



Strasbourg, 16 October 2009

DH-DEV(2009)004

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

Meeting report

39th meeting
Monday 12 – Wednesday 14 October 2009

Room G01, Agora, Strasbourg

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

1. The Committee of Experts for the Development of Human Rights (DH-DEV) held its 39th meeting in Strasbourg on 12-14 October 2009 with Mr Philippe WERY (Belgium) in the Chair. The list of participants can be found in Appendix I.
2. Having welcomed all participants, Mr Jeroen SCHOKKENBROEK, Head of the Human Rights Development Department (Directorate General of Human Rights and Legal Affairs, DG-HL) presented the objectives of the meeting, which constituted a bridge between past and future activities since the DH-DEV was called upon to approve work which had been finished, provide advice on on-going activities and begin reflection on future tasks.
3. The Chair recalled that the draft Committee of Ministers' Declaration on human rights in culturally diverse societies, prepared by the DH-DEV, had been approved by the CDDH and adopted by the Committee of Ministers on 1 July 2009.
4. The DH-DEV adopted the proposed agenda for the meeting as set out in Appendix II.

Item 2: Human rights of members of the armed forces

5. The Chair first recalled that at the last meeting of the DH-DEV, the Committee had given guidance to the DH-DEV-FA as to, *inter alia*, the scope of the draft recommendation on human rights of members of the armed forces and how to shorten it to bring it more into line with other CM recommendations, taking into account the views of the CDDH on the matter.
6. The Chair of the Group on Human Rights of Members of the Armed Forces (DH-DEV-FA), Ms Sonja SCHITTENHELM (Austria) presented the work of the Group during their 5th and 6th meetings, explaining how the guidance given by the DH-DEV and the CDDH had been taken into account in the finalisation of the draft recommendation on human rights of members of the armed forces and the draft explanatory memorandum. She informed the Committee that the draft recommendation had been considerably shortened and stressed that both texts presented today were the result of a consensus in the Group.
7. Delegations thanked the Group for their hard work in finalising the two draft texts. However, some delegations regretted that not all the guidance given by the CDDH had been taken into account, in particular regarding the form of the recommendation. They expressed the concern that the draft recommendation was still too lengthy and detailed and that the scope was too extensive. Some delegations pointed out that the draft recommendation included rights which were not guaranteed in their national law. Other delegations stated that the draft recommendation was not longer than many other existing recommendations and that although the explanatory report was long, it provided many details necessary for a correct understanding of the recommendation.
8. The Chair of the DH-DEV recalled that the aim of the recommendation was to provide guidance to member states in the context of human rights of members of the armed forces. The provisions contained therein could therefore not be considered to be legally binding.
9. Regarding follow-up to the recommendation, the Secretariat explained that this would be carried out through the Committee of Ministers by the CDDH.

10. The Committee then proceeded to examine the appendix to the draft recommendation section by section. Some principles were merged and others were deleted as they were considered more appropriate for the explanatory memorandum. This led to a further shortening of the text and to a number of amendments to the explanatory memorandum of the recommendation.

11. During the examination of the principles concerning the right to dignity, health protection and security at work, the Committee discussed the differences between professional members of the armed forces and conscripts and the applicability of the rights guaranteed to workers by the European Social Charter and other international human rights instruments to conscripts.

12. At end of the examination of the draft recommendation and its explanatory memorandum, the Committee approved the revised texts as they appear in documents DH-DEV(2009)005 and DH-DEV(2009)006 and agreed to transmit them to the CDDH for adoption. However three delegations expressed doubts as to the conformity of the outcome of the work with the guidance provided by the DH-DEV at its last meeting and with the expectations of the CDDH. One delegation also reiterated the doubts previously expressed as to the need for such a text.

Item 3: Discrimination on grounds of sexual orientation and gender identity

13. Mr Hans YTTERBERG (Sweden), Chair of the Committee of Experts on Discrimination on Grounds of Sexual Orientation and Gender Identity (DH-LGBT) presented the draft recommendation on measures to combat discrimination on grounds of sexual orientation and gender identity which the Committee drafted at its second meeting on 3-5 June 2009 (see the meeting report DH-LGBT(2009)008rev, Appendix III). He explained that the LGBT opted for a short text, following the traditional format of Committee of Ministers' recommendations and that the aim of the draft text was to establish measures based on principles recognised by international human rights law, in particular the case-law of the Court, as well as practical measures and to invite member states to solve problems encountered by LGBT persons by practical and legal means. Mr Ytterberg indicated that the explanatory memorandum to the draft recommendation was in the process of being drafted and that it would be examined at the DH-LGBT's next meeting on 4-6 November 2009.

14. Mr Ytterberg invited the Committee to have an exchange of views on the text of the draft recommendation so that any useful suggestions may be transmitted to and considered by the DH-LGBT at its next meeting, the aim of which was to finalise the draft recommendation and its explanatory memorandum and then submit them to the CDDH at its meeting on 24-27 November 2009.

15. During the exchange of views, several members expressed their full support for the text drafted by the Committee and stressed that it was essential for such a text to be elaborated within the Council of Europe. The importance of the explanatory memorandum for a detailed analysis of this issue was underlined. Some members of the DH-DEV requested that terminological clarifications be made in the recommendation or in the explanatory memorandum, particularly as concerned the abbreviation LGBT, the definition of transgender and transsexual persons and the concept of self-defined gender identity. Some members were in favour of deleting the reference to "self-defined" gender identity as it appeared in the provisions of the recommendation. Changes, as well as additional explanations, were also requested on Section I.B. ("Hate speech" and other "hate-motivated expressions"),

particularly on the last sentence of paragraph 5 of the draft recommendation. Concerning the right to respect for private and family life, several delegations expressed the wish to clarify conditions “prior to the legal recognition of the preferred gender or for accessing gender reassignment services” (notably with regard to divorce); the concept of “comparable situation” expressed in paragraph 33; and the notion of “best interests of the child” in the context of paragraph 25. Concerning Section VII. (“Health”), some members expressed the wish for the explanatory memorandum to provide clarification regarding medical abuse which transgender persons might undergo. One delegation wished that the explanatory memorandum would take into account the margin of appreciation which should be accorded to states with respect to multiple discrimination. Other requests for clarification or drafting suggestions (including shortening the Preamble) were also noted.

16. The Chair took note that most of the members of the Committee were in support of the draft recommendation in principle and thanked Mr Ytterberg and the members of the Committee for their participation in the debate. The Chair indicated that the members of the DH-DEV could send their comments in writing to the DH-LGBT Secretariat (estelle.faury@coe.int) before 30 October 2009. The Committee agreed to transmit the conclusions of this exchange of views to the CDDH in the form of this meeting report and to remain at the disposal of the CDDH regarding the work of the DH-LGBT.

Item 4: Impunity

17. The Committee took note of the report of the first meeting of the Committee of Experts (DH-I) (document DH-I(2009)007 final). The Committee exchanged views on some of the issues that the DH-I had left open for discussion. Many delegations expressed their support to the work of the DH-I.

18. Some delegations mentioned the need for a preliminary discussion on the definition of “impunity”. Concerning the scope of the guidelines, a majority of delegations expressed support for an approach which was not limited to Articles 2 and 3 of the Convention, underlining that the case-law of the Court should be the main source of reference for the guidelines. Some delegations pointed out, however, that if a broader approach were followed, the term “impunity” may not be entirely appropriate for violations other than particularly serious crimes. Several delegations recalled the particular relevance of criminal law for this theme and the contribution that the CDPC could provide to the ongoing work. One delegation expressed doubts about the appropriateness of some of the issues identified in the list of possible items to be included in the guidelines. Regarding the question of whether the guidelines should deal with international actors or non-state actors, some delegations expressed doubts, particularly with respect to international actors, while with respect to non-state actors, some delegations observed that they could be of relevance when analysing positive obligations of states.

Item 5: Exchange of views on possible future activities

19. The DH-DEV held a preliminary exchange on possible future activities with a view to prepare for a more in depth discussion on its future work at its 40th meeting. The Committee took note of two Parliamentary Assembly Recommendations recently adopted concerning “The challenges posed by climate change” (Recommendation 1883(2009)) and “Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment” (Recommendation 1885(2009)).

20. In view of the possible involvement of the CDDH in the reply to Recommendation 1885 (2009) , the DH-DEV reaffirmed the position already expressed in the past by the DH-DEV and the CDDH that an additional protocol to the Convention on human rights concerning the right to a healthy environment should not be drafted at this stage, particularly in the absence of a clear definition of this right and in the light of the additional amount of work this would imply for the Court. It considered, however, that an update of the 2006 Manual on Human Rights and the Environment could be a useful contribution.

21. With regard to Recommendation 1883 (2009), although several delegations expressed doubts as to the added value and to the possible results of a study on the linkages between climate change and human rights in Europe, many delegations expressed an interest in such a study. Some delegations pointed out that such a study could be seen as part of a multidisciplinary Council of Europe approach to climate change.

22. The Chair stressed the need to identify other topics for future activities and invited delegations to present concrete proposals, including in writing, in view of the next meeting. The Chair referred to possible work on the human rights of elderly persons and one delegation expressed interest in this.

Item 6: Other business

23. No other business was raised.

Item 7: Date of next meeting

24. The date of the next meeting was not fixed. It will tentatively be held after the CDDH meeting in spring 2010.

Appendix I

LIST OF PARTICIPANTS

MEMBER STATES / ETATS MEMBRES

ALBANIA / ALBANIE

Ms Ledia HYSI, Director of Legal Affairs and Treaties Department, Ministry of Foreign Affairs, Tirana

ARMENIA / ARMENIE

Mrs Nelly SAROYAN, Head of International Treaties Desk, Legal Department, Ministry of Foreign Affairs, Yerevan

AUSTRIA / AUTRICHE

Ms Elisabeth HANDL-PETZ, Referent, Federal Chancellery, Legal Service, Vienna

AZERBAIJAN / AZERBAIDJAN

Mr Otari GVALADZE, Chief Adviser, Department for Co-ordination of Law Enforcement Agencies, Administration of President Prezident Sarayi, Baku

BELGIUM / BELGIQUE

M. Philippe WERY, Chair of the Committee / Président Comité, Attaché, SPF Justice, Service des Droits de l'Homme, Brussels

BOSNIA AND HERZEGOVINA / BOSNIE ET HERZEGOVINE

Mr Samir ŠLAKU, Expert advisor, Ministry for Human Rights and Refugees of BiH, Sarajevo

BULGARIA / BULGARIE

Ludmila BOJKOVA, Directrice, direction Droits de l'Homme et Organisations Internationales, Ministère des Affaires Etrangères, Sofia

CYPRUS / CHYPRE

Ms Eleonora NICOLAIDES, Senior Counsel of the Republic, Office of the Attorney-General, Law Office of the Republic of Cyprus, Nicosia

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Mr. Ondřej ABRHAM, Deputy Director, Human Rights and Transition Policy Department, Ministry of Foreign Affairs

DENMARK / DANEMARK

Ms Lene STEEN, Head of Section, Ministry of Justice, Copenhagen K

ESTONIA / ESTONIE

Mr Kalle KIRSS, Lawyer, Ministry of Foreign Affairs, Tallinn

FINLAND / FINLANDE

Ms. Päivi ROTOLA-PUKKILA, Legal Officer, Legal Department, Unit for Human Courts and Conventions, Ministry for Foreign Affairs

FRANCE

Mme Marie MONGIN-HEUZE, Rédacteur, Direction des Affaires juridiques – sous-direction des droits de l’homme, Ministère des Affaires Etrangères, Paris

GEORGIA / GEORGIE

Ms. Nino TSERETELI, Deputy Head of Department of the State Representation to the International Courts of Human Rights, Ministry of Justice, Tbilissi

GERMANY / ALLEMAGNE

Mrs Nicola WENZEL, Desk Officer, Federal Ministry of Justice, Unit of the Agent for Human Rights, Berlin

GREECE / GRECE

Mme Sofia KASTRANTA, Rapporteur, Special Legal Department, Ministry of Foreign Affairs, Athens

HUNGARY / HONGRIE

Mr Zoltán TALLÓDI, Co-agent of the Ministry of Justice and Law Enforcement before the ECHR, Budapest

IRELAND / IRLANDE

Mr Peter WHITE, Assistant Legal Adviser, Department of Foreign Affairs, Dublin

ITALY / ITALIE

M. Nicola LETTIERI, Expert juridique, Représentation Permanente de l’Italie auprès du Conseil de l’Europe, Strasbourg, France

LITHUANIA - LITUANIE

Mr Julius RAKITSKIS, Head of Human Rights Division, Ministry of Foreign Affairs, Vilnius

LUXEMBOURG – apologised / excusé

MALTA / MALTE

Mark A. PACE, Deputy Permanent Representative, Permanent Representation of Malta to the Council of Europe, Strasbourg

MOLDOVA

Mrs Mariana BRADUȚAN, Counsellor, Council of Europe and Human Rights Division, Ministry of Foreign Affairs and European Integration of the Republic of Moldova, Chisinau

NETHERLANDS / PAYS-BAS

Ms Liselot EGMOND, Deputy Gouvernement Agent for the European Court of Human Rights, Legal Affairs Department, International Law Division, Ministry of Foreign Affairs, Hague

NORWAY / NORVEGE

Mr Anders NARVESTAD, Higher Executive Officer, Legislation Department, Ministry of Justice and the Police, Oslo

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Andrey NIKIFOROV, Deputy Head, Humanitarian Cooperation and Human Rights Department, Ministry of Foreign Affairs, Moscow

SERBIA / SERBIE

Ms Gordana MOHOROVIC, Senior Advisor, Head of Division for Implementation of Human Rights Conventions, Ministry for Human and Minority Rights, Belgrad

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

Mrs Jana VNUKOVÁ, Vice-chair of the Committee / Vice-présidente du Comité, Director of International Relations and Human Rights Department, International Law & European Law Section, Ministry of Justice, Bratislava

SPAIN / ESPAGNE

Jesús BESTEIRO, Spanish Justice Department, Ministry of Justice

SWEDEN / SUEDE

Ms Gunilla ISAKSSON, Special Adviser Department for International Law, Human Rights and Treaty Law, Ministry for Foreign Affairs, Sweden

Mrs. Bilge TEKIN BEFRITS, Ministry of Integration and Gender Equality, Stockholm

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

"The Former Yugoslav Republic of Macedonia"/"l'Ex-République yougoslave de Macédoine"

Mrs Sanja ZOGRAFSKA-KRSTESKA, Deputy-Head of Council of Europe, OSCE and European Multilateral Affairs Unit, Skopje

TURKEY / TURQUIE

Mrs. Esra DEMIR, Head of Department – EctHR, Ministry of Foreign Affairs, Ankara

UNITED KINGDOM / ROYAUME-UNI

Ms Emily WILLMOTT, Assistant Legal Adviser, Foreign and Commonwealth Office, London

* * *

PARTICIPANTS

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

Mr Lauri SIVONEN, Theme Work, Council of Europe, Strasbourg Cedex

Committee of Experts on discrimination on grounds of sexual orientation and gender identity (DH-LGBT)

Mr Hans YTTERBERG, Chair of the Committee / Président du Comité, Director General, Ministry of Integration and Gender Equality, former ombudsman for LGBT-matters in Sweden, Stockholm, Sweden

Group on Human Rights of Members of the Armed Forces (DH-DEV-FA)

Ms Sonja SCHITTENHELM, Chair of the Committee / Présidente du Comité, Human Rights Coordinator, Ministry of Defense Interministerial Legislation Division, Vienna

Ms Satu KASKINEN, Legal Officer, Unit for Human Rights Courts and Conventions, Ministry for Foreign Affairs

* * *

OTHER PARTICIPANTS

International Lesbian and Gay Association – Europe (ILGA – Europe) / Association internationale lesbienne et gay - Europe (ILGA – Europe)

Mr Nigel WARNER, Council of Europe adviser, London

* * *

OBSERVERS

Holy See / Saint-Siège

Révérénd Frère Olivier POQUILLON o.p., Délégué permanent de l'Ordre Dominicain auprès de l'Organisation des Nations Unies, Genève

Mexico

Mme Lydia MADERO, Observateur Permanent Adjoint

Amnesty International

Mr Johannes HEILER, Assistant Adviser, International Law and Organizations Programme, Amnesty International

Mr Tomaso FALCHETTA, Policy Coordinator, International Secretariat, London, United Kingdom

* * *

**Directorate General of Human Rights and Legal Affairs – DG-HL /
Direction générale des droits de l'Homme et des affaires juridiques – DG-HL
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 Division / Chef de Division, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme, Secretary of the DH-DEV / Secrétaire du DH-DEV

Ms Merete BJERREGAARD, Administrator / Administrateur, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme, Co-secretary of the DH-DEV / Co-secrétaire du DH-DEV

DH-DEV(2009)004

Mme Estelle FAURY, Programme Officer / Officier de programmes, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme

Ms Claire ASKIN, Administrative Assistant / Assistante administrative, 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:

MARCHINI Isabelle

TANNER Julia

QUAINE Philippe

Appendix II

Agenda

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

- Draft agenda
DH-DEV(2009)OJ 002
- Terms of reference of the CDDH and the bodies answerable to it adopted by the Ministers' Deputies at their 1048th meeting (12 February 2009)
CDDH(2009)003
- Report of 68th meeting of the Steering Committee of Human Rights (CDDH) (24-27 March 2009)
CDDH(2009)007final
- Report of the 38th meeting of the DH-DEV (11-13 March 2009)
DH-DEV(2009)002final

Item 2: Human rights of members of the armed forces

- Report of the 5th meeting of the DH-DEV Group on human rights of members of armed forces (DH-DEV-FA) (13-15 May 2009)
DH-DEV-FA(2009)005
- Report of the 6th meeting of the DH-DEV Group on human rights of members of armed forces (DH-DEV-FA) (24-25 September 2009)
DH-DEV-FA(2009)007
- Draft CM recommendation on human rights of members of the armed forces
DH-DEV-FA(2009)008
- Draft explanatory memorandum for a CM recommendation on human rights of members of the armed forces
DH-DEV-FA(2009)009

Item 3: Discrimination on grounds of sexual orientation and gender identity

- Report of the 2nd meeting of the Committee of Experts on discrimination on grounds of sexual orientation and gender identity (DH-LGBT) (3-5 June 2009)
DH-LGBT(2009)008rev
- Draft recommendation on measures to combat discrimination on grounds of sexual orientation and gender identity, to ensure respect for human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them*
(Appendix III)

Item 4: Impunity

- Report of the 1st meeting of the Committee of Experts on Impunity (DH-I) (9-11 September 2009)
DH-I(2009)007

Item 5: Exchange of views on possible future activities

Item 6: Other business

- PACE Recommendation on “ The right to a healthy environment” Recommendation 1885 (2009)
- PACE Recommendation on “The challenges posed by climate change” Recommendation 1883 (2009)

Item 7: Dates of next meeting