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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

**DRAFTING GROUP ON ENHANCING THE NATIONAL IMPLEMENTATION OF
THE SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS
(DH-SYSC-V)**

Concept paper prepared by the consultant

**Part II – Updating the Recommendation Rec(2002)13 of the Committee of Ministers
to member states
on the publication and dissemination in the member States
of the text of the European Convention on Human Rights
and of the case-law of the European Court of Human Rights**

Information note

1. The present document contains elements for reflection on the third item of the mandate of the DH-SYSC-V according to which the Group is responsible for updating Recommendation Rec(2002)13 of the Committee of Ministers to member States on the publication and dissemination in member States of the text of the European Convention on Human Rights and the case law of the European Court of Human Rights. This document constitutes the second part of the research entrusted by the Secretariat to the consultant Mr Fredrik SUNDBERG, former Head of the Department for the Execution of Judgments of the European Court of Human Rights, as a follow-up to the mandate given by the Committee of Ministers to the CDDH and with a view to the preparation of the 1st meeting of DH-SYSC-V (14-16 October 2020).

2. The DH-SYSC-V is invited to discuss this discussion paper at its 1st meeting, in particular the proposals made by the Consultant on the title, preamble, operative part and appendix of

a new text aimed at updating Recommendation (2002)13. The DH-SYSC-V is also invited to take relevant decisions to prepare, on the basis of its discussions, a draft text for updating the above-mentioned Recommendation for consideration and possible finalisation at its 2nd meeting in 2021.

INTRODUCTION

1. The consultant was invited to "*provide guidance for updating the Recommendation (2002)13 on the publication and dissemination in member States of the text of the ECHR and the case-law of the Court*" (the text of the Recommendation and its Explanatory Memorandum are reproduced in the Appendix to this document). More specifically, he was invited to:

- (i) Identify the provisions of the Recommendation that need to be adapted, indicating the reasons why an update is necessary;
- (ii) Draft a possible structure for updating the Recommendation with relevant new elements and provisions.

2. It was considered that further consideration of the issues of publication and dissemination is urgently needed as many developments have taken place since the previous Recommendation of 2002 and that publication and dissemination of the major texts of the Convention system is the *sine qua non* condition for effective measures to prevent and redress violations of the Convention at the national level.

3. Among the expected beneficial effects at the national level of further consideration of issues related to publication and dissemination are the following:

- More effective monitoring of the compliance of draft legislation with the standards of the Convention;
- Increased awareness of national authorities of their obligations under the Convention system;
- Increased effectiveness of remedies;
- A judicious use of Protocol No. 16 to the Convention; or
- Other beneficial effects such as better vocational training at the national level.

4. This is all the more important as strengthening the implementation of the Convention at the national level remains a priority also for the post-Interlaken period.

REASONS WHY AN UPDATE OF RECOMMENDATION (2002)13 IS NECESSARY

5. Since the entry into force of the European Convention on Human Rights (the Convention) on 3 September 1953, significant efforts have been made to ensure its publication and dissemination. These efforts, which have also covered the case law of the European Court of Human Rights (the Court), have been made by:

- (i) Public authorities, at governmental, parliamentary and judicial level;
- (ii) National institutions for the promotion and protection of human rights and Ombudsman institutions;

- (iii) Non-state bodies such as specialised publishing houses, bar associations, universities, human rights institutes, non-governmental organizations, churches, associations, and private individuals.

6. A great deal of work has already been done:

- (i) Twenty years ago, the European Ministerial Conference on Human Rights which was organised by the CDDH and held in Rome on 3-4 November 2000 to commemorate the 50th anniversary of the Convention explicitly encouraged member states to "ensure that the text of the Convention is translated and widely disseminated to national authorities, including judicial bodies, and that developments in the case law of the [European] Court of Human Rights are sufficiently accessible in the language or languages of the country" (Resolution I, paragraph 14. (iii)).
- (ii) Subsequently, the first non-binding standard-setting text drawn up by the CDDH after the Rome Conference and adopted by the Committee of Ministers as a follow-up to the Conference's Political Declaration specifically concerned the publication and dissemination in the member states of the text of the Convention and the Court's case law. On 18 December 2002, at their 822nd meeting, the Ministers' Deputies thus adopted Recommendation (2002)¹³ devoted specifically to this question. This text had been drawn up by the CDDH, which had also drafted the relevant explanatory memorandum. However, this Recommendation was adopted at a time when :
 - The Convention was not yet an integral part of the domestic law of all member states;
 - The number of cases had not yet "exploded";
 - The number and diversity of authorities potentially concerned had not yet been clearly demonstrated;
 - The importance of ensuring a publication that facilitates the effective consideration of all the Court's relevant case law, and not especially that concerning the State in question, had not yet been felt as strongly as it is today.

7. The work carried out within the Council of Europe has also led to the setting up of the HUDOC database allowing easy access to the Court's case-law by including more and more translations into the languages of the Organisation. Access to knowledge of existing good national practices in the national implementation of the Convention has also been facilitated. The Council of Europe has enabled a growing exchange of experience between authorities and between States (in particular through numerous conferences and co-operation activities, often bi- or multilateral but also at the level of the Organisation itself).

8. However, the situation has changed considerably since then:

- The number of States Parties has considerably increased;
- The incorporation of the Convention as an integral part of national law was completed for all member states of the Organisation by 2004;

- The evolution of the Court's jurisprudence has been massive¹;
- The importance given to a good knowledge of the requirements for the execution of judgments, both in general and in specific, often complex cases, has increased;
- The expertise accumulated by the various advisory and monitoring bodies of the Council of Europe has become increasingly important.

9. Today, eighteen years after the adoption of the Recommendation, the CDDH has once again been invited to consider measures that could be taken by member States to ensure at the national level a good knowledge of the Convention system as a *sine qua non* condition for its viability and effectiveness.

10. Indeed, since the first Recommendation in 2002, the need to ensure the publication and dissemination not only of the Court's case law, but also of the texts and decisions relevant to the effective implementation of the Convention has been strongly felt.

11. This often implies facilitating access to a range of other Council of Europe sources of inspiration relevant to the prevention and effective redress of violations of the Convention (recommendations, opinions, expert opinions, etc.).

12. Although this last point has already been partly addressed in the framework of the Recommendation of the Committee of Ministers (2008)² on effective domestic means for rapid execution of judgments of the European Court of Human Rights, in particular with regard to texts and decisions of the Committee of Ministers in the framework of its supervision of execution, it seems appropriate and in line with the approach taken in the recent Recommendation of the Committee of Ministers (2019)⁵ on the Convention system in university education and vocational training to clearly and more generally integrate this "system-related aspect" in a new Recommendation on publication and dissemination.

13. It should be also stressed that these additional sources of inspiration are equally relevant outside the strict framework of the execution of the Court's judgments, since it is a matter of preventing and remedying, in purely domestic contexts, any violation of the Convention.

14. It is thus not fortuitous that the DH-SYSC-V has been entrusted, at the same time, with work on the publication and dissemination of the various major texts of the Convention system and work aimed at preventing and remedying violations in an effective manner. Indeed :

- (i) The prevention of violations requires an appropriate knowledge on the part of the stakeholders of the obligations arising from the Convention system, which is only possible if the actors concerned have effective channels for accessing the reference texts, including the judgments of the Court, the practice - the *acquis*, as described by the Court - of the Committee of Ministers and of the States with regard to the requirements for the execution of the Court's judgments, the recommendations of the Committee of Ministers to member States and other relevant non-binding texts, opinions or expertise. The appropriate publication and dissemination of these texts enables in particular:

¹ More than 5,400 judgments and decisions adopted since 2003 have been reported in HUDOC as having provided clarifications to the existing case law.

- the legal advisers of governments or parliaments to ensure that draft legislation complies with the Convention as well as those of any other structure that has been put in place with the same task;²
 - judges and various State decision-makers to ensure that they adequately protect the rights and freedoms of the Convention, by means of giving effective follow-up not only to judgments concerning their State, but also, in a proactive manner, to relevant judgments concerning other States. In addition, the publication and dissemination of these texts enables judges and decision-makers to effectively remedy any violations of the Convention wherever they are found.³
 - lawyers, NHRIs, NGOs and other interested actors to act in an informed manner.
- (ii) Remedying the violations found similarly requires appropriate national knowledge of the Convention system. A better publication and dissemination of the requirements in this regard as they emerge from the above-mentioned sources is necessary to ensure that, at the national level, adequate possibilities exist for victims of violations to obtain reparation in all situations in accordance with European standards.

15. However, it should be noted that many of the basic principles and considerations contained in Recommendation (2002)13 on the publication and dissemination of the Court's judgments remain highly relevant. Some examples include:

- (i) The principle that publication should take place in media commonly used by the legal community and that the practice in respect of national judgments should also guide the practice in respect of judgments of the Court - especially since 2002 the Convention has been an integral part of national law in all member states:
- It is sufficient to publish, in addition to the main judgments against the state (especially those requiring general or individual measures depending on this publication), the judgments that clarify the content of the protected rights;
 - The State should ensure that all judgments and decisions affecting its own national system, and requiring general measures, are also promptly disseminated to the public bodies concerned and, where appropriate, to non-state entities such as bar associations or professional orders ;

² As more and more judgments of the Court concerning their countries have arrived, several national parliaments have taken the initiative to translate and publish them themselves. Some countries ensure this publication through the official gazette. [This information will be developed in the light of the replies that will be received following the circulation of the questionnaire].

³ Publication by the highest judicial or governmental authorities is also frequent: thus, the courts of cassation in Italy and France publish summaries in the national language. In Portugal, this work is also carried out by the Attorney General's Office, who is the special legal advisor to the government. However, given the scale and complexity of the task of selection, publication and translation, parliaments are generally no longer involved in this work, which continues to be carried out, in addition to the Court itself, by governments, supreme courts and specialised agencies/companies with a significant contribution from civil society in a number of states. [This information will be developed in the light of the responses that will be received following the circulation of the questionnaire] [This information will be developed in the light of the responses that will be received following the circulation of the questionnaire].

- All judgments against the State should always be promptly disseminated to the authorities directly involved in the case;
 - Publication should be prompt, but may be limited to substantial extracts or summaries;
 - It should, if necessary, also include translations into the national language(s).
- (ii) In view of the high number of judgments and decisions, it is very important to ensure also publications that analyse the Strasbourg judgments and publications that evaluate and comment on these texts.
- To the latter end it always seems important to encourage financial aid to law faculties etc.
- (iii) In order to facilitate access, it remains very important to provide links to the HUDOC Court databases, and now also to HUDOC Enforcement, through the sites commonly used for legal research on national law;
- (iv) The support given to inter-State cooperation with a view to creating databases containing translations of judgments in common languages seems, finally, also to remain relevant.

16. These principles could thus, on the one hand, be reiterated, or even reinforced, and, on the other hand, extended in an appropriate manner to other texts of importance for the proper functioning of the Convention system to take account of the important developments since 2002.

17. Efforts to publish and disseminate more widely all the Court's well-established case law also seem necessary, since recent developments show an increase in the number of cases covered by "well-established case law" (so-called JBE / WECL cases).⁴

18. In accordance with the above-mentioned Recommendation (2008)2, it would also seem useful to reiterate the importance of publishing and disseminating the Committee of Ministers' acquis as regards the requirements for the execution of judgments and the decisions and resolutions adopted by the Committee in individual cases.

19. While the experts also consider it appropriate to follow the example of Recommendation (2019)5 on the Convention system in university education and vocational training and accept the new ambition to place this recommendation also in the wider field of the proper functioning of the Convention system, the texts to be published, or at least disseminated or brought to the attention of the authorities by appropriate means (for example, through networks of councils with links to relevant Council of Europe sites), would also cover, as proposed above, a series of non-binding texts :

- (i) These would include the relevant recommendations of the Committee of Ministers, opinions and expertise of importance for the proper functioning of the system

⁴ It may be noted that the number of JBE cases (decided on the basis of well-established case law) revealing new general/structural problems has more than doubled since 2015 and so has the number of states concerned and that some of these cases have also been placed under sustained supervision by the Committee of Ministers because of the importance of the problems revealed. It is further recalled that such efforts to reduce JPBE cases are also fully in line with the Interlaken process which, from the outset, stressed the need for good training in the requirements of the Court's well-established case-law, a need which also includes good publication and dissemination of this case-law.

adopted by the Council of Europe's advisory and monitoring bodies (e.g. the CPT, CEPEJ or the Venice Commission).

- (ii) The need for translation would have to be assessed on a case-by-case basis, taking into account established practices, in particular for recommendations of the Committee of Ministers.

20. In addition to the Court's judgments and decisions, flagship texts for publication and rapid dissemination could include the following:

- (i) Relevant texts explaining the practice and acquis of the Committee of Ministers, reflected in part in the (partly developed) Vademecum mentioned in Recommendation (2008)2 and in its Annual Reports and Fact Sheets. The Committee's annual reports could also further develop information on the way in which member states publish and disseminate the major texts and practices of the Convention system)
- (ii) Relevant decisions and resolutions of the Committee of Ministers in cases under supervision, if necessary by translating these texts, as already indicated in Recommendation (2008)2
- (iii) The set of Recommendations of the Committee of Ministers to the Governments of Member States which are closely related to the prevention of violations and to the effective execution of the Court's judgments that have been elaborated by the CDDH since 2000, namely :

CM/Rec(2019)6 - on the development of the institution of the Ombudsman

CM/Rec(2019)5 - on the system of the European Convention on Human Rights in university education and vocational training

CM/Rec(2018)11 - on the need to strengthen the protection and promotion of civil society space in Europe

CM/Rec(2016)3 - on human rights and business

CM/Rec(2010)5 - on measures to combat discrimination based on sexual orientation or gender identity

CM/Rec(2010)4 - on the human rights of members of the armed forces

CM/Rec(2010)3 - on effective remedies for excessive length of proceedings, with a Guide to Good Practice

CM/Rec(2008)2 - on effective means to be implemented at domestic level for the rapid execution of judgments of the European Court of Human Rights

Rec(2004)6 - on the improvement of domestic remedies

Rec(2004)5 - on the verification of the compatibility of draft laws, existing laws and administrative practices with the standards set by the European Convention on Human Rights

Rec(2002)13 - on the publication and dissemination in the ~~M~~member States of the text of the European Convention on Human Rights and the case-law of the European Court of Human Rights

Rec(2002)2 - on access to official documents

Recommendation No. R(2000)2 - on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights

- (iv) The Toolkit for informing public officials on the obligations of the State under the European Convention on Human Rights developed by the CDDH in 2014
- (v) Relevant excerpts from the Yearbook of the European Convention on Human Rights
- (vi) Texts containing links to the sites of the Committee of Ministers and the CDDH, possible national or joint sites of several States sharing the same language (created or envisaged) which would include in the language(s) of the country/region the specific information contained in these two Council of Europe sites which would be of particular interest to the country(ies) concerned at a given time (including texts such as the Council of Europe publication on the selection and election of judges to the European Court of Human Rights which is accessible from the CDDH site).
- (vii) Various activity reports or other texts or publications deemed to be of interest for the state in question, such as those of the Court, the Committee of Ministers on its supervision of execution, the CPT, the CEPEJ etc...

21. The publication and dissemination of the major texts and practices of the Convention system are today accompanied by major training and education efforts, which are regularly supported by the Council of Europe.⁵ The objectives of these activities are to promote national prevention (both reactive, following judgments of the Court against the State in question, and proactive, aiming also at avoiding any foreseeable violation on the basis of the general case law developed against other States) and the proper functioning of individual (and inter-State) remedies before the Court.

PROVISIONS OF THE RECOMMENDATION NEEDING ADAPTATION

22. Almost twenty years after the adoption of Recommendation (2002)13, it can be seen that, while the substantive messages are still relevant, it is necessary to reformulate the whole text to give it a broader scope.

23. As regards the reformulation of the text, it would seem interesting to take as a "mirror" the recent Recommendation CM/Rec (2019)5 of the Committee of Ministers to member states on the system of the European Convention on Human Rights in university education and vocational training. The framework could be based on that recommendation, since the content and messages of the two texts follow and complement each other.

⁵ Thus, the Committee of Ministers encourages specific training programmes, in particular in the framework of its supervision of the execution of judgments. Furthermore, the Organisation is increasingly developing training courses on the Convention system in the framework of its HELP programme.

24. With regard to substance, the crucial point that the DH-SYSC-V should consider is the scope of the new Recommendation. As already pointed out, it no longer seems appropriate to confine oneself to the mere publication and dissemination of the text of the Convention and the relevant jurisprudence of the Court; it is also necessary to have, at the various decision-making and operational levels of the State, a sufficient knowledge of the ECHR system as a whole, including texts and practices that may facilitate the proper execution of judgments and the effective prevention of future violations.

25. This task, which has undoubtedly become more complex and demanding, should be carried out by member states in close synergy with the Council of Europe and with non-state actors, in particular bar associations and representatives of civil society.

A. TITLE

26. Should the above idea be retained, and also in order to make the new Recommendation more attractive to the Committee of Ministers and to the general public than a mere revision of an instrument that is almost twenty years old, any title that would read "Recommendation (2002)13 revised ..." should be discarded.

27. Following the example of the above-mentioned Recommendation CM/Rec (2019)5 of the Committee of Ministers to member states on the system of the European Convention on Human Rights in university education and vocational training, for which the CDDH did not simply adopt the previous title, it is proposed that the revised recommendation be given a specific reference "2021" and a title reflecting the new scope desired for this instrument. One possibility would be as follows:

"Recommendation (2021)...of the Committee of Ministers to member states on the publication and dissemination, at domestic level, of the text of the European Convention on Human Rights, the case-law of the Court and other major texts and practices concerning the Convention system".

B. PREAMBLE

28. The following ideas/developments should be highlighted in the preamble :

- (i) Issues related to publication and dissemination are today essential for a good knowledge of the requirements arising from the Convention system is now one of the sine qua non conditions for public authorities to take adequate preventive measures and provide satisfactory redress for violations found (others relate to the status of the Convention in domestic law, the effectiveness of procedures to ensure the conformity of laws and draft laws with the Convention, and the existence of effective remedies for alleged violations).
- (ii) The fact that, compared to the situation in 2002, the Convention is now part of domestic law in all member states/Parties.
- (iii) The content and messages of the new Recommendation would seem to usefully "mirror" the above-mentioned Recommendation CM/Rec (2019)5 of the Committee of Ministers to member states on the system of the European Convention on Human Rights in university education and vocational training, This requires, in particular, consideration not only of issues relating to the publication and dissemination of the Court's judgments, but of all texts relevant to the proper functioning of the Convention system, starting with those of the Committee of Ministers in the context of its supervision of the execution of judgments;

- (iv) the significant development of the Court's case-law and the practice of the Committee of Ministers, the diversity and number of national, regional or local authorities concerned and the importance of taking account of the Council of Europe's expertise in its various forms (recommendations, opinions, expert opinions, etc.) for the proper functioning of the system;
- (v) the interest which could be attached to the organisation, where appropriate, of databases between States sharing the same language;
- (vi) The need to translate and, where appropriate, authenticate the relevant texts and decisions when they are available only in the two official languages of the Organisation and, as a result, will not be accessible to most of the addressees and will not be given credence by the authorities concerned, in particular in the case of requests for individual measures;
- (vii) Technological developments are indisputable assets for rapid publication and dissemination, but also pose challenges in terms of efficiency (it is tempting to consider that "all the information is already on the Internet" in order to dispense with the efforts, in particular of synthesis, targeting and sharing of information, which today are absolutely necessary so that the system of the Convention is really known and applied by all those concerned); (viii) the need for the Convention to be published and disseminated in both official languages of the Organisation and that, as a result, it will not be accessible to most recipients and will not be trusted by the authorities concerned, in particular in the case of requests for individual measures:
- (viii) The need to ensure that persons who do not have access to electronic information tools can have access to the most important texts (at least that of the Convention) through the traditional means of printed documents;
- (ix) Emphasise the commendable efforts to contribute to the effective publication, translation and dissemination of the texts and practices of the Convention system that have been made and continue to be made by, inter alia, :
 - the Committee of Ministers, the Court and the Council of Europe's Human Rights Training Programme for Legal Professionals (HELP) ;
 - on the other hand, the various actors of civil society, in particular national institutions for the promotion and protection of human rights and non-governmental organizations, as well as bar associations.

29. If these ideas were retained by the DH-SYSC-V, they could be included in a new preamble which could usefully be at least partly inspired by that of the above-mentioned Recommendation CM/Rec (2019)5.

30. The following draft paragraphs are thus inspired by this recommendation, while retaining parts of the former preamble of Recommendation (2002) 13), developments and trying to reflect the ideas presented above:

[The Committee of Ministers of the Council of Europe, as stated in Article 15.b of the Statute of the Council of Europe,

- 1. Reaffirming the commitment to the Statute of the Council of Europe and its aim of achieving greater unity between its members, in particular by promoting common standards and activities in the field of human rights and fundamental freedoms;*
- 2. Recalling the essential role of the system of the Convention for the Protection of Human Rights and Fundamental Freedoms in the effective protection of human rights, the rule of law and democracy in Europe;*
- 3. Recalling that the Convention has become an integral part of the domestic legal order of all States Parties;*
- 4. Recalling the recent Recommendation CM/Rec(2019)5 of the Committee of Ministers to member states on the system of the European Convention on Human Rights in university education and vocational training;*
- 5. Stressing in the light of this recommendation the importance of a thorough knowledge not only of the judgments and case-law of the Court, but also of the various texts, decisions, recommendations, opinions and expert opinions necessary for the proper functioning of the Convention system as elaborated by the competent bodies of the Council of Europe, through systems of publication and effective dissemination adapted to the needs and traditions of States;*
- 6. Stressing the significant increase in the number and diversity of cases decided by the Court since 2002 and in the number of authorities concerned (whether national, regional or local);*
- 7. Noting, therefore, in view of the developments since Recommendation Rec(2002)13 of the Committee of Ministers to member states on the publication and dissemination in member states of the text of the European Convention on Human Rights and the case-law of the European Court of Human Rights, the need to update this recommendation;*
- 8. Stressing the continued importance of publishing the case-law of the Court relevant to each state in such a way as to be easily accessible to state organs and the legal community, including through the channels normally used for the case-law of national courts, where appropriate in translation; and other texts in a manner appropriate to the nature of the texts and decisions concerned and the existing recommendations of the Committee of Ministers, in particular in Recommendation (2008)2 on effective national capacity for rapid execution of the Court's judgments;*
- 9. Stressing the interest that could be attached to the organisation, where appropriate, of regional databases between States sharing the same language;*
- 10. Stressing, in view of the development of the Court's case-law, that it is of major importance to have summaries or syntheses of that case-law in the language of the country, and that the same importance attaches to summaries or syntheses of the acquis of the Committee of Ministers in the context of its supervision of the execution of judgments, and that such texts should be drafted by professionals and be readily available in member States;*
- 11. Noting the need to ensure, where appropriate, prompt and authenticated translations of judgments, decisions or other relevant texts (in particular at the execution stage, in the context of applications for the reopening of proceedings or the review of incriminated decisions by the Court);*
- 12. Stressing the major contribution to the proper functioning of the Convention system made by the recommendations of the Committee of Ministers and other texts such as the opinions and expert opinions adopted by the advisory and monitoring bodies/bodies of the Council of Europe and the importance which can also be attached to ensuring, in an appropriate manner, their publication and dissemination;*

13. *Stressing that technological developments in the field of communication and information, in particular the HUDOC systems, are indisputable assets for the rapid publication and dissemination of the major texts and practices of the Convention system, but that they also pose challenges for national authorities in assessing whether these standards are actually known and applied by national actors who do not have access to these technologies or who do not know the official languages of the Council of Europe;*

14. *Bearing in mind the important developments in the publication and dissemination of the major texts of the Convention system in the 47 member States of the Council of Europe, resulting from the commendable efforts of the member States and civil society as well as of the Committee of Ministers, the Court and the Council of Europe's Human Rights Training Programme for Legal Professionals (HELP);*

15. *15. Stressing the role played by various actors of civil society, in particular national institutions for the promotion and protection of human rights and non-governmental organisations, as well as bar associations, in contributing to the effective publication, translation and dissemination of the texts and practices of the Convention system;*

16. *Taking into consideration the diversity of traditions and practices in Member States with regard to the publication and dissemination of the major texts of the Convention system;]*

C. OPERATIVE PART

31. The current operative part should be reworded.
One possibility would be as follows:

[Recommends that the governments of member states :

i. Ensure that the publication and dissemination of the major texts of the Convention system comply with the principles set out in Annex I to this recommendation-;

ii. Ensure by appropriate means and actions, including translation if necessary, wide dissemination of this Recommendation to relevant authorities and stakeholders;

iii. Review, within the Committee of Ministers, the implementation of this recommendation five years after its adoption].

D. DETAILED PRINCIPLES TO BE SET OUT IN THE APPENDIX TO THE RECOMMENDATION

32. While the main messages of Recommendation Rec(2002)13 remain valid, it is nevertheless necessary to revise their wording to take into account the important developments since its adoption and to add new provisions relating to the extended scope of the revised Recommendation, in order to clearly explain the scope and purpose of the new Recommendation.

33. If this idea were retained by the DH-SYSC-V, it would be necessary to exemplify what is meant by "major texts and practices of the Convention system".

- (i) Obviously, the two key elements are the text of the Convention itself as explained and clarified by the Court's jurisprudence.
- (ii) There is, however, a third key element, the practice of the Committee of Ministers and of States in relation to the requirements for the execution of the Court's judgments and decisions.

- (iii) This is followed by a series of non-binding texts aimed at contributing to the proper functioning of the system, both for the general implementation of the Convention, to identify appropriate responses to European challenges with important consequences for the Convention, and to facilitate the adoption of necessary reforms following judgments or decisions of the Court. These include various recommendations of the Committee of Ministers and the opinions, expert opinions or other texts adopted by the Council of Europe's advisory and monitoring bodies.

34. The detailed principles to be set out in the appendix to the Recommendation could have the following structure:

I. General principles

1. *Member States should ensure the publication and dissemination of the major texts of the Convention system, ensuring that they meet the needs and expectations of the different categories of the public. Where necessary, this should be done in cooperation with non-State stakeholders.*
2. *Member States should, in particular, enhance the effectiveness of such publication and dissemination by ensuring that the tools necessary to comply with the obligations under the Convention are available for each category of the public.*
3. *To this end, member States should ensure that the major texts of the Convention system are available in an accessible manner and with the required degree of quality and reliability; and that publication and dissemination are targeted, where appropriate, to specific audiences.*

II. Target Audience

4. *Member states should ensure publication and dissemination of the major texts of the Convention system that can provide domestic authorities (at various local, regional and national levels) with the knowledge necessary to prevent or remedy violations.*
5. *Member States, while taking into account the diversity of national situations, should ensure that a wide variety of professionals have access to (i) the major texts of the Convention system, where appropriate in the language(s) of the member State; (ii) the relevant case-law of the Court in their respective fields of competence; and (iii) the requirements for the execution of judgments, so that these professionals can effectively prevent any foreseeable violation on the basis of this case-law and remedy the violations found.*
6. *In particular, the attention of member states should focus on the following categories: judges, prosecutors, law enforcement personnel; lawyers; specialized journalists; personnel dealing with vulnerable groups.*

III. Means of Publication and Dissemination

7. *Member States should ensure that means of publication and dissemination of the major texts of the Convention system exist that take into account both the national context and the fact that the Convention, today, is part of the domestic law of all Member States. This implies in particular that :*
 - (i) *The case law of the Court be published on sites where the legal community expects to find other case law relevant to the understanding of national law,*
 - (ii) *The specific needs and expectations of the various target audiences are taken into account.*
8. *Member States may, where appropriate, consider developing these means in close cooperation with non-state actors. The main aim should be to facilitate effective access to the various relevant texts (judgments, decisions, resolutions, recommendations) of the Convention system by also making the best use of the resources made available by the Council of Europe (HUDOC and HUDOC-EXEC*

databases; Committee of Ministers and Parliamentary Assembly sites; site of the CDDH and other relevant intergovernmental co-operation bodies, HELP thematic courses, etc.).

9. *Where they consider it necessary or useful to have translations into the national language(s) of the major texts of the Convention system, member states should ensure in particular that translations of the relevant case-law of the Court or summaries of case-law are carried out by professionals or on the basis of reliable and duly supervised electronic methods. Such translations should be easily accessible and free of charge.*

10. *Member states should encourage initiatives by representatives of civil society to ensure the rigour of translations in relation to the original English or French versions and the quality of the networks for publishing and disseminating the texts.*

E. ADDITIONAL IDEAS BROUGHT TO THE ATTENTION OF THE DH-SYSC-V

35. The following ideas could be included in the above structure. If the DH-SYSC-V is of the opinion that this is the case, it would be up to the DH-SYSC-V to decide on the best place to reflect them and their wording.

36. It is particularly important to stress the increased importance of an effective publication in national language of all relevant case law for each State, especially that which can be qualified as "well-established". This publication must be made in a form and through channels that clearly encourage all authorities in their areas of competence, and lawyers in general, to use it and ensure the awareness of civil society.

37. Indeed, the comprehensive statistics made available by the Court's and the Committee of Ministers' publications show that JBE cases are clearly on the increase and that the potential for a strengthening of this trend is significant given the very large number of Chamber cases without case-law interest (category 3).

38. The channels of publication also seem to deserve more attention since, since the adoption of the existing Recommendation, the Convention has become an integral part of the domestic law of all States Parties and it therefore seems even more appropriate than in 2002 to ensure such publication in the same forms (places, media, etc.) as any other publication of case-law relevant to the understanding of national law; an idea already disaggregated at the time.

39. It also appeared necessary to ensure that authoritative translations of judgments and decisions are rapidly made available, in order to enable claimants to obtain redress. Various methods could be envisaged, for example, agreements between the States and the Court's Registry on the quality requirements to be met for the inclusion of translations in the HUDOC system. Or at least a marking system could be introduced to identify translations accepted by the States concerned.

40. A problem to be solved in this context concerns the very large number of State, regional and local authorities concerned by the Convention/the Court's judgments and the question of how to ensure publication and dissemination in such a way as to keep all these authorities duly informed. These tasks could be carried out by a specialised internal organisation.

- (i) This requirement seems reasonable for authorities very frequently concerned by the Court's case-law (courts, prosecutors, police, detention centers, social authorities).
- (ii) For others less frequently requested, it could be envisaged to set up knowledge sharing systems allowing rapid access to the necessary expertise. This could often

be the case for various regulatory authorities, such as safety commissions, financial control commissions, or even central banks or regulatory authorities (such as civil aviation regulatory authorities) as well as a significant proportion of national authorities. Local and regional authorities would deserve special attention depending on their situation in each country.

41. In view of the remaining knowledge needs, the Recommendation could again stress the continued importance, at national level, of encouraging the production and dissemination of publications which analyse the Strasbourg decisions and/or present the Convention system. While much progress has been made through public and private initiatives or through the existence of university research programmes, there still seems to be a significant need. To this end, the idea already put forward in the previous recommendation of providing financial assistance to law faculties or other private actors, etc., for research and publication on the Convention could also be reiterated.

42. It may be interesting to reiterate the invitation to promote regional initiatives aimed at gathering translations of relevant case law and other texts available in the common languages.

43. It is essential to recall that other major actors in the Convention system, namely NGOs and NHRIs, include lawyers and bar associations.

44. Consideration of the role that will/should be played by them could in itself be the subject of a separate study but, for the purposes of this exercise, it should be noted that lawyers and bar associations are a major part of the public targeted by the new Recommendation and that, in turn, these actors can play a key role in the publication and dissemination of the Court's case-law and the *acquis* of the Committee of Ministers.

F. Compendium of good national practice

45. It is expected that the consultant's guidelines contained in this document may lead to the adoption of a questionnaire to be circulated by the Council of Europe Secretariat to participants in CDDH meetings as well as to participants in human rights cooperation programmes. The replies will make it possible to draw up a compendium of good national practices, along the lines of what was done in the "mirror" Recommendation CM/Rec (2019)5 of the Committee of Ministers to member states on the system of the European Convention on Human Rights in university education and vocational training. The collection of good national practices should be published following a possible adoption by the Committee of Ministers of a new recommendation to member states on the publication and dissemination, at domestic level, of the text of the European Convention on Human Rights, the case-law of the Court and other major texts and practices concerning the Convention system.

G. QUESTIONNAIRE

46. If the above idea of a compendium of national good practices is retained by the CDDH, the CDDH should develop the questionnaire in due course. To this end, the following ideas may be useful:

Question 1

The text of the Convention

Can you confirm and/or clarify the following points:

- (a) *The text of the ECHR (including its Protocols) as well as the various key recommendations of the Committee of Ministers for the implementation of the Convention at national level,*

concerning both the system as such and more thematic issues, are published in ways that reflect their different legal values and are available to all those interested and to the public in the language(s) of your country (i) in electronic version (ii) in traditional printed version and that there are (iii) official translations of these texts.

- (b) *The relevant authorities in your country take initiatives to ensure the dissemination of these texts to the relevant central, regional or local authorities; (ii) also encourage bar associations and representatives of civil society to ensure the dissemination of these texts to their own target groups (cite, where appropriate, examples of synergy between the public and private sectors).*

Question 2

The jurisprudence of the Court

Can you confirm and/or clarify the following points:

- (a) *The well-established jurisprudence of the Court (judgments and decisions having a more or less general scope) as well as the main judgments and decisions specifically concerning your country are published in the language(s) of your country on the sites commonly used by the legal community to find national law and jurisprudence, (i) in electronic version (ii) in traditional printed version and that there is (iii) an official translation of these texts in cases where such translation is necessary (and promptly where such translation is required for the applicant to obtain redress, p. (iii) an official translation of these texts for cases where such a translation is necessary (and promptly where such a translation is required in order for the applicant to obtain relief, e.g., through the reopening of a proceeding, reconsideration of a case or reopening of an investigation).*
- (b) *The relevant authorities in your country take initiatives to ensure the dissemination, possibly targeted and accompanied by explanations, of these texts to the various state, regional or local authorities concerned, according to the needs of each authority; (ii) also encourage bar associations and representatives of civil society to ensure the dissemination of these texts to their own target groups (cite, where appropriate, examples of synergy between the public and private sectors)*

Question 3

Other major texts and practices concerning the Convention system

Can you confirm and/or clarify the following points:

- (a) *Other major texts and compendia of practice concerning the Convention system, in particular the decisions and resolutions of the Committee of Ministers adopted in the framework of its supervision of the execution of the Court's judgments and decisions, are available, in particular to the authorities concerned in the language(s) of your country (i) in electronic version (ii) in traditional printed version (iii) and, as far as the above-mentioned decisions and resolutions of the Committee of Ministers are concerned, that their dissemination to the authorities/institutions concerned is ensured in an expeditious manner.*
- (b) *that the relevant authorities in your country take initiatives to promote, where appropriate, the regular production of manuals and other publications, in the language(s) of the country, providing knowledge of the Convention system and the Court's main case-law and ensure their effective dissemination; (ii) that the bar associations and representatives of civil society do the same (cite, where appropriate, examples of synergy between the public and private sectors)*

Question 4**The Council of Europe's action
in terms of publication and distribution**

Can you confirm and/or clarify the following points:

- (a) The action currently being taken by the Council of Europe to publish and disseminate the relevant texts of the convention system, in particular through the various HUDOC databases, seems appropriate to you, including as regards the requirements for the execution of judgments (the acquis of the Committee of Ministers) and access to the various expertise and compendia of good practice available through the Council of Europe's action.*
- (b) Improvements are desirable, concerning the following aspects [please complete].*

Appendix**(for information)****Text of Recommendation Rec(2002)13 of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights***(adopted by the Committee of Ministers on 18 December 2002,
at the 822nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering the importance of the European Convention on Human Rights (hereafter referred to as "the Convention") as a constitutional instrument for safeguarding public order in Europe, and in particular of the case-law of the European Court of Human Rights (hereafter referred to as "the Court") ;

Considering that easy access to the Court's case-law is essential for the effective implementation of the Convention at national level, as it enables to ensure the conformity of national decisions with this case-law and to prevent violations;

Considering the respective practices of the Court, of the Committee of Ministers in the framework of its control of the execution of the Court's judgments, and of the member states with respect to publication and dissemination of the Court's case-law;

Considering that member states were encouraged, at the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000), to *"ensure that the text of the Convention is translated and widely disseminated to national authorities, notably the courts, and that the developments in the case-law of the Court are sufficiently accessible in the language(s) of the country"*;

Taking into account the diversity of traditions and practice in the member states as regards the publication and dissemination of judicial decisions;

Recalling Article 12 of the Statute of the Council of Europe, according to which the official languages of the Council of Europe are English and French,

Recommends that the governments of the member states review their practice as regards the publication and dissemination of:

- the text of the Convention in the language(s) of the country,
- the Court's judgments and decisions, in the light of the following considerations.

* * *

It is important that the governments of member states:

- i. ensure that the text of the Convention, in the language(s) of the country, is published and disseminated in such a manner that it can be effectively known and that the national authorities, notably the courts, can apply it;
- ii. ensure that judgments and decisions which constitute relevant case-law developments, or which require special implementation measures on their part as respondent states, are rapidly and widely published, through state or private initiatives, in their entirety or at least in the form of substantial summaries or excerpts (together with appropriate references to the original texts) in the language(s) of the country, in particular in official gazettes, information bulletins from competent ministries, law journals and other media generally used by the legal community, including, where appropriate, the Internet sites;

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

Explanatory memorandum

Background

1. The European Convention on Human Rights entered into force on 3 September 1953. Since then, important efforts have been carried out in order to ensure the publication and dissemination of the Convention and the case-law of the European Court of Human Rights, at governmental and parliamentary level as well as at nonstate (publishers, bar associations, universities, human rights institutes, individuals ...) level.

2. Nevertheless, the increase in the number of member states of the Council of Europe and the evolution of the case-law of the Court have made further measures necessary at the European level, in order to ensure that the efforts correspond to the new needs.

3. Accordingly, the European Ministerial Conference on Human Rights, held in Rome on 3-4 November 2000 to commemorate the 50th anniversary of the Convention encouraged member states to "ensure that the text of the Convention is translated and widely disseminated to national authorities, notably the courts, and that the developments in the case-law of the [European Court of Human Rights] are sufficiently accessible in the language(s) of the country" (Resolution I, paragraph 14.(iii)).

4. As part of the follow-up to the Conference, the Ministers' Deputies, at their 736th meeting (10-11 January 2001), instructed the Steering Committee for Human Rights (CDDH) to examine ways and means of assisting member states with a view to a better implementation of the Convention in their domestic law and practice (...) (Decision N° 9). The CDDH gave the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) the task of considering the follow-up to these terms of reference.

5. DH-PR has recognized the importance of the publication and dissemination in the member states of the text of the Convention and of the case-law of the Court, in order to allow national authorities, and in particular judges, to efficiently implement the Convention as interpreted by the Court. Accordingly, the DH-PR decided, at its 49th meeting (25-27 April 2001) to elaborate a draft recommendation on this subject.

6. The text of the draft recommendation was elaborated by the DH-PR during its 50th (26-29 September 2001) and 51st meetings (20-22 March 2002). It was examined by the CDDH during its 54th meeting (1-4 October 2002) and transmitted to the Committee of Ministers for adoption.

7. The accessibility of the Court's case-law depends on the effort of the Court as well as on that of the member states. Therefore, the draft recommendation should be read keeping in mind the draft Resolution of the Committee of Ministers on the publication and dissemination of the case-law of the European Court of Human Rights, which states the need for administrative measures to be taken within the Court to facilitate access to important judgments and decisions.

8. The Recommendation invites the member states to review their practice on publication and dissemination of the text of the Convention, (including the Protocols thereto ratified by each state) in the language(s) of the country by:

(i) ensuring that the text of the Convention, translated into the language(s) of the country, is published and disseminated in such a manner that it can be effectively known and that the national authorities, notably the courts, can apply it;

9. On this matter, member states could follow national practice on the publication of legislation. However, as the question of how the Convention is published is closely linked to that of dissemination, it should be envisaged to publish the Convention in such a form (leaflet, brochure, etc.), so that it can be easily and widely disseminated.

10. As far as dissemination is concerned, a requirement would be that the text of the Convention be accessible in both paper and electronic form in the main libraries, in the courts and in the documentation centres or the Internet sites of the Government and/or Parliament. Dissemination of the Convention to the larger public would be of great value, for example through universities or professional training centers or other public or private institutions.

11. The Recommendation also invites the member states to examine their practice on publication and dissemination of the Court's judgments and decisions. It takes account of the diversity of traditions and practice in the member states as regards the publication and dissemination of judicial decisions. It notes in particular that some states have a strong tradition whereby civil society caters for this function, just as it

does for the national courts (for instance, through specialist private publishing houses, university centres, etc). In other states, this is not the case, for a variety of reasons, and the public authorities have to use their own resources to publish and disseminate the case-law (for instance, some ministries ensure the dissemination of Court judgments and decisions by means of information bulletins for the courts and authorities, in a number of states the judgments are published in the official gazette and in others the supreme courts publish them). With these basic considerations as a background, member states are invited to take a number of measures, evoked in the recommendation.

(ii) ensuring that, whether as a result of state or private initiatives, judgments and decisions which constitute relevant case-law developments, or which require special implementation measures on their part as respondent states, are rapidly and widely published, in their entirety or at least in the form of substantial summaries or excerpts (together with adequate references to the original texts) in the language(s) of the country, in particular in official gazettes, information notes from competent ministries, law journals and other media commonly used by the legal community, including, where appropriate, the Internet sites;

12. The recommendation underlines the necessity that the important judgments and decisions be made available in the national language(s). However, it notes that it is often enough to provide a summary of the case in the national language.

13. It is not considered realistic or necessary to ask Contracting states to ensure the publication and dissemination of all judgments and decisions. In fact, the Recommendation does not even ask the Court to publish all judgments and decisions, which is in line with its present practice according to which the Court selects the more important judgments and decisions for publication. It must be emphasised that many cases relate to specific problems or are repetitive cases, not adding significantly to the development of the case-law. These cases do not normally merit publication. In this connection, the current practice of the Committee of Ministers in supervising the enforcement of judgments can be noted. This practice does not require the respondent state to publish judgments solely highlighting various administrative shortcomings, without providing clarifications on the content of the rights

protected by the Convention. It is therefore often considered sufficient to disseminate such judgments to the authorities directly concerned (see below under (vii)).

14. In the interest of efficiency, the stress should be on those important judgments and decisions, knowledge of which is necessary for the application of the Convention at the national level. However, an effort from member States to publish these judgments and decisions rapidly and widely is requested.

15. The Recommendation gives a number of examples of where these judgments and decisions could be published, such as official gazettes, information notes from competent ministries, law journals and other media commonly used by the legal community, including, where appropriate, the Internet sites. As mentioned above, national practices on the publication of judgments must guide the member states' choice in this respect.

16. In this context, the contribution of the Council of Europe Information Offices existing in certain member states is underlined.

17. The interference between publication and dissemination must be underlined. In many cases publication also leads to the desired dissemination.

(iii) encouraging where necessary the regular production of textbooks and other publications, in the language(s) of the country, in paper and/or electronic form, facilitating knowledge of the Convention system and the main case-law of the Court;

18. The Recommendation stresses the importance of publications at the national level analysing the Strasbourg decisions (textbooks explaining the Convention and the main judgments, etc) and of ensuring their effective dissemination. It may be that in some countries publications of this kind are already sufficiently catered for through private initiatives or within the framework of the existing research programmes of the universities.

19. It is not sufficient to simply provide a mass of information; it has to be assessed and an appropriate commentary added. Furthermore, such works should be regularly published and sufficiently accessible, in paper and/or electronic form. As a means of achieving this goal could be mentioned providing financial assistance for research and publication on the Convention to the national law faculties, etc.

(iv) publicising the Internet address of the Court's site (<http://www.echr.coe.int>), notably by ensuring that links to this site exist in the national sites commonly used for legal research;

20. The Recommendation does not concern the setting up of new national databases which reproduce judgments in one of the official languages of the Council of Europe (Internet sites, etc.) in so far as the HUDOC data base managed by the Council of Europe provides with the essential information. The Recommendation rather invites member States to refer users to the HUDOC data base from the national sites commonly used for legal research.

(v) ensuring that the judiciary has copies of relevant case-law in paper and / or electronic form (CD-Rom, DVD, etc.), or the necessary equipment to access to caselaw through the Internet;

21. This is perhaps one of the most important elements in the Recommendation, if the aim of the effective implementation of the Convention on the national level is to be achieved. The judiciary must have access to the case-law, but must also, in their training as judges, be informed about the relevance and importance of the texts and about how to access them. An effort must be made in member states in this regard.

(vi) ensuring, where necessary, rapid dissemination to public bodies such as courts, police authorities, prison administrations or social authorities, as well as, where appropriate, to non-state entities such as bar associations, professional associations etc., of those judgments and decisions which may be of specific relevance for their activities, where appropriate together with an explanatory note or a circular;

22. This means that each member state is to make sure that all the main judgments and decisions affecting its own national system (usually necessitating the adoption of general measures) are rapidly

disseminated to public bodies such as courts, police authorities, prison administrations or social authorities, as well as, where appropriate, to non-state entities such as bar associations, professional associations etc. Whenever it is considered appropriate the judgments and decisions should be accompanied by an explanatory note or a circular.

(vii) ensuring that the domestic authorities or other bodies directly involved in a certain case are rapidly informed of the Court's judgment or decision, e.g. by receiving copies thereof;

23. In this connection, the current practice of the Committee of Ministers in supervising the enforcement of judgments, according to which states are invariably requested to disseminate judgments to the authorities directly involved in the case, can be noted. This is of importance in order to guide the necessary administrative reforms.

(viii) considering the possibility of co-operating with a view to including, in a common compilation, in paper or in electronic form, Court judgments and decisions that are available in the same non-official language of the Council of Europe.

24. In the light of the efforts made by the Council of Europe to assist certain states in setting up data bases containing translations of judgments into certain languages, the Recommendation encourages the creation of such databases (for instance, Russian and German), on a more general scale. It proposes that countries with the same or partly the same national language(s) co-operate in this respect.