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DH-GDR(2014)R7 Addendum II

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

**Draft CDDH contribution to the High-level Conference on
“The implementation of the Convention: our shared responsibility”,
organised by the Belgian Chairmanship of the Committee of Ministers
(Brussels, 26-27 March 2015)**

A. INTRODUCTION

1. The forthcoming Belgian Chairmanship of the Committee of Ministers has announced that it will organise a High-level Conference under the title “The implementation of the European Convention on Human Rights: Our Shared Responsibility”, to take place in Brussels on 26-27 March 2015. The conference is intended to culminate in adoption of a declaration including proposals for measures notably to improve the execution of judgments of the European Court of Human Rights and the effectiveness of its supervision. The Belgian authorities have invited the CDDH to make a written contribution to the conference, with a view in particular to subsequent preparation of a draft Brussels Declaration. The present document constitutes that contribution.

2. It can be recalled that the CDDH, as part of its long-standing, wider work on reform of the Convention system, has long been involved in discussion of reform of the process of execution of Court judgments and its supervision by the Committee of Ministers. Of particular note in recent years are the Committee of Ministers’ different recommendations to the member States, notably Recommendation Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the Court, drafted by the CDDH; the CDDH’s 2008 “practical proposals for the supervision of the execution of judgments of the Court in situations of slow execution”,¹ which contributed to the Committee of Ministers’ introduction of the ‘twin-track’ (standard and enhanced) supervision process; and the 2013 CDDH report on whether more effective measures are needed in respect of States that fail to implement Court judgments in a timely manner,² currently under examination by the Ministers’ Deputies following receipt of comments by the Court.³ It may also be recalled that the issue of execution of judgments and its supervision is one of the main themes to the CDDH’s ongoing work under its terms of reference to examine the longer-term future of the Convention system and the Court.⁴ In this connection, the CDDH further recalls the Oslo Conference on the long-term future of the European Court of Human Rights, at which many interesting proposals concerning these issues were examined.⁵

B. BACKGROUND OBSERVATIONS

3. In its above-mentioned 2013 report, the CDDH had noted that “the number of new cases continues to exceed the number of cases closed”, such that the total number of pending cases continued to increase. Figures for 2013 (unavailable to the CDDH when drafting its report), however, show three important developments: first, the number of new final judgments issued by the Court whose execution requires supervision by the Committee of Ministers has fallen significantly every year since 2010; second, the number of cases whose supervision has been closed by the Committee of Ministers has increased very significantly every year since 2009; and as a result of these two tendencies, the total number of cases

¹ See doc. CDDH(2008)014 Addendum II.

² See doc. CDDH(2013)R79 Addendum I.

³ For the Court’s comments, see “Reply of the European Court of Human Rights to Committee of Ministers request for comments on the CDDH Report on Execution”, doc. DD(2014)650.

⁴ Para. 35.f)i) of the 2012 Brighton Declaration led to the CDDH being invited to present to the Committee of Ministers by 31 December 2015 a report including i.a. “comprehensive examination of ... the procedure for the supervision of the execution of judgments of the Court, and the role of the Committee of Ministers in this process”.

⁵ See doc. H/Inf (2014) 1.

pending before the Committee of Ministers fell in 2013, for the first time.⁶ Among the positive results is also the tangible decrease in the number of repetitive cases in which the Court has been obliged to deliver a further judgment or judgments addressing the underlying problem and, relatedly, the good results obtained through the application of the pilot judgment procedure, notably as a result of the important efforts deployed by respondent States and the Committee of Ministers to ensure the proper execution of these judgments.

4. At the same time, the CDDH notes that the Court Registrar has indicated that the Court is expecting to resolve the very considerable backlog of repetitive cases currently pending before it. How these are resolved (which may be by inadmissibility decision following the introduction of domestic remedies, striking out following friendly settlement or unilateral declaration, or judgment), whether the underlying structural problems are also resolved, and thus the consequences for the Committee of Ministers' workload, remain to be seen. It should furthermore be noted that there remains before the Court a substantial backlog of pending potentially admissible non-repetitive applications (Category IV in the Court's priority policy categorisation).

5. The current system thus today works well in general for the overwhelming majority of Court judgments, which are executed without any particular difficulty under the Committee of Ministers' supervision: a unique advantage enjoyed by the Convention system that the Brussels Conference could properly emphasise. At the same time, it is noted that certain aspects of the execution process, including of Committee of Ministers' supervision, may be further improved. Resolution of the execution problems encountered in certain cases often requires particular political will in the respondent State and co-operation between the authorities concerned, and calls for a specific response.⁷

6. The Committee of Minister's new working methods aim at dealing more efficiently with such cases. This problem is also at the heart of the Committee's present activities aimed at ascertaining whether it has all necessary tools at its disposal to ensure the timely execution of the Court's judgments. Further measures may therefore be needed both at Strasbourg and national level in order to allow the Convention system adequately to deal with all the different kinds of execution issues that arise as a result of the judgments delivered by the Court.

⁶ See the 7th Annual Report of the Committee of Ministers on Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, 2013; Appendix 1: Statistics 2013.

⁷ In this context, as the CDDH had noted in paras.6-7 of the above-mentioned 2013 report, broadly speaking, it can be said that there are three general causes of failure to execute judgments in a timely manner:

- i. Reluctance on the part of either the executive to propose measures or parliament to adopt legislation.
- ii. Substantive problems and technical complexity, e.g. need for a wide range of measures requiring co-ordination or extensive legal reforms.
- iii. Inertia (being a simple failure to take action not linked to any particular political or technical consideration but e.g. to a shortage of staff).

Financial difficulties may be relevant to all or any of the above: for instance, general budgetary problems may lead to a reluctance to take political decisions allocating scarce resources to executing a judgment; or lack of resources in a particular body may hinder the search for technical solutions or prevent sufficient attention from being given to a problem.

Identification of the most suitable tool for responding to a problem depends on its cause. Reluctance to take action, for example, will require a response on the political level or which contains a political component. The provision of a Council of Europe technical assistance programme would be indicated in response to a technical problem.

7. The Conference could also give a new political impetus to these ends in order that the necessary resources be made available to complete the work within fixed deadlines.

C. POSSIBLE CONCRETE PROPOSALS FOR INCLUSION IN THE DRAFT DECLARATION

i. Further development of the Committee of Ministers' working methods

8. The Conference could make proposals seeking to improve the Committee of Ministers' working methods under Article 46(2) of the Convention.

- a. *Organisation of the Committee of Ministers' supervision of execution of judgments better adapted to the complexity of the issues before it.* Far too often, much of the precious CM/DH meeting time ends up being 'monopolised' by a few cases at the expense of many others that nevertheless raise important structural problems. The Declaration could recognise the need better to adapt working methods to these cases and call for further work to this end
- b. *The status of state representatives participating in CM/DH meetings.* The Declaration could call for States to ensure that those participating in these meetings are of sufficient stature, authority and familiarity with the issues at stake to ensure achievement of the intended outcomes and ensure continuity.
- c. *Supplementary measures to improve the dissemination of decisions of the Committee of Ministers under Article 46(2) and to strengthen their impact.* These decisions often contain elements, such as Action Plans, of great value to all national authorities and other interested parties concerned in the respondent State, but from which insufficient benefit is drawn. The Declaration could recall the relevant provisions of Committee of Ministers' Recommendation Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the Court and invite member States to pursue their efforts to implement them. (See further below with respect to possible updating of the recommendation.)
- d. *Refinement of the Rules of the Committee of Ministers for supervision of the execution of judgments and of the terms of friendly settlements.* It would be useful, for example, to amend Rule 9, for instance to prolong the deadline under paragraph 3 and/ or to extend the range of sources of information available to the Committee of Ministers.⁸ The Declaration could propose decisions to engage in work to this end.

ii. New sources of information for the benefit of States

9. The Committee of Ministers' criteria in relation to adoption of individual and general measures represent a very rich source of examples of good practice that could better be put to the service of States, helping them to resolve the various problems raised by Court judgments.⁹

⁸ See e.g. the proposals contained in the CDDH report on whether more effective measures are needed in respect of States that fail to implement Court judgments in a timely manner (doc. CDDH(2013)R79 Addendum I).

⁹ In this respect, it can be noted that the DH-GDR, in implementation of its current terms of reference to act as a forum for exchange of information between states on national implementation of the Convention and execution of Court judgments, is also examining very similar proposals: see doc. DH-GDR(2014)004.

- a. *In relation to payment of just satisfaction*, for example, document CM/Inf/DH(2008)7 final could be updated;
- b. *In relation to substantive questions concerning adoption of individual measures*, the inventory of all States' practices could be updated (the latest update was in 2006: see H-Exec(2006)1 and restructured in a database with an advanced search functionality;
- c. *In relation to substantive questions concerning adoption of general measures*, the inventory of all States' practices could be updated (the latest update was in 2006: see H-Exec(2006)2) and restructured in a database with an advanced search functionality.

iii. The Court and Committee of Ministers' discharge of their roles under Article 46 of the Convention and their interaction with respondent States

10. The Conference also represents an opportunity to take stock of the discharge by the Court and the Committee of Ministers of their respective roles in relation to the various provisions of Article 46 of the Convention. This could include examination of the interactions between the two, and respondent States, with a view to further improving this interaction, already present notably in the form of the pilot judgment procedure.

iv. New possibilities for Council of Europe cooperation activities

11. The Conference could promote and give concrete form to the idea that the Council of Europe must better direct its cooperation activities to ensure improved communication with those national authorities directly concerned by Convention violations on issues of relevance for execution. In particular:

- a. *Undertake more rapid and effective evaluation of the training needs of the relevant authorities* and adapt the Council of Europe's offer of assistance by proposing targeted professional training for the legal professionals concerned, by way of the pan-European HELP programme and employing suitable methodology.
- b. *Identify specific medium- and long-term projects for dealing with persistent large-scale structural problems* at the origin of repetitive applications before the Court; evaluate the potentials and limitations of the Council of Europe for addressing them; and identify priorities for action in the matter.
- c. *Improve further the quality of technical assistance projects*, increase their relevance and ensure that expert advice is provided within appropriate time-limits to avoid possible prolongation of the execution process.

v. Streamlining of national procedures for implementation of the Convention

12. The Conference could take note of the fact that even if most problems at the origin of violations do not give rise to controversy, their solution at national level is nevertheless often delayed by bureaucratic obstacles relating to a lack of technical coordination between the various domestic actors. The Conference could therefore give a political impetus, or even invite the Committee of Ministers to reinvigorate efforts towards reinforcing domestic capacity for implementation of the Convention, including execution of Court judgments. An

important element of such a development would be encouragement of efforts to set up efficient structures at national level to follow up the execution of the Court's judgments. In this context Committee of Ministers' Recommendation Rec(2008)2 merits detailed re-examination in order to highlight the good practices accumulated since its adoption and to promote those models of interaction at national level that have proved themselves to be most effective. The role of national parliaments in the execution of Court judgments and its supervision at the domestic level should also be highlighted by the Conference (cf. paragraphs 9.c) and 29.a) of the Brighton Declaration, as well as further discussions *i.a.* at the Oslo Conference); as should that of domestic courts and tribunals in relation to execution of Court judgments and reflection of Convention standards in the domestic legal order (cf. paragraph 9.c) of the Brighton Declaration, as well as further discussions *i.a.* at the Baku Conference).

vi. International cooperation on major issues

13. Certain execution situations raise problems of such magnitude that efficient action would be facilitated if adequate procedures existed to allow concerted efforts with other international actors such as the World Bank, the International Monetary Fund, the United Nations etc. The Conference could provide an impetus for the identification of such situations and the development of relevant procedures.