

Strasbourg, 6 June 2014

DH-GDR(2013)R6

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

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

**MEETING REPORT
6th meeting**

4-6 June 2014

Summary

The Committee, at its 6th meeting (4-6 June 2014), in particular:

- Elected Ms Isabelle NIEDLISPACHER (Belgium) as its Vice-chairperson
- Nominated Ms Natalia SEVOSIANOVA (Ukraine) as its Gender Equality Rapporteur
- Exchanged views on its terms of reference for the biennium 2014-2015 (Item 2)
- Exchanged views on the work to date of Drafting Group “F” on the reform of the Court (GT-GDR-F), gave guidance for its future work and selected ‘ad hoc experts’ to invite to the Group’s next meeting (Item 3)
- Exchanged views with Mr Erik FRIBERGH, Registrar of the Court, on the work to date of Drafting Group “G” on the reform of the Court (GT-GDR-G) and gave guidance for its future work (Item 4)
- Exchanged views on how to fulfil its mandate regarding the exchange of information concerning implementation of the Convention and the execution of the Court’s judgments and appointed Ms Aleksandra MEZYKOWSKA (Poland) as Rapporteur to present a paper at its next meeting (Item 5)
- Adopted possible elements for a CDDH opinion on PACE Recommendation 2043(2014) on the ‘urgent need to deal with new failures to co-operate with the European Court of Human Rights’ (Item 6)
- Invited the CDDH to request that the Committee of Ministers extend the deadline for work on ‘longer-term reform of the Convention system and the Court’ to 31 December 2015 (Item 7)

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 6th meeting in Strasbourg from 4-6 June 2014 with Mr Morten RUUD (Norway) in the chair. The list of participants appears at Appendix I. The agenda, as adopted, appears at Appendix II. The Committee elected Ms Isabelle NIEDLISPACHER (Belgium) as its Vice-chairperson and nominated Ms Natalia SEVOSTIANOVA (Ukraine) as its gender equality rapporteur, following the resignation of Ms Natalia SHAKURO (Ukraine), whom it thanked for her contribution in this role to its work.

Item 2: Terms of reference for the biennium 2014-2015

2. The Committee exchanged views on its terms of reference for the biennium 2014-2015. It took note that work on the first two elements was already under way in Drafting Groups “F” and “G” respectively (see items 3 and 4 below); that the third element would depend on the outcome of work on the first two; that the fourth element would be discussed in more detail later in the meeting (item 5 below); and that work on the fifth element would depend on the availability of time and resources following completion of work on the first four elements.

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

3. In the absence of its Chairperson, Ms Isabelle NIEDLISPACHER (Belgium), Vice-chairperson of the GT-GDR-F, presented the work of the Group. The Committee welcomed the progress made to date. It approved the working methods being employed by the Group, the direction in which work was proceeding and the proposed structure for the eventual CDDH final report. As regards the content of the draft text prepared thus far for certain parts of the final report, it limited itself at this stage to suggesting that the question of why the Court was needed could be more clearly addressed, from both historical and forward-looking perspectives.

4. In addition, the Committee decided:
- To invite experts to submit to the Secretariat (david.milner@coe.int), by 30 June 2014, any further questions to Mr Fribergh or Mr Giakoumopoulos for response at the next meeting of the GT-GDR-F (24-26 September 2014);
 - To invite Prof. Marten BREUER (University of Konstanz), Dr Başak ÇALI (Koç University), Dr Alice DONALD (Middlesex University), Prof. Elisabeth LAMBERT-ABDELGAWAD (University of Strasbourg) and Ms Nuala MOLE (AIRE Centre) as ‘ad hoc experts’ to the next meeting of the GT-GDR-F. Should any of those persons be unable to attend that meeting, the Committee proposed that the CDDH at its own next meeting consider inviting (an) alternative person(s).

Item 4: Work of Drafting Group “G” on the reform of the Court (GT-GDR-G)

5. The Chairperson of the GT-GDR-G, Mr Vit SCHORM (Czech Republic), presented the work of the Group. Mr Erik FRIBERGH, Registrar of the Court, then made a presentation expressing the concerns of the Court. The Committee thanked Mr Fribergh for his intervention, the text of which appears at Appendix III. In the course of the exchange of views that followed, the Committee underlined that the aim of the exercise was not to undermine the autonomy or independence of the Court but to improve the dialogue between the various actors within the Convention system, in accordance with para. 12)c.iii. of the Brighton Declaration. In this connection, the Committee welcomed the consultation process launched by the Court concerning amendments to the Rules of Court in anticipation of the entry into force of Protocol no. 15 to the Convention, and looked forward to that foreseen with respect to Protocol no. 16.

6. The Committee recalled the mandate given by the Committee of Ministers, which requires the presentation of a final report by 31 December 2014. Whilst taking due account of the position of the Court, it considered that the work already begun should continue in order fully to discharge this mandate, which responded to certain concerns often expressed by States Parties.

7. The Committee gave the following guidance to the GT-GDR-G, with a view to its second and final meeting (15-17 October 2014):

- The draft report should reflect all sensible proposals, whilst indicating the extent of their feasibility and the existence or not of consensus on them, and bearing in mind that some of them may prove to be useful in the future;

As regards the procedure for amendment of the Rules of Court:

- The importance of allowing the Court the possibility of continuing to respond flexibly to new circumstances should be borne in mind, and also the fact that any new form of involvement of interested parties, whose introduction would require either the agreement of the Court or amendment of the Convention, should be pragmatic in nature;
- The Group should therefore concentrate on improvement of the current process, including by formalisation of the existing practice. The Group should consider what possible modalities could lead to the desired result;
- The Committee noted that, contrary to what was indicated in the outline for a draft CDDH final report (doc. GT-GDR-G(2014)R1 Appendix III, part II), there was no consensus “that the Court should only make an amendment that has not been opposed by the States”, insofar as it implied a formal prohibition on the Court acting otherwise. That said, it could be expected that the Court would not in practice act contrary to such an express objection by States Parties;

As regards the possible “upgrading” to the Convention of certain provisions of the Rules of Court:

- The Committee confirmed that it would not at present be realistic to expect agreement on the idea of creating a Statute of the Court.

8. The DH-GDR invited experts to submit any comment or proposal on these issues to the Secretariat (virginie.flores@coe.int) before 29 August 2014, in order that they may be taken into account by the Rapporteur whilst preparing the draft report that would be presented at the second and final meeting.

Item 5: Information concerning the implementation of the Convention and execution of the Court's judgements

9. Ms Aleksandra MEZYKOWSKA (Poland) explained to the Committee the thinking behind the Polish delegation's proposal of this element of the terms of reference. The Committee could provide a forum for regular exchanges of information and good practice between member States on various topics. It could concentrate on two main issues: concerning implementation of the Convention, e.g. the compatibility of national legislation with Convention standards; and concerning execution of Court judgments, e.g. procedures for implementation. Information could be stored in an electronic database, which should be easily accessible and updatable, and States could be asked to provide on a voluntary basis information on specific, identified questions. The database should not duplicate the content of the database planned by the Department for the Execution of Court Judgments.

10. Mr Christos GIAKOUMOPOULOS, Director, Human Rights, presented the Secretariat's suggestions for how the activity could be pursued. He noted that the aim of involving the DH-GDR in a mix of activities concerning national implementation and execution of judgments was consistent with that of the ongoing discussions in the CDDH concerning the latter's future role and priorities. A database of the type proposed by the Polish delegation could be developed also to bring together information on specific problems of implementation or execution, difficulties encountered in overcoming them, and the solutions found to overcome the difficulties and resolve the problems. This would allow identification of good practices (and, also usefully, of unsuccessful approaches) and support awareness-raising and networking activities. It would not be possible to address all problems from the outset but would instead be necessary to identify priorities, nor would it be possible to include all good practices from every member State; but if successful, such a database could expand and develop over time.

11. There was general interest in the Committee in these similar and compatible approaches, which would make existing information more easily accessible, create a record of institutional memory and enable pooling of experience. It was noted that initial developments need not require extensive resources. It would also be important not to proceed on the basis of unrealistic expectations of what national authorities could contribute in terms of information. It was suggested that the added value of the Committee's involvement could be as a channel for introduction of information into the database and as a flexible forum for discussion of specific technical problems on the basis of material contained in the database. These aspects would require further consideration at the next meeting.

12. On this basis, the Committee appointed Ms Mezykowska as Rapporteur to prepare a paper for presentation at its next meeting.

Item 6: Replies to recommendations of the Parliamentary Assembly

13. The Committee adopted possible elements for a CDDH opinion on PACE Recommendation 2043(2014) on the ‘urgent need to deal with new failures to co-operate with the European Court of Human Rights’ as they appear at Appendix IV. Text on which consensus had not been reached was retained between square brackets.

Item 7: Other business

14. The Committee exchanged views on the schedule for the work of GT-GDR-F, and in particular the deadline of 15 March 2015 set by the Committee of Ministers for submission of the CDDH final report. It recalled the significant progress made thus far, but at the same time noted the extremely broad scope of the report and the often complex and/ or sensitive nature of the many issues that would have to be addressed. Considering that the over-riding aim must be to produce a complete, coherent and balanced report supported insofar as possible by all member States, the Committee concluded that it had become necessary to extend the current deadline. It therefore invited the CDDH to request that the Committee of Ministers extend the deadline to 31 December 2015, thus permitting two additional GT-GDR-F meetings. Should this request be accepted, the Committee further invited the CDDH slightly to postpone the GT-GDR-F meeting currently envisaged for January 2015 so as to allow experts more time for reflection following the meeting in mid-December 2014.

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Appendix I

List of participants

MEMBERS / MEMBRES

ALBANIA / ALBANIE

Ms Alma HICKA, Albanian General State Advocate

ANDORRA / ANDORRE

ARMENIA / ARMENIE

Ms Manushak ARAKELYAN, Attaché, Law department, Ministry of Foreign Affairs,

AUSTRIA / AUTRICHE

Ms Brigitte OHMS, Deputy Government Agent, Division for International Affairs and General Administrative Affairs, Federal Chancellery

AZERBAIJAN / AZERBAIJAN

Mr Otari GVALADZE, Chief adviser, Department for Coordination of Law Enforcement Agencies, Administration of President the Republic of Azerbaijan

BELGIUM / BELGIQUE

Ms Isabelle NIEDLISPACHER, co-Agent du Gouvernement, SPF Justice, Service des Droits de l'Homme

BOSNIA AND HERZEGOVINA

Ms Zikreta IBRAHIMOVIC, Deputy Agent of the Council of Ministers of Bosnia and Herzegovina before European Court of Human Rights, Office of the Agent

BULGARIA / BULGARIE

Ms Jordanka PARPAROVA, Direction des droits de l'homme, Ministère des Affaires étrangères

CROATIA / CROATIE

Ms. Štefica STAZNIK, Government Agent of Croatia before the European Court of Human Rights

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Mr Vit A. SCHORM, Government Agent, Ministry of Justice

DENMARK / DANEMARK

Ms Josephine ILCHMANN JØRGENSEN, Head of Section, The Danish Ministry of Justice

ESTONIA / ESTONIE

Ms Maris KUURBERG, Government Agent, European Court of Human Rights, Ministry of Foreign Affairs

FINLAND / FINLANDE

Mr Arto KOSONEN, Government Agent, Director of the Unit for Human Rights Court and Conventions, Legal Service, Ministry of Foreign Affairs

FRANCE

Ms Emmanuelle TOPIN, Conseiller, Direction des affaires juridiques, Sous-direction des droits de l'Homme, Ministère des affaires étrangères

GEORGIA / GEORGIE

Mr Levan MESKHORADZE, Government Agent to the European Court of Human Rights

GERMANY / ALLEMAGNE

Ms Katja BEHR, Head of Unit IV C 1, Government Agent before the European Court of Human Rights, Ministry of Justice

GREECE / GRECE

Mme Garyfallia SKIANI, Conseillère juridique du Conseil juridique de l'Etat - Membre du Bureau de l'Agent du Gouvernement Hellénique

HUNGARY / HONGRIE

Mr Tamás TÓTH, Co-Agent for the Hungarian Government before the European Court of Human Rights, Section of the European Court of Human Rights, Department of Cooperation on International Crime and Human Rights, Ministry of Public Administration and Justice

IRELAND / IRELAND

Mr Peter WHITE, Agent for the Government of Ireland, Assistant Legal Adviser, Legal Division, Department of Foreign Affairs and Trade

ITALY / ITALIE

Mr. Giuseppe CAVAGNA, Deputy Permanent Representative, Permanent Representation of Italy to the Council of Europe

LATVIA / LETTONIE

Ms Sandra KAULINA Head of the Government Agent Office, Ministry of Foreign Affairs of the Republic of Latvia

LIECHTENSTEIN

Mr Manuel FRICK, Deputy Permanent Representative to the Council of Europe, Office for Foreign Affairs

LITHUANIA / LITUANIE

Ms Karolina BUBNYTE, Head of the Representation Division to the European Court of Human Rights, Ministry of Justice

MALTA / MALTE

Dr. Ariana Rowela FALZON, Lawyer, Office of the Attorney General

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

Mr Lilian APOSTOL, Agent for the Government of the Republic of Moldova, Ministry of Justice

MONTENEGRO

Mr Zoran PAZIN, State Agent to the ECHR

THE NETHERLANDS / PAYS-BAS

Ms Noortje VAN RIJSSEN, Legal Officer, Ministry of Foreign Affairs

NORWAY / NORVEGE

Mr Morten RUUD, **Chairperson of the DH-GDR/Président du DH-GDR**, Special Adviser Ministry of Justice

Ms Helle Aase FALKENBERG, Legal adviser, Ministry of Justice

POLAND / POLOGNE

Aleksandra MEŻYKOWSKA, Co-Agent of the Government of Poland in cases and proceedings before the European Court of Human Rights, Ministry of Foreign Affairs

PORTUGAL

Ms Ana GARCIA MARQUES, Lawyer within the Office of the Agent of the Portuguese Government before the ECHR

ROMANIA / ROUMANIE

Ms Irina CAMBREA, Government Agent, Ministry of Foreign Affairs

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

SERBIA / SERBIE

Ms Vanja RODIC, Agent before the ECHR, Agency Sector before the European Court of Human Rights, Ministry of Justice and Public Administration

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

Ms Marica PIROSIKOVA, Government Agent, Ministry of Justice

SLOVENIA / SLOVENIE

Mr Matija VIDMAR, Judicial System Legislation Directorate, Ministry of Justice

SPAIN / ESPAGNE

Mr Rafael Andrés LEON CAVERO, Agent of Spain before the ECHR, Deputy, Directorate General of Constitutional and Human Rights Affairs, State Attorney, Head of the Human Rights Area, Office of the General State Attorney, Ministry of Justice

SWEDEN / SUEDE

Ms Katarina FABIAN, Department for International Law, Human Rights and Treaty Law, Ministry for Foreign Affairs

SWITZERLAND / SUISSE

Mr Adrian SCHEIDEGGER, Agent suppléant du Gouvernement suisse devant la Cour européenne des droits de l'homme et le CAT, Département fédéral de justice et police DFJP, Office fédéral de la justice

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” / “L’EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE”

Ms Danica DJONOVA, Head of Unit, Government Agent Office, Ministry of Justice

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Ms Aysen EMÜLER, Legal Expert, Représentation permanente de la Turquie auprès du Conseil de l’Europe

Mr Harun SAĞLAM, Counsellor, Ministry of Justice, Permanent Representation of Turkey to the Council of Europe

UKRAINE / UKRAINE

Ms Nataliia SEVOSTIANOVA, Government Agent before the ECHR

UNITED KINGDOM / ROYAUME-UNI

Mr Rob LINHAM, Head of Council of Europe Human Rights Policy, Ministry of Justice

OBSERVERS / OBSERVATEURS

HOLY SEE/ SAINT SIÈGE

Mme Andréea POPESCU

JAPAN / JAPON

Mr Takaaki SHINTAKU, Consul of the Consulate General of Japan in Strasbourg

MEXICO/ MEXIQUE

M. Diego SANDOVAL PIMENTEL, Adjoint à l'Observateur Permanent, Mission Permanente du Mexique auprès du Conseil de l’Europe

EUROPEAN UNION / UNION EUROPEENNE

Mr Giovanni Carlo BRUNO, Deputy to the Head of delegation, European Union Delegation, European Union Delegation to the Council of Europe

Ms Karin BRACKO

Amnesty International

Mr Sébastien RAMU, Senior Legal Adviser, Law and Policy Programme, Amnesty International

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

Apologised

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

Mr Jean-Bernard MARIE

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

Mr Erik FRIBERGH Registrar, European Court of Human Rights

Mr John DARCY, Adviser to the President and the Registrar, Private Office of the President, European Court of Human Rights

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

Ms Ann-Katrin SPECK, Legal Affairs & Human Rights Department

Ms Sarah LEE, Legal Affairs & Human Rights Department

SECRETARIAT

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Mr Christos GIAKOUMOPOULOS, Director / Directeur, Human Rights Directorate / Direction des droits de l'homme

Mr Mikhail LOBOV, Head of Human Rights Policy and Development Department / Chef du Service des politiques et 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, Head of the Unit on the reform of the Court / Chef de l'Unité pour la réforme de la Cour, 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, Administrator / Administrateur, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'homme

Ms Naomi FENWICK, Lawyer / Juriste, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Mme Haldia MOKEDDEM, Assistant / Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'homme

INTERPRETERS/INTERPRÈTES

Sally BAILEY-RAVET

Sylvie BOUX

Isabelle MARCHINI

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

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| - Draft annotated agenda | DH-GDR(2014)OJ006 |
| - Draft order of business | DH-GDR(2014)OT006 |
| - Report of the 80 th CDDH meeting (08-11 April 2014) | CDDH(2014)R80 |
| - Report of the 79 th CDDH meeting (26-29 November 2013) | CDDH(2013)R79 |
| - Report of the 5 th DH-GDR meeting (29-31 October 2013) | DH-GDR(2013)R5 |
| - Interlaken Declaration | CDDH(2010)001 |
| - Izmir Declaration | CDDH(2011)010 |
| - Brighton Declaration | CDDH(2012)007 |
| - Securing the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights (Decisions taken at the 122nd session of the Committee of Ministers, 23 May 2012) | CDDH(2012)008 |
| - 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. |
| - Securing the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights (Decisions taken at the 124th Session of the Committee of Ministers, 6 May 2014) | GT-GDR-F(2014)013 |
| - Proceedings of the Oslo Conference on the long-term future of the European Court of Human Rights | H/Inf(2014)1 |
| - Terms of reference of the Committee of Experts on the reform of the Court (DH-GDR) for 2014-2015 | DH-GDR(2014)001 |

Information document

- | | |
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| - Committee of Ministers' Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods | CDDH(2011)012 |
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Item 2: Terms of reference for the biennium 2014-2015

Reference document

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| - Terms of reference of the Committee of Experts on the reform of the Court (DH-GDR) for 2014-2015 | DH-GDR(2014)001 |
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Item 3: Work of Drafting Group “F” on the reform of the Court (GT-GDR-F)

Reference documents

- Report of the 1st GT-GDR-F meeting (19-21 March 2014) GT-GDR-F(2014)R1
- Report of the 2nd GT-GDR-F meeting (14-16 May 2014) GT-GDR-F(2014)R2
- Expected results, working methods and schedule: proposals by the Chairperson of the GT-GDR-F GT-GDR-F(2014)001
- Compilation of the results of the ‘open call for contributions’ (prepared by the Secretariat) GT-GDR-F(2014)002
- Thematic overview of the results of the ‘open call for contributions’ (prepared by the Secretariat) GT-GDR-F(2014)003
- Overview of proposals made in the context of on-going work concerning preservation and reinforcement of the current system (prepared by the Secretariat) GT-GDR-F(2014)010
- CDDH Final Report on the long-term future of the European Court of Human Rights: Draft text resulting from discussions at the 1st GT-GDR-F meeting, prepared by the Rapporteur, Ms Kristine Līce (Latvia) GT-GDR-F(2014)011
- Proceedings of the Oslo Conference on the long-term future of the European Court of Human Rights H/Inf(2014)1
- Analysis of statistics 2013 (European Court of Human Rights, January 2014)
- Statistics of the Court on case-management survey (01/01-31/03/2014), cases by country and Brighton backlog by country as of 01/04/2014 DD(2014)494
- 7th Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, 2013
- Possibilities for preserving (and reinforcing) the current system (provisional list of issues identified by the GT-GDR-F at its 2nd meeting) GT-GDR-F(2014)misc.1
- Questions variously to Mr Erik Fribergh, Registrar of the Court, and Mr Christos Giakoumopoulos, Director, Human Rights GT-GDR-F(2014)misc.2

Item 4: Work of Drafting Group “G” on the reform of the Court (GT-GDR-G)

Reference documents

- Report of the 1st GT-GDR-G meeting (12-14 February 2014) GT-GDR-G(2014)R1
- Rules of Court

- CDDH Final Report on a simplified procedure for amendment of certain provisions of the Convention CDDH(2012)R75
Addendum I
- Interlaken Follow-up: Simplified Procedure for Amending the Convention (Idea of a Court Statute) (document submitted by the Court) #3272054_v1
- Letter from the President of the Court to the Chairperson of the CDDH, 12 June 2012 #3981532

Item 5: Information concerning the implementation of the Convention and execution of the Court's judgements

Reference documents

- Terms of reference of the Committee of Experts on the reform of the Court (DH-GDR) for 2014-2015 DH-GDR(2014)001
- Role and priorities of the CDDH during the 2016-2017 biennium: preliminary elements for consideration prepared by the Secretariat CDDH(2014)006

Item 6: Replies to recommendations of the Parliamentary Assembly

Reference documents

- Decisions of the Ministers' Deputies on texts adopted at the 2nd part of the Parliamentary Assembly's 2014 Session CM/Del/Dec(2014)1198/3.1
- Parliamentary Assembly Recommendation on the "urgent need to deal with new failures to co-operate with the European Court of Human Rights" PACE Rec. 2043(2014)
- Possible elements for a CDDH opinion on PACE Recommendation Rec 2043(2014) (draft prepared by the Secretariat) DH-GDR(2014)002

Item 7: Other business

Item 8: Adoption of the conclusions and meeting report

Working document

- Draft report of the 6th DH-GDR meeting (14-16 May 2014) DH-GDR(2014)R6

Appendix III

Presentation by the Registrar of the Court, Mr Erik Fribergh (Item 4)

Thank you for allowing me to come here and express myself on the work you are doing on the question of changes of the Rules of Court.

Many of you heard what the President of Court said in Oslo in the beginning of April: he expressed serious concerns about whether it was right to address this question at a time when other serious issues needed to be addressed.¹

You will not be surprised to hear that I am on the same line as the President. I will try to convince you today that we have other more important things to do at this stage.

First, the reform of the Court and the Convention system has to a large extent been driven by a concern about how to bring down the workload of the Court and how to make it function more efficiently.

I believe that the idea that the Rules of Court or certain of its provisions should be subject to the approval of Governments followed on from work which had been carried out on simplified amendment of the Convention. When discussions on this proposal revealed that there was insufficient support for it, a new line was taken by certain delegations who felt that there was a problem with the Rules of Court in that Governments were not given sufficient say in the way in which they were amended. To put it bluntly, and you will forgive me for doing so, this initiative seems to reflect a desire to exercise more control over the Court. This has been expressed diplomatically as “upgrading” the Rules of Court.

Whatever the objective of this exercise is, it can certainly not be efficiency, nor can it be linked to a wish on the part of Member States to ease the work burden on the Court. It is obvious that the end-result will be the opposite: more complications and more work for the Court. The question is whether other reasons justify a change. I have not been convinced by what I have heard so far.

Personally, I see the on-going work as a criticism against the Court for not having consulted the Member States when making changes to the Rules.

Before going into to the factual background and some historical details, allow me to update you about the latest change of the Rules of Court.

The latest change was adopted in April this year when the Court changed some of the rules concerning the election of the Court office holders, notably the election rules for

¹ « Alors que nous nous employons, au quotidien, à faire face sans relâche aux problèmes posés par les affaires répétitives, par les affaires prioritaires, par l'inexécution de certains arrêts importants, certains au lieu de résoudre ces problèmes cruciaux en soulèvent d'autres, tels que celui-là, qui n'a aucun caractère d'urgence. J'y vois un désir de contrôle de notre Cour qui ne me semble pas correspondre aux défis qui se posent actuellement. Consacrons nous donc à l'essentiel. »

the Registrar and the Deputy Registrar. In this case, the Court did not consult Member States or the NGOs. I do not think there was any reason for such consultation on this purely internal matter.

As to the factual background, I wish to recall that in the original Convention, the regulatory power was clearly conferred upon the Convention organs.

Article 55 provided: “The Court shall draw up its own rules and shall determine its own procedure.” Article 36 contained a similar provision for the Commission. (“The Commission shall draw up its own rules of procedure.”).

Protocol No. 11 confirmed the exclusive regulatory competence of the Court.

The States have therefore twice conferred this power on it.

If we look at other international courts, it is true that one can find both comparable and contrasting arrangements among other international courts:

The International Court of Justice, the International Tribunal of the Law of the Sea, the International Criminal Tribunal for Yugoslavia and the Inter-American Court of Human Rights are all granted the power to adopt the Rules of Court.

In contrast, the three EU courts, the EFTA court and the International Criminal Court do not have such power.

Practice of consultation

Let me now make a summary of the historical background of the Court’s practice to consult. Then we may come back to the question whether the Court is doing enough in terms of consultation.

The Court has for a long time had a practice of consultation and dialogue regarding the changes and adoption of its Rules of Court.

In preparation for the entry into force of Protocol No. 11, the Registry and the Commission Secretariat drew up draft rules - the model Rules of Court.

The text was sent to States, and was discussed by the members of the DH-PR over several meetings in the period 1996-1998, and also in the CDDH (see report of the 43rd CDDH meeting in October 1997, and of the 44th meeting in June 1998). The results of these discussions were communicated to the new Court for consideration as it adopted the Rules in the months leading up to 1 November 1998.

In June 2000, the Court wished to get feedback from those using the system. It invited submissions from Governments, as well as from other interested parties via a notice on the website. 12 Governments sent in comments (Austria, Croatia, Czech Republic, France, Lithuania, Netherlands, Norway, Russia, Slovak Republic, Sweden, Switzerland and Turkey). Replies were received from 9 NGOs, and from 9 individuals as well. The Rules Committee examined all points raised, and brought them to the

Plenary Court for its consideration. Amendments were adopted in stages from mid-2002 onwards.

The fact that there is no formal procedure for asking the Court to consider changing the Rules does not mean that it cannot be done. In December 2004 when the Plenary approved certain changes to the Rules, the Rules Committee reported that it had given consideration to external proposals as well. For example, one Government Agent wrote to the Court in 2005 to suggest specific amendments, which were examined – but not accepted – by the Rules Committee.

The biennial meetings between the Court and Government Agents typically include points about possible changes to the Rules of Court. This was a major point of the 2005 meeting for example. At the next meeting in 2007, there was discussion of other possible changes, e.g. so as to ensure data protection. This issue was ultimately addressed by other means – externally by a practice direction and internally by an instruction from the Registrar.

In addition to discussions of this sort, the Court has also directly consulted Governments regarding intended changes to the Rules. In 2010, it sought views on rules for the pilot-judgment procedure – 5 Governments responded, as well as a group of NGOs and the CCBE.

In 2012, it sought views about the contents of a rule on unilateral declarations – that led to 11 replies from Governments and 2 NGO submissions. These were, of course, examined attentively by the Rules Committee.

In 2013, the Court revised Rule 29 on *ad hoc* judges, responding to the criticisms made of the previous version as not being fully in line with the wording of and intention behind Protocol No. 14 in this respect.

This year, the Court has gone further than in the past by consulting on a draft text prepared in light of Protocol No. 15. This responds to a point made previously that it is easier for a Government Agent to react to a text than to offer their thoughts without knowing what approach the Court has in mind.

There will be a similar exercise regarding Protocol No. 16 probably later this year.

One can also say that there has been a dialogue concerning the Rules of Court at a higher level at Brighton. The Brighton Declaration took note of the Court's stated intention to take a stricter approach to the six-month time-limit (amendment of Rule 47) and to act to improve case-law consistency (amendment of Rule 72).

Conclusion

I would conclude by saying that the Court's exclusive power to amend the Rules has allowed it the necessary autonomy to develop its procedures, internal set-up and working methods for the sake of greater efficiency. It has not had to negotiate with any other party or body, although it has regularly consulted and will continue to do so on any matters which will affect the Contracting Parties and their participation in proceedings before the Court. That flexibility is valuable.

The principle of the Court's independence also arises. While it is true that courts with less power over their Rules are not, for this reason alone, lacking in independence, the Court's regulatory power is an attribute of its independence from States and other bodies/parties and is seen as such by the Court itself. An attempt to remove or reduce that power will be regarded, at least by some, as undermining the Court's independence.

At the end of the day, I believe that this exercise cannot be justified. In any event, at this stage we have other priorities and we need to continue to work in a spirit of co-operation. This exercise is on any reading of it not in that spirit. As the President said in Oslo, we should be focussing on what is essential, what will have an impact in terms of making the Convention more efficient and effective, for example in the area of execution of the Court's judgments. I am afraid that I have to say that this whole discussion is a distraction from the real business of making the Convention system work.

Appendix IV

Possible elements for a CDDH opinion on PACE Recommendation 2043(2014) on the ‘urgent need to deal with new failures to co-operate with the European Court of Human Rights’

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2043(2014) on the ‘urgent need to deal with new failures to co-operate with the European Court of Human Rights’. It recalls Committee of Ministers’ Resolution CM/Res(2010)25 on member States’ duty to respect and protect the right of individual application to the European Court of Human Rights, which called upon the member States to “take prompt and effective action with regard to any interim measures indicated by the Court so as to ensure compliance with their obligations under the relevant provisions of the Convention”. It also recalls its own earlier work on the issue, notably its report on interim measures under Rule 39 of the Rules of Court, which reiterated that “member States should be reminded that Article 34 of the Convention entails an obligation for States Parties to comply with an indication of interim measures made under Rule 39 of the Rules of Court and that non-compliance normally implies a violation of Article 34 of the Convention”.²

2. The CDDH notes that certain of the failures to respect indications of interim measures occurred after the adoption of Committee of Ministers’ Resolution CM/Res(2010)25. This underlines the need for the Committee of Ministers to continue responding effectively to such incidents, as implied by paragraph 2 of the Parliamentary Assembly’s recommendation. [The CDDH emphasises the importance of full implementation of the relevant measures contained in the 2011 Committee of Ministers’ Guidelines on eradicating impunity for serious human rights violations.³]

3. [The CDDH also notes paragraph 5 of the accompanying PACE Resolution 1991(2014), to which the recommendation refers, and which calls to mind perceptions of conflict between the obligation to comply with an indication of interim measures under Rule 39 of the Rules of Court, and other international legal or diplomatic commitments. The Committee of Ministers may wish to reflect on whether and how this issue could be further examined.] Finally, the CDDH notes the Assembly’s call for speedy treatment by the Court of applications in the context of which interim measures have been indicated, and recalls its own recommendation in this sense made in its 2013 Report.

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² See para. 54 of doc. CDDH(2013)R77 Addendum III: under examination by the Committee of Ministers at the time of writing.

³ Doc. CM/Del/Dec(2011)1110/4.8, Appendix 5.