

Strasbourg, 15 February 2013

DH-GDR(2013)R3

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

3<sup>rd</sup> meeting

13-15 February 2013

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At its 3<sup>rd</sup> meeting (13-15 February 2013), the DH-GDR, in particular:

- Re-elected Ms Inga REINE (Latvia) as its Vice-Chairperson;
- Adopted the draft Explanatory Report to Protocol No. 16, for transmission to the CDDH at its next meeting (Addendum I);
- Adopted a draft CDDH Report on interim measures under Rule 39 of the Rules of the Court, for transmission to the CDDH at its next meeting (Addendum II);
- Adopted a draft CDDH Report on the advisability and modalities of a “representative application procedure”, for transmission to the CDDH at its next meeting (Addendum III);
- Designated the members of its Drafting Group “D” (Finland, Greece, Latvia, The Netherlands, Portugal, the Republic of Moldova and Romania) at the expense of the Council of Europe budget, elected Ms Inga REINE (Latvia) as Chairperson of the Group and gave guidance on its work;
- Designated the members of its Drafting Group “E” (the Czech Republic, Germany, Montenegro, Norway, Switzerland, Turkey and the United Kingdom) at the expense of the Council of Europe budget, elected Mr Morten RUUD (Norway) as Chairperson of the Group and gave guidance on its work.

**Item 1: Opening of the meeting, adoption of the agenda and of the order of business, and election of a Vice-chairperson**

1. The Committee of experts on the reform of the Court (DH-GDR) held its 3<sup>rd</sup> meeting, in plenary composition, in Strasbourg from 13-15 February 2013 with Mr Vit SCHORM (Czech Republic) in the chair. The list of participants appears at Appendix I. The agenda, as adopted, appears at Appendix II. The Committee re-elected Ms Inga REINE (Latvia) as its Vice-chairperson.

2. The Committee heard a welcoming presentation by Mr Jörg POLAKIEWICZ, Head of the Human Rights Policy and Development Department. Mrs Natalia SHAKURO (Ukraine), the Committee's gender equality rapporteur, recalled the importance of the gender dimension to its work.

**Item 2: Explanatory report to draft Protocol no. 16**

3. The Committee examined and adopted the draft Explanatory Report to Protocol No. 16, as it appears in Addendum I, for transmission to the CDDH at its next meeting.

4. In doing so, the following notable issues were addressed:
- i. *A proposal to add titles to each article of the Protocol:* not accepted, as it was felt that titles would either be too vague or need to be too long and that the Protocol itself was in any case short.
  - ii. *A proposal to add to paragraph 15 a statement that publication of reasons for refusing requests for advisory opinions would not be beneficial to dialogue between the requesting court or tribunal and the Court:* not accepted, as draft Article 2(1) of the Protocol required the Court to give reasons, which was in the interest of transparency, as explained in paragraph 15 itself.
  - iii. *Application of Articles 35 and 37 of the Convention by the Court to cases arising from domestic proceedings in which an advisory opinion had effectively been followed:* the Committee preferred the first of the two options in the draft text, amended so as to use less direct language.
  - iv. *Relationship between advisory opinions and subsequent applications:* after lengthy discussions, the Committee agreed that it was necessary to refer to the fact that an advisory opinion would express the Court's views at that point in time on a question of interpretation of the Convention and as such would subsequently stand as a point of reference on that question, in the same way as judgments, with respect to non-respondent States, and decisions of the Court. Certain experts were concerned that this would inappropriately give advisory opinions effects in relation even to non-States-Parties to the Protocol, which would be inconsistent with its intended optional nature.
  - v. *Possible effects of denunciation of the Protocol:* the Secretariat transmitted information from the Directorate of Legal Advice and Public International Law, recalling that (a) it would be an additional, not amending protocol, with no effect on the Convention itself for any States whether party to the Protocol or not: denunciation of the Protocol would thus have no effect on the Convention itself; and (b) Article 55 of the Vienna Convention on the Law of Treaties stated that "unless the treaty otherwise provides, a multilateral treaty

does not terminate by reason only of the fact that the number of parties falls below the number necessary for its entry into force”.

### **Item 3: Work of Drafting Group “C” on the reform of the Court (GT-GDR-C)**

5. Mr Martin KUIJER (The Netherlands), Chairperson of the GT-GDR-C, presented the work of the Group and the two draft reports that it had produced.

#### **3.1 Draft CDDH report on interim measures under Rule 39 of the Rules of Court**

#### **3.2 Draft CDDH report on the advisability and modalities of a “representative application procedure”**

6. The Committee examined and adopted the two draft reports as they appear at Addendum II and Addendum III respectively, for transmission to the CDDH at its next meeting. It thanked the GT-GDR-C and its Chairperson for their invaluable contributions to its work.

### **Item 4: Organisation of future work**

#### **4.1 Drafting Group “D” on the reform of the Court (GT-GDR-D)**

7. The Committee designated the following seven member States to send experts to the GT-GDR-D at the expense of the Council of Europe budget: Finland, Greece, Latvia, The Netherlands, Portugal, the Republic of Moldova and Romania. It recalled that the GT-GDR-D was open-ended and that other member States were therefore welcome to send experts at the expense of their authorities.

8. In accordance with the decisions taken by the CDDH at its 73<sup>rd</sup> meeting on implementation of its terms of reference for the biennium 2012-2013, the GT-GDR-D would meet twice in 2013 (10-12 April and 22-24 May), during which it would conduct preparatory work on (i) a guide to good practice in respect of domestic remedies, (ii) a toolkit to inform public officials about the State’s obligations under the Convention; and (iii) conclusions and possible proposals for action on ways to resolve the large numbers of applications arising from systemic issues identified by the Court.

9. The Committee elected Ms Inga REINE (Latvia) as Chairperson of the GT-GDR-D.

10. As regards work on the guide to good practice in respect of domestic remedies, the Committee examined and approved the possible structure prepared by the Secretariat (doc. DH-GDR(2013)001), including the appended questionnaire to be sent to member States and to which replies should be sent to the Secretariat ([virginie.flores@coe.int](mailto:virginie.flores@coe.int)) by 30 April 2013, with the following additional guidance:

- Article 13 envisaged not only judicial remedies;

- When identifying good practices, the particular requirements of specific situations (e.g. vulnerable groups) should be taken into account;
- Account should be taken also of work at the UN level, e.g. the OPCAT;
- The importance of preventive measures should be recalled;
- The distinction between the requirements of Articles 13 and 35 of the Convention should be explained;
- The second section should take account of different types of remedies (preventive, compensatory, legislative, judicial etc.);
- The rationale for identifying priority areas should take account of priority issues identified by the Court;
- Rather than “detention conditions”, the guide should deal with Articles 3 and 5 more broadly (“deprivation of liberty, treatment in detention and detention conditions”), and should also cover detention on mental health grounds;
- Rather than “asylum” in any broad sense, the guide should deal with the issue of suspensive remedies against removal on Convention grounds, in accordance with the Court’s case-law;
- The guide should also cover investigations under the procedural limbs of Articles 2 and 3;
- The guide should clarify that there was no implication of a requirement to introduce general remedies;
- Further to paragraph 9.c.iv. of the Brighton Declaration, an additional, final section should address the effects of and attention paid to the Court’s case-law in national jurisdictions.

11. As regards work on the toolkit to inform public officials about the State’s obligations under the Convention, the Committee examined and approved the outline proposed by the consultant expert, Mr Martin EATON (doc. DH-GDR(2013)002), with the following additional guidance:

- “Officials responsible for the deprivation of a person’s liberty” should be taken to mean not only prison officers but also other relevant officials;
- There should, where appropriate, be footnote references to the names of particular Court judgments;
- In paragraph 4, the toolkit should address also obligations arising under Article 2 concerning deaths in detention;
- Preparatory work should involve consultation of non-Council of Europe materials from not only the EU Agency for Fundamental Rights.

Any experts who wished to be consulted by Mr EATON on further preparation of the draft toolkit prior to the first GT-GDR-D meeting were invited to send their email address to the Secretariat ([david.milner@coe.int](mailto:david.milner@coe.int)).

12. As regards work on ways to resolve the large numbers of applications arising from systemic issues identified by the Court, the Committee examined the background paper prepared by the Secretariat (doc. DH-GDR(2013)003). It considered that the GT-GDR-D should undertake a dual exercise: reflect upon possible new ways to address the problem of repetitive applications; and examine existing ideas, including the Court’s proposal to introduce a default judgment procedure (see doc. GT-GDR-C(2012)001, para. 21).

#### **4.2 Drafting Group “E” on the reform of the Court (GT-GDR-E)**

13. The Committee designated the following seven member States to send experts to the GT-GDR-E at the expense of the Council of Europe budget: the Czech Republic, Germany, Montenegro, Norway, Switzerland, Turkey and the United Kingdom. It recalled that the GT-GDR-E was open-ended and that other member States were therefore welcome to send experts at the expense of their authorities.

14. In accordance with the decisions taken by the CDDH at its 73<sup>rd</sup> meeting on implementation of its terms of reference for the biennium 2012-2013, the GT-GDR-E would meet twice in 2013 (see further under Item 5, Other Business below), during which it would conduct preparatory work on (i) conclusions and possible proposals for action on whether or not to proceed to amend the Convention to enable the appointment of additional judges to the Court, (ii) conclusions and possible proposals for action following a review of the functioning of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights; and (iii) conclusions and possible proposals for action on whether more effective measures are needed in respect of States that fail to implement judgments of the Court in a timely manner.

15. The Committee elected Mr Morten RUUD (Norway) as Chairperson of the GT-GDR-E.

16. As regards work on whether or not to proceed to amend the Convention to enable the appointment of additional judges to the Court, the Committee considered that the GT-GDR-E should take a practical approach with a view to assisting the Committee of Ministers to reach a decision on the matter. In assessing possible modalities, the focus should therefore be on what type of additional judge would be most valuable in helping the Court to address the problem of the number of applications pending before its Chambers; there would also be the question of whether or not to proceed to amend the Convention to this end.

17. As regards work on the review of the functioning of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights, the Committee examined and approved the possible working methods suggested by the Secretariat (to invite the panel to make a written contribution to the first GT-GDR-E meeting and to invite its Chair to participate in that meeting: see doc. DH-GDR(2013)004). The GT-GDR-E should analyse and assess apparent difficulties that had arisen in the past and make constructive proposals for the future to the Committee of Ministers. It should examine the interaction between the Panel and both the national authorities and the Parliamentary Assembly, with the perspectives of these latter two to be taken into account, as well as aspects of national selection procedures relating to interaction with the Panel.

18. As regards work on whether more effective measures are needed in respect of States that fail to implement judgments of the Court in a timely manner, the Committee examined and approved the possible working methods suggested by the Secretariat (to hold an exchange of views with civil society representatives at the first GT-GDR-E meeting and to involve additional civil society representatives in its subsequent work: see doc. DH-GDR(2013)006). The Committee authorised its Chairperson and that of the GT-GDR-E to identify suitable organisations for these purposes, to be agreed in consultation with the Committee by email.

#### **4.3 Follow-up to the CDDH report on the measures taken by member States to implement relevant parts of the Interlaken and Izmir Declarations**

19. The Committee considered whether any of the recommendations contained in the CDDH report on the measures taken by member States to implement relevant parts of the Interlaken and Izmir Declarations should be given further follow-up, with a view to suggesting to the CDDH possible proposals for work in the biennium 2014-2015. It agreed to come back to the issue at its next meeting, in the context of a wider discussion on possible activities during the biennium 2014-2015. Experts were invited to submit any proposals to the Secretariat ([david.milner@coe.int](mailto:david.milner@coe.int)) in advance of the next meeting.

#### **Item 5: Other business**

20. The Committee agreed to propose to the CDDH that the dates of the GT-GDR-E meetings be changed to 18-20 September and 9-11 October 2013, and those of the Committee's autumn meeting to 29-31 October. It asked the Secretariat to look further into the best meeting dates for the GT-GDR-D.

21. The Committee took note that a new web-site had been created as a focal point for inter-governmental work on reform of the Court, at the following address: [www.coe.int/reformECHR](http://www.coe.int/reformECHR).

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Appendix II**Agenda (as adopted)****Item 1:        Opening of the meeting, adoption of the agenda and of the order of business, and election of a Vice-chairperson**General reference documents

- Draft annotated agenda DH-GDR(2013)OJ003
- Report of the 76<sup>th</sup> CDDH meeting (27-30 November 2012) CDDH(2012)R76
- Report of the 2<sup>nd</sup> DH-GDR meeting (29-31 October 2012) DH-GDR(2012)R2
- Decisions taken at the 122<sup>nd</sup> session of the Committee of Ministers (23 May 2012) CDDH(2012)008
- Ministers' Deputies' decisions on the follow-up to the 122<sup>nd</sup> session of the Committee of Ministers (Strasbourg, 23 May 2012) CM/Del/Dec(2012)1145/1.6
- Interlaken Declaration CDDH(2010)001
- Izmir Declaration CDDH(2011)010
- Brighton Declaration CDDH(2012)007
- Follow-up to the High-level Conference on the Future of the European Court of Human Rights (Brighton, 18-20 April 2012) (document prepared by the Secretariat) CDDH(2012)009 REV.
- Committee of Ministers' Resolution on intergovernmental committees and subordinate bodies, their terms of reference and working methods CDDH(2011)012

**Item 2:        Explanatory report to draft Protocol no. 16**Working document

- Draft Explanatory Report to Protocol no. 16 (*following a partial first reading at the 76<sup>th</sup> CDDH meeting, 27-30 November 2012*) CDDH(2012)R76  
Addendum VI

Reference documents

- Written comments on draft Explanatory Report to Protocol no. 16 DH-GDR(2013)007
- Draft Protocol no. 16 to the Convention (*as provisionally adopted by the CDDH at its 76<sup>th</sup> meeting, 27-30 November 2012*) CDDH(2012)R76  
Addendum V
- Report of the 76<sup>th</sup> CDDH meeting (27-30 November 2012) CDDH(2012)R76
- Compilation of written comments on the draft Explanatory Report to Protocol no. 16 (prepared by the Secretariat) (*comments submitted prior to the 2<sup>nd</sup> DH-GDR meeting, 29-31 October 2012*) DH-GDR(2012)015
- CDDH Report on measures to enhance relations between the Court and national courts (Appendix V to the Final Report on measures requiring amendment of the ECHR) CDDH(2012)R74  
Addendum I, Appendix V

- Reflection paper on the proposal to extend the Court's advisory jurisdiction

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### **Item 3: Work of Drafting Group "C" on the reform of the Court (GT-GDR-C)**

#### **3.1 Draft CDDH report on interim measures under Rule 39 of the Rules of Court**

##### Working document

- Draft CDDH report on interim measures under Rule 39 of the Rules of Court GT-GDR-C(2013)R2  
Addendum I

##### Reference documents

- Written comments on the draft CDDH report on interim measures under Rule 39 of the Rules of Court DH-GDR(2013)008
- Report of the 2<sup>nd</sup> GT-GDR-C meeting (30 January – 1 February 2013) GT-GDR-C(2013)R2
- Report of the 1<sup>st</sup> GT-GDR-C meeting (12-14 December 2012) GT-GDR-C(2012)R1
- Report of the 2<sup>nd</sup> DH-GDR meeting (29-31 October 2012) DH-GDR(2012)R2
- Brighton Declaration CDDH(2012)007
- Izmir Declaration CDDH(2011)010
- Preliminary Opinion of the Court in preparation for the Brighton Conference GT-GDR-C(2012)001
- Practice Direction: requests for interim measures (Rule 39 of the Rules of Court) GT-GDR-C(2012)002
- Statistics on interim measures accepted and refused by State Party (1 January – 30 June 2012) GT-GDR-C(2012)003
- Rule 39 decisions by year (2008-2011) GT-GDR-C(2012)004
- Statement issued by the President of the European Court of Human Rights concerning requests for interim measures (Rule 39 of the Rules of Court) (11 February 2011) GT-GDR-C(2012)005
- Research on ECHR Rule 39 interim measures (ECRE – European Council on Refugees and Exiles / ELENA – European Legal Network on Asylum)
- Article 39 of the Rules of Court: modalities of application and procedure (Information document by the Registry of the Court) GT-GDR-C (2012)009
- Parliamentary Assembly's resolution and recommendation on "Preventing harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights" GT-GDR-C (2012)011
- The Interlaken Process and the Court (document prepared by the Court) DH-GDR(2012)018
- Interim measures before the European Court of Human Rights (Contribution of the European Group of NHRIs prepared by the Commission consultative des droits de l'homme (CNCDH)) GT-GDR-C(2013)006



### 3.2 Draft CDDH report on the advisability and modalities of a “representative application procedure”

#### Working document

- Draft CDDH report on the advisability and modalities of a “representative application procedure” GT-GDR-C(2013)R2  
Addendum II

#### Reference documents

- Report of the 2<sup>nd</sup> GT-GDR-C meeting (30 January – 1 February ) GT-GDR-C(2013)R2
- Report of the 1<sup>st</sup> GT-GDR-C meeting (12-14 December 2012) GT-GDR-C(2012)R1
- Report of the 2<sup>nd</sup> DH-GDR meeting (29-31 October 2012) DH-GDR(2012)R2
- Brighton Declaration CDDH(2012)007
- Proceedings of the Round Table on “The right to trial within a reasonable time and short-term reform of the European Court of Human Rights”, organised by the Slovenian Chairmanship of the Committee of Ministers (Bled, 21-22 September 2009)
- Proceedings of the Seminar on “Ten Years of the ‘New’ European Court of Human Rights 1998-2008: situation and outlook”, organised by the Court (Strasbourg, 13 October 2008) GT-GDR-C(2012)006
- “European Court Registrar calls for special measures to deal with influx of Hungarian pension cases” (press release, 11 January 2012) GT-GDR-C(2012)007
- “Statement on Case-overload at the European Court of Human Rights”, European Law Institute, 6 July 2012 GT-GDR-C(2012)008
- Lettre du Greffier de la Cour à l’Agent du Gouvernement italien (in French only) GT-GDR-C(2013)004
- Note prepared by the Registry of the Court further to the 1st meeting of GT-GDR-C GT-GDR-C(2013)005

### **Item 4: Organisation of future work**

#### Reference documents

- Report of the 75<sup>th</sup> CDDH meeting (19-22 June 2012) CDDH(2011)R75
- Report of the 2<sup>nd</sup> DH-GDR meeting (29-31 October 2012) DH-GDR(2012)R2
- Follow-up to the High-level Conference on the Future of the European Court of Human Rights (Brighton, 18-20 April 2012) (document prepared by the Secretariat) CDDH(2012)009REV.
- Committee of Ministers’ resolution on intergovernmental committees and subordinate bodies, their terms of reference and working methods CDDH(2011)012

#### **4.1 Drafting Group “D” on the reform of the Court**

##### Reference documents

- Possible structure for a Guide to Good Practice in respect of domestic remedies (prepared by the Secretariat) DH-GDR(2013)001
- Proposed outline for a Toolkit to inform public officials about the State’s obligations under the Convention (prepared by Mr Martin Eaton, consultant expert) DH-GDR(2013)002
- Conclusions and possible proposals for action on ways to resolve the large numbers of applications arising from systemic issues identified by the Court (background paper prepared by the Secretariat) DH-GDR(2013)003

#### **4.2 Drafting Group “E” on the reform of the Court**

##### Reference documents

- CDDH Final Report on measures requiring amendment of the European Convention on Human Rights CDDH(2012)R74  
Addendum I
- European Court of Human Rights – Analysis of Statistics 2012
- Review of the functioning of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights: possible working methods (prepared by the Secretariat) DH-GDR(2013)004
- Resolution CM/Res(2010)26 on the establishment of an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights CM/Res(2010)26
- Ministers’ Deputies’ exchange of views with Mr Luzius Wildhaber, Chairman of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights (4 April 2012 & 30 January 2013) DH-GDR(2013)005
- Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights CM(2012)40 final
- More effective measures in respect of States that fail to implement judgments of the Court in a timely manner: possible working methods (prepared by the Secretariat) DH-GDR(2013)006

#### **4.3 Follow-up to the CDDH report on the measures taken by member States to implement relevant parts of the Interlaken and Izmir Declarations**

##### Reference document

- CDDH report on the measures taken by member States to implement relevant parts of the Interlaken and Izmir Declarations CDDH(2012)R76  
Addendum I

#### **Item 5: Other business**

#### **Item 6: Adoption of the conclusions and meeting report**