



Strasbourg, 16 May 2014

GT-GDR-F(2014)R2

STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

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

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**2<sup>nd</sup> Meeting**

**Strasbourg**

**Wednesday 14 May – Friday 16 May 2014**

**Agora, Meeting Room G02**

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**MEETING REPORT**

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**Item 1:      Opening of the meeting and adoption of the agenda**

1.      Drafting Group F on the reform of the Court (GT-GDR-F) held its 2<sup>nd</sup> meeting in Strasbourg from 14-16 May 2014 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](#).

**Item 2:      Examination of the results of the Oslo Conference on the long-term future of the European Court of Human Rights**

2.      On the basis notably of the published proceedings, the Group examined the results of the Oslo Conference on the long-term future of the European Court of Human Rights, organised by PluriCourts under the auspices of the Council of Europe on 7-8 April 2014, with a view in particular to identifying elements of especial interest to its work.

**Item 3:      Presentations by invited ‘ad hoc experts’**

3.      Following presentation of their proposals, the Group exchanged views with Ms Nuala MOLE (AIRE Centre), Professor Marten BREUER (University of Konstanz) (see doc. GT-GDR-F(2014)009) and Professor Elisabeth LAMBERT ABDELGAWAD (University of Strasbourg).

**Item 4:      Advantages and disadvantages of the current system**

4.      Further to decisions at its first meeting, the Group exchanged views on the question of the advantages and disadvantages of the current system, which it had provisionally determined would be addressed in Section IV of the draft CDDH final report. On reflection, it agreed that a more suitable title for this section would be “Strengths and weaknesses”.

5.      The Group agreed on guidance and an aide-memoire to the Rapporteur, as they appear at [Appendix III](#), and appointed Ms Katja BEHR (Germany) as Rapporteur to prepare draft text for the final report on that basis.

**Item 5:      Possibilities for preserving (and reinforcing) the current system**

6.      Further to decisions at its first meeting, the Group exchanged views on the question of possibilities for preserving and reinforcing the current system, which it had provisionally determined would be addressed in Section V of the CDDH final report.

**Item 6:      Organisation of future work**

7.      The Group decided to continue its discussions under Item 5 at its next meeting (24-26 September 2014). It therefore decided to defer appointment of a Rapporteur for Section V of the draft CDDH final report and adoption of any conclusions of its discussions so far. Instead, the Secretariat was instructed to prepare a summary of the views expressed at the meeting, for distribution prior to the next meeting. The Group invited its members to submit written contributions in advance of the next meeting on both the Secretariat’s summary and other issues on the list distributed during the present meeting (see doc. GT-GDR-F(2014)misc.1), as well as any proposals for other issues that could be examined under this item.

8. In response to a proposal from Sir Nicolas BRATZA, the Group decided to invite Mr Erik FRIBERGH, Registrar of the Court, and Mr Christos GIAKOUMOPOULOS, Director, Human Rights to its next meeting to provide information on the situation of the Court and the Committee of Ministers (as regards its supervision of Court judgments under article 46 of the Convention). During the course of the meeting, the Group also prepared a preliminary list of questions to which it invited Mr Fribergh and Mr Giakoumopoulos to respond (see doc. GT-GDR-F(2014)misc.2), and invited its members to submit any proposals for additional questions to the Secretariat ([david.milner@coe.int](mailto:david.milner@coe.int)) by Monday 26 May 2012. It also invited Mr Fribergh and Mr Giakoumopoulos to submit written presentations in advance of the next meeting.

9. As regards invitations to ‘ad hoc experts’ to participate at the next meeting, the Group recalled that the CDDH had in April considered in particular inviting Ms Başak Çali and Ms Alice Donald to future meetings. It noted that there may be an interest in inviting the ‘ad hoc experts’ who participated to the present meeting also to the next, given that discussions under Item 5 of the current agenda would continue. The Group therefore invited its members to transmit to the Secretariat ([david.milner@coe.int](mailto:david.milner@coe.int)) any further proposals for persons to be invited to its next meeting, and invited the DH-GDR to decide on the matter at the latter’s next meeting (4-6 June 2014).

#### **Item 7: Other business**

10. The Group took note of information provided by Ms Helen LINDQUIST (Sweden) concerning a seminar on “the interplay between the European Court of Human Rights and National Courts”, organized by the Swedish Ministry for Foreign Affairs in collaboration with the Supreme Court and the Administrative Supreme Court in Stockholm on 19 May 2014, in connection with a visit by the President of the Court, Dean SPIELMANN and with the participation of Judges Helena JÄDERBLOM and Angelika NÜSSBERGER. The Group reiterated its invitation to members to provide information to the Secretariat ([david.milner@coe.int](mailto:david.milner@coe.int)) on any other relevant events taking place in their countries.

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Appendix I**List of participants****MEMBERS / MEMBRES****AUSTRIA / AUTRICHE**

Mr Ronald FABER, Federal Chancellery of the Republic of Austria, Constitutional Service,  
Head of Department V/5

**BELGIUM / BELGIQUE**

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

**CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE**

Mr Ota HLINOMAZ, Office of the Government Agent, Ministry of Justice

**DENMARK / DANEMARK**

Ms Josephine ILCHMANN JØRGENSEN, Head of Section, The Danish Ministry of Justice,  
EU Law and Human Rights Division

**FINLAND / FINLANDE**

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

**FRANCE**

Mme Elodie JUNG, Ministère des Affaires étrangères, Direction des affaires juridiques, Sous-  
direction des droits de l'Homme

**GERMANY / ALLEMAGNE**

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

**GREECE / GRÈCE**

Ms Ourania PATSOPOULOU, Senior Adviser, Office of the Government Agent

**ITALY / ITALIE**

Mr Paolo EPIFANI, Ministère des affaires étrangères

**LATVIA / LETTONIE**

Mrs Kristine LICE, Government Agent, Representative of the Government of Latvia before  
International Human Rights Organizations, Ministry of Foreign Affairs

**LUXEMBOURG / LUXEMBOURG**

Mme Brigitte KONZ, Juge de Paix directrice

**THE NETHERLANDS / PAYS-BAS**

Mr. Martin KUIJER, Chairperson of Drafting Group "F"/Président du Groupe de rédaction  
"F", Senior legal adviser human rights law, Ministry of Justice, Legislation Department

Ms Liselot EGMOND, Deputy Agent for the Government of the Netherlands, Ministry of Foreign Affairs

**NORWAY / NORVÈGE**

Ms Helle Aase FALKENBERG, Legal adviser, Ministry of Justice

**POLAND / POLOGNE**

Mrs Eliza SUCHOŹEBRSKA, Government Co-Agent of Poland before the European Court of Human Rights, Department of Proceedings before International Human Rights Protection Bodies, Ministry of Foreign Affairs of Poland

**PORTUGAL**

M. Paulo NEVES POCINHO, Représentant permanent adjoint du Portugal

**ROMANIA / ROUMANIE**

Ms Irina CAMBREA, Government Agent, Ministry of Foreign Affairs

**RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE**

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

Mr Maxim TOKAREV Deputy to the Permanent Representative, Permanent Representation of Russian Federation to the Council of Europe

Mr Vitaly NEVZOROV, Deputy to the Permanent Representative, Permanent Representation of Russian Federation to the Council of Europe

**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 / SUÈDE**

Ms Helen LINDQUIST, Special Advisor, Department for International Law, Human Rights and Treaty Law, Ministry for Foreign Affairs

**SWITZERLAND / SUISSE**

Mr Frank SCHÜRMAN, Agent du Gouvernement, Chef de l'Unité Droit européen et Protection Internationale des droits de l'Homme, Office fédéral de la justice

**TURKEY / TURQUIE**

Ms Ayşen EMÜLER, Legal Expert, Permanent Representation of Turkey to the Council of Europe

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

**UNITED KINGDOM / ROYAUME-UNI**

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

**EXTERNAL EXPERTS / EXPERTS EXTERNES**

Sir Nicolas BRATZA, Former President of the European Court of Human Rights

Mr Alvaro GIL-ROBLES, Former Commissioner for Human Rights

Mr Christophe GRABENWARTER, Constitutional Court judge and member of the Venice Commission

Mr Bahadır KILINÇ, Deputy Secretary General, Constitutional Court of the Republic of Turkey

Mr Alain LACABARATS (*Apologised*)

Mr Giorgio MALINVERNI, Professeur honoraire de l'Université de Genève, Ancien Juge à la Cour européenne des droits de l'homme

Ms Tatiana NESHATAEVA, Vice-president of the Court of the Eurasian Economic Community

**AD HOC EXPERTS / EXPERTS AD HOC**

Professor Martin BREUER, Universität Konstanz

Mme Elisabeth LAMBERT-ABDELGAWAD, Directrice de recherche au CNRS

Ms Nuala MOLE, AIRE Centre

**OTHER PARTICIPANT / AUTRE PARTICIPANT**

Ms Vasilisa NESHATAEVA

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

Mme Andreea POPESCU

**JAPAN / JAPON**

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

**EUROPEAN UNION / UNION EUROPÉENNE**

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

Mr Jonathan BERNAERTS, European Union delegation to the Council of Europe

**AMNESTY INTERNATIONAL**

Mr Sébastien RAMU, Senior Legal Adviser, Law and Policy

**CONFERENCE OF INGOS OF THE COUNCIL OF EUROPE / CONFÉRENCE DES  
ONG DU CONSEIL DE L'EUROPE**

M. Jean-Bernard MARIE

**OPEN SOCIETY JUSTICE**

Mr Christian DE VOS, advocacy officer

Mr Aidan HARRIS

**INTERNATIONAL COMMISSION OF JURISTS (ICJ) / COMMISSION  
INTERNATIONALE DE JURISTES (CIJ)**

Mrs Róisín PILLAY, Senior Legal Adviser, Europe Programme

**EUROPEAN NETWORK OF HUMAN RIGHTS INSTITUTIONS (ENNHRI) /  
RÉSEAU EUROPÉEN DES INSTITUTIONS NATIONALES DES DROITS DE  
L'HOMME**

Mr Bruce ADAMSON, Senior Enquiries and Legal Officer, Irish Human Rights Commission

**REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / GREFFE DE LA  
COUR EUROPÉENNE DES DROITS DE L'HOMME**

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

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

**DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE COURT /  
SERVICE DE L'EXÉCUTION DES ARRÊTS DE LA COUR**

Ms Geneviève MAYER, Head of Department

Mr Fredrik SUNDBERG, Deputy to the Head of Department

**SECRETARIAT**

**DG I – Human Rights and Rule of Law / Droits de l'homme et État de droit  
Council of Europe / Conseil de l'Europe, F-67075 Strasbourg Cedex**

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, 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

Lucie DE BURLET

Isabelle MARCHINI



Appendix II**Agenda (as adopted)****Item 1:       Opening of the meeting and adoption of the agenda and order of business**General background documents

- Draft annotated agenda GT-GDR-F(2014)OJ002
- Report of the 1<sup>st</sup> meeting of the GT-GDR-F (19-21 March 2014) GT-GDR-F(2014)R1
- Report of the 80<sup>th</sup> meeting of the CDDH (8-10 April 2014) CDDH(2014)R80
- 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
- Securing the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights (Decisions of the 122<sup>nd</sup> Session of the Committee of Ministers, 23 May 2012) CM/Dec(2012)122/2
- Decisions taken at the 124<sup>th</sup> Session of the Committee of Ministers (6 May 2014) GT-GDR-F(2014)013
- Terms of reference of the Committee of Experts on the reform of the Court (DH-GDR) for 2014-2015 DH-GDR(2014)001
- Expected results, working methods and schedule: proposals by the Chairperson of the GT-GDR-F GT-GDR-F(2014)001

**Item 2:       Examination of the results of the Oslo Conference on the long-term future of the European Court of Human Rights**Reference document

- Proceedings of the Oslo Conference on the long-term future of the European Court of Human Rights H/Inf(2014)1

**Item 3:       Presentations by invited ‘ad hoc experts’**Reference documents

- Compilation of the results of the ‘open call for contributions’ (prepared by the Secretariat) GT-GDR-F(2014)002
- Proceedings of the Oslo Conference on the long-term future of the European Court of Human Rights H/Inf(2014)1
- Previous contributions made in the context of on-going work by the ad hoc experts invited to the 2nd meeting GT-GDR-F(2014)008
- Taking Human Rights Seriously: Attributing Supremacy to the European Convention on Human Rights (PowerPoint presentation by GT-GDR-F(2014)009

**Item 4: Advantages and disadvantages of the current system**Reference documents

- 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
- Proceedings of the Oslo Conference on the long-term future of the European Court of Human Rights H/Inf(2014)1
- CDDH report containing elements to contribute to the evaluation of the effects of Protocol no. 14 to the Convention and the implementation of the Interlaken and Izmir Declarations on the Court’s situation CDDH(2012)R76 Addendum II
- 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
- 7<sup>th</sup> 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

**Item 5: Possibilities for preserving (and reinforcing) the current system**Reference documents

- 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
- Proceedings of the Oslo Conference on the long-term future of the European Court of Human Rights H/Inf(2014)1
- 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
- Compilation of written contributions received in advance of the 2<sup>nd</sup> meeting (prepared by the Secretariat) GT-GDR-F(2014)012 REV.
- Opinions of the Consultative Council of European Judges (CCJE) [\[Link\]](#)

**Item 6: Organisation of future work****Item 7: Other business**

### Appendix III

#### **Section IV – Strengths and weaknesses of the current system**

*Non-exhaustive guidance and aide-memoire for the Rapporteur*

- Overall approach:
  - o Consider the system as a whole – the Court is just a means to wider end; acknowledge fact of questions over what should be the aim of system
  - o Broad approach: are the Convention system/ its constituent elements suited or capable of achieving all of the current aims?
  - o Specific approach: what are the strengths and weaknesses of the current system/ its constituent elements, notably in relation to the expected future challenges? What are the positive and/ or negative aspects?
- General point – the greatest strength of the system is the fact of its existence!
  - o Europe-wide human rights protection system, enhancing respect for human rights & rule of law
- Question is whether the Convention system achieves its current aims
- Convention system an international system
  - o Strength – elevates system above national level, binding legal obligations under international law and collective enforcement by Parties
  - o Weakness – separates Convention system from domestic ownership
- A weakness in international law generally is the inability to enforce compliance in the absence of political will
  - o In the Convention context, this means how to find effective tools to deal with States Parties that refuse to execute a judgment
  - o More specifically, how to involve the decisive national actors in the implementation process and to induce them to take the timely and appropriate measures required by the Court's judgments? How better to assist them in this process? Weakness – the Council of Europe's limited capacity in that regard and the lack of appropriate domestic mechanisms to that effect
- Subsidiarity
  - o Strength – State Party has responsibility to find most appropriate measures for Convention implementation, given particularities
  - o Weakness – varying levels of implementation, varying levels of application at domestic level
- System based on judicial determination of complaints
  - o Strength – authority: procedural integrity, Applicants' trust in process
  - o Weakness – practical feasibility, given demands on the system
- Current model is in practice based on individual justice (not inter-state cases): strength or weakness?
- Limits to this model – especially in relation to repetitive case-load
- (In)ability of the Convention system to respond promptly to situations of large-scale violations (a weakness)
- The Convention focuses mainly on civil & political rights; social & economic rights have been elaborated in the Court's case-law

- Strength – Court maintains the Convention’s relevance (“living instrument”)
  - Weakness – in doing so, it may be considered to go beyond the intentions of the drafters
- Responses to the caseload problem – different elements:
  - Single Judge system:
    - Tension between output efficiency (strength), and resource consequences/ degree of reasoning and its effects on public perception (weakness)
    - Risk of ‘mistaken’ Single Judge decisions (weakness)
  - Repetitive applications:
    - Possible weaknesses to current responses: the definition may be too broad/ too narrow; the pilot judgment procedure could be used more effectively
  - (In)ability of the Court to deal with non-priority Chamber cases (a weakness)
- Court developed and applied ‘living instrument’ interpretative doctrine
  - The Convention institutions have developed practices that fill the procedural spaces in the system established by the legal texts, going beyond & sometimes even against them – e.g. separate decisions on admissibility & merits in simple cases
    - Both demonstrate flexibility (a strength), but criticised as an inappropriate arrogation of power by Court (a weakness)
  - Rules of Court have allowed development of responses to new problems; if precluded, system could run into a dead end
    - Strength – Court adopts Rules of procedure / can react flexibly to changing circumstances
    - Weakness – Rules may create rights & obligations for parties to which parties have not agreed
- Also, identify strengths and weaknesses in relation to the following aspects:
    - The process for appointing judges of the Court
    - The execution of judgments & its supervision by the CM
    - Article 41: best means of redress through Court award of just satisfaction or more varied forms provided by national authorities (e.g. reopening domestic proceedings)?
    - Role of national parliaments

*The Rapporteur should also consider the contributions received following the ‘open call’ and the proceedings of the Oslo Conference, as well as any further contributions from experts and previous CDDH reports, which may contain further elements relevant to this section of the final report.*