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STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

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

**Terms of reference given by the Committee of Ministers to the CDDH  
regarding the work of the DH-SYSC during the 2018-2019 biennium**

*(as adopted by the Committee of Ministers at its 1300<sup>th</sup> meeting, 21-23 November 2017)*

**and relevant extracts of the CDDH meeting reports**

## Terms of reference given by the Committee of Ministers to the CDDH regarding the work of the DH-SYSC during the 2018-2019 biennium

(as adopted by the Committee of Ministers at its 1300<sup>th</sup> meeting, 21-23 November 2017)

Set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution [CM/Res\(2011\)24](#) on intergovernmental committees and subordinate bodies, their terms of reference and working methods

**Type of committee:** Subordinate body

Terms of reference valid from: **1 January 2018 until 31 December 2019**

<b>PILLAR/SECTOR/PROGRAMME</b>
<b>Pillar:</b> Human Rights <b>Sector:</b> Protecting Human Rights <b>Programme:</b> Effectiveness of the ECHR System at national and European level
<b>MAIN TASKS</b>
Under the supervision of the Steering Committee for Human Rights (CDDH), the DH-SYSC will conduct the intergovernmental work intended to enhance the protection of human rights by improving the effectiveness of the system of the European Convention on Human Rights and the implementation of the Convention at national level, as assigned by the Committee of Ministers to the Steering Committee.
<b>SPECIFIC TASKS</b>
(i) Concerning the place of the European Convention on Human Rights in the European and international legal order, as well as the related challenges, prepare a draft report for the Committee of Ministers containing conclusions and possible proposals for action (deadline: 31 December 2019). (ii) Concerning the authority of the Court and its case-law: follow-up to the decisions that may be taken by the Committee of Ministers further to the submission, in December 2017, of the CDDH report on the process of selection and election of the judges at the European Court of Human Rights with a view to improving the current system (deadline: 31 December 2019). (iii) In light of the results achieved in the framework of the above-mentioned activities, contribute to the evaluation set out by the Interlaken Declaration, before the end of 2019, with a view to formulating proposals to the Committee of Ministers as to whether the measures adopted so far have proven to be sufficient to ensure sustainable functioning of the system of the Convention or whether more profound changes are necessary (deadline: 31 December 2019). (iv) Concerning the implementation of the Convention and execution of the Court's judgments: ensure that information is exchanged regularly - in order to assist member States in developing their domestic capacities and facilitate their access to relevant information (see paragraph 29 (a) i) of the Brighton Declaration and paragraph C. 1. g) of the Brussels Declaration); to this end, consider the different means to promote quicker exchange of information and experiences, to reinforce the status of the government agents, of the co-ordinators (c.f. para. 1 <a href="#">CM/Rec(2008)2</a> ), and to provide sufficient means to the state authorities involved in the functioning of the Convention and in the process of the execution of judgments. (v) Concerning university education and professional training in human rights, update Recommendation <a href="#">Rec(2004)4</a> in light of important developments taken place over more than 10 years in the field in the 47 member States of the Council of Europe, notably as a result of the European Programme for Human Rights Education for Legal Professionals (HELP) of the Council of Europe (deadline: 31 December 2019). (vi) Concerning effective remedies for excessive length of proceedings, update the accompanying Guide to Good Practice to Recommendation <a href="#">CM/Rec(2010)3</a> (deadline: 31 December 2019).
<b>COMPOSITION</b>
<b>Members:</b> Governments of member States are invited to designate one or more representatives of the highest possible rank in the field of human rights. The Council of Europe will bear the travel and subsistence expenses of one representative from each member State (two in the case of the State whose representative has been elected Chair).

Each member of the committee shall have one vote. Where a government designates more than one member, only one of them is entitled to take part in the voting.

#### **Participants:**

The following may send representatives, without the right to vote and at the charge of their corresponding administrative budgets:

- Parliamentary Assembly of the Council of Europe;
- Congress of Local and Regional Authorities of the Council of Europe;
- European Court of Human Rights;
- Council of Europe Commissioner for Human Rights;
- Conference of INGOs of the Council of Europe;
- HELP Network Consultative Board;
- Committees or other bodies of the Council of Europe engaged in related work, as appropriate.

The following may send representatives, without the right to vote and without defrayal of expenses:

- European Union (one or more representatives, including, as appropriate, the European Union Agency for Fundamental Rights (FRA));
- Observer States to the Council of Europe: Canada, Holy See, Japan, Mexico, United States of America;
- representatives of other international organisations (Organisation for Security and Co-operation in Europe (OSCE) / Office for Democratic Institutions and Human Rights (ODIHR), Office of the United Nations High Commissioner for Human Rights, Office of the United Nations High Commissioner for Refugees).

#### **Observers:**

The following may send representatives, without the right to vote and without defrayal of expenses:

- Belarus;
- Non-member States with which the Council of Europe has a Neighbourhood Partnership including relevant co-operation activities;
- Non-governmental organisations (Amnesty International, European Trade Unions Confederation (ETUC), International Commission of Jurists (ICJ), International Federation of Human Rights (FIDH), European Roma<sup>1</sup> and Travellers Forum, Open Society Justice Initiative (OSJI)), as well as the European Network of National Human Rights Institutions (ENNHRI).

#### **WORKING METHODS**

##### **Plenary meetings:**

48 members, 1 meeting in 2018, 3 days

48 members, 2 meetings in 2019, 3 days

The Committee will also appoint a Gender Equality Rapporteur from amongst its members.

The rules of procedure of the Committee are governed by Resolution [CM/Res\(2011\)24](#) on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

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<sup>1</sup> The term "Roma and Travellers" is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term "*Gens du voyage*", as well as persons who identify themselves as Gypsies. The present is an explanatory footnote, not a definition of Roma and/or Travellers.

**Extract of the report of the 87<sup>th</sup> CDDH meeting**  
(6-9 June 2017, document CDDH(2017)R87)

**ITEM 3: SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**  
**(DH-SYSC)**

3. The Chair of the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC), Ms Isabelle NIEDLISPACHER (Belgium), presented the outcome of its 3<sup>rd</sup> meeting (10-12 May 2017, document DH-SYSC(2017)R3). She recalled that, on this occasion, the DH-SYSC gave guidance on:

(i) the on-going work aimed to follow-up to the CDDH report on the longer-term future of the system of the Convention;

(ii) the work on Recommendation CM/Rec(2008)2 on efficient domestic capacity measures taken for rapid execution of judgments of the European Court of Human Rights;

(iii) the other on-going work, especially on Recommendation Rec(2004)4 on the European Convention on Human Rights in university education and professional training; the exchange of information regarding the implementation of the Convention and the execution of judgments of the Court ; State of signatures and ratifications of Protocols Nos. 15 and 16 to the Convention ; the Analysis of national reports on the implementation of the Brussels' Declaration by the member States.

4. The CDDH thanked the Chair of the DH-SYSC for this presentation and in particular for the draft terms of reference of the DH-SYSC for the next biennium, prepared by the Committee of experts at its 3<sup>rd</sup> meeting in May (see item 7 hereafter).

**3.1 Follow-up to the CDDH report on the longer-term future of the system of the Convention**

5. The follow-up work is focused on the process of selection and election of judges of the European Court of Human Rights (Drafting Group I, DH-SYSC I) and on the place of the European Convention on Human Rights within the European and international legal systems (Drafting Group II, DH-SYSC II).

**3.1.1 Drafting Group I (DH-SYSC-I)**

6. The Chair of the Drafting Group I on the follow-up to the CDDH Report on the longer-term future of the system of the Convention (DH-SYSC-I), Mr Vít A. SCHORM (Czech Republic), presented the work of the 3<sup>rd</sup> meeting of the Group (27 February - 1<sup>st</sup> March 2017, document DH-SYSC-I(2017)R3) regarding the process of selection and election of judges of Court and recalled that this work is conducted in close-cooperation with all actors concerned, such as the Court and its Registry, the Secretary General of the Parliamentary Assembly and the Secretary of the Advisory Panel.

7. It is recalled that the mandate of the Group is as follows:

- At their 1252<sup>nd</sup> meeting, the Ministers' Deputies agreed on the following: "deemed it essential that the judges of the Court enjoy the highest authority in national and international law and to this end instructed the CDDH to examine, while securing the participation of the Court and all other relevant actors concerned, the whole selection and election process, including all factors that might discourage

possible candidates from applying, in the light of conclusion § 203 i) and the relevant paragraphs of the report (document CDDH(2015)R84 Addendum I); ”

8. The Chair of the Drafting Group pointed out that, given the particular importance of this activity for the system of the Convention, it matters that the States who wishes to participate, designate an experienced representative in view of the 4<sup>th</sup> and last meeting (18-20 October 2017), during which the draft report on the process of selection and election of judges of European Court of Human Rights (DH-SYSC-I(2017)014) will be finalised with a view to its approval by the DH-SYSC in November and subsequently by the CDDH in December.

9. The CDDH thanked the Chair of the drafting Group for this presentation and endorsed the guidance given by the DH-SYSC (see document DH-SYSC-I(2017)R3 §§3-14). It noted that a revised version of the draft report will be prepared under the responsibility of the Chair and the Secretariat, in view of the 4<sup>th</sup> meeting of the drafting Group. This revised draft report:

(i) will follow the approach endorsed by the CDDH<sup>2</sup>: ”examine the possible measures to respond to the identified challenges in an inclusive approach (namely without excluding answers that would require an amendment of the Convention), while focussing on practical solutions to improve the current system; this work should involve a feasibility study”;

(ii) will contain an exhaustive analysis of the four themes identified by the DH-SYSC-I<sup>3</sup> while also considering alternative models;

(iii) will specify which responses would need an amendment of the Convention;

(iv) will present its current Appendixes I and II, such as they appear in the document DH-SYSC-I(2017)014 in two distinct reference documents in order to serve as basis for possible follow-up work;

(v) will take into account the comments made during the DH-SYSC meeting in May and at the present meeting, as well as contributions received from all the actors concerned and new contributions awaited from experts. To this aim, the CDDH invited the members, participants and observers to send any new contribution by the **23 June 2017**, 18:00 DGI-CDDH-Reform@coe.int; see the table of deadlines, hereafter.)

### **3.1.2 Drafting Group II (DH-SYSC-II)**

10. The Chair of the Drafting Group II on the follow-up to the CDDH Report on the longer-term future of the European Convention on Human Rights (DH-SYSC-II), Ms Florence MERLOZ (France), presented the results of the 1<sup>st</sup> meeting of the Group (30-31 March 2017, document DH-SYSC-II(2017)R1) on the place of the European Convention on Human Rights in the European and international legal order.

11. It is recalled that the mandate of the Group is as follows:

- At their 1252<sup>nd</sup> meeting, the Ministers’ Deputies agreed on the following: “instructed the CDDH to carry out a detailed analysis of all questions relating to the place of the Convention in the European and international legal order and on the medium-term and longer-term prospects, in the light of the relevant paragraphs of the report (conclusion § 203 iii of document CDDH(2015)R84 Addendum I).”

<sup>2</sup> See the document CDDH(2016)R85 §§4 and 13 and document DH-SYSC(2016)R1 §7.

<sup>3</sup> Procedure of selection; process of selection; employment and working conditions at the Court, the *ad hoc* Judges.

12. Firstly, she presented the results of the Seminar on the same subject, which took place in Strasbourg on 29 and 30 March 2017 at the initiative of the Norwegian authorities with the participation of the *PluriCourts* academic network.

- This event, which brought together judges of the International Court of Justice and the European Court of Human Rights, Government Agents, leading international legal scholars and practitioners, very usefully preceded the launching of the work of the Drafting Group.
- The publication of the proceedings will be an important basis for the forthcoming work within the DH-SYSC-II during the next biennium.
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13. The CDDH thanked the Norwegian authorities and especially Mr Morten RUUD (Norway) for his personal commitment in the preparation of the Seminar.

14. Regarding the work of the DH-SYSC-II, the CDDH endorsed the list of the three priority themes that need to be examined<sup>4</sup> in the light of the CDDH report on the longer-term future of the Convention system, namely:

- the challenge of the interaction between the Convention and other branches of international law, including international customary law;
- the interaction between the Convention and other international human rights instruments to which the Council of Europe member States are parties;
- the interaction between the Convention and the EU legal order, and other regional organisations.

15. The CDDH also endorsed the working methods foreseen by the drafting Group.<sup>5</sup> It is recalled that, with a view to its next meeting, the Secretariat is instructed to prepare a draft outline to facilitate the analyses that will be carried out.

16. The CDDH thanked the Chair of the Group for this presentation and noted that it will consecutively address the three above-mentioned themes, while taking care of planning the future themes whereas working on the present one.

17. Finally, the CDDH invited the experts to express their interest in becoming rapporteurs on one of these three themes, in view of the nomination of the rapporteurs at the 2<sup>nd</sup> meeting of the DH-SYSC-II (20-22 September 2017) (deadline for the applications by Friday, **1 September 2017** at 18:00 addressed to [DGI-CDDH-Reform@coe.int](mailto:DGI-CDDH-Reform@coe.int); see table of deadlines, hereafter).

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<sup>4</sup> See §§5-9 of DH-SYSC-II of the meeting report, document [DH-SYSC-II\(2017\)R1](#), as they stem from the CDDH report on the longer-term future of the system of the European Convention on Human Rights.

<sup>5</sup> See §§10-12 of document [DH-SYSC-II\(2017\)R1](#).

### **3.2 Work on Recommendation CM/Rec(2008)2 on efficient domestic capacity measures taken for rapid execution of judgments of the European Court of Human Rights**

18. The Chair of the Drafting Group of DH-SYSC on the Recommendation CM/REC(2008)2 ( DH-SYSC-REC), Ms Emanuela TOMOVA (Bulgaria), presented the results of the Group's work (6-8 March 2017, document DH-SYSC-REC(2017)R2), which resulted in the elaboration of a draft Guide to good practices on the implementation of the Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.

19. It is recalled that the mandate of the Group is as follows:

- "to take stock of its implementation, and make an inventory of good practices relating to it and, if appropriate, provide for updating the recommendation in the light of practices developed by the States Parties (deadline: 30 June 2017)" (specific task iv)).

20. The CDDH thanked the Chair for her presentation and welcomed the drafting Group for the quality of the work accomplished. It adopted the text as it appears in the document CDDH(2017)R87 Addendum I and decided to transmit it to the Committee of Ministers for information.

### **3.3 Other work within the DH-SYSC**

21. Regarding Recommendation CM/Rec(2004)4 on the European Convention on Human Rights in university education and professional training, the CDDH approved the DH-SYSC decision to proceed to its update.

22. The CDDH noted that a summary of the exchange of views that will take place within the DH-SYSC on the mechanisms to guarantee the compatibility of legislation with the Convention will be put online soon.

23. Finally, regarding the analysis of national reports on the implementation of the Brussels' Declaration by the member States, the CDDH asked the Committee of Ministers for an extension of the deadline until 30 June 2018, to analyse the national reports on the implementation of the Brussels' Declaration by the member States and invited the States that had not yet transmitted their national report to the Secretariat of the Committee of Ministers ([clare.ovey@coe.int](mailto:clare.ovey@coe.int)) to do so as soon as possible.

### **3.4 Exchange of views on the procedure of simplified communication of applications**

24. Upon request of several delegations this point had been added to the order of business. Mr John DARCY and Ms Paola TONARELLY-LACORE, representatives of the Registry of the European Court of Human Rights, presented the new simplified communication procedure of applications (IMSI), put in place by the Registry since March 2016 in respect of twelve State Parties to the Convention<sup>6</sup>. They stated that, having regard to the continually increasing number of Chamber judgments, this procedure is important as soon as it involves the Parties to a greater extent than previously in the preparation of cases in view of their judicial examination.

<sup>6</sup> Albania, Bulgaria, Germany, Greece, Hungary, Island, Italy, Romania, the Russian Federation, Spain, "the former Yugoslav Republic of Macedonia" and Turkey.

25. After the presentation, an exchange of views took place during which numerous participants expressed their concern with respect to the extension of this procedure after 31 December 2016 to other State Parties, yet without prior consultation with those States, although involving additional work for the capitals. The participants argued that the Registry extended this procedure even before having evaluated it together with the States, as initially foreseen. Accordingly, additional dialogue and consultation between the Registry of the Court and the Government Agents appear necessary before going any further in implementing this procedure.

26. Certain experts had also reservations as to the systematic use of Article 47 of the Rules of the Court, which in view of the excessive formalities it causes, thus entailing a risk of violation of Articles 6 and 34 of the Convention.

27. Mr John DARCY and Ms Paola TONARELLY-LACORE provided clarifications regarding the functioning of the IMSI procedure and confirmed that they will submit to the CDDH, by **30<sup>th</sup> June 2017** at 18:00, an assessment of the results mode of operating of this procedure. The Document of the Registry will be transmitted to the CDDH experts and DH-SYSC, inviting them to send their possible comments to the Secretariat by Friday, **1 September 2017** at 18:00, addressed to [DGI-CDDH-Reform@coe.int](mailto:DGI-CDDH-Reform@coe.int) (see table of deadlines, **Error! Reference source not found.** hereafter)<sup>7</sup>.

28. Finally, the CDDH noted that the document of the Registry and the possible comments received from the experts could be object of an exchange of views during the informal meeting of Government Agents foreseen in Prague on 13 October 2017.

### ***3.5 Envisaged Conference by the future Danish Presidency of the Committee of Ministers***

29. The Representative of Denmark informed the CDDH of the intention of his authorities to organise, during the future Danish Presidency of the Committee of Ministers of the Council of Europe (November 2017 – May 2018) a Conference which would allow an assessment of the Convention system and which would cover also the issue of dialogue between the European Court of Human Rights and the State Parties to the Convention. A preparatory experts meeting is foreseen in Copenhagen on 22-24 November 2017. The Conference will take place during spring 2018. Detailed information will be communicated in due time. The CDDH noted that its Bureau will hold its next meeting in Copenhagen at the dates combined with the preparatory meeting.

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<sup>7</sup> The Registry had sent to the Secretariat the document on 30 June 2017. The Secretariat forwarded it the same day to the participants to the CDDH and DH-SYSC ([Document #5769867 –IMSI Procedure](#)).

**Extract of the report of the 88<sup>th</sup> CDDH meeting**  
(5-7 December 2017, document CDDH(2017)R88)

**ITEM 3: SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

3. The Chair of the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC), Ms Isabelle NIEDLISPACHER (Belgium), presented the outcome of its 4<sup>th</sup> meeting (9-10 November 2017, document [DH-SYSC\(2017\)R4](#)). She recalled that the DH-SYSC considered in depth the on-going work aimed to follow-up the CDDH report on the longer-term future of the system of the Convention. In this context, the DH-SYSC:

- (i) approved the draft Report prepared by its drafting Group I on the process of selection and election of judges of the European Court of Human Rights and decided to transmit it to the CDDH for adoption at its present meeting (see item 3.1 below);
- (ii) endorsed the working methods and the draft Outline elaborated by its drafting Group II on the place of the Convention in the European and international legal order (see item 3.2 below).

4. The Chair of the DH-SYSC also informed that the Committee prepared extensive draft comments on [Recommendation 2110 \(2017\)](#) of the Parliamentary Assembly on the implementation of judgments of the European Court of Human Rights which it submitted to the CDDH for adoption at its present meeting (see item 2 above and [Appendix III](#) below).

5. Finally, she indicated that the DH-SYSC (i) gave guidance on the on-going work concerning on the update of Recommendation [CM/Rec\(2004\)4](#) of the Committee of Ministers to member States on the European Convention on Human Rights in university education and professional training; (ii) decided on a new theme in the framework of the exchange of information on the implementation of the Convention and the execution of the Court's judgments, namely third-party interventions; (iii) exchanged information on the prospects of signatures and ratifications namely of Protocols Nos 15 and 16 and transmitted it to the CDDH.

***3.1 Selection and election of judges of the Court (DH-SYSC-I)***

6. The Chair of the Drafting Group I on the selection and election of judges of the Court (DH-SYSC-I), Mr Vít A. SCHORM (Czech Republic), presented the results of the Group's work, which led to the elaboration of a draft Report on the process of selection and election of judges of the European Court of Human Rights (document [DH-SYSC\(2017\)R4Add](#)).

7. The CDDH reviewed the contents of the document and commended the quality of the work accomplished. Further to its review, it adopted its Report as it appears in document [CDDH\(2017\)R88addI](#) and decided to transmit it to the Committee of Ministers for information and possible follow-up.

### **3.2 Place of the Convention in the European and international legal order (DH-SYSC-II)**

8. The Chair of the Drafting Group on the place of the European Convention on Human Rights in the European and international legal order (DH-SYSC-II), Ms Florence MERLOZ (France), presented the results of the 2<sup>nd</sup> meeting of the Group (20-22 September 2017, document DH-SYSC-II(2017)R2).

9. The CDDH exchanged views on the working methods proposed by the Group. In endorsing them, it took note of the draft outline and the planning that the Group envisaged for its work as well as the election of Rapporteurs and Contributors. The CDDH underlined the importance of following the planning set due to the large scope of the work and the number of actors involved in the drafting process.<sup>8</sup> Concerning these aspects, the CDDH:

- (i) noted the high number of member States which participated at their own expense in the 2<sup>nd</sup> meeting of the Group and welcomed the interest that they show for this work. The CDDH hopes that, in the future, the costs of representatives from these States could also be covered by the budget of the Council of Europe, subject to the availability of budgetary resources and following a rotation system (see Appendix XI below);<sup>9</sup>
- (ii) authorized the Group to hold an additional 7<sup>th</sup> meeting of the Group in 2019 (see the calendar in Appendix XII below);
- (iii) welcomed the appointment of Mr Petr VÁLEK (Czech Republic) as a representative from Committee of Legal Advisors on Public International Law (CAHDI) to participate in the meetings of the Group;
- (iv) invited the participants to send to the Secretariat by the 20 December 2017 at 18:00 (DGI-CDDG-Reform@coe.int)<sup>10</sup> suggestions of names of *ad hoc* experts to invite to meetings of the DH-SYSC-II.

### **3.3 Other work within the DH-SYSC**

10. The CDDH endorsed the decision of the DH-SYSC to set up a new Drafting Group DH-SYSC-III to update Recommendation CM/Rec(2004)4 of the Committee of Ministers to member States on the European Convention on Human Rights in university education and professional training. It noted that the Group will organise its work in 2018 through video conferences with the help of written contributions which will be made available by electronic means.

11. The CDDH took note of: (i) the upcoming work on the update of the Guide to good practice accompanying Recommendation CM/Rec(2010)3 of the Committee of Ministers to member States on effective remedies for excessive length of proceedings; (ii) the decision of

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<sup>8</sup> See §§6-11 of document DH-SYSC-II(2017)R2.

<sup>9</sup> Subject to the availability of budgetary resources, it is envisaged that the following member States would also be covered by the budget of the Council of Europe to participate in the following meetings:

- 3<sup>rd</sup> meeting (3-5 April 2018) and 5<sup>th</sup> meeting (March 2019): Albania, Austria, Azerbaijan, Bosnia-Herzegovina, Denmark, Finland, Germany, Greece, Russian Federation, United Kingdom
- 4<sup>th</sup> meeting (25-28 September 2018) and 6<sup>th</sup> meeting (May 2019): Greece, Poland, Romania, Russian Federation, Serbia, Spain, Sweden, Turkey, Ukraine, United Kingdom
- 7<sup>th</sup> meeting (September 2019): it is envisaged that the Council of Europe will cover the costs of all the participants.

<sup>10</sup> See §18 i) of document DH-SYSC-II(2017)R2.

the DH-SYSC to work on third-party interventions<sup>11</sup> in the framework of its exchange of information on the implementation of the Convention and the execution of the Court's judgments.

***3.4 High-level Expert Conference “2019 and Beyond – Taking stock and moving forward from the Interlaken Process” (Kokkedal, Denmark, 22-24 November 2017)***

12. The Danish delegation informed about the outcome of the High-level Expert Conference “2019 and Beyond – Taking stock and Moving Forward from the Interlaken Process” (Kokkedal, Denmark, 22-24 November 2017) under the aegis of the Danish Presidency of the Committee of Ministers (November 2017 – May 2018). The CDDH commended the Danish authorities for the quality of this event, which gathered over 80 participants, out of which several members of the CDDH, including its Chair and vice-Chair, and which focused on the issue of dialogue between the Court and the States parties. It noted that a roundtable with actors from civil society will take place in Copenhagen in January 2018. This work is a part of the preparation of the High-level Conference which will take place in Copenhagen from 11 to 13 April 2018.

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<sup>11</sup> In particular: (i) who may make third-party interventions; (ii) the content of observations; (iii) the procedures for identifying judgments of the Court justifying a third-party intervention by the member States.

**Extract of the report of the 89<sup>th</sup> CDDH meeting**  
(19-22 June 2018, document CDDH(2018)R89)

**ITEM 4: SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

11. The CDDH examined the follow-up to the Copenhagen Declaration as well as the work under way in the Drafting Groups DH-SYSC-II, DH-SYSC III and in the Committee of Experts on the system of the Convention (DH-SYSC).

**4.1 Follow-up to the Copenhagen Declaration**

12. The delegation of Denmark in the CDDH presented the results of the High-level Conference "*Continuing Reform of the European Court of Human Rights Convention System - Better Balance, Improved Protection*", organised by the Danish Chairmanship of the Committee of Ministers and held in Copenhagen on 11–13 April 2018. The CDDH expressed its appreciation of the event and warmly thanked the Danish authorities for their hospitality.

13. The CDDH exchanged views with the Danish delegation on the Copenhagen Declaration adopted at this Conference. Referring to § 41 of this Declaration, the Danish delegation announced that Denmark will host another informal meeting between States Parties and other stakeholders to discuss the implementation of the Copenhagen Declaration, presumably in October 2018 in Kokkedal.

14. Moreover, the CDDH took note of the information provided by the delegation of Denmark as well as by the Secretariat on the decisions of the 128<sup>th</sup> Session of the Committee of Ministers (Elsinore, Denmark, 18 May 2018) concerning the follow-up to be given to the Declaration of Copenhagen.

**4.2 The place of the Convention in the European and international legal order (DH-SYSC-II)**

15. The Chairperson of the Drafting Group on the place of the European Convention on Human Rights in the European and international legal order (DH-SYSC-II), Ms. Florence MERLOZ (France), reported on the works of the Group's 3rd meeting (3–5 April 2018). In this context the Chairperson:

- (i) stated that Mr Petr VÁLEK (Czech Republic), Vice-Chairperson of the Committee of Legal Advisers on Public International Law of the Council of Europe (CAHDI), had participated in the meeting and provided a valuable contribution to the Group's work;
- (ii) informed the CDDH that she had presented the Group's work to the CAHDI on 22 March 2018 upon the invitation of the latter. She furthermore pointed out that the presentations made to the Group by two *ad hoc* experts, Professor Rick LAWSON (University of Leiden) and Professor Sébastien TOUZÉ (University Paris II Panthéon-Assas) were much appreciated and useful for the Group;<sup>12</sup>

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<sup>12</sup> Prof. LAWSON and TOUZÉ made presentations on respectively (i) State responsibility and extraterritoriality of the Convention; and (ii) the interaction between international humanitarian law and the Convention.

- (iii) stated that, at its 3<sup>rd</sup> meeting, the Group had considered issues concerning (i) State responsibility and extraterritorial application of the European Convention on Human Rights (ECHR) and (ii) interaction between the resolutions of the Security Council and the ECHR on the basis of two chapters presented by the co-rapporteurs.<sup>13</sup> In addition, the Group held a first discussion on the issues of (iii) the methodology of interpretation by the European Court of Human Rights and its approach to international law and (iv) the interaction between international humanitarian law and the ECHR. The co-rapporteurs had been invited to submit to the Group, before 29 June 2018, draft chapters prepared or revised in the light of the decisions taken by the Group at the meeting. The Chair emphasised that the purpose of the work was not to give instructions to the Court, but to preserve the effectiveness of the Convention system against the risk of fragmentation of the international legal order.

16. The Chairperson of DH-SYSC II recalled that at its forthcoming 4<sup>th</sup> meeting (25–28 September 2018), the DH-SYSC-II would discuss and adopt the entire chapter on the challenge of interaction between the Convention and other branches of international law (Theme 1) of its future report, which consists of the four parts mentioned above. Furthermore, it would hold a first discussion on the challenge of the interaction between the ECHR and other international human rights instruments to which the Council of Europe member States are parties (Theme 2).

17. During its exchange of views on the work of the Drafting Group, the CDDH expressed its appreciation to the Chairperson for the considerable amount of work already accomplished by the Group on this complex issue. In this regard, the CDDH:

- (i) recalled that by the end of this biennium (92<sup>nd</sup> meeting, November 2019) it should adopt the future report on the place of the Convention in the European and international legal order. It was part of the discussions on the longer-term future of the ECHR system and should be reflected in the "contribution of the CDDH to the Interlaken process" at the end of 2019.
- (ii) noted that it had been agreed that the follow-up to be given to the future report will depend on the findings and proposals made by the latter and should be determined after the finalisation of the report. An overview of the "contribution of the CDDH to the Interlaken process" should be prepared for the CDDH meeting in November 2018.

18. *Committee of Experts on the system of the European Convention on Human Rights (DH-SYSC)* - With regard to the work of the DH-SYSC, the CDDH took note of the Council of Europe's budgetary restrictions and noted that the main task of the DH-SYSC at its next meeting would be to consolidate the work currently conducted by its DH-SYSC-II Drafting Group<sup>14</sup>. It was agreed that the meeting of the DH-SYSC scheduled for 18–19 October 2018 would be postponed until 2019, which would enable the Committee of Experts to take a decision on the work of the DH-SYSC-II at an advanced stage of the latter's work.

#### **4.3 The ECHR in university education and professional training (DH-SYSC-III)**

19. The CDDH was informed about the preparatory work of the Drafting Group on the follow-up to Recommendation Rec(2004)4 (DH-SYSC-III) and the envisaged next steps. In

<sup>13</sup> Mr Chanaka WICKREMASINGHE (United Kingdom) and Prof. Alexei ISPOLINOV (Russian Federation).

<sup>14</sup> Furthermore, the DH-SYSC will be called upon to organise relevant work on the Guide to Good Practice that accompanies Recommendation Rec (2010) 3 of the Committee of Ministers to member States on effective remedies for excessive length of proceedings.

particular, two documents prepared by the Secretariat had recently been distributed - one (DH-SYSC-III(2018)02) containing proposals on the method of updating Recommendation Rec(2004)4 and the other (DH-SYSC-III(2018)03) containing updated information on the implementation of Recommendation Rec(2004)4 by the member States.

20. The CDDH invited all its participants to submit their comments and proposals. Moreover, it invited national delegations in particular to check the information concerning their own country before 16 July 2018, so that the Secretariat could prepare a consolidated version of the two documents by September 2018. It was at present envisaged that the members of the Group would pursue their exchanges electronically; a meeting in Strasbourg might nevertheless be envisaged for December 2018 or January 2019.

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**Extract of the report of the 90<sup>th</sup> CDDH meeting**  
(27-30 November 2018, document CDDH(2018)R90)

**ITEM 4: SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

11. With regard to the work related to the system of the European Convention on Human Rights, the CDDH examined the work in progress in the Drafting Groups DH-SYSC-II and DH-SYSC-III and in the Committee of Experts on the system of the Convention (DH-SYSC); the follow-up to the Interlaken, Brussels and Copenhagen Declarations, as well as issues regarding the selection and election of the Judges of the Court. Furthermore, it exchanged views on the Seminar organised on 26 November 2018 on the occasion of the 20<sup>th</sup> anniversary of the new Court.

**4.1 The place of the Convention in the European and international legal order (DH-SYSC-II)**

12. The Chairperson of the Drafting Group on the place of the European Convention on Human Rights in the European and international legal order (DH-SYSC-II), Ms Florence MERLOZ (France), reported on the work of the 4<sup>th</sup> meeting of the Group (25–28 September 2018).

13. During this meeting, the Group discussed in particular Theme 1 (The challenge of the interaction between the Convention and other branches of international law, including international customary law) of the draft future report of the CDDH on the European Convention on Human Rights in the European and international legal order.

14. The Chairperson of the Drafting Group explained that the Group, at this stage:

- (i) had provisionally adopted the draft chapters on sub-themes i) (Methodology of interpretation by the European Court of Human Rights and its approach to international law) and iii) (Interaction between the resolutions of the Security Council and the European Convention on Human Rights) and transmitted them to the CDDH for information and possible guidance. The Group considered that its examination of the two sub-themes was closed as to the substance, it being understood that a review would take place at the end of the biennium to harmonise the form of the entire document and that the texts could be updated in the event that the Court would make new important judgments before the final adoption of the entire future report in 2019;
- (ii) examined in detail the revised draft chapter on sub-theme ii) (State responsibility and extraterritorial application of the European Convention on Human Rights) prepared by the co-Rapporteurs. As a result of this review, the Group requested the Secretariat to prepare a revised version of this chapter, under the responsibility of the Chair, in order to take into account the in-depth discussions that took place at the meeting; this version would form the basis of the work at the next meeting (February 2019). In line with the Group's instructions, the Chair further reported on the state of the works on this chapter to the CDDH, with a view to obtaining possible guidance for the February 2019 meeting;

- (iii) decided not to retain the proposal made by one delegation to address also questions relating to the execution of judgments in the future report and notably in its chapter on State responsibility and extraterritorial application of the Convention, but agreed to submit this issue to the CDDH at its forthcoming meeting for final guidance on this matter;
- (iv) postponed the examination of the draft chapter on sub-theme (iv) (Interaction between international humanitarian law and the European Convention on Human Rights) to its next meeting (February 2019) in view of time constraints.

15. The Group had further held an exchange of views on Theme 2 (The challenge of the interaction between the Convention and other international human rights instruments to which the Council of Europe member States are parties), following a presentation on the topic by Professor Photini PAZARTZIS (Greece, Professor and Director of the Public International Law Centre at the National and Kapodistrian University of Athens, Member of the UN Human Rights Committee) which was much appreciated by the Group.

16. The Group had finally invited the CDDH to authorise an additional day for the Group's meeting in February 2019 to allow it to complete the examination of Theme 1 by finalising the draft chapters on sub-themes ii) and iv).

17. In June 2019, the CDDH would be invited to examine the parts of the draft report that will be completed at that time and, in the light of its guidance, the Group would finalise the text at its 7<sup>th</sup> meeting (11–13 September 2019) for transmission to the CDDH for adoption at its 92<sup>nd</sup> meeting (26–29 November 2019). The detailed work schedule of the DH-SYSC-II appears in [Appendix V](#) below for information.

18. During its discussion of the work of the Drafting Group, the CDDH expressed its appreciation for the considerable amount of work already accomplished by the Group on this complex subject-matter.

19. Furthermore, the CDDH:

- (i) gave some guidance concerning the draft chapters of sub-themes i) and iii) which should be reflected in the finalised text of the report;
- (ii) exchanged views on whether questions relating to the execution of judgments should be addressed in the future report and notably in its chapter on State responsibility and extraterritorial application of the Convention. All but one delegation considered that this goes beyond the scope of the future report to be drafted by the DH-SYSC-II on the European Convention on Human Rights in the European and international legal order and the analysis of the risks of fragmentation arising from diverging interpretations. It was however, acknowledged that difficulties may indeed arise for the States at the stage of the execution of judgments in situations of extraterritoriality. This could be briefly mentioned in the future report, but should not be discussed in detail since it went beyond the scope of the report as discussed. In any event, the unconditional character of the obligation to execute the Court's judgments under Article 46 of the Convention had to be recalled in this context;

- (iii) authorised the DH-SYSC-II, subject to the availability of the necessary funds, to prolong its next meeting (6–8 February 2019) by one day (5 February 2019) in order to enable it to complete the drafting of Theme 1 by finalising the draft chapters on sub-themes ii) and iv).

#### **4.2 The ECHR in university education and professional training (DH-SYSC-III)**

20. The CDDH was informed of the work accomplished by the Drafting Group on the follow-up to Recommendation Rec(2004)4 (DH-SYSC-III) at its meeting in October 2018, in particular of the preliminary draft of the revised Recommendation and its basic principles ([Appendix VI](#) below).

21. The CDDH welcomed the progress accomplished, approved the abovementioned preliminary draft and provided guidance to the DH-SYSC-III, with a view to finalising its work within the deadline set by the Committee of Ministers (31 December 2019).

#### **4.3 Follow-up to the *Interlaken Declaration* - Preparation of the final report**

22. It is recalled that the Interlaken Declaration (2010) sought to establish a roadmap for the reform process towards long-term effectiveness of the Convention system.<sup>15</sup> It notably invited the Committee of Ministers to decide, before the end of 2019, whether the measures adopted in the course of the reform process had proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes would be necessary.<sup>16</sup>

23. The CDDH exchanged views on how to organise the work on the follow-up to the Interlaken Declaration in order to submit to the Committee of Ministers, by the end of 2019, a CDDH final report entitled *Contribution to the evaluation provided for by the Interlaken Declaration*.

24. From this perspective, the CDDH:

- (i) adopted the preliminary draft table of contents of the future report as it appears in [Appendix VII](#) below;
- (ii) concerning the content and format of the future report, considered it advisable that the document submitted to the Committee of Ministers be as brief as possible, with references to existing documents for more details, and written in an accessible language. It should contain a table of contents and a concluding section, which should include an evaluation of whether the measures adopted so far in the Interlaken reform process had proven to be sufficient to ensure a sustainable functioning of the system of the Convention or whether more profound changes would be necessary. This question had been partly answered in previous CDDH reports which should be reflected in the future report. Moreover, the latter could contain proposals for further reflection and/or future action.<sup>17</sup>

<sup>15</sup> See the [Interlaken Declaration](#) of 19 February 2010 of the High Level Conference on the Future of the European Court of Human Rights, PP 10.

<sup>16</sup> See the [Interlaken Declaration](#), Implementation of the Action Plan, point 6.

<sup>17</sup> As for the additional elements which the Ministers' Deputies had invited the CDDH to include in its future contribution to the evaluation of the Interlaken Process at their meeting on 30 May 2018, see item 4.5 below.

#### 4.4 Follow-up to the *Brussels Declaration*

25. The Secretariat informed the CDDH of the status of the follow-up to the Declaration adopted by the Committee of Ministers at the High-level Conference on “Implementation of the European Convention on Human Rights, our shared responsibility” held in Brussels on 26–27 March 2015.<sup>18</sup>

- (i) This follow-up included in particular a compilation (available at the meeting) and an analysis, to be carried out by the Secretariat, of the information received from 24 member States on the national implementation of the Declaration.
- (ii) The analysis should be presented to the CDDH at its meeting in June 2019. The results of the analysis should equally be reflected in the *Contribution to the evaluation provided for by the Interlaken Declaration* (see item 4.3 above).
- (iii) It was further agreed that the Secretariat would send a first draft of the analysis to the member States not having submitted information on the national implementation of the Brussels Declaration by 8 April 2019 so that these States could submit national information supplementing the draft analysis by 30 April 2019.

#### 4.5 Follow-up to the Copenhagen Declaration

26. Following the High-Level Conference regarding the reform of the Convention system in Copenhagen on 12–13 April 2018, the Ministers’ Deputies, at their meeting on 30 May 2018,<sup>19</sup> had invited the CDDH to include the following additional elements in its future *Contribution to the evaluation provided for by the Interlaken Declaration* (see item 4.3 above):

- (i) a comprehensive analysis of the Court’s backlog of cases, identifying and examining the causes of the influx of cases from the States parties in order to identify the most appropriate solutions at the level of the Court and the States parties;
- (ii) proposals on how to facilitate the prompt and efficient handling of cases, in particular repetitive cases, which the parties were prepared to settle by means of a friendly settlement or a unilateral declaration;
- (iii) proposals on how to handle more effectively cases related to inter-State disputes, as well as individual applications arising from situations of conflict between States, without thereby limiting the jurisdiction of the Court, taking into account the specific features of these categories of cases, *inter alia* regarding the establishment of facts, and;
- (iv) questions relating to the situation of judges of the European Court of Human Rights after the end of their mandate, mentioned in paragraphs 154 and 159 of the 2017 CDDH Report on the process of selection and election of judges of the European Court of Human Rights (document CM(2018)18-add1).

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<sup>18</sup> [https://www.echr.coe.int/Documents/Brussels\\_Declaration\\_ENG.pdf](https://www.echr.coe.int/Documents/Brussels_Declaration_ENG.pdf)

<sup>19</sup> 1317<sup>th</sup> meeting of the Deputies, decisions following the 128<sup>th</sup> Session of the Committee of Ministers held in Helsingør (Denmark) on 17-18 May 2018. Reference documents: [CM/PV\(2018\)128-prov](#), [CM/PV\(2018\)128-add](#), [CM\(2018\)OJ-prov5](#), [SG\(2018\)1](#), [CM/Inf\(2018\)10](#), [CM/Inf\(2018\)11](#), [CM\(2018\)18-add1](#).

27. The Registry of the European Court of Human Rights confirmed that it could provide the CDDH with statistics which would enable the later to analyse the Court's backlog. The delegations stressed the importance of legible statistical material which would enable the CDDH to identify the main areas (such as conflict cases, condition of detention cases etc.) and the reasons for the Court's case-load. The Registry further explained that it could provide the CDDH with a document on a future non-contentious stage of the proceedings before the Court and an updated report on the situation of judges at the end of their mandate.

28. As regards the working methods for elaborating the a draft text covering these four subjects, the CDDH, having regard to the fact that the budgetary situation did not permit the setting up of another Drafting Group, agreed that the Bureau, with the help of the Secretariat, would elaborate a first draft proposal on the basis of written contributions from the member States' delegations, to be submitted by 28 February 2019 on the basis of an explanatory document to be prepared by the Secretariat. To that end, the Bureau meeting in Helsinki in May 2019 should be prolonged by one day to be devoted to this work. The usefulness of the participation at this meeting (at their own expense) of experts from some States which are not represented in the Bureau but which can provide substantive contributions was also discussed. Concerning the specific question regarding the establishment of facts in cases related to inter-State disputes, the CDDH noted that the outcomes of the seminar "Evidence before International Courts: Distinct Fora, Similar Approaches?" held in Moscow on 9 November 2018 could provide a good basis for the discussion.

29. The CDDH would be invited to consider the first draft text at its 91<sup>st</sup> meeting (June 2019). It could then decide whether it would be desirable to organise a broader discussion, in particular, on the third topic of the effective handling of cases related to inter-State disputes, possibly involving experts, for instance, during the DH-SYSC meeting in October 2019. The CDDH should adopt the text as a part of the *Contribution to the evaluation provided for by the Interlaken Declaration* at its 92<sup>nd</sup> meeting (November 2019) for transmission to the Committee of Ministers.

30. The Danish delegation in the CDDH and the Chair of the CDDH informed the Steering Committee of the outcome of the Second High-level Expert Conference on the Implementation of the Copenhagen Declaration (Kokkedal, Denmark, 31 October – 2 November 2018).<sup>20</sup> The topics addressed at the conference included building a common human rights culture by dialogue, the case-load challenge and European supervision. The Chair and delegations stressed the interest for all sides of the discussions with different members of the academia and practitioners and thanked the Danish authorities for their hospitality.

#### **4.6 Selection and election of judges at the Court**

31. Regarding the questions related to the selection and the election of the Judges of the Court, Mr Vít Alexander SCHORM (Czech Republic), former Chair of the Drafting Group DH-SYSC-I which had elaborated the 2017 CDDH Report on the process of selection and election of judges of the European Court of Human Rights (document [CM\(2018\)18-add1](#)), as well as

<sup>20</sup> Organised by the Danish authorities, this meeting aimed in particular at:

- (a) monitoring the implementation at national level of the Copenhagen Declaration;
- (b) exchanging views on the general developments of the Court's case-law with regard in particular to the independence of the Court and the binding nature of its judgments;
- (c) initiating a dialogue on the theme "Building a Common Human Rights Culture" with a view to more firmly anchoring the development of human rights in European democracies, with particular emphasis on the dialogue between the courts and on the issue of third party interventions.

the Secretariat, informed the CDDH of the work conducted by the Committee of Ministers' Rapporteur Group on Human Rights (GR-H).

32. As part of the follow-up to the Copenhagen Declaration, the Ministers' Deputies, at their above-mentioned meeting on 30 May 2018,<sup>21</sup> instructed their Rapporteur Group on Human Rights (GR-H) to consider, in co-operation with the Parliamentary Assembly, and on the basis of the said 2017 CDDH report, the entire process of selecting and electing judges to the Court in order to ensure its fairness, transparency and efficiency, and that the most qualified and competent candidates are elected. In accordance with this mandate, the GR-H had met:

- (i) on 4 September 2018 with Mr Vít Alexander SCHORM (Czech Republic), former Chair of the Drafting Group DH-SYSC-I;<sup>22</sup>
- (ii) on 18 October 2018 Ms Nina VAJIĆ, Chair of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights, and Mr Wojciech SAWICKI, Secretary General of the Parliamentary Assembly.

33. It was noted that the Secretariat of the Committee of Ministers had prepared a document with proposals for decisions on the issue of the selection and election of judges to the Court, taking into account the above-mentioned exchanges of views as well as the Parliamentary Assembly draft Resolution on the Procedure for the election of judges to the European Court of Human Rights, prepared on the basis of a report by the Parliamentarian Boriss CILEVICS. As for the CDDH, it was expected that it would examine in 2019 issues relating to the situation of judges of the Court after the end of their mandate (see § 26 above). It might further be charged with reviewing the Committee of Ministers' 2012 Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights.

#### **4.7 Seminar on the occasion of the 20<sup>th</sup> anniversary of the New Court**

34. The CDDH exchanged views on the "Seminar on the occasion of the 20<sup>th</sup> Anniversary of the New Court" (Strasbourg, 26 November 2018), organised by the Finnish Presidency (November 2018 - May 2019) of the Committee of Ministers in co-operation with the European Court of Human Rights and the CDDH (the Programme appears in [Appendix VIII](#) below). This event had focused on the journey made by the current single Court since its establishment following the entry into force of Protocol No. 11 to the ECHR on 1 November 1998. The twentieth anniversary has thus provided an opportunity to highlight the achievements of the Court and the remaining challenges.

35. The delegations commended the Finnish authorities for the seminar, which had gathered four former Presidents of the Court and the current President and shown that the Convention system had been able to come up with solutions to the challenges it was facing, but also the need to keep safeguarding the Court in the forthcoming years.

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<sup>21</sup> See footnote 10 above.

<sup>22</sup> The report of the CDDH was sent to the Committee of Ministers in March 2018 and was widely distributed at the High Level Conference in Copenhagen. At its meeting in Helsingør, the Committee of Ministers referred explicitly to measures concerning the selection and election of judges and recognition of service as a judge of the Court, stressing that improvements in the current selection and election procedures could be envisaged, notably through increased cooperation between the different actors (States Parties, the Committee of Ministers, the Parliamentary Assembly and the Expert Advisory Panel on Candidates for the election of judges to the Court). In this context, it had praised the value of the Report presented by the CDDH in March 2018.

#### **4.8 Organisation of work at the next DH-SYSC meeting (2019)**

36. Lastly, the CDDH considered that, despite budgetary constraints in 2019, it was of utmost importance that the DH-SYSC could meet on 16-18 October 2019 as it has to finalise the work of the Drafting Groups DH-SYSC-II and DH-SYSC-III and the draft *Contribution to the evaluation provided for by the Interlaken Declaration*.

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**Extract of the report of the 91<sup>st</sup> CDDH meeting**  
(18-21 June 2019, document CDDH(2019)R91)

**ITEM 4: SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

**4.1 The place of the Convention in the European and international legal order (DH-SYSC-II)**

8. The Chair of the Drafting Group on the place of the European Convention on Human Rights in the European and international legal order (DH-SYSC-II), Ms Florence MERLOZ (France), presented to the CDDH the results of the 5<sup>th</sup> meeting (5–8 February 2019, report DH-SYSC-II(2019)R5) and of the 6<sup>th</sup> meeting (22–24 May 2019, report DH-SYSC-II(2019)R6) of the Drafting Group.

9. The Chair of the DH-SYSC-II further presented to the CDDH the content of the following four draft chapters of the future CDDH report on the place of the European Convention on Human Rights in the European and international legal order which is being elaborated by the Drafting Group and which the latter provisionally adopted<sup>23</sup>:

- (a) Sub-theme i) of Theme 1, on *Methodology of interpretation by the European Court of Human Rights and its approach to international law* (document DH-SYSC-II(2018)23 as provisionally adopted at the 4<sup>th</sup> meeting of the DH-SYSC-II in September 2018);
- (b) Sub-theme iii) of Theme 1, on the *Interaction between the Resolutions of the Security Council and the European Convention on Human Rights* (document DH-SYSC-II(2018)25 as provisionally adopted at the 4<sup>th</sup> meeting of the DH-SYSC-II in September 2018);
- (c) Sub-theme iv) of Theme 1, on the *Interaction between international humanitarian law and the European Convention on Human Rights* (document DH-SYSC-II(2019)35 as provisionally adopted at the 5<sup>th</sup> meeting of the DH-SYSC-II in February 2019); and
- (d) Theme 2, on the *Challenge of the interaction between the Convention and other international human rights instruments to which Council of Europe member States are parties* (document DH-SYSC-II(2019)36 as provisionally adopted at the 5<sup>th</sup> meeting of the DH-SYSC-II in February 2019).

10. The CDDH expressed its appreciation for the considerable amount of work already accomplished by the Drafting Group. It then examined and provisionally adopted the above-mentioned four draft chapters of its future report (see CDDH(2019)R91 Addendum 7).

11. The CDDH took note of the fact that sub-theme (ii) of Theme 1, on *State responsibility and extraterritorial application of the European Convention on Human Rights*, is still under consideration in the DH-SYSC II and that the remaining paragraphs of this chapter, which have not yet been provisionally adopted, shall be examined at the Group's 7<sup>th</sup> and last meeting in

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<sup>23</sup> The DH-SYSC-II explained in its meeting reports that "Provisional adoption means that the Group has examined the text of the draft chapter paragraph by paragraph and made amendments both on the content and on the form of the text. The text may be updated in case the European Court of Human Rights delivered new important judgments prior to the final adoption of the entire future report in 2019, and in order to harmonise the entire text of the future report and take into account possible orientations given by the CDDH." (see [DH-SYSC-II\(2019\)R6](#), footnote 1).

September 2019, together with the finalised report, which will be submitted to the DH-SYSC-II for adoption at that meeting.

12. The CDDH further observed that the DH-SYSC-II had already provisionally adopted Theme 3, on the *Challenge of the interaction between the Convention and the legal order of the European Union and other regional organisations*, at its recent 6<sup>th</sup> meeting (22–24 May 2019). This chapter will be directly integrated in the finalised report which will be submitted to the DH-SYSC-II for adoption at its September meeting. That report shall then be transmitted to the DH-SYSC for consideration at its meeting in October and subsequently to the CDDH for consideration and adoption at its meeting in November.

13. The CDDH further discussed the working methods in order to arrive at an adoption of the future CDDH report on the place of the European Convention on Human Rights in the European and international legal order. It stressed that it was for the Working Group to decide in which way to present its work to the DH-SYSC and the CDDH, including on those parts of the text which have not yet been provisionally adopted if no consensus could be found in this respect within the Group. It was further suggested that the judgments and decisions of the European Court of Human Rights were quoted in a homogeneous manner, mentioning the case name, decision body, application number, relevant paragraph number and date of the judgment / decision.

14. The Turkish delegation further referred in that context to the fact that the DH-SYSC-II invited the Rapporteurs of the different chapters “to send to the Secretariat any update, in accordance with what has been agreed upon at the moment of provisional adoption,<sup>(...)</sup> as a result of new judgments or decisions”.<sup>24</sup> It reiterated its position that it was opposed to reopening the discussions on the parts of the report which had been provisionally adopted. Therefore, no new text other than references to important judgments in the footnotes should be inserted in the provisionally adopted parts of the report.

15. Concerning the participation on the Council of Europe’s budget at the DH-SYSC-II’s 7<sup>th</sup> and last meeting (18–20 September 2019), it was recalled that the CDDH, at its 88<sup>th</sup> meeting (December 2017, CDDH(2018)R90, Appendix XVI), agreed that in addition to the costs of the eight members of the Group, the costs of one representative from each of the Member States of the Council of Europe which have previously participated in one or more of the meetings of the Group would also be covered by the budget of the Organisation.<sup>25</sup>

16. The detailed schedule of the work of DH-SYSC-II is given in Appendix V below, for information.

#### **4.2 The ECHR in university education and professional training (DH-SYSC-III)**

17. The CDDH welcomed the work accomplished by its Drafting Group on the follow-up to Recommendation Rec(2004)4 (DH-SYSC-III) with Ms Vasileia PELEKOU (Greece) in the Chair. It was recalled that the Group, which met once (16–17 October 2018),<sup>26</sup> prepared a preliminary Draft Recommendation CM/Rec(2019)... of the Committee of Ministers to member States on the system of the European Convention on Human Rights in university education and professional training, accompanied by a selection of good national practices.

18. The CDDH then proceeded to a detailed examination of the text of its Draft Recommendation including the selection of good national practices, in the light also of the

<sup>24</sup> See the report of the 6<sup>th</sup> meeting of the DH-SYSC-II, document [DH-SYSC-II\(2019\)R6](#), § 10. For the understanding by the DH-SYSC-II of “provisional adoption” see the previous footnote.

<sup>25</sup> See document [DH-SYSC-II\(2019\)R6](#), § 12 for the 31 member States covered.

<sup>26</sup> For the meeting report see document [DH-SYSC-III\(2018\)R1](#).

written comments and proposals received from the CDDH participants, adopted it (CDDH(2019)R91Addendum 1) and decided to transmit it to the Committee of Ministers.

#### **4.3 Follow-up to the *Interlaken Declaration* - Preparation of the final report of the CDDH**

19. The CDDH noted that the Secretariat would prepare its draft *Contribution to the evaluation provided for by the Interlaken Declaration*<sup>27</sup> during the summer, following the draft table of contents adopted and the guidance given by the CDDH at its November 2018 meeting.<sup>28</sup> That draft shall then be distributed on Monday 16 September 2019 to the participants both in the DH-SYSC and in the CDDH meetings, with the possibility to react on it with drafting proposals by Monday 7 October 2019.

20. It was further noted that the Court's Registry had provided the CDDH with a document entitled "*Securing the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights: the Court's action in 2018-2019*" (document CDDH(2019)25) in order to provide up-to-date information to the CDDH for the preparation of the draft *Contribution*.

21. The draft *Contribution* will be transmitted to the DH-SYSC for discussion and adoption at its meeting in October 2019, which will largely be devoted to consolidating the text, and subsequently to the CDDH for discussion and adoption at its meeting in November 2019.

22. In the light of the decisions to be taken in early 2020 by the Committee of Ministers in the follow-up to its Interlaken report, the CDDH further exchanged views with Mr Geir ULFSTEIN, Professor at the Faculty of Law of the University of Oslo, a representative of *PluriCourts* (Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order).

(i) Professor Ulfstein informed the CDDH that *Pluricourts* was ready to organise one or more seminars related to the follow-up to the Interlaken report, including, *inter alia*, a substantive contribution to possible work on the effective treatment of inter-State cases and individual applications lodged with the Strasbourg Court arising from situations of inter-State conflicts or on the national reception of the Convention.

(ii) The CDDH welcomed these proposals and agreed that two seminars could be envisaged during the next biennium (2020–21) within the CDDH on the topics to be dealt with in the follow-up to the Interlaken report, namely, one in June 2020 organised

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<sup>27</sup> The Interlaken Declaration adopted on 19 February 2010 at the High Level Conference on the future of the European Court of Human Rights established a roadmap for the reform process towards long-term effectiveness of the Convention system. In the section on the implementation of the Action Plan, the Committee of Ministers was invited to decide, before the end of 2019, whether the measures adopted during the reform process have proved sufficient to ensure a sustainable functioning of the Convention's control mechanism or whether more fundamental changes are needed.

<sup>28</sup> The Steering Committee expressed the wish that the future report:

- (i) is as brief as possible in both contents and form, with references to existing documents for further details, and should be written in accessible language;
- (ii) contains a table of contents and a concluding section which should include an assessment of whether the measures adopted so far in the Interlaken reform process have proved sufficient to ensure a sustainable functioning of the Convention system or whether further changes are needed. This question has already been partially answered in previous CDDH reports, which should be reflected in the future report, which could also contain proposals for further reflection and/or action;
- (iii) contains the additional elements requested by the Ministers' Deputies at their meeting on 30 May 2018; see item 4.5 below;

see document CDDH(2018)R90, §§ 22–24 and, for the draft table of contents, Appendix VII to that meeting report.

by *Pluricourts* in Strasbourg, and one organised in the framework of the German Chairmanship of the Committee of Ministers in April 2021 in Germany. The event to be organised in June 2020 could have a format similar to the seminars which took place in Kokkedal (Denmark) and should be prepared by *Pluricourts* in close co-operation with the Secretariat and the Chair. The exact choice of the topics would depend on the CDDH's terms of reference for that biennium and thus has to be determined at a later stage.

#### 4.4 Follow-up to the *Brussels Declaration*

23. The CDDH welcomed the draft report on *Measures taken by the member States to implement relevant parts of the Brussels Declaration*<sup>29</sup> (document CDDH(2019)17rev) prepared in the light of the national information received (documents [CDDH\(2018\)23](#) and [CDDH\(2019\)21](#), bilingual). It then examined and provisionally adopted its report by a silent procedure on 15 July 2019 at 18:00.

24. If the member States send drafting proposals before that date, the Secretariat will submit them to the Chair and the Bureau. The text (see CDDH(2019)R91Addendum 2) will then be transmitted to the Committee of Ministers for information.

#### 4.5 Follow-up to the *Copenhagen Declaration*

25. It was recalled that following the High Level Conference on the reform of the Convention system held in Copenhagen on 12-13 April 2018<sup>30</sup>, the Ministers' Deputies, at their meeting on 30 May 2018, invited the CDDH to include the following additional elements in its future *Contribution to the evaluation provided for by the Interlaken Declaration* (see point 4.3 above):

- (i) a comprehensive analysis of the Court's backlog, identifying and examining the causes of the influx of cases from States Parties in order to identify the most appropriate solutions at the level of the Court and States Parties. To this end, the Registry of the Court has provided the CDDH with statistics on the evolution of the Court's workload over 10 years, which allow for an analysis of the Court's backlog (document CDDH(2019)08);
- (ii) proposals on how to facilitate the expeditious and efficient handling of cases, in particular repetitive cases, which the parties are ready to settle by friendly settlement or unilateral declaration; to this end, the Registry of the Court has provided the CDDH with a document (available in English only) entitled "*Encouraging the resolution of proceedings before the Court through a non-contentious procedural phase*" (CDDH(2019)09);
- (iii) proposals on how to deal more effectively with cases relating to inter-State disputes, as well as individual applications arising from situations of conflict between States, though without limiting the jurisdiction of the Court, taking into account the specificities of these categories of cases, in particular with regard to fact-finding; to this end, the Registry of the Court has provided the CDDH with a document (available in English only) entitled "*Proposals for a more efficient processing of inter-State cases*" (CDDH(2019)22);

<sup>29</sup> Declaration adopted by the Committee of Ministers at the High Level Conference on "The implementation of the European Convention on Human Rights, our shared responsibility" held in Brussels on 26-27 March 2015. [https://www.echr.coe.int/Documents/Brussels\\_Declaration\\_ENG.pdf](https://www.echr.coe.int/Documents/Brussels_Declaration_ENG.pdf)

<sup>30</sup> 1317<sup>th</sup> meeting of the Deputies, decisions following-up the 128<sup>th</sup> Session of the Committee of Ministers held in Helsingør (Denmark) on 17–18 May 2018. Reference documents: CM/PV(2018)128-prov, CM/PV(2018)128-add, CM(2018)OJ-prov5, SG(2018)1, CM/Inf(2018)10, CM/Inf(2018)11, CM(2018)18-add1.

- (iv) questions relating to the situation of judges of the European Court of Human Rights after the end of their term of office, mentioned in paragraphs 154 and 159 of the CDDH 2017 Report on the selection and election of judges of the European Court of Human Rights (document CM(2018)18-add1). The Registry provided a document also on this subject ("*Recognition in domestic law of service in international courts*", available in English only, CDDH(2019)07).

26. It was recalled that the member States were further invited to send contributions on these topics (their answers are compiled in document CDDH(2019)12) and that the Bureau of the CDDH, at its 101<sup>st</sup> meeting (Helsinki, 15–17 May 2019), examined and adopted the document entitled *Draft additional elements resulting from the Copenhagen Declaration that should be reflected in the future Interlaken follow-up report* (document CDDH-BU(2019)R101 Addendum).

27. The CDDH examined and provisionally adopted<sup>31</sup> the *Draft additional elements* in so far as they concern the above-mentioned points (i), (ii) and (iv). It further had an in-depth exchange of views in so far as they concern point (iii) which will be reflected in the CDDH *Contribution to the evaluation provided for by the Interlaken Declaration* and decided to take up this point again at its next meeting in the light of the proposals of the DH-SYSC.

28. Finally, it is recalled that the CDDH should adopt its report *Contribution to the evaluation provided for in the Interlaken Declaration*, including the draft additional elements resulting from the Copenhagen Declaration, at its 92<sup>nd</sup> meeting (November 2019) for transmission to the Committee of Ministers before 31 December 2019.

#### **4.6 Update of the accompanying Guide to Good Practice to Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings**

29. It was recalled that under its terms of reference for the current (and the previous) biennium, the CDDH was mandated, concerning effective remedies for excessive length of proceedings, to update the accompanying Guide to Good Practice to Recommendation [CM/Rec\(2010\)3](#).

30. In its exchange of views on that subject-matter, the CDDH considered that this topic was no longer one of the urgent issues for the effectiveness of the Convention system which should be treated as a priority. It considered that this subject-matter should rather be included in the activities on the topic of national implementation of the Convention which the CDDH could propose to the Committee of Ministers further to the Interlaken report.

#### **4.7 Organisation of work at the next DH-SYSC meeting (October 2019)**

31. The CDDH exchanged views with the Chairperson of the DH-SYSC, Ms Brigitte OHMS (Austria), on the work to be carried out by the DH-SYSC at its meeting which should last from 15–18 October 2019. That meeting will focus on the review of the work of the DH-SYSC-II (see point 4.1 above) and on the consolidation of the text of the draft *Contribution to the evaluation provided for by the Interlaken Declaration* (see point 4.3 above).

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<sup>31</sup> Drafting proposals can be sent to the Secretariat by 15 July 2019. The Secretariat will take them into account in the draft text which will be sent by 16 September 2019. The experts from DH-SYSC and CDDH will then have the possibility to send drafting proposals on this latest version by 7 October 2019.