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STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

CDDH report on the effective processing and resolution of cases relating to inter-State disputes[1]

[1] The CDDH recalls that the issue of inter-State applications is also under examination in the ongoing negotiations on the accession of the European Union to the European Convention on Human Rights. It underlines that insofar as they may be relevant, the contents of the present draft are without prejudice to these negotiations.

SUMMARY OF CONCLUSIONS

The CDDH proposes to the Committee of Ministers to: [2]

- ***Affirm*** the special character and significant importance of the inter-State procedure under Article 33 of the Convention allowing a State Party to bring before the Court an alleged breach of the Convention, notably to complain about systemic problems and administrative practices in another State Party with a view to vindicating the public order of Europe, within the framework of collective responsibility under the Convention, and to denounce violations by another State Party of the human rights of its nationals or other victims;

- ***Call*** on member States who are Parties in inter-State proceedings and related individual applications to fully comply with their obligations under Article 38 as interpreted by the Court at all stages of the proceedings;

- ***Invite*** the Court to continue to reflect on its working methods and allocate appropriate human resources so as to ensure effective and speedy examination and resolution of applications stemming from inter-State disputes, which often involve large-scale human rights violations, including by taking into account the consequences of the fact that the Russian Federation has ceased to be a member of the Council of Europe as from 16 March 2022 (Resolution CM/Res(2022)2), and a Party to the European Convention on Human Rights as from 16 September 2022;

- ***Affirm*** the potential of friendly settlement, notably under Article 39 of the Convention to resolve inter-State cases pending before the Court on the basis of respect for human rights as defined in the Convention and Protocols thereto, and ***invite*** the States Parties concerned to consider using this framework under active guidance from the Court;

- ***Commit*** itself to reviewing the political tools at its disposal for stimulating political dialogue between the States Parties to inter-State cases, with the potential contribution of other Council of Europe bodies such as the Parliamentary Assembly as well as the Secretary General and the Commissioner for Human Rights;

The CDDH:

- ***Underlines*** the interest of member States in the possible further clarification of the Court's jurisprudence on the question of the standing of States Parties to lodge an application under Article 33 of the Convention, and on the scope of the Court's jurisdiction.

[2] These elements also constitute the Draft Declaration of the Committee of Ministers on the effective processing and resolutions of cases relating to inter-State disputes (CDDH(2022)R97 Addendum 2).

- **Expresses** the interest of member States as regards the Court's future application of the admissibility criteria concerning the exhaustion of domestic remedies and the four-month time-limit, as provided for in Article 35 § 1 of the Convention, to inter-State applications.

- ***Welcomes*** the Court's case-management measures to accelerate the processing of inter-State applications at the admissibility stage, namely the immediate communication of an inter-State application to the respondent State as well as the examination on a case-by-case basis of the need to relinquish jurisdiction rapidly, where appropriate, over an inter-State case by a Chamber in favour of the Grand Chamber.

- ***Notes*** that it is desirable that the Court:

  - monitors and evaluates the impact of the above-mentioned case-management measures with a view to their consistent application and further development;

  - in connection with a proposed amendment of Rule 51 § 5 of the Rules of Court, maintains the possibility of the State Parties concerned to request the holding of a hearing on admissibility;

  - evaluates the effectiveness of the practice and modalities of adjourning the examination of individual applications which are considered to be connected to or subject to an overarching determination to be made in a ruling in an inter-State application and, if appropriate, on the basis of this evaluation formalises this practice in the Rules of Court;

  - monitors and evaluates the effectiveness of measures concerning the adjustment of processing of inter-State applications according to geographical or time criteria or legal questions raised;

  - ensures, in the context of its reflections on the amendments to Rule 46 § g of the Rules of Court, clarity and predictability as regards the duties of States Parties in inter-State proceedings to translate documents referred to in their written observations into one of the official languages of the Court;

  - evaluates the impact of setting time limits for the Parties' exchange of observations on just satisfaction, with a view to shortening the time-period between the judgment on merits and just satisfaction;

  - considers, in cases in which it has found the existence of administrative practice in breach of the Convention, the feasibility of enshrining in the Rules of Court the practice of requesting the applicant Government to submit a list of clearly identifiable individual victims at the outset of the just satisfaction procedure without prejudice to supplementing the list at a later stage, if need be;

  - evaluates the impact that the creation of a Conflicts' Unit within the Registry dealing with cases related to inter-State conflicts between Ukraine and Russia, Georgia and Russia, and Armenia and Azerbaijan, has had on the effective processing of these cases.

I. Introduction

1. In its terms of reference for 2022-2025, the Steering Committee for Human Rights (CDDH) was instructed by the Committee of Ministers to present by 31 December 2022 a "report on the effective processing and resolution of cases related to inter-State disputes including possible proposals to the Committee of Ministers."[3] The present document constitutes that report.

2. The CDDH recalls the Progress Report 2020-2021 on the effective processing and resolution of cases relating to inter-State disputes[4], which was adopted on 28 October 2021 by the Committee of Experts on the system of the European Convention of Human Rights (DH-SYSC) under the authority of the CDDH pursuant to their terms of reference. That document contains the background research and analysis for the conclusions and proposals included in the present report.

3. There are currently 19 inter-State applications pending before the European Court of Human Rights ("the Court"), with the majority relating to conflict situations, including armed conflicts between member States. There are also around 11 000 pending individual applications which the Court considers as connected to these inter-State applications or to an inter-State dispute. These amount to around 14% of the total number of pending individual applications which as of 1 August 2022 was 78 500.

4. Cases relating to inter-State disputes often involve grave and large-scale human rights violations, in many cases of vulnerable people. The effective response to such large-scale human rights violations is a responsibility for the Council of Europe as a whole, including the Court, and the Convention with its unique mechanisms of individual and inter-State applications constitute a unique asset at its disposal. These cases are complex and their processing is resource and time-consuming for the Judges and the Registry as well as for the member States concerned. This threatens to jeopardise the longer-term effectiveness of the control system of the European Convention on Human Rights ("the Convention"). The utmost importance of these cases requires that the Court, supported by the State Parties and the Council of Europe as a whole, takes the steps necessary to ensure their effective and speedy examination and resolution.

5. Eight of the inter-State applications pending before the Court are directed against the Russian Federation. There are approximately 2663 pending individual applications connected to the inter-State applications against the Russian Federation.[5] The latter ceased to be a Party to the Convention on 16 September 2022 as reflected in Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe adopted by the Committee of Ministers on 23 March 2022 and Resolution of 22 March 2022 of the Court.[6] While the Court remains competent to deal with applications directed against the Russian Federation in relation to acts or omission capable of constituting a violation of the Convention that occurred until 16 September 2022, questions have arisen as

[3] CM(2021)131-addfinal
[4] DH-SYSC(2021)R6 Addendum
[5] DH-SYSC-IV(2022)05REV Statistical Report on conflict related applications provided by the Registry of the Court.
[6] Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights; Resolution CM/Res(2022)3.

regards the processing of inter-State applications against the Russian Federation and individual applications connected to these. The Court is expected to elaborate a strategy for dealing with cases against or concerning the Russian Federation. The CDDH looks forward to further information on this strategy notably as regards the failure of the Russian Federation to participate in proceedings before the Court in pending cases against it as this failure is creating a major obstacle to the proper functioning of the inter-state procedures.

6. The CDDH's examination of the processing of cases related to inter-State disputes consisted of exploring ways of enhancing the capacity of the Court to deal with them more effectively. In this task the CDDH was guided by the principle that the real measure of effectiveness is not only the quantity of judgments and decisions rendered every year, but also the degree to which the Court is able to fulfil the role given to it under the Convention, namely to ensure the observance by the States Parties of their obligations under the Convention in compliance with Article 19.

7. The CDDH has taken fully into account the Declaration adopted by the High-Level Conference meeting in Copenhagen on 12 and 13 April 2018, which underlined the need not to limit the jurisdiction of the Court and to take into consideration the specific features of these categories of cases, *inter alia* regarding the establishment of facts.[7]

8. The CDDH emphasises the special character and significant importance of proceedings under Article 33 of the Convention in the light of the specific purpose of an inter-State application. Any State Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another State Party. The applicant State Party may complain about systemic issues in another State Party with a view to protecting the public order of Europe; may denounce violations by another State Party of the human rights of its nationals or other victims; or invoke the jurisdiction of the Court to establish the existence of a pattern of violations by another State Party, to put an end to them, and to prevent their recurrence.

9. Most of the CDDH's conclusions build on case-management measures and organisational initiatives already taken or envisaged by the Court and seek to encourage their further development based on an evaluation of their effectiveness. Given that a number of these measures are being implemented in pending inter-State proceedings, the Court will be able to evaluate their effects once the relevant proceedings have been concluded. Some of the proposals of the CDDH seek to reinforce the States Parties' commitment to fully implement their duty to co-operate with the Court under Article 38 of the Convention. Due regard for the principle of subsidiarity and the roles and responsibilities of the States Parties and Convention bodies enshrined in the Preamble, and Articles 1, 19, 32 and 46 of the Convention underpin the CDDH's proposals.

II. Procedural questions

10. The increasing number of inter-State applications and the very high number of pending individual applications relating to the same underlying issue as in inter-State applications are a serious challenge to the effectiveness of the Convention system, which could and should be addressed by appropriate targeted measures. The CDDH has analysed case-management measures that the Court has taken or envisages to take in order to ensure the efficient processing of these cases within a reasonable time. The CDDH draws some conclusions regarding the further development of these measures, and regarding some other questions that it has considered in the course of its mandate.

[7] Para.54(c).

a. Admissibility of inter-State applications

i. Admissibility criteria (in the narrow sense)

11. The CDDH has analysed the admissibility criteria applicable to inter-State and individual applications. The grounds for inadmissibility stipulated in Article 35 §§ 2 and 3 of the Convention and the criterion of proving victim status under Article 34 of the Convention do not apply to inter-State applications.

12. The admissibility criteria applicable to inter-State applications reflect the specific purpose of the inter-State application in the Convention system as affirmed in the Court's jurisprudence. Inter-State applications are concerned with the protection of the fundamental rights of individuals. In lodging an inter-State application, a State is not seeking to enforce its own rights, but rather is bringing before the Court an alleged violation of the public order of Europe. The inter-State application also provides the possibility for a State Party to denounce violations by another State Party of the human rights of its nationals or other victims.

13. The CDDH does not agree with the suggestion that the difference in admissibility criteria for inter-State and individual applications lodged in connection with the same events creates higher levels of human rights protection for individuals when their rights are invoked through inter-State applications. Consequently, it has rejected proposals to introduce more restrictive admissibility criteria for inter-State applications based on the co-existence of inter-State and individual applications lodged in connection with the same events.

14. The CDDH expresses its interest as regards the Court's future application of the admissibility criteria concerning the exhaustion of domestic remedies and the four-month time-limit, as provided for in Article 35 § 1 of the Convention, to inter-State applications.

ii. Standing under Article 33 of the Convention

15. In light of the above, the CDDH proposes to the Committee of Ministers that it affirms the special character of proceedings under Article 33 of the Convention in the light of the specific purpose of an inter-State application, as underlined by the Court in its jurisprudence.

16. The CDDH has discussed the issue of standing under Article 33 of the Convention, notably the question whether there is a need to differentiate between, on the one hand, the procedural right of a State Party to lodge an inter-State application concerning the substantive rights of entities which do not have standing to lodge an individual application with the Court and, on the other hand, the admissibility ground of having victim status in an individual application lodged under Article 34.

17. At the time of writing, the Court has ruled in only one case involving this issue. It has found that the issue falls outside the scope of any of the admissibility criteria set out in Article 35 of the Convention and is rather an issue of the jurisdiction of the Court under Article 32 § 2 of the Convention. The Court has ruled that Article 33 does not empower it to examine an inter-State application alleging a violation of Convention rights in respect of a legal entity that has no

standing to lodge an individual application. The Court lacks jurisdiction to take cognisance of such case. [8]

18. The CDDH will remain attentive to possible further clarification of the Court's jurisprudence on the question of the standing of States Parties to lodge an application under Article 33 of the Convention. It underlines the interest of States Parties in this area, notably as regards the scope of the Court's jurisdiction.

iii. Other aspects

19. The CDDH notes some case-management measures taken by the Court to accelerate the processing of inter-State applications at the admissibility stage. These include the immediate communication of an inter-State application to the respondent State pursuant to Rule 51 § 1 of the Rules of Court, and the rapid relinquishment of jurisdiction over an inter-State case by a Chamber in favour of the Grand Chamber pursuant to Article 30 of the Convention and Rule 72, having regard to the priority and the sensitive nature of such cases.[9]

20. The second practice was followed in respect of six inter-State applications. The period of time between the lodging of an inter-State application and the relinquishment of jurisdiction to the Grand Chamber was shorter for the applications lodged more recently.[10] The CDDH considers that an evaluation of the effectiveness of this practice as well as that of immediate communication of inter-State cases would be useful for the consistent application and further development by the Court of its case-management practices and working methods. Therefore, it agrees to welcome these practices and to invite the Court to undertake this evaluation.

21. The CDDH has also discussed a recommendation of the Committee of Working Methods adopted by the plenary Court to "ensure that the Court remains flexible if it wishes to handle questions of admissibility and merits of inter-State applications, where they are closely linked, at the same time."[11] It has also discussed the related conclusion of the Court regarding a possible amendment of Rule 51 § 5 of the Rules of Court "in order to clarify that the Chamber is not bound by a request from the Parties to hold an admissibility hearing" while "taking account of Article 29 § 2 of the Convention."[12]

22. Separate decisions on admissibility and the merits has been the Court's predominant practice in respect of inter-State applications, in accordance with Article 29 § 2 of the Convention. This provision allows the Court discretion to decide in exceptional cases on admissibility and merits at the same time. Rule 51 § 5 of the Rules of Court, which provides that a hearing on admissibility shall be held if one or more of the States Parties concerned so requests, is in harmony with Article 29 § 2 of the Convention. A hearing on admissibility decided

[8] *Slovenia v. Croatia* (dec.) [GC], no. 54155/16, §§43-45; 79.
[9] See Committee of Working Methods' proposals for more efficient processing of inter-State cases, redacted version of the report adopted by the Plenary of the Court on 18 June 2018, CDDH(2019)22, §§ 14,19, 32/1.
[10] The Chamber decided in May 2018 to relinquish jurisdiction to the Grand Chamber over the following applications: Ukraine v. Russia, no. 20958/14, 13 March 2014 ; Ukraine v. Russia (IV) no. 42410/15, 27 August 2015 ; Ukraine v. Russia (V) no. 8019/16, 13 March 2014 ; and Ukraine v. Russia (VI), no. 70856/16, 27 August 2015; see ECHR 173 (2018), 9.05.2018. The Chamber decided in May 2021 to relinquish jurisdiction to the Grand Chamber over the following applications Armenia v. Azerbaijan no. 42521/20, 27 September 2020 and Azerbaijan v. Armenia no. 47319/20, 27 October 2020; see ECHR 145 (2021), 12.05.2021. The Chamber decided in October 2021 not to relinquish jurisdiction to the Grand Chamber over the application Armenia v. Turkey, no. 43517/20. The request of the applicant Government to revise the Chamber's decision is pending before the Chamber.
[11] CDDH(2019)22, §§ 15-17;32/1.
[12] CDDH(2019)22, §§ 15-18.

by the Court upon a request of the States Parties concerned does not reduce the discretion of the Court to apply Article 29 § 2 of the Convention but rather contributes to the Court's assessment of the necessity of making a joint decision on admissibility and merits.

23. The CDDH is aware that a hearing on admissibility involves a preliminary procedure, with time needed for exchanging written observations by the States Parties and for holding the hearing. In connection with a possible amendment of Rule 51 § 5 of the Rules of Court along the lines explained above to clarify that the final decision would lie with the Court, and in view of the exceptional nature of a joint decision on admissibility and merits, the CDDH considers that the States Parties concerned should still be given the possibility to request a hearing on admissibility.

b. Prioritisation of inter-State cases

24. The Copenhagen Declaration affirmed the Court's present practice that, where an inter-State case is pending, individual applications raising the same issues or deriving from the same underlying circumstances are, in principle and in so far as practicable, not decided before the overarching issues stemming from the inter-State proceedings have been determined in the inter-State case.[13]

25. An example of this approach is the processing of individual applications against Ukraine or Russia or both countries in relation to the conflict in Eastern Ukraine which were lodged before the events of 2022. The Court considered that a key issue to be determined in these applications is whether Ukraine or Russia has jurisdiction over the matters complained of in accordance with Article 1 of the Convention, a question on which it expected to rule in the relevant inter-State application Ukraine v. Russia. To save as much time as possible, the Court decided that any related individual application which is not declared inadmissible or struck out at the outset will be communicated to the appropriate respondent Government or Governments for observations in parallel with the inter-State case. After receiving the Governments' observations and the applicants' observations in reply, it intended to adjourn each case, pending a judgment in the inter-State case, with a view to having the files complete and ready for decision or judgment against Ukraine, Russia or both as soon as possible thereafter.[14]

26. The CDDH would also welcome clarification as to whether the practice of adjourning the examination of individual applications is followed in respect of applications linked to other pending inter-State applications. If that is the case, in the interest of clarity and predictability of proceedings, the applicants should be informed of any decision made to adjourn the examination of their applications and be notified of all relevant developments affecting their cases. The issue/ question which is to be determined in the relevant inter-State case before the connected individual applications are decided should also be clearly communicated. A general practice of adjourning individual applications should not preclude the possibility for the Court to decide on the merits of individual applications when this is justified in the light of the factual basis of the respective cases, the arguments put forward by the respective individual applicants or respondent governments and overarching questions eventually emerging in proceedings of individual applications.

27. The pertinence of asking for observations from the applicants and the States Parties concerned when the Court intends to adjourn each individual application after receiving the observations is not immediately evident. Indeed, it must be borne in mind that the preparation of observations by States Parties is time and resource demanding. Furthermore, the respondent

[13] Para.45.
[14] ECHR 432 (2018), 17.12.2018

State may wish to complement its observations once the overarching issue has been determined in the inter-State case.

28. The CDDH notes the desirability of the Court evaluating the practice and modalities of adjourning individual applications subject to a ruling in an inter-State application and, if appropriate, on the basis of this evaluation formalise this practice in the Rules of Court.

c. Special measures in the event of a mass influx of applications

29. The CDDH notes the recent Practice Direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on the processing of applications in the event of a mass influx concerning individual applications under Article 34 of the Convention.[15] Special measures may be resorted to following the receipt of a large number of similar applications, notably "[…] the Registrar, under the authority of the President of the Court, may decide, in the interests of the proper administration of justice, to suspend provisionally the registration of some or all of these applications, pending a decision by a judicial formation in one or more leading cases on how the relevant applications are to be processed."[16]

30. Where the applications concerned are based on similar facts and/or involve similar complaints, the Registrar may, if necessary, request the presentation of the applications to be coordinated at national level and the re-submission of grouped applications within a fixed time-limit, in a particular format. The failure to re-submit an application as directed may result in the application not being examined by the Court. [17] The Practice Direction also includes specific provisions on the date of the introduction of the application and the communication of the Court with applicants. [18]

31. The CDDH notes that the special measures introduced with the Practice Direction may be applied to individual applications that the Court considers as linked to a pending inter-State case. At the time of writing the present report, the CDDH has not become aware of such special measures being resorted to in cases relating to inter-State disputes. The CDDH will remain attentive to future communications from the Court regarding the implementation of the Practice Direction.

d. Adjustment of processing of inter-State applications according to geographical or time criteria or legal questions raised

32. The Court divided geographically two applications lodged by Ukraine against Russia to make their processing more efficient; complaints relating to events in Eastern Ukraine and Donbas were split from complaints concerning events in Crimea.[19] Shortly after the Chamber relinquished jurisdiction over the four applications in favour of the Grand Chamber the latter decided to join them in two applications one regarding Crimea and one regarding Eastern Ukraine.[20]

[15] See edition of the Rules of Court which entered into force on 3 October 2022, page 74.
[16] Section II.§ 2, of the Practice Direction.
[17] Section II.§3, of the Practice Direction. Further instructions on the submission of grouped applications and multiple applicants, are contained in the Practice Directions on Institution of Proceedings.
[18] Section III and IV, at page 74.
[19] ECHR 173 (2018), 9.05.2018.
[20] ECHR 277 (2018), 27.08.2018.

33. The latter case was joined to two other applications, namely the inter-State application lodged by Ukraine against Russia concerning the alleged abduction of three groups of children in Eastern Ukraine and their temporary transfer to Russia and the inter-State application of The Netherlands against Russia concerning the downing of Malaysia Airlines Flight MH17 over Eastern Ukraine on 17 July 2014.[21]

34. In the admissibility decision for the case of Ukraine v. Russia regarding Crimea the Court confined its examination to the complaints formulated by the applicant government concerning the specific allegation of the existence of a pattern of human rights violations within a specific period of time.[22]

35. The Court has adopted a recommendation of the Committee of Working Methods to continue the practice of adjusting the processing of inter-State cases, if need be, according to geographical or time criteria or to the legal questions raised, in order to ensure more efficient and speedier processing. [23]

36. The CDDH notes that the joinder of applications lodged by different States Parties raises the question whether separate admissibility decisions are to be expected in respect of each State Party. Other practical questions relate to whether the States Parties concerned are expected to collaborate with each other when submitting their observations.

37. The CDDH considers that the information at its disposal regarding the application of measures to adjust the processing of inter-State applications according to geographical or time criteria or the legal questions raised is rather limited, covering only the cases mentioned in paragraphs 28-30 above. Therefore, it notes the desirability of the Court evaluating the effectiveness of these measures in these cases and their possible application to other inter-State applications. This is without prejudice to the Court's discretion to take any procedural or case-management decisions as it deems appropriate.

e. Translation of documents

38. The CDDH has discussed a recommendation of the Committee of Working Methods adopted by the plenary Court in respect of the "content of an inter-State application and the procedure before the Court" to "provide for the submission at the outset by the Contracting Parties of translations of the documents to which they refer in their respective observations in one of the Court's two official languages and amend [Rule 46 § g of the Rules of Court] accordingly." [24]

39. The CDDH notes that Rule 46 § g as it now stands concerns only the applicant State. Given the time and resources needed to translate documents, the CDDH considers that documents to which the States Parties refer in their written observations should be translated on a needs basis, upon request of the Court. This principle is consistent with Rule 34 § 4, c. Indeed, it is for the Court to establish the need to request the States Parties to provide translations into, or a summary in, English or French of all or certain documents to which the States Parties refer in their written submissions, or of any other relevant document or extracts therefrom.

40. The CDDH strongly supports the reflections within the Court to amend Rule 46 § g with a view to addressing questions of translation of documents. The scope of duties of the applicant and the respondent State would need to be defined separately taking into account the principles

[21] ECHR 354 (2020), 4.12. 2020.
[22] *Ukraine v. Russia (dec) [GC]*, nos. 20958/14 and 38334/18, § 236-248, 16 December 2020.
[23] CDDH(2019)22, § 32/2
[24] CDDH(2019)22, §§ 8-10; 32/1.

of equality of arms and procedural economy as well as the needs-basis and upon-request principle. The translation of documents should respond to the needs of each stage of proceedings. For example, until an application is communicated to the respondent State, there is unlikely to be a pressing need to request the applicant State to provide translations of all documents relating to the object of the application. The Registry should have sufficient proficiency in the relevant language to enable the Court to read these documents as provided, and to determine which documents need to be translated in one of its official languages by the applicant State after the application has been communicated. Should the Court need assistance from the States Parties in making such determination at any stage of proceedings, it may request the States Parties to provide a summary in one of its official languages of all or certain documents to which they refer in their observations. On this basis, the Court can determine which documents should be translated in full by the applicant or the respondent State, and within which time limits. Also, consideration should be given to the consequences of non-compliance with requests of the Court.

41. In light of the above, the CDDH notes the desirability of ensuring clarity and predictability as regards the duties of States Parties in inter-State proceedings to translate documents referred to in their written observations in one of the official languages of the Court upon its request and having due regard to the specific needs of each stage of proceedings. This is without prejudice to the States Parties' duties to comply with the Court's requests.

III. The establishment of the facts

42. Inter-State cases raise exceptional difficulties for the Court regarding the establishment and assessment of evidence, in particular when they concern armed conflicts involving thousands of people and taking place over a significant period of time across a vast geographical area. In cases concerning allegations of administrative practice in contravention of the Convention, usually there has been no examination of these practices by domestic courts. The Court is thus confronted with the same difficulties as a first-instance court.[25]

43. Other difficulties relate to the length of Parties' observations and annexes in some inter-State cases. At times, the respondent Government fails to provide the documents or information requested by the Court in order to establish the facts or obtain evidence or even to participate in proceedings before the Court in cases against it, including those arising out of inter-State disputes. In other cases, witnesses summoned by the Court fail to appear before it and the Court has no means to compel their attendance. It would be useful to reflect upon the reasons behind the witnesses' non-attendance and on the possible solutions, including for ensuring their safety.

44. The CDDH has analysed these challenges in the light of the Court's practice. First, it notes that the Court establishes the facts primarily on the basis of documentary evidence. It examines all the material before it, whether originating from the Parties or other sources, and, if necessary, obtains material *proprio motu*.[26] There are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment; the Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence including such inferences as may flow from the facts and the Parties' submissions. Proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the Parties when evidence is being obtained has to be taken

[25] *Ukraine v. Russia (dec) [GC]*, nos. 20958/14 and 38334/18, § 254, 16 December 2020; *Georgia v. Russia (I) [GC]*, no.13255/07, § 104, 3 July 2014.
[26] *Ireland v. United Kingdom*, no. 5310/71, § 160, 18 January 1978.

into account.[27] Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights.[28]

45. The Court has not carried out fact-finding visits in inter-State cases since the entry into force of Protocol no. 11 in 1998. Such visits are expensive, time-consuming, add to the length of proceedings and their success often depends on the full co-operation of the respondent State. This does not exclude, however, the possibility to have such fact-finding visits in the future again. To establish evidence, the Court relies increasingly on fact-finding hearings with witnesses in Strasbourg. This approach ensures venue-neutrality and has practical advantages as regards the availability of legal staff, equipment and interpreters. From the Court's perspective, it is cost-efficient that States Parties contribute to the organisation of fact-finding visits or when witnesses are summoned at the request of or on behalf of a Party, as the latter bears the costs of their appearance.

46. The Court often attaches importance to reports of independent international human rights protection associations or governmental sources, assessing their reliability based on the authority and reputation of their authors, the seriousness of the investigations on which they are based, the consistency of their conclusions, and whether they are corroborated by other sources.[29] The Court also has regard to reports of international governmental and non-governmental organisations.[30] The Court may hold a hearing with witnesses to test the veracity of the evidence set out in the reports by these international organisations[31] Reports or statements by international observers, non-governmental organisations or the media, or the findings of other national or international courts, are often taken into account to shed light on the facts or to corroborate findings made by the Court.[32]

47. Having discussed questions that were raised during the CDDH's work on the admissibility and probative value of evidence and its evaluation by the Court, the CDDH, supports the Court's evolving practice of fact-finding hearings with witnesses, as explained above, noting that witnesses' availability and ability to travel are essential considerations for the choice of venue for such hearings. New technology allowing for remote participation presents significant advantages for organising hearings with witnesses who are not physically present in Strasbourg. While all decisions concerning evidence are at the Court's discretion, the CDDH considers that a well-justified request by a party for a fact-finding visit or hearing, including information about their relevance, should be given due consideration by the Court.

48. The CDDH underlines the importance of the Parties to inter-State proceedings honouring their obligation to furnish all the necessary facilities to the Court under Article 38 of the Convention, including submitting documentary evidence to the Court, identifying, locating and ensuring the attendance of witnesses at hearings and replying to questions asked by the Court. If a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion, or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate.

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[27] *Zubayrayev v. Russia*, no. 67797/01, § 71 and 77, 10 January 2008; *Tagayeva and Others v. Russia*, nos. 26562/07 and al., § 586, 13 April 2017.
[28] *Georgia v. Russia (I) [GC]*, no.13255/07, § 94, 3 July 2014; *Georgia v. Russia* (II) (merits) [GC] no. 38263/08, § 59
[29] *Georgia v. Russia (I) [GC]*, no.13255/07, § 138, 3 July 2014; *Georgia v. Russia* (II) (merits) [GC] no. 38263/08, § 59, 21 January 2021.
[30] *Georgia v. Russia* (II) (merits) [GC] no. 38263/08, § 63, 21 January 2021; *Ukraine v. Russia (dec) [GC]*, nos. 20958/14 and 38334/18, §125, 16 December 2020.
[31] *Georgia v. Russia* (II) (merits) no. 38263/08, § 74, 21 January 2021.
[32] *Ukraine v. Russia (dec) [GC]*, nos. 20958/14 and 38334/18 § 257, 16 December 2020.

49. Against this background, the CDDH proposes to the Committee of Ministers to call on State Parties in inter-State proceedings or those relating to inter-State disputes to comply with their obligations under Article 38 of the Convention as interpreted by the Court.

IV. Just satisfaction

50. The CDDH notes that there have been long intervals of time between the judgement on the merits of inter-State cases and the judgment on just satisfaction.[33] In order to address this issue, the Court has started to implement a new practice of setting out in the operative part of the judgment on the merits a time-limit for the Parties' exchange of observations on just satisfaction.[34] Given that this practice is recent, the CDDH notes the desirability of the Court evaluating its impact in terms of shortening the time-period between the judgment on merits and just satisfaction.

51. The Court's jurisprudence has established that the beneficiary of an award of just satisfaction under Article 41 of the Convention in inter-State cases is not the applicant State but individual victims.[35] The Court assesses and decides on just satisfaction taking into account the type of complaint made by the applicant Government, whether the victims of violations can be identified, and the main purpose of bringing the proceedings in so far as this can be discerned from the initial application to the Court.[36]

52. The CDDH has discussed the issue of identification of individual victims in inter-State proceedings in which the Court has found the existence of administrative practice in breach of the Convention. It notes that the Court bases itself on a determination of a sufficiently precise and objectively identifiable group of people whose rights were violated. The Court requests the applicant Government at the outset of the just satisfaction procedure to submit a list of clearly identifiable individual victims and the respondent Government to provide all the relevant information and documents in its possession.[37] The Parties exchange observations in compliance with the adversarial principle.[38]

53. The Court examines the lists of victims submitted by the applicant Government and may consider that certain persons may not be regarded as victims or could not be awarded just satisfaction in that procedure because they had lodged individual applications on which the Court had already ruled.[39] The argument that the Court should identify each individual victim of the violations found through adversarial proceedings has been rejected by the Court.[40] The duty to cooperate with the Court in compliance with Article 38 of the Convention applies to both Parties in inter-State proceedings; the applicant Government who must substantiate their claims, and also the respondent Government in respect of which an administrative practice has been found to be in breach of the Convention.[41]

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[33] In the case of Cyprus v. Turkey (IV), no. 25781/94, 22.11.1994, the judgment on the merits was issued on 10 May 2001 whereas the judgment on just satisfaction on 12 May 2014. In the case of Georgia v. Russian Federation (I), no. 13255/07, 26.03.2007, the judgment on the merits was issued on 3 July 2014 and the judgment on just satisfaction on 31 January 2019.
[34] Georgia v. Russia (II) (merits) no. 38263/08, §16, 21 January 2021. CDDH(2019)22, §§ 30, 32/4.
[35] *Cyprus v. Turkey (just satisfaction) [GC]*, no. 25781/94, §§ 43-45, 12 May 2014; *Georgia v. Russia* (I) (just satisfaction), no. 13255/07, § 22, 31 January 2019; *Slovenia v. Croatia* (dec.) [GC], no. 54155/16, § 67.
[36] *Cyprus v. Turkey (just satisfaction) [GC]*, no. 25781/94, §43, 12 May 2014; *Georgia v. Russia (I)* (just satisfaction) [GC], no. 13255/07, § 20, 29 January 2019; *Georgia v. Russia* (II) (merits) no. 38263/08, § 350, 21 January 2021.
[37] CDDH(2019)22, §§ 31; 32/4.
[38] *Georgia v. Russia* (I) (just satisfaction), no. 13255/07, §§ § 159, 57, 31 January 2019.
[39] Ibid., § 70, footnote 3.
[40] Ibid., §§ 63-65
[41] *Ibid.*, § 60, 29 January 2019; *Georgia v. Russia* (II) (merits) no. 38263/08, § 351, 21 January 2021.

54. The CDDH supports the Court's practice of requesting the list of victims from the applicant Government in cases in which it has found the existence of administrative practice in breach of the Convention at the start of the just satisfaction procedure. It has rejected the idea that such a list should be requested at an earlier stage of proceedings, as this is unnecessary and creates an unjustified burden on the applicant State. The CDDH notes that, in the framework of the Committee of Ministers' supervision of the execution of the judgment in one inter-State case, the States Parties concerned agreed on the modalities for the payment of just satisfaction by the respondent State Party through a Council of Europe bank account held in escrow. This should be followed by the submission by the applicant State Party of a detailed list of individual victims together with information on the relevant violations suffered and the amount of compensation due to each victim as well as the mechanism to be established for the distribution of the sums awarded.[42]

55. The CDDH recalls that the Court has held that the duty to co-operate with the Court under Article 38 of the Convention is particularly important for the proper administration of justice where the Court awards just satisfaction under Article 41 of the Convention in inter-State cases, which applies to both Parties (see also paragraph 48 above).[43]

56. In light of the above, in cases in which the Court has found the existence of administrative practice in breach of the Convention, the CDDH notes the desirability of the Court considering the feasibility of enshrining in the Rules of Court the practice of requesting the applicant Government to submit a list of victims at the outset of the just satisfaction procedure without prejudice to supplementing that list at a later stage if need be. Furthermore, it proposes to the Committee of Ministers that it calls on States Parties in inter-State proceedings and related individual applications to comply with their obligations under Article 38, as interpreted by the Court, at the stage of just satisfaction, notably as regards the duty to produce all relevant information and documents in their possession.

V. Friendly settlement

57. The CDDH has taken stock of inter-State proceedings concluded following settlements or political agreements reached between the States Parties concerned as well as friendly settlements reached under former Article 28 § b) and current Article 39.[44] These proceedings, with the exception of one case, predate the entry into force of Protocol 11. The CDDH notes that, in the majority of inter-State cases pending before the Court, allegations of States Parties concern large-scale human rights violations in conflict situations.

58. Several aspects of the Court's friendly settlement procedure offer opportunities for the States Parties concerned to discuss and agree on various measures aimed at ensuring remedies for the alleged violations of the Convention. In this regard, the CDDH notes the consent-based approach and the confidentiality of negotiations, the fact that any adversarial proceedings subsequent to negotiations are conducted separately from and with due respect for the confidentiality of any friendly-settlement proceedings, the fact that written or oral

[42] CM/ResDH(2022)55; CM/Notes/1428/H46-26, 9 March 2022.
[43] *Georgia v. Russia (I)* (just satisfaction) [GC], no. 13255/07, § 60, 29 January 2019; *Georgia v. Russia* (II) (merits) no. 38263/08, § 351, 21 January 2021.
[44] Greece v. United Kingdom, no. 176/56, Report of the Commission (volume I), 26 September 1958, Resolution (59) 12, 20 April 1959, adopted by the Committee of Ministers Human Rights (Application No. 176/56); Greece v. United Kingdom (II), no. 299/57, Report of the Commission, 8 July 1959; *Denmark, Norway, Sweden v. Greece (II)*, no. 4448/70, Report of the Commission, 4 October 1976; *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, nos 9940-44/82, report of the Commission, 7 December 1985 (friendly settlement); *Denmark v. Turkey*, no. 34382/97, 5 April 2000.

communications or concession offers made in attempts to secure friendly settlement bear no consequences for any subsequent contentious proceedings, and the generally shorter period of time needed to resolve the case as compared to contentious proceedings. The Court acts as a guarantor of human rights regarding the agreed settlement; it does not automatically strike a case out of the list when a friendly settlement has been reached. It may indeed decide, pursuant to Article 37 § 1, sub-paragraph 2, of the Convention, to continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

59. Aware that the feasibility of friendly settlements in pending inter-State cases depends on the allegations in each case and the political willingness of the States Parties, the CDDH proposes to the Committee of Ministers to affirm the potential of the friendly settlement framework under Article 39 of the Convention to resolve them on the basis of respect for human rights as defined in the Convention and Protocols thereto, and to call on the States Parties concerned to consider using this framework.

60. Various comments concerning friendly settlement were made by independent experts during the Conference on "Inter-State cases under the European Convention on Human Rights – experiences and current challenges" organised by the German Chairmanship of the Council of Europe on 12 and 13 April 2021. One proposed that the Court should proactively draft a roadmap that sets out key points and a timetable for negotiations, and reviews the settlement proposed by the Parties after negotiations that they conducted on their own. The expert also suggested that the Court should prepare its Registry to be pro-active in inter-State cases, recognising and acting in key moments when friendly settlements may be possible. On the same view, a "search commission" could be set up which could be followed by settlement proposals in individual applications linked to inter-State cases based on the findings in the inter-State case.[45]

61. Another expert's comment focused on the friendly settlement of individual applications connected to inter-State cases. It construes the judgment in an inter-State case as one deciding on general legal questions of the Convention and outlining the parameters based on which the individual applications connected to the inter-State case would be decided. In this construct, the judgment in the inter-State case would serve as a new kind of pilot judgment, based on which the respondent State Parties concerned would try to reach friendly settlements with applicants in each individual cases; if they fail, the Court could decide on cases in some form of an abbreviated procedure.[46]

62. The CDDH considers that these comments and proposals, at present, remain under exploration within the expert community. The CDDH will remain attentive and open to their further development.

VI. Organisational measures

63. In spring 2021, a Conflicts Unit was created within the Registry to deal with cases stemming from the three major inter-State conflicts between Ukraine and Russia, Georgia and Russia, and Armenia and Azerbaijan.

64. The CDDH has exchanged views on the Conflicts Unit with the Registry. It notes that the aim of this reorganisation is partly to create greater consistency and coordination in the handling

[45] Proceedings of the Conference, Helen Keller "Is there room for friendly settlements in inter-state cases?", pages 90-91.
[46] Proceedings of the Conference Geir Ulfstein, Andreas Zimmermann, page 107. See also comments from Prof. Ulfstein in document DH-SYSC-IV(2022)04.

of cases concerning armed conflicts. Experience sharing on legal and administrative practices between lawyers and assistants working on the cases is expected to lead to their more efficient processing. The groups of cases concerning armed conflicts differ as regards their factual background but have many common features and present similar issues of assessment as regards both law and facts, for example questions of State jurisdiction, the evaluation of evidence and requirements on the applicants to substantiate their claims as well as the relationship between the Convention and international humanitarian law. It is expected that in the future, one judge rapporteur will be responsible for all cases concerning a particular conflict/project.

65. The Unit has three different projects and teams, one for each mentioned conflict. The teams are staffed with lawyers and assistants from third countries as well as from the countries concerned by the conflict, the latter being necessary to provide language skills as well as knowledge of the national legal systems and circumstances. Currently, the Unit has 14 lawyers, seven of whom are working part-time on other types of cases. In addition, there are eight secretaries, most of whom are serving other units within the Registry as well. The total capacity in the Unit (adding up full-time and part-time assignments) corresponds to nine lawyers and four secretaries. To boost case-processing capacity, the inter-State cases are mostly assigned to experienced lawyers who do not have the nationality of one of the State Parties involved and who are otherwise not members of the Conflicts Unit.

66. The CDDH welcomes the initiative of the Registry to create the Conflicts' Unit, which has the potential to accelerate the processing of cases related to the three relevant inter-State disputes. It notes the desirability of the Court evaluating the impact of this organisational measure and its project-focused approach as well as human resources needs of the Unit in question in terms of effective tackling the relevant case-load challenge of the Registry.

VII. General conclusions

67. Soon after the High-Level Conference meeting in Copenhagen in April 2018, the Court envisaged several measures aimed at processing more rapidly and effectively the pending inter-State applications and individual applications relating to inter-State disputes. The Court has started to implement some of these measures with others, notably those concerning possible amendments to the Rules of Court, which are still under consideration.

68. The present report has analysed these measures, highlighting their potential for streamlining and accelerating case-processing, while putting forward the considerations of the States Parties regarding their further development. A number of these measures – such as those concerning the case-management of inter-State cases at the admissibility stage, their prioritisation, and their processing according to geographical and time criteria or legal issues raised, the fact-finding function of the Court, and the identification of victims – are being implemented in pending inter-State proceedings. Therefore, the CDDH takes the view that the Court should evaluate the effects of these measures once the relevant proceedings have concluded. An evaluation of the impact of the Conflict's Unit, which was recently established within the Registry, would also be relevant to further enhancing the effective processing of cases relating to inter-State disputes.

69. Since the admissibility and evaluation of evidence and the establishment of facts are considered as being within the exclusive competence of the Court, the CDDH's proposals in these areas focus on the role of States Parties to the Convention to support the Court in the efficient conduct of judicial proceedings. The proposals seek to reinforce the States Parties' obligation under Article 38 of the Convention to co-operate with the Court, notably as regards

submitting documentary evidence, identifying, locating and ensuring the attendance of witnesses at hearings, and replying to questions asked by the Court. The CDDH also affirms the potential of the friendly settlement framework under Article 39 of the Convention to resolve inter-State cases pending before the Court on the basis of respect for human rights as defined in the Convention and Protocols.

70. Finally, the CDDH recalls the reflections on large-scale violations arising out of armed conflicts included in its 2015 report on the longer-term future of the system of the Convention which are still pertinent today.[47] The response to large-scale violations is a responsibility for the Council of Europe as a whole. While the Court addresses legal questions pertaining to the Convention,[48] the political dimension is left to political authorities and the existing European bodies and mechanisms. The Convention system relies on the collective responsibility of the Council of Europe to address the root causes and consequences of those violations and explore avenues for dialogue including through ad hoc mechanisms. The examination of the means available to the Council of Europe to respond to this challenge goes beyond the objectives of the present report. The CDDH reaffirms the need for the Committee of Ministers to review the political tools at its disposal for stimulating political dialogue between the State Parties to inter-State cases, as well as the potential contribution of other bodies such as the Parliamentary Assembly, the Secretary General and the Commissioner for Human Rights.

[47] CDDH(2015)R84 addendum 1, §§88, 130(v).

[48] The Court may also indicate interim measures under Rule 39 § 1 of the Rules of Court, which can be notified to the Committee of Ministers pursuant to Rule 39 § 2.