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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

[REVISED DRAFT] CDDH FINAL REPORT
on
measures that result from the Interlaken Declaration that
do not require amendment of
the European Convention on Human Rights

4th meeting
Strasbourg, 15-17 September 2010

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the European Convention on Human Rights¹

I. INTRODUCTION

1. In its initial ad hoc terms of reference of 10 March 2010 to consider the relevant parts of the Interlaken Declaration (see Appendix I), the Steering Committee for Human Rights (CDDH) was instructed by the Committee of Ministers to submit by 31 December 2010 a final report on its activities “to elaborate specific proposals for measures that result from the Interlaken Declaration and that do not require amendment of the European Convention of Human Rights, if necessary, additional to those it has already submitted to the Committee of Ministers.” The present document constitutes that report.²

2. The CDDH recalls its earlier Activity Report,³ which contained various proposals for measures not requiring amendment of the Convention but which has not yet been formally examined by the Committee of Ministers. The proposals contained in the earlier report have therefore been incorporated into the present document.

3. Details of the relevant activities of the CDDH and its subordinate bodies during this period can be found at Appendix II.

II. PROPOSALS

Responding to the problem of repetitive applications

4. The CDDH considers that, along with the very high number of inadmissible applications, the number of admissible cases raising issues relating to the same underlying problem, frequently structural or systemic and often the subject of previous Court judgments, is one the most serious problems facing the Convention system. It therefore proposes a series of possible measures that may contribute to alleviating this problem.

i. Measures implying action by member States

- In accordance with the principle of subsidiarity, member States should ensure effective implementation of the Convention at national level, including provision of effective domestic remedies and implementation of Committee of

¹ [Adopted by the CDDH at its 71st meeting (2-5 November 2010).]

² See also the “CDDH First report on implementation of the Interlaken Declaration,” doc. CDDH(2010)010 Addendum I.

³ See the Activity Report on “Guaranteeing the long-term effectiveness of the control system of the European Convention on Human Rights,” doc. CDDH(2009)007 Addendum I, adopted by the CDDH at its 68th meeting (24-27 March 2009).

Ministers' recommendations. The CDDH intends to return to this issue in future on the basis of information on the measures taken to implement relevant parts of the Interlaken Declaration, to be provided by member States to the Committee of Ministers by the end of 2011 (see further below).

ii. Measures implying action by the Committee of Ministers

- The information to be provided by States before the end of 2011 concerning the implementation of the Interlaken Action Plan could form the basis for new recommendations or guidelines concerning situations which are regularly the subject of repetitive applications.
- In particular, the CDDH recalls that the Deputies' decisions on follow-up to the 2008 Stockholm Colloquy mentioned "the possibility of drawing up more specific non-binding instruments on effective domestic remedies regarding in particular excessive length of domestic proceedings, including practical steps to prevent violations."⁴ It notes that this left open the possibility of drawing up such instruments in relation to other areas in which existing domestic remedies are widely ineffective.
- The Committee of Ministers could examine possible modalities for supervising the execution of unilateral declarations, especially (in the present context) of any general measures proposed by a respondent State as part of a unilateral declaration.

iii. Measures implying coordinated action by the Committee of Ministers and member States

- An effective review of the implementation of the seven recommendations to member States adopted by the Committee of Ministers over the past 10 years, as called for in the Interlaken Declaration, could contribute to identifying measures that would help to address the problem of repetitive applications.
- The Committee of Ministers, in its supervision of the execution of judgments, should give a priority to cases that reveal a structural problem and indicate to the Respondent State that it can, on request, obtain the necessary practical and legal assistance from the Council of Europe.
- Groups of Deputies confronted with similar problems could meet to seek together solutions and elaborate draft resolutions for submission to the plenary Committee, in collaboration with the Execution Department and other relevant bodies of the Council of Europe.

iv. Measures implying action by the Court

- The Court could be invited to develop further its practice of striking cases out of its list in view of the State's commitments or concessions made as part of

⁴ See doc. CM/Del/Dec(2008)1039/4.6.

unilateral declarations and which would be regarded as in conformity with the Convention.

- The Court could be invited to ensure that its case-law on the application of Article 41 is sufficiently foreseeable for the applicants and detailed for the Governments to encourage recourse to friendly settlements and unilateral declarations.
- When a violation has already been declared by the Court in a particular case and the State has taken effective measures to avoid its repetition, the Court could be invited to apply the maxim *de minimis non curat praetor* (“the court is not concerned with trivial matters”) by way of Article 35(3)(b) ECHR as amended by Protocol No. 14 or Article 37 ECHR. This may prove to be very useful for settling similar cases that do not lead to disadvantage requiring reparation by an award of just satisfaction or other individual measures in favour of the applicant.⁵
- For cases arising from structural problems and for which a well-established case-law does not yet exist (and which are thus not subject to determination by a three-judge committee), the adoption of a pilot judgment may be an adequate solution.
- The Court could be invited:
 - to identify more systematically in its judgments the existence of a structural/ systemic problem;
 - to explain the criteria having led to application of the pilot judgment procedure and, in that context, to the choice of a pilot case, and
 - to define possible avenues to remedy a given repetitive case.

v. Measures implying action by member States and the Court

- Generalisation of the Registry’s practice of putting itself at the disposal of the parties at any time during the proceedings in order to arrive at a friendly settlement of the case.
- Generalisation of the practice of unilateral declarations by Respondent States, with the Court allowing the State to propose from the outset, in addition to possible compensation and/ or individual measures, general measures with a view to remedying a structural problem, where these are possible and appropriate.
- Regular meetings between the government agent and the Section Registrar responsible for dealing with applications against that State.

⁵ In this connection, the CDDH welcomes the Court’s decision to strike out the case of *Bock v. Germany* (App. No. 22051/07, decision of 19/01/10) under Article 35(3) as being an abuse of the right of application. This case had concerned the length of domestic proceedings surrounding the applicant’s complaint of non-reimbursement of €7.99 for the cost of magnesium tablets prescribed by his physician.

vi. Measures implying action by other actors

- Providing Council of Europe assistance to encourage a pro-active approach by States when presenting to the Committee of Ministers, in the course of its supervision of execution of judgments, action plans and schedules for the introduction of remedies for persons who find themselves in a situation similar to that condemned by the Court.
- Regular review by national institutions of a State's execution of judgments rendered against it.

Ensuring the independence of judges and the impartiality and quality of the Court

5. The CDDH intends to prepare a compilation of national practices for the selection of candidates for the office of judge of the Court. This compilation will form the basis for an exchange of views intended to provide help to optimise national selection procedures, with a view in particular to the significant number of forthcoming elections.

Relations between national legal systems and the Court

6. Subject to the operational requirements and capacity of the Court, more frequent secondment of national judges (as well as of other high-level independent lawyers) to the Registry, notably by simplifying the administrative procedures at national level, could be beneficial to both the Court and domestic legal systems.⁶

Development of the Court's case-law à droit constant⁷

7. The Court could be invited to develop further its interpretation of certain articles of the Convention relating to procedure. For example, Article 37(1)(c), which deals with the circumstances in which the Court may strike cases out of its list, could be interpreted in such a way as to give effect to the rule *de minimis non curat praetor*.

Implementation of the Interlaken Declaration

8. The Interlaken Declaration calls on member States to inform the Committee of Ministers, before the end of 2011, of the measures taken to implement relevant parts of the Declaration. The CDDH considers that this exercise would benefit from (i) clarification of the modalities for presentation of information by member States, in order to make the information received as digestible as possible, and (ii) preparation for the reception and examination of and follow-up to this information by the

⁶ The CDDH notes that since this proposal was first made in its 2009 Activity Report, repeated in its Opinion on the issues to be covered at the Interlaken Conference (doc. CDDH(2009)019 Add. I) and taken up in the Interlaken Declaration, the Court has written to member States inviting them either to second a national judge to the Registry or to make a voluntary contribution to the budget, allowing recruitment of an additional lawyer to the Registry. It notes that, according to information given to the CL-CEDH "liaison committee" by the Registrar on 14 October 2010, 9 states have so far responded to the request and a further 10 are in discussion with the Registry. The CDDH fully supports the Court's initiative and encourages those States that have not yet responded to do so.

⁷ "Under existing law," i.e. without amendment of the Convention.

Committee of Ministers. It therefore proposes to address these issues at a future meeting, in order to provide the appropriate assistance to member States as soon as possible so that they might begin preparing their reports at the earliest opportunity.

9. The Interlaken Declaration also called “in particular upon the Committee of Ministers and the States Parties to consult with civil society on effective means to implement the Action Plan”. The CDDH also notes that, in addition to civil society organisations, national human rights institutions and Ombudsmen may have a role to play in implementation of relevant parts of the Interlaken Declaration (notably provision to potential applicants of comprehensive and objective information on the Convention and the Court’s case-law, in particular on the application procedures and admissibility criteria). It therefore encourages member States and the Committee of Ministers to organise such consultations at an early stage and decides itself to return to the matter at a future meeting.

III. OTHER MEASURES EXAMINED

Access to the Court – fees for applicants

10. The CDDH’s preliminary consideration of this complex and controversial issue was reflected in its First Report to the Committee of Ministers.⁸ Following the subsequent GT-SUIVI.Interlaken meeting of 29 June 2010, at which it was noted that more information was necessary before any decision could be taken, a consultant expert was engaged to prepare a study on the various systems in certain member States requiring applicants to the highest courts to pay a fee or other sum.⁹ This study, which will include identification of possible models that might be suitable for use in the Convention system, will be finalised by the end of 2010, for examination at a subsequent meeting. A cost-benefit analysis of identified models would be performed as a further step in consideration of the issue.

11. It should be noted that the CDDH is still in the early stages of examining this complicated issue, of which one aspect, yet to be resolved, is whether introduction of a fee would require amendment of the Convention or whether it could be done under the current provisions or, for example, by way of amendment of the Rules of Court.¹⁰ The CDDH notes that the answer to this question may vary depending on the model. It nevertheless intends to continue its examination of the issue of fees in 2011.

Execution of judgments and its supervision by the Committee of Ministers

12. The CDDH remains available to contribute to further work on implementation of the relevant parts of the Interlaken Declaration and maintains its willingness to establish a working group of restricted composition consisting of both DH-PR members and experts appointed by the Committee of Ministers, should the Committee

⁸ For the full account of this issue, see doc. CDDH(2010)010 Appendix II.

⁹ For the synopsis of the GT-SUIVI.Interlaken meeting, see doc. GT-SUIVI.Interlaken(2010)CB5. It may also be recalled that the CDDH’s ad hoc terms of reference allow it to commission the necessary studies (see doc. CM/Del/Dec(2010)1079/1.6 Appendix 2). For details of the DH-GDR’s exchange of views with the consultant expert at its 4th meeting, see doc. DH-GDR(2010)017.

¹⁰ See doc. CDDH(2010)010 Appendix II para. 26

of Ministers wish to request the CDDH's assistance in any eventual drafting of new rules of procedure.

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Appendix I

Initial ad hoc terms of reference for the Steering Committee for Human Rights (CDDH) to consider the relevant parts of the Interlaken Declaration

1079th meeting – 10 March 2010

Appendix 2

(Item 1.6)

- 1. Name of Committee:** Steering Committee for Human Rights (CDDH)
- 2. Source:** Committee of Ministers
- 3. Duration:** These terms of reference shall expire on 31 December 2010 and 15 April 2012

Subject to more specific guidance which may be given by the Committee of Ministers at any time, consider all the relevant parts of the Interlaken Declaration.

In particular:

(a) to elaborate specific proposals for measures that result from the Interlaken Declaration and that do not require amendment of the European Convention of Human Rights, if necessary, additional to those it has already submitted to the Committee of Ministers;

This part of the terms of reference shall be executed through the presentation of a final report to the Committee of Ministers by 31 December 2010;

(b) to elaborate specific proposals for measures requiring amendment of the Convention, including proposals, with different options, for a filtering mechanism within the European Court of Human Rights and proposals for making it possible to simplify amendment of the Convention's provisions on organisational issues;

This part of the terms of reference shall be executed through the presentation of a final report to the Committee of Ministers by 15 April 2012; an interim activity report shall be submitted by 15 April 2011.

(c) Work on items (a) and (b) shall be pursued in parallel.

In the execution of these terms of reference, the CDDH may commission and conduct the necessary studies and consultations with other bodies, in particular the Court, as well as civil society representatives. It may assign appropriate tasks to its subordinate structures. The Court and its Registry may at all stages contribute to the execution of these terms of reference.

The CDDH shall keep itself informed of action being taken or envisaged by other actors involved in the implementation of the Interlaken Declaration and, if appropriate, may present its views thereon to the Committee of Ministers. In this context, it shall also take into account the first effects of the entry into force of the new procedures foreseen by Protocol No. 14.

The CDDH shall regularly report on progress of work and present its proposals to the Committee of Ministers as and when they are finalised. A first report shall be submitted before the end of June 2010. The Committee of Ministers shall provide the CDDH with the necessary guidance.

Appendix II

Relevant activities of the CDDH and its subordinate bodies

1. The Chairperson of the CDDH is Mrs Almut Wittling-Vogel (Germany) and its Vice-chairperson Mr Derek Walton (United Kingdom). The CDDH has met twice since the Interlaken Conference, on 15-18 June 2010 and 2-5 November 2010. At the former meeting, it examined and adopted its First Report on implementation of the Interlaken Declaration (see doc. CDDH(2010)010 Add. I); at the latter, the present Final Report.

2. The Committee of experts on the improvement of procedures for the protection of human rights (DH-PR), a CDDH subordinate body of plenary composition, has as its Chairperson Mrs Björg Thorarensen (Iceland) and its Vice-Chairperson Mrs Isabelle Niedlispacher (Belgium). It has met once since the Interlaken Conference, on 10-12 May 2010.¹¹ At this meeting, it considered the following items of relevance:

- proposals for making it possible to simplify amendment of the Convention's provisions on organisational issues;
- execution of Court judgments and its supervision by the Committee of Ministers; and
- action at national level.

3. The Committee of experts on the reform of the Court (DH-GDR), a CDDH subordinate body of restricted composition, has as its Chairperson Mrs Anne-Françoise Tissier (France) and its Vice-chairperson and Mr Frank Schürmann (Switzerland). It has met three times since the Interlaken Conference, on 24-26 March 2010, 5-7 May 2010 and 15-17 September 2010.¹² At these meetings, it has considered the following items:

- repetitive applications – proposals not requiring amendment of the Convention;
- the pilot judgment procedure;
- the election of judges of the Court;
- access to the Court – fees for applicants;
- filtering – inadmissible applications and repetitive applications – judicial treatment (in essence, the possible creation of new filtering mechanism for the Court).

4. The Committee of experts on a simplified procedure for amendment of certain provisions of the ECHR (DH-PS), a CDDH subordinate body of restricted composition, has as its Chairperson Mrs Björg Thorarensen (Iceland). It has met once since the Interlaken Conference, on 6-8 October 2010.¹³ Its mandate covers only one issue, as suggested by its title and set out in its terms of reference, subject to the clarification given by the GT-SUIVI.Interlaken.¹⁴

¹¹ See the meeting report, doc. DH-PR(2010)002.

¹² See the meeting reports, docs. DH-GDR(2010)002, DH-GDR(2010)0080 and DH-GDR(2010)17 respectively.

¹³ See the meeting report, doc. DH-PS(2010)003.

¹⁴ For both the terms of reference and the relevant extract from the synopsis of the GT-SUIVI.Interlaken meeting, see doc. DH-PS(2010)001.