



Strasbourg, 22 March 2010

DH-I(2010)004

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**COMMITTEE OF EXPERTS FOR
THE DEVELOPMENT OF HUMAN RIGHTS
(DH-DEV)**

COMMITTEE OF EXPERTS ON IMPUNITY
(DH-I)

**Report of the 2nd meeting of
the Committee of Experts on Impunity (DH-I)
(DH-I)**

2nd meeting
Strasbourg, Wednesday 03 March (9.30am) – Friday 05 March 2010 (1pm)

Agora-Building, Room G04
Council of Europe

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

1. The Committee of Experts on Impunity (DH-I) held its second meeting in Strasbourg on 3-5 March 2010 with Mr Derek WALTON (United Kingdom) in the Chair. The list of participants can be found in Appendix I. The agenda as adopted and the references to the working documents appear in Appendix II. The Chair made an opening statement to welcome all participants.

Item 2: Draft guidelines of the Committee of Ministers on impunity

2. The Committee agreed to discuss the draft Guidelines prepared by the Secretariat section by section and paragraph by paragraph, considering the relevant comments provided by delegations in writing prior to the meeting.

3. With regard to the Preamble, the Committee agreed on a number of amendments, in particular on the need to include new paragraphs dealing with the right to an effective remedy and referring to relevant international legal instruments. It asked the Secretariat to do so.

4. As regards Section “A. The need to combat impunity”, the Committee agreed on a number of amendments and on the utility of mentioning examples of relevant serious violations of human rights in the explanatory memorandum. Delegations were invited to submit proposals for the reformulation of paragraph A. II.

5. Concerning Section “B. Scope of the Guidelines”, the Committee agreed upon a number of amendments, including a definition of “serious human rights violations” for the purposes of the Guidelines. There was discussion as to whether the list of ECHR articles mentioned in paragraph B.III should be exhaustive or whether the Guidelines should also apply to violations of other ECHR articles which correspond to the criteria set out in the first sentence of paragraph B.III (in particular Articles 8 and 14 ECHR). A majority of delegations expressed themselves in favour of the second option. The Committee agreed however to leave the question open. It also decided to further consider whether the expression “positive obligations” is appropriate in the context of these Guidelines or whether another expression, easier to understand for an average reader, would be preferable. Finally, the Committee considered that the forthcoming accession of the EU to the ECHR made it desirable to delete the explicit reference to the exclusion of the accountability of international organizations from Section B.VI. However, since this point had been the subject of guidance from the CDDH, it was agreed that this should be brought to the attention of the CDDH before a final decision is made. The Committee also considered that the explanatory memorandum should make clear that references to ‘States’ in the text are not intended to exclude the application of the Guidelines to any Contracting Party to the ECHR that is not a State. The Committee also asked the Secretariat to mention a number of issues in the explanatory memorandum, including citing the relevant case-law of the European Court of Human Rights and examples of violations of Article 5.1 of the ECHR which would amount to “serious human rights violations”.

6. On Section “C. Preventing Impunity”, the Committee agreed on a number of amendments to the existing points. The Committee also discussed the possible inclusion of new items to deal with situations of impunity, namely the establishment of an effective criminal policy and the need to undertake institutional reforms (including with respect to the selection of public officials). In the absence of consensus on the proposals made, interested delegations were invited to make proposals for consideration at the next meeting. It also agreed to further discuss whether the existing subtitles are appropriate or whether they should be replaced or deleted. The Committee asked the Secretariat to make proposals in this respect and to reorder the items listed in paragraph C.I.1 to move the more positive measures to the top of the list.

7. With regard to Section “D. Determining facts, responsibility and consequences of violations”, the Committee agreed that this section should be split into different new sections. A first section should deal with safeguards and procedural measures to protect persons in custody or detention from serious human rights violations, and should include some provisions currently contained under Subsection D.I; a second section should deal with the investigation phase; a third section should deal with the trial phase; and a final section (or sections) should deal with residual issues such as international cooperation, restrictions and limitations, non judicial complaint procedures etc.. The Secretariat was asked to make proposals when presenting the revised draft.

Concerning the provisions on the investigation phase, the Committee agreed to insert an overarching general guideline regarding the duty to investigate, to be followed immediately in separate paragraphs by specific provisions setting out the nature of the duty to investigate under Articles 2, 3, 4 and 5.1 respectively of the ECHR. Details of the case-law should appear in the explanatory memorandum. The Secretariat was asked to revise this part accordingly. The Committee also agreed on a number of amendments with regard to the criteria for an effective investigation. It decided to return at its next meeting to the criterion of an “independent investigation” (in particular concerning the absence of “institutional links” of those leading the investigation). The Secretariat was asked to provide examples from the case-law in the explanatory memorandum with regard to that criterion.

Among the other amendments agreed for the various subsections of the current Section D, the Committee decided to delete Subsection “V. Investigation of motives for the offence”, and asked the Secretariat to redraft the subsection on international co-operation in order, *inter alia*, to include a reference to mutual legal assistance and extradition as possible forms of co-operation. The Committee also had a long exchange of views on the issue of amnesties, time-bars, immunities as well as pardons., Bearing in mind the instructions of the CDDH, it discussed appropriate ways to express in the Guidelines the opportunity to underline that such instruments should not unduly impede both the prosecutions of perpetrators and a thorough explanation of the circumstances of a given case. It agreed to come back to this issue at the next meeting. As regards the subsection on non-judicial complaint mechanisms, the Chair invited delegations wishing to expand this subsection to make proposals in writing with a view to discussing them at the next meeting.

8. Finally, regarding Section “E. Reparation”, the Committee agreed that a definition of “victims” for the purposes of the guidelines, incorporating where appropriate also the

family of and other persons close to the direct victim, should be included in the section on the scope of the Guidelines. It was also agreed that current Section E.I on the involvement of victims in the investigations should be redrafted, in order to make it sufficiently general to be applicable to the various legal systems of the member States. This Section should then be moved to the new Section on investigation. The Vice-Chair was asked to coordinate a drafting group and to present a proposal to be included in the revised draft. For this purpose, and in order to ensure consistency between different Council of Europe instruments, the Committee was invited to consider the relevant provisions of Recommendation Rec(2006)8 on assistance to crime victims. In addition, delegations wishing to include examples of good practices regarding reparation of victims in the explanatory memorandum were invited to send them to the Secretariat. The Committee also agreed on a number of other amendments to this Section

9. The Committee completed the first reading of the draft Guidelines. The Chair thanked the Committee for its constructive work.

Item 3: Other business

10. The Secretariat was asked to issue a revised version of the draft Guidelines (document DH-I (2010)004) in accordance with the amendments decided by the Committee and the instructions given to the Secretariat and to the Vice-Chair for the redrafting of specific paragraphs or sections. The revised Guidelines should be sent to delegations by 19 March at the latest.

11. The Committee took note of the fact that the Chair will have an exchange of views on the draft Guidelines with the DH-DEV at its next meeting, on 26-28 April 2010.

12. It was agreed that the third meeting of the DH-I would take place on 26-28 May 2010. On that occasion, the DH-I would discuss the entire revised draft a second time, in the light of the comments to be sent by delegations and of possible suggestions from the DH-DEV and from the Bureau of the CDDH. The Secretariat would circulate a first draft of elements for the explanatory memorandum by 21 April 2010. Delegations are invited to submit comments in writing to the Secretariat on the draft revised Guidelines and on the draft elements for the explanatory memorandum by 7 May 2010.

Appendix I

LIST OF PARTICIPANTS

MEMBERS / MEMBRES

AZERBAIJAN / AZERBAIDJAN

Mr Kamran BALAYEV, Deputy Director of International Cooperation Department, Ministry of Justice, Baku

BELGIUM / BELGIQUE

Mrs Stéphanie GRISARD, Attachée, SPF Justice, Direction générale de la Législation et des Libertés et Droits fondamentaux, Service des droits de l'Homme, Bruxelles

BULGARIE/BULGARIA

Mrs Emanuela Tomova, Second Secretary in the Human Rights Directorate in the Ministry of Foreign Affairs, Sofia

ESTONIA/ESTONIE

Mrs Kristiina AAVIK, Counsellor, criminal Police Department, Ministry of Justice,

FINLAND / FINLANDE

Mrs Päivi ROTOLA-PUKKILA, legal secretary, Ministry for Foreign Affairs

FRANCE

Mr Benoît COMBOURIEU, sous-direction des droits de l'Homme, Direction des affaires juridiques, Ministère des affaires étrangères, Paris

LUXEMBOURG

Mrs Brigitte KONZ, Vice-Présidente du tribunal d'arrondissement de Luxembourg, Luxembourg

MOLDOVA

Mrs Rodica SECRIERU, Conseillère du Ministre de la Justice de la République de Moldova, Ministère de la Justice, Chisinau

POLAND / POLOGNE

Mr Michał BALCERZAK, Assistant Professor, Nicholas Copernicus University, Faculty of Law and Administration, Torun

Mr Jakub WOŁĄSIEWICZ, Agent of the Government before the European Court of Human Rights, Ministry of Foreign Affairs

RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE

Ms Tatiana KLEIMENOVA, Department for International Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs, Moscow

SERBIA / SERBIE

Mr Slavoljub CARIC, Government Agent, Ministry for Human and Minority Rights, Office of the Agent before the ECHR

Mrs Kristina POTIC, Councillor, Ministry for Human and Minority Rights, Office of the Agent before the ECHR

SPAIN / ESPAGNE

Mr Rafael Vaillo RAMOS, Consejero técnico, Subdirección General de Asuntos de Justicia para la UE y OO.II., Dirección General de Cooperación Jurídica, Ministerio de Justicia

SWITZERLAND / SUISSE

Mrs Katrin WEILHAMMER, Swiss Federal Department of Foreign Affairs FDFA, Directorate for International Law DIL, Berne

TURKEY / TURQUIE

Mr Bilal ÇALIŞKAN, Deputy General Director, Ministry of Justice of Turkey, Müdafaa Cad. Ankara

UNITED KINGDOM / ROYAUME-UNI

Mr Derek WALTON, [*Chair of the DH-I*], Legal Counsellor, Foreign and Commonwealth Office, London

Mrs Rachel CORNWELL, Policy Adviser, Human Rights Division, Ministry of Justice, London

* * *

PARTICIPANTS

Parliamentary Assembly / Assemblée Parlementaire

Excused/excusé

Council of Europe Commissioner for Human Rights / Commissaire aux Droits de l'Homme du Conseil de l'Europe

Mr Lauri SIVONEN, Thematic coordinator/Coordinateur thématique

Council of Europe Directorate General of Human Rights and Legal Affairs, Department for the Execution of Judgments

Mr Özgür DERMAN, Head of Division

Mrs Irène KITSOU-MILONAS, Adviser

Saint Siège / Holy See

Excused/excusé

MEXICO

Mrs Lydia MADERO, Observateur Permanent Adjoint, Mission Permanente du Mexique auprès du Conseil de l'Europe, Strasbourg

Mrs María-Fernanda GONZÁLEZ, Attachée de la Mission du Mexique auprès du Conseil de l'Europe

Amnesty International

Mrs Jill HEINE, Legal Adviser, International Law and Organizations Programme

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

Mrs Róisín PILLAY, Senior Legal Adviser, Europe Programme, International Commission of Jurists, Geneva, Switzerland

* * *

SECRETARIAT

Directorate General of Human Rights and Legal Affairs
Direction générale des droits de l'Homme et des affaires juridiques
Council of Europe/Conseil de l'Europe, F-67075 STRASBOURG CEDEX

Mr Daniele CANGEMI, Head of Human Rights Law and Policy Division / Chef de la Division du droit et de la politique des droits de l'Homme, Secretary of the DH-I / Secrétaire du DH-I

Mr Matthias KLOTH, Administrator, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme

Mrs Virginie FLORES, Programme Officer / Officier de programmes, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme

Mrs Frédérique BONIFAIX, Assistant / Assistante, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme

Interpreters / Interprètes:

Mr Grégoire DEVICTOR

Mr Philippe QUAINÉ

Mrs Christine TRAPP-GILL

Appendix II

AGENDA

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

Item 2: **Draft guidelines of the Committee of Ministers on impunity**

Working documents

Preliminary draft of the future guidelines [DH-I \(2010\)001](#)

Written contributions by the Committee members

Contribution from Belgium [Belgium](#)

Contribution from Bulgaria [Bulgaria](#)

Contribution from France [France](#)

Comments from Switzerland [Switzerland](#)

*Contribution from International Commission of
Jurists and Amnesty International* [ICJ and Amnesty
International](#)

Terms of reference and decisions of the Committee of Ministers [DH-I \(2010\)003](#)

Selection of relevant Council of Europe texts concerning impunity [DH-I \(2009\)002](#)

Compendium of the case-law of the European Court of Human Rights concerning the positive obligation of States to carry out an investigation into cases of violations of human rights and bring the perpetrators to justice [DH-I \(2009\)003](#)

Report of the 1st meeting of the Committee [DH-I \(2009\)007final](#)

Item 3: **Other business**

* * *