

Strasbourg, 11 May 2010

DH-GDR(2010)008

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

REPORT

3rd meeting

5-7 May 2010

Summary

During its meeting, the Committee in particular:

- adopted draft reports on (i) access to the Court – fees for applicants (Addendum I) and (ii) proposals for dealing with repetitive applications that would not require amendment of the Convention (Addendum II) and decided to submit them to the CDDH for consideration at the latter's next meeting;
- exchanged views on the pilot judgment procedure and agreed to return to the issue at its next meeting, taking into account contributions to be made to the Court concerning the latter's preparation of future rules governing the procedure;
- exchanged views on the election of judges to the Court and *inter alia* decided to refer to the CDDH the question of a possible Committee of Ministers' recommendation on national selection procedures for candidates;
- updated the table setting out the methods, results and timetable for its work (Appendix III);
- agreed to invite the Chairperson of the GT-SUIVI.Interlaken to its next meeting.

Item 1: Opening of the meeting and adoption of the order of business

1. The Committee of experts on the reform of the Court (DH-GDR) held its third meeting in Strasbourg from 5-7 May 2010 with Mrs Anne-Françoise TISSIER (France) in the chair. The list of participants appears at Appendix I. The agenda, as adopted, appears at Appendix II.

2. The Committee heard a short presentation from its Chairperson concerning her participation and that of the CDDH Chairperson Mrs Almut WITTLING-VOGEL (Germany) at the 2nd meeting of the Ministers' Deputies' GT-SUIVI.Interlaken working group on 23rd April 2010.¹

3. The Committee also took note of information provided by its Secretary concerning the 3rd meeting of the GT-SUIVI.Interlaken on 4 and 5 May 2010, at which the working group had finalised the draft decisions on the follow-up to the Interlaken Declaration for submission to the 120th Session of the Committee of Ministers on 11 May 2010.²

Item 2: Implementation of the Interlaken Declaration: access to the Court – fees for applicants

4. The Committee heard a presentation by its Rapporteur on the issue of introducing a fee for applicants to the European Court of Human Rights, Mr Rob LINHAM (United Kingdom).³ It also heard a presentation by Mr Michael O'BOYLE, Deputy Registrar of the Court, of the Registry's paper containing preliminary reflections concerning the introduction of a fee system. It then considered and revised the draft report, based on contributions from experts and observers, before adopting it as it appears at Addendum I, to be transmitted to the CDDH for consideration at its next meeting (15-18 June 2010), with a view to its inclusion in the latter's first report on implementation of the Interlaken Declaration, due to be submitted to the Committee of Ministers before the end of June 2010.

Item 3: Implementation of the Interlaken Declaration: repetitive applications – proposals not requiring amendment of the Convention

5. The Committee then heard a presentation by its Rapporteur on proposals for dealing with repetitive applications that would not require amendment of the Convention, Mrs Isabelle NIEDLISPACHER (Belgium).⁴ It also heard a presentation by Mrs Geneviève MAYER, Head of the Department for the Execution of Judgments of the Court, concerning relevant aspects of the Committee of Ministers' work on supervision of execution of judgments. It then considered and revised the draft report, based on contributions from experts and observers, before adopting it as it appears at Addendum II, to be transmitted to the CDDH for consideration at its next meeting (15-18 June 2010), with a view to its inclusion in

¹ The synopsis of this meeting can be found at doc. [GT-SUIVI.Interlaken\(2010\)CB2](#). The Chairperson of the DH-PR, Mrs Björg THORARENSEN, had also been invited to participate in this meeting but was unable to do so due to transport difficulties. The synopsis of the first meeting can be found at doc. [GT-SUIVI.Interlaken\(2010\)CB1](#).

² The convocation and draft agenda of this meeting can be found at doc. [GT-SUIVI.Interlaken\(2010\)OJ3 revised](#).

³ The Rapporteur's draft report can be found in doc. DH-GDR(2010)003. Most of the various contributions made to preparation of the report appear in doc. DH-GDR(2010)006; others (in particular, those of Norway and the Council of Europe Conference of International NGOs) are available on request from the Secretariat.

⁴ The Rapporteur's draft report can be found in doc. DH-GDR(2010)004. The various contributions made to preparation of the report appear in doc. DH-GDR(2010)007.

the latter's first report on implementation of the Interlaken Declaration, due to be submitted to the Committee of Ministers before the end of June 2010.

6. The questions of whether and how to define a "repetitive application" were discussed. It was considered unnecessary and potentially unhelpful to attempt to define the term; instead, the draft report offers a brief description. Since the aim of the exercise was to identify possible ways of reducing the Court's burden of applications arising from common structural problems, it was considered important that the proposals contained in the report could cover not only repetitive applications arising from situations that were already the subject of Court judgments, but also those arising from situations that were not yet subject of such judgments. This would allow proposals to be made for the largest number of potential responses to the widest range of possible situations.

7. The Committee noted the importance to its future work of obtaining information from the Court on the functioning of three-judge committees and their effect in dealing with repetitive applications following the entry into force of Protocol No. 14 on 1 June 2010.

Item 4: Implementation of the Interlaken Declaration: the pilot judgment procedure

8. The Committee exchanged views on the issue of the pilot judgment procedure, in particular as regards the preparation by the Court of future rules governing the procedure. It welcomed the circular letter sent by the Court's Registrar to all government agents inviting all those who wished to communicate their opinion on the possible content of rules on the pilot-judgment procedure to do so in writing (it should be noted that the deadline for doing so has since been extended to 30 June 2010), as well as its intention to send a similar letter to NGOs and other bodies representing applicants' interests.⁵ It also took note of the forthcoming seminar on pilot judgments being organised by London Metropolitan University in Strasbourg on 14 June 2010.⁶

9. The Chairperson proposed that the Secretariat prepare a compilation of States' contributions to the Court's work with a view to possible further discussion of the issue by the DH-GDR at its next meeting (8-10 September 2010).

10. The Committee also noted that such contributions could be posted to and discussed on the Government Agents' Forum (https://government-agents-forum.cws.coe.int/tiki-login_scr.php). It therefore invited those interested government agents who had not yet done so to register with the Forum's moderator via the "Contact" link on the Forum's web-site.

Item 5: Implementation of the Interlaken Declaration: election of judges

11. The Committee exchanged views on the issue of election of judges to the European Court of Human Rights, taking note of a presentation of the Parliamentary Assembly's recommendations and procedures made by Mr Andrew DRZEMCZEWSKI, Head of the Parliamentary Assembly's Law and Human Rights Department. The Committee considered

⁵ See Court doc. #3109039

⁶ Those interested in participating are required to register with the organisers in advance by e-mail to a.dudhia@londonmet.ac.uk. It can also be recalled that the issue was discussed during the 3rd Warsaw Seminar on 14-15/05/09.

that the accessibility of the Assembly's recommendations could be enhanced by their consolidation into a single text. It also took note of the compilation of existing texts prepared by the Secretariat and decided to propose to the CDDH that this document be updated and more widely diffused to interested parties.⁷

12. The Committee considered that the primary responsibility for ensuring the necessary quality of judges fell to States Parties, by ensuring that lists of candidates contained only persons fully satisfying the requirements for the office of judge. It therefore concluded that there may be interest in preparing a Committee of Ministers' recommendation to member States on the issue and/ or a compilation of existing good practices concerning national selection procedures. It decided to refer this idea to the CDDH for possible inclusion in the latter's first report to the Committee of Ministers.

13. The Committee also considered that the CDDH could reflect further and perhaps give guidance on possible future work on potential means of enhancing the technical expertise available to bodies involved in selecting candidates and electing judges and dialogue between States Parties and the Parliamentary Assembly.

14. Finally, the Committee agreed that the linguistic competence required of judges went beyond the mention made in the Interlaken Declaration: more than just being proficient in at least one official language, candidates should have an active knowledge of one and a passive knowledge of the other official language.

Item 6: Organisation of future work

15. The Committee exchanged views on the organisation of its future work, including the following questions: (i) the possible dates of future meetings, (ii) priority issues for future meetings, (iii) working methods and (iv) the possibility of inviting the Chairperson of the Ministers' Deputies' GT-SUIVI.Interlaken to participate at a future meeting.

16. As regards these questions, the Committee:

- took note of the calendar of meetings of the CDDH and the bodies answerable to it, which indicated that the next meeting of the DH-GDR would take place on 8-10 September 2010;
- reiterated its decision to discuss at its next meeting the issues of (i) filtering – inadmissible applications, (ii) filtering – a new filtering mechanism and (iii) repetitive applications – judicial treatment,⁸ subject to further or alternative issues arising as a result of intervening decisions;
- expressed its thanks to Mrs Almut WITTLING-VOGEL (Germany) for volunteering to act as rapporteur on the issue of 'filtering – a new filtering mechanism' and, insofar as it was connected, 'repetitive applications – judicial treatment' and invited interested parties to send their views on these issues to the rapporteur (wittling-al@bmj.bund.de and wenzel-ni@bmj.bund.de) before 30 June 2010, with a copy to the Secretariat (david.milner@coe.int);
- agreed to invite the Chairperson of the GT-SUIVI.Interlaken to its next meeting.

17. On the basis of the foregoing and of the overall results of the present meeting, the Committee prepared a revised version of the table setting out the methods, results and

⁷ See doc. DH-GDR(2010)005

⁸ See the table "Implementation of the Interlaken Declaration – methods, results and timetable," appended to the 2nd meeting report (doc. DH_GDR(2010)002 Appendix III)

timetable for its work on implementation of the Interlaken Declaration. The revised table can be found at Appendix III.

Item 7: Other business

Application of Protocol No. 14 – appointment of single judges and non-judicial rapporteurs by the Court/ Rotating pool of judges

18. One delegation reminded the Committee of the short-term proposal to create within the Court a rotating pool of judges. In this connection, Mr John DARCY of the Registry provided information concerning the appointment of single judges and non-judicial rapporteurs by the Court in preparation for the entry into force of Protocol No. 14 on 1 June 2010. 20 single judges would then be in operation, eleven of whom having already exercised the function under Protocol No. 14bis and the Madrid Agreement. These judges, whose names would be publicised, would be taken from all sections of the Court but exclude the President of the Court and members of its Bureau. They would continue to act as single judges for 12 months and then be replaced by a further 20. The Court will take a flexible and pragmatic approach to the allocation of individual cases to single judges, with a view to maximising judicial output. Non-judicial rapporteurs would also begin acting on 1 June, the first group being appointed from amongst experienced Registry lawyers or, if need be, deputy section registrars. These would work on cases against States concerning which they had previous experience.

19. The Committee reiterated the importance of obtaining information from the Court on the functioning of the new single judge procedures to its future work on filtering. It welcomed Mr Darcy's readiness to transmit this message and emphasise its urgency.

Appendix I**List of participants/ Liste de participants****ARMENIA / ARMENIE**

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Mr Michael O'BOYLE, Deputy Registrar / Greffier adjoint

Mr John DARCY, Administrator, Private Office of the President, European Court of Human Rights / Administrateur, Cabinet du Président, Cour européenne des droits de l'homme

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

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Conference of INGOs of the Council of Europe / Conférence des OING du Conseil de l'Europe

Apologised / excusé

* * *

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Apologised / excusé

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Interpreters/Interprètes:

Mme Sally BAILEY

M. Philippe QUAINÉ

Mme Corinne MCGEORGE-MAGALLON

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Appendix II**Agenda (as adopted)****Item 1: Opening of the meeting and adoption of the order of business**General background documents

- Draft annotated agenda DH-GDR(2010)OJ002
- Synopsis of the 1st meeting of the Ministers' Deputies' GT- GT-SUIVI.Interlaken(2010)CB21
SUIVI.Interlaken working group
- Synopsis of the 2nd meeting of the GT-SUIVI.Interlaken GT-SUIVI.Interlaken(2010)CB2
- Report of the 79th meeting of the CDDH Bureau (23 March 2010) CDDH-BU(2010)001
- Report of the 2nd meeting of the DH-GDR (24-26 March 2010) DH-GDR(2010)002
- Decisions of the Committee of Ministers on the action to be taken CDDH(2010)002
following the Interlaken Conference & Terms of reference of the
CDDH and subordinate bodies involved in follow-up work to
Interlaken
- Interlaken Declaration CDDH(2010)001
- "Background documents" for the Interlaken Conference H/Inf (2010) 2
- "Preparatory contributions" for the Interlaken Conference H/Inf (2010) 3
- CDDH Activity Report on guaranteeing the long-term effectiveness CDDH(2009)007 Add. I
of the control system of the European Convention on Human Rights

**Item 2: Implementation of the Interlaken Declaration: access to the Court –
fees for applicants**Background documents

- Draft report on the issue of introducing a fee for applicants to the DH-GDR(2010)003
European Court of Human Rights
- Written contributions to the report on access to the Court – fees for DH-GDR(2010)006 (E & F)
applicants (document prepared by the Secretariat)
- "Preliminary reflections concerning the introduction of a fee
system," paper prepared by the Registry of the Court

**Item 3: Implementation of the Interlaken Declaration: repetitive applications
– proposals not requiring amendment of the Convention**Background documents

- Draft report on proposals for dealing with repetitive applications that DH-GDR(2010)004

would not require amendment of the Convention

- Written contributions to the report on proposals for dealing with repetitive applications that would not require amendment of the Convention (document prepared by the Secretariat) DH-GDR(2010)007 (E & F)
- European Court of Human Rights' report on repetitive applications and class actions #2910358 v.3

Item 4: Implementation of the Interlaken Declaration: the pilot judgment procedure

Background document

- Circular letter from the Court's Registrar to all government agents concerning the drafting of rules on the pilot judgment procedure #3109039

Item 5: Implementation of the Interlaken Declaration: election of judges

Background documents

- Collection of existing texts concerning the election of judges (document prepared by the Secretariat) DH-GDR(2010)005
- "Procedure for electing judges to the European Court of Human Rights" – information document prepared by the Secretariat of the Parliamentary Assembly AS/Jur (2010) 12 rev.
- Interights' report on "Judicial independence: law and practice of appointments to the European Court of Human Rights," May 2003
- Interights' Memorandum for the hearing of the Parliamentary Assembly's Sub-committee on the election of judges (2 June 2008)

Item 6: Organisation of future work

Item 7: Other business

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Appendix III

Implementation of the Interlaken Declaration – methods, results and timetable⁹

A. Issues addressed by the DH-GDR at its meeting on 5-7 May 2010

Relevant issues arising under the Interlaken Declaration Action Plan	CDDH Activity Report proposals	Working methods & foreseen results	Timetable
<p><i>i. Access to the Court</i></p> <p>3. [T]he Conference calls upon the Committee of Ministers to consider any additional measure which might contribute to a sound administration of justice and to examine in particular under what conditions new procedural rules or practices could be envisaged, without deterring well-founded applications.</p>	<p>“The Court’s more rigorous practice with respect to application of the six-month time-limit is to be supported.”</p>	<p><i>Fees</i></p> <ul style="list-style-type: none"> - the Rapporteur, Mr Rob LINHAM (United Kingdom), presented a draft report on the issue of introducing a fee for applicants to the European Court of Human Rights based on contributions received from experts and observers - the DH-GDR considered, revised and adopted the draft report as it appears at <u>Addendum I</u> to the present meeting report - the draft report will be presented to the CDDH for possible adoption and transmission to the Committee of Ministers as part of the first progress report <p><i>Other issues concerning access to the Court</i></p> <ul style="list-style-type: none"> - the Committee agreed that it may return to other issues at a later stage 	<p>Discussion in CDDH: <u>15-18/06/10</u></p> <p>First CDDH report to CM: <u>end June 2010</u></p>
<p><i>ii. Repetitive applications – friendly settlements and unilateral declarations</i></p> <p>7.a)i. [The Conference calls upon States Parties to] facilitate, where appropriate, within the guarantees provided for by the Court and, as necessary, with the support of the Court, the adoption of friendly settlements and unilateral declarations</p>	<p>“Where appropriate, States should be encouraged to make unilateral declarations so as to allow the Court to strike certain cases out of its list.”</p>	<ul style="list-style-type: none"> - the Rapporteur, Mrs Isabelle NIEDLISPACHER (Belgium), presented a draft report on proposals for dealing with repetitive applications that would not require amendment of the Convention, including but not limited to those concerning friendly settlements and unilateral declarations based on contributions received from experts and observers - the DH-GDR considered, revised and adopted the draft report as it appears at <u>Addendum II</u> to the present meeting report - the draft report will be presented to the CDDH for possible adoption and transmission to the Committee of Ministers as part of the first progress report 	<p>Discussion in CDDH: <u>15-18/06/10</u></p> <p>First CDDH report to CM: <u>end June 2010</u></p>

⁹ Table updated following the 3rd DH-GDR meeting (5-7 May 2010)

<p>iii. Pilot judgment procedure</p> <p>7.b) [The Conference ...] stresses the need for the Court to develop clear and predictable standards for the “pilot judgment” procedure as regards selection of applications, the procedure to be followed and the treatment of adjourned cases [...]</p>	<p>“The Court should elaborate an explanation of what the pilot judgment procedure involves. A manual could be drafted whereby States would share their various experiences of the pilot judgment procedure.”</p>	<ul style="list-style-type: none"> - the DH-GDR welcomed the Court’s invitation to government agents and to civil society and other representatives of applicants to make their views known to the Court on its preparation of draft rules governing the pilot judgment procedure - in this connection, it noted that the DH-GDR may return to the issue at its next meeting, including in the light of contributions made by government agents and civil society representatives to the Court - to this end, the Secretariat will prepare a compilation of those contributions it receives (david.milner@coe.int) 	<p>Next discussion in DH-GDR: <u>8-10/09/10</u></p> <p>p.m. London Metropolitan University seminar on pilot judgments: <u>14/06/10</u> (Strasbourg)</p>
<p>iv. Election of judges</p> <p>8.a) [The Conference calls upon States Parties and the Council of Europe to] ensure, if necessary by improving the transparency and quality of the selection procedure at both national and European levels, full satisfaction of the Convention’s criteria for office as a judge of the Court, including knowledge of public international law and of the national legal systems as well as proficiency in at least one official language. In addition, the Court’s composition should comprise the necessary practical legal experience;</p>	<p>(None)</p>	<ul style="list-style-type: none"> - the DH-GDR referred the idea of preparing a Committee of Ministers’ recommendation to member States on the issue and/ or a compilation of existing good practices concerning national selection procedures to the CDDH for possible inclusion in the latter’s first report to the Committee of Ministers - it also referred to the CDDH the possibility of future work on potential means of enhancing the technical expertise available to bodies involved in selecting candidates and electing judges and dialogue between States Parties and the Parliamentary Assembly 	<p>Discussion in CDDH: <u>15-18/06/10</u></p> <p>First CDDH report to CM: <u>end June 2010</u></p>

B. Issues to be addressed by the DH-GDR during its meeting on 8-10 September 2010

Relevant issues arising under the Interlaken Declaration Action Plan	CDDH Activity Report proposals	Working methods & foreseen results	Timetable
<p>i. Filtering – inadmissible applications</p> <p>6.b) [The Conference] stresses the interest for a thorough analysis of the Court’s practice relating to</p>	<p>(None)</p>	<ul style="list-style-type: none"> - the Court indicated its readiness to provide information on the typology of reasons for inadmissibility and on the modalities and first results of implementation of the new single judge procedure 	<p>Next discussion in DH-GDR: <u>8-10/09/10</u></p>

applications declared inadmissible.			<u>Subsequent discussion in CDDH: 2-5/11/10</u>
<p>ii. Filtering – a new filtering mechanism</p> <p>6.c)ii. [The Conference recommends...] to the Committee of Ministers to examine the setting up of a filtering mechanism within the Court going beyond the single judge procedure and the procedure provided for in i). [i.e. a mechanism within the existing bench likely to ensure effective filtering].</p> <p><i>N.b. the CDDH ad hoc terms of reference require it “to elaborate specific proposals..., with different options, for a filtering mechanism within the European Court of Human Rights.”</i></p>	“The creation of a judicial committee, including its budgetary implications, should be examined further.”	<ul style="list-style-type: none"> - the German expert has volunteered to act as rapporteur on the issue of ‘filtering – a new filtering mechanism’ and, insofar as it is connected, ‘repetitive applications – judicial treatment’ (see B.iii. below) - interested parties are invited to send their views to the Rapporteur (wittling-al@bmj.bund.de and wenzel-ni@bmj.bund.de) to be reflected in this report (copy to the Secretariat, david.milner@coe.int) - on the basis of this information, the DH-GDR will return to the issue at its next meeting - the DH-GDR’s discussions will be reflected in its meeting report; - the DH-GDR will also take into account the further information to be provided by the Court (see under B.i. above) 	<p>Provision of information to the Rapporteuse: <u>by 30/06/10</u></p> <p>Next discussion in DH-GDR: <u>8-10/09/10</u></p>
<p>iii. Repetitive applications – judicial treatment</p> <p>7.c)i. [...] consider whether repetitive cases could be handled by judges responsible for filtering (see above Section C [para. 6.c)ii.]);</p>	(None)	<ul style="list-style-type: none"> - insofar as the two issues have been linked, the DH-GDR will return to this issue when it next discusses a new filtering mechanism (see under B.ii. above) 	Next discussion in DH-GDR: <u>8-10/09/10</u>
<p>iv. Enabling the Court to concentrate on its essential role</p> <p>2. With regard to the high number of inadmissible applications, the Conference invites the Committee of Ministers to consider measures that would enable the Court to concentrate on its essential role of guarantor of human rights and to adjudicate on well-founded cases with the necessary speed, in particular those alleging serious violations of human rights.</p>	(None)	<ul style="list-style-type: none"> - the DH-GDR considered this to be a cross-cutting issue allowing scope for exploration of further issues at any stage of work - it expressed its willingness to examine any relevant issue in the course of its work 	(No specific time-table)