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## **STEERING COMMITTEE FOR HUMAN RIGHTS**

**(CDDH)**

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**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**

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

Recalling the essential role of the system of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, “the Convention”) in the effective protection of human rights, the rule of law and democracy in Europe;

Recalling the obligation of States Parties under Article 1 of the Convention to secure the rights and freedoms enshrined in the Convention to everyone within their jurisdiction;

Considering that knowledge of the Convention system is a *sine qua non* condition for its viability and effectiveness since it facilitates the implementation of the Convention at the national level through enabling conformity of national decisions with the Convention, preventing violations of the Convention as well as the execution of the judgments of the European Court of Human Rights (“the Court”) and, therefore, requires the continued engagement and commitment of the States Parties to promote and strengthen such knowledge;

Building on the Brussels Declaration which called on the States Parties to promote the accessibility of the Court’s judgments, action plans and reports as well as to the Committee of Ministers’ decisions and resolutions, by developing their publication and dissemination to the stakeholders concerned, so as to involve them further in the judgment execution process at the domestic level; and by translating or summarising relevant documents, including significant judgments of the Court;

Building on the Copenhagen Declaration which called on States Parties, as part of their responsibility to implement and enforce the Convention at the national level, to promote translation of the Court’s case law and legal materials into relevant languages which contributes to a broader understanding of Convention principles and standards;

Recalling the Committee of Ministers’ Decision ‘Securing the long-term effectiveness of the system of the European Convention on Human Rights’ adopted on 4 November 2020 which resolved to ensure the continued effectiveness of the Convention system and called upon all States Parties, *inter alia*, to abide by the judgments of the Court rendered against them, to ensure the promotion and effective implementation of the Convention, and to translate and disseminate the Court’s case law at national level;

Recalling 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 and welcoming the work undertaken by the States Parties so far to implement this recommendation;

Taking into account that, since Recommendation Rec(2002)13 was adopted, the Convention has become an integral part of the domestic legal order in all its State Parties and the number and

diversity of cases decided by the Court has significantly increased together with the number of authorities concerned whether national, regional or local;

Stressing the need for the member States' action to implement the Convention at the national level to take into account the developments in the Convention system during the decade of reforms in the course of the Interlaken process as well as the increased number of texts that are relevant to the Convention system;

Having regard to the current diversity of practices in the member States in relation to the translation and dissemination of the Court's case-law and the need in several member States to have guidance on the main principles for such translation and dissemination so that the case-law can be effectively known and that the relevant national authorities can apply it;

Acknowledging the central contribution of the HUDOC databases in ensuring the continued effectiveness of the Convention system as well as the challenges faced by national authorities and other actors who do not have access to these systems or do not know the official languages of the Council of Europe;

Acknowledging the significant opportunities that information and communication technological developments offer to promote enhanced knowledge of the Convention system at the national level;

Stressing the need to continue to engage with national human rights institutions (NHRIs), Ombudsman institutions, equality bodies and other human rights structures in the implementation of the Convention as well as civil society organisations to promote knowledge of the system of the Convention at the national level;

Emphasising the importance of strengthening the Council of Europe support for member States in the implementation of the Convention at national level, including through co-operation projects such as the HELP Programme (Human Rights Education for Legal Professionals);

Taking into consideration the diversity of traditions and practices in Member States with regard to the publication and dissemination of the texts that are relevant to the Convention system;

**Considering that the Court in its policy of publication of judgments and decisions already provides for the protection of personal data;**

Recommends that the governments of member States:

- i. Ensure by appropriate means and actions that the texts relevant to the Convention system are accessible, in particular that their publication and dissemination comply with the principles set out in the appendix of this Recommendation which replaces Recommendation Rec(2002)13;
- ii. Ensure by appropriate means and actions a wide dissemination of this Recommendation to relevant authorities and stakeholders.

***Appendix to 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***

**1. Main principles governing the publication and dissemination**

- 1.1. Member States should ensure 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 in the language(s) of the member State concerned.
- 1.2. Member States should ensure that the texts of the Convention and the Protocols thereto are published and disseminated in full.
- 1.3. Member States should also ensure that the case-law of the Court in which the member State concerned is a Party is published and disseminated in due time either in full or, when justified by the national context, in the form of excerpts or summaries thereof together with references to the original texts (e.g. through hyperlinks).
- 1.4. Member States, taking into account the diversity of their national situations, should facilitate access to the texts referred to above of the national authorities responsible for the implementation of the Convention, in particular judges, public prosecutors, law enforcement officials, the administration of the penitentiary system, social authorities, national human rights institutions (NHRIs)<sup>1</sup> and, where appropriate, other structures and institutions, while having due regard to their fields of competence and responsibilities.
- 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 or summaries thereof** with references to the original texts (e.g. through hyperlinks) should be ensured.
- 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 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.

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<sup>1</sup> Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions

1.7. Member States should as far as possible publish and disseminate the following texts:

- Recommendations of the Committee of Ministers to member States concerning the prevention of violations of the Convention and the effective execution of the Court's judgments, notably Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings; Recommendation 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; Recommendation Rec(2004)6 on the improvement of domestic remedies; 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.
- The Rules of Court and Practice Directions issued by the President of the Court as well as the Rules of the Committee of Ministers for the supervision of the execution of judgments of the Court and of the terms of friendly settlements, and directions given as to the Committee's working methods.

1.8. Member States should assess the desirability and feasibility of publishing and disseminating other texts, namely:

- Materials elaborated by the Registry of the Court on the case-law or by articles of the Convention or by themes as well as materials and guides elaborated by the Council of Europe's Department for the Execution of Judgments with respect to execution issues.
- Recommendations of the Committee of Ministers to member States concerning the protection and promotion of the rights and freedoms set forth in the Convention in various areas whenever pertinent to reinforcing the implementation of the Convention in the member State concerned, and in particular where this contributes to addressing complex or structural problems at the domestic level.
- Recommendations and Resolutions and accompanying reports of the Parliamentary Assembly of the Council of Europe, reports of the Council of Europe monitoring and advisory bodies and the Commissioner for Human Rights wherever such reports are issued in respect of the member State concerned, as well as thematic reports, analyses, comments or materials issued by Council of Europe monitoring and advisory bodies whenever pertinent to reinforcing the implementation of the Convention in the member State concerned, and in particular where this contributes to addressing complex or structural problems at the domestic level.

On the basis of this assessment, member States should identify and prioritise the texts concerned, taking into account the needs of the national authorities to know other texts relevant to the Convention system. Where appropriate, this assessment should be carried out in consultation

and co-operation with relevant stakeholders including NHRIs, civil society organisations, academia and associations of legal professionals, notably bar associations.

## **2. Means of publication and dissemination**

- 2.1. Member States should ensure that the texts referred to in points 1.1. and 1.2. and, wherever applicable, other texts referred to above, are accessible in electronic and/or printed form, without barriers taking into account the provisions of the Convention on the rights of persons with disabilities ~~[and other accessibility requirements]~~.
- 2.2. While access to the texts in electronic form and to those referred to in point 1.1. in printed form should be ensured free of charge, the person applying for access in printed form to other texts may be charged a fee which should be reasonable and not exceed the actual costs of reproduction and delivery of the documents.
- 2.3. When the publication and dissemination of the texts are realised primarily in electronic form, Member States should facilitate access to these texts to the persons who cannot avail themselves of electronic means, such as by providing them with the documents in printed form.
- 2.4. Member States should, as appropriate, encourage the regular production of textbooks and other publications, in printed and/or electronic form, facilitating the knowledge of the Convention system and the case-law of the Court.
- 2.5. Member States should encourage the appointment of contact persons in the judiciary, while fully respecting its independence, public administration, law enforcement authorities and legal professions to facilitate access to, and cooperate in the dissemination of the Convention, the case-law of the Court and other texts translated in accordance with this Recommendation.**

## **3. Co-ordination and co-operation**

- 3.1. Member States should consider the possibility of co-operating, with a view to publishing compilations, in printed or in electronic form, including databases, of Court judgments and decisions that are available in non-official languages of the Council of Europe.
- 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.

- 3.3. Member States, where appropriate, should promote multi-stakeholder dialogues and meetings between national authorities and, where appropriate, other actors, regarding themes and issues of relevance in their national context addressed in the texts which have been published and disseminated, with a view to facilitating their understanding and implementation by national authorities.

#### **4. Quality of translations**

- 4.1. Member States should ensure that their translations into the language(s) of their country are carried out by professionals or on the basis of reliable electronic methods.

#### **5. Council of Europe resources**

- 5.1. For the purposes of the implementation of this recommendation, Member States should promote and facilitate effective access to the resources made available by the Council of Europe, such as HUDOC databases, the HELP programme as well as the publicly available parts of the websites of the various bodies and services of the Council of Europe.
- 5.2. Member States should, whenever pertinent, pay particular attention to seeking and making full use of the assistance that can be provided by the Council of Europe regional or country-specific co-operation programmes as regards the implementation of this Recommendation and carrying out training of relevant national authorities on the system of the Convention.