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COMITÉ DIRECTEUR POUR LES DROITS DE L'HOMME

(CDDH)

COMMITTEE OF EXPERTS ON THE SYSTEM OF THE EUROPEAN
CONVENTION ON HUMAN RIGHTS /
COMITÉ D'EXPERTS SUR LE SYSTÈME DE LA CONVENTION EUROPÉENNE
DES DROITS DE L'HOMME

(DH-SYSC)

**Comments on the preliminary draft Recommendation Rec(2019)[...] of the
Committee of Ministers to member States on the system of the European
Convention on Human Rights in university education and professional training**

**Commentaires sur l'avant-projet de Recommandation Rec(2019)[...] du Comité
des Ministres aux Etats membres sur le système de la Convention européenne
des Droits de l'Homme dans l'enseignement universitaire et la formation
professionnelle**

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Introduction

1. The Drafting Group III on the follow-up to the Recommendation Rec(2004)4 (DH-SYSC-III) has prepared a preliminary draft Recommendation Rec(2019)[...] of the Committee of Ministers to member States on the system of the European Convention on Human Rights in university education and professional training (document DH-SYSC-III(2019)02).
2. The experts of the DH-SYSC-III expressed divergent views concerning § 8 of Appendix I to the preliminary draft Recommendation and the experts of the DH-SYSC were invited to send their written comments notably in this respect by 25 April 2019. The present compilation contains these comments.

* * *

Introduction

1. Le Groupe de rédaction III sur le suivi de la Recommandation Rec(2004)4 (DH-SYSC-III) a préparé un avant-projet de Recommandation Rec(2019)[...] du Comité des Ministres aux Etats membres sur le système de la Convention européenne des Droits de l'Homme dans l'enseignement universitaire et la formation professionnelle (document DH-SYSC-III(2019)02).
2. Les experts du DH-SYSC-III ont exprimé des vues divergentes sur le § 8 de l'Annexe I à l'avant-projet de Recommandation, et les experts du DH-SYSC ont été invités à envoyer leurs commentaires écrits notamment à cet égard avant le 25 avril 2019 inclus. La présente compilation contient ces commentaires.

Member States / États membres

AUSTRIA / AUTRICHE

[Comment by the Secretariat: This paragraph refers to § 8 of Appendix I to the preliminary draft Recommendation]

I would like to echo the thanks for the work done by the Working Group and the comments made by Vit [*Czech Republic*] and Hans-Jörg [*Germany*] regarding translations. As far as our experience goes, automatic translations are far from being accurate. Reasonable summaries are very helpful not only for practitioners but in particular for students.

Lastly, I would like to mention the following small drafting points:

para 8 of the preamble: I am wondering why the Protocols to the Convention are not mentioned ("... on the publication and dissemination ... of the European Convention on Human Rights and its Protocols and of the case-law ...")

para. 13 of the preamble: traditions and practices?

para 3 of Appendix: "**where** appropriate"? - For the sake of consistency with para ii of the operative part of the recommendation.

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

As to point 8 of the Appendix to the Recommendation, I agree that we should not promote automatic translations at this moment. Accuracy of the translations is of essence, and as our Spanish colleague rightly pointed out, translating is a tricky exercise.

I would nonetheless like to see another idea in the text, referred to amongst others in the Brussels declaration (“translating or summarising relevant documents, including significant judgments of the Court, as required”, point B.2.f), namely that information about the Court’s case law can also be ensured by professionally drafted summaries.

I do not object to accurate translations of selected case law, explicitly mentioned, but would like to see good quality summaries mentioned as well, for example by saying in point 8 of the Preamble and of the Appendix: “... accurate translations of selected Court’s case-law or at least professionally drafted summaries of the case-law / thereof...”.

I do not stick to the words “professionally drafted” if there is a better expression available of the fact that not only the translations need to be accurate, but the summaries, which somewhat replace them, must be of good quality. We may even say: “...accurate translations or summaries of selected Court’s case-law...” if there is no obstacle to putting translations and summaries at quite equal footing.

I also agree to point out that these translations or summaries should be accessible free of charge.

And, by the way, I do not think that we should say in point 8 of the preamble, as suggested by our Armenian colleague, that “it is of major importance... that accurate translations... should be available” since it does not seem to be grammatically correct. The current wording “... are available...” is a statement of fact, not something we want to achieve, so it is all right.

ESTONIA / ESTONIE

Estonia is also hesitant about the proposed wording of para. 8.
I make two comments:

- (i) Regarding the first sentence of para. 8 “Member States **should ensure accurate translations of selected Court’s case-law**, in line with 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.” I would like to note following.

To be precise, the referred Rec(2002)13 uses following wording: “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; ...”

Also, **in the Court-reform related declarations the alternative wording referring to “summaries” has been used.** See para. 9 (d) (i) of the Brighton declaration (“Ensure that significant judgments of the Court are translated or summarised into national languages where this is necessary for them to be properly taken into account”) and para. B 2.f of the Brussels declaration (“translating or summarising relevant documents, including significant judgments of the Court, as required”).

In addition, although I appreciate very highly that the Court itself selects most important judgments, it should nevertheless be taken into account that depending on a specific state, different cases have different level of interest and importance. Hence, the states should be free to weight which judgments are translated or at least summarised.

Thus, I propose to amend the first sentence as follows: “Member States should ensure [*accurate*] translations of selected Court’s case-law **or summaries of significant judgments, in line with 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.**

I also join the colleagues who have expressed hesitance regarding a word “accurate” and I would rather delete it.

- (ii) Regarding the last sentence of para. 8 “To strengthen the dissemination of the judgments of the European Court of Human Rights, member States should be encouraged to use automatic translation, if possible, as unofficial translation, in order to reduce the impact of language differences” I have following comment.

First, the translation (at least in my legal system) would anyhow be “unofficial” as the official text is the original text of the judgment or decision. What concerns the reference to “automatic translation”, I join the states who have opposed that amendment. I am very doubtful of the useful factor of automatically translated judgments (taking into account the

quality of automatic translations in the present time). Actually, a misleading translation could do more harm than the absence of a translation. **I support deleting the last sentence of para. 8.**

FRANCE

Quant au point 8 de l'Annexe I au projet de recommandation, concernant la nécessité d'une traduction fidèle de la jurisprudence sélectionnée de la Cour, le Gouvernement français est plutôt défavorable à la proposition de la Slovénie consistant à ce que les Etats-membres soient encouragés à utiliser la traduction automatique en tant que traduction non-officielle.

Il apparait en effet, que cette proposition va à l'encontre de la nécessité d'une traduction fidèle de la jurisprudence et engendre un risque important de diminution de la qualité des documents produits dans ce cadre, même s'il ne s'agirait que de documents non-officiels.

GERMANY / ALLEMAGNE

[M]any thanks to the Working Group for the draft and all the work that has gone into it. The only points that I have relate to the suggestions made by Slovenia in No. 8. Here, I tend to agree with our colleagues from Portugal and others; automatic translation may be the future, but in my experience it is not yet the present - at least not if we are talking about accurate (or even reasonably accurate) translations. I think that the precision of the reporting of the Court's case law is too important a consideration to trade accuracy for numbers.

To mention "free of charge" is, however, a good point and I support it.

I would also agree with Vit Alexander [*Czech Republic*] as regards summaries. As far as the German speaking countries are concerned, we are very grateful to the Austrian Institute of Human rights for their case summaries; this may well serve as an example for other language communities.

GREECE / GRECE

[Commentaire par le Secrétariat : ce paragraphe concerne le § 8 de l'Annexe I à l'avant-projet de Recommandation]

Il est vrai que le terme "traduction automatique" peut se prêter à la confusion Si il s'agit des traductions préparées à l'aide de certains programmes informatisés, il faut dire que ces textes sont très souvent incompréhensibles. Dès lors, ces traductions risquent d'être pratiquement inutiles. Par ailleurs, je ne vois pas comment ces traductions pourraient aider les Etats membres à réduire l'impact des différences de langues. Je proposerais donc, soit de biffer la dernière phrase au point 8, soit de opter pour une rédaction différente. A mon avis, le message contenu dans ce point concerne la possibilité pour les Etats d'utiliser à part les traductions officielles, les traductions non officielles à condition évidemment que de telles traductions existent et dans la mesure où la qualité de ces textes est en quelque sorte garantie. La dernière phrase pourrait alors se lire ainsi: "Afin de renforcer la diffusion des arrêts de la Cour Européenne des Droits de l'homme, les Etats membres devraient être encouragés à utiliser des traductions non officielles également, élaborées éventuellement par des agences de traduction pour servir les intéressés potentiels ".

[Commentaire par le Secrétariat : ce paragraphe concerne les commentaires faits par l'Espagne sur le § 8 de l'Annexe I à l'avant-projet de Recommandation, voir ci-dessous]

L'idée principale qui en ressort est, à mon avis, que la qualité des traductions des arrêts de la Cour doit prévaloir en tout état de cause. Autrement, on perd le but, à savoir la connaissance large et consolidée des jugements de la Cour. Je souscris entièrement à cette idée et je propose soit de biffer la dernière phrase au point 8 de l'avant-projet sous examen, soit de reformuler cette phrase tenant en compte que les Etats membres peuvent rechercher d'autres moyens pour ces traductions à part les traductions officielles, comme c'est le cas de votre pays.

POLAND / POLOGNE

As regards paragraph 5 I do not fully understand what is a reason behind replacing the word “teacher” with the word “lecturer”. Are those two words not considered as synonyms or is the word “lecturer” considered to be a broader term, also encompassing the word “teacher”? If they are not considered as synonyms maybe we should use all of them, i.e. “lecturers, teachers and trainers”?

As regards paragraph 8 I join other colleagues in the conviction that widespread dissemination of the Court’s case-law should be the aim of all State Parties. I also agree that in order to achieve it they should ensure the high-quality translation of the relevant judgements and decisions of the Court that is accessible to all and free of charge. However, in the context of guaranteeing the high-quality translation the use of automatic translations would not be advisable because of a rather poor quality of such translations (I think all of us have already had an opportunity to use various automatic translators...). I think that the widespread dissemination of the Court’s case-law should not be pursued at the expense of the quality and accuracy of its translations. Otherwise it may harm the authority of the Court and interests of justice in general.

SPAIN / ESPAGNE

Regarding the proposals on para 8. of Preliminary draft Recommendation Rec(2019)... of the Committee of Ministers to member States on the system of the European Convention on Human Rights in university education and professional training , we would like to share with you our experience regarding dissemination of translations. We have given a huge thrust to it with the following measures:¹

- a) Translation with our own Agent services of all judgments and decision referring to Spain (with internal personnel and now with added additional external translators through public procurement)
- b) The agreements between the Ministry of Justice, the Court and the Static Open University, by which Ph.D. students and last year students in law, international relations, and English/French philology to translate relevant judgments and decision in non-Spanish cases that may be interesting for legal professional in the Spanish legal environment (I enclose, for your information, a copy of the agreement)
- c) Furnish in our webpage a link to the free HELP training courses for legal professionals.
- d) Development of a newsletter on ECtHR issues.
- e) Dissemination of all translations in our own webpage, the HUDOC and the internal judicial database

The agreement with universities is ow rendering a very good output and several other universities would like to join soon. The accuracy of translations is double checked before reaching dissemination: by the University professor in charge of the program and by ourselves. Everybody seems to be delighted with the agreement: the students take part in HR protection while widening their skills in the legal field, Ph.D. tend to elaborate their own thesis upon the selected judgments, the University likes to promote human rights and the associated costs are not other than those of usual university training.

In order to enhance our internal capacity we have also subscribed to an encrypted automatic translator. The one we use –and we do not intend engage in advertising it- is called deepl. It works rather well to get a first draft of a translation but it has to be checked before issuing the final translation. As we all know, translation is rather tricky even for a well-trained human being (and what to say about the Italian proverb “traduttore, traditore”). Sometimes the first draft coming from the automatic translator has some few very funny outcomes. Therefore, although it is to be expected that in the future automatic translations might reach almost perfection – If I judge myself by the way things have evolved since I was born in 1963- It is not the case right now and we consider premature to insert the reference to automatic translations in para. 8 of the draft.

On the opposite, we have always considered very important that translations **are free of charge** to all individuals. Jurisprudence of the ECtHR can only be accessed with equality of arms between potential applicants from the first national instances if this is so. From the entry of Spain in the CoE, back in 1977, Spain has performed free translation not only of all decisions and judgments in all Spanish cases but also in all cases until 2002 and of all Spanish cases and relevant other cases onwards. These translations have been performed by the Lawyers at the Secretariat od the Parliament until 2002 and afterwards by the Agent’s

¹ Spain further provided a copy of a document “Memorandum of agreement on the procedure for ensuring and disseminating Spanish translations of select case-law and publications of the European Court of Human Rights” between a university and the Ministry of Justice of Spain, which is available in the Secretariat.

office. The General Council of the Judiciary has recently joined allocating funds for annual translation of the ECtHR Bureau's choice of most important judgments. The very competent Registry of the Constitutional Court is considering joining in the effort regarding some materials. For translations to be available to the public and to judges, dissemination of all translations is funnelled by the judicial database, the Agent's webpage and the HUDOC. The development of a HUDOC interface in Spanish has helped much to disseminate as search engines work with any word –regardless of the language- and will extract results from the translations into that language. A curious development has been that a cross-fertilization has occurred between the American System for HR protection (The Inter-American Court) and the ECtHR. Surprisingly enough nowadays most of the searches in HUDOC come from Spanish speaking individuals worldwide.

To conclude, we are for the retention of the access free of charge as recommendation but we consider premature to refer to automatic translations.

We have that this reflections may help us to disentangle the "babelic" wall that may be a hindrance to the protection of Human rights from the very first national judicial instance to the top of the system, the ECtHR.

UNITED KINGDOM / ROYAUME-UNI

**Preliminary draft Recommendation Rec(2019)...
of the Committee of Ministers to member States
on the system of the European Convention on Human Rights in university education
and professional training**

*(adopted by the Committee of Ministers on ... 2019,
at its ... Session)*

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

[...]

6. Taking into account that the Convention, is an integral part of the domestic legal order of all member States, has a direct effect and must be fully implemented in their domestic law, and that there is therefore a need to provide specific university education and professional training in the system of the Convention;

Comment [CW(1): The Convention in UK law has effect by virtue of a domestic Statute – so it is not “direct effect” as we understand it in other contexts.

[...]

Appendix I to Recommendation

1. Member States should ensure university education and professional training in the system of the Convention which are in line with the needs and expectations of the different categories of public, notably those acting in the human rights field. If necessary, this task should be performed in cooperation with relevant non-State actors.

Comment [CW(2): I'm not sure I understand what this means ?

2. Member States should notably enhance the effectiveness of such university education and professional training by providing ensuring that there is available to each category of public with necessary tools to comply with the obligations stemming from the Convention. To this end, member States should ensure that provide quality, targeted and accessible professional training is available.

Comment [CW(3): As above

Comment [CW(4): Is this the right verb ? – if “categories of public” is the subject of the verb do they have obligations under the Convention??

1. Targeted public

3. Member States should ensure that university students of law and, as appropriate, of relevant science and other relevant degrees, are offered education concerning the basic elements of the system of the Convention in their common core curriculum. In addition, optional in-depth studies should be offered to those who wish to specialise.

[...]