

October 2018
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Round Table

*Implementation of the ECHR in the domestic legal systems:
experience in the translation and dissemination of the judgments
of the European Court in a comparative perspective*

(Strasbourg 15 October 2018,
Council of Europe, Palais, Room 9)

11:30-12:50 Session 2 – Dissemination of the translations of the Strasbourg Court judgments in Italy, Poland, Russia and other countries

CM RECOMMENDATION (2002)13: ACHIEVEMENTS AND THE WAY FORWARD

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1. Our Session 2 is devoted to share national experience on the dissemination of the translations of the Strasbourg Court judgments. For this purpose, we will discuss the situation in a number of member States (Italy, Poland, Russia and other countries)
2. Before this, it is useful to remind the background: for many years, the Council of Europe has been insisting on the need to publish and disseminate in all our member states the text of the European Convention on Human Rights and the case-law of the European Court of Human Rights.
3. The first step was the European Ministerial Conference on Human Rights held in Rome on 3-4 November 2000 to mark the 50th anniversary of the Convention. The Conference defined the Convention as “a constitutional instrument for safeguarding public order in Europe” and encouraged member States to, in particular,

“ensure that the text of the Convention is translated and widely disseminated to national authorities, notably the courts, and that the

developments in the case-law of the Court are sufficiently accessible in the language(s) of the country”.

4. The reason for this was, of course, that the Court’s case-law is “essential for the effective implementation of the Convention at national level as it enables to ensure the conformity of national decisions with this case-law and to prevent violations”.
5. Accordingly, the Council of Europe started a careful reflection on measures to be taken at national level to facilitate an **easy access** to the case-law of the Court.

* Drafting work in view of a non-binding legal instrument on the issue was conducted by the Steering Committee for Human Rights (CDDH), an intergovernmental body answerable to the Committee of Ministers and gathering legal experts from our 47 member States).

* As a result, the Committee of Ministers of the Council of Europe adopted on 18 December 2002 its **Recommendation Rec(2002)13** 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.

6. While acknowledging the diversity of traditions and practice in the member States as regards the publication and dissemination of judicial decisions, the Recommendation invited the governments of the member States to review their practice as regards the publication and dissemination of the text of the Convention and the Court’s judgments and decisions in the language(s) of the country.
7. The idea was to ensure two points:
 - i. that the text of the Convention, in the language(s) of the country, is published and disseminated in such a manner that it can be effectively known and that the national authorities, notably the courts, can apply it;
 - ii. that judgments and decisions which constitute relevant case-law developments, or which require special implementation measures on their part as respondent states, are rapidly and widely published, through state or private initiatives, in their entirety or at least in the form of substantial summaries or excerpts (together with appropriate references to the original texts) in the language(s) of the country, in particular in official gazettes, information bulletins from competent ministries, law journals

and other media generally used by the legal community, including, where appropriate, the Internet sites.

8. The Recommendation also encouraged, where necessary:

- (i) the regular production of textbooks and other publications, in the language(s) of the country, in paper and/or electronic form, facilitating knowledge of the Convention system and the main case-law of the Court;
- (ii) the publicity of the internet address of the Court's site (<http://www.echr.coe.int>) notably by ensuring that links to this site exist in the national sites commonly used for legal research;
- (iii) action to ensure that the judiciary has copies of relevant case-law in paper and/or electronic form (CD-Rom, DVD, etc.), or the necessary equipment to access case-law through the Internet;
- (iv) action to ensure the rapid dissemination to public bodies such as courts, police authorities, prison administrations or social authorities, as well as, where appropriate, to non-state entities such as bar associations, professional associations etc., of those judgments and decisions which may be of specific relevance for their activities, where appropriate together with an explanatory note or a circular;
- (v) action to ensure that the domestic authorities or other bodies directly involved in a specific case are rapidly informed of the Court's judgment or decision, for example by receiving copies thereof;
- (vi) finally, co-operation with a view to publishing compilations, in paper or in electronic form, of Court judgments and decisions that are available in non-official languages of the Council of Europe.

9. Four years after the adoption of this Recommendation, the follow-up to its national implementation was ensured by the CDDH. After having analysed information provided by all our member States, it reached the conclusion (document CDDH(2006)008) that the overall implementation of the recommendation was generally satisfactory and that numerous private initiatives to publish the Court's case-law contributed to such implementation. However:

* whereas the publication and dissemination of the Court's case-law concerning the state itself appeared to be sufficiently guaranteed, this was much less the case with regard to the case-law concerning other states. Further follow-up to the implementation of this recommendation should focus in particular on this aspect (dissemination of all relevant case-law of the Court concerning third states);

* in some countries there were still few textbooks and other publications in the language(s) of the country facilitating knowledge of the Convention system and the main case-law of the Court;

* no information was provided with regard to possible cooperation among states sharing a national language with a view to translating and disseminating the Court's case-law. Such states were encouraged to co-operate with a view to publishing compilations (in paper or in electronic form) of Court judgments and decisions that are available in non-official languages of the Council of Europe.

10. In 2009, the CDDH suggested that the Court could publish up-to-date information on its case-law on admissibility with translations into non-official languages. It also proposed to proceed to a further survey of the implementation and impact of the Recommendation.

11. What will be the way forward? In 2018, the CDDH is embarked upon a new exercise concerning this issue. We start on 16 October 2018 within a Drafting Group of the CDDH. It is envisaged, in particular, to encourage textbooks and other publications (paper or electronic) in the language(s) of the country likely to facilitate knowledge of the Convention system and the main case-law of the Court in Universities and in professional training, including training of legal translators, in order to overcome difficulties in translation of the case-law terminology used in Strasbourg. The possibility of setting-up trans frontier networks of case-law translators sharing the same language will also be considered.

12. Emphasis will also be given to the need of feeding the HUDOC database with the existing national translations of the Court's case-law (whatever the origin of the translations (public or private initiative) but under the condition that such national linguistic versions reflect accurately the official English or French text of the Court's judgment or decision.