



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 12 May 2010

DH-PR(2010)002 Addendum II

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

**Draft report
on
proposals for making it possible to simplify
amendment of the Convention's provisions
on organisational issues**

**(Adopted by the DH-PR at its 65th meeting,
10-12 May 2010)**

Draft report
on
proposals for making it possible to simplify amendment of
the Convention's provisions on organisational issues¹

I. Interpretation of the CDDH's ad hoc terms of reference

1. The CDDH's ad hoc terms of reference require it "to elaborate ... proposals for making it possible to simplify amendment of the Convention's provisions on organisational issues."

2. Many experts expressed the view that this would also provide an opportunity for addressing other issues from outside the Convention and/or relating to non-organisational issues, including, for example, certain provisions of the Rules of Court given the status of implied obligation through the Court's case-law, notably Rule 39, unilateral declarations and the pilot judgment procedure,² all of which would benefit in clarity, transparency and, above all, authority and legitimacy by elevation of their status through inclusion in a text adopted by the States parties.

3. Some did not consider that the terms of reference could or should be pursued in this way: for instance, some felt that the CDDH's ad hoc terms of reference were deliberately limited, that the essential goal was to allow greater flexibility in amending the Convention or that efforts to include such issues would over-complicate an exercise already likely to be difficult and lengthy.³

4. Resolving this preliminary question is a prerequisite to addressing other questions that will arise during future work (see further below). The Committee of Ministers is therefore asked whether the CDDH is to interpret its terms of reference so as to allow it to consider also issues found outside the Convention, including those not relating to organisational matters.

II. Questions to be resolved during future work at expert level

5. At this preliminary stage, it can be observed that the following further questions, possibly amongst others, will need to be resolved at expert level:

- (a) Which issues should be subject to a new amendment procedure: in other words, which of the Convention provisions on organisational issues and, should the possibility of their inclusion be affirmed (see para. 4 above), which issues currently found outside the Convention and/or not relating to organisational matters.
- (b) How the procedure should be introduced, whether by way of:

¹ Adopted by the DH-PR at its 65th meeting (10-12 May 2010).

² It should be noted that the pilot judgment procedure is based on the Court's case-law and that the Court is currently working on its incorporation in the Rules of Court.

³ It should be noted that ad hoc terms of reference require the CDDH to submit proposals by 15/04/12.

- (i) Inclusion of relevant issues in a Statute of the Court, with a new provision in the Convention establishing the Statute and its amendment procedure;
- (ii) A new provision in the Convention allowing certain other provisions of the Convention to be amended by a simplified procedure (i.e. an approach similar to that found in Article 41(d) of the Statute of the Council of Europe);⁴ or
- (iii) Some other approach not yet envisaged.

In this respect, it can be noted that the choice between these options may to some extent depend on decisions on the eventual scope of the procedure (see (a) above): should only Convention provisions on organisational issues be covered, option (ii) may be sufficient; should other issues also be covered, option (i) may be necessary.

- (c) Who should be involved in the amendment procedure itself, the possibilities including:
 - (i) The Committee of Ministers;
 - (ii) The European Court of Human Rights; and
 - (iii) The Parliamentary Assembly.

In this respect, it can be noted that identification of the appropriate bodies may to some extent depend on the nature of the provisions that would be subject to the procedure (see (a) above).

- (d) What should be the amendment procedure, with aspects of this question including:
 - (i) Which bodies should have the right to propose amendments;
 - (ii) Which bodies' approval should be required to adopt amendments;
 - (iii) Whether amendments could be adopted by majority, and if so whether simple or qualified, by unanimity or by a "non-opposition" procedure of implied consent.

III. Creation of a body of restricted composition to pursue future work

6. The Committee of Ministers is asked to adopt terms of reference for a Committee of experts on a simplified procedure for amendment of certain provisions of the Convention on

⁴ In response to a request made by experts, the Secretariat provided the following information concerning this article. It was an original provision of the Statute. Unlike the amending protocol procedure required for amendment of other provisions of the Statute, Article 41(d) had been used on 33 occasions, most often in relation to Article 26 of the Statute, to define the number of seats in the Parliamentary Assembly allocated to the delegation of a new member State following its accession to the Council of Europe. It had also been used in relation to Articles 23, 25, 27 and 34, also concerning the Parliamentary Assembly, and Article 38, concerning financing of the Organisation.

organisational issues (title to be reviewed in the light of the response to the question set out under section I. above), this body to be of restricted composition.