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**STEERING COMMITTEE FOR HUMAN RIGHTS
COMITE DIRECTEUR POUR LES DROITS DE L'HOMME**

CDDH

**Focal points representing the CDDH in other bodies-events /
Points focaux représentant le CDDH dans d'autres instances-événements**

**Information provided by the focal points
Informations fournies par les points focaux**

(draft document for the attention to the Bureau meeting (29 October 2020)
in view of the CDDH plenary meeting (14-16 December 2020)

Introduction

1. This document contains, for information, the extensive reply provided by the Chairperson of the CDDH Mr Morten RUUD (Norway) on 28 September 2020 to the letter and questionnaire sent by the Secretary General to the Chairs of the Council of Europe steering committees and ad hoc committees and to the Secretary of the CDADI, inviting them to identify "key priorities for the Organisation in order to best respond to the challenges faced by European societies".
2. This document also contains information sent by the CDDH focal point in the European Committee on Legal Co-operation (CDCJ) Ms María de Fátima GRAÇA CARVALHO (Portugal) concerning her participation in the annual meeting of the CDCJ (Visio conference, 4-5 and 23-24 November 2020).

- I. **Reply provided by the Chairperson of the CDDH Mr Morten RUUD (Norway) on 28 September 2020 to the letter and questionnaire sent by the Secretary General to the Chairs of the Council of Europe steering committees and ad hoc committees and to the Secretary of the CDADI, inviting them to identify “key priorities for the Organisation in order to best respond to the challenges faced by European societies”**

Strategic priorities

What should be the key priorities for the Organisation in order to best respond to the challenges faced by European societies?

- The Council of Europe should maintain its role as the general, Pan-European organisation promoting fundamental values as Human Rights, Democracy and Rule of Law. The Organisation should continue to serve as a meeting point for representatives of all European Nations, both politicians, governmental representatives, civil servants, independent experts and representatives of civil society. In my view the Council of Europe is especially important for those European nations that are not members of the European Union. Coming from a State not member of the EU, I have through my 43 years of participation in Council of Europe meetings considered this to be the most valuable arena for contact with representatives from other European states. In this respect, the Council of Europe should not try to “compete” with the European Union, but rather through its activity aim to provide added value in a form that is also attractive to EU Member States.
- In general terms: the key priority for the Organisation in this changing and uncertain period should be to continue to **preserve and strengthen its “raison d’être”**, that is its foundational goals and well-established methods:
 - **Goals** - Council of Europe as “watchdog” of the European values (Human Rights, Democracy and the Rule of Law and a “lighthouse” for our changing societies, anticipating potential dangers and providing inspiration, incentives and encouragement for member States to devise the appropriate responses.
 - **Methods** - Council of Europe’s strong ability for:
 - standard-setting, both through binding and non-binding rules
 - co-operation activities and
 - supervisory function of the implementation of European standards.

The current challenges and circumstances stemming from the pandemic do not put in question the “*raison d’être*” of the Organisation. Nor do they require fundamental changes to its mission. Instead, what is called for is to strengthen the role of the Council of Europe as a watchdog of the European values which are at stake more than ever before.

- In concrete terms: The Organisation can help member States to face several challenges raised by the pandemic, the climate change, artificial intelligence technology, etc;
 - **Pandemic:** Focus on selected rights which have been specifically impacted upon by the responses to the crisis, whether civil/political rights (e.g. the right to life, the right to liberty, right to free movement, right to private life or the freedom of expression, access to official information, the ways to engage in a public debate) or economic/social/cultural rights (e.g. the right to health including the equitable

access to health care, right to education, the right to work). Focus on strengthening the ability of member States to uphold the Rule of Law including the legality and supremacy of law, legal certainty, institutional balance, prohibition of arbitrariness, access to justice before independent and impartial courts, principles of equality before the law and non-discrimination, principles of proportionality. Focus on strengthening the ability of member States to prevent and address wherever necessary social divides and discrimination created by the pandemic, polarisation and intolerance.

- **System of the ECHR:** Preserving and strengthening it – Implementation of ECHR at national level by means of targeted regional or country-based co-operation programmes; EU accession to the ECHR.
- **Environment:** Promoting acceptance of the protection of the environment as a dimension of human rights, encouraging involvement of all relevant stakeholders in the national decision-making process.
- **Artificial Intelligence and other new technologies:** Explore their impact on human rights in general, including the right to access to court as well as the exercise and enjoyment of the right to work (potential dangers of massive job losses in modern societies due to rampant automatization of labour processes);
- **Participatory and democratic governance:** Ensuring ongoing dialogue between public authorities and civil society, trust-building and synergy by means of increasing the space of participation of civil society in the Council of Europe bodies and activities.
- **Vulnerable groups:** Focusing on the protection of marginalised and disadvantaged groups (e.g. elderly persons, poor people, migrants, human rights defenders etc.) with the aim of devising transversal measures for each category of vulnerable groups.

What is the role and added value of the Council of Europe in addressing these challenges?

- The **added value** of the Council of Europe in fulfilling its various roles comes from
 - its geographical composition (The Wide Europe);
 - its well-established working methods; intergovernmental dialogue and co-operation by means binding conventions as well as of soft law, the latter often prove to be more appropriate than the binding integration approach to tackle numerous legal, human and societal issues, taking into account the diversity of the situations in the 47 member States;
 - its variety of approaches to tackle a problem, deriving from the different backgrounds and mentalities of its Secretariat and of the national experts and observers participating in its work (the reflection is thus enriched).
- The **various roles** of the Council of Europe concerning intergovernmental co-operation are extremely varied, differing from one area to another. It is here exemplified with references to the work of the Steering Committee for Human Rights (CDDH).
 - **European unity/cohesion role** – For instance:

- Council of Europe acting as a forum for European dialogue, common reflection on common challenges, peer-to-peer supervision and the discharge of the collective responsibilities under the ECHR;
 - Council of Europe acting as “bridge” between public authorities and civil society and individuals.
- **Preventing role** – For instance:
 - Standards to help member States to prevent HR violations at national level; to anchor human rights in culturally diverse societies (*living together*); to ensure good functioning of the democracy and the Rule of Law.
 - **Supervisory role** – For instance:
 - Evaluation of the human rights impact of national measures regarding the pandemic, whether member States submit derogations pursuant to Article 15 of the ECHR or not; considering whether and to what extent restrictive measures infringing human rights should be taken in response to a sanitary crisis or other major hazard.
 - Assessing the impact of various national decisions on human rights and fundamental freedoms to identify effective solutions and the possible need to adapt the European standards accordingly. Elements for such an analysis of domestic practices would include domestic courts’ decisions on compatibility of State measures with the ECHR and other conventions.
 - Ensuring respect of the legal requirements established by the ECHR system (Court, CM supervision of the execution of Court’s judgments).
 - Supervising the use made by several member States of the derogation under Article 15 ECHR in the context of the pandemic.
 - **Forward-looking/anticipating role** – For instance:
 - Reflection on lessons to be drawn from the response of the Council of Europe to the health crisis, with special focus on the human rights aspect of measures taken by member States during the crisis. The toolkit released by the Secretary General for governments across Europe on respecting human rights, democracy and the rule of law during the Covid-19 crisis is a perfect example.
 - Considering the wide range of responses already given or still being envisaged by the Council of Europe, need to engage an in-depth analysis of various human rights implications in times of sanitary emergency (reflection wide enough to also encompass other state of emergencies, e.g. natural disasters).
 - Reflection on human rights and Environment, human rights and Business, human rights and Artificial Intelligence with the possibility of new standard-setting work based on best European practices.
 - Reflection on the tension between, on the one hand, the States’ positive obligations to protect the vulnerable persons and the proportionality of the restrictive measures applicable generally to the population on the other hand in case of major hazards (pandemic, natural disasters, etc.).
 - **Protective role** – For instance:
 - Protection of the current system of the ECHR by enhancing its national implementation and its proper functioning at Strasbourg level.
 - Protection role of the weakest sectors of society (elderly, migrants, etc.)

- **Redressing role** – For instance:
 - Collective action (via shared responsibility) against human rights violations, democratic deficit, gaps/failures of the Rule of Law in member States.
 - Political and legal pressure against death penalty, torture, discrimination, etc.
- **Promoting role** – For instance:
 - Making full use of the potential of civil society to provide expertise and assistance to member States and to hold governance to account;
 - Improving better knowledge of the Council of Europe values through publication, dissemination and publicity of the major legal instruments and practices, as well as via education and training.

Governance and working methods

- The Council of Europe's Secretariat under the guidance of the Secretary General, in synergy with the CM and other structural bodies of the Organisation, have gained strong experience in drafting legal standards, cooperation programmes, awareness-raising activities, supervision of the implementation of European instruments. These constitute the richness of the Organisation and must not in any way be put in question by the current crisis.
- The working methods reflect the values of the Organisation: the meetings reflect an excellent opportunity to acquire practical knowledge on democracy, tolerance, pluralism and diversity, constructive and positive co-operation among member States and *with civil society*.
- Transversality and synergy more and more developed in the Organisation.

In view of the strategic priorities you have identified:

What role could be played by intergovernmental committees? What possible changes could be envisaged to fulfil this role?

- Intergovernmental committees should continue to provide fora where multilateral dialogue among European nations takes place, awareness on human rights standards is raised and more broadly speaking a human rights culture is spread at the European level, new standards/ policies responding to new challenges are developed, peer-to-peer dialogue on the implementation of the Council of Europe standards takes place and the notion of collective responsibility for the implementation of ECHR is embodied/transposed in various activities.
- Performing these roles does not require fundamental changes in the processes and outputs of the intergovernmental committees. Some possible procedural changes or improvements might be considered, and would include proactive outreach to and involvement of civil society groups notably as regards the definition of areas of work for each biennium; fewer but more effective subordinate groups with precise tasks; diversification of the outputs in intergovernmental processes – e.g. in addition to developing recommendations and declarations (i.e. new standards) developing thematic commentaries on specific issues which provide guidance on the implementation of the existing standards), including compilation of best

practices in Member States. An example is the analysis and handbook on alternatives to detention of migrants, carried out by the CDDH.

Is the virtuous circle of standard-setting/monitoring/co-operation still relevant? If yes, can the link and co-ordination with the monitoring and co-operation sectors be improved, and how?

- Absolutely. This circle is becoming more and more effective. Need of fluid communication first between members of the Secretariat and Chairs of the relevant bodies. Likewise, it is important that the members of the steering committee are informed about the working of monitoring bodies.

How does your intergovernmental body develop synergies and co-ordination with other bodies and entities of the Council of Europe, and externally?

- Via invitations of Chairs of other bodies, via permanent contacts of the Secretariat of the CDDH with homologue staff of other bodies and committees and via mutual consultations concerning texts of common interest. The CDDH appoints among its members “focal points” that follows the work of other bodies and committees of The Council of Europe and report back to the CDDH.
- Excellent examples are provided by cooperation between CDDH and the Court, the PACE, the Venice Commission, The Commissioner, the Congress, The IONG Conference; with CPT, Social Charter, CDCJ, CDMSI, GREVIO, etc.
- Excellent examples of synergy between CDDH and civil society (NHRI, Ombudsmen, NGOs, etc.).

Does the structure of the Secretariat favour synergies with other activities undertaken in the same area by other sectors of the Organisation? Can it be improved, and how?

- In general, it functions well. But there is permanent need of personal contact between various members of the staff in order to avoid overlap or competition.
- The preparation of the bi-annual Programme of work provides an excellent occasion to favour transversality, joint ventures, co-operation between the various sectors.

How could digital developments facilitate your work?

- The various sites are more and more interesting and professional and will in the future replace printed publications.
- Need to avoid that “virtual reality” replaces presential meetings in Strasbourg. Crucial in any event to have classical presential meetings around a table. The experience during the pandemic has shown that web-based meeting can work acceptably in smaller groups and should be developed for working-group meetings and consultations in-between plenary meetings. However, even if it is economically cheaper, it should not replace presential plenary meetings and meetings where there is a need for direct contact to work out consensus solutions.

Lessons learnt from the sanitary crisis

How has the current crisis impacted the policies and priorities of governments across Europe in your area of responsibility? Have new needs for standards emerged as a result?

- The Bureau of the CDDH, at its last meeting (May 2020), decided to have a specific in-depth discussion during the next plenary meeting of the CDDH devoted to the future “possible work of the CDDH related to the pandemic crisis and its consequences in the Member States”. Many of the ideas of the Bureau concerning this have already been reflected above. Experiences from the present pandemic will form the basis for work necessary to prepare for future pandemics and other civil crisis (as for instance extreme weather) that are likely to occur in the future.

How has the current crisis impacted the functioning of your intergovernmental body? What kind of risks or opportunities have you experienced/have you seen emerge during the current crisis?

How should the continuing work of your body be shaped in view of these risks and opportunities?

- The lack of presential meetings has considerably slowed down the work of the CDDH and its sub-ordinate groups and reduced the opportunities for multilateral dialogue that happens in these forums. While video-conference meetings are organised, the time limitations and the fact that member States’ representatives are not physically present restricts fundamentally the exchanges of views and hinders consensus-building. The discussions tend to become more formal and seems to hinder a more active participation by a larger group of participants. As chair it is important to “sense” the general feeling of the audience, which is impossible when they not even appear on the screen. In fact it is impossible to ascertain whether people are actively following the discussion or are engaged in other work in their offices. The situation ultimately increases the risk of member States’ disengagement with the Council of Europe processes.
- Video-conference technologies present good opportunities for meetings in rather small formats – e.g. discussions with small working groups composed of the Chair and Rapporteurs, or Bureau meetings.
- As mentioned above it is crucial to have presential meetings around the table in order to preserve engagement and commitment to the Organisation and its values as well as a genuine multilateral dialogue and co-operation.

II. Information sent by the CDDH focal point in the European Committee on Legal Co-operation (CDCJ) Ms María de Fátima GRAÇA CARVALHO (Portugal) concerning her participation in the annual meeting of the CDCJ (Visio conference, 4-5 and 23-24 November 2020)

1. La réunion annuelle du Comité directeur pour la coopération juridique a eu lieu, par vidéo-conférence, le 4-5 et le 23-24 novembre 2020.
2. L’ordre du jour comprenait les sujets suivants :
 - *Activités en cours*: étude de faisabilité concernant une convention européenne sur la profession d’avocat ; examen de la mise en œuvre du Plan d’action de Sofia sur l’indépendance et l’impartialité du pouvoir judiciaire ; rétention administrative des migrants ;

droits et intérêt supérieur de l'enfant dans le cadre des procédures de séparation des parents ou de placement ; accès aux services de traduction et d'interprétation dans les procédures civiles et administratives ; conférence internationale sur l'apatridie

- *Mécanismes de règlement en ligne des litiges* - Lignes directrices (adoption)
- *Systèmes d'assistance judiciaire* - Lignes directrices (adoption)
- *Programme pour 2022-2023* - Les activités suivantes ont été soulignées :
 - (i) *Administration et intelligence artificielle*
 - (ii) *Droit des personnes conçues par don de connaître leurs origines* (étude comparative)
 - (iii) *Élaboration d'un instrument juridique concernant la protection de la profession d'avocat.*

3. Malgré une certaine difficulté technique que j'ai eue pour accompagner tous les travaux, je peux indiquer les aspects suivants en tant qu'aspects les plus pertinents du point de vue du CDDH.
4. **Rétention administrative des migrants** - Un rapport sur les travaux accomplis jusqu'à présent, assorti de propositions de pistes possibles pour l'achèvement de ces travaux, sera présenté en 2021
5. **Administration et intelligence artificielle** - Le Comité a approuvé une note conceptuelle (*concept paper*) sur ce sujet et, sur cette base, les travaux devront se concentrer sur l'utilisation de l'IA dans le domaine administratif.
6. **Étude de faisabilité concernant une convention européenne sur la profession d'avocat** - Le Comité a approuvé l'étude réalisée par le consultant Jeremy MCBRIDE ; toutefois, la question de la nature contraignante ou non-contraignante du futur instrument juridique à préparer reste à décider.
 - (i) Cette étude de faisabilité est un document long et complet qui commence par identifier les problèmes auxquels sont confrontés les avocats, *soit à titre individuel*, dans l'exercice de la profession (des attaques, des menaces, de la violence envers les avocats ou leurs familles; le contrôle de communications entre avocats et clients, les perquisitions illégales, l'obligation de témoigner contre des clientes; l'usage inappropriée des procédures d'admission, des procédures disciplinaires ou des poursuites pénales à son encontre), *soit des problèmes de nature institutionnelle*, concernant notamment l'indépendance des corps et des associations professionnelles vis-à-vis des pouvoirs publics
 - (ii) Par la suite, l'étude analyse en détail les principaux instruments juridiques déjà existants sur la profession d'avocat, soit dans le cadre de la "*soft law*" (notamment les Principes de base des Nations Unies, la Recommandation R(2000)21 du Comité des Ministres du Conseil de l'Europe), soit des instruments de nature contraignante (Convention européenne des Droits de l'Homme – avec une analyse de la jurisprudence de la Cour, notamment dans le cadre des articles 5, 6, 8, 10 et 11; Pacte International des Droits Civils et Politiques ; Directive de

l'Union européenne). Il conclut que ces instruments, bien qu'ils ne soient pas contradictoires entre eux, ils se distinguent autant par les situations qu'ils couvrent et par le degré dans lequel ils le font, autant par la prévision – ou pas – d'un mécanisme de mise en œuvre et d'accompagnement ou même d'interprétation.

- (iii) En ce qui concerne la Recommandation du Comité des Ministres, l'étude souligne quelques omissions, notamment sur la liberté de choisir des clients; la loyauté vis-à-vis des intérêts des clients; les limites aux obligations de rapporter sur les clients; l'indépendance vis-à-vis le travail financé sur fonds publiques; la possibilité d'objection fondée vis-à-vis la conduite d'un juge et la participation; la liberté de choix dans l'organisation de la pratique juridique; la participation aux discussions publiques en matière de promotion et de protection des Droits de l'Homme; la participation à des procédures internationales; l'immunité civile et pénale pour les déclarations faites de bonne-foi; la communication et la publicité; les élections des membres pour les corps et les associations professionnelles; le devoir des autorités de protéger dûment les avocats menacés.
 - (iv) Par ailleurs, bien que cette Recommandation n'établisse pas un mécanisme d'interprétation et de mise en œuvre, l'étude souligne le lien entre beaucoup de ces dispositions et les droits prévus à la Convention européenne des Droits de l'Homme, pouvant ainsi faire l'objet des requêtes soumises à la Cour, comme cela arrive dans plusieurs affaires.
 - (v) Toutefois, l'étude considère que cela n'empêche pas l'adoption d'un nouvel instrument juridique et rajoute que la jurisprudence de la Cour ne traite pas toutes les questions pertinentes concernant l'exercice de la profession, la principale omission concernant les questions systémiques et de nature institutionnelle.
 - (vi) Ainsi, analysant ensuite les avantages et les désavantages de l'adoption d'un nouvel instrument juridique, l'étude souligne, parmi les avantages, sa portée plus large, la plus grande clarté des concepts, la prévision d'un mécanisme de mise en œuvre ou d'accompagnement. Plusieurs possibilités concernant ce mécanisme sont aussi analysées.
 - (vii) En somme, compte tenu des problèmes croissants auxquels les avocats sont confrontés dans l'exercice de leur profession et de l'insuffisance de la protection apportée par les instruments actuels - pour des raisons différentes - l'étude se prononce pour l'adoption d'un instrument de nature contraignante, qui dispose non seulement sur les aspects qui concernent la sécurité et l'indépendance de l'avocat mais aussi d'autres, notamment ceux mentionnés ci-dessus et ceux qui concernent l'indépendance et le *self-governing* des associations professionnelles ou les critères et les règles de procédure en matière disciplinaire.
 - (viii) Quant au mécanisme à instituer, l'étude marque sa préférence pour un organe compétente pour émettre des avis et pour apprécier de requêtes collectives - introduites par certaines entités - portant sur des problèmes d'ordre systémique et de nature institutionnelle.
7. Toutefois, comme mentionné ci-dessus, le Comité a décidé de laisser ouverte la question de la nature contraignante ou non-contraignante du nouvel instrument à adopter.