

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

CDDH-MIG(2018)R4
29/03/2018

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**DRAFTING GROUP ON MIGRATION AND HUMAN RIGHTS
(CDDH-MIG)**

REPORT

4th meeting
21 – 22 March 2018

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

1. The CDDH Drafting Group on Migration and Human Rights (CDDH-MIG) held its 4th meeting in Strasbourg from 21 to 22 March 2018 with Mr Morten RUUD (Norway) in the Chair. The list of participants appears in Appendix I.
2. The Chair opened the meeting and welcomed all participants. The agenda as adopted appears in Appendix II.

Item 2: Election of a Vice-Chair

3. The Group elected Ms Consuelo CASTRO REY (Spain) as Vice-Chair of the CDDH-MIG on 21 March 2018.

Item 3: Discussion on the follow-up to the *Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration* and terms of reference for 2018-2019

4. The Vice-Chair of the Committee of Experts on Administrative Detention of Migrants (CJ-DAM), Mr Pascal LIEUTAUD (France), gave a brief overview of the on-going work of CJ-DAM on codifying existing international standards relating to the administrative detention of migrants. After open consultations with National Preventive Mechanisms (NPMs), civil society and other key stakeholders (May-June 2017), a second draft of the instrument is being prepared in light of comments received. Once the work on the second draft and its explanatory memorandum are completed, written comments will be invited from relevant stakeholders in a second round of consultations. Mr Lieutaud noted that clear references are made to the work of the Steering Committee on Human Rights (CDDH) on alternatives to immigration detention and key standards on alternative measures included. The Chair welcomed these developments and emphasised the importance of having members of the CJ-DAM participating in the CDDH-MIG. The Group took note of the suggestion that the CJ-DAM and the CDDH-MIG could have a joint event in 2019.
5. The Group then held a general discussion on the follow-up to the *Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration*. The Group emphasised the priority of now widely disseminating the work among all relevant stakeholders, making it visible and more widely known. The Group highlighted the need to publish the work both in printed form and online, and, should funds allow, possibly translate the work into other languages. It was agreed to have a fixed agenda item at future meetings where the Secretariat would inform of any new and significant developments in the field, also allowing for a potential periodic update of the Analysis by the Group. Ms Iris Bjorg KRISTJANSÐOTTIR (Iceland) and Ms Colette VAN LUL (Belgium) volunteered to be contact points to the Rapporteur and Secretariat in regard to effective dissemination of the Analysis and potential updating.

6. The Group further discussed its Terms of Reference for 2018-2019 and noted in particular its wide scope. Based on the work conducted in 2016-2017, the Committee of Ministers has mandated the CDDH to *“prepare one or more draft non-binding instruments of the Committee of Ministers (for example a recommendation, guidelines, good practice handbooks) concerning human rights issues in the context of migration, in particular effective alternatives to detention of migrants and asylum-seekers”*. In this regard, the CDDH has endorsed the step-by-step approach recommended by the Group, namely, in the first instance to produce a practical and user-friendly handbook for authorities on effectively implementing alternatives to immigration detention.

7. The Group exchanged views on potential Guidelines in the future and agreed to come back to this issue at its next meeting as the unanimous focus at present is the preparation of a handbook.

8. The Secretariat informed the Group of a small cooperation project underway focusing on alternatives to immigration detention under the auspices of the *Council of Europe Action Plan on protecting refugee and migrant children*. The project will *inter alia* engage in capacity building activities and trainings of officials based mainly on the work of the CDDH as well as other Council of Europe entities. The project activities are envisioned to put the materials produced so far to further concrete use and provide opportunities for reinforcing Council of Europe standards and work in the field.

Item 4: Discussion on a preliminary draft structure of the Council of Europe Handbook on alternatives to immigration detention

9. The Rapporteur introduced some of the key questions to be addressed before the drafting of the Handbook would begin. He noted that the language, structure and content of the Handbook would inevitably vary depending on the target audience, and invited the Group to give further guidance on such critical issues. While there was considerable interest in the Group to make a Handbook for judges, the overall conclusion was that the primary product for the next meeting should be a practical guide for practitioners that should be short, clear and visual with potential flowcharts, factsheets and/or graphic layout to illustrate key messages. While focusing on practitioners, attempts should be made to devise the Handbook in such a way that it could be useful for a broader audience. The Handbook should be both printed and online, with a possibility for later exploring interactive e-learning tools. In order to be effective, the Handbook would also need to be translated into different languages. In light of the Terms of Reference, it was noted that the Group could potentially make more than one product in the biennium 2018-2019. Pocket-guide(s) or other targeted material(s) might be made specifically for judges and/or other key actors based on the Analysis.

10. The Group discussed the preliminary draft structure of the Handbook and made suggestions to consolidate chapters and key aspects. The Group entrusted the Rapporteur and Secretariat with revising the draft structure based on the discussions, and to present a full draft well in advance of the next meeting, emphasising the Analysis as the foundational text for the work.

Item 5: Adoption of the meeting report

11. The Group adopted the provisional text of the meeting report.

Item 6: Other business

12. The next meeting of the CDDH-MIG will take place 17-19 October 2018 in Strasbourg. If possible, external experts in the field, offering different perspectives, will be invited to join during the first day of the meeting so as to share their insights and experiences with the Group.

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Appendix I

List of participants

MEMBER STATES / ETATS MEMBRES

ARMENIA / ARMÉNIE

Mr Gagik YEGANYAN, Head of State Migration Service of Ministry of Territorial Administration and Development

BELGIUM / BELGIQUE

Mme Colette VAN LUL, Membre du CJ-DAM, Agent devant la Cour de Justice de l'Union européenne, SPF Affaires étrangères - Direction générale des Affaires juridiques - Direction Droit européen (J2)

BULGARIA / BULGARIE

Mr Kamen KOUTSAROV, Second Secretary, Human Rights Department, Ministry of Foreign Affairs

CZECH REPUBLIC / REPUBLIQUE TCHÈQUE

Mr Petr KONŮPKA, Deputy Government Agent of the Czech Republic before the European Court of Human Rights, Ministry of Justice

DENMARK / DANEMARK

Ms Astrid Kløve Albæk PEDERSEN, Head of Section, Division for Return, Ministry of Immigration and Integration

FINLAND / FINLANDE

Ms Liisa VALJENTO, Counsellor, Unit for Human Rights Courts and Conventions Legal Service, Ministry for Foreign Affairs

FRANCE

M. Pascal LIEUTAUD, Vice-Président du CJ-DAM, Adjoint au Chef du Bureau de la rétention et de l'éloignement, chef du Pôle rétention, Sous-direction de la lutte contre l'immigration irrégulière, Direction de l'immigration, Direction générale des étrangers en France

GREECE / GRÈCE

Mr Elias KASTANAS, Legal Counsellor, Legal Department, Ministry of Foreign Affairs

ICELAND / ISLANDE

Ms Íris Björg KRISTJANDOTTIR, Special Adviser, Department of Human Rights and Local Government, Ministry of the Interior

ITALY / ITALIE

M. Daniele LOI, Adjoint au Représentant Permanent, Représentation permanente de l'Italie auprès du Conseil de l'Europe

Mme Carlotta BERIONNI, Représentation permanente de l'Italie auprès du Conseil de l'Europe

LATVIA / LETTONIE

Mr Vilnis VITOLINS, Director of the Legal Department of the Ministry of the Interior, Representative of Latvia before the European Court of Human Rights, Ministry of Foreign Affairs

NORWAY / NORVÈGE

Mr Morten RUUD (*Chairperson of CDDH-MIG / Président du CDDH-MIG*), Special Adviser, Ministry of Justice and Public Security

POLAND/POLOGNE

Mr Dawid GROCHOWSKI, Chief Specialist, Analysis and Migration Policy Department, Ministry of the Interior and Administration

SWITZERLAND / SUISSE

M. Frank SCHÜRMANN (*Rapporteur of CDDH-MIG / Rapporteur du CDDH-MIG*), Agent du Gouvernement de la Suisse auprès de la Cour européenne des droits de l'homme, Chef de l'Unité Droit européen et Protection Internationale des droits de l'homme, Office fédéral de la justice

TURKEY / TURQUIE

Ms Gamze GÜL ÇAKIR KILIÇ, Conseiller juridique, Direction Générale de l'Administration d'Immigration, Ministère de l'Intérieur

OBSERVERS / OBSERVATEURS

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

Mr Jean-Bernard MARIE, Représentant au CDDH

Mme Martine SCHMELCK

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC) / COMITÉ INTERNATIONAL DE LA CROIX-ROUGE (CICR)

Ms Audrey EPRINCHARD, Legal Adviser, ICRC, Brussels

Ms. Alice BLOOMFIELD, Migration Advisor, ICRC, Paris

COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE / CONSEIL DES BARREAUX EUROPÉENS (CCBE)

Mr. Flip SCHULLER, CCBE Migration Committee Expert

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

Mr Massimo FRIGO, Legal Advisor

UNHCR / HCR

Ms Delphine LENEUTRE, Legal Associate, UNHCR Representation to the European Institutions in Strasbourg

Mr Roland-Francois WEIL, UNHCR Representative to the European Institutions in Strasbourg

COUNCIL OF EUROPE/CONSEIL DE L'EUROPE

EUROPEAN COMMITTEE ON LEGAL CO-OPERATION / COMITÉ EUROPÉEN DE COOPÉRATION JURIDIQUE (CDCJ)

Mr Philippe KRANTZ, Legal Officer

SECRETARIAT

**DG I – Human Rights and Rule of Law / Droits de l'homme et Etat de droit
Council of Europe / Conseil de l'Europe**

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 CDDH / Secrétaire du CDDH*

Ms Lilja GRETARSDOTTIR, Deputy Head of Division, Independent Human Rights Bodies /
Chef adjoint, Institutions Indépendantes des Droits de l'homme, *Secretary of CDDH-MIG /
Secrétaire du CDDH-MIG*

Ms Julia WESTMACOTT, Assistant, / Assistante, Independent Human Rights Bodies /
Institutions Indépendantes des Droits de l'homme

Ms Andrea KALCHER, Trainee, Independent Human Rights Bodies / Stagiaire, Institutions
Indépendantes des Droits de l'homme

Ms Laurence ROUX, Trainee, Independent Human Rights Bodies / Stagiaire, Institutions
Indépendantes des Droits de l'homme

INTERPRETERS/ INTERPRÈTES

Mr Nicolas GUITTONNEAU
Mr Didier JUNGLING

Appendix II

Agenda (as adopted)

	ITEM 1: OPENING OF THE MEETING, ADOPTION OF THE AGENDA
<u>CDDH-MIG(2018)OJ1</u>	Draft agenda
	ITEM 2: ELECTION OF A VICE-CHAIR
CM/Res(2011)24	Resolution on intergovernmental committees and subordinate bodies, their terms of reference and working methods
	ITEM 3: DISCUSSION ON THE FOLLOW-UP TO THE CDDH ANALYSIS OF THE LEGAL AND PRACTICAL ASPECTS OF EFFECTIVE ALTERNATIVES TO DETENTION IN THE CONTEXT OF MIGRATION AND TERMS OF REFERENCE FOR 2018-2019
CDDH-MIG(2017)R3	Report of the 3 rd meeting of CDDH-MIG (24-26 October 2017)
CDDH-MIG(2018)01	Extracts of the terms of reference given by the Committee of Ministers to the CDDH regarding the work of the CDDH-MIG during the 2018-2019 biennium and relevant CDDH meeting reports
CDDH(2017)R88add2	Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration
CDDH(2017)R88add2bis	Conference Report: "Immigration Detention of Children: Coming to a Close?", Prague 25-26 September 2017
	ITEM 4: DISCUSSION ON A POTENTIAL STRUCTURE OF THE COUNCIL OF EUROPE HANDBOOK ON ALTERNATIVES TO IMMIGRATION DETENTION
CDDH-MIG(2018)02	Potential, preliminary structure for the Council of Europe Handbook on Alternatives to Immigration Detention
CDDH-MIG(2018)03	Extracts from Council of Europe standards on alternatives to immigration detention
CDDH-MIG(2018)04	Non-exhaustive list of relevant case law of the European Court of Human Rights

CDDH-MIG(2018)05	Overview of United Nations documents on alternatives to immigration detention
Human Rights Handbooks	Examples of Handbooks: Council of Europe
Publication	<i>United Nations High Commissioner for Refugees</i> Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012
Publication	There are Alternatives: A handbook for preventing unnecessary immigration detention (revised edition), 2015
	ITEM 5: ADOPTION OF THE MEETING REPORT
	ITEM 6: OTHER BUSINESS