



Strasbourg, 26 October 2009

DH-GDR(2009)001

STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

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COMMITTEE OF EXPERTS ON THE REFORM OF THE COURT  
(DH-GDR)

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REPORT

1<sup>st</sup> meeting

7-9 October 2009

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**Summary**

The Committee, in particular:

- adopted a preliminary draft opinion of the CDDH on the issues to be covered at the Conference to be organised by the Swiss Presidency of the Committee of Ministers at Interlaken on 18-19 February 2010 (see Addendum I);
- instructed the Secretariat to complete the preliminary draft opinion with material taken from the CDDH Activity Report (CDDH(2009)007 Add. I) on short and medium term proposals not requiring amendment of the Convention.

**Item 1:      Opening of the meeting, adoption of the agenda and order of business**

1.      The Committee of experts on the reform of the Court (DH-GDR) held its first meeting in Strasbourg from 7-9 October 2009 with Mr Roeland BÖCKER (The Netherlands) in the chair. The list of participants appears at Appendix I. The agenda, as adopted, appears at Appendix II.
2.      The Committee heard a statement from Mr Philippe BOILLAT, Director General of Human Rights and Legal Affairs, describing the context in which it would undertake its work and the nature of the task conferred upon it by the Ministers' Deputies.
3.      It also heard a statement from Mr Marc WEY (Switzerland) concerning his authorities' preparations and intentions for the Conference.

**Item 2:              Terms of reference**

4.      The Committee proceeded to exchange views on the terms of reference received from the Ministers' Deputies (see Appendix III), in the light of the information received from Mr BOILLAT and Mr WEY. It was agreed that the draft opinion did not need to extend to a detailed presentation of every issue that might be discussed at Interlaken or reflect all aspects of each issue and the varying positions expressed with respect to them.

**Item 3:              Preparation of a draft opinion of the CDDH on issues to be covered at the Interlaken Conference**

5.      The draft opinion, as prepared by the Committee, appears at Addendum I.
6.      The Committee decided to include a summary of its discussions on certain issues that were not ultimately retained in the present meeting report.

*Formal requirements for applicants to the Court*

7.      The idea of requiring all communications with the Court from the very outset, including the initial application, to be in one of the two official languages of the Court was considered very problematic. Above all, it was considered to be discriminatory against applicants from countries in which the official languages of the Court were not official languages or widely spoken. Even if the idea was linked to a requirement to have legal representation from the outset, it would nevertheless present an excessive burden on applicants and could thereby wrongly deter potentially admissible applications. It was also noted that the Rules of Court already required the use of an official language of the Court for communications in respect of a hearing or once notice of the application had been given to the Respondent State, this latter being the stage following which the Rules of Court required that applicants be legally represented.
8.      The idea of requiring applicants to have legal representation from the very outset also did not meet with great interest. If the intention was to deter unmeritorious applications or enhance the quality of the applications that were made, the Committee was not convinced that these results would be achieved. It also noted that the Rules of Court already required that

applicants be legally represented following notification of the application to the Respondent State.

9. Given the lack of any broad agreement on these issues, the Committee decided not to retain them as proposals for the agenda of the Interlaken Conference.

*Human rights applications*

10. One expert proposed the issue of making provision for human rights applications at national level. Individuals would be able to make applications to higher national courts on the same legal grounds as applications to the Court in Strasbourg were made. This would reinforce subsidiarity.

11. Some experts noted that it would be very difficult to generalise such a system. Others felt that their national systems already included a sufficient variety of human rights protection mechanisms and procedures and did not need any more. It would also be problematic if the proposal implied the creation of “human rights courts,” such as existed in Germany and Spain.

12. Given the lack of any broad agreement on the issue, the Committee decided not to retain it as a proposal for the agenda of the Interlaken Conference.

*Class actions*

13. The Committee noted that the President of the Court had mentioned this issue in his Memorandum for the Interlaken Conference. It was concerned, however, that the meaning of the term involved remained uncertain, including in the President’s Memorandum. It also expressed its uncertainty as to the meaning of the related concept of “collective applications” and of the difference between the two.

14. It was explained that the former usually meant that an application was brought by an individual on behalf of a group of persons who had suffered the same or similar violations, with the definition of this group being certified by the competent court. The latter usually meant that an organisation or collectivity brought a complaint, without claiming victim status but instead so as to resolve a situation that threatened to give rise to violations in the future.

15. The Committee recalled that the issue had, for the first time in the context of the current discussions on reform of the Convention system, been discussed at the recent Round Table organised by the Slovenian chairmanship of the Committee of Ministers in Bled (21-22 September 2009). It was observed that there may be certain similarities with the pilot judgment procedure, at least insofar as both potentially offered responses to the problem of repetitive applications. On the other hand, the introduction of a system of class actions would almost certainly require amendment of the Convention, whereas the pilot judgment procedure had not. Furthermore, the role of the Court and the position of applicants differed significantly between the two.

16. Given the uncertainty and lack of any broad agreement on the issue, the Committee decided not to retain it as a proposal for the agenda of the Interlaken Conference.

17. Finally, the Committee instructed the Secretariat to complete the preliminary draft opinion with material taken from the CDDH Activity Report (CDDH(2009)007 Add. I) on short and medium term proposals not requiring amendment of the Convention, this to be done for the meeting of the CDDH.

Annexe I**List of participants/ Liste de participants****AUSTRIA / AUTRICHE**

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**FRANCE**

Mme Anne-Françoise TISSIER, Sous-directeur des droits de l'homme, Agent du Gouvernement, Ministère des affaires étrangères, DJ/HOM, 57 boulevard des Invalides, F-75007 PARIS

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**LUXEMBOURG**

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**THE NETHERLANDS / PAYS-BAS**

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**SPAIN / ESPAGNE**

M. Ignacio BLASCO LOZANO, Government Agent, *Abogado del Estado-Jefe*, Ministère de la Justice, c/Marqués del Duero 4, 28001 MADRID

**SWEDEN / SUEDE**

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**SWITZERLAND / SUISSE**

M. Frank SCHÜRMANN, Agent du Gouvernement, Chef de la Section des droits de l'homme et du Conseil de l'Europe, Office fédéral de la justice, Bundesrain 20, CH-3003 BERNE

M. Marc WEY, Représentant permanent adjoint, 23, rue Herder, 67083 STRASBOURG Cedex

**TURKEY / TURQUIE**

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Mr Rob LINHAM, Head of Litigation, Legislation and the Council of Europe, Human Rights Division, Ministry of Justice, 5<sup>th</sup> Floor Area 5.16, 102 Petty France, LONDON, SW1H 9AJ

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**Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) / Comité d'experts pour l'amélioration des procédures de protection des droits de l'homme (DH-PR)**

Ms Björg THORARENSEN, Chairperson of the DH-PR / Présidente du DH-PR, Professor of Law, University of Iceland, 150 REYKJAVIK

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**PARTICIPANTS**

**Parliamentary Assembly/Assemblée parlementaire**

Mr Andrew DRZEMCZEWSKI, Head of the Secretariat / Chef du Secrétariat, Committee on Legal Affairs & Human Rights / Commission des questions juridiques & des droits de l'homme

**European Court of Human Rights / Cour européenne des droits de l'homme**

Mr John DARCY, Administrator, Private Office of the President / Administrateur, Cabinet du Président

Ms Ramona TOMA, Administrateur au Greffe de la Cour européenne des droits de l'homme

**Department for the Execution of judgments of the Court / Service Exécution des Arrêts de la Cour**

Ms Irene KITSOU-MILONAS, Lawyer / juriste

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

**Amnesty International**

Ms Jill HEINE, Legal Adviser, Amnesty International, International Secretariat, 1 Easton Street, LONDON WC1X 0DW

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**SECRETARIAT**

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M. Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division / Chef de la Division de la coopération intergouvernementale en matière de droits de l'Homme, Secretary of the CDDH / Secrétaire du CDDH

Mr David MILNER, Administrator / Administrateur, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme, Secretary of the DH-GDR / Secrétaire du DH-GDR

Mme Virginie FLORES, Lawyer / Juriste, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Mme Michèle COGNARD, Assistant / Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Interpreters/Interprètes:

Ms Cynera JAFFREY

Ms Angela BREWER

M. Nicolas GUITTONNEAU

M. William VALK

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Annexe II**Agenda (as adopted)****Item 1:                    Opening of the meeting, adoption of the agenda and order of business****Item 2:                    Terms of reference**Background document

- Terms of reference of the DH-GDR CM/Del/Dec(2009)1056/4.1b,  
Appendix 4
- Ministers' Deputies' Decision of 9 September 2009 giving specific terms of reference to the CDDH CM/Del/Dec(2009)1064/4.3

**Item 3:                    Preparation of a draft opinion of the CDDH on issues to be covered at the Interlaken Conference**Background documents

- Memorandum of the President of the European Court of Human Rights to the States with a view to preparing the Interlaken Conference (3/7/09) #2781022
- Ministers' Deputies' Liaison Committee with the European Court of Human Rights: Summary of the debate at the meeting held on 8 September 2009 CL-CEDH(2009)CB1
- CDDH Activity Report: Guaranteeing the long-term effectiveness of the control system of the European Convention on Human Rights CDDH(2009)007 Add. I
- Speech of Mr Erik Fribergh, Registrar of the European Court of Human Rights, at the Round Table held in Bled, Slovenia (21-22 September 2009) #2868169
- "Comments to the DH-GDR opinion on the Interlaken conference," document presented by the Norwegian expert
- "Key points for a new filtering body for the European Court of Human Rights," document presented by the German expert
- Non-Paper presented by the United Kingdom expert

**Item 4:                    Other business**

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### Annexe III

#### **Terms of reference of the Committee of Experts on the reform of the Court (DH-GDR)**

- 1. Name of Committee:** Committee of Experts on the reform of the Court (DH-GDR)
- 2. Type of Committee:** Committee of Experts
- 3. Source of terms of reference:** Committee of Ministers, upon proposals of the Steering Committee for Human Rights (CDDH)

**4. Terms of reference:**

Having regard to:

- Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods, adopted by the Committee of Ministers on 14 December 2005;
- the Declaration and the Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe member states (Warsaw, 16-17 May 2005; CM(2005)80 final, 17 May 2005), in particular chapter I.1. "Ensuring the continued effectiveness of the European Convention on Human Rights";
- the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5) and Protocol No. 14 to the ECHR, amending the control system of the Convention (2004, CETS No. 194);
- the Declaration of the Committee of Ministers on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels (adopted on 19 May 2006 at its 116th Session);
- Decision No. CM/873/11072007 containing the ad hoc terms of reference of the CDDH following the 117th Session of the Committee of Ministers (adopted by the Ministers' Deputies at their 1002nd meeting, 11-12 July 2007).

Under the authority of the Steering Committee for Human Rights (CDDH) and in relation to project 2008/DGHL/1403 – "Enhancing the control system of the ECHR", of the Programme of Activities, the Committee is instructed to pursue its reflection on possible further reform of the ECHR control system.

**5. Composition of the Committee:**

**5.A Members**

Governments of member states are entitled to appoint representatives with the relevant qualifications concerning procedures in the framework of international human rights protection instruments, in particular the European Convention on Human Rights.

The Council of Europe budget will bear the travel and subsistence expenses of the 18 members appointed by the following member states: Austria, Belgium, Czech Republic, Denmark, Finland, France, Georgia, Germany, Latvia, Netherlands, Norway, Poland, Portugal, Russian Federation, Sweden, Switzerland, Turkey and United Kingdom.

The above-mentioned states may send (an) additional representative(s) to meetings of the Committee at their own expense. Representatives appointed by other member states may participate in the meetings of the Committee at the expense of these states.

Each member state participating in the meetings of the Committee has the right to vote in procedural matters.

**5.B Participants**

- i. The following committees may each send a representative to meetings of the Committee, without the right to vote and at the expense of the corresponding Council of Europe budgetary article:
  - European Commission for the Efficiency of Justice (CEPEJ);
  - European Commission for Democracy through Law (Venice Commission).
- ii. The Parliamentary Assembly may send (a) representative(s) to meetings of the Committee, without the right to vote and at the expense of its administrative budget.
- iii. The Council of Europe Commissioner for Human Rights may send (a) representative(s) to meetings of the Committee, without the right to vote and at the expense of its administrative budget.
- iv. The Registry of the European Court of Human Rights may send (a) representative(s) to meetings of the Committee, without the right to vote and at the expense of its administrative budget.
- v. The Conference of INGOs of the Council of Europe may send (a) representative(s) to meetings of the Committee, without the right to vote and at the expense of the body that they represent.

#### **5.C Other participants**

- i. The European Commission and the Council of the European Union may send (a) representative(s) to meetings of the Committee, without the right to vote or defrayal of expenses.
- ii. States with observer status of the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America) may send (a) representative(s) to meetings of the Committee, without the right to vote or defrayal of expenses.
- iii. The following intergovernmental organisations may send (a) representative(s) to meetings of the Committee, without the right to vote or defrayal of expenses:
  - Organisation for Security and Co-operation in Europe (OSCE);
  - Office for Democratic Institutions and Human Rights (ODIHR);
  - Office of the United Nations High Commissioner for Human Rights.

#### **5.D Observers**

The following non member state:

- Belarus;

and the following non-governmental organisations:

- Amnesty International;
- International Commission of Jurists (ICJ);
- International Federation of Human Rights (FIDH);
- European Roma and Travellers Forum;

and the European Group of National Institutions for the Promotion and Protection of Human Rights;

may send (a) representative(s) to meetings of the Committee, without the right to vote or defrayal of expenses.

#### **6. Working methods and structures:**

In order to fulfil its tasks the Committee is:

- entitled to invite other participants and/ or observers to meetings of the Committee, without the right to vote or defrayal of expenses. The DH-GDR will have to ask the CDDH for the authorisation necessary to admit observers (other than those already listed in these terms of reference);
- authorised to seek, as appropriate and within its budgetary appropriations, the advice of experts, to have recourse to studies prepared by consultants and to consult relevant non-governmental organisations and

other members of civil society.

**7. Duration:**

The present mandate will expire on 31 December 2009.

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1064th meeting – 9 September 2009

**Item 4.3**

**Liaison Committee with the European Court of Human Rights (CL-CEDH) –  
Oral report by the Chair of the meeting on 8 September 2009**

*Decisions*

The Deputies

1. recalling the welcome given by the Ministers at their 119th Session (12 May 2009) in Madrid to Switzerland's intention to host a high-level conference on the future of the European Court of Human Rights in the context of its forthcoming chairmanship of the Committee of Ministers, took note with appreciation of the information provided by the Swiss delegation concerning the organisation of the conference at Interlaken on 18 and 19 February 2010;
2. noted that the organisation of the conference would proceed under the aegis of the Swiss authorities in consultation with stakeholders and that relevant information would be disseminated regularly;
3. took note with appreciation of the preparation of the memorandum of the President of the European Court of Human Rights with a view to preparing the Interlaken Conference;
4. invited the Steering Committee for Human Rights (CDDH), to submit, by the end of November 2009, an opinion on the issues to be covered at the conference, bearing in mind, *inter alia*, the memorandum prepared by the President of the Court and in the light of the summary of the debate of the CL-CEDH;
5. agreed to engage actively in the preparation of the conference, not least at the next meeting of the Liaison Committee with the European Court of Human Rights (CL-CEDH) on 20 October 2009 and to revert to the matter as soon as the CDDH had provided its opinion;
6. invited the Slovenian Chairmanship to disseminate the conclusions of the Bled Round Table (21-22 September 2009) as a contribution to the preparation of the conference, and invited member states who had hosted, or intended to host relevant events, likewise to disseminate their conclusions.