



Strasbourg, 14 February 2014

GT-GDR-G(2014)R1

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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**DRAFTING GROUP 'G' ON THE REFORM OF THE COURT  
(GT-GDR-G)**

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**1<sup>st</sup> Meeting**  
**Strasbourg**  
**Wednesday 12 February – Friday 14 February 2014**  
**Agora, Meeting Room G04**

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**MEETING REPORT**

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

1. Drafting Group G on the reform of the Court (GT-GDR-G) held its 1<sup>st</sup> meeting in Strasbourg from 12 to 14 February 2014. The list of participants appears at Appendix I. The agenda, as adopted, appears at Appendix II. The Group elected Mr Vít A. SCHORM (Czech Republic) as Chairperson and Ms Cordelia EHRICH (Switzerland) as Vice-chairperson.

**Item 2: Terms of reference and working methods**

2. The Group exchanged views on its terms of reference, taking account of the guidance given by the DH-GDR at its 5<sup>th</sup> meeting (29-31 October 2013, see doc. DH-GDR(2013)R5 para. 17), as endorsed by the CDDH at its 79<sup>th</sup> meeting (26-29 November 2013, doc. CDDH(2013)R79 para. 9). The Group in particular noted the importance of taking account of, whilst not duplicating, work already undertaken by the Committee of Experts on a simplified procedure for amendment of certain provisions of the ECHR (DH-PS). In this connection, the Group considered it unrealistic to examine further the idea of creating a Statute for the Court, especially given the problems encountered during previous work on that issue and the fact that other modalities could be equally effective for current purposes.

**Item 3: The procedure for the amendment of the Rules of Court and the possible ‘upgrading’ to the Convention of certain provisions of the Rules of Court**

3. The Group examined the following aspects of the two limbs of its terms of reference, which it considered to be inter-related and certainly not mutually exclusive responses to a common underlying problem:

- With respect to a revised procedure for amending the Rules of Court:
  - o The reasons for seeking to revise the amendment procedure for the Rules of Court and the objectives of such an exercise;
  - o Desirable features of a revised amendment procedure, which would depend on the procedure and modality for its introduction (see below);
  - o The criterion to be applied to identify specific Rules of Court for which a revised amendment procedure would be particularly suitable;
  - o A preliminary selection of Rules of Court, performed on that basis;
  - o Possible procedures and modalities for introducing a revised amendment procedure;
- With respect to possible upgrading of certain provisions of the Rules of Court:
  - o The criterion to be applied to identify specific Rules of Court that may be suitable for upgrading to the Convention;
  - o A preliminary selection of Rules of Court, performed on the basis of that criterion;
  - o The possible procedure and modality for upgrading certain Rules of Court, including their potential complexity and feasibility;
  - o The interest in proceeding to upgrade certain Rules of Court.

4. An indication of the Group’s views and provisional conclusions on these issues can be found in the outline for a draft CDDH final report at Appendix III to the present document.

**Item 4: Organisation of future work**

5. The Group appointed Ms Cordelia EHRICH (Switzerland) as Rapporteur to prepare draft text for a CDDH final report, in accordance with the outline at [Appendix III](#) and subject to any guidance to be given by the DH-GDR and CDDH (see below). The Group invited the Rapporteur to present the draft at its next meeting, which it recalled was scheduled to take place from 15 to 17 October 2014.

6. The Group invited the DH-GDR, as a plenary committee, to examine closely its approach to and provisional conclusions on the various issues, with a view to guiding its future work; this guidance to be subsequently approved, if appropriate, by the CDDH. In this connection, it took note of the information provided by the Registry concerning the Court's intention to prepare, possibly before the summer, amendments to the Rules of Court in anticipation of the entry into force of Protocols no. 15 and 16, and in particular the fact that the Court would engage in consultations as part of this exercise. The nature of these consultations could be a valuable indication of the Court's willingness to respond to the States' concerns and of its future practice when amending the Rules of Court; in this respect, it could influence the choice of avenues to be followed in future work.

**Item 5: Adoption of the conclusions and meeting report**

7. The Group adopted the final decisions of the meeting.

Appendix I**List of participants / Liste des participants****MEMBERS / MEMBRES****CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

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

**ESTONIA / ESTONIE**

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

**FINLAND / FINLANDE**

Mr Jaakko HALTTUNEN, Deputy Director, Legal Service, Ministry of Foreign Affairs

**FRANCE**

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

**GREECE / GRECE**

Ms Ourania PATSOPOULOU, Senior Adviser, Deputy to the Permanent Representative, Permanent Representation of Greece to the Council of Europe

**ITALY / ITALIE**

Ms Maria Teresa LEACCHE, Ministry of justice

Mr Gianluca MAURO PELLEGRINI, Co-agent du Gouvernement devant la CEDH, Représentation Permanente d'Italie

**LATVIA / LETTONIE**

Mr Emils PLAKSINS, Deputy Head of the Office of the Government Agent, Ministry of Foreign Affairs

**THE NETHERLANDS / PAYS-BAS**

Ms Noortje VAN RIJSSEN, Ministry of Foreign Affairs

Ms Clarinda COERT, Ministry of Justice

**POLAND / POLOGNE**

Ms Agnieszka KOZINSKA, Head of Division for Civil and Administrative Proceedings, Department for the Proceedings before International Human Rights Protection Bodies, Ministry of Foreign Affairs

Ms Joanna PILASZEK, Trainee, Ministry of Foreign Affairs

**ROMANIA / ROUMANIE**

Ms Sorana POPA, Juriste, Bureau de l'Agent du Gouvernement, Ministère des Affaires Etrangères

**RUSSIAN FEDERATION / FEDERATION DE RUSSIE**

Mr Nikolay MIKHAILOV, Deputy Head of the Office of the Russian Federation at the European Court of Human Rights, Ministry of Justice

Mr Stanislav KOVPAK, Delegation of the Ministry of Justice of Russia to the Permanent Mission of the Russian Federation

Mr Maxim TOKAREV, Delegation of the Ministry of Justice of Russia to the Permanent Mission of the Russian Federation

**SWITZERLAND / SUISSE**

Ms Cordelia EHRICH, Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ

**TURKEY / TURQUIE**

Ms Aysen EMÜLER, Représentation permanente de la Turquie auprès du Conseil de l'Europe

**UNITED KINGDOM / ROYAUME-UNI**

Ms Anna McLEOD, Assistant Legal Adviser, Counter-Terrorism and Human Rights Team, FCO Legal Directorate, Foreign and Commonwealth Office

**OBSERVERS / OBSERVATEURS****HOLY SEE/ SAINT SIÈGE****JAPAN / JAPON**

Mr Takaaki SHINTAKU, Consul (Attorney), Consulate-General of Japan, Consulate-General of Japan

**MEXICO/ MEXIQUE****EUROPEAN UNION / UNION EUROPEENNE****Amnesty International****Conference of INGOs of the Council of Europe / Conférence des OING du Conseil de l'Europe****UNHCR****Conference of INGOs of the Council of Europe / Conférence des OING du Conseil de l'Europe**

Mr Jean-Bernard MARIE

**HELP Network Consultative Board / Comité Consultatif du réseau HELP**

Mr Grzegorz BORKOWSKI, Coordinator of the HELP consultative Board, Judge, National School of Judiciary and Public Prosecution

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

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

**Parliamentary Assembly/Assemblée parlementaire****Department for the Execution of Judgments of the Court/ Service de l'Exécution des Arrêts de la Cour**

<b>SECRETARIAT</b>
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**DG I – Human Rights and Rule of Law / Droits de l’Homme et Etat de droit Council of Europe / Conseil de l’Europe, F-67075 Strasbourg Cedex**

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, Secretary of the GT-GDR-G / Secrétaire du GT-GDR-G

Mme Corinne GAVRILOVIC, Assistant / Assistante, 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

**INTERPRETERS / INTERPRÈTES**

Ms Lucie DE BURLET  
Mr Grégoire DEVICTOR  
Mr Luke TILDEN

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

- Draft annotated agenda GT-GDR-G(2014)OJ001
- Report of the 79<sup>th</sup> meeting of the CDDH (26-29 November 2013) CDDH(2013)R79
- Report of the 78<sup>th</sup> meeting of the CDDH (25-28 June 2013) CDDH(2013)R78
- Report of the 5<sup>th</sup> meeting of the DH-GDR (29-31 October 2013) DH-GDR(2013)R5
- Brighton Declaration CDDH(2012)007

Information document

- Committee of Ministers' Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods CDDH(2011)012

**Item 2: Terms of reference and working methods**Reference document

- Terms of reference of the Committee of Experts on the reform of the Court (DH-GDR) for 2014-2015 DH-GDR(2014)001

**Item 3: The procedure for the amendment of the Rules of Court and the possible 'upgrading' to the Convention of certain provisions of the Rules of Court**Reference documents

- Report of the 5<sup>th</sup> meeting of the DH-GDR (29-31 October 2013) DH-GDR(2013)R5
- Rules of Court
- Compendium of States' contributions GT-GDR-G(2014)001
- 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 4:**      **Organisation of future work**

**Item 5:**      **Other business**

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

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### Appendix III

## **Outline for a draft CDDH Final Report**

### I. INTRODUCTION

- Recall the terms of reference and explain the CDDH's understanding of them, in the light of the guidance given by the DH-GDR and confirmed by the CDDH
- Recall previous CDDH (DH-PS) work on the issue of a simplified procedure for the amendment of certain provisions of the ECHR, including the possible upgrading of certain Rule of Court, and difficulties encountered

### II. THE PROCEDURE FOR AMENDMENT OF THE RULES OF COURT

*Reasons for revising the procedure for the amendment of the Rules of Court and the objectives pursued in doing so*

- Differing experiences of the States in relation to dialogue with the Court on amendments to the Rules of Court (reference to para. 12.c)iii) of the Brighton Declaration)
- Absence of constant, formalised practice for consultation of the States, and the States' wish to be involved in the amendment procedure
- Absence of reasons given by the Court for not giving effect to States' comments
- As a matter of principle, regardless of the Court's actual practice, the Court should develop its procedural rules in consultation with those subject to its jurisdiction

*Proposed characteristics of a new procedure for amendment of the Rules of Court*

- Consensus on the fact that the final decision should fall to the Court, but also that the Court should only make an amendment that has not been opposed by the States
- The choice of procedure would depend on the modality of introduction of a new procedure (as elaborated below)
- As a minimum, there should be systematisation of the best of current practice, notably the Court always informing the States of its intention to make any amendment to the Rules of Court and allowing the States an opportunity to submit contributions; although it is noted that this would not respond to all the concerns expressed
- Basic elements of the most flexible 'new' procedure: the Court systematically informs the States of its intention to amend the Rules; it provides a draft text as a basis for discussion; the States have the opportunity to present both individual and collective positions; and the Court organises a meeting at which it presents the final text and explains why it has followed a particular approach and, if relevant, why it has not given effect to comments made by States
- A yet more inclusive and formalised procedure could be inspired by that applicable to the Rules of Procedure of the Court of Justice of the EU (see Article 253 of the Treaty on the Functioning of the EU): e.g. amendment proposal made by the Court or (a) State(s); decision by the CM on whether or not to pursue the proposal; examination of the proposal by a Committee of Government Agents/ the CDDH, with consultation of civil society and, for proposals made by States, of the Court; approval of the draft amendment by the CM; possible adoption by the Court of the amendment as approved by the CM (the introduction of such a procedure would require amendment of the ECHR)

- The proposed consultation procedures may not be necessary with respect to all possible amendments of all of the rules, this necessity to be evaluated in the final report
- In the case of the more flexible new procedure, identification of the circumstances in which it should be applied could be left to the Court's absolute discretion or regulated through application by the Court of a predetermined selection criterion (as to a possible selection criterion, see below)
- With respect to both the more flexible and more formalised new procedures, there could be identification in advance of every rule to which the new procedure should apply
- In all cases, the States could have the possibility of asking the Court to be consulted

*Criterion to be applied in order to identify specific rules suitable to be subject to a new amendment procedure*

- Essential principle: does this rule have an effect on the rights and obligations of the parties to a case before the Court?
- The criterion should not lead to the inclusion of too large a number of rules: only those whose effect on the rights and obligations is significant and not merely technical should be included

*Preliminary identification of relevant rules*

- (see the table below)

*Possible modalities for the introduction of a new amendment procedure*

- With respect to the 'systematisation' and more flexible options, this could be by modification by the Court of its current practice or announcement by the Court of an intention to modify its practice (could be by informal agreement with the States, or the introduction of a new provision in the Rules of Court themselves, e.g. by revision of Rule 110)
- With respect to the more formalised option, this would require amendment of Article 25 ECHR [which could be envisaged, if necessary, in the context of future work on follow-up to the CDDH final report on the longer-term future of the Convention system and the Court (work of GT-GDR-F)]

### III. THE 'UPGRADING' OF CERTAIN ESSENTIAL PRINCIPLES FOUND IN THE RULES OF COURT

*Criterion to be applied in order to identify the essential principles that should be 'upgraded'*

- Does the essential principle set out a right or obligation that does not have a sufficient legal basis in the Convention?

*Preliminary selection of essential principles*

- (see table below)

*Procedure and possible modalities for upgrading*

- Given the difficulties encountered during previous CDDH (DH-PS) work on a simplified amendment procedure, only upgrading to the Convention is envisagable

*The interest in proceeding to upgrade certain principles*

- Most experts were in favour of upgrading, so that the essential principles of the rules identified would thenceforth have a sufficient legal basis in the Convention

- Some experts expressed their reluctance, insofar as they saw no practical interest in the exercise and had doubts as to its feasibility

Provision	Title	New amendment procedure?	Upgrade?
Rule 29	<i>Ad hoc</i> judges	X	
Rule 30	Common interest	X	
Rule 31	Possibility of particular derogations	X	
Rule 32	Practice directions	X	
Rule 34	Use of languages	X	
Rule 35	Representation of Contracting Parties	X	
Rule 36	Representation of applicants	X	
Rule 39	Interim measures	X	X
Rule 43	Striking out and restoration to the list	X	
Rule 44	Third-party intervention	X	
Rule 46	Contents of an inter-State application	X	
Rule 47	Contents of an individual application	X	
Rule 52A	Procedure before a single judge	X	
Rule 53	Procedure before a Committee	X	
Rule 54	Procedure before a Chamber	X	
Rule 54 A	Joint examination of admissibility and merits	X	
Rule 55	Pleas of inadmissibility	X	
Rule 58	Inter-State applications	X	
Rule 59	Individual applications	X	
Rule 60	Claims for just satisfaction	X	
Rule 61	Pilot-judgment procedure	X	X
Rule 62	Friendly settlement	X	
Rule 62 A	Unilateral declaration	X	X
Rule 71	Applicability of procedural provisions	X	
Rule 72	Relinquishment of jurisdiction in favour of the Grand Chamber	X	
Rule 73	Request by a party for referral of a case to the Grand Chamber	X	
Rule 79	Request for interpretation of a judgment	X	X
Rule 80	Request for revision of a judgment	X	X
Rule 81	Rectification of errors in decisions and judgments	X	
Rule 91		X	
Rule 93		X	

Rule 94		X	
Rule 95		X	
Rule 97		X	
Rule 98		X	
Chapter XI	Legal aid	X	X
Rule 110	Amendment or suspension of a Rule	X	
Rule 111	Entry into force of the Rules	X	
(Annex to the Rules)			
A1	Investigative measures	X	
A2	Obligations of the parties as regards investigative measures	X	
A4	Conduct of proceedings before a delegation	X	
A7	Hearing of witnesses, experts and other persons by a delegation	X	