



Strasbourg, 30 September 2010

DH-I(2010)11

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 4th meeting of
the Committee of Experts on Impunity (DH-I)
(DH-I)**

4th meeting
Strasbourg, Tuesday 28 September (9.30am) – Thursday 30 September 2010 (1pm)

Palais, Room G06
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 fourth meeting in Strasbourg on 28-30 September 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 of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations

2. The Chair presented a report of the exchange of views on the draft Guidelines that had taken place during the 70th meeting of the CDDH (see the report of its 70th meeting of 15-18 June 2010, CDDH (2010)010, paras. 41-43). He informed the Committee of the guidance given by the CDDH on certain issues, which was subsequently taken into account by the Committee in its review of the draft Guidelines.

3. The Committee agreed to discuss the draft Guidelines prepared by the Secretariat section by section and paragraph by paragraph, considering the relevant comments provided in writing prior to the meeting and during the meeting. The Committee also discussed the proposals submitted in writing by delegations which are not members of the DH-I, and other proposals made by delegations during the 70th meeting of the CDDH. It decided to renumber the Guidelines in the text after several passages had been deleted in the course of the 3rd meeting.

4. The Committee made some editorial changes to the Preamble and decided to keep the references to the relevant UN principles on impunity, as also suggested by the CDDH (see CDDH (2010)010, para. 41). It agreed to include further references to other UN standards in the Preamble.

5. As regards the Guideline on the “Scope of the Guidelines”, the Committee decided to confirm the scope envisaged in the current draft, as had been suggested by the CDDH (see CDDH (2010)010, para. 43). As regards the definition of the term “victim”, the Committee agreed to closely follow the definition adopted by the Committee of Ministers, notably in Section 1.1 of Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims.

6. The Committee considered the proposal made by two delegations during the 70th meeting of the CDDH to change the term “States” to “High Contracting Parties” in order to take into account the forthcoming accession of the European Union to the European Convention on Human Rights. Considering that this amendment would not improve the readability of the Guidelines, and that the latter are not conceived as part of the ECHR system, the Committee did not accept this proposal, and decided to address this issue in the Reference-texts.

7. The Committee made a number of changes to the text of the Guideline on “General measures on the prevention of impunity”. It also added provisions suggesting protection of

“whistle-blowers” (see its para.5) and the removal from office of those who have committed serious human rights violations (see its para.7).

8. Regarding the Guideline on “Safeguards to protect persons deprived of their liberty from serious human rights violations”, the Committee agreed to redraft paragraph 2 in accordance with the proposal by the Secretariat, with some amendments, in particular in the light of comments made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

9. In the Guideline on “The duty to investigate”, the Committee discussed in particular the proposal made by the Secretariat reflecting the existing case law and amended that proposal in the light of comments made by several delegations.

10. The Committee amended the Guideline on “Criteria for an effective investigation”, in particular by providing additional guidance on how the duty to conduct an effective investigation should be carried out in practice, in accordance with the indications of the CDDH in this respect.

11. With regard to the Guideline on the “involvement of victims in the investigation”, the Committee decided, by a majority, to delete a provision that had been left in square brackets at its last meeting concerning obstacles unduly impeding victims’ access to the case-file. The Chair indicated that any delegation that wished to do so was free to raise this issue in the CDDH.

12. The Committee decided to delete the second paragraph in the Guideline on international cooperation, and to redraft the first paragraph in order to include a reference to the principle of “non-refoulement”.

13. The Committee discussed the Guideline on “Command responsibility and superior orders” and decided, by a majority, to delete the part on “command responsibility”, as this concept was mainly relevant in the context of international criminal law, which had been expressly excluded from the scope of the Guidelines. However, it decided to keep the paragraph on superior orders, amending the text and modifying the title of the Guideline accordingly.

14. Bearing in mind the discussion held in the CDDH in this respect, delegations considered whether to include in the Guideline on “Restrictions and Limitations”, a sentence taking into account the case-law of the European Court of Human Rights with regard to amnesties, pardons and time-bars¹. In the absence of a majority in support of it, the Committee decided against its inclusion. The Chair indicated that any delegation that wished to do so was free to raise this issue in the CDDH.

15. The Committee made significant amendments to the Guideline on the “execution of the judgments of the European Court of Human Rights” and decided to move this provision to the Preamble.

¹ “In particular, amnesties, pardons and time-bars should not unduly impede the prosecution of alleged perpetrators”.

Item 3: Draft Reference-texts for the Guidelines

16. The Chair presented the draft Reference-texts as prepared by the Secretariat under his guidance, noting in particular that it was meant to bring together relevant sources such as extracts from the case-law of the European Court of Human Rights, the general reports of the CPT as well as international treaties and accepted standards. The Chair stressed that inclusion in the Reference-texts would in no way change the status of the source documents or the nature of States' obligations under them.

17. The Committee discussed which of the texts currently appearing in the draft as well as in the submissions by delegations should be included in the final text. It instructed the Secretariat to revise the document accordingly and to seek the guidance of the Chair as to the question whether to incorporate the text of all the material submitted by delegations or to merely cite their sources. The Secretariat was instructed to circulate the revised Reference-texts in due course.

Item 4: Other business

18. At the conclusion of its work, the Committee approved the draft Guidelines, as they appear in document DH-I(2010)12. The Committee decided to transmit this text as well as its corresponding Reference-texts, as revised, to the CDDH with a view to their examination and adoption at its 71st meeting (2-5 November 2010).

19. The Committee considered that it had fulfilled the mandate given to it. The Chair warmly thanked all participants for the constructive approach and spirit of compromise shown during the discussion on the complex issues addressed in the Guidelines.

APPENDIX I

MEMBERS / MEMBRES

BELGIUM / BELGIQUE

Mme 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

Ms Emanuela TOMOVA, Second Secretary in the Human Rights Directorate in the Ministry of Foreign Affairs, Sofia

FINLAND / FINLANDE

Ms. Päivi ROTOLA-PUKKILA, legal secretary, Ministry for Foreign Affairs

FRANCE

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

LUXEMBOURG

Mme Brigitte KONZ, Vice-Présidente du tribunal d'arrondissement de Luxembourg, Cité judiciaire, Bâtiment T.L.

MOLDOVA

Mme 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

Mrs. Agata ROGALSKA, Legal Adviser, Office of the Plenipotentiary for the proceedings before the international organs of human rights protection, Ministry of Foreign Affairs, Warsaw

RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE

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

Ms Elena ANTONOVICH, Ministry of Internal Affairs, Moscow

SERBIA / SERBIE

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

SLOVAKIA / SLOVAQUIE

Mrs Lydia TOBIASOVA, (JUDr., PhD.), Department of Criminal Law, Comenius University, Bratislava

SWITZERLAND / SUISSE

Mme Dominique STEIGER LEUBA, Collaboratrice scientifique, Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ, Domaine de direction Droit public, Unité Droit européen et protection des droits de l'Homme, Berne

UNITED KINGDOM / ROYAUME-UNI

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

Ms Alexandra SWALLOW, Human Rights Policy Adviser, Human Rights and International Directorate, Ministry of Justice, London

PARTICIPANTS

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

M. Giancarlo CARDINALE, Thematic coordinator/Coordinateur thématique

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment / Le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT)

Mr Trevor STEVENS, Secrétaire Exécutif / Executive Secretary

Saint Siège / Holy See

Excused/excisé

Amnesty International

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

International Federation of Human Rights / Fédération internationale des ligues des droits de l'Homme (FIDH)

M. Emmanuel DECAUX, Université Panthéon-Assas 12, Paris, France

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

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

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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 Jeroen SCHOKKENBROEK, Head of Department / Chef de Service, Human Rights Development Department / Service du développement des droits de l'Homme

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

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

Interpreters / Interprètes:

Luke TILDEN

Olivier OBRECHT

Philippe QUAINÉ

APPENDIX II

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

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

Working documents

Draft Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations	DH-I (2010)10
• Comments from Belgium	Belgium
• Comments from Sweden	Sweden
• Comments from Switzerland	Switzerland
• Comments from United Kingdom	UK
• Comments from the CPT	CPT
• Comments from Amnesty International, ICJ, REDRESS and FIDH	Joint comments
Terms of reference and decisions of the Committee of Ministers	DH-I (2010)03
Report of the 3rd meeting of the Committee of Experts on Impunity (26-28 May 2010)	DH-I (2010)07
Report of the 70 th meeting of the Steering Committee for Human Rights (15-18 June 2010)	CDDH(2010)010

Item 3: Draft texts of reference for the guidelines

Working documents

Draft Reference-texts for the Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations	DH-I (2010)09
• Comments from Belgium	Belgium
• Comments from Amnesty International, ICJ, REDRESS and FIDH	Joint comments

Item 4: Other business