

Strasbourg, 9 November 2011

DH-GDR(2011)R8

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

REPORT

8th meeting

2 – 4 November 2011

Summary:

At its 8th meeting, the Committee, in particular:

- adopted draft CDDH reports, for presentation to the CDDH at its next meeting, on the following issues:
 - filtering of applications and the treatment of repetitive applications ([Appendix III](#));
 - a system of fees for applicants to the Court ([Appendix IV](#));
 - the proposal to introduce a sanction in futile cases ([Appendix V](#));
 - compulsory legal representation ([Appendix VI](#));
 - the proposal to extend the Court's jurisdiction to give advisory opinions ([Appendix VII](#));
- examined a German proposal to amend the “significant disadvantage” admissibility criterion in Article 24(3)(b) ECHR and Swiss/ UK proposals on possible new procedural rules or practices concerning access to the Court and decided to appoint Mr Martin KUIJER (The Netherlands) to prepare a preliminary report on these issues;
- examined and expressed its interest in a German proposal inviting the Court to re-examine its practice on the application of the six-month rule on admissibility;
- examined and noted the future interest in a Polish proposal on the concept of a general domestic remedy;
- organised its future work.

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 8th meeting in Strasbourg from 2 – 4 November 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: A new filtering mechanism / judicial treatment of repetitive applications

2. The Committee took note of information from Mr Patrick TITIUN of the Registry concerning the decreases in the number of applications pending before judicial formations of the Court that had occurred in September and October 2011, the figure for 31 October 2011 being 153,850. Mr TITIUN placed this development in the context of the very encouraging results obtained by the Registry's new filtering section, which had achieved an output of decisions in clearly inadmissible cases greater than the arrival of new applications provisionally identified as such, and the secondment of 20 judges to the Registry by the Russian Federation.

3. The Committee then examined and adopted a draft CDDH report on filtering of applications and treatment of repetitive applications, as it appears at Appendix III, with a view to its submission to the CDDH at the latter's meeting (6-9 December 2011).

Item 3: Access to the Court – fees for applicants

4. The Committee examined and adopted a draft CDDH report on a system of fees for applications to the Court, as it appears at Appendix IV, with a view to its submission to the CDDH at the latter's next meeting (6-9 December 2011).

Item 4: Access to the Court – sanctions in futile cases

5. The Committee examined and adopted a draft CDDH report on the proposal to introduce a sanction in futile cases, as it appears at Appendix V, with a view to its submission to the CDDH at the latter's next meeting (6-9 December 2011).

Item 5: Access to the Court – compulsory legal representation

6. The Committee examined and adopted a draft CDDH report on compulsory legal representation, as it appears at Appendix VI, with a view to its submission to the CDDH at the latter's next meeting (6-9 December 2011).

Item 6: Advisory opinions

7. The Committee took note of information given by Mr John DARCY of the Registry that the Court, in response to the Committee's initiative,¹ was in the process of preparing a plenary position on the issue, to be adopted in late November and made available for the CDDH meeting of 6-9 December 2011.

8. The Committee then examined and adopted a draft CDDH report on the proposal to extend the Court's jurisdiction to give advisory opinions, as it appears at Appendix VII, with a view to its submission to the CDDH at the latter's next meeting (6-9 December 2011).

Item 7: Amendment of the "significant disadvantage" admissibility criterion (Article 35(3)(b) ECHR)

9. Ms Denise RENGGER (Germany) presented the German proposal to amend the "significant disadvantage" admissibility criterion in Article 35(3)(b) ECHR by removing the safeguard requiring prior due consideration by a domestic tribunal.

10. A clear majority of experts were in favour of continuing examination of this issue, although some were opposed to the proposal and it was suggested that it should not be taken as an immediate priority. The proposal could form part of wider discussions on the admissibility criteria during both preparation of and the Ministerial Session itself.

11. The Committee decided to prepare a preliminary report on the issue and on related issues raised in the Swiss/ United Kingdom note (see further under Other Business below), on the basis of written contributions and subsequent approval by a written procedure. The schedule for this procedure was agreed as follows:

- written contributions should be sent to the Rapporteur, Mr Martin KUIJER (The Netherlands) (m.kuijer@minjus.nl), with a copy to the Secretariat (david.milner@coe.int), by Friday 18 November 2011;
- the draft preliminary report would be distributed for approval by a written procedure on Friday 16 December, thus allowing the Rapporteur to take into account also discussion of the issues at the CDDH meeting of 6-9 December;
- any responses to the written approval procedure should be communicated to the Rapporteur (copy to Secretariat) by Tuesday 20 December;
- the final version of the preliminary report would then be distributed by Thursday 22 December;
- the preliminary report would then be examined at the meeting of 18-20 January 2012.

Item 8: Application of the six-month rule by the Court (Article 35(1) ECHR)

12. Ms RENGGER (Germany) presented the German proposal to invite the Court to reassess its practice on implementation of the six-month rule on admissibility, whereby applicants whose first contact with the Court was not in the proper form, even if made shortly before the expiry of the six-month time-limit, were given an additional eight weeks to complete and return the application form. The Committee expressed interest in the proposal.

¹ See doc. DH-GDR(2011)R7 REV. para. 9.

13. Mr DARCY of the Registry informed the Committee of the Court's "Rule 47 Project." This entailed a stricter approach by the Registry to the formal requirements for submitting an application, as set out in detail in Rule 47 of the Rules of Court. Failure to provide all of the required information would lead to the rejection of the application by the Registry. The applicant would be informed by letter that their application had not been accepted for judicial consideration. This notification was final. The applicant could not submit a new application form, even within the six-month period. Certain categories of case were exempted from the exercise, e.g. applications raising issues under Articles 2, 3, 4 and 5 (these provisions attracting high priority), applications by prisoners etc. There was also limited discretion for non-judicial rapporteurs in borderline cases. The project would run for six months initially, following by a first assessment of its impact. The results of this assessment will be presented to the Committee. The Committee took note of this information and expressed its intention to follow developments.

Item 9: Organisation of future work

14. The Committee took note that its next meeting would take place on 18-20 January 2012 and that the CDDH, at its extraordinary meeting, had instructed it then "to prepare the main text of the draft CDDH final report and a draft CDDH contribution to the High-level Conference to be organised by the UK Chairmanship of the Committee of Ministers, both texts to be submitted to the CDDH plenary meeting on 7-10 February for adoption and transmission to the CM no later than 10 February."²

Item 10: Other business

15. The Committee also considered the following issues:
- A Note presented by Switzerland and the United Kingdom on possible new procedural rules of practices concerning access to the Court.³ The Committee welcomed these proposals, which it considered required further examination, and decided to prepare a preliminary report on them as a basis for discussion at its next meeting (see also under para. 11 above).
 - A proposal by Poland on the concept of a general domestic remedy. The Committee welcomed this proposal but, whilst agreeing that improved implementation of the Convention at national level was an important issue to which further attention would be required in future, decided that the proposal did not fall to be further examined at the current stage of work, since it did not imply amendment of the Convention.

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² See doc. CDDH(2011)R.Ex, report of the extraordinary CDDH meeting (12-14 October 2011), para. 7.

³ See doc. DH-GDR(2011)020.

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

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

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Ms Denise RENGGER, Legal Officer, Federal Ministry of Justice, Mohrenstr. 37, 10117 Berlin

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Apologised / excusé

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Apologised / excusé

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Ms Maria MOLODTSOVA, 1st Secretary, Department for International Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs, 32/34, Sennaya sq., 119200 Moscow

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Mr Hideaki GUNJI, Consul, Consulate-General of Japan at Strasbourg

European Union/Union Européenne

Apologised / excusé

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Mr Jean-Etienne KAUTZMAN, Legal Associate, UNHCR Representation to the European Institutions in Strasbourg

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

Registry of the European Court of Human Rights / Greffe de la Cour européenne des droits de l'homme

Mr Patrick TITIUN, Head of Office, Private Office of the President of the Court / Chef de Cabinet, Cabinet du Président de la Cour européenne des droits de l'homme

Mr John DARCY, Conseiller du président et du greffier, Private Office of the President, European Court of Human Rights / adviser to the President and the Registrar, Cabinet du Président, Cour européenne des droits de l'homme

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Apologised / excusé

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

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Ms Mary CUNNEEN, Senior Lawyer with the UK Equality and Human Rights Commission

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

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DG I – Human Rights and Rule of Law / Droits de l'Homme et État de droit
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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 Szilvia SIMOND Assistant / Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Interpreters/Interprètes:

Ms TANNER Julia
Mr GUITTONNEAU Nicolas
Mr JUNGLING Didier

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

- Draft annotated agenda DH-GDR(2011)OJ003
- Report of the extraordinary meeting of the CDDH (12-13 October 2011) CDDH(2011)R.Ex
- Report of the 72nd meeting of the CDDH (29 March – 1 April 2011) CDDH(2011)R72
- CDDH Interim Activity Report on specific proposals for measures requiring amendment of the ECHR CDDH(2011)R72 Add. I
- Report of the 7th meeting of the DH-GDR (9-11 February 2011) DH-GDR(2010)R7
- 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
- Ministers' Deputies' Decisions on Follow-up to the 121st Session of the Committee of Ministers (Istanbul, 10-11 May 2011) CM/Del/Dec(2011)1114/1.5
- Interlaken Declaration CDDH(2010)001
- Izmir Declaration CDDH(2011)010
- "Preparatory contributions" for the Interlaken Conference H/Inf (2010) 3
- "Background documents" for the Interlaken Conference H/Inf (2010) 2
- Opinion of the Court for the Izmir Conference #3484768
- 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: A new filtering mechanism / judicial treatment of repetitive applicationsWorking document

- DRAFT revised report on filtering of applications and treatment of repetitive applications DH-GDR(2011)029

Background documents

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

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| repetitive applications | Appendix IV |
| - Non-paper on filtering: combined options | DH-GDR(2011)014 |
| - Norway's views on filtering of applications and treatment of repetitive applications | DH-GDR(2011)019 |
| - German Proposal – Judicial Filtering Mechanism | DH-GDR(2011)022 |
| - “Filtering by whom? Why judges should be vested with the task of filtering and not the registry staff” (Germany) | DH-GDR(2011)023 |
| - European Group of National Human Rights Institutions, “Reform of the European Court of Human Rights – Selected Issues” | DH-GDR(2011)030 |
| - Norwegian amendment proposals to document DH-GDR(2011)029 | DH-GDR(2011)032 |

Item 3: Access to the Court – fees for applicants

Working document

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| - Possible models for a system of fees for applicants to the Court | DH-GDR(2011)011 FINAL |
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Background documents

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| - Opinion of the Legal Advice Department on the question of whether or not it would be necessary to amend the ECHR in order to introduce a system of fees | DH-GDR(2011)025 |
| - Registry Note on Court fees | DH-GDR(2011)027 |
| - European Group of National Human Rights Institutions, “Reform of the European Court of Human Rights – Selected Issues” | DH-GDR(2011)030 |
| - CDDH preliminary report on the issue of access to the Court – fees for applicants | CDDH(2011)R72 Add. I, Appendix V |
| - Registry note on Court fees | #3666425 |
| - Study on the possible introduction of a system of fees for applicants to the European Court of Human Rights (revised) (prepared by Mr Julien Lhuillier, expert consultant) + Appendices | DH-GDR(2011)002 REV. + Add. I |
| - “Preliminary reflections concerning the introduction of a fee system” (document prepared by the Registry of the Court) | COURT_n3121780_v1 COURT_n3102958_v1_feesrevised |

Item 4: Access to the Court – sanctions in futile cases

Working document

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| - Preliminary report on the proposal to introduce a sanction in futile cases | DH-GDR(2011)018 FINAL |
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Background document

- German proposal to introduce a sanction in futile cases DH-GDR(2011)012
- European Group of National Human Rights Institutions, “Reform of the European Court of Human Rights – Selected Issues” DH-GDR(2011)030

Item 5: Access to the Court – compulsory legal representationWorking document

- Preliminary report on compulsory legal representation DH-GDR(2011)016 FINAL

Background document

- Court’s Note on compulsory legal representation of applicants DH-GDR(2011)026
- European Group of National Human Rights Institutions, “Reform of the European Court of Human Rights – Selected Issues” DH-GDR(2011)030

Item 6: Advisory opinionsWorking document

- Preliminary report on the proposal to extend the Court’s jurisdiction to give advisory opinions (revised by the Secretariat) DH-GDR(2011)017

Background documents

- Advisory opinions: previous discussions in the DH-S-GDR and CDDH DH-GDR(2010)019
- Estonian comments on the draft preliminary report on the proposal to extend the Court’s jurisdiction to give advisory opinions DH-GDR(2011)021
- European Group of National Human Rights Institutions, “Reform of the European Court of Human Rights – Selected Issues” DH-GDR(2011)030
- Russian Federation’s Position on the proposal to extend the Court’s jurisdiction to give advisory opinions DH-GDR(2011)031

Item 7: Amendment of the “significant disadvantage” admissibility criterion (Article 35(3)(b) ECHR)Background document

- German statement as to the assessment of the admissibility criteria DH-GDR(2011)013
- German proposal – Amendment of Article 35 paragraph 3.b ECHR DH-GDR(2011)024

- European Group of National Human Rights Institutions, “Reform of the European Court of Human Rights – Selected Issues”

DH-GDR(2011)030

Item 8: Application of the six-month rule by the Court (Article 35(1) ECHR)

Background document

- German statement as to the assessment of the admissibility criteria
- European Group of National Human Rights Institutions, “Reform of the European Court of Human Rights – Selected Issues”

DH-GDR(2011)013

DH-GDR(2011)030

Item 9: Organisation of future work

Item 10: Other business

Background documents

- “Possible new procedural rules or practices concerning access to the Court” (Note submitted by Switzerland and the United Kingdom)
- “Concept of a General Domestic Remedy” (proposal by Poland)

DH-GDR(2011)020

DH-GDR(2011)028