



DH-SYSC(2019)R5

18/10/2019

STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

**COMMITTEE OF EXPERTS ON THE SYSTEM
OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

(DH-SYSC)

MEETING REPORT

5th meeting

15 – 18 October 2019

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

1. The Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC) held its 5th meeting in Strasbourg from 15 to 18 October 2019. The list of participants appears in [Appendix I](#).
2. The Chair, Ms Brigitte OHMS (Austria) opened the meeting and evoked the different subjects on the agenda, notably the discussion, in view of their adoption, of the preliminary draft CDDH Report on the place of the European Convention on Human Rights in the European and international legal order and the draft Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration.
3. Mr Mikhail LOBOV, Head of the Human Rights Policy and Co-operation Department, welcomed the participants. He was satisfied that the DH-SYSC could meet again after an interruption of almost two years. He further stressed the importance of its work notably on the above-mentioned two documents, which he hoped the DH-SYSC would be able to finalise and adopt in the present meeting.
4. The Committee adopted the agenda (see [Appendix II](#)) and the order of business (DH-SYSC(2019)OT1rev).

Item 2: DISCUSSION, IN VIEW OF ITS ADOPTION, OF THE PRELIMINARY DRAFT CDDH REPORT ON THE PLACE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN THE EUROPEAN AND INTERNATIONAL LEGAL ORDER

5. Ms Florence MERLOZ, 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), presented the preliminary draft CDDH Report on the place of the European Convention on Human Rights in the European and international legal order (document DH-SYSC-II(2019)R7 Addendum), as adopted by the DH-SYSC-II at its 7th and last meeting (15–18 September 2019).
6. Following a general discussion, the Committee examined the text of the preliminary draft CDDH Report and agreed on a number of amendments in the light of the discussion and the written comments received from member States' delegations (see document DH-SYSC(2019)04).
7. The Committee adopted the text of the draft CDDH Report.
8. The delegation of the Russian Federation made declarations regarding:
 - paragraph 122¹ of the draft Report, stating that “The Russian delegation regrets that the Report does not recognize the obviously contradictory character of the judgment in the case *Catan and Others v. Moldova and Russia*, as well as the fact that the Court significantly expanded the factors inherent in the determination of the existence of “effective control”, thus considerably lowering the threshold of responsibility.”;

¹ The paragraph numbers referred to are the numbers as they appeared in document [DH-SYSC-II\(2019\)R7 Addendum](#).

- paragraph 185 of the draft Report, stating that “The Russian delegation regrets the lack of substantive recommendations corresponding to the challenges identified, and proposes to highlight the need that the Court, in the interest of preserving its authority, more consistently applied relevant rules of general international law, including those codified in the ARSIWA.”;
- paragraph 427, of the draft Report, stating that “The Russian delegation regrets that the conclusions of the report do not properly reflect the challenges and solutions identified, and proposes to highlight that clarity and consistency in the application by the Court of general rules of international law on state responsibility, is of great importance for the States Parties”. This delegation recalled that it considers that the need to preserve the authority of the Court was enshrined in the Copenhagen Declaration and in the report of the CDDH on the longer-term future of the system of the ECHR. This delegation further stated that one of the key challenges that threaten the authority of the Court lies in fragmentation of international law due to application by the Court of its own requirements for establishing jurisdiction and lack of clear distinction between jurisdiction and responsibility in the Court’s decisions.

The full text of the Declaration setting out the position expressed by the Russian Federation figures in Appendix III to the present meeting report.

9. The delegation of the Republic of Moldova made a declaration regarding paragraph 133 of the draft CDDH Report, stating that “The Republic of Moldova does not share the assessment of the way the facts were presented in this paragraph regarding the *Ilaşcu* and *Catan* cases.” The delegation recalled that it declared that it shares the assessment of the ECHR regarding the decisive influence and effective control applied in *Ilaşcu* and *Catan* cases. The full text of the Declaration setting out the position expressed by the Republic of Moldova figures in Appendix IV to the present meeting report.

10. At the end of the meeting, the delegation of Azerbaijan announced its intention to submit a declaration on paragraphs 133 and 134 of the draft Report to the CDDH. The delegation of Armenia announced its intention to equally submit a declaration depending on the content of the declaration of Azerbaijan.

11. The DH-SYSC-II had been unable to agree on the text of an executive summary in the time remaining for its meeting, although a majority of the delegations would have liked to have a summary of the Report.² During the DH-SYSC meeting, a majority of delegations considered an executive summary would be useful but one delegation disagreed with the necessity of an executive summary. The DH-SYSC decided to set up an informal *ad-hoc* group composed of representatives of interested delegations in the DH-SYSC. That group should draft a short executive summary which would be sent to the participants in the CDDH meeting for comments, would be discussed by the Bureau of the CDDH and be submitted to the CDDH for possible adoption at its 92nd meeting (26–29 November 2019).

12. It was noted that the draft Report on the place of the European Convention on Human Rights in the European and international legal order would be submitted to the CDDH for consideration and possible adoption of the final Report at its forthcoming meeting in November 2019. The text of the adopted draft Report appears in document DH-SYSC(2019)R5 Addendum 1.

² See DH-SYSC-II(2019)R7, § 8.

Item 3: DISCUSSION, IN VIEW OF ITS ADOPTION, OF THE DRAFT CONTRIBUTION OF THE CDDH TO THE EVALUATION PROVIDED FOR BY THE INTERLAKEN DECLARATION

13. The Chair recalled that the Interlaken Declaration (2010) invited the Committee of Ministers to decide, before the end of 2019, whether the measures adopted in the course of the process of reform of the system of the European Convention on Human Rights had proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes would be necessary.³ The CDDH was charged with drafting a Contribution to this evaluation provided for by the Interlaken Declaration.

14. The Chair presented the draft Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration (document DH-SYSC(2019)02), as prepared by the Secretariat on the basis of a preliminary draft table of contents adopted by the CDDH and guidance given by the latter.⁴

15. Following a general discussion, the Committee examined the text of the draft Contribution paragraph by paragraph and agreed on a number of amendments in the light of the discussion and the written comments received from the participants in the DH-SYSC meeting (see document DH-SYSC(2019)03).

16. The Committee adopted the text of the draft Contribution with a view to its submission to the CDDH for consideration and possible adoption at its 92nd meeting (26–29 November 2019). The text of the adopted draft Contribution appears in document DH-SYSC(2019)R5 Addendum 2.

Item 4: INFORMATION EXCHANGE REGARDING THE IMPLEMENTATION OF THE CONVENTION AND THE EXECUTION OF THE COURT'S JUDGMENTS

17. The Chair recalled that the DH-SYSC, in accordance with its terms of reference for 2018–2019, has been mandated "[c]oncerning the implementation of the Convention and execution of the Court's judgments [to] 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 CM/Rec(2008)2), 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".⁵ The Secretariat had prepared a background paper to prepare a discussion on that topic (document DH-SYSC(2019)06).

18. To this end, the Committee held an exchange of views with Ms Clare OVEY, Deputy Head of the Department for the Execution of Judgments of the European Court of Human Rights (the Execution Department), who made a detailed presentation on the various types of exchanges of information in the process of execution of judgments (for the text of the

³ See the [Interlaken Declaration](#) of 19 February 2010 of the High-Level Conference on the Future of the European Court of Human Rights, Implementation of the Action Plan, point 6.

⁴ See document [CDDH\(2018\)R90](#), § 24 and Appendix VII.

⁵ See document [DH-SYSC\(2018\)01rev](#).

presentation see [Appendix V](#)), and Ms Stéphanie FLECKINGER, Head of Central Office of that Department, who presented the HUDOC-EXEC database.

19. The exchange of views brought to light a high interest in, and appreciation of the delegations of the broad information and search opportunities offered by the HUDOC-EXEC database. The delegations expressed their support for holding regular thematic debates during the Human Rights meetings of the Committee of Ministers (currently once a year), which constitute a good platform for the exchange of information and practices of the member States related to the process of the execution of judgments of the European Court of Human Rights and not an occasion for “naming and shaming”. In this context, the question of inviting national experts from the capitals to these debates was also raised. Moreover, the efforts made by the Committee of Ministers to involve civil society through written comments in the execution process were welcomed and the impact of this co-operation for that process was considered positive. Moreover, direct dialogue between states and the representatives of the Execution Department in the execution process were generally considered very helpful. Finally, exchanges of experiences with the representatives of the Execution Department, including through the practice of secondment of national officials to that Department, were considered very beneficial for the execution process and thus encouraged.

Item 5: INFORMATION ON THE WORK OF THE DH-SYSC DURING THE BIENNIUM 2020/2021

20. The Secretariat informed the Committee of the planning of the work of the DH-SYSC during the upcoming biennium 2020/2021, as set out in the draft terms of reference to be discussed and possibly adopted by the Committee of Ministers before end of 2019. According to the draft terms of reference, in the light of the decisions of the Committee of Ministers on the follow-up to the evaluation set out by the Interlaken Declaration, the DH-SYSC is to formulate proposals to the Committee of Ministers on the following two topics:

- i) the effective processing and resolution of cases relating to inter-State disputes (deadline: 31 December 2021); and
- ii) the national reception of the system of the European Convention on Human Rights, in order to assist the State authorities involved in the operation of the Convention and in the process of the execution of judgments to fulfil their mission in the best possible way, in the light of existing national best practices. To this end, develop guidelines covering all of the action at national level expected from States Parties to prevent and remedy violations of the Convention, accompanied by a Guide to existing best practices (deadline: 31 December 2021).⁶

21. To this end, the Committee considered that creating two new separate drafting groups on these two topics, a Drafting Group working on effective processing and resolution of cases relating to inter-State disputes (DH-SYSC-IV) and a Drafting Group working on the national implementation of the system of the European Convention on Human Rights (DH-SYSC-V), would be useful.

22. The Secretariat further informed the DH-SYSC of recent and forthcoming changes of the staff in the Secretariat.

⁶ See document [CDDH\(2019\)R91](#), Appendix IV.

Item 6: ADOPTION OF THE MEETING REPORT

23. At the end of its meeting, the Committee adopted the present meeting report in the two official languages of the Organisation.

ACKNOWLEDGEMENTS

24. The Committee warmly thanked its Chair, Ms Brigitte OHMS, for the excellent manner in which she has chaired the meeting and fulfilled her tasks during the biennium 2018–2019. It further warmly thanked Ms Florence MERLOZ, Chair of the Drafting Group DH-SYSC-II, for the excellent way in which she had conducted the works of this Group and paid tribute to the thorough work of the rapporteurs within that Group. The Group also thanked the Secretariat for the support it had provided to the Committee.

* * *

Appendix I**List of participants**

DH-SYSC
5th meeting
15–18 October 2019

MEMBERS / MEMBRES**ALBANIA / ALBANIE**

Ms Monika LAMCE, Deputy to the Permanent Representative of Albania to the CoE, Representative of the Albanian Advocature Strasbourg

ARMENIA / ARMÉNIE

Ms Manushak ARAKELYAN, Acting Head of the Division of Multilateral International Treaties of the Department of International Treaties and Law of the Ministry of Foreign Affairs of Armenia

Mr Aram HAKOBYAN, Deputy to the Permanent Representative, Permanent Representation of Armenia to the Council of Europe

AUSTRIA / AUTRICHE

Ms Brigitte OHMS, Deputy Government Agent, Division for International Affairs and General Administrative Affairs (dpt. V 5), Federal Ministry for Constitutional Affairs, Reforms, Deregulation and Justice, Constitutional Service, **Chair of the DH-SYSC / Présidente du DH-SYSC**

AZERBAIJAN / AZERBAÏDJAN

Mr Habib ABDULLAYEV, Lead Consultant, Human Rights Unit, Department for Work with Law Enforcement Bodies and Military Affairs, Administration of President of the Republic of Azerbaijan

Ms Zhala IBRAHIMOVA, Deputy to the Permanent Representative of Azerbaijan to the CoE

BELGIUM / BELGIQUE

Ms Isabelle NIEDLISPACHER, Agent du Gouvernement de la Belgique auprès de la Cour européenne des droits de l'homme, SPF Justice, Service des Droits de l'Homme

BOSNIA AND HERZEGOVINA / BOSNIE HERZÉGOVINE

Ms Belma SKALONJIĆ, Agent of the Council of Ministers of Bosnia and Herzegovina, Government Agent before the ECHR

BULGARIA / BULGARIE (*apologised*)**CROATIA / CROATIE**

Ms Štefica STAŽNIK, Representative, Office of the Representative of the Republic of Croatia before the European Court of Human Rights

CYPRUS / CHYPRE (*apologised*)**CZECH REPUBLIC / REPUBLIQUE TCHÈQUE**

Mr Vít A. SCHORM, Government Agent of the Czech Republic before the European Court of Human Rights, Ministry of Justice

DENMARK / DANEMARK (*apologised*)**ESTONIA / ESTONIE**

Ms Maris KUURBERG, Government Agent before the ECtHR, Ministry of Foreign Affairs

Ms Kerli TIIK, Deputy to the Permanent Representative, Permanent Delegation of Estonia to the COE

DH-SYSC(2019)R5

FINLAND / FINLANDE

Ms Päivi ROTOLA-PUKKILA, Legal Counsellor, Unit for Human Rights Courts and Conventions, Legal Service, Ministry for Foreign Affairs of Finland

Ms Mia SPOLANDER, Deputy to the Permanent Representative of Finland to the Council of Europe

Ms Jemina JÄRVILEHTO, Trainee at the Permanent Representation of Finland to the Council of Europe

FRANCE

Mme Barbara MASSIOU, Ministère de l'Europe et des Affaires étrangères, Direction des affaires juridiques, Sous-direction des droits de l'Homme

Mme Florence MERLOZ, Sous-directrice des droits de l'homme, Direction des affaires juridiques, Ministère de l'Europe et des affaires étrangères

GEORGIA / GÉORGIE

Mr Beka DZAMASHVILI, Ministry of Justice of Georgia, Head of the Department of State Representation to the International Courts/Government Agent

Ms Tamar ROSTIASHVILI, Ministry of Justice of Georgia, Deputy Head of the Department of State Representation to the International Courts/Deputy Government Agent

Mr Konstantine KVACHAKHIDZE, Deputy Permanent Representative of Georgia to CoE

GERMANY / ALLEMAGNE

Ms Nicola WENZEL, Leiterin des Referates R A 1, Bundesministerium der Justiz und für Verbraucherschutz

GREECE / GRÈCE

Ms Ourania PATSOPOULOU, Senior Advisor, Office of the Greek Government Agent before the ECourHR

ICELAND / ISLANDE

Ms Elísabet GÍSLADÓTTIR, Ministry of Justice

IRELAND / IRLANDE

Mr Peter WHITE, Government Agent of Ireland before the European Court of Human Rights, Assistant Legal Adviser, Legal Division, Department of Foreign Affairs and Trade

ITALY / ITALIE

Mr Daniele LOI, Adjoint au Représentant Permanent de l'Italie auprès du Conseil de l'Europe

Ms Chiara CATAPANO, stagiaire du Représentant Permanent de l'Italie auprès du Conseil de l'Europe

LATVIA / LETTONIE

Ms E. Emīlija PLAKSINS, Office of the Government Agent, Ministry of Foreign Affairs

LIECHTENSTEIN

Mr Martin HASLER, Deputy Permanent Representative of Liechtenstein to the Council of Europe, Office for Foreign Affairs

LITHUANIA / LITUANIE

Ms Lina URBAITĖ, Agent of the Government of the Republic of Lithuania to the European Court of Human Rights, Ministry of Justice

LUXEMBOURG

Mme Brigitte KONZ, Juge de Paix directrice

MALTA / MALTE

Mr Maurizio CORDINA, Senior Lawyer, Office of the Attorney General

REPUBLIC OF MOLDOVA / RÉPUBLIQUE DE MOLDOVA

Mr Oleg ROTARI, Agent for the Government, Ministry of Justice

Mr Andrei URSU, Deputy to the Permanent Representative, Permanent Representation of the Republic of Moldova to the Council of Europe

MONACO

Ms Laura BENITA, Service du Droit International des Droits de l'Homme et des Libertés Fondamentales, Direction des Affaires Juridiques

MONTENEGRO / MONTÉNÉGR

Ms Valentina PAVLIČIĆ, Representative of Montenegro before the European Court of Human Rights

Ms Jelena RASOVIĆ, Adviser

NETHERLANDS / PAYS-BAS

Ms Kanta ADHIN, Deputy Agent to the European Court of Human Rights, Legal Affairs Department, International Law Division, Ministry of Foreign Affairs of the Kingdom of the Netherlands

NORTH MACEDONIA / MACEDOINE DU NORD

Ms Danica DJONOVA, Acting Agent of the Republic of North Macedonia before the European Court of Human Rights

NORWAY / NORVÈGE

Mr Morten RUUD, Special adviser, Norwegian Ministry of Justice and Public Security, Legislation Department

POLAND / POLOGNE

Mr Jan SOBCZAK, Agent of the Government before the European Court of Human Rights, Deputy Director, Legal and Treaty Department, Ministry of Foreign Affairs

PORTUGAL

Ms Ana GARCIA MARQUES, Lawyer within the Office of the Agent of the Portuguese Government before the ECHR

ROMANIA / ROUMANIE

Ms Sorana Delia POPA, Deputy to the Permanent Representative of Romania to the Council of Europe

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Stanislav KOVPAK, Représentant du Ministère de la Justice de la Fédération de Russie, Représentation de la Fédération de Russie auprès du Conseil de l'Europe

Mr Vladislav ERMAKOV, Adjoint au Représentant permanent de la Fédération de Russie auprès du Conseil de l'Europe

Ms Olga ZINCHENKO, 3rd Secretary of the Department for Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs of Russia

Mr Roman SEDOV, Adjoint au Représentant permanent de la Fédération de Russie auprès du Conseil de l'Europe

SERBIA / SERBIE (*apologised*)

SLOVAK REPUBLIC / RÉPUBLIQUE SLOVAQUE (*apologised*)

SLOVENIA / SLOVÉNIE

Mr Matija VIDMAR, Secretary, Office for International Cooperation and Mutual Legal Assistance, Ministry of Justice

SPAIN / ESPAGNE

Mr Alfonso BREZMES MARTÍNEZ DE VILLARREAL, Agent before the ECtHR, Head of the Human Rights Area of the Constitutional Law & Human Rights Department, Ministry of Justice

DH-SYSC(2019)R5

SWEDEN / SUÈDE

Ms Helen LINDQUIST, Special Adviser, Department for International Law, Human Rights and Treaty Law, Ministry for Foreign Affairs, Government Offices of Sweden

SWITZERLAND / SUISSE

Mr Adrian SCHEIDEGGER, Eidgenössisches Justiz- und Polizeidepartement EJPD, Bundesamt für Justiz BJ

M. Alain CHABLAIS, Dr. iur., Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ, Représentation de la Suisse devant la Cour européenne des droits de l'Homme, le CAT, le CERD, le CEDAW et le CRC

TURKEY / TURQUIE

Ms Gül Pelin KAYA, Head of Department, Ministry of Justice

Mr Basri YILDIZ, Legal Expert, Ministry of Foreign Affairs

Ms Günseli GUVEN, Deputy to the Permanent Representative, Permanent Delegation of Turkey to the CoE

Ms Ayşen EMÜLER, Legal Expert, Permanent Delegation of Turkey to the CoE

Mr Ahmet Metin GÖKLER, Justice Counsellor, Permanent Delegation of Turkey to the CoE

UNITED KINGDOM / ROYAUME-UNI

Mr Chanaka WICKREMASINGHE, Agent of the UK before the European Court of Human Rights, Legal Counsellor, Foreign and Commonwealth Office

OBSERVERS / OBSERVATEURS

AMNESTY INTERNATIONAL

Mr Sébastien RAMU, Deputy Programme Director and Head of the Freedoms and Justice team - Law and Policy Programme, Amnesty International International Secretariat

CCBE

Mr Piers GARDNER, Chair of the CCBE Permanent Delegation to the European Court of Human Rights, Council of Bars and Law Societies of Europe – European lawyers promoting law and justice

EUROPEAN NETWORK OF HUMAN RIGHTS INSTITUTIONS (ENNHRI) / RESEAU EUROPEEN DES INSTITUTIONS NATIONALES DES DROITS DE L'HOMME

Ms Sophie HALE, Human Rights Officer, Secretariat of the European Network of National Human Rights Institutions

HOLY SEE / SAINT-SIEGE

Ms Giorgia BALDINO, Stagiaire, Mission Permanente du Saint-Siège

OPEN SOCIETY JUSTICE INITIATIVE

Mr John DORBER, Advocacy Consultant

OTHER PARTICIPANTS / AUTRES PARTICIPANTS

REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / GREFFE DE LA COUR EUROPÉENNE DES DROITS DE L'HOMME

Ms Rachael KONDAK, Adviser to the President and the Registrar

Ms Ann-Marie O'NEIL, Registry of the European Court of Human Rights

SECRETARIAT OF THE COMMITTEE OF MINISTERS

Mr John DARCY, Human Rights Meetings and Monitoring Mechanisms

DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS, DIRECTORATE GENERAL HUMAN RIGHTS AND RULE OF LAW

Ms Claire OVEY, Deputy Head of Department

Ms Stéphanie FLECKINGER, Head of Central Office

* * * *

SECRETARIAT

**DG I – Human Rights and Rule of Law / Droits de l’homme et Etat de droit
Council of Europe / Conseil de l’Europe, F-67075 Strasbourg Cedex**

Mr Mikhail LOBOV, Head of Human Rights Policy and Co-operation Department / Chef du Service des politiques et de la coopération en matière de droits de l’homme

Mr Alfonso DE SALAS, Head of the Human Rights Intergovernmental Co-operation Division / Chef de la Division de la coopération intergouvernementale en matière de droits de l’homme, **Secretary of the CDDH / Secrétaire du CDDH**

Ms Dorothee VON ARNIM, Head of the Unit on the system of the European Convention on Human Rights / Chef de l’Unité sur le système de la Convention européenne des droits de l’homme, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l’Homme, **Secretary of the DH-SYSC / Secrétaire du DH-SYSC**

Ms Cipriana MORARU, Administrator, Human Rights Intergovernmental Co-operation Division / Division de la coopération intergouvernementale en matière de droits de l’Homme

Ms Elisa SAARI, Assistant Lawyer, Human Rights Intergovernmental Co-operation Division / Division de la coopération intergouvernementale en matière de droits de l’Homme

Ms Susanne ZIMMERMANN, Administrative Assistant / Assistante administrative, Human Rights Intergovernmental Co-operation Division / Division de la coopération intergouvernementale en matière de droits de l’homme

INTERPRETERS/INTERPRETES

Mr Grégoire DEVICTOR

Mr Didier JUNGLING

Ms Bettina LUDEWIG

* * *

Appendix II**Agenda**

	Reference documents concerning all items on the agenda
DH-SYSC(2018)01rev	Extract of the terms of reference given by the Committee of Ministers to the CDDH regarding the work of the DH-SYSC during the 2018–2019 biennium and relevant extracts of the CDDH meeting reports
CDDH(2019)R91	Report of the 91 st CDDH meeting (18–21 June 2019)
CDDH(2018)R90	Report of the 90 th CDDH meeting (27–30 November 2018)
DH-SYSC(2017)R4	Report of the 4 th DH-SYSC meeting (9–10 November 2017)
DH-SYSC(2017)R3	Report of the 3 rd DH-SYSC meeting (10–12 May 2017)
DH-SYSC(2016)R2	Report of the 2 nd DH-SYSC meeting (8-10 November 2016)
DH-SYSC(2016)R1	Report of the 1 st DH-SYSC meeting (25-27 April 2016)
CDDH(2015)R84 Addendum I	CDDH report on the longer-term future of the system of the European Convention on Human Rights
	Copenhagen Declaration
CDDH(2015)004	Brussels Declaration
CDDH(2012)007	Brighton Declaration
CDDH(2011)010	Izmir Declaration
CDDH(2010)001	Interlaken Declaration
DH-SYSC(2016)009	Decisions adopted at the 1252 nd meeting of the Ministers' Deputies on the CDDH Report on the longer-term future of the system of the European Convention on Human Rights (30 March 2016)
CM/Res(2011)24	Committee of Ministers' Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods
	ITEM 1: OPENING OF THE MEETING, ADOPTION OF THE AGENDA AND OF THE ORDER OF BUSINESS
DH-SYSC(2019)OJ1rev	Draft agenda
DH-SYSC(2019)OT1	Draft order of business

	ITEM 2: DISCUSSION, IN VIEW OF ITS ADOPTION, OF THE PRELIMINARY DRAFT CDDH REPORT ON THE PLACE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN THE EUROPEAN AND INTERNATIONAL LEGAL ORDER
DH-SYSC-II(2019)R7 Addendum	Preliminary draft CDDH report on the place of the European Convention on Human Rights in the European and international legal order, as adopted by the DH-SYSC-II at its 7 th meeting
DH-SYSC(2019)04	Comments on the Preliminary draft CDDH report on the place of the European Convention on Human Rights in the European and international legal order, in view of the 5 th DH-SYSC meeting
CDDH(2019)R91 Addendum 7	Draft chapters of the future CDDH Report on the place of the European Convention on Human Rights in the European and international legal order provisionally adopted by the CDDH at its 91 st meeting (18–21 June 2019)
DH-SYSC-II(2019)R7	Report of the 7 th DH-SYSC-II meeting (18–20 September 2019)
DH-SYSC(2019)05 and Appendix	Executive summary prepared by the Secretariat concerning the Preliminary draft CDDH report on the place of the European Convention on Human Rights in the European and international legal order, and Appendix: Letter addressed by the President of the DH-SYSC-II to the President of the DH-SYSC
	ITEM 3: DISCUSSION, IN VIEW OF ITS ADOPTION, OF THE DRAFT CONTRIBUTION OF THE CDDH TO THE EVALUATION PROVIDED FOR BY THE INTERLAKEN DECLARATION
DH-SYSC(2019)02	Draft Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration
DH-SYSC(2019)03rev	Comments on the draft Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration, in view of the 5 th DH-SYSC meeting
CDDH-BU(2019)R101 Addendum	Draft additional elements resulting from the Copenhagen Declaration that should be reflected in the future Interlaken follow-up report
DH-SYSC(2019)07	Comments on the 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)
CDDH(2018)R90 Appendix VII	Draft table of contents of the Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration, as approved by the CDDH at its 90 th meeting
CDDH(2019)R91Addendum 2	Report on measures taken by the member States to implement relevant parts of the Brussels Declaration, adopted by the CDDH at its 91 st meeting (18–21 June 2019)

	ITEM 4: INFORMATION EXCHANGE REGARDING THE IMPLEMENTATION OF THE CONVENTION AND THE EXECUTION OF THE COURT'S JUDGMENTS
DH-SYSC(2019)06	Background paper for a discussion on the exchange of information regarding the implementation of the Convention and the execution of the Court's judgments
	ITEM 5: INFORMATION ON THE WORK OF THE DH-SYSC DURING THE BIENNIUM 2020/2021
	ITEM 6: ADOPTION OF THE MEETING REPORT

* * *

Appendix III

Declarations made by the Delegation of the Russian Federation regarding the wording of paragraphs 122, 185 and 427 of the draft CDDH Report on the place of the European Convention on Human Rights in the European and international legal order (DH-SYSC(2019)R5 Addendum1)⁷

(at the 5th DH-SYSC meeting, Strasbourg, 15–18 October 2019)

The position expressed by the Russian Federation, at the 5th DH-SYSC meeting, concerning the wording of paragraphs 122, 185 and 427 of the draft Report

The Russian delegation regrets the lack of substantive recommendations corresponding to the challenges identified in the report. The need to preserve the authority of the Court was enshrined in the Copenhagen Declaration⁸ and in the report of the CDDH on the longer-term future of the system of the ECHR⁹. The Russian Federation considers it an important issue that must be reflected in the concluding part of the subchapter “State responsibility and extraterritorial application of the European Convention on Human Rights” and of the Report as a whole. One of the key challenges that threaten the authority of the Court lies in fragmentation of international law due to application by the Court of its own requirements for establishing jurisdiction¹⁰ and lack of clear distinction between jurisdiction and responsibility in the Court’s decisions.¹¹ This approach goes against the rules of general international law and practice of other international courts, including the ICJ. Therefore the Russian Federation suggests that paras. 185 and 427 be strengthened by referencing the need that the Court, in the interest of preserving its authority, more consistently applied relevant rules of general international law, including those codified in the ARSIWA.

⁷ Note of the Secretariat: The paragraph numbers referred to are the numbers as they appeared in document [DH-SYSC-II\(2019\)R7 Addendum](#).

⁸ “The quality and in particular the clarity and consistency of the Court’s judgments are important for the authority and effectiveness of the Convention system” (par.27 of the Declaration).

⁹ “While acknowledging that the interpretation of the Convention is a prerogative of the Court itself, the CDDH noted that an interpretation of the Convention which is at odds with other instruments of public international law (such as international humanitarian law) could have a detrimental effect on the authority of the Court’s case law and the effectiveness of the Convention system as a whole.” (par.186 of the CDDH report); “The authority of the Court is vital for its effectiveness and for the viability of the Convention system as a whole. These are contingent on the quality, cogency and consistency of the Court’s judgments, and the ensuing acceptance thereof by all actors of the Convention system, including governments, parliaments, domestic courts, applicants and the general public as a whole.” (par. 195(ii) of the CDDH report).

¹⁰ *See, inter alia*, paras. 133, 136, 178 of the draft report.

¹¹ *See, inter alia*, paras. 90, 135, 184, 426 of the draft report.

The Russian Federation also regrets that the Report falls short of admitting that the Court in its judgment in the case *Catan and Others v. Moldova and Russia* not merely developed, but significantly expanded the factors inherent in the determination of the existence of “effective control”. Compared to general international law, this threshold was dramatically lowered by the ECtHR, thus deviating from the approach of the International Law Commission and the International Court of Justice¹².

Moreover, the Court not only found Russia responsible while openly admitting the absence of any evidence of Russian involvement in the alleged violations¹³, but also made no distinction between jurisdiction and responsibility¹⁴. Despite these obvious inconsistencies – acknowledged even in the Report itself¹⁵ – the latter still fails to qualify the *Catan* decision as contradictory in paragraph 122 or 133.

The Russian Federation stresses that this approach of the ECtHR, divergent from general international law, causes unavoidable difficulties for States in determining the scope of their obligations under the Convention, as well as at the stage of the execution of judgments in situations of extraterritoriality.

¹² Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States of America*), 27 June 1986; Application of the Convention on the Prevention and Punishment of the Crime of Genocide, (*Bosnia and Herzegovina v Serbia and Montenegro*) 26 February 2007.

¹³ See *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, 19 October 2012, paragraphs 114 (“The Court accepts that there is no evidence of any direct involvement of Russian agents in the action taken against the applicants’ schools.”) and 149 (“The Court notes that there is no evidence of any direct participation by Russian agents in the measures taken against the applicants. Nor is there any evidence of Russian involvement in or approbation for the “MRT”’s language policy in general. Indeed, it was through efforts made by Russian mediators, acting together with mediators from Ukraine and the OSCE, that the “MRT” authorities permitted the schools to reopen as “foreign institutions of private education” (see paragraphs 49, 56 and 66 above).”).

¹⁴ Partly dissenting opinion of Judge Kovler in *Catan and Others v. the Republic of Moldova and Russia* [GC] (“... as in the earlier cases of *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, ECHR 2004-VII) and *Ivanțoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011), I do not share the conclusions of the majority regarding a number of points. In those cases I expressed my disagreement with the methodology of the analysis (wrong parallels with a Cyprus-type conflict), the (somewhat selective) presentation of the facts, the analysis (both disputable and disputed by a number of specialists) of the concepts of “jurisdiction” and “responsibility”...); B.Bowring, 'Case commentary: *Catan v Moldova and Russia*: geopolitics and the right to education, and why "no person" is in fact a child'. *International Justice* 1 (9), 2014, pp. 44-59 (“... the ECtHR has opened itself to serious criticism in its judgments in the three cases, *Ilaşcu*, *Ivanțoc*, and now *Catan*, in which it has attributed responsibility to Russia through faulty and inadequate reasoning”); M. Milanović, 'Catan and Others'. *European Journal of International Law: Talk!*, 21 October 2012 (“Is the Court here saying that Russia was responsible for *everything* that the MRT did, i.e. that all of its acts were attributable to Russia, by virtue of some ECHR-specific rule of attribution? Not only would this go against what the ILC and the ICJ had to say on the matter, but this would also contradict the earlier passages in *Catan* in which the Court draws the distinction between jurisdiction and responsibility. [...] In effect, the Court would appear to have treated this case in exactly the same way as if Russian authorities were directly involved in the closing of the schools, and that just does not seem right to me.”).

¹⁵ See paragraphs 133 and 135 of the draft Report.

Amendments proposed by the delegation of the Russian Federation

Paragraph 122

Replace the first sentence with the following:

“In relation to the Court’s category of extraterritorial application on the basis of “effective control of an area”, there has been significant expansion as regards the factors the Court will consider, notably in the contradictory¹⁶ Court’s judgment in *Catan and Others v. the Republic of Moldova and Russia*¹⁷.”

Paragraph 185

Adjust its wording as follows:

“Apparent inconsistencies in the Court’s interpretation of “jurisdiction” will result in unpredictability and uncertainty among the States as to how their actions might be qualified by the ECtHR. Providing legal certainty is central to the legitimacy of the ECtHR and the maintenance of its effectiveness and authority as an independent and competent judicial institution. In view of the foregoing, and in order to avoid a risk of fragmentation of the international legal order, as well as in the interest of preserving the authority of the Court’s decisions, it would be desirable if the Court more consistently applied relevant rules of general international law, including those codified in ARSIWA in cases concerning attribution of conduct to the respondent State before it.”

Paragraph 427

Adjust its wording as follows:

“Legal certainty as regards the applicable rules concerning the interpretation of the ECHR, and its relationship with other rules of international law, for example international humanitarian law, as well as clarity and consistency in the application by the Court of general rules of international law on state responsibility, is of great importance for the States Parties. As the ECtHR itself found on many occasions, as follows from Article 31 § 3 (c) of the 1969 Vienna Convention on the Law of Treaties, the ECHR cannot be interpreted in a vacuum and should as far as possible be interpreted in harmony with other rules of international law of which it forms part, including those relating to the international protection of human rights.”

¹⁶ See also Partly dissenting opinion of Judge Kovler in *Catan and Others v. the Republic of Moldova and Russia* [GC]; B.Bowring, 'Case commentary: Catan v Moldova and Russia: geopolitics and the right to education, and why "no person" is in fact "a child"'. *International Justice* 1 (9), 2014, pp. 44-59; M. Milanović, 'Catan and Others'. *European Journal of International Law: Talk!*, 21 October 2012.

¹⁷ *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, 19 October 2012.

Appendix IV

Declaration made by the Delegation of the Republic of Moldova regarding the wording of paragraph 133 of the draft CDDH Report on the place of the European Convention on Human Rights in the European and International legal order (DH-SYSC(2019)R5 Addendum 1)¹⁸

(at the 5th DH-SYSC meeting, Strasbourg 15–18 October 2019)

The position expressed by the Republic of Moldova, at the 5th DH-SYSC meeting, concerning the wording of paragraph 133 of the draft Report

The Republic of Moldova proposed the following text:

133. Several other judgments further developed the scope of the States' jurisdiction where they were found to have effective control of an area and in particular in cases where that control was found to be exercised not directly, but through a subordinate administration. In several cases concerning the existence, within the territory of a Contracting State, of an entity which is not recognised by the international community as a sovereign State, with the support of the respondent State, the Court had not only had regard to the strength of the State's military presence in the area. In *Ilaşcu* the Court did not require effective control, considering "decisive influence" to be a sufficient requirement for establishing jurisdiction. In *Catan*, even though no direct involvement of the agents of the respondent State was established [insert footnote: reference to paragraph 123 of the current report], the Court nevertheless concluded that the respondent State exercised "effective control and decisive influence" over the separatist administration, which was found to continue in existence "only because of Russian military, economic and political support".¹⁹

Nevertheless, it is to be noted that the development of the Courts' assessment from *Ilaşcu* case to *Catan* case occurred due to the changes of the situation in the transnistrian region of the Republic of Moldova which took place after the events described in *Ilaşcu*. In *Catan*, the Court explained the way in which the respondent state (Russian Federation) transformed its decisive influence in the transnistrian region through all of its means of support (military, economic and political) to the separatist regime, which determined not just a decisive influence but an effective control.

[...]

¹⁸ Note by the Secretariat: The paragraph numbers referred to are the numbers as they appeared in document [DH-SYSC-II\(2019\)R7 Addendum](#).

¹⁹ *Catan and Others*, cited above, § 122.

Appendix VINFORMATION EXCHANGE REGARDING THE IMPLEMENTATION OF THE
CONVENTION AND THE EXECUTION OF THE COURT'S JUDGMENTS**Presentation of Ms Clare OVEY, Deputy Head of the Department for the
Execution of Judgments of the European Court of Human Rights**

17 OCTOBER 2019

Your mandate requires you to ensure that information is exchanged regularly, to assist member States in developing their capacities and facilitate their access to relevant information.

This can refer to exchanges of information between a number of different actors in the execution process.

- Exchange of information between the Committee of Ministers (CM) and the state authorities – I would rather describe this as accessibility of information about CM and State practice in execution
- Exchange of information between the 47 Member States (MS) of the Council of Europe
- Exchange of information between the national coordinator/government agent (GA) and the Department of Execution (DEJ)
- Exchange of information between the various state authorities and the GA

Exchange of information between the CM and the state authorities

As you know, the CM meets in its human rights format (DH meetings) four times a year, when it adopts decisions and resolutions on the execution of judgments by the MS.

Immediately after the meeting we publish all the decisions that were adopted. We also distribute them on social media – the DEJ has a Twitter account that you might want to follow (https://twitter.com/coe_execution).

Over the many decades that the CM has been performing its role under the Convention of supervising execution, it has developed an extensive body of practice (“*acquis*” as the Court recently called it²⁰). This practice can guide the state authorities in deciding how they should approach similar problems. In the DEJ we have been working on making this information more accessible and searchable, mainly through the development of the HUDOC-EXEC database ([HUDOC-EXEC](#)), or through document such as the Enhanced Table that lists all the main groups in the Enhanced procedure which is published at each DH meeting ([ENHA Table](#)).

²⁰ *Ilgar Mammadov v. Azerbaijan (Article 46 § 4 proceedings)* § 164.

DH-SYSC(2019)R5

We are also working on factsheets to provide in consolidated and thematic form information on CM practice as regards reopening of domestic procedures, payment of just satisfaction and constitutional procedures. These should be online before the end of the year.

Every year the CM adopts an Annual Report on execution and this is full of statistical and thematic information, together with an overview by the Director General and the Chairs. Past Annual Reports can be found on our website ([Execution Dpt annual reports](#)).

Finally, we are working on a HELP module specifically on the execution process, with examples and guidance on how to access further information.

Exchange of information between the 47 MS of the CoE

This can take place at the DH meetings, when delegations can exchange views on the execution of specific cases.

In accordance with the Brussels Declaration, the CM has also been organising thematic debates adjacent to DH meetings. In 2018 a thematic debate was held on conditions of detention and national remedies. In 2019 the thematic debate was on the procedural obligation to investigate ill treatment and killings by security forces. Many delegations brought experts from the capitals and we heard how the authorities of many MS have organised their investigatory procedures to comply with Convention obligations.

For 2020 we are thinking of using the Annual report as a springboard to discuss national capacity for the execution of judgments and good practices from the MS that have been used to enable the execution of some very complex and sensitive cases. We are thinking of inviting other national stake-holders, such as Parliamentarians and representatives of national human rights institutions and NGOs to take part. A concept paper will be distributed for discussion in the GR-H before the end of the year.

Finally, the DEJ organises roundtables and conferences to bring together experts from MS to share information about practice in their countries. This week a high-level regional conference on the duty to investigate ill-treatment is taking place in Montenegro.

Exchange of information between the GA and the DEJ

This has definitely improved over the course of the Interlaken process – it introduced the idea that states should send action plans and action reports. You can find a very clear guide to assist in the drafting of Action Plans and actions Reports on our website “vademecum”).

Please don't forget about older cases. It is CM practice to transfer cases from standard to enhanced procedure after five years if nothing is being done to get them executed. Often we find that measures have been taken but we have not been informed in an Action Report.

It is CM practice to do partial closures of groups of repetitive cases where individual measures have been taken, and to continue supervising the general measures in one or several leading cases. To close individual cases we need information on individual measures, particularly reopening where relevant.

We are happy to organise study visits and in-country training for GA staff.

Exchange of information between the various state authorities and the GA

When we go on mission to countries sometimes we feel that the roundtables we organise are the first time the relevant actors at state level have sat down together to discuss issues – it often provides the key to resolve long-standing problems.

In particular, I would urge you to make sure that CM decisions are translated into your national language and circulated to the relevant ministries, the courts and Parliament. We have been trying to improve the way these are drafted so that they are more easily understood to “outsiders” who are not fully immersed in CM procedure, the ECtHR’s case-law or the execution history of certain long-standing cases.

Short presentation of the HUDOC-EXEC database ([HUDOC-EXEC](#)):

HUDOC-Exec is a documentary database that centralises the public documents related to all pending and closed cases dealt with by the Execution Department. The documents available include action plans, actions reports, communications from the civil society, interim resolutions, final resolutions, etc...

The aim of the tool, which is based on the ECHR’s HUDOC database, is to increase the visibility of the Execution process by making readily available the public documents relating to cases.

The cases can be searched using various filters and easy to use search engines.

In each case the different tabs allow an organized view of the documents available, and a brand-new tab lists all the CMDH decisions related to each case, where applicable.

The RSS-feed tool allows users to save their searches and be informed when new documents relating to their search has been uploaded. Set RSS-feed searches have also been saved on the Execution website per country, which can be easily saved on ones browser ([pre-saved RSS feeds](#)).

The Execution department is happy to hear any feedback relating to the HUDOC database, to allow us to improve the current tool. We are also happy to organize training sessions with government agents and other officials in Strasbourg or in the Member States in relation to HUDOC-Exec.