

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 1 July 2016

DH-SYSC-I (2016)R1

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH) (CDDH)

**COMMITTEE OF EXPERTS ON THE SYSTEM OF THE EUROPEAN
CONVENTION ON HUMAN RIGHTS
(DH-SYSC)**

**DRAFTING GROUP I ON THE FOLLOW-UP TO THE CDDH REPORT
ON THE LONGER-TERM FUTURE OF THE CONVENTION
(DH-SYSC-I)**

MEETING REPORT

1st meeting

29 June – 1 July 2016

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

1. The Drafting Group I on the follow-up to the CDDH Report on the longer-term future of the system of the European Convention on Human Rights (DH-SYSC-I) held its 1st meeting in Strasbourg, from 29 June to 1 July 2016, with Mr Vít A. SCHORM (Czech Republic) in the Chair. The list of participants appears in Appendix I. The agenda, as it was adopted, appears in Appendix II. The Group elected Mr Morten RUUD (Norway) as its Vice-Chairperson.

Item 2 : **Work on the selection and election process of judges of the European Court of Human Rights**

2. The Chair recalled the exchange of views held by the DH-SYSC with all actors concerned at its 1st meeting (25–27 April 2016), and the guidance of the DH-SYSC to the Drafting Group DH-SYSC-I (see the meeting report DH-SYSC(2016)R1, paras 6–8) which the CDDH endorsed at its 85th meeting (15–17 June 2016, see doc. CDDH(2016)R1, para. 13), namely:

- consider all the parameters of the selection and election process in light of the CDDH report on the longer term future of the Convention system while preserving the credibility of the Court. The situation of judges of the Court once their term of office has expired will as well be considered, also in light of information provided by member States;
- take into consideration a) the work and reflections of all actors concerned, including good practices developed and outstanding challenges, while ensuring the appropriate level of confidentiality and b) the previous work carried out by the CDDH including the work of the Ad Hoc Working Group on national practices for the selection of candidates for the post of judge at the European Court of Human Rights (CDDH-SC);
- examine the procedures and practices of selection/election of judges in other international and regional courts and in highest national courts;
- examine possible measures to respond to the challenges identified with an inclusive approach, *i.e.* without excluding responses that would require an amendment to the Convention while focusing on practical solutions improving the current system. This work should involve a feasibility study.

3. It is also recalled that [the CDDH¹ underlined that:

- the working methods of the DH-SYSC-I should correspond to those which are normally followed by the other groups working under the CDDH or the DH-SYSC;

¹ See doc. CDDH (2016)R85, §13. The square brackets will disappear as soon as the report of the 85th meeting of the CDDH becomes final and public.

- the DH-SYSC asked the DH-SYSC-I to take into consideration the work and reflections of all the actors concerned, while ensuring the appropriate level of confidentiality. The Chair of the Group and the Secretariat will ensure this, notably when drafting the meeting reports but all the participants to this work also bear the responsibility for this.
- States that wish to participate in the work of the DH-SYSC-I are invited to appoint an experienced representative.]

4. The Group held an exchange of views on all aspects addressed in the working document DH-SYSC-I(2016)003,² presenting all the steps of the process of selection/election, the work and reflections of all relevant actors concerned (including the previous work carried out by the CDDH), a comparative study of the practices of selection and election of judges in other international and regional courts, as well as references to relevant academic work. The Group also held an exchange of views with Mr Jörg POLAKIEWICZ, Director of Legal Advice and Public International Law regarding the functioning of the Advisory Panel of Experts on Candidates for Election as Judges at the Court on the occasion of the Second activity report of the Advisory Panel which became public on 24 June 2016 (doc. Advisory Panel(2016)1).

5. After completion of its work, the DH-SYSC-I instructed the Secretariat to prepare a new working document in view of the 2nd meeting of the Group, in accordance with the aforementioned guidelines drawn up by the DH-SYSC and endorsed by the CDDH, namely presenting possible measures to respond to the challenges identified with an inclusive approach, *i.e.* without excluding responses that would require an amendment to the Convention while focusing on practical solutions improving the current system. This work should include a feasibility study. The Group agreed that all the themes and subthemes covered in the working document of the present meeting (doc. DH-SYSC-I(2016)003) should be addressed taking into account the elements raised during the meeting. The Secretariat should maintain a degree of latitude with regard to the final structure of the document in so far as all the questions are intrinsically linked.

Item 3 : Organisation of future work

6. For the purpose of the preparation of the working document that would be presented at the next meeting of the Group (19–21 October), the following procedure and calendar were decided on:

- the experts are invited to send to the Secretariat (DGI-CDDH-Reform@coe.int), **as soon as possible and at the latest by Friday 9 September 2016**, any contribution on the themes addressed in the working document DH-SYSC-I(2016)003, more particularly on:
 - the taking into account of the Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights in respect of the national procedures of selection, in particular concerning the composition and the functioning of the selection body;

² Prepared in light of the guidance of the DH-SYSC (doc. DH-SYSC(2016)R1, § 8).

- the possible updating of the elements mentioned in the comparative survey prepared by the Court on the recognition of service as a Judge of the European Court (document [DD\(2013\)1321](#));
 - possible relevant national practices concerning the selection of the judges in the highest national courts.
- Furthermore, the DH-SYSC-I considered that it could also be useful to obtain information regarding the various opinions and experiences, positive or negative, concerning the national processes of selection of the candidates for the post of judge at the Court and of election of the judges of the Court. While noting the difficulty of this exercise, the Drafting Group indicated that the request for information should be made by national experts in accordance with the appropriate methods chosen by each expert. The modalities regarding the request for information and its submission are laid down in Appendix III.
- the Secretariat will prepare a consolidated draft document by **Friday 7 October 2016** in order to send it in due time before the 2nd meeting.

7. The DH-SYSC-I instructed the Secretariat to organise an exchange of views with the Secretariat of the Parliamentary Assembly that would take place at the next meeting of the Group (19–21 October 2016). It also instructed the Secretariat to contact the Registry of the Court with a view to the contribution of the latter before the 2nd meeting of the Drafting Group.

* * *

Appendix I – List of participants

MEMBER STATES / ETATS MEMBRES

ARMENIA / ARMENIE

Ms Varduhi MELIKYAN, Second Secretary, Legal Department, Ministry of Foreign Affairs

BELGIUM / BELGIQUE

Mme Isabelle MINNON, Co-Agent du Gouvernement de la Belgique auprès de la Cour européenne des droits de l'homme, SPF Justice, Service des Droits de l'Homme

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Ms Zikreta IBRAHIMOVIC, Deputy Agent of the Council of Ministers of Bosnia and Herzegovina before the European Court of Human Rights, Office of the Agent

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Mr Vít A. SCHORM, **Chairperson of DH-SYSC-I / Président du DH-SYSC-I**, Government Agent of Czech Republic before the European Court of Human Rights, Ministry of Justice

Mr Ota HLINOMAZ, Office of the Government Agent of Czech Republic before the European Court of Human Rights, Ministry of Justice

FINLAND / FINLANDE

Mr Arto KOSONEN, Government Agent of Finland before the European Court of Human Rights, Director of the Unit for the Human Rights Court and Conventions, Legal Service, Ministry of Foreign Affairs

Ms Krista OINONEN, Deputy Director, Unit for Human Rights Courts and Conventions, Legal Service

ESTONIA / ESTONIE

Ms Katri LÕHMUS, lawyer, International Law Division of the Legal Department, Ministry of Foreign Affairs

GERMANY / ALLEMAGNE

Ms Kathrin BRUNOZZI, Federal Ministry of Justice and Consumer Protection

GREECE / GRECE

Ms Ourania PATSOPOULOU, Conseiller, Bureau de l'Agent du Gouvernement devant la Cour européenne des droits de l'homme, Représentation Permanente de la Grèce auprès du Conseil de l'Europe

LATVIA / LETTONIE

Ms Kristīne LĪCIS, Representative of Latvia before European Court of Human Rights, Ministry of Foreign Affairs

Ms Renāte RŪSE-AUZIŅA, Jurisconsult of the Government Agent Office before International Human Rights Organisation, Ministry of Foreign Affairs

LUXEMBOURG

M^{me} Brigitte KONZ, Juge de Paix directrice, Cité judiciaire

M. Laurent THYES, Attaché de Gouvernement, Ministère de la justice

MONTENEGRO / MONTÉNÉGRO

Mr Ivo ŠOĆ, Advisor of the Representative of Montenegro before the European Court of Human Rights

NETHERLANDS / PAYS-PAS

Ms Johanna PALM, LL.M, Legal adviser human rights law, Ministry of Security and Justice, Legislation Department

Ms Noortje VAN RIJSEN, Legal Officer, Ministry of Foreign Affairs of the Netherlands, Legal Affairs Department (DJZ/IR), International Law Division

NORWAY / NORVÈGE

Mr Morten RUUD, **Vice-Chairperson of DH-SYSC-I /Vice-Président du DH-SYSC-I**, Special Adviser Ministry of Justice

SWEDEN / SUÈDE

Ms Helen LINDQUIST, Special Adviser, Department for International Law, Human Rights and Treaty Law, Ministry for Foreign Affairs, Government Offices of Sweden

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Vladislav ERMAKOV, Ministry of Foreign Affairs

M. Stanislav KOVPAK, Représentant du Ministère de la Justice de la Fédération de Russie, Représentation de la Fédération de Russie auprès du Conseil de l'Europe

Ms Kseniya ROGOZYANSKAYA, Attaché, Ministry of Justice of Russian Federation, Permanent Representation of Russian Federation to the Council of Europe

TURKEY / TURQUIE

Mr Öner AYDIN, Rapporteur Judge, Ministry of Justice

Mr Hasan ÇETİN, Rapporteur Judge, Ministry of Justice

M^{me} Aysen EMÜLER, Experte juridique, Représentation permanente de la Turquie auprès du Conseil de l'Europe

UNITED KINGDOM / ROYAUME-UNI

Mr Paul FLYNN, Head of Europe Human Rights Policy, Ministry of Justice

PARTICIPANTS

Mr Jörg POLAKIEWICZ, Director of Legal Advice and Public International Law, Council of Europe

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

Mr Grégor PUPPINCK, 4 quai Koch, F-67000 Strasbourg

JAPAN / JAPON

Mr Shun KITAGAWA, Consul, Consulate-General of Japan in Strasbourg

**EUROPEAN NETWORK OF HUMAN RIGHTS INSTITUTIONS (ENNHRI) / RÉSEAU
EUROPÉEN DES INSTITUTIONS NATIONALES DES DROITS DE L'HOMME**
Mme Morgane COULON, Chargée de mission at CNCDH

**CONFERENCE OF INGOS OF THE COUNCIL OF EUROPE / CONFÉRENCE DES OING
DU CONSEIL DE L'EUROPE**
M. Jean-Bernard MARIE

**REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / GREFFE DE LA COUR
EUROPÉENNE DES DROITS DE L'HOMME**
Mr John DARCY, Adviser to the President and the Registrar, Private Office of the President,
European Court of Human Rights

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

Mme Irène KITSOU-MILONAS, Head of the Unit on the system of the European Convention on
Human Rights/Chef de l'Unité sur le système de la Convention européenne des droits de l'homme,
Secretary of the DH-SYSC/Secrétaire du DH-SYSC

Mme Virginie FLORES, Administrator/Administratrice, Unit on the system of the European
Convention on Human Rights/Unité sur le système de la Convention européenne des droits de
l'homme

Mme Haldia MOKEDDEM, Assistant/Assistante, Unit on the system of the European Convention on
Human Rights/Unité sur le système de la Convention européenne des droits de l'homme

Mme Carole DERON, Trainee/Stagiaire

INTERPRETERS/INTERPRÈTES

Grégoire DEVICTOR
Christopher TYCZKA
Chloé CHENETIER

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

- Draft annotated agenda DH-SYSC-I(2016)OJ001
- Report of the 85th CDDH meeting (15-17 June 2016) CDDH(2016)R85
- Report of the 1st DH-SYSC meeting (25-27 April 2016) DH-SYSC(2016)R1
- Report of the 84th CDDH meeting (7-11 December 2015) CDDH(2015)R84
- Report of the 9th DH-GDR meeting (17-20 November 2015) DH-GDR(2015)R9
- CDDH report on the longer-term future of the system of the European Convention on Human Rights CDDH(2015)R84 Addendum I
- Brussels Declaration CDDH(2015)004
- Brighton Declaration CDDH(2012)007
- Izmir Declaration CDDH(2011)010
- Interlaken Declaration CDDH(2010)001
- Rome Declaration
- Decisions adopted at the 1252nd meeting of the Ministers' Deputies on the CDDH Report on the longer-term future of the system of the European Convention on Human Rights (30 March 2016) DH-SYSC(2016)009
- Terms of reference of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC) for 2016-2017 DH-SYSC(2016)003
- Committee of Ministers' Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods CDDH(2011)012

Item 2 : Work on the selection and election process of judges of the European Court of Human RightsWorking document

- Working document in view of the 1st DH-SYSC-I meeting DH-SYSC-I(2016)003

Main reference documents

- Report of the 1st DH-SYSC meeting (25-27 April 2016) DH-SYSC(2016)R1

- CDDH report on the longer-term future of the system of the European Convention on Human Rights CDDH(2015)R84 Addendum I
- Comment from the Court on the report of the CDDH on the longer-term future of the Convention system #5281071
- Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights CM(2012)40-final
CM(2012)40-addfinal
- Report of the CDDH on the review of the functioning of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights CDDH(2013)R79 Addendum II
- Contributions submitted in the framework of the GT-GDR-F work DH-SYSC-I(2016)001
- Compilation of information submitted in the framework of the national reports on the implementation of the Brighton Declaration DH-SYSC-I(2016)002
- Relevant provisions relating to other International or Regional courts or tribunals DH-SYSC-I(2016)004
- Procedure for electing judges to the European Court of Human Rights - Information document prepared by the Secretariat of the Parliamentary Assembly – Committee on the election of judges to the Court AS/Cdh/Inf (2016) 01 rev 4
- Country-by-country table of progress - Information document prepared by the Secretariat of the Parliamentary Assembly – Committee on the election of judges to the Court
- Activity Report of the Advisory Panel of Experts on Candidates for Election as Judge to the Court (2010-2013) Advisory Panel (2013)12 EN
- Activity Report of the Advisory Panel of Experts on Candidates for Election as Judge to the Court (2014-2015) Advisory Panel (2016)1
- Comparative survey on the recognition of service as a Judge of the European Court of Human Rights DD(2013)1321

Item 3: Organisation of future work

* * *

Appendix III – Elements with a view to collecting additional information

1. In its [Report on the longer-term future of the system of the European Convention on Human Rights](#), adopted on 11 December 2015, the Steering Committee for Human Rights (CDDH) concluded:

“A central challenge for the long-term effectiveness of the system is to ensure that the judges of the Court enjoy the highest authority in national and international law. A comprehensive approach examining all parameters regarding the selection and election process including all factors that might discourage possible candidates from applying is needed. The CDDH concludes that all the above considerations and possible measures to be taken deserve a further in-depth analysis that should be conducted as a follow-up to this report. As noted above, this follow-up may result in responses outside the existing structures.”³

2. At their 1252nd meeting, the Ministers’ Deputies agreed on the follow-up to the report and “deemed it essential that the judges of the Court enjoy the highest authority in national and international law and to this end instructed the CDDH to examine, while securing the participation of the Court and all other relevant actors concerned, the whole selection and election process, including all factors that might discourage possible candidates from applying, in the light of conclusion § 203 i) and the relevant paragraphs of the report”.

3. This work was entrusted to the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC), which decided that the preparatory work would be conducted by the first Drafting Group of the DH-SYSC (DH-SYSC-I).

4. As part of its preparatory work, the DH-SYSC-I considered that it could also be useful **to obtain information regarding the various opinions and experiences, positive or negative, concerning the national processes of selection of the candidates for the post of judge at the Court and of election of the judges of the Court.** While noting the difficulty of this “open call”, the Drafting Group indicated that the request of information should be made in accordance with the appropriate methods chosen by each national expert. The request for information could be directed to the following persons:

- individuals whose profile corresponds to the post of judge at the European Court of Human Rights but do not wish to be candidates, more particularly with regard to the factors that might discourage them ;
- individuals who were candidates for the post of judge at the Court but were not retained in the national selection procedure;
- individuals who were candidates for the post of judge at the Court but were not elected following the procedure conducted before the Parliamentary Assembly of the Council of Europe;
- former judges of the Court.

³ § 203 i).

5. The information can be communicated to the Secretariat by e-mail (DGI-CDDH-Reform@coe.int) or by regular mail (at Irène Kitsou-Milonas, Human Rights Intergovernmental Co-operation Division, Council of Europe, bâtiment Agora, 1 quai Jacoutot, F-67075 Strasbourg cedex) by **Friday 9th September 2016**, directly by the person concerned or through the expert of the State concerned. The Secretariat is responsible for ensuring the anonymity of this information as well as the absence of any elements enabling the identification of the State or the persons concerned.

* * *