

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 21 October 2016

DH-SYSC-I (2016)R2

**STEERING COMMITTEE FOR HUMAN RIGHTS
(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

2nd meeting

19–21 October 2016

Item 1 : **Opening of the meeting, adoption of the agenda and order of business**

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 2nd meeting in Strasbourg, from 19 to 21 October 2016, with Mr Vít A. SCHORM (Czech Republic) and Mr Morten RUUD (Vice-Chairperson, Norway) in the Chair. The list of participants appears in Appendix I. The agenda, as it was adopted, appears in Appendix II.
2. The Chair recalled the guidance of the DH-SYSC as endorsed by the CDDH, under which the Group should notably take into consideration the work and reflections of all the actors concerned, while ensuring the appropriate level of confidentiality, this responsibility falling under the Chair of the Group and the Secretariat, as well as to any participant to the work.
3. The Representative of the Registry of the Court informed the DH-SYSC-I that the Court's Status Committee will meet in view of the drafting of its contribution to this work, on the basis of all the reference documents examined by the Drafting Group. This contribution will be submitted to the Court sitting in plenary session with a view to its transmission in due course to the DH-SYSC-I before its 3rd meeting (27 February–1st March 2017).

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

4. The Group held an exchange of views with Mr Wojciech SAWICKI, Secretary General to the Parliamentary Assembly, accompanied by Mr Günter SCHIRMER, Head of the Legal Affairs and Human Rights Department of the Secretariat of the Parliamentary Assembly. The Group instructed the Secretariat to draft a summary of this exchange of views, which will be transmitted to the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC) before its 2nd meeting (8–10 November 2016).
5. The Group proceeded to the examination of all the questions addressed in the working document DH-SYSC-I(2016)007. It recalled that the examination of the different parts should take into account the fact that all angles and steps of the process form an aggregate where all parts are interlinked. The decisions on possible responses to one particular challenge faced should not lose sight of its bearing on other parts of the process and the aim of the present exercise, which is to seek how to ensure that the best possible candidates apply, are selected, and elected as judges of the European Court of Human Rights. These responses should not, if possible, amplify factors that might discourage potential candidates.
6. The Group wished to bring to the attention of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC) the decisions appearing in Appendix III so as to gather its approval or possible guidance.

Item 3 : Organisation of future work

7. To the ends of the preparation of the working document that will be presented during the next meeting of the Group (27 February–1 March), the Group suggested that the experts of the DH-SYSC be invited to send their contributions according to a procedure and a calendar which will be set during the next meeting of the DH-SYSC (8–10 November 2016).

8. The Group furthermore invited the experts to address to the Secretariat (DGI-CDDH-Reform@coe.int) any information destined to update the tables in Appendices I and III of document DH-SYSC-I(2016)007 with the prospect of a regular update of these elements.

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Appendix I – List of participants**MEMBER STATES/ETATS MEMBRES****ALBANIA/ALBANIE**

Ms Evi SADUSHAJ, Agent of the Albanian Government

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

CZECH REPUBLIC / REPUBLIQUE TCHÈQUE

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

ESTONIA/ESTONIE

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

FINLAND/FINLANDE

Ms Katja KUUPPELOMÄKI, Legal Officer, Unit for Human Rights Courts and Conventions, Legal Service, Ministry for Foreign Affairs

FRANCE

Mme Elise TROALEN, Rédactrice, Ministère des Affaires étrangères et du Développement international, Direction des affaires juridiques, Sous-direction des droits de l'homme

GERMANY/ALLEMAGNE

Ms Kathrin BRUNOZZI, Federal Ministry of Justice and Consumer Protection

GREECE/GRECE

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

LUXEMBOURG

Mme Antonine LACROIX, Représentation permanente du Luxembourg auprès du Conseil de l'Europe

MONTENEGRO/MONTÉNÉGRO

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

NETHERLANDS/PAYS-PAS

Ms Clarinda COERT, Ministry of Security and Justice, Legislation Department

Ms Noortje VAN RIJSSEN, 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, Desk Officer, 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

Mme Aysen EMÜLER, Experte juridique, Représentation permanente de la Turquie auprès du Conseil de l'Europe

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

M. Grégor PUPPINCK

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

M. Jean-Bernard MARIE

PARLIAMENTARY ASSEMBLY / ASSEMBLÉE PARLEMENTAIRE

Mr Wojciech SAWICKI, Secretary General

Mr Günter SCHIRMER, Head of Department, Legal Affairs & Human Rights Department

**REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / GREFFE DE LA
COUR EUROPÉENNE DES DROITS DE L'HOMME**

M. Patrick TITIUN, Chef du Cabinet, Cabinet du Président de la Cour

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

Mr Mikhail LOBOV, Head of Human Rights Policy and Development Department / Chef du
Service des politiques et du développement des droits de l’Homme

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

Ms 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

Ms 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

Ms 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

Mr Jérémie SPEISER, Trainee / Stagiaire

INTERPRETERS/INTERPRÈTES

Ms Chloé CHENETIER

Ms Nadine KIEFFER

Ms Shan BENSON

Mr Christopher TYZCKA

Appendix II – Agenda (as adopted)

Item 1: Opening of the meeting, adoption of the agenda and order of business

General documents

- Draft annotated agenda DH-SYSC-I(2016)OJ002REV
- Draft order of business DH-SYSC-I(2016)OT002
- Report of the 1st DH-SYSC meeting (25–27 April 2016) DH-SYSC(2016)R1
- Report of the 85th CDDH meeting (15–17 June 2016) CDDH(2016)R85
- Report of the 1st DH-SYSC-I meeting (29 June–1 July 2016) DH-SYSC-I(2016)R1
- 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

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

Working document

- Working document in view of the 2nd DH-SYSC-I meeting DH-SYSC-I(2016)007
(*prepared by the Secretariat*)

Main reference documents

- Contributions in view of the 2nd DH-SYSC-I meeting DH-SYSC-I(2016)005
REV
- Information regarding the various opinions and experiences 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 DH-SYSC-I(2016)006
REV
Restricted
- Report of the 1st DH-SYSC-I meeting (29 June–1 July 2016) DH-SYSC(2016)R1
- Working document in view of the 1st DH-SYSC-I meeting DH-SYSC-I(2016)003

- Relevant provisions relating to other International or Regional Courts or tribunals DH-SYSC-I(2016)004
- 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
- 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**

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**Appendix III – Points for consideration by the Committee of Experts on
the System of the European Convention on Human Rights (DH-SYSC)**

1. The examination of all the questions addressed in the working document DH-SYSC-I(2016)007 should take into account the fact that all angles and steps of the process form an aggregate where all parts are interlinked. The decisions on possible responses to one particular challenge faced should not lose sight of its bearing on other parts of the process and the aim of the present exercise, which is to seek how to ensure that the best possible candidates apply, are selected, and elected as judges of the European Court of Human Rights. These responses should not, if possible, amplify factors that might discourage potential candidates.

2. The Group wished to bring to the attention of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC) the following decisions so as to gather its approval or possible guidance.

I. The selection procedure

The selection criteria (Article 21 of the Convention)

3. As regards selection criteria as such, the following proposals were not retained by the Group:

- (i) The modification of the term of office: The Group excluded such a modification in order to preserve the independence of judges and the institutional stability of the Court. It has nonetheless highlighted that the concerns related to the nine-year term could be diluted in the framework of responses provided as regards the recognition of service as a judge at the Court and the prospects of future employment.
- (ii) The introduction of a minimum age for candidates has been excluded by a large majority, notably in the light of national differences in this regard as well as the difficulties for certain countries to find appropriate candidates for the national list.
- (iii) The modification of linguistic requirements has also been excluded, having been recalled that there are certain essential minimal requirements in order for the judges to be operational in an international jurisdiction of which the two official languages are French and English.
- (iv) As regards the difficulty for States to present a list of 3 candidates or the possibility for the Committee on the Election of Judges to present to the Plenary of the Assembly a list containing less than three candidates, it is not envisaged to amend the Convention. Responses to the concerns expressed notably by small States, could nonetheless be provided in the framework of the examination of the other aspects of the process.

National selection procedures

4. As regards the national selection procedures, the Group agreed to the following:
- (i) In light of the information related to the national selection procedures figuring in Appendix I of working document DH-SYSC-I(2016)007, the Group decided, as had been envisaged by the CDDH,¹ that follow-up should be conducted.
 - (ii) This follow-up should take into account the fact that it is necessary to preserve the particularities of the national system. A first step could be to update the examples of good practices of the Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights.
 - (iii) The update of the guidelines or the elaboration of a recommendation stating the essential characteristics which every national selection procedure should present could constitute an additional step, if it is found necessary.

5. As regards the interpretation of the criteria, the Group considered that the guidelines should be the text of reference for all actors in the process with a view to their application, while respecting the diversities of national systems. The risk of diverging interpretations of the criteria by the different actors of the process has been raised. The Group considered that it would be useful to obtain more elements concerning notably the substance of the complementary information solicited by the Panel to the member States. The Group tasked the Secretariat to solicit the Panel's Secretariat to this effect.

The role of the Advisory Panel in the selection process

6. As regards the role of the Advisory Panel in the selection process, the Group agreed on the following:
- (i) As regards the Panel's intervention in the selection process at the national level, the Group has agreed upon that all avenues should be explored so as to reinforce the latter's role, if need be through the means of the revision of the Guidelines of the Committee of Ministers on the selection of judges at the national level in order to specify that the consultation of the Panel is integral to the selection process by national authorities prior to the list's transmission to the Parliamentary Assembly.
 - (ii) The DH-SYSC-I did not retain the possibility for the Panel to interview candidates in exceptional circumstances, considering that it could be considered as discriminatory towards other potential candidates, or as going against the principle of respecting the confidentiality of the process. It has also been argued that it would multiply the amount of interviews held and thereby prolong the selection process of candidates.
 - (iii) The Group has also not retained the proposal of making the opinion delivered by the Panel binding, deeming it would go against the advisory nature of the Panel.

¹ § 104 of the CDDH report (doc. CDDH(2015)R84 Addendum I).

- (iv) As regards the means allocated to the Panel, the Group has agreed upon that the Panel should be allocated the resources necessary to achieve its task.

II. The election process

7. As regards the election process, the Group agreed to the following:

- (i) The Group has agreed upon that the election of judges to the Court must continue to fall under the Parliamentary Assembly, in accordance with the Convention, as a guarantee of the democratic legitimacy of the judges. Consequently, other systems were not retained.
- (ii) Suggestions should nonetheless be drawn in order to feed into the work of the Parliamentary Assembly on this issue. In light of the discouraging factors mentioned in the contributions received by the Group and those identified by the latter, these reflections and suggestions would notably relate to the holding of interviews, voting regulations and the quorum, or to the communication and the interaction between the Panel and the Assembly or its Committee on the Election of Judges to the European Court of Human Rights.
- (iii) The Group equally considered important that it explores the eventual strengthening of the motivation of the Panel's decisions in order to facilitate the work of the Committee on the Election of Judges to the European Court of Human Rights, respecting the confidentiality in order not to harm the reputation of candidates.

III. Conditions of employment and working conditions at the Court

8. As regards working conditions at the Court, the Group decided that this question will be examined in the light of the Court's expected contribution.

9. As regards conditions of employment and notably the issue of recognition of service as a judge by States, the Group decided that the question will be further explored in the light of the Court's contribution exposing the difficulties encountered up to this day as well as the contributions of States in order to decide on the need for possible follow-up work.

IV. Ad hoc judges

10. The Group decided that a distinct regime for *ad hoc* judges is notably justified by the rarity of the procedure's use. It decided not to further consider this question. It noted that the Court could envisage prolonging, or rendering more flexible, the two-year period for the list of *ad hoc* judges.