportunities to share experiences *between States* as regards the efficient implementation of the Convention.
52. Member States should also consider available Council of Europe expertise, recommendations and possibilities of assistance through cooperation activities;
53. Member States should, in order to facilitate experience sharing, make full use of the capacities of the national coordinators appointed/co-ordinating structures set up to guide

and/or assist the implementation of the Court's judgments and decisions and their networks, and, as appropriate, also those of relevant NGO's and NHRI's and representative organs of the legal profession.

54. Member States should also, when encountering new Convention issues of more pan European interest, take action to raise these in appropriate Council of Europe inter-governmental fora with a view to possible action, e.g. in the form of recommendations, guidelines or collections of best practices.
55. Member States should in this vein also be encouraged to enhance the use of specialised fora provided by the Council of Europe, such as the councils/conferences for judges, prosecutors, heads of detention and probation centres. They should also strengthen their efforts to provide similar arrangements for other important institutions or stakeholders under Council of Europe auspices, notably for high representatives of the police forces in the Member States.
56. Member States should in parallel promote and enhance dialogue between their national courts and the Court, e.g. through, the Superior Courts Network and, where appropriate, requests for advisory opinions under Protocol no. 16.

Guideline 10 - Enhance cooperation programmes with the Council of Europe

57. Member States should, especially when engaging more important reforms raising issues under the Convention, consider and exploit the cooperation possibilities offered by the Council of Europe, e.g. in order to obtain general expertise on Convention standards, more specific expertises on different pieces of legislation, assistance in the search for the root causes of important systemic problems to ensure the adequacy of reforms proposed, an appropriate setting for experience exchange with other States, assistance in the organisation of training activities or in the organisation of fora to promote experience exchanges and synergies between domestic authorities.
58. Member States should in this context support and promote specific initiatives by competent State institutions to seek advice from relevant Council of Europe institutions, such as the Commissioner for Human Rights, or expert bodies, such as the Venice Commission.
59. Member States should also constantly consider possibilities of contributing to the Council of Europe's capacity to offer such cooperation programs, whether through voluntary contributions, contributions to the HRTF or through the EU.

Guideline 11 - Improve cooperation between Member States

60. Member States should ensure that wherever assistance requested from another State Party has to be given under the Convention, notably in order to ensure the effectiveness of investigations into violations of Article 2 and 3 of the Convention, such assistance may and will be given.
61. Member States should not provide such assistance when the result could lead to a violation of the Convention in the other State without credible and tangible guarantees eliminating the risk of a violation.
62. Member States should also otherwise, to the extent deemed appropriate and possible, develop mutual assistance and cooperation activities when this can promote the good domestic implementation of the Convention, e.g. through cooperation arrangements between authorities and, especially where common languages are shared, also common databases, cooperation as regards university education and training, moot court competitions etc.

Guideline 12 - Other measures to secure the good functioning of the Convention system

63. Member States should, beyond providing all necessary assistance to, and ensuring efficient interaction with, the Court and the Committee of Ministers in the context of ongoing proceedings also provide the human and financial resources necessary for the good functioning of the two institutions and the Convention system in general.
64. Member States should, in particular, as regards the Judges of the Court, pursue their efforts to (a) attract persons of the highest calibre to serve as judge on its bench, so as to continue to safeguard the authority of the Court ; (b) continue to guarantee by all possible means the independence and impartiality of the Court's judges, and (c) consider providing necessary additional safeguards also after the end of the Judges' terms of office, notably by due recognition for their status as judges and for their service on the Court.
65. Member States should also provide the Secretary General with all necessary support and facilities in case of requests under Article 52 of the Convention.

Guideline 13 - Promote ratification of Protocol No. 16 to the European Convention

66. Member States which have not ratified Protocol No. 16 should enhance their examination of the possibilities of rapidly doing so taking into account the developing practice of the Court and the specificities of their systems of judicial organisation, notably the possibilities of coordination or constructive interaction between the different High Courts which may be concerned by a request.
67. Member States should also ensure that the parties to the proceedings underlying a request, as well as civil society and others likely to have an interest to intervene in the advisory proceedings before the Court, have easy access to all information relevant for the issue submitted to the Court;
68. Member States are also encouraged to exchange, in cooperation with the Court and other Council of Europe bodies concerned, experiences with regard to the use of the new procedure.

II. PREVENTION AND REDRESS IN CASE OF VIOLATIONS FOUND BY THE EUROPEAN COURT OF HUMAN RIGHTS**Guideline 14 - General considerations**

69. Member States should, in the light of the progress achieved during the Interlaken process, further improve their domestic capacities for rapid execution of the Court's judgments and decisions in all cases to which they are parties.
70. Member States should thus enhance, wherever necessary, their efforts to secure in all circumstances the existence of efficient procedures guaranteeing the payment of any just satisfaction awarded by the Court and to rapidly erase, to the extent possible, the consequences for applicants of violations established and ensure *restitutio in integrum*.
71. Member States should, similarly, enhance their efforts to ensure that necessary parliamentary, executive or judicial action is taken to efficiently and rapidly address all more general, structural or systemic problems revealed by judgments of the Court, in particular to prevent to the extent possible new repetitive applications, speed up the

solution of easy cases and overcome in a more effective manner more important technical obstacles, deeply rooted local prejudice and/or situation of blockages.

72. Member States should ensure that violations established by the Court are duly recognised by authorities involved and that remedial action is rapidly engaged both to provide individual redress and to prevent similar violations, and that, if reforms require time for their adoption and implementation, all possible temporary/interim measures are taken to limit as far as possible the effects of the violation(s).
73. Member States should, in this connection, take into account
 - Recommendation CM/Rec(2008)2 of the Committee of Ministers to member States on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, the examples of good state practices presented by the CDDH in 2017 and subsequent developments;
 - Recommendation CM/Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the Court and subsequent developments.
74. Member States should in this context, in view of the close links between the measures required for rapid execution and those necessary for good general implementation of the Convention, also take into account all the different sources of inspiration available in the latter context, notably the Committee of Ministers own recommendations cited above under part I.

Guideline 15 - Strengthening of co-ordination structures

75. Member States must, in the light of available information, further enhance the support provided to coordinators, or other coordinating structures, as required in the form of improved resources, status or authority, in order to allow these to better respect deadlines fixed for action plans, better contribute to the solution of more important structural or complex problems, in particular placed under enhanced supervision, and, in close cooperation with the Department for the execution of judgments, to the speedy solution of in principle “easy” cases under standard supervision, with a view to their solution as far as possible within 2 years.
76. Member States should take special measures to solve rapidly the present backlog of such “easy cases” awaiting closure since more than 5 years.
77. Member States should ensure that coordinators, or coordinating structures, establish necessary contacts with relevant parliamentary committees or departments and judicial authorities and that the continuity of their work and structures over time is safeguarded, as breaks in this respect may have very negative effects on the handling of important execution issues and lead to unnecessary applications and violations of the Convention.
78. Member States should ensure protection of coordinators from unjustified attacks and from any form of harassment or threat linked to the performance of their duties.

Guideline 16 - Improved publication and dissemination of execution information

79. Member States should ensure that action plans and reports adopted in response to judgments of the Court are of high quality and fully explain the changes proposed or the measures taken as compared to the situation incriminated by the Court and, as appropriate, also draw on relevant recommendations and advice by Council of Europe institutions and expert and monitoring bodies.

80. Member States should also ensure that such plans and reports are rapidly made public in the national language and appropriately disseminated as should decisions of the Committee of Ministers with respect to their adequacy or implementation.
81. States parties should in this context ensure that also other relevant information on the Convention requirements with respect to ongoing execution processes are brought, through appropriate means, to the attention of all authorities concerned, where deemed useful in cooperation with the Department for the execution of judgments.
82. States Parties should furthermore ensure more general awareness of the requirements of execution, notably by the dissemination of information, in the national language, on relevant execution practices and on the scope and expected results of the Committee of Ministers' supervision procedure. In so doing they may be inspired by the the parts of the Vademecum prepared by the Department for execution so far and possible further parts, the general overviews of achievements made in the Committee of Ministers Annual Reports and by the Parliamentary Assembly, by the fact sheets by country and topic published by the Department for the execution of judgments.
83. Member States are also encouraged to give wide publicity to the special web sites developed by the Committee of Ministers and the Department for the execution of judgments to present both the general execution requirements and the state of execution in individual cases, or groups of cases.
84. States Parties are also encouraged to ensure wide use of the special HELP course on execution designed to assist national authorities, lawyers and their professional organisations, NGO's and NHRI and other interested in better understanding the execution process and its supervision by the Committee of Ministers

Guideline 17 - Ensure that remedies are fully effective in the execution context

85. Member States should ensure, through appropriate means, that national judges and other independent authorities, when acting as effective remedies in the execution context, secure the recognition of the Court's findings and their enforcement in the national legal system.
 - i. For applicants**
86. Member States should take special care to ensure that judgments or decisions by the Court of importance for applicants to obtain individual redress are rapidly made available in an authoritative translation wherever necessary. Member States may for this purpose be encouraged to explore possibilities of arrangements with the Registry and the Department for the execution of judgments to ensure that translations entered into the HUDOC database be considered authoritative.
87. Member States should ensure, to the extent possible, an open and constructive approach on the part of courts and authorities when these are requested, on reasonable grounds, to provide individual redress, to prevent formalistic and unnecessary delays in ensuring such redress and secure that all applicants receive redress without discrimination.
88. Member States should, in order to be able to rapidly handle more difficult situations, be encouraged to ensure that the coordinators competent for the handling of execution matters may enter into friendly settlements with applicants under the Committee of Ministers' supervision.
89. Member States could also consider whether, beyond the existing integration of a number of specific execution obligations into domestic law, e.g. that of reopening unfair proceedings or, in some states, the duty to heed interim measures ordered by the Court,

other such obligations, notably the payment of sums due by virtue of Court judgments or decisions could not also be so integrated, in particular in case of friendly settlements or unilateral declarations.

ii. To prevent repetitive cases

90. Member States should further following a violation of the Convention take action to ensure, through legislative action, constructive judicial practice or otherwise, the existence of remedies capable of preventing, as far as possible, prima facie well founded repetitive applications to the Court.
91. Member States should also, wherever appropriate, seek also other solutions to avoid repetitive applications, such as amnesties erasing, to the extent possible the consequences for all victims of an excessive criminalisation, the restitution of rights, for example citizen or residence rights, unjustly taken away or measures otherwise erasing more generally the consequences of violations.

Guideline 18 - Enhanced efforts to deal with technical obstacles, deep rooted local prejudice and blockages

92. Member States should avail themselves of all opportunities to prepare themselves already during the proceedings before the Court, as appropriate in cooperation with relevant Council of Europe bodies, for possible findings of violations likely to generate risks of blockages or other major execution problems so as to prepare constructive reactions on the part of those concerned and explore possible avenues forward.
93. Member States should, in face of difficulties in ensuring rapid execution, such as important technical obstacles, deep rooted local prejudice or political blockages, ensure wherever possible the setting up of structures and procedures capable of securing, over the full time span of reforms planned, the impetus, coordination of action and allocation of resources necessary for the problems to be overcome.
94. Member States should, when confronted with important structural and/or complex problems, provide all necessary support, including high level political support, to the coordinators or coordinating structures set up. They should also rapidly explore all possibilities of assistance from relevant Council of Europe institutions and bodies, whether in the form of fora for dialogue or in the form of expertise and cooperation programs.
95. Member States should also, in face of major structural problems, be encouraged to explore in depth possible synergies with the activities and programmes engaged or planned with the EU, other international organisations such as the UN, the IMF, the World Bank or other States.

Guideline 19 - Promote stakeholders' participation in the execution process

96. Member States should encourage the involvement of all authorities concerned by a certain problem revealed by a judgment of the Court and promote, through meetings, liaison officers, joint working groups etc., the development of synergies between them, whether in the reflection on necessary action or in the implementation of action plans decided and the assessment of results obtained. Member States are in this context, encouraged to involve also relevant NGO's, NHRI and representatives of the legal profession, as appropriate.

97. Member States are also encouraged to associate the Department for the execution of judgments and other relevant Council of Europe structures in the above processes and to ensure also that the experience of other States is taken into account.
98. Member States should ensure the presence of competent authorities in Strasbourg when execution problems relating to their field of competence are being debated in the Committee of Ministers and, and where appropriate also the presence of responsible ministers, especially important in face of major problems to reassure the Committee of the political will to overcome them.
99. Member States are encouraged, in order to facilitate the participation of relevant authorities, to ensure that action plans developed are published also in the national language in an easily accessible manner and disseminated to relevant governmental authorities, to competent parliamentary bodies and, as appropriate, other interested bodies and organisations, for example NHRI's, notably ombudsman institutions and the professional organisations of lawyers.

Guideline 20 - Strengthen Parliamentary support

100. Member States should encourage the further development of parliamentary mechanisms and procedures for effective oversight of the implementation of the Court's judgments, notably on the basis of the regular circulation of action plans and reports and parliamentary debates on outstanding issues, as appropriate with presentations by responsible ministries/ministers, and possibly supplemented with a general obligation on the Government to present at least once a year an overview of the execution situation for parliamentary scrutiny.
101. Responsible Parliamentary Committees should be ensured assistance of independent advisers well trained in the Convention system.

Guideline 21 - Better involvement of all Member States

102. Member States should encourage their national authorities and stakeholders to take cognizance of relevant ongoing execution processes against other States and of the experiences of the Committee of Ministers supervision process in order to foster a better understanding of the collective nature of the Convention system as well as a climate of openness, dialogue and mutual support and experience sharing, prone to encourage initiatives facilitating good and speedy execution.

Guideline 22 - Effective interaction with Protocol No. 16

103. Member States are encouraged to consider, when execution hinges on the interpretation of a Convention obligation flowing from a Court judgment, whether the seeking of an advisory opinion is required or whether the progress of acceptable reforms cannot be more speedily ensured within the framework of the Committee of Ministers' supervision taking into account the expertise available in that process or, possibly, by a Committee of Ministers' request to the Court for an interpretation of the judgment being executed under Article 46 § 3.

Appendix VI

**The position of the Russian Federation concerning the
Preliminary draft Guidelines of the Committee of Ministers to
member States on the prevention and remedying of violations of
the European Convention on Human Rights**

At its 92nd meeting (26-29 November 2019, CDDH(2019)R92) the CDDH entrusted its drafting Group on enhancing the national implementation of the system of the European Convention on Human Rights (DH-SYSC-V) with the task of preparing Guidelines covering all of the action at national level expected from States Parties to prevent and remedy violations of the Convention.

At the same meeting, the CDDH specified that the 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.

However, despite this fact, the problematic aspects relating to the execution of judgments in situations of extraterritoriality were ignored by the Secretariat in the draft Guidelines.

The relevant issues cover 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 such 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 in the internal affairs.

The consequences of these actions 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 Guidelines.