



Strasbourg, 9 November 2009

DH-RE(2009)007

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**COMMITTEE OF EXPERTS ON EFFECTIVE REMEDIES FOR
EXCESSIVE LENGTH OF PROCEEDINGS
(DH-RE)**

REPORT

2nd meeting

2-4 November 2009

Summary

The Committee, in particular:

- finalised a draft recommendation on effective remedies for excessive length of proceedings, for transmission to the CDDH at its next meeting (24-27 November 2009);
- finalised a draft Guide to Good Practice, to accompany the draft recommendation, also for transmission to the CDDH at its next meeting;
- in doing so, considered that it had fulfilled the terms of reference that had been conferred upon it.

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

1. The Committee of experts on effective remedies for excessive length of proceedings (DH-RE) held its second meeting in Strasbourg from 2-4 November 2009 with Mr Jakub WOLASIEWICZ (Poland) in the chair. The list of participants appears at Appendix I. The agenda, as adopted, appears at Appendix II.

Item 2: Finalisation of a draft recommendation and accompanying text (“Guide to Good Practice”)

2. The Committee first turned to the draft Guide to Good Practice, based on elements prepared by the Secretariat in accordance with guidance given by the Committee at the first meeting (see DH-RE(2009)006, para. 15). The results of this work, as adopted (along with the draft recommendation – see para. 7 below), appear in the Addendum.

3. During its discussions, the Committee addressed the issue of measures that might be effective in improving the efficiency of bodies responsible for various stages of proceedings but which did not in themselves constitute “remedies” as defined by the Court. For example, disciplinary measures against recalcitrant or negligent officials whose conduct contributed to delays may have certain positive effects, but they could not provide any form of redress to victims of violations of the right to trial within a reasonable time. Whilst noting that such measures were presented in various documents as being a form of remedy, the Committee considered that, whilst interesting, they did not properly fit within the draft Guide to Good Practice.

4. The Italian expert proposed that reference be made in the draft Guide to the process currently under way before his country’s parliament to reform the so-called “Pinto law”. He stated that the current draft law should prove beneficial by resolving certain difficulties that had emerged in practice concerning implementation of the Pinto law. The Committee noted this information with interest. Recalling its terms of reference and the decision taken at its first meeting to include only established remedies that had been clearly approved by the Court, however, it did not consider that it would be appropriate to refer in the Guide to Good Practice to a draft law whose final form and eventual effects remained uncertain. It observed that the Guide would in future be subject to revision in the light of new developments and therefore felt that reference to the Italian reforms could be reconsidered once they had been finalised, adopted and put into practice and their effects been given a positive assessment by the Court.

5. The Committee also heard a statement by Mrs Irene KITSOU-MILONAS of the Department for the Execution of Judgments of the Court, which had provided written proposals for the draft Guide. It thanked Mrs Kitsou-Milonas for her participation and for the Execution Department’s contribution to its work. It also thanked Prof. Alan UZELAC of the CEPEJ, Mrs Paola TONARELLI-LACORE of the Registry of the Court and Mrs Dubravka BOJIC of the European Commission for Democracy through Law (the Venice Commission) for their participation and contributions.

6. Returning to the preliminary draft recommendation, as prepared during the first meeting (see DH-RE(2009)006 Appendix IV), the Committee reiterated that the

recommendation should not seek to prescribe a “perfect” remedy in all its aspects but rather define the broad conceptual characteristics, as identified by the Court, of a system of remedies that would be effective in addressing the overall problem of excessive length of proceedings. In this respect, it should include both preventive measures to ensure respect for the requirements of article 6 ECHR as well as remedies introduced in pursuance of article 13 ECHR, since, as underlined by the Court, prevention is itself the best remedy and a recommendation that failed to acknowledge the importance of prevention would be incomplete and less effective than might be.

7. On this basis and subject only to minor editorial changes to paragraphs 4 and 12/13, the Committee adopted the draft recommendation as it had been prepared at the first meeting. The draft recommendation (along with the draft Guide to Good Practice) appears in the Addendum.

Item 3: Other business

8. The Committee considered that it would be very useful to conduct a cost-benefit analysis of the budgetary implications of different approaches for addressing the problem of excessive length of proceedings. It noted that some, limited information was available from various sources but that for methodological reasons this information could not be used for comparative purposes. It recognized that the Secretariat of the Committee had neither the means nor the expertise to perform this exercise. Nevertheless, it wished to record its views on the issue and propose that consideration be given to performing such an analysis in future.

9. As regards possible future follow-up to the Recommendation, the Committee noted that the Guide should evolve in response to developments, notably concerning the Court’s case law and at national level, and should therefore be subject to periodic review and updating. Further ideas for follow-up could be discussed by the CDDH at its next meeting.

10. Furthermore, the Committee considered that, in addition to the present work, other aspects of the question of effective domestic remedies could also be usefully examined in the future, according to the modalities considered appropriate by the CDDH. In this connection, it recalled the Ministers’ Deputies’ decision on follow-up to the Stockholm Colloquy (9-10 June 2008) (see doc. CM/Del/Dec(2008)1039/4.6). It suggested that the CDDH hold an exchange of views on the subject at one of its meetings in 2010, notably in the light of the conclusions of the February 2010 Interlaken Conference.

11. The Committee appreciated the positive and constructive atmosphere in which it had undertaken its work and expressed its thanks to its Chairperson for his conduct of the meeting. In particular, it thanked its Secretary, Mr David MILNER, for the preparation of the working documents that had provided the basis of its work, as well as Mrs Virginie FLORES and other members of the Secretariat.

12. In presenting the draft Recommendation and Guide, as they appear in the Addendum, to the CDDH for examination and possible adoption in November, the Committee considered that it had fulfilled the terms of reference that had been conferred upon it.

Appendix I**List of participants / Liste de participants****BELGIUM / BELGIQUE**

M. Gauthier DE BECO, Attaché au Service des Droits de l'Homme, Service Public Fédéral Justice, Service des droits de l'homme, Boulevard de Waterloo 115, B-1000 BRUXELLES

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Ms Vesna Batistić KOS, Counsellor, Department for International Organisations and Human Rights, Ministry of Foreign Affairs and European Integration, N. Š. Zrinskog 7-8, 10000 ZAGREB

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Mr Levan MESKHORADZE, Government Agent of Georgia to the European Court of Human Rights, Head of Department of the State Representation to the International Courts of Human Rights, Ministry of Justice, Rustaveli Avenue 30, TBILISI 0146

GERMANY / ALLEMAGNE

Mr Hans Jörg BEHRENS, Permanent Deputy Agent for Human Rights, Bundesministerium der Justiz, Mohrenstr. 37, D-10117 BERLIN

ICELAND / ISLANDE

Ms Björg THORARENSEN, Chairperson of the DH-PR / Présidente du DH-PR, Professor of Law, University of Iceland, 150 REYKJAVIK

ITALY / ITALIE

M. Giuseppe ALBENZIO, Avocat d'Etat, Présidence du Conseil des Ministres, Via dei Portoghesi n. 12, 00186 ROMA

LATVIA / LETTONIE

Ms Inga REINE, Government Agent, Representative of the Government of Latvia before International Human Rights Organizations, Ministry of Foreign Affairs, Brivibas blvd 36, RIGA LV 1395

NORWAY / NORVEGE

Mr Michael REIERTSEN, Adviser, The Royal Norwegian Ministry of Justice and the Police, Legislation Department, P.O. Box 8005 Dep., N-0030 OSLO

POLAND / POLOGNE

Mr Jakub WOLASIEWICZ, Chairperson of the DH-RE / Président du DH-RE, Government Agent, Ministry of Foreign Affairs, Aleja Szucha 23, WARSAW 00580

Ms Agnieszka KOZIŃSKA, expert, Office of the Plenipotentiary for the Proceedings before the International Organs of the Protection of Human Rights, Ministry of Foreign Affairs, Aleja Szucha 23, WARSAW 00580

PORTUGAL

M. João Manuel DA SILVA MIGUEL, Vice-chairperson of the DH-RE / Vice-president du DH-RE, Agent du Gouvernement, Magistrat, Procuradoria-Geral da República, R. Escola Politécnica, N° 140, 1249-269 LISBOA

ROMANIA / ROUMANIE

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RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Nikolay MIKHAILOV, Office of the Representative of the Russian Federation at the European Court of Human Rights, Deputy Head, Ministry of Justice of the Russian Federation, Zhitnaya St., 14, 119991 MOSCOW

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

Mrs Marica PIROŠIKOVÁ, Agent of the Slovak Republic before ECHR, Ministry of Justice, Zupne nam. 13, 813 11 BRATISLAVA

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Mr Peter PAVLIN, Secretary, Head of Sector, Ministry of Justice of the Republic of Slovenia, Directorate for the Legislation on the Justice System, Župančičeva 3, SI-1000 LJUBLJANA

Mr Zoran SKUBIC, Legal Adviser, Ministry of Justice of the Republic of Slovenia, Župančičeva 3, 1000 LJUBLJANA

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SWITZERLAND / SUISSE

M. Adrian SCHEIDEGGER, Agent suppléant du Gouvernement suisse devant la Cour européenne des droits de l'Homme et le CAT, Département fédéral de la justice et police, Office fédéral de la justice, Représentation de la Suisse devant la Cour européenne des droits de l'Homme et le CAT, Bundesrain 20, CH-3003 BERNE

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PARTICIPANTS**European Commission for the Efficiency of Justice (CEPEJ) / Commission européenne pour l'efficacité de la justice (CEPEJ)**

Mr Alan UZELAC, PhD. Professor at the Faculty of Law, University of Zagreb, Trg maršala Tita 14, 10 000 ZAGREB, Croatia

European Court of Human Rights / Cour européenne des droits de l'homme

Mme Paola TONARELLI-LACORE, Chef de Division gestion des requêtes et méthodes de travail

European Commission for Democracy through Law (« Venice Commission ») / Commission européenne pour la démocratie par le droit (« Commission de Venise »)

Ms Dubravka BOJIC, Administrator / Administratrice, Division of Democratic Institutions and Fundamental Rights / Division des institutions démocratiques et des droits fondamentaux

Department for the Execution of judgments of the Court / Service Exécution des Arrêts de la Cour

Ms Irene KITSOU-MILONAS, Legal Adviser

Parliamentary Assembly/Assemblée parlementaire

Mr Andrew DRZEMCZEWSKI, Head of the Secretariat / Chef du Secrétariat, Committee on Legal Affairs & Human Rights / Commission des questions juridiques & des droits de l'homme

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SECRETARIAT

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M. 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, Co-Secretary of the CDDH / Co-secrétaire du CDDH / Secretary of the DH-RE / Secrétaire du DH-RE

Mme Virginie FLORES, Lawyer / Juriste, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Mme Michèle COGNARD, Assistant / Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Interpreters/Interprètes:

MARCHINI Isabelle
TYCZKA Christopher
QUAINE Philippe

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

- Report of the 1st Meeting of the DH-RE DH-RE(2009)005

Item 2: Finalisation of a draft recommendation and accompanying text (“Guide to Good Practice”)Working document

- Elements for a draft Guide to Good Practice/ Manual, prepared by the Secretariat (including the preliminary draft recommendation) DH-RE(2009)006

Background documents¹

- Terms of reference of the DH-RE as adopted by the Ministers’ Deputies CM/Del/Dec(2009)1055/4.4c, Appendix 5
- Report of the 1st Meeting of the DH-RE DH-RE(2009)005
- Contribution of the Czech Republic DH-RE(2009)004 bil.
- Compendium of Good Practices (compiled by the Secretariat) DH-RE(2009)002
- Review of the implementation of Committee of Ministers’ Recommendation Rec(2004)6 to member States on the improvement of domestic remedies CDDH(2008)008 Add. I, Appendix IV
- Venice Commission Report on the effectiveness of national remedies in respect of excessive length of proceedings CDL-AD(2006)036rev
- CEPEJ report on the length of proceedings in the member States of the Council of Europe based on the case law of the European Court of Human Rights CEPEJ(2006)15
- Proceedings of the Workshop on the improvement of domestic remedies with particular emphasis on cases of unreasonable length of proceedings (held at the initiative of the Polish Chairmanship of the Committee of Ministers, Strasbourg, 28/4/05)
- Some examples of improvements achieved or under way as regards effective remedies for excessively lengthy judicial proceedings – working document prepared by the Department for the Execution of the Judgments of the Court
- Written proposals from the Department for the Execution of the Judgments of the Court for the draft Guide to Good Practice DH-RE(2009)006/1 EXEC & DH-RE(2009)006/3 EXEC

Item 3: Other business

¹ It should be noted that these represent only a small fraction of the documents referred to in the draft Guide.