



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 8 December 2006

DH-PR(2006)008

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**COMMITTEE OF EXPERTS FOR THE IMPROVEMENT
OF PROCEDURES FOR THE PROTECTION
OF HUMAN RIGHTS
(DH-PR)**

REPORT

60th meeting

Strasbourg, 22-24 November 2006

Introduction

1. The Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) held its 60th meeting in Strasbourg on 22-24 November 2006. The meeting was chaired by Ms Ingrid SIESS-SCHERZ (Austria). The list of participants appears in Appendix I. The agenda, as adopted, appears in Appendix II.

2. The Chairperson informed the Committee that at its 63rd meeting (24-27 October 2006), the CDDH decided to appoint the current Vice Chairperson of the DH-PR, Mr. Vit SCHORM (Czech Republic) as its next Chairperson for a one year term of office, renewable as of 1 January 2007 (see CDDH(2006)026, Appendix VI). The DH-PR warmly welcomed this choice and decided to elect Ms Björg THORARENSEN (Iceland) as Vice Chairperson of the Committee for a one year term of office, renewable as of 1 January 2007.

3. The meeting was devoted to reflection on and planning of work to ensure the long-term effectiveness of the ECHR at the national and European levels in the light of the new terms of reference assigned to the CDDH in this regard in June 2006 (see pp. 59-60, Appendix V, CDDH(2006)026).

4. The Secretariat informed the DH-PR that by virtue of “*Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods*”, all committees and subordinate bodies should have terms of reference and these should be presented in the standard form set out in such Resolution. The attention of the committee was drawn to the draft specific and ad hoc terms of reference prepared by the CDDH for the DH-PR and its Working Groups A and B (see Appendix IV, pp.32-34 and Appendix V, pp. 51-60 of document CDDH(2006)026). The DH-PR noted that these drafts have been submitted to the Committee of Ministers’ Rapporteur Group on Human Rights (GR-H) for discussion on 14 December 2006. The Rapporteur Group will then submit them to the 984th meeting of the Ministers’ Deputies (17 January 2007) for approval.

WORKING GROUP A – Execution of Judgments

5. It was highlighted that the 1st meeting of new Working Group A, which will be chaired by Ms Marianne ZISS (France), would be on 14-15 December 2006 and that it would aim at examining its terms of reference and deciding on the working methods to achieve (a) preparing a draft recommendation to member states on efficient domestic capacity for rapid execution of the Court’s judgments and (b) developing further practical proposals for the supervision of execution of judgments in situations of slow or negligent execution.

6. It was recalled that, based on past experience with regard to the elaboration of practical suggestions to improve the supervision of execution, it was felt useful to combine in one Group different levels (national/Committee of Ministers) of relevant practical experiences to attain effective creative results. Hence, the exceptional

composition¹ of the Group: the 9 members (or more, as the Group is open-ended), the representative of the Parliamentary Assembly, Mr. Jurgens, and the 9 experts with practical experience of the Deputies' supervision of the execution of judgments. It was felt necessary to clarify that it was expected that the latter share their personal experience with regard to the Committee of Ministers' supervision of the execution of judgments, which will be helpful to put forward concrete suggestions.

a) Rapid execution of the Court judgments at the national level

7. The Committee was informed that as of 23 November 2006, 35 member states submitted notes on how the execution of judgments of the European Court of Human Rights is organised at the national level.² The remaining 11 member states were warmly encouraged to send their note to the Secretariat (gioia.scappucci@coe.int) as soon as possible to enable Group A to address the issue of the draft recommendation on efficient domestic capacity on the basis of a comprehensive working document. It was agreed to make such document accessible on the internet and was suggested that it be published on the website of the Department for the Execution of Judgments of the Court as soon as possible.³

8. Ms Corinne AMAT of the Secretariat of the Department for the Execution of Judgments of the Court (Execution Department) provided some examples of good (e.g. political involvement at the high political level; systematic and constant analysis of all judgments by the Office of the Government Agent; establishment of ad hoc working groups to examine all possible implications of a judgment on a given theme, etc) and bad practices (lack of internal coordination when it comes to payment of just satisfaction, delays in submission and transmission of information which keep cases on the agenda or slow down the taking of necessary measures, etc) noticed with regard to the functioning of domestic arrangements for the execution of the Court's judgments. She informed the DH-PR that the Secretariat was planning to submit a document reflecting the analysis of the situation in this regard by the Execution Department to Group A for its reflection on the draft recommendation and that she would be willing to discuss it with the Group.

9. During the exchange of views with Ms Amat, DH-PR members highlighted further productive practices such as direct bilateral contacts between the capitals and the Execution Department; possible participation of agents dealing with national execution in the Committee of Ministers' Human Rights meetings to have a direct understanding of what is expected in the execution phase; setting-up of task forces to facilitate execution, etc. Areas for improvement were also pointed out such as the need to become more acquainted with the "right of the execution". In this regard, the need for a vademecum on

¹ See para. 8, CDDH 63rd meeting report, document CDDH(2006)026.

² A revised version of document DH-PR(2006)007 Bil of 10 November (which will include information currently in its Addendum of 20 November and any further information received) will be sent to Group A by the end of November.

³ The document will be up-dated regularly to include any further notes received.

execution (one of the practical suggestions put forward by the CDDH in April 2006⁴ and endorsed by the Committee of Ministers in May 2006) was strongly reiterated.

10. With regard to the participation of Mr. Jurgens to the work of the Group concerning the draft recommendation, it was considered useful that the Secretariat invite him to provide it with a document sketching his initial input to Group A's work.

b) Supervision of execution in situations of slow and negligent execution

11. Ms AMAT informed the DH-PR about the state of play of the database and the vademecum on execution of judgments.⁵ As to the database, she referred to the Memorandum of 20 October 2006 prepared by the Execution Department on "Changes to computing systems to improve supervision of the execution of judgments" and highlighted that it was expected that the database⁶ would play an important role in facilitating access to execution information and increasing understanding of what is expected during the various steps of the process. The DH-PR was pleased to note that such database might already be operational for the Human Rights meetings in February or April 2007. As to the vademecum, she pointed out that the Execution Department was working on its structure and content bearing in mind the indications of the CDDH. She welcomed any other input (to be sent to corinne.amat@coe.int) from experts to indicate what was felt should appear in the document and promised that a outline of this useful tool would be presented to the DH-PR in March 2007. It was agreed that the vademecum should be considered a "living instrument" which would be adapted over time to take into account new practices and challenges. Ms Amat also referred to other informatics tools being developed, which might be useful when a thematic research is needed, such as the possibility of sorting cases by themes.

12. The DH-PR was of the view that also the other practical suggestions which were presented to the Deputies by the CDDH in its Activity report of 7 April 2006 to address situations of slow or negligent execution of Court judgments were worth of swift implementation. For instance, the idea of organising a yearly meeting for Government Agents to examine specific concrete issues related to the execution of judgments, such as the payment of just satisfaction, was considered of immediate usefulness and was deemed to be an additional opportunity to possibly identify further new practical proposals to improve the execution of judgments. According to their nature, conclusions emerging from such yearly meetings of the agents could be addressed either to the Deputies directly or to the DH-PR. It was emphasised that in no case these meetings should be considered as an institutionalised new group answerable to the DH-PR.

⁴ See para. 7 of Appendix IV containing "Practical suggestions from the CDDH to the Ministers' Deputies to address situations of slow or negligent execution of judgments of the European Court of Human Rights" of the CDDH Activity report (CDDH(2006)008).

⁵ See paras. 7 and 17 of Appendix IV containing "Practical suggestions from the CDDH to the Ministers' Deputies to address situations of slow or negligent execution of judgments of the European Court of Human Rights" of the CDDH Activity report (CDDH(2006)008).

⁶ Court Management Information System (CMIS).

13. Following this discussion, the DH-PR member from the Slovak Republic informed the Committee that her authorities were examining the possibility of organising such a meeting in Bratislava in November 2007 (one day and a half) within the framework of their future Chairmanship of the Committee of Ministers. The DH-PR thanked its member for this suggestion and asked the Secretariat to explore this possibility and to submit concrete proposals as soon as possible.

14. As to developing new practical proposals for the supervision of execution of judgments, it was recalled that former Group A had concentrated on suggestions to prevent slow and negligent execution and that it was therefore expected that the new Group should focus on suggestions to improve supervision when faced with situations of slow or negligent execution. It was hoped that useful insight in this respect would be provided by the participation in the work of the new Group of 9 experts with practical experience of the Committee of Ministers' supervision of execution of judgments. Ms Amat informed the DH-PR that the Execution Department would prepare a document for the Group containing an overview of the main obstacles/problems identified in the supervision process that should be overcome/tackled in situations of slow or negligent execution.

WORKING GROUP B – Review of the implementation of the Recommendations

15. Mr. Vit Schorm (Chairperson of Group B) informed the DH-PR about the outcome of the 6th meeting of the Group which was held on 9-10 November 2006 (see document GT-DH-PR(2006)008) and was principally aimed at exchanging views on the ways and means to carry out the work reassigned to it (see CDDH(2006)026, Appendix V, pp. 54-56) to continue the review of the implementation of the five recommendations mentioned in the May 2004 Declaration.

16. He drew the attention of the DH-PR to the fact that 13 member states did not send replies to the new questionnaire addressed to them in July 2006. Experts from two of these states informed the Committee that they had not done so as the information previously submitted was considered exhaustive at this stage. The Secretariat invited any other State in a similar position to inform it as soon as possible so that it would indicate this in a revised version of the document⁷ compiling the responses to the questionnaire. Under the name of the state at stake, the following sentence would appear: "Previous information submitted (see CDDH(2006)008 Addendum II, pages... and III, pages ...), provides up-to date replies to all these questions".

17. In the light of the Committee of Ministers' instruction to involve in the continued review of the implementation of the five recommendations also non-governmental organisations (NGOs) and national human rights institutions (NHRIs), in line with

⁷ A revised version of document DH-PR(2006)004 Bil of 10 November (which will include information currently in its Addendum of 20 November and any further information received) will be sent to Group B by the end of November.

Group B, the DH-PR considered it essential to reiterate the request already addressed⁸ to them by the Secretariat to comment on the information provided by member states. To this end and on the basis of the following guidelines, the DH-PR agreed that at this stage, the Chairperson of the DH-PR should send them a letter at the latest by 29 November 2006 (see Appendix III)⁹ to:

- inform relevant key players about the general framework of the exercise (guaranteeing the long term effectiveness of the Convention system) and attach the texts of the 5 recommendations to the letter, pointing out that at this stage of the review, focus is on three priority recommendations, but this should not refrain from commenting on the other two if it is so wished;
- explain clearly that by 5 February 2007 they are invited to provide their reaction to the information submitted by the state where they are active with a view to providing the Council of Europe with a more accurate assessment of the effectiveness of the implementation of the recommendations (e.g. by identifying concrete obstacles to achieve effective implementation and/or by putting forward suggestions to improve implementation);
- provide the link to the Council of Europe webpage where the information is to be found on the internet, highlighting that even though the documents are huge, the total amount of pages concerning a specific country remains reasonable;
- clarify that their contributions will be examined and taken into consideration appropriately (how needs to be defined once the nature of the contributions is known);
- highlight that the process is an on-going one that aims, at this stage, at engaging in a constructive dialogue;
- point out that after this written consultation it is planned to organise an event (next autumn, e.g. hearing or workshop) involving active representatives of civil society.

18. The DH-PR was of the view that as many relevant representatives of civil society as possible¹⁰ should be reached by such request for comments. To this end, it was agreed that as soon as possible members of the DH-PR would provide the Secretariat (gioia.scappucci@coe.int) with a list of contact details of relevant key players. The DH-PR decided to instruct its Group B to examine how the information sent by NGOs and NHRIs would be reflected in the continued review.

19. With a view to keeping NGOs, NHRIs, but also other Council of Europe bodies and member states themselves constantly informed about recent information submitted,¹¹

⁸ The email sent to NGOs and NHRIs by the Secretariat on 20 June and 28 August 2006 is reproduced in the introduction of document DH-PR(2006)005Bil.

⁹ After the plenary, based on these guidelines, the Chair Chairperson of the DH-PR, the Chairperson of its Group B, the representative of Amnesty International at the DH-PR and the Secretariat prepared the text of the letter. It was considered useful for future reference to append it to this report.

¹⁰ Local relevant NGOs, human rights associations of professionals (e.g. Bar Associations), previously contacted NGOs which did not reply to the request yet. NHRIs, Council of Europe information offices, the Council of Europe Commissioner for Human Rights and the Bureau of the Liaison Committee Conference of international non-governmental organisations of the Council of Europe should be requested to forward the letter to their member organisations or relevant partners.

¹¹ The Secretariat reiterated that member states were, if need be, always invited to submit to gioia.scappucci@coe.int any relevant up-date to any of their earlier submissions.

the DH-PR considered it practical to make the following information accessible on the webpage of the Council of Europe concerning the reform:¹²

- document CDDH(2006)008 Addenda II (tables) and III (full state contributions);
- the compilation of replies by member states to the new questionnaire on the five recommendations¹³;
- the document containing contributions from NGOs and NHRIs.¹⁴

20. Given the longer timeframe needed to engage in a productive exchange with civil society, it was thought premature to hold a hearing or any other option put forward by Group B in March 2007 (see para. 11, 6th meeting report, document GT-DH-PR(2006)008). The DH-PR decided to postpone the event with civil society to next autumn, reserving the decision on the type of event to organise (topic, participants) for its next meeting in March 2007 (when Group B will have analysed and drawn conclusions from all in-coming contributions). It was agreed that funding should be sought to enable a suitable organisation of such a significant event. Finally, it was also decided that on 27 March, Group B should hold an extra meeting to continue its heavy workload and be in a position to report to the DH-PR plenary on the following day.

PILOT JUDGMENTS

21. The DH-PR held a very fruitful first exchange of views with Mr. Michael O'BOYLE (Court Registry) and Ms Corinne Amat (Execution Department) on the topical issue of pilot judgments. Many useful ideas and some concrete suggestions for further in-depth analysis emerged from this exchange. The following are highlighted for future in-depth reflection:

- unclear definition of pilot judgments;
- need for a sharper definition of suitability of cases that lend themselves to being considered for pilot judgment procedure (possible role of the State in this regard);
- need to reflect on the procedure of pilot judgments (idea of prolonging time of proceedings before the Court, because of their complexity) and its effects on the execution of the case (i.e. freezing of similar cases reduces possibility of having wider picture of situation and hence of measures required) and generally its impact on the State (retroactive effect: better to pay for the past or invest in the future?);
- reconsider the need for a solid legal framework for the pilot procedure? Delegations were generally hesitant to include an article in this regard in the Convention;
- need to reflect on possible guidelines for the execution of pilot judgments at the Committee of Ministers level and/or suggestion to envisage a Committee of Ministers recommendation to member states setting out the criteria for implementation at the national level of pilot judgments.

22. In any event, it was considered that given the on-going developments within the Court and the Committee of Ministers' practices with regard to pilot judgments, it was necessary to keep similar exchanges of views on the agenda of the DH-PR plenary. It was therefore decided to provide a detailed account of the discussion of this meeting in

¹² http://www.coe.int/t/F/Droits_de_l%27Homme/ECHRReform_followup.asp#TopOfPage

¹³ Document DH-PR(2006)004 Bil rev.

¹⁴ Document DH-PR(2006)005 Bil rev.

due time before the next DH-PR meeting (28-30 March 2007).¹⁵ The DH-PR took note that its terms of reference with regard to pilot judgments expire in December 2008.

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23. The DH-PR noted that its next plenary would be held on 28-30 March 2007. It agreed to invite Mr. Erik JURGENS (who will represent the Parliamentary Assembly in its Group A) and the consultant engaged by the Parliamentary Assembly to examine the CDDH work on the review of the implementation of the recommendations (which will be carried out by Group B) to exchange views with it. Finally, it took note that during the next plenary it would have to draft an interim report based on drafts submitted by its Working Groups to be transmitted to the CDDH.

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24. The DH-PR warmly thanked Ms Siess-Scherz for the successful chairing of its meetings for the past two years.

¹⁵ This account will include a detailed summary of the exchange of views as well as the document already made available by the Registry of the Court and a document which will be provided by the Execution Department.

Appendix I**List of participants****ALBANIA / ALBANIE**

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Apologised / Excusé

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EUROPEAN COMMISSION / COMMISSION EUROPEENNE

Apologised/Excusé

* * *

OBSERVERS/OBSERVATEURS

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Apologised/Excusé

UNITED STATES OF AMERICA / ETATS UNIS D'AMERIQUE

Apologised/Excusé

CANADA

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JAPAN/JAPON

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MEXICO/MEXIQUE

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Apologised/Excusé

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

Apologised/Excusé

European Group of National Institutions for Human Rights / Groupe Européen des Institutions nationales des droits de l'homme

Apologised/Excusé

Europa Roma and Travellers Forum / Forum des Roms et Gens du voyage

Apologised/Excusé

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

Apologised/Excusé

* * *

European Court of Human Rights / Cour européenne des Droits de l'Homme

Mr Michael O'BOYLE , Deputy Registrar / Greffier Adjoint

* * *

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* * *

Interpreters/Interprètes

Mme Sally BAILEY
M. Olivier OBRECHT
Mme Julia TANNER

Appendix II**Agenda****Item 1: Opening of the meeting and adoption of the annotated agenda**Working documents

- Draft annotated agenda DH-PR(2006)OJ002
- Report of the 63rd CDDH meeting (24-27 October 2006) CDDH(2006)026
- Report of the 72nd meeting of the Bureau (Paris, 12-13 October 2006) CDDH-BU(2006)002
- Activity report, 7 April 2006 CDDH(2006)008
+Addenda I – III
- Report of the 59th meeting of DH-PR (7-10 March 2006) DH-PR(2006)001

Item 2: Work to draw up a draft recommendation to member states on efficient domestic capacity for rapid execution of the Court's judgments (GROUP A)Working documents

- Compilation of information notes sent by member states on execution of judgments at the national level DH-PR(2006)007Bil
- Report by the Ministers' Deputies to the 116th Session of the CM CM(2006)39 final
(12 May 2006)
- Draft ad hoc terms of reference for GT-DH-PR A CDDH(2006)026
Appendix V, p. 51

Item 3: Work to develop further practical proposals for the supervision of execution of judgments in situations of slow or negligent execution (GROUP A)Working documents

- Information note prepared by the Department for the Execution of Judgments on "Informatics developments to improve the supervision of the execution of judgments"(20 October 2006, *translation into English underway*)
- Report by the Ministers' Deputies to the 116th Session of the CM CM(2006)39 final
(12 May 2006)
- Practical suggestions from the CDDH to the Ministers' Deputies to address situations of slow or negligent execution of judgments of the Court CDDH(2006)008
Appendix IV

Item 4: Work on the developing practice of the Court and of the Ministers' Deputies on so-called pilot judgments

Working document

- Information note prepared by the Registry of the Court

Item 5: Work on follow-up to the Recommendations adopted at the 114th Session of the Committee of Ministers (12-13 May 2004) (*GROUP B*)

Working documents:

- | | |
|---|--|
| - Conclusions of the 6 th meeting of GT-DH-PR B (9-10 November 2006) | GT-DH-PR B(2006)... |
| - Draft ad hoc terms of reference for GT-DH-PR B | CDDH(2006)026
Appendix V, pp. 54-56 |
| - Report by the Ministers' Deputies to the 116 th Session of the CM | CM(2006)39 final
(12 May 2006) |
| - CDDH Activity report, 7 April 2006 | CDDH(2006)008
+ Addenda I - III |
| - Text of the recommendations and their explanatory reports or appendices | DH-PR(2005)012 |

Information documents:

- | | |
|--|-------------------|
| - Replies to the new questionnaire received by the Secretariat | DH-PR(2006)004Bil |
| - Comments/supplementary information received by the Secretariat | DH-PR(2006)005Bil |
| - Information note on contributions expected from other Council of Europe bodies | DH-PR(2006)006 |

Item 6: Adoption of the conclusions of meeting

Appendix III**Letter by the Chairperson of the DH-PR requesting comments from civil society**
(sent on 29 November 2006)

Madam, Sir,

The Council of Europe is working to ensure the improved respect and implementation of the human rights protection at the national level as guaranteed by the European Convention of Human Rights and its protocols. This effort should not only enhance respect for human rights at the national level but should also make it less necessary for persons to have to resort to the now overburdened European Court of Human Rights for redress of human rights violations and therefore help to guarantee its long-term effectiveness.

To this end, the Committee of Ministers of the Council of Europe adopted a series of Recommendations aimed at re-examination or reopening of cases following judgments of the Court, publication and dissemination of the text of the Convention and of the case-law of the Court, university education and professional training on the Convention in member states, verification of compatibility of draft laws, existing laws and administrative practice with the Convention and the improvement of domestic remedies. The text of each one of these recommendations is attached.

The Committee of Ministers is reviewing the implementation of these Recommendations by the 46 member states of the Council of Europe. To date the member states have provided information about how they address the issues raised by the Recommendations in their countries. This information is accessible on the Internet.¹⁶

In June 2006, the Committee of Ministers decided to deepen this review by seeking the input of others and thereafter initiate a constructive dialogue. Based on this decision, I am writing to you to request that you review the information provided by the State in which you are active and to solicit your comments and views on such information.¹⁷

¹⁶ [http://www.coe.int/t/F/Droits de l%27Homme/ECHRReform_followup.asp#TopOfPage](http://www.coe.int/t/F/Droits_de_l%27Homme/ECHRReform_followup.asp#TopOfPage) is where relevant documents are to be found. Your attention is particularly drawn to the Addenda II and III of the Activity report of 7 April 2006. Please note that even though they are huge, the total amount of pages concerning a specific country in relation to each of the five Recommendations remains reasonable. Please also note that these documents are continuously up-dated and that soon a new document containing recent replies by member states to a new questionnaire on the implementation of the five Recommendations will become accessible on the same webpage. **If access is difficult, please contact Ms Gioia Scappucci at gioia.scappucci@coe.int**

¹⁷ At this stage of the review, focus is on three priority Recommendations: improvement of domestic remedies, re-examination or reopening of cases following judgments of the Court, and verification of compatibility of draft laws, existing laws and administrative practice with the Convention. However, if it is so wished, this should not refrain you from commenting on the other two Recommendations: publication and dissemination of the text of the Convention and of the case-law of the Court; and university education and professional training on the Convention in member states.

In particular, I would appreciate if you could inform us in writing of your organisation's view on submissions of the State in which you are active, highlighting among other things points considered to be inaccurate or incomplete as well as any concrete suggestions for better implementation of the above mentioned Recommendations.

In order to ensure that your comments are duly taken into account in the course of this review, I would be grateful if you would send your comments **by 5 February 2007** to Ms Gioia Scappucci (gioia.scappucci@coe.int). Unless you request us not to, your comments will be made available on the Council of Europe's website referred to in footnote 1 of this letter.

Following receipt of your comments, there will be further discussion in the intergovernmental body leading this review, the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR). Among other things, this Committee is considering convening a conference in autumn 2007 with members of civil society, Council of Europe member states and relevant bodies of the Council of Europe.

Please feel free to forward this request and its attached documentation to any other relevant non-governmental organisation, national human rights institution and any other appropriate actor.

Thank you very much for your cooperation.

Best regards,

Ms Ingrid SIESS-SCHERZ
Chairperson of the Committee of Experts for the
Improvement of Procedures for the Protection of Human Rights