



CDDH(2021)11
31/05/2021

STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

Compilation of comments on the Draft Recommendation CM/Rec(2021)... of the Committee of Ministers to member States on the publication and dissemination of the European Convention on Human Rights, the case-law of the European Court of Human Rights and other relevant texts

Preamble

Proposal to insert two new paragraphs at the end of the preamble as following:

Considering that the need for the protection of personal data should not be understood as an obstacle for the translation and dissemination of the Court's judgments and decisions in their entirety;

Stressing the need for Member States to overcome possible problems related to the protection of personal data so as to ensure access to effective information on, and translation of the Court's judgments and decisions in their entirety;

Comment: In some member states doubts arise as to whether the translation and dissemination by the governments of the Court's judgments or decisions containing personal data, e.g. the applicant's name, is admissible under the data protection regulations. Some data protection authorities or the applicants' themselves demand that governments anonymise such translations, including by using acronyms instead of the full name of the application. This however could result in the existence of various versions of the same text and confusion regarding which case is at stake. This in turn may hinder effective access to the Court's rulings and provoke questions if the State has genuinely executed a given judgment in so far as its translation and effective dissemination is concerned. On the other hand, the applicants' interests are protected by the possibility of applying to the Court for anonymisation of their case and thus for the protection of their data already in the original rulings.

Therefore we propose to add two above paragraphs to the preamble of the present Recommendation as an important interpretative guidance for domestic authorities, including those dealing with the data protection issues. At the same time, it would be useful if the Court could continue reflection on its procedures so as to make sure that the applicants' data are appropriately protected if they so wish and that they have access to the full and transparent information regarding the scope of data that would be published in the Court's rulings and other documents. The Court could also consider the need for the protection of other persons' data as appropriate.

Appendix to Draft Recommendation CM/Rec(2021) ...

Paragraph 1.5.

Proposal to insert "excerpts thereof or" in the last line before "summaries" (highlighted in yellow below)

- 1.5. Member States should publish and disseminate the case-law of the Court in which the member State concerned is not a Party whenever they deem that this contributes to

addressing complex or structural domestic problems or is otherwise relevant for the application, within their jurisdiction, of the Convention and the Protocols thereto. Where full translation of such case-law is not possible, **excerpts thereof or** summaries with references to the original texts (e.g. through hyperlinks) should be ensured.

Comment: In Poland, the Supreme Administrative Court, which participates in the translation of the Court's judgments concerning other State Parties, applies the practice of translating extensive excerpts of judgments. It translates a legal summary of the facts and the full reasoning of the Court (chapter "The Law"). Such and similar approaches could be used as a compromise between the costly and time-consuming translation of the full text and the translation of merely a summary (which is not always enough for judges and other professionals to get a full picture of the Court's approach).

Paragraph 2.5.

Proposal to add a new paragraph as following:

2.5. Member States should encourage appointment of contact persons in courts, public administration, law enforcement authorities and legal professions to facilitate access to, and cooperate in dissemination of, the Convention, the case-law of the Court and other texts translated in accordance with this Recommendation.

Comment: We propose to add this paragraph based on the practice applied in Poland and other Member States. It seems useful to have persons in the relevant authorities and institutions who are tasked to look for (or receive from governments) and disseminate (translated) judgments or other relevant texts or who could be approached by other colleagues to help them find the relevant judgments and documents. In Poland, for instance, there is obligation on the presidents of courts to disseminate information (sent out by the Ministry of Justice) on the Court's judgments finding violations in respect of Poland and there are also two coordinators in each regional court, separately for civil and criminal matters, who assist other judges in the matters covered by this Recommendation.

Paragraph 3.2.

Addition in the third line of the term "translating"

3.2. Member States should consider proactively and regularly co-operating with relevant stakeholders, mentioned in point 1.8., and wherever appropriate, with actors of the private sector, with a view to undertaking or co-ordinating initiatives and activities aimed at **translating**, publishing and disseminating the texts referred to above, seeking efficiencies and synergies in the allocation of financial resources and complementing each other's work.

Comment: The proposal aims at making the text more comprehensive as coordination may and should concern also the translation process. For instance, in Poland, since 2014 there has been an agreement between the MFA and the Constitutional Court, the Supreme Administrative Court, the Ministry of Justice and the National Prosecutor's Office, on the basis of which partner institutions coordinate and share the translations of the Court's judgments concerning other State Parties (the judgments concerning Poland being translated by the government). In addition, the Government Agent coordinates the translation of judgments and shares its overviews of the most interesting Court's case-law with the Ombudsman's Office which also contributes to the translation process.



Paragraph 1.6.

Proposal to delete in the second line the words “and rapidly”, in the third line “rapidly” to replace with “in due time”.

- 1.6. Member States should ensure that all judgments and decisions of the Court to be executed in their respect are duly ~~and rapidly~~ disseminated to relevant actors in the execution process. They should ensure that the same actors are also ~~rapidly~~ informed **in due time**, in a format deemed appropriate, of the decisions and resolutions of the Committee of Ministers in the context of the execution of judgments of the Court [as well as action plans submitted by that member State]. Member States should also publish these texts of the Committee of Ministers [and action plans] in a format deemed appropriate.

Paragraph 2.2.

Proposal to delete the paragraph.

Paragraph 2.3.

Proposal to delete the paragraph.