



Strasbourg, 12 April 2013

GT-GDR-D(2013)R1

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

COMMITTEE OF EXPERTS ON THE REFORM OF THE COURT
(DH-GDR)

**DRAFTING GROUP 'D' ON THE REFORM OF THE COURT
(GT-GDR-D)**

**1st Meeting
Strasbourg
Wednesday 10 April – Friday 12 April 2013
Agora, Meeting Room G04**

MEETING REPORT

Item 1: Opening of the meeting, adoption of the agenda and order of business, and election of a Vice Chairperson

1. Drafting Group D on the reform of the Court (GT-GDR-D) held its 1st meeting in Strasbourg from 10-12 April 2013 with Ms Inga REINE (Latvia) in the chair. The list of participants appears at Appendix I. The agenda, as adopted, appears at Appendix II. The Group elected Ms Agnieszka KOZINSKA (Poland) as Vice-chairperson.
2. The Group then heard a welcoming address from Mr Alfonso DE SALAS, Head of the Human Rights Inter-governmental Co-operation Division.

Item 2: Terms of reference and working methods

3. The Group exchanged views on its terms of reference, in particular procedure and working methods. It recalled that it had two meetings to complete its work, with the second and final one to take place on 15-17 May 2013.

Item 3: Toolkit to inform public officials about the State's obligations under the Convention

4. Mr Martin EATON, expert-consultant, presented his draft toolkit to inform public officials about the State's obligations under the Convention (doc. GT-GDR-D(2013)001). The Group thanked Mr Eaton warmly for his work. It held a general exchange of views on the structure and content of the draft, considering that it was necessary to bear in mind the different forms that the toolkit could eventually take, such as printed or electronic, interactive versions.
5. The Group considered that the current first part, covering all the articles of the Convention and the additional Protocols thereto, should remain in its entirety, even if certain articles and issues were not necessarily relevant to the principal audience; the issue of whether and how to envisage secondary audiences would be further examined at the next meeting. The Group gave guidance to Mr Eaton, notably to include more examples of concrete situations with which the principally targeted officials would be confronted. The first part constituted a solid basis that could subsequently be exploited for different uses, different audiences and in different ways, notably through electronic and interactive media. The answers to the questions listed in the second part appeared in the relevant parts of the first part, to which it would cross-refer. The Group will decide at its next meeting whether or not to include the text of the Convention (and Protocols) in a third part of the toolkit.

6. The Group then examined the text in detail. It asked Mr Eaton to present, in good time before the second meeting, a new version of the draft toolkit taking into account the Group's suggestions and guidance.

7. Experts are invited to send to the Secretariat (david.milner@coe.int), by Friday 19 April 2013, the written text of any proposal made during the meeting as well as any possible reference to the case-law, including indication of quoted paragraphs.

8. The Registry of the Court indicated that it was ready to check the case-law references contained in the draft toolkit once finalised, and that the electronic version could also be hosted on the Court's website.

Item 4: Guide to good practice in respect of domestic remedies

9. The Group examined the draft Guide to good practice in respect of domestic remedies, as prepared by the Secretariat. On the basis of the structure approved by the DH-GDR at its 3rd meeting, this first draft contained the basic legal principles to be satisfied by effective remedies. The draft, as revised during the meeting, appears in document GT-GDR-D(2013)002 REV.

10. It was noted that despite the Committee of Ministers' earlier recommendations mentioned at paragraph 55 of the draft Guide, difficulties persisted. In addition to the work on the Guide, the Group considered that it would be useful also to identify further the causes of those difficulties.

11. The Group recalled the importance of sending examples of good practice to the Secretariat (virginie.flores@coe.int) by Friday 19 April in order that they may be included in the draft Guide in good time before the second meeting of the Group. A message to this end would be sent to all DH-GDR members.

Item 5: Ways to resolve the large numbers of applications arising from systemic issues identified by the Court

12. The Group heard an intervention by Mr Roderick LIDDELL of the Registry of the Court, who provided information relating to the "default judgment procedure" mentioned in the Court's Preliminary Opinion of the Court in preparation for the Brighton Conference (for the full text, see doc. GT-GDR-D(2013)005). Mr Liddell also noted that the procedures he mentioned as having been used with respect to systemic issues in certain States Parties did not require amendment of the Convention but that as the Court's practice developed and became established, it might come to be given explicit description in the Rules of Court. The Group insisted on the need for clear statistical information on applications arising from systemic issues.

13. Subsequent exchanges underlined the importance of co-operation between the Court and respondent States in responding both to systemic issues and to the large numbers of repetitive applications that they produce. This implied co-operation not only in resolving individual applications but also in the procedure leading up to judgments containing general measures, as was already the case in, for example, the pilot judgment procedure. Successful co-operation needs to bear in mind the reasonable limits of capacity of the respondent State. The fact of rapid treatment of repetitive applications prior to the resolution of the underlying problem may have the effect of inciting further applications to the Court, further burdening

the system. It is therefore critical that the respondent State take timely and effective measures to rectify the underlying systemic issues.

14. It was noted that any new ways used by the Court or Committee of Ministers for resolving the large numbers of applications arising from systemic issues could not substitute for resolution of the underlying problem at national level, in order to satisfy the State's obligations under Articles 1 and 13 of the Convention and engage Article 35. This required corrective and/ or remedial action at national level, notably through the full, prompt implementation of general measures.

15. Discussions also focussed on the Committee of Ministers' supervision of the execution of judgments, in particular of the general measures contained notably in pilot and other leading judgments, which were the most difficult aspects to implement. It was suggested that special supervision procedures could apply to judgments relating to systemic issues, such as shortened deadlines for the respondent State's submission of an action plan. The Court could also adjourn any related pending or new applications for a certain period to allow time for implementation of the general measures: if effectively implemented, the applications could be struck out; if not, the Court could resume their treatment.

16. Under the Court's current practice, unilateral declarations by states in cases relating to systemic issues are only accepted once a leading judgment setting out general measures to be taken addressing those issues has been transmitted to the Committee of Ministers. Mr Fredrik SUNDBERG of the Department for the supervision of the execution of judgments of the Court noted that the Committee of Ministers did not receive detailed information on unilateral declarations made by respondent States. This meant that after transmission to the Committee of Ministers of a judgment relating to a systemic issue, it did not remain fully informed of subsequent applications to and proceedings before the Court arising from that issue, although this was improving thanks to the Court's developing practice of sending letters on certain specific situations. The Court could also advise on what measures were needed and what action by the Committee of Ministers would be helpful, possibly including setting a shorter deadline for submission of an action plan.

17. The Group also examined a Polish proposal for a "special secondment procedure" (see doc. GT-GDR-D(2013)004). It was noted that this also reflected the need for co-operation and burden-sharing between the Court and the respondent State.

18. On the basis of these discussions, the Group approved the structure for the draft CDDH report on ways to resolve the large numbers of applications arising from systemic issues identified by the Court as it appears at Appendix III. It appointed Ms Geanina MUNTEANU (Romania) as rapporteur to prepare a draft report.

Item 6: Organisation of future work

19. With a view to the second and final meeting (15-17 May 2013), experts are reminded that they are invited to send, by Friday 19 April:

- concerning the draft toolkit (Item 3), the written text of any proposal made during the meeting as well as any possible reference to the case-law, including indication of quoted paragraphs (to david.milner@coe.int)
- concerning the draft guide to good practice (Item 4), examples of good practice/ replies to the questionnaire issued following the 3rd DH-GDR meeting (to virginie.flores@coe.int).

Appendix I**List of participants / Liste des participants****MEMBERS / MEMBRES****ALBANIA / ALBANIE**

Mr. Roden HOXHA , lawyer in ECHR, Council of Europe Permanent Representation

Mr. Denis RECI, Secretary of the Albanian ambassador in Strasbourg, Council of Europe Permanent Representation

FINLAND / FINLANDE

Ms Paivi ROTOLA-PUKKILA, Legal Counsellor, Ministry of Foreign Affairs, Unit for Human Rights Courts and Conventions

FRANCE

Mme Emmanuelle TOPIN, Conseiller, Direction des affaires juridiques, Sous-direction des droits de l'Homme, Ministère des affaires étrangères

GREECE / GRECE

Ms Zacharoula CHATZIPAVLOU, Membre du Conseil Juridique de l'Etat

Ms Ourania PATSOPOULOU, Member of State legal Council, Deputy to the Permanent Representative, Permanent Representation of Greece to the Council of Europe

ITALY / ITALIE

Ms Maria Teresa LEACCHE, Ministry of justice

LATVIA / LETTONIE (Chair)

Ms Inga REINE, Legal Adviser, Permanent Representation of the Republic of Latvia to the European Union

THE NETHERLANDS / PAYS-BAS

Ms Johanna [Hanneke] PALM, i.e. legal adviser human rights law, Ministère du Sécurité et de la Justice

NORWAY / NORVEGE

Ms Helle Aase FALKENBERG, Legal adviser, Ministry of Justice

POLAND / POLOGNE

Ms Agnieszka KOZINSKA, Head of Division for Civil and Administrative Proceedings, Department for the Proceedings before International Human Rights Protection Bodies, Ministry of Foreign Affairs of Poland

PORTUGAL

Ms Ana GARCIA MARQUES, lawyer within the Office of the Government Agent before the European Court of Human Rights

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

Ms Iulia GHEORGHIEȘ, Chef de la Direction Générale de l'Agent du Gouvernement, Ministère de la Justice

ROMANIA / ROUMANIE

Ms Geanina MUNTEANU, Ministry of Foreign Affairs

SWEDEN / SUEDE

Ms Hanna KRISTIANSSON, Legal Adviser, Department for International Law, Human Rights and Treaty Law, Ministry for Foreign Affairs

TURKEY / TURQUIE

Ms Işık BATMAZ, Legal Expert, Représentation permanente de la Turquie auprès du Conseil de l'Europe

UNITED KINGDOM / ROYAUME-UNI

Ms Ann SWAMPILLAI, FCO Legal Advisers, Foreign and Commonwealth Office

OTHER PARTICIPANTS / AUTRES PARTICIPANTS

Mr Martin EATON, Consultant, United Kingdom

OBSERVERS / OBSERVATEURS**HOLY SEE / SAINT-SIÈGE**

Ms Andreea POPESCU

MEXICO/ MEXIQUE

Mr Alejandro MARTÍNEZ PERALTA, Chargé d'affaires, a. i. Mission permanente du Mexique auprès du Conseil de l'Europe

Mr Diego SANDOVAL

EUROPEAN UNION / UNION EUROPEENNE

Mr Giovanni Carlo BRUNO, Deputy to the Head of Delegation of European Union to the Council of Europe

Ms Amandine VAN DEN EEDE, European Union Delegation to the Council of Europe

Conference of INGOs of the Council of Europe / Conférence des OING du Conseil de l'Europe

Ms Stéphanie BOURGEOIS

UNHCR

Mr Samuel BOUTRUCHE ZAREVAC, Legal Associate, UNHCR Representation to the European Institutions in Strasbourg, c/o Council of Europe

Ms Manon RICHARD, Legal Intern, UNHCR Representation to the European Institutions in Strasbourg, c/o Council of Europe

Registry of the European Court of Human Rights / Greffe de la Cour européenne des droits de l'homme

Mr Roderick LIDDELL, European Court of Human Rights / Cour européenne des droits de l'Homme

Mr John DARCY, Conseiller du président et du greffier / adviser to the President and the Registrar, Private Office of the President, European Court of Human Rights, Cabinet du Président, Cour européenne des droits de l'Homme

Parliamentary Assembly/Assemblée parlementaire

Mr Andrew DRZEMCZEWSKI, Head of Department, Legal Affairs & Human Rights Department / Chef de service des questions juridiques & des droits de l'homme

Ms Ekaterina MALAREVA, Legal Affairs & Human Rights Department / service des questions juridiques & des droits de l'homme

Department for the Execution of Judgments of the Court/ Service de l'Exécution des Arrêts de la Cour

Mr Fredrik SUNDBERG, Conseil de l'Europe

SECRETARIAT

**DG I – Human Rights and Rule of Law / Droits de l'Homme et Etat de droit
Council of Europe / Conseil de l'Europe, F-67075 Strasbourg Cedex**

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 the CDDH / Secrétaire du CDDH

Mr David MILNER, Head of the Unit on the reform of the Court / Chef de l'Unité pour la réforme de la Cour, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme, Secretary of the DH-GDR / Secrétaire du DH-GDR

Mme Virginie FLORES, Administrator / Administrateur, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme, Secretary of the GT-GDR-D / Secrétaire du GT-GDR-D

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

Mlle Eglantine LEBLOND, Stagiaire, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

INTERPRETERS/INTERPRÈTES

Amanda BEDDOWS

Sylvie BOUX

Pascale MICHLIN

Appendix II**Agenda (as adopted)****Item 1: Opening of the meeting, adoption of the agenda and order of business, election of a Vice-Chairperson**General documents

- Draft annotated agenda GT-GDR-D(2013)OJ001
- Report of the 77th meeting of the CDDH (19-22 March 2012) CDDH(2013)R77
- Report of the 75th meeting of the CDDH (19-22 June 2012) CDDH(2012)R75
- Report of the 3rd meeting of the DH-GDR (13-15 February 2013) DH-GDR(2013)R3
- Report of the 2nd meeting of the DH-GDR (29-31 October 2012) DH-GDR(2012)R2
- Brighton Declaration CDDH(2012)007
- Follow-up to the high level Conference on the future of the European Court of Human Rights (Brighton, 18-20 April 2012) CDDH(2012)009REV.
- Resolution of the Committee of Ministers on intergovernmental committees and subordinate bodies, their terms of reference and working methods CM/Res(2011)24

Item 2: Terms of reference and working methodsReference document

- Follow-up to the high level Conference on the future of the European Court of Human Rights (Brighton, 18-20 April 2012) CDDH(2012)009REV.

Item 3: Toolkit to inform public officials about the State's obligations under the ConventionWorking document

- Draft toolkit to inform public officials about the State's obligations under the Convention (prepared by Mr Martin Eaton, expert consultant) GT-GDR-D(2013)001

Reference document

- Proposed outline for a toolkit to inform public officials about the State's obligations under the Convention (prepared by Mr Martin Eaton, expert consultant) DH-GDR(2013)002

Item 4: Guide to good practice in respect of domestic remediesWorking document

- Draft Guide to Good Practice in respect of domestic remedies (prepared by the Secretariat) GT-GDR-D(2013)002

Reference documents

- Possible structure for a Guide to Good Practice in respect of domestic DH-GDR(2013)001

remedies (prepared by the Secretariat)

- Compilation of the replies received to the questionnaire on domestic remedies sent to the member States GT-GDR-D (2013)003
- Report of the CDDH on measures taken by member States to implement relevant parts of the Interlaken and Izmir Declarations CDDH(2012)R76
Addendum I
- Compilation of replies to Question III, Action Plan 4 of the questionnaire as sent to member States, related to the introduction of new legal remedies GT-GDR-A(2012)008 REV
- Recommendation Rec(2004)6 of the Committee of Ministers to member States on the improvement of domestic remedies Rec(2004)6
- Recommendation CM/Rec(2010)3 of the Committee of Ministers to member States on effective remedies for excessive length of proceedings CM/Rec(2010)3
- Guide to good practice accompanying Recommendation CM/Rec (2010)3
- Review of the implementation of Rec(2004)6 CDDH(2008)008 Add. I

Item 5: Ways to resolve the large numbers of applications arising from systemic issues identified by the Court

Reference documents

- Conclusions and possible proposals for action on ways to resolve the large numbers of applications arising from systemic issues identified by the Court (reference document prepared par le Secretariat) DH-GDR(2013)003
- Report of the CDDH on advisability and modalities of a procedure on « representative applications » CDDH(2013)R77
Addendum IV
- Contribution of Poland GT-GDR-D(2013)004
- Notes on a default judgment procedure, Intervention of Mr Roderick Liddell GT-GDR-D(2013)005

Item 6: Organisation of future work

Appendix III**Outline for a draft CDDH report on ways to resolve the large numbers of applications arising from systemic issues identified by the Court**

(as approved by the GT-GDR-D at its 1st meeting, 10-12 April 2013)

I. Introduction

- background information (see doc. DH-GDR(2013)003, paras. 2 and 3)
- factual/ statistical information from:
 - o Mr Liddell's intervention (doc. GT-GDR-D(2013)005)
 - o Court's statistics (latest monthly statistics & 2012 analysis of statistics)
 - o 6th Annual Report of the Committee of Ministers on supervision of the execution of judgments and decisions of the Court (2012)
- recall the principles set out in paras. 18, 26 & 27 of the Brighton Declaration (see doc. DH-GDR(2013)003, para. 4)

II. General principles for resolving applications arising from systemic issues

- recall States Parties' obligations under Articles 1, 13 and 46 of the Convention to respect Convention rights, provide effective remedies and execute Court judgments
- recall that under Article 35 of the Convention, individuals must exhaust effective remedies before their applications may be admitted before the Court
- recall the importance of the States Parties and the Court sharing responsibility for maintaining the effectiveness of the Convention system
- recall the importance of co-operation between the Court and respondent States
- recall the need for effective supervision of execution by the Committee of Ministers
- recall the need to ensure the availability of targeted Council of Europe technical assistance to States in executing judgments relating to systemic issues
- recall the need for flexibility and adaptability in responding to systemic issues
- recall the need for political will at domestic level to fulfil Convention obligations
- recall the practical constraints posed by the reasonable limits of capacity of respondent States

III. Existing procedural tools available to the Court

- recall and summarise section B of the CDDH report on the advisability and modalities of a 'representative application procedure' (doc. CDDH(2013)R77 Add. IV, para. 16)
- recall the Ministers' Deputies' decision, following the CDDH report, on the advisability of a 'representative application procedure' (to be adopted 30/4/13)

IV. Existing proposals for responding to the problem of repetitive applications

- recall and summarise the proposals contained in the CDDH Final Report on measures that result from the Interlaken Declaration that do not require amendment of the ECHR (doc. CDDH(2012)R74 Add. II)

V. The Court's envisaged 'default judgment procedure'

- recall the Court's Preliminary Opinion in preparation for the Brighton Conference & its Registrar's letter to the Ministers' Deputies (see doc. DH-GDR(2013)003, paras 8 & 10)
- summarise relevant information from Mr Liddell's intervention (doc. GT-GDR-D(2013)005)
- [further comments?]

VI. Unilateral declarations and striking out of cases by the Court

- recall the Court's practice in accepting unilateral declarations and striking out cases relating to systemic issues
- recall that the Committee of Ministers does not supervise execution of unilateral declarations
- note that after transmission of a leading judgment, the Committee of Ministers does not systematically receive information on subsequent new applications and strike-out decisions and so may not be fully informed of relevant developments

VII. Supervision of execution of judgments by the Committee of Ministers

- summarise the Committee of Ministers' procedures for supervision of execution of judgments relating to systemic issues (see the 6th Annual Report)

VIII. Provision of Council of Europe technical assistance

- recall para. 9.g.iii. of the Brighton Declaration
- summarise part II of the Secretary General's preliminary report to the Committee of Ministers (doc. SG/Inf(2012)34)

IX. 'Special secondment procedure'

- summarise the Polish proposal for a 'special secondment procedure' (doc. GT-GDR-D(2013)004)
- note that this reflects the need for co-operation and burden-sharing between the Court and the respondent State
- [further comments on the proposal?]

X. Future work on whether more effective measures are needed in respect of States that fail to implement judgments of the Court in a timely manner

- briefly describe the relevant forthcoming activities of the CDDH/ GT-GDR-E

XI. Conclusions and recommendations

- the report could examine the advantages and disadvantages of the following suggestions:
 - o reducing the deadline for submission to the Committee of Ministers of action plans for the execution of judgments relating to systemic issues
 - o freezing by the Court of its treatment of new applications for a certain period following the adoption of a judgment containing general measures for addressing a systemic issue
 - o enhanced provision of information by the Court to the Committee of Ministers on developments following transmission of a judgment relating to a systemic issue
 - o [any further suggestions relating to the various issues above...]