



Strasbourg, 20 June 2011

DH-GDR(2011)R7 REV.

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

REPORT

7th meeting

30 May – 1 June 2011

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 seventh meeting in Strasbourg from 30 May – 1 June 2011 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.

Item 2: Izmir Conference, Istanbul Ministerial Session and follow-up

2. The Committee examined and took note of the Izmir Declaration, the Report of the Ministers' Deputies on the future of the Court and the Declaration of the Ministerial Session, as well as the decisions on follow-up to the Ministerial Session adopted by the Ministers' Deputies at their 1114th meeting. The Committee especially noted that it was not required to reach consensus on all issues but instead to advise the Committee of Ministers, setting out the practical arguments for and against; the CDDH's eventual Final Report, however, could seek to prioritise issues according to whether or not they enjoyed consensus or majority support. Also of especial note was the need to bear in mind a long-term vision of the future of the Court.

Item 3: Access to the Court – fees for applicants

3. The Committee examined and revised the document entitled “Possible models for a system of fees for applicants to the Court” prepared by the Secretariat and invited interested parties to send any further written comments on the document to the Secretariat by 17 June 2011, the subsequent revised document to be approved by a written procedure by 1 July 2011.

4. The Committee, considering the issues of legal basis and administrative costs to be fundamental to any eventual decision-making, decided to ask:

- the Legal Advice Department to advise on the need to amend the Convention in the event of implementation of the model systems presented in the revised document;
- the Registry of the Court to provide information on the possible costs of administering these model systems, especially as regards the aspects of a fee variable according to the applicant's country of residence and exemptions based on the applicant's means.

Item 4: Access to the Court – other new procedural rules or practices

5. The Committee examined the German expert's proposal to introduce a sanction for applicants in futile cases. A majority considered that although the proposal would not provide significant relief to the Court, it could constitute a useful case-management tool. One expert expressed opposition to the proposal. The idea of also sanctioning States that failed to execute fully and promptly Court judgments in repetitive cases was mentioned. The Committee instructed the Secretariat to prepare a draft preliminary report on the issue of a sanction for applicants in futile cases and invited interested parties to send written contributions, containing practical arguments for and against the proposal, to the Secretariat (david.milner@coe.int) by 17 June 2011. The subsequent draft preliminary report would be

approved by a written procedure, with a view to examination by the Committee at its next meeting.

6. The Committee examined the Court's proposal that legal representation be compulsory for applicants from the outset. Most expressed scepticism, noting in particular various problems relating to the suggestion that States should provide legal aid to impecunious applicants. The Committee accepted with gratitude the French expert's offer to act as rapporteur on the issue and invited interested parties to send written contributions, containing practical arguments for and against the proposal, to the rapporteur (emmanuelle.topin@diplomatie.gouv.fr) by 17 June 2011. The subsequent draft preliminary report would be approved by a written procedure and if possible sent to the Court by 15 July 2011 for information and possible comment, with a view to the Committee examining the results at its next meeting.

7. The Committee examined the German expert's proposal to amend the "manifest disadvantage" admissibility criterion (Article 35(3)(b) ECHR) by removing the requirement for prior consideration by a domestic tribunal. Some hesitancy was expressed, notably because the criterion was not yet being applied by Single Judges and the safeguard clauses had been the subject of careful negotiation and compromise. The Committee decided to return to the issue at its next meeting.

8. The Committee examined the German expert's proposal to invite the Court to reassess its practice on interpretation and application of the six-month rule in Article 35(1) ECHR and subsequently to consider any possible need to amend Rule 47 of the Rules of Court. It decided to return to the issue at its next meeting, with a view to preparing possible text for the CDDH Final Report.

Item 5: Advisory opinions

9. The Committee recalled the existing proposal made by the Dutch and Norwegian experts. It instructed the Secretariat to prepare a draft preliminary report on the issue and invited interested parties to send written contributions, in accordance with the guidance given in the document entitled "main aspects of a possible system extending the Court's jurisdiction to give advisory opinions" (see Appendix III), to the Secretariat (david.milner@coe.int) by 17 June 2011. The subsequent draft preliminary report would be approved by a written procedure and if possible sent to the Court by 1 July 2011 for information and possible comment, with a view to the Committee examining the results at its next meeting.

Item 6: A new filtering mechanism / judicial treatment of repetitive applications

10. The Committee examined the non-paper on "filtering: combined options," containing a new proposal; recalled the existing proposal made by the Norwegian expert that filtering be undertaken by the Registry and that temporary judges could be recruited to strengthen the Court's general decision-making capacity; and welcomed the German expert's offer to submit a document outlining the existing proposal to establish a new category of judge to the next meeting. One expert expressed opposition to the possibility that a new filtering mechanism be competent also to deliver judgment in repetitive cases. It decided to examine the three aforementioned proposals further at its next meeting, with a view to setting out the main practical arguments for and against each or any of them.

**Item 7: Court's Jurisconsult's Notes on the principle of subsidiarity
and on the clarity and consistency of the Court's case-law**

11. The Committee examined and approved a revised draft collective response to the Jurisconsult's Notes prepared by the United Kingdom expert and decided to submit it to the next meeting of the CDDH, for possible adoption and transmission to the Court. This text can be found at Addendum I. The Committee also reflected on the most appropriate means and context for pursuing its dialogue with the Court.

Item 8: Future activities

12. The Committee decided to propose to the Bureau of the CDDH that its next meeting take place before the next meeting of the CDDH. The Committee will be informed of the Bureau's decision and of the dates of the next meeting at the earliest opportunity.

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Appendix I**List of participants / liste des participants****MEMBERS / MEMBRES****AUSTRIA / AUTRICHE**

Ms Brigitte OHMS, Deputy Government Agent, Division for International Affairs and General Administrative Affairs, Federal Chancellery, Dpt. V/5, Constitutional Service, Ballhausplatz 2, 1010 WIEN

BELGIUM / BELGIQUE

Mme Isabelle NIEDLISPACHER co-Agent du Gouvernement, Service Public Fédéral Justice, Service des droits de l'homme, Boulevard de Waterloo 115, B-1000 BRUXELLES

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Mr Vit SCHORM, Government Agent, Ministry of Justice, Vyšehradská 16, 128 10 PRAHA 2

DENMARK / DANEMARK

Ms Katarina HVID LUNDH, Head of Section, Ministry of Justice, Law Department, Human Rights Division, Slotsholmsgade 10, DK-1216 COPENHAGEN K

FINLAND / FINLANDE

Mr Arto KOSONEN, Government Agent, Director of the Unit for Human Rights Court and Conventions, Legal Service, Ministry of Foreign Affairs, P.O. Box 411, FI-00023 VALTIONEUVOSTO

FRANCE

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

Mme Emmanuelle TOPIN, Sous-direction des droits de l'homme, Ministère des affaires étrangères, 57 boulevard des Invalides, F-75007 PARIS

GEORGIA / GEORGIE

Mr Levan MESKHORADZE, Agent of the Government of Georgia to the ECHR, Ministry of Justice, Rustaveli Avenue 30, TBILISI 0146

GERMANY / ALLEMAGNE

Mrs Almut WITTLING-VOGEL, Chairperson of the CDDH / Présidente du CDDH Agent for Human Rights, Federal Ministry of Justice, Mohrenstr. 37, D-10117 BERLIN

Ms Vera WEIßFLOG, Legal Officer, Federal Ministry of Justice, Mohrenstr. 37, 10117 BERLIN

GREECE / GRECE

Ms Sofia KASTRANTA, Rapporteur at the Special Legal Department of the Ministry of Foreign Affairs of the Hellenic Republic, Vasilissis Sophias 11, 10671 ATHENES

ITALY / ITALIE

Mme Silvia COPPARI

Co-Agent du Gouvernement devant la Cour Européenne des droits de l'Homme

Représentation permanente de l'Italie auprès du Conseil de l'Europe

3 rue Schubert 67000 STRASBOURG

LATVIA / LETTONIE

Ms Inga REINE, Government Agent, Representative of the Government of Latvia before International Human Rights Organizations, Ministry of Foreign Affairs, Brivibas blvd 36, RIGA LV 1395

LUXEMBURG / LUXEMBOURG

Apologised / excusé

THE NETHERLANDS / PAYS-BAS

Mr Martin KUIJER, Senior legal adviser human rights law, Ministry of Justice, Legislation Department, room H.511, Schedeldoekshaven, P.O. Box 20301, 2500 BZ THE HAGUE

Ms Françoise SCHILD, Legal counsel, International Law Division, Human Rights Cluster, Ministry of Foreign Affairs of the Netherlands, P.O. Box 20061, 2500 EB The Hague, The Netherlands

NORWAY / NORVEGE

Ms. Audgunn SYSE, Acting legal advisor, The Legislation Department, Ministry of Justice and the police, P.O. Box 8005 Dep, NO-0030 Oslo Norway

Ms Guro Camerer, Senior adviser, Legal Affairs Department, Ministry of Foreign Affairs, P.O.Box 8114 Dep, NO-0032 Oslo Norway

POLAND / POLOGNE

Mr Jakub WOLASIEWICZ, Government Agent, Ministry of Foreign Affairs, Aleja Szucha 23, WARSAW 00580

PORTUGAL

Mme Maria de Fátima GRAÇA CARVALHO, Agente du Gouvernement, Procureur-General adjointe, Procuradoria Geral da Republica, rua de Escola Politécnica, N° 140, P-1249-269 LISBOA

ROMANIA / ROUMANIE

Ms Irina CAMBREA, Government Agent, Ministry of Foreign Affairs, 14, Aleea Modrogan, Sector 1, BUCHAREST

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Nikolay MIKHAILOV, Office of the Representative of the Russian Federation at the European Court of Human Rights, Deputy Head, Ministry of Justice of the Russian Federation, Zhitnaya St., 14, 119991 MOSCOW

Ms Maria MOLODTSOVA, Ist Secretary, Department for International Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs, 32/34, Smolenskaya-Sennaya sq., 119200 MOSCOW

M. Vladislav ERMAKOV, Représentation permanente de la Fédération de Russie auprès du Conseil de l'Europe, 75 allée de la Robertsau, F-67000 STRASBOURG

SWEDEN / SUEDE

Ms Gunilla Isaksson, Special Adviser, Department for International Law, Human Rights and Treaty Law, Ministry for Foreign Affairs, SE-103 39 STOCKHOLM

SWITZERLAND / SUISSE

M. Frank SCHÜRMANN, Agent du Gouvernement, Chef de l'unité Droit européen et protection internationale des droits de l'homme, Office fédéral de la justice, Bundesrain 20, CH-3003 BERNE

TURKEY / TURQUIE

Mme Deniz AKÇAY, Adjointe au Représentant permanent de la Turquie auprès du Conseil de l'Europe, 23, boulevard de l'Orangerie, F-67000 STRASBOURG

Ms Nilgün ERDEM ARI, Première conseillère au Représentant permanent de la Turquie auprès du Conseil de l'Europe, 23, boulevard de l'Orangerie, F-67000 STRASBOURG

Ms Gönül ERONEN, Adjointe au Représentant permanent de la Turquie auprès du Conseil de l'Europe, 23, boulevard de l'Orangerie, F-67000 STRASBOURG

UNITED KINGDOM / ROYAUME-UNI

Ms Laura DAUBAN, Assistant Legal Adviser, Foreign and Commonwealth Office, King Charles Street, LONDON SW1A 2AH

* * *

OBSERVERS / OBSERVATEURS

Holy See/ Saint Siège

Mr Grégor Puppinck, 4 quai Koch, F-67000 STRASBOURG

European Union

Excused / Excusé

Office of the United Nations High Commissioner for Human Rights/ Office du Haut Commissaire des Nations Unies pour les refugies

Apologised / excusé

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Parliamentary Assembly/Assemblée parlementaire

Mr Andrew DRZEMCZEWSKI, Head of Department, Legal Affairs & Human Rights Department / Chef de service 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, European Court of Human Rights / Administrateur, Cabinet du Président

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

Apologised / excusé

Department for the Execution of Judgments of the Court/ Service de l'Execution des Arrêts de la Cour

Apologised / excusé

* * *

Amnesty International

Mr. Johannes Heiler, Amnesty International, International Secretariat, 1 Easton Street, LONDON WC1X 0DW

Council of Bars and Law Societies of Europe / Conseil des barreaux européens (CCBE)

Apologised / excusé

European Group of National Human Rights Institutions / Groupe européen des institutions nationales des droits de l'homme

Mme Noémie BIENVENU, Legal Adviser / Chargée d'études juridiques, Commission Nationale Consultative des Droits de l'Homme (CNCDH)
35, rue Saint Dominique, 75007 PARIS

Mr. Bruce Adamson, Legal Officer, Scottish Human Rights Commission, 58 Robertson Street,
Glasgow, G2 8DU, Scotland, UK

International Commission of Jurists (ICJ) / Commission internationale de Juristes (CIJ)

Apologised / excusé

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SECRETARIAT

**Directorate General of Human Rights and Legal Affairs, Directorate of Standard Setting,
Council of Europe, F-67075 STRASBOURG Cedex**

**Direction générale des droits de l'Homme et des affaires juridiques, Direction des
Activités normatives, Conseil de l'Europe, F-67075 STRASBOURG Cedex**

Fax : 0033 3 88 41 37 39

Mr Jörg POLAKIEWICZ, Head of Human Rights Development Department / Chef du Service
du développement des droits de l'Homme

Mr 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 Raluca IVAN, Lawyer / Juriste, Human Rights Intergovernmental Cooperation
Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Mlle Ségolène CHESNEAU, Lawyer / Juriste, Human Rights Intergovernmental Cooperation
Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Mlle Aurélie JACQUOT, Assistant / Assistante, Human Rights Intergovernmental
Cooperation Division / Division de la coopération intergouvernementale en matière de droits
de l'Homme

Mlle Marie BARBIER, Stagiaire, Human Rights Intergovernmental Cooperation Division /
Division de la coopération intergouvernementale en matière de droits de l'Homme

Interpreters/Interprètes:

Grégoire DEVICTOR

Luke TILDEN

Sally BAILEY-RAVET

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

- Draft annotated agenda DH-GDR(2011)OJ002
- Report of the 72nd meeting of the CDDH (29 March – 1 April 2011) CDDH(2010)R72
- CDDH Interim Activity Report on specific proposals for measures requiring amendment of the ECHR CDDH(2011)R72 Add. I
- Report of the 6th meeting of the DH-GDR (9-11 February 2011) DH-GDR(2010)R6
- CDDH Final Report on measures that result from the Interlaken Declaration that do not require amendment of the ECHR CDDH(2010)013 Add. I
- Decisions of the Committee of Ministers on the action to be taken following the Interlaken Conference & Terms of reference of the CDDH and subordinate bodies involved in follow-up work to Interlaken CDDH(2010)002
- 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 of the control system of the European Convention on Human Rights CDDH(2009)007 Add. I

Item 2: Izmir Conference, Istanbul Ministerial Session and follow-upBackground documents

- Izmir Declaration
- Draft report of the Ministers’ Deputies on the future of the European Court of Human Rights – follow-up to the Interlaken and Izmir Conferences CM(2011)57 final
- Declaration of the 121st Session of the Committee of Ministers (Istanbul, 10-11 May 2011)
- Istanbul Ministerial Session – Follow-up (decisions taken at the 1114th meeting of the Ministers’ Deputies, Strasbourg, 25 May 2011) CM/Del/Dec(2011)1114/1.5

Item 3: Access to the Court – fees for applicantsBackground documents

- Izmir Declaration

- Study on the possible introduction of a system of fees for applicants to the European Court of Human Rights (revised) + Appendices (prepared by Mr Julien Lhuillier, expert consultant) DH-GDR(2011)002 REV. + Add. I
- CDDH preliminary report on the issue of access to the Court – fees for applicants CDDH(2010)010 Add. I, Appendix II
- Opinion of the Court for the Izmir Conference #3484768
- “Preliminary reflections concerning the introduction of a fee system” (document prepared by the Registry of the Court) COURT_n3121780_v1
COURT_n3102958_v1_feesrevised

Working document

- Possible models for a system of fees for applicants to the Court (document prepared by the Secretariat) DH-GDR(2011)011

Item 4: Access to the Court – other new procedural rules or practices

Background document

- Opinion of the Court for the Izmir Conference #3484768

Working documents

- German proposal to introduce a sanction in futile cases DH-GDR(2011)012
- German statement as to the assessment of the admissibility criteria DH-GDR(2011)013

Item 5: Advisory opinions

Background documents

- Izmir Declaration
- Advisory opinions: previous discussions in the DH-S-GDR and CDDH (prepared by the Secretariat) DH-GDR(2010)019
- Opinion of the Court for the Izmir Conference #3484768

Item 6: A new filtering mechanism / judicial treatment of repetitive applications

Background document

- CDDH report on Filtering of applications and treatment of repetitive applications CDDH(2011)R72 Add. I, Appendix IV

Working documents

- Non-paper “Filtering: combined options” DH-GDR(2011)014
- Written contributions to the report on the issues of filtering – a new filtering mechanism & repetitive applications – judicial treatment (*see the Norwegian contribution at p.10*) DH-GDR(2010)009

Item 7: **Court's Jurisconsult's Notes on the principle of subsidiarity and on the clarity and consistency of the Court's case-law**

Background documents

- Court's Jurisconsult's Note on the principle of subsidiarity Court_#3188076
- Court's Jurisconsult's Note on clarity & consistency of the Court's case-law Court_#3197955

Working documents

- Draft Collective Response to the Jurisconsult's Notes DH-GDR(2011)005 REV.

Item 8: **Future activities**

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Appendix III

Main aspects of a possible system extending the Court's jurisdiction to give advisory opinions

Interested parties are invited to express practical arguments for and against the proposal to introduce a system extending the Court's jurisdiction to give advisory opinions, including on the following aspects of a possible system and the various options mentioned, and to suggest any other possible options, also giving practical arguments for and against such options:

1. In what type of case a request for an advisory opinion should be allowed
 - a. *Option I*: only in cases revealing a potential systemic or structural problem
2. Which domestic authority/ies could request an advisory opinion
 - a. *Option I*: a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law
 - b. *Option II*: parliaments
 - c. *Option III*: governments
3. Whether it should be optional for the domestic authority to make a request
 - a. *Option I*: yes
 - b. *Option II*: no
4. Whether the Court should have discretion to refuse requests
 - a. *Option I*: yes, a full discretion, with no obligation to give reasons
 - b. *Option II*: no
5. Whether other States Parties to the Convention should be able to intervene as third parties in the advisory opinion proceedings
 - a. *Option I*: yes
 - b. *Option II*: no
6. Whether the Court should give priority to requests for advisory opinions
 - a. *Option I*: yes
 - b. *Option II*: no
7. Whether the advisory opinion should be binding
 - a. *Option I*: yes
 - b. *Option II*: no
8. Whether there should be restrictions on the right of individuals to bring the same question before the Court under Article 34 ECHR
 - a. *Option I*: yes
 - b. *Option II*: no