

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 31 March 2017

DH-SYSC-II (2017)R1

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH) (CDDH)

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

**DRAFTING GROUP II ON THE FOLLOW-UP TO THE CDDH REPORT
ON THE LONGER-TERM FUTURE OF THE CONVENTION
(DH-SYSC-II)**

MEETING REPORT

1st meeting

30 – 31 March 2017

Item 1 : **Opening of the meeting, adoption of the agenda and order of business and election of the Vice-Chairperson**

1. The Drafting Group II on the follow-up to the CDDH Report on the longer-term future of the system of the European Convention on Human Rights (DH-SYSC-II) held its 1st meeting in Strasbourg from 30 to 31 March 2017, with Ms Florence MERLOZ (France) in the chair. The list of participants appears in Appendix I. The agenda, as it was adopted, appears in Appendix II. The Group elected Mr Alfonso BREZMES MARTÍNEZ DE VILLARREAL (Spain) as its Vice-Chairperson.

2. Mr Mikhail LOBOV, Head of the Human Rights Policy and Cooperation Department, delivered a welcome speech and underlined the importance of the work, which will be pursued in the next biennium.

3. The Drafting Group welcomed the holding of the Seminar on the place of the European Convention on Human Rights in the European and international legal order (Strasbourg 29-30 March 2017) preceding the launching of its work. It welcomed the high level of speakers and participants, bringing together Judges of the International Court of Justice and the European Court of Human Rights, Government Agents, leading international legal scholars and practitioners, allowing for very rich discussions that will feed into the work of the Group. It warmly thanked the Norwegian authorities for this initiative and in particular Mr Morten RUUD (Norway) for his personal commitment in the preparation of this event, as well as the *PluriCourts* academic network for its very important scientific input. It welcomed the future publication of the proceedings, which will constitute an important basis for its work. The programme of the Seminar appears in Appendix III.

Item 2 : **Work on the place of the European Convention of Human Rights in the European and International legal order**

4. At their 1252nd meeting (30 March 2016), the Ministers' Deputies agreed on the following.

“[instructed] the CDDH to carry out a detailed analysis of all questions relating to the place of the Convention in the European and international legal order and on the medium-term and longer-term prospects, in the light of the relevant paragraphs of the report (conclusion § 203 iii).”

5. The Group determined the list of the three priority themes that need to be examined in the context of its work, as they emerge from the CDDH report on the longer-term future of the system of the European Convention on Human Rights (“the CDDH report”), namely:

- the challenge of the interaction between the Convention and other branches of international law, including international customary law;
- the interaction between the Convention and other international human rights instruments to which the Council of Europe member States are parties;
- the interaction between the Convention and the EU legal order, and other regional organisations.

6. Concerning the challenge of the interaction between the Convention and the general principles of international law, as well as other branches of international law (see in particular paragraphs 185-187; 189 and 192 of the CDDH report), the Group decided, in particular in light of the discussions during the seminar, that it has to examine notably the questions of:

- the methodology of interpretation by the Court (it will be determined at a later stage if this question should be subject to a distinct study);
- the notions of jurisdiction, in the sense of Article 1 of the Convention, and of responsibility (including the questions relating to effective control);
- the relation between the resolutions of the Security Council and the Convention;
- the Convention and international humanitarian law.

7. As regards the interaction between the Convention and other international human rights instruments to which the Council of Europe member States are parties, the Group decided that it should examine the interaction between the Convention and the UN treaty bodies, in particular in light of paragraphs 182-184 as well as paragraph 188 of the CDDH report. It recalled that, in this regard, the situation in which a case introduced before the Court is declared inadmissible by means of an unreasoned decision, while the communication subsequently submitted to the United Nations Human Rights Committee is declared well-founded, should be addressed.¹

8. As regards the interaction between the Convention and the EU legal order, and other regional organisations, the Group decided that it needs to examine the interaction between the Convention and the EU legal order from the perspective of the relations between the two courts (see in particular paragraphs 177-181 and 190-191 of the CDDH report). Emphasis will be placed on the consequences of the delay of the EU accession to the Convention, as well as on the possible responses to the consequences of this delay, in the form of mechanisms or modalities to be defined, in light of the related session of the seminar. The work will not cover the accession of the EU to other Council of Europe treaties. The question of the relation with other entities such as the Eurasian Economic Union could also be addressed.

9. The Group underlined that the aim of the work in its entirety should be the preservation of the efficiency of the Convention system against risks of fragmentation of the European and international legal space in the field of human rights protection, stemming from diverging interpretations. Each challenge presented in the CDDH report will need to be subjected to stocktaking and then an analysis allowing identification of the underlying risks that it entails, as well as the concrete and pragmatic responses thereto, from the perspective of the system of the Convention. With a view to preparing the mid and longer-term responses, the focus needs to be on the follow-up actions of the Council of Europe bodies.

¹ See paragraph 184 of the CDDH Report on the longer-term future of the system of the Convention and footnote 224 referring notably to *María Cruz Achabal Puertas v. Spain* (1945/2010), CCPR/C/107/D/1945/2010 (2013); 20 IHRR 1013 (2013).

10. The Group proceeded to define its proposed working methods for the continuation of its work, namely:

- the appointment of rapporteurs upon the endorsement of the themes by the DH-SYSC, at the latest before the CDDH meeting and following a procedure to be set up by the Secretariat;
- the possible contribution of CAHDI and other relevant bodies to the work;
- the participation, as required, of *ad hoc* experts on specific subjects.

Item 3: Organisation of future work

11. With a view to its next meeting (20-22 September 2017), and subject to the endorsement of its guidance by the DH-SYSC, the Group instructed the Secretariat to prepare a draft outline to facilitate the analyses that will be carried out.

12. The Group envisaged two possible methods for the conduct of the work, either by working on all the themes in parallel, or by working consecutively on each one of the themes. The Group expressed its preference for the second option.

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Appendix I – List of participants

MEMBERS / MEMBRES

BULGARIA/BULGARIE

Ms. Emanuela TOMOVA, Chef de service « Droits de l’homme » à la direction Droits de l’homme au Ministère des affaires étrangères.

CROATIA/CROATIE

Ms. Morana BRIŠKI, Head of Department, Department for case-law research and harmonisation of the legislation with the European Convention on Human Rights, Office of the Agent of Croatia before the European Court of Human Rights

CYPRUS/CHYPRE

Ms. Eleni Loizidou, Attorney-at-law for the Republic of Cyprus, Law Office of the Republic of Cyprus

CZECH REPUBLIC/REPUBLIQUE TCHÈQUE

Mr. Ota HLINOMAZ, Senior Ministerial Counsellor, Office of the Government Agent before the European Court of Human Rights, Ministry of Justice of the Czech Republic

DENMARK/DANEMARK

Ms. Maria Aviaja SANDER HOLM, The Danish Ministry of Justice, Constitutional Law and Human Rights Division

Mr. Rasmus KIEFFER-KRISTENSEN, Head of Department, Danish Ministry of Justice

FINLAND/FINLANDE

Ms. Katja KUUPPELOMÄKI, Legal Officer, Unit for Human Rights Courts and Conventions, Legal Service, Ministry for Foreign Affairs of Finland

FRANCE

Mme Florence MERLOZ, Chairperson of DH-SYSC-II / Présidente du DH-SYSC-II, Sous-directrice des droits de l’homme, Direction des affaires juridiques, Ministère des affaires étrangères et du développement international

GERMANY/ALLEMAGNE

Ms. Cornelia WÖLK, Staff Counsel, Ministry of Justice

GREECE/GRÈCE

Mme Sofia KASTRANTA, Conseiller juridique adjoint, Département Juridique Spécial, Ministère des affaires étrangères

ITALY/ITALIE

Ms. Maria Laura Aversano, Co-Agent of the Italian Government at the Ministry of Foreign Affairs

LATVIA/LETTONIE

Ms. Kristīne LĪCIS, Representative of Latvia before European Court of Human Rights, Ministry of Foreign Affairs of the Republic of Latvia

Ms. Anta Rutka-Kriškalne, Head of the Government Agent’s Office

NETHERLANDS/PAYS-BAS

Ms. Kanta ADHIN, Deputy Government agent to the European Court of Human Rights, Legal Affairs Department, International Law Division

Ms. Clarinda COERT, Ministry of Security and Justice, Legislation Department

NORWAY/NORVÈGE

Ms. Tonje RUUD, Legal Adviser, Ministry of Justice and Public Security, Legislation Department

Ms. Elin Widsteen, Senior Adviser, Norwegian Ministry of Foreign Affairs, Legal Affairs Department, Section for Humanitarian and Criminal Law

POLAND/POLOGNE

Ms. Joanna PILASZEK, Attache, Department for Proceedings before International Human Rights Protection Bodies, Ministry of Foreign Affairs of Poland

ROMANIA/ROUMANIE

Ms. Catrinel BRUMAR, Agent of the Government before the European Court of Human Rights, Ministry of Foreign Affairs

RUSSIAN FEDERATION/FÉDÉRATION DE RUSSIE

M. Vladislav ERMAKOV, Ministry of Foreign Affairs

M. Stanislav KOVPAK, Représentant du Ministère de la Justice de la Fédération de Russie, Représentation de la Fédération de Russie auprès du Conseil de l'Europe

Ms Kseniya ROGOZYANSKAYA, advisor to the Representation of the Ministry of Justice of the Russian Federation in Strasbourg

Ms. Olga ZINCHENKO, attaché in the Ministry of Foreign Affairs of the Russian Federation

SPAIN/ESPAGNE

Mr. Alfonso BREZMES MARTÍNEZ DE VILLARREAL, Vice-Chairperson of DH-SYSC-II/ Vice-Président du DH-SYSC-II, Senior State Attorney of the Constitutional Law & Human Rights Department, Ministry of Justice

SWEDEN/SUÈDE

Mr. Daniel Wållander, Legal Adviser, Department for International Law, Human Rights and Treaty Law Ministry for Foreign Affairs, Government Offices of Sweden

SWITZERLAND/SUISSE

Mr Adrian SCHEIDEGGER, Agent suppléant du Gouvernement suisse devant la Cour européenne des droits de l'homme et le CAT, le CERD et le CEDAW, Département fédéral de justice et police DFJP, Office fédéral de la justice

TURKEY/TURQUIE

Mr. Harun ÇEVİK, Deputy to the Head of the Department of Human Rights, Ministry of Justice

Ms. Gül Pelin Kaya, Judge-Rapporteur, Ministry of Justice

Ms. Sibel ERKAN, Deputy Permanent Representative, Ministry of Foreign Affairs

M^{me} Aysen EMÜLER, Experte juridique, Représentation permanente de la Turquie auprès du Conseil de l'Europe

UNITED KINGDOM/ROYAUME-UNI

Mr. Chanaka WICKREMASINGHE, Legal Counsellor, Legal Directorate, Foreign and Commonwealth Office

OBSERVERS / OBSERVATEURS**HOLY SEE/ SAINT SIÈGE,**

M. Grégor PUPPINCK

EUROPEAN NETWORK OF HUMAN RIGHTS INSTITUTIONS (ENNHRI) / RÉSEAU EUROPÉEN DES INSTITUTIONS NATIONALES DES DROITS DE L'HOMME

Ms. Julie Lejeune, Legal Policy Officer, Permanent Secretariat, European Network of National Human Rights Institutions(ENHRI)

REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / GREFFE DE LA COUR EUROPÉENNE DES DROITS DE L'HOMME

Mr. John DARCY, Deputy Head of the Private Office of the President, European Court of Human Rights

Non governmental Organisations / Organisations non-gouvernementales**Amnesty International**

Mr. Sébastien Ramu, Senior Legal Adviser - Law and Policy, International Secretariat

ETUC

Mr. Klaus LÖRCHER, ETUC Human Rights Advisor

Mr. Stefan CLAUWAERT, Senior Researcher at the European Trade Union Institute (ETUI) and ETUC Representative in the Governmental Committee of the European Social Charter

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SECRETARIAT**DG I – Human Rights and Rule of Law / Droits de l'homme et Etat de droit****Council of Europe / Conseil de l'Europe, F-67075 Strasbourg Cedex**

Mr. Mikhail LOBOV, Head of Human Rights Policy and Co-operation Department / Chef du Service des politiques et de la coopération en matière de droits de l'Homme

Ms. Irène KITSOU-MILONAS, Head of the Unit on the system of the European Convention on Human Rights / Chef de l'Unité sur le système de la Convention européenne des droits de l'homme, Secretary of the DH-SYSC / Secrétaire du DH-SYSC

Ms. Virginie FLORES, Administrator/Administratrice, Unit on the system of the European Convention on Human Rights / Unité sur le système de la Convention européenne des droits de l'homme

Ms. Simona MARINA, Assistant/Assistante, Unit on the system of the European Convention on Human Rights / Unité sur le système de la Convention européenne des droits de l'homme

Ms. Elisa SAARI, Trainee / Stagiaire

INTERPRETERS/INTERPRETES

Gillian WAKENHUT
 Christopher TYCZKA
 Christine TRAPP

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Appendix II – Agenda (as adopted)

Item 1 : Opening of the meeting, adoption of the agenda and election of a vice-president

- Report of the 86th CDDH meeting (6-8 December 2016) [CDDH\(2016\)R86](#)
- Report of the 2nd DH-SYSC meeting(8-10 November 2016) [DH-SYSC\(2016\)R2](#)
- Report of the 85th CDDH meeting (7-11 December 2015) [CDDH\(2016\)R85](#)
- Report of the 9th DH-GDR meeting (17-20 November 2015) [DH-GDR\(2015\)R9](#)
- CDDH report on the longer-term future of the system of the European Convention on Human Rights [CDDH\(2015\)R84 Addendum I](#)
- Brussels Declaration [CDDH\(2015\)004](#)
- Brighton Declaration [CDDH\(2012\)007](#)
- Izmir Declaration [CDDH\(2011\)010](#)
- Interlaken Declaration [CDDH\(2010\)001](#)
- Rome Declaration
- Decisions adopted at the 1252nd meeting of the Ministers' Deputies on the CDDH Report on the longer-term future of the system of the European Convention on Human Rights (30 March 2016) [DH-SYSC\(2016\)009](#)
- Terms of reference of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC) for 2016-2017 [DH-SYSC\(2016\)003](#)
- Resolution of the Committee of Ministers CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods [CDDH\(2011\)012](#)

Item 2 : Work on the place of the European Convention of Human Rights in the European and International legal order

- Draft program of the Seminar organised for the launching of the work of the DH-SYSC-II, co-organized by *PluriCourts* and the Council of Europe
- CDDH report on the longer-term future of the system of the European Convention on Human Rights [CDDH\(2015\)R84 Addendum I](#)
- Report of the 86th CDDH meeting (6-8 December 2016) [CDDH\(2016\)R86](#)
- Report of the 2nd DH-SYSC meeting (8-10 November 2016) [DH-SYSC\(2016\)R2](#)

- Comment from the Court on the report of the CDDH on the longer-term future of the Convention system

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Item 3 : Organisation of future work

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Appendix III – Programme of the Seminar

Wednesday 29 March 2017

Opening session: 9:30 – 10:00

- Christos Giakoumopoulos, Director, Directorate of Human Rights, Council of Europe
- Andreas Føllesdal, Professor, Co-Director, PluriCourts, Faculty of Law, University of Oslo

1st session - ECHR and general international law

10:00-11:15: 1st part – General issues of treaty interpretation and the European Court of Human Rights, chaired by Päivi Kaukoranta, Chair of the Committee of Legal Advisers on Public International Law (CAHDI), Director General, Legal Service, Ministry for Foreign Affairs of Finland

- Geir Ulfstein, Professor, Co-Director, PluriCourts, University of Oslo: *“Interpretation of the ECHR in light of the Vienna Convention on the Law of Treaties”*
- James Crawford, Judge, International Court of Justice: *“Interpretation of human rights treaties by the International Court of Justice”*
- Helen Keller, Judge, European Court of Human Rights: *“The Court’s dilution of hard international law: justified by human rights values?”*
- Mark Entin, Professor, Moscow State Institute of International Relations (MGIMO University) and Baltic Federal University of Kaliningrad: *“ECHR impact on contemporary International law and legal consciousness”*

11:15-11:45: Coffee break

11:45-13:00: Discussion

13:00-14:30: Lunch break

14:30-15:15: 2nd part – Specific challenges of interaction between the ECHR and General International Law, chaired by Florence Merloz, Chair of the DH-SYSC-II, Deputy

Director of Human Rights, Directorate of Legal affairs of the French Ministry for Foreign Affairs and International Development

- Linos-Alexandre Sicilianos, Judge, European Court of Human Rights: *“The European Court of Human Rights and the United Nations Security Council: Towards Systemic Harmonization”*
- Ledi Bianku, Judge, European Court of Human Rights: *“The European Court of Human Rights and Humanitarian Law with focus on the significance of the judgment in the case of Hassan v. the United Kingdom”*
- Freya Baetens, Professor, PluriCourts, University of Oslo: *“Non-discrimination: Cross-fertilisation of likeness tests between human rights and investment tribunals”*

15:15-16:15: Discussion

16:15-16:45: Coffee break

16:45-17:00: 2nd Session – Relations with other international human rights treaties and control organs, chaired by Morten Ruud, Norwegian Ministry of Justice, former Chair of the Committee of experts on the reform of the Court (DH-GDR)

- Anja Seibert-Fohr, Professor, Heidelberg University: *“The European Court of Human Rights and the Human Rights Committee”*

17 :30 : Reception hosted by the Permanent Representation of Norway to the Council of Europe – Salon Bleu, Palais de l’Europe

Thursday 30 March

9:30-10:15: Continuation of the 2nd Session

- Vibeke Blaker Strand, Professor, University of Oslo: *“The European Court of Human Rights, The Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)”*
- Kjetil Larsen, Professor, Norwegian Centre for Human Rights: *“The European Court of Human Rights and the UN Disability Convention”*

10:15-11:00: Discussion

11:00: Group photo

11:10-11:30: Coffee break

11:30-12:15: 3rd Session – ECHR and EU accession-consequences of delay

chaired by Morten Ruud, Norwegian Ministry of Justice, former Chair of the Committee of experts on the reform of the Court (DH-GDR)

- Martin Kuijer, Professor, Free University of Amsterdam; Legal Adviser of the Netherlands Ministry of Security and Justice: *“The place of the ECHR mechanisms in the EU legal order: consequences of a delayed accession”*
- Tonje Meinich, Head of Department of European and International Affairs, Norwegian Ministry of Justice, Former Chair of the CDDH informal working group on the accession of the European Union to the European Convention on Human Rights (CDDH-UE): *“Challenges in the negotiations and the opinion of the CJEU”*
- Alexey Ispolinov, Professor, Head of the Chair of International law, Moscow State University: *“Consequences of the delay: the perspective of a non EU member State”*

12:15-13:00: Discussion**13:00: End of the Seminar**

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