



Strasbourg, 14 December 2012

GT-GDR-C(2012)R1

STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

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

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**1<sup>st</sup> Meeting**

**Strasbourg**

**Wednesday 12 December – Friday 14 December 2012**

**Agora, Meeting Room G02**

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**MEETING REPORT**

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

1. Drafting Group C on the reform of the Court (GT-GDR-C) held its 1<sup>st</sup> meeting in Strasbourg from 12-14 December 2012 with Mr Martin KUIJER (The Netherlands) in the chair. The list of participants appears at Appendix I. The agenda, as adopted, appears at Appendix II. The Group elected Mrs İsik BATMAZ (Turkey) as Vice-chairperson. It agreed to admit the UNHCR to its meetings as an observer on an ad hoc basis, notably in relation to Item 3 of its agenda. It heard a welcoming presentation from Mr Jörg POLAKIEWICZ, Head of the Human Rights Policy and Development Department.

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

2. The Group exchanged views on its terms of reference, in particular procedure and working methods. It recalled that it had two meetings to complete its work, with the second and final one to take place on 30 January – 1 February 2013. It considered that it should prepare two draft CDDH reports, one on each of the substantive agenda items, for presentation to the DH-GDR at its meeting on 13-15 February 2013.

3. As regards the report on interim measures under Rule 39 of the Rules of Court, the Group appointed Mrs Yasmine AHMED (United Kingdom) as its Rapporteur. It provisionally agreed that the report should contain both factual information on the questions posed in the Brighton Declaration (see doc. CDDH(2012)007, para. 12.e)) as to “whether there has been a significant reduction in their numbers and whether applications in which interim measures are applied are now dealt with speedily” and proposals addressed to the Committee of Ministers, some of which would relate to action that could be taken by the member States, whilst others could culminate in invitations to the Court. It considered that its preparatory work contributed to the dialogue between the States Parties to the Convention and the Court on the question of interim measures and should be recorded as such in the draft CDDH report. It recalled that the DH-GDR had considered that the question of the legal status of interim measures was associated with that of a simplified procedure for amendment of certain provisions of the Convention, further work on which had been postponed by the Committee of Ministers until work on priority issues had been completed.

4. As regards the report on a ‘representative application procedure’, the Group appointed Mr Morten RUUD (Norway) as its Rapporteur. It recalled that its terms of reference required it to consider both the advisability and the modalities of such a procedure (cf. Brighton Declaration, doc. CDDH(2012)007, para. 20.d)).

**Item 3: Interim measures under Rule 39 of the Rules of Court**

5. The Group exchanged views on the issues raised in the instructions given by the DH-GDR (see doc. DH-GDR(2012)R2, para. 13) and the written contributions submitted by experts in advance of the meeting (see doc. GT-GDR-C(2012)010), along with others raised during the meeting. It took note of a letter, with enclosures, sent to the Chairperson by the President of the Parliamentary Assembly’s Committee on Migration, Refugees and Displaced Persons (see doc. GT-GDR-C(2012)011). It took note of the extensive information provided by Mrs Sophie PIQUET of the Registry, as well as that contained in the information document submitted by the Registry in advance of the meeting (see doc. GT-GDR-C(2012)009). It grouped the various issues as they appear at Appendix III, and instructed its Rapporteur to reflect each of them in the draft CDDH report, presenting the information

obtained and conclusions drawn during the meeting, along with any written contributions or further information from the Registry in advance of the next meeting.

**Item 4: “Representative application procedure”**

6. The Group exchanged views on the issues raised in the instructions given by the DH-GDR (see doc. DH-GDR(2012)R2, para. 15) and the written contributions submitted by experts in advance of the meeting (see doc. GT-GDR-C(2012)010), along with others raised during the meeting. It heard a presentation from Mr Riccardo PRIORE of the Secretariat of the European Committee of Social Rights concerning the collective complaints procedure under the optional protocol to the European Social Charter. It took note of the extensive information provided by Mr John DARCY of the Registry. It grouped the various issues as they appear at Appendix IV, and instructed its Rapporteur to reflect each of them in the draft CDDH report, presenting the information obtained and conclusions drawn during the meeting, along with any written contributions or further information from the Registry in advance of the next meeting.

**Item 5: Organisation of future work**

7. The Group invited any interested participant to submit any further comments or proposals in writing to the Secretariat ([david.milner@coe.int](mailto:david.milner@coe.int)) before Friday 4 January 2013, with a view to their incorporation into the draft reports to be examined at the next meeting. It thanked the representatives of the Registry for their willingness to provide in advance of the next meeting further information in response to certain issues raised at the present meeting.

Appendix I**List of participants****MEMBERS / MEMBRES****ARMENIA / ARMENIE**

Mr Arthur GRIGORYAN, Second Secretary, Legal Department, Ministry of Foreign Affairs of the Republic of Armenia, Government Building N2, Republic Square, Yerevan 0010

**BULGARIA / BULGARIE**

Mme Yordanka PARPAROVA, Direction des droits de l'homme, Ministère des Affaires Étrangères 2, rue Aleksandar Zhendov, Sofia 1040

**FINLAND / FINLANDE**

Mr Arto KOSONEN, Government Agent, Director of the Unit for Human Rights Court and Conventions, Legal Service, Ministry of Foreign Affairs, P.O. Box 411, FI-00023 Valtioneuvosto

**FRANCE**

Mme Emmanuelle TOPIN, Conseiller, Direction des affaires juridiques, Sous-direction des droits de l'Homme, Ministère des affaires étrangères, 57 boulevard des Invalides, F-75007 Paris

**GREECE / GRECE**

Mr Ioannis BAKOPOULOS, legal assistant in the Legal Council of the Greek State, Office of the Legal Counselor in the Ministry of Foreign Affairs, Akadimias 3, 10671 Athens

**ITALY / ITALIE**

Mrs Teresa LEACCHE, Ministry of Justice, via Arenula 70, 00186 Roma

**THE NETHERLANDS / PAYS-BAS**

Mr Martin KUIJER, Chairperson of the GT-GDR-C / Président du GT-GDR-C, Senior legal adviser human rights law, Ministry of Justice, Legislation Department, room H.511, Schedeldoekshaven, P.O. Box 20301, 2500 BZ The Hague

Mrs Françoise SCHILD, Legal counsel, International Law Division, Human Rights Cluster, Ministry of Foreign Affairs of the Netherlands, P.O. Box 20061, 2500 EB The Hague

**NORWAY / NORVEGE**

Mr Morten RUUD, Norwegian Ministry of Justice and Public Security, Legislation Department, Oslo

**POLAND / POLOGNE**

Mrs Marta KACZMARSKA, Senior Expert, Department for the Proceedings before International Human Rights Protection Bodies, Ministry of Foreign Affairs of Poland, Al. J. Ch. Szucha 23, 00-580 Warsaw

**ROMANIA / ROUMANIE**

Mrs Cristina MORARIU, Legal Adviser, Ministry of Foreign Affairs, Bucarest

**RUSSIAN FEDERATION / FEDERATION DE RUSSIE**

Mr Vladislav ERMAKOV, Deputy to the Permanent Representative, Chancery, 75 allée de la Robertsau, 67000 Strasbourg

**SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE**

Mr Juraj KUBLA, Ministry of Foreign Affairs of the Slovak Republic, Human Rights Department, Hlboka cesta 2, 833 36 Bratislava

**SWEDEN / SUEDE**

Mrs Sara FINNIGAN, Permanent Representation to the Council of Europe, 67 allée de la Robertsau, F-67000 Strasbourg

**SWITZERLAND / SUISSE**

Mme Cordélia EHRICH, Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ, Domaine de direction droit public, Droit européen et protection internationale des droits de l'homme, Bundesrain 20, 3003 Berne

**TURKEY / TURQUIE**

Mrs Gönül ERÖNEN, Adjointe au Représentant permanent de la Turquie auprès du Conseil de l'Europe, 23, boulevard de l'Orangerie, F-67000 Strasbourg

Mr Nurullah YAMALI, Counsellor, Permanent Representation of Turkey to the Council of Europe, 23, boulevard de l'Orangerie, F-67000 Strasbourg

Mme Işık BATMAZ, Legal Expert, Représentation permanente de la Turquie auprès du Conseil de l'Europe, 23, boulevard de l'Orangerie, F-67000 Strasbourg

**UNITED KINGDOM / ROYAUME-UNI**

Mrs Yasmine AHMED, Assistant Legal Adviser, UK Foreign and Commonwealth Office Foreign & Commonwealth Office, King Charles Street, London SW1A 2AH

**OBSERVERS / OBSERVATEURS****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

Mme Sophie PIQUET, Head of Division / Chef de division, European Court of Human Rights / Cour européenne des droits de l'homme

**PARLIAMENTARY ASSEMBLY/ASSEMBLÉE PARLEMENTAIRE**

Mr Mark NEVILLE, Head of Migration and Equality Department / Chef du Service des Migration et de l'Egalité

**DEPARTMENT OF THE EUROPEAN SOCIAL CHARTER / SERVICE DE LA CHARTE SOCIALE EUROPÉENNE**

Mr Riccardo PRIORE, Division II Collective Complaints

**OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES / OFFICE DU HAUT COMMISSAIRE DES NATIONS UNIES POUR LES RÉFUGIÉS (UNHCR)**

Mr Samuel BOUTRUCHE, Legal Associate, UNHCR Representation to the European Institutions in Strasbourg

**SECRETARIAT**

**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 Jörg POLAKIEWICZ, 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, Administrator / Administrateur, Human Rights Intergovernmental Cooperation  
Division / Division de la coopération intergouvernementale en matière de droits de l’Homme,  
Secretary of the DH-GDR / Secrétaire du DH-GDR

Mme Virginie FLORES, Administrator / Administrateur, Human Rights Intergovernmental  
Cooperation Division / Division de la coopération intergouvernementale en matière de droits de  
l’Homme

Mlle Haldia MOKEDDEM, Assistant / Assistante, Human Rights Intergovernmental Cooperation  
Division / coopération intergouvernementale en matière de droits de l’Homme

**INTERPRETERS/INTERPRÈTES**

Mr Luke TILDEN

Ms Lucie DE BURLET

Mr Jean-Jacques PEDUSSAUD

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

- Draft annotated agenda GT-GDR-C(2012)OJ001
- Report of the 75<sup>th</sup> meeting of the CDDH (19-22 June 2012) CDDH(2012)R75
- Report of the 2<sup>nd</sup> meeting of the DH-GDR (29-31 October 2012) DH-GDR(2012)R2
- Report of the 1<sup>st</sup> meeting of the DH-GDR (17-20 January 2012) DH-GDR(2012)R1
- 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) CDDH(2012)009REV.
- Izmir Declaration CDDH(2011)010
- Committee of Ministers' Resolution on intergovernmental committees and subordinate bodies, their terms of reference and working methods CM/Res(2011)24

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

- Follow-up to the High-level Conference on the Future of the European Court of Human Rights (Brighton, 18-20 April 2012) CDDH(2012)009REV.

**Item 3: Interim measures under Rule 39 of the Rules of Court**Reference documents

- 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
- Compilation of written contributions (prepared by the Secretariat) GT-GDR-C (2012)010
- 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

#### **Item 4: "Representative application procedure"**

##### Reference documents

- 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
- Compilation of written contributions (prepared by the Secretariat) GT-GDR-C (2012)010

#### **Item 5: Organisation of future work**

#### **Item 6: Other business**

#### **Item 7: Adoption of the conclusions and meeting report**

##### Working document

- Draft report of the 1<sup>st</sup> meeting of the GT-GDR-B (12-14 December 2012) GT-GDR-B(2012)R1



### Appendix III

#### **Issues for inclusion in the draft CDDH report on interim measures**

- I. Provision of the necessary factual information
  - *The evolution in the number of interim measures requested/ granted/ rejected*
  - *Why are so many requests considered as incomplete?*
  - *Why are so many applications not pursued?*
  - *How does the Court deal with the application after the imposition of an interim measure?*
  
- II. Issues relating to the procedure leading up to the moment the Court has to deal with a request for an interim measure
  - *Domestic remedies (Izmir Declaration: “Stresses the importance of States Parties providing national remedies, where necessary with suspensive effect, which operate effectively and fairly and provide a proper and timely examination of the issue of risk in accordance with the Convention and in light of the Court’s case law”)*
  - *Timely notification of removal and enforcements actions by the authorities (see also the issue of the Court’s deadlines)*
  
- III. Issues relating to awareness of the Court’s procedure: availability of precise information for the benefit of potential applicants and their legal representatives
  - *the requirements surrounding the request for imposition of an interim measures, for example concerning deadlines*
  - *the explicit consent of the applicant*
  - *whether the legal representative is still in touch with the applicant*
  - *whether the applicant is still within the jurisdiction of the High Contracting Party concerned*
  - *whether there is still a domestic remedy (with suspensive effect) available*
  - *whether a concrete date is known on which the expulsion will take place (cf. Court’s deadlines), etc.*
  
- IV. Issues relating to the way in which a request for an interim measure is processed by the Court
  - *Why is the one-day deadline not always applied?*
  - *Adversarial elements in the procedure for deciding a request for an interim measure, including the issue whether there should be a mechanism for a State to challenge an interim measure once it has been imposed*
  - *Why are not all cases in which interim measures are imposed communicated immediately?*
  - *For cases that are not communicated after imposition of an interim measure, should there be an “intermediate check”?*
  - *On what grounds may a request be granted (other than Articles 2 or 3)?*
  - *Whether the Court could give reasons for the imposition of an interim measure*
  - *Quasi-systemic approach (para. 41 doc. GT-GDR-C(2012)009)*
  - *Guaranteeing coherency within the Court’s practice (i.e. the ‘centralised procedure’)*
  - *Duration of an imposed interim measure: ‘for the duration of the proceedings’ / ‘until further notice’ (which may go beyond judgment), or until a given date*
  - *Is the Court bound by the arguments put forward by the applicant?*

- *Should the interim measure mention the name of the judge?*

V. The effect of an imposed interim measure

- *towards the High Contracting Party concerned: legally binding (Mamatkulov) – see Izmir Declaration (“reiterates the requirement for States Parties to comply with them”) as part of the right of individual petition*
- *does imposition of an interim measure imply that an applicant is then required to exhaust non-suspensive domestic remedies?*
- *can the Court order “positive” interim measures requiring the State to treat the applicant in a certain way*
- *how should the State treat the applicant following imposition of an interim measure (reception facilities etc.)?*
- *vis-à-vis the ensuing examination of the application by the Court: how does the Court subsequently deal with applications in which an interim measure has been indicated? Application of Rule 41*

VI. Improved communication between the Court and Member States / applicants concerning interim measures

- *the Court’s publication of half-yearly statistics – wish to have information communicated concerning requests for interim measures which have been denied by the Court*
- *the Practice Direction, including remaining potential for the Court to clarify its substantive assessment of requests for interim measures*
- *the manner in which a specific interim measure is communicated towards the High Contracting Party concerned*

VII. Interim measure preventing removal to another member State where the applicant would be at risk of irreparable harm

- *Mention issue of interim measures relating to return to another High Contracting Party*

Appendix IV

**Issues for inclusion in the draft CDDH report on  
a “representative application procedure”**

I. This theme concerns large inflows of ‘similar’ applications. The aim is transparently to ensure adequacy and efficiency in the treatment of these cases. The assumption is that a representative application procedure would be something different (“building upon the pilot judgment procedure”). There is a link to subsidiarity relating to the Respondent State’s obligation to take remedial action at the domestic level, thereby preventing further inflow of such applications.

- ‘Similar’ = “Applications that allege the same violation against the same Respondent State”
- Avoid use of the term “repetitive applications” in this context

II. Description of the Court’s current procedures

- Pilot judgment procedure and variants (e.g. case v. Serbia where “pilot judgment procedure” but no mention of r.61)
- Ukrainian section’s expedited Committee-procedure approach in cases concerning non-execution of domestic court judgments
- *M.S.S. v. Belgium and Greece* approach: lead judgment, other applications adjourned; judgment executed in such a way as to resolve also other applications, which are then struck off
- *Demopoulos & otrs v. Turkey* (access to property in the northern part of Cyprus); 9 cases taken by Court as ‘representative’ of situations of c. 1000 in total
- *Gaglione v. Italy* (one judgment, multiple applicants; “joinder”)
- Hungarian pension cases
- In what circumstances does the Court use which procedure?
- What lessons have been learned from use of these procedures?
- Are there any types/ category of case that cannot be resolved by existing procedures?
- Is the Court encountering any difficulties in dealing with the Hungarian pension cases?

III. Is there any need for a new mechanism in addition to these current procedures?

- There is no significant added value at the moment because the practice within the Court has developed over time; the procedural tools exist (also to deal with repetitive and mass applications). The problem is resources to deal with the volume of cases
- Most states have little or no experience vis-à-vis the existing procedures; too early to come to any definite decision. Court may perceive situation differently in future.

IV. What might a representative application procedure be; how might it “build upon”/ differ from the pilot judgment procedure?

- Possible relationship to/ distinction from class action; collective complaints; default judgment
- Possible distinguishing feature(s): non-registration of other applications; making certain features of the existing procedures more compulsory?

V. What would be the effect of a representative application procedure on the Convention system?

- Effect on the right of individual petition