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# COUNCIL OF EUROPE: COMMENTS ON FOLLOW-UP OF THE INTERLAKEN DECLARATION

**December 2010**

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# INTRODUCTION

1. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty consider that the effective implementation of many of the elements of the Interlaken Declaration and Plan of Action<sup>1</sup> could lead to enhanced respect for human rights in the Council of Europe member states. It could also effectively address a number of the challenges faced by the European Court of Human Rights resulting from the number of applications received by the Court and its current backlog, in the light of its current resources. The organizations therefore welcome the opportunity to participate in the continuing discussions on the implementation of the Interlaken Declaration. In that context, the organizations submit the following comments, including comments on the ***Final Report of the CDDH to the Committee of Ministers on measures that result from the Interlaken Declaration that do not require amendment of European Convention on Human Rights*** (CDDH(2010)013 Addendum I).<sup>2</sup>

2. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty consider that any reforms to the Convention system, including to the European Court of Human Rights should ensure better implementation of the Convention by the 47 member states of the Council of Europe at national level.

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<sup>1</sup> The Interlaken Declaration and Plan of Action was adopted by the member states of the Council of Europe at a Ministerial level conference on the future of the European Court of Human Rights in February 2010. The aim of the conference, which was organised by the Swiss Chairmanship of the Council of Europe's Committee of Ministers, was to reaffirm member states' commitment to protecting human rights in Europe, and to draw up a plan of action aimed at guaranteeing the future effectiveness of the European Court of Human Rights, in view of the growing volume of applications it receives. The Interlaken Declaration is accessible at:

[http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final\\_en.pdf](http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final_en.pdf).

<sup>2</sup> The *Final Report of the CDDH to the Committee of Ministers on measures that result from the Interlaken Declaration that do not require amendment of European Convention on Human Rights*, (CDDH(2010)013 Addendum I, is available at:

[http://www.coe.int/t/e/human\\_rights/cddh/3\\_committees/01.%20steering%20committee%20for%20human%20rights%20%28cddh%29/05.%20meeting%20reports/71st\\_%20Add%20%20I\\_%20EN.pdf](http://www.coe.int/t/e/human_rights/cddh/3_committees/01.%20steering%20committee%20for%20human%20rights%20%28cddh%29/05.%20meeting%20reports/71st_%20Add%20%20I_%20EN.pdf).

3. We also consider that the European Court of Human Rights must be a strong Court, accessible to individuals who are victims of violations of their Convention-protected rights and who have had no effective redress domestically. It should be a Court which will give a reasoned decision on whether a case is admissible, or a reasoned judgment on the merits of a case, without undue delay. The Court should be given the resources by states to function properly, and not at the expense of other Council of Europe human rights mechanisms.

4. To these ends we consider that any reforms to the Convention system should ensure that:

- the fundamental right of individual petition is preserved and not further curtailed;
- there is an efficient, fair, consistent, transparent and effective screening of applications received, in order to identify the admissible applications from the very high proportion (around 90 per cent) of applications that are inadmissible under the current criteria;
- judgments are given within a reasonable time, particularly in cases where time is of the essence, or that raise repetitive issues where the Court's case law is clear and those that arise from systemic problems;
- the Court, including its Registry, is given adequate financial and human resources, without adversely impacting the budgets of other Council of Europe human rights mechanisms and bodies;
- appropriate solutions to the problems faced by the Court<sup>3</sup> are devised, including measures taken by states at national level, on the basis of informed analysis and transparent evaluation of both the root of the problems and recent and future reforms.

5. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty have evaluated the Interlaken Declaration and the proposals for reform, including those set out in the *CDDH Final Report on proposals not requiring an amendment to the European Convention on Human Rights*, by these criteria.

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<sup>3</sup> The European Court of Human Rights: Some Facts and Figures, at page 5, available at <http://www.echr.coe.int/NR/rdonlyres/ACD46A0F-615A-48B9-89D6-8480AFCC29FD/0/FactsAndFiguresENAvril2010.pdf>.

## CONSULTATION

6. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty attach great significance to the call in the Interlaken Declaration on the Council of Europe member states and on the Council of Europe itself to consult with civil society on means to implement the Action Plan.<sup>4</sup> This is because we consider that the people of Europe have an interest at least equal to that of states in ensuring enhanced respect for human rights in the 47 Council of Europe member states and the effectiveness of the European Court of Human Rights. While we note the development of plans to hold a consultation at Council of Europe level with a limited number of non-governmental organizations (NGOs), National Institutions for Human Rights and Ombudspersons, we are concerned by information received that indicates that to date, there has been little effort at the national level to inform civil society about the discussions on reform of the Court and to consult with civil society about proposals being discussed.

7. We are also concerned that there has been insufficient transparency and no consultation to date on some reform measures including the establishment of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights; proposals to reform the system of supervision of the implementation of the Court's judgments and measures to ensure that potential applicants to the Court receive sufficient information.

**8. We therefore urge the Committee of Ministers to:**

- **Urge member states to ensure that information about the ongoing reform discussions and proposals is made available to civil society and that civil society is regularly consulted about proposals to ensure better implementation of the European Convention on Human Rights and Fundamental Freedoms (the Convention) at national level and proposals to reform the Convention system. States should also be urged to take into account the views of civil society in forming their positions on reform proposals;**
- **Ensure that discussions of all reform measures are carried out in a transparent manner and that civil society is**

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<sup>4</sup> Interlaken Declaration, Action Plan, Implementation paragraph 2.

**consulted about proposals for change. Ensuring the declassification of documents setting out proposals for such changes in a timely manner (including those of the Committee of Ministers) would facilitate transparency and consultation.**

## **SUBSIDIARITY: IMPLEMENTATION AT THE NATIONAL LEVEL**

9. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty have welcomed the emphasis placed in the Interlaken Declaration on action required at the national level to implement the Convention. Noting that over 83% of the Court's more than 12,000 judgments over the last 50 years have found at least one violation of the Convention, it is clear that better implementation of the Convention at national level would mean greater respect for human rights throughout Europe. It would also reduce the need for individuals to apply to the Court for redress. Active steps by member state governments to implement the Convention in national law, policy and practice are fundamental to making a reality of the principle of subsidiarity, according to which the primary responsibility for protecting the Convention rights lies with the member states.

**10. The organizations therefore consider that action at the national level to ensure enhanced respect for human rights by the 47 Council of Europe member states must remain the priority in the follow-up to the Interlaken Declaration.**

11. In particular, it is clear that implementation of the Convention at the national level would be enhanced and that fewer cases would be brought to the Court on issues about which the Court's case law is clear if states not only fully and effectively implemented the judgments against them, but also took into account the standards developed in all relevant judgments against other states. We therefore also welcome the call in the Interlaken Declaration for states to ensure that they regularly review and take into

account the jurisprudence of the Court in cases brought against states other than their own and actively consider what measures should be taken, where the same problem of principle exists within their country.<sup>5</sup>

12. We consider that more priority should be given to ensuring that the Court's judgments are translated into the language of the Contracting Parties involved in the proceedings as well as the official languages of the Court. This will increase their accessibility and allow more people in the Council of Europe region to read and rely on them.

13. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty **urge the Committee of Ministers to regularly underscore the importance of each of the member states taking concerted action to implement the measures set out in paragraph B(4) of the Interlaken Declaration.**

14. **We consider that the reports to be submitted by the member states to the Committee of Ministers by the end of 2011 should clearly identify what measures states have affirmatively taken recently to review and change law and practice with a view to ensuring better application of the Convention at the national level.**

15. **Among other things we consider that such reports should indicate:**

- **Steps taken to establish systems for the regular review and screening of existing and draft laws and administrative practice in the light of the Convention and the Court's case law;**
- **Steps taken to review the laws and practices of the country in the light of the Recommendations and Resolutions adopted by the Committee of Ministers in the context of the reform discussions;<sup>6</sup>**

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<sup>5</sup> Interlaken Declaration Paragraph 7(A)(i) of Part D of the Action Plan and CDDH Final Report, Section II, para 8 (v) 4<sup>th</sup> bullet point.

<sup>6</sup> These Recommendations and Resolution include in particular: Recommendation No. R (2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights; Rec(2002)13 on the publication and dissemination in the member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights; Rec(2004)4 on the European



- **The adoption and implementation of Action Plans to address gaps in national law and practice in the light of such review, including to:**
  - **Implement the Recommendations and Resolutions;**
  - **Ensure prompt implementation of the judgments of the Court against it, including the procedures and systems at national level for this purpose;**
  - **Implement the judgments of the Court finding a violation by the member state;**
  - **Ensure effective and accessible remedies at domestic level for violations of the Convention;**
  - **Establish systems for regular review of the jurisprudence of the Court with regard to other member states, and take appropriate measures at national level to ensure that this review informs the work of relevant government departments and public bodies so that prompt and appropriate measures are taken to ensure that law and practice will be consistent with such judgments.**
  - **Ensure that the availability and accessibility of information in relevant languages about the admissibility criteria for bringing cases to the Court, including through a national assistance and/or education programme (see also paragraphs 60 and 61 below).**

**16. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty urge the Committee of Ministers to allocate the appropriate resources to analyze the reports submitted by states. On the basis of such analysis, the**

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Convention on Human Rights in university education and professional training; Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights; Rec(2004)6 on the improvement of domestic remedies; CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights; Recommendation Rec(2010)3 to member States on effective remedies for excessive length of proceedings and Resolution CM/Res(2010)25 on member states' duty to respect and protect the right of individual application to the European Court of Human Rights.

**Committee of Ministers should consider what further action is warranted at Council of Europe level to guide and assist states in meeting their Convention obligations.**

## REPETITIVE APPLICATIONS

17. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty note that some 50% of the judgments that the Court has issued over the last 50 years are on repetitive issues. It is therefore axiomatic that the way to ensure the reduction of repetitive cases is for each member state to ensure the “full, effective and rapid execution of the final judgments of the Court”.<sup>7</sup> To do so they must provide effective remedies and reparation and in many cases, take the necessary steps aimed at ensuring that the violation is not repeated.

18. The organizations therefore welcome the call on member states to “ensure effective implementation of the Convention at national level, including the provision of effective domestic remedies and implementation of relevant Committee of Ministers’ recommendations” by the CDDH in its *Final Report on measures that result from the Interlaken Declaration that do not require amendment of the European Convention on Human Rights*.

## FRIENDLY SETTLEMENTS AND UNILATERAL DECLARATIONS

19. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty consider that friendly settlements can be an appropriate way to efficiently address many applications in which a Convention violation is clear, and in particular those raising issues on which there is well-established case law, including in judgments against another state.

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<sup>7</sup> Paragraph 7 of the Interlaken Declaration.

20. We therefore consider that **member states should be encouraged to engage in friendly settlements with regard to repetitive cases – including when the Court’s case law on the issue has been made clear in judgments against other states.** This would be consistent with the Interlaken Declaration and in some respects with the Final Report of the CDDH on measures not requiring amendment of the Convention.<sup>8</sup>

21. Given that the practice and level of facilitation of friendly settlements differs within the Registry, we consider that **the practice of friendly settlements would be facilitated if the Court took further measures to ensure consistency of practice across the Registry with regard to friendly settlements.**

22. We also consider that **applicants to the Court would be aided in assessing offers of friendly settlements if the Court’s case-law on the application of Article 41 of the Convention was sufficiently foreseeable and detailed.**<sup>9</sup> We therefore welcome the inclusion of the recommendation to this effect by the CDDH. We also welcome news from the Court’s President that the Court is considering publishing its tables for calculating awards of Just Satisfaction.<sup>10</sup>

23. The organizations consider however that **greater emphasis on friendly settlements should not result in undue pressure placed on the applicants to accept proposals which are detrimental to their interests, including under the threat of the Court striking out an otherwise admissible application under Article 37 on the basis of a unilateral declaration.**

24. We accept that unilateral declarations may be an appropriate way to resolve some cases. The organizations note however that the Convention

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<sup>8</sup> See Paragraphs 7(A)(i) of Part D and 4(c) of Part B of the Action Plan included in the Interlaken Declaration, and the first bullet point in Paragraph 8(v) of the CDDH Final Report on measures that result from the Interlaken Declaration that do not require amendment of the European Convention on Human Rights (CDDH (2010) 013 Addendum I).

<sup>9</sup> 2<sup>nd</sup> bullet point of Paragraph 8(iv) of the CDDH Final Report on measures that result from the Interlaken Declaration that do not require amendment of the European Convention on Human Rights (CDDH (2010) 013 Addendum I).

<sup>10</sup> Steering Committee for Human Rights (CDDH) Report of 71<sup>st</sup> meeting, CDDH(2010)013 at paragraph 10, available at:  
[http://www.coe.int/t/e/human\\_rights/cddh/3.\\_committees/01.%20steering%20committee%20for%20human%20rights%20%28cddh%29/05.%20meeting%20reports/71st\\_en.pdf](http://www.coe.int/t/e/human_rights/cddh/3._committees/01.%20steering%20committee%20for%20human%20rights%20%28cddh%29/05.%20meeting%20reports/71st_en.pdf).

itself would preclude the striking out of a case, if “respect for human rights” requires that the Court continue examination of the application.

**25. We consider that the resort to unilateral declarations must be consistent with the criteria which have been developed by the Court.<sup>11</sup> We recommend that the Court consider publishing a summary of these criteria so that they are accessible to applicants and states alike.**

**26. In addition to undertaking to carry out individual measures when appropriate, consistent with the CDDH, we call on states to include in such declarations undertakings to adopt any appropriate general measures to avoid repetition of the violation.<sup>12</sup>**

**27. Echoing the recommendation of CDDH, we urge the Committee of Ministers to amend *its Rules on the supervision of the execution of judgments and of the terms of friendly settlements* to include supervision of decisions of the Court to strike out on the basis of unilateral declarations.<sup>13</sup>**

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<sup>11</sup> See, *Acar v Turkey, HS and others v United Kingdom and Rantsev v Cyprus and Russia*.

<sup>12</sup> See 2<sup>nd</sup> bullet point in Paragraph 8(v) of the CDDH Final Report on measures that result from the Interlaken Declaration that do not require amendment of the European Convention on Human Rights, (CDDH (2010) 013 Addendum I).

<sup>13</sup> See final bullet point of paragraph 8(ii) of the CDDH Final Report on measures that result from the Interlaken Declaration that do not require amendment of the European Convention on Human Rights (CDDH (2010) 013 Addendum IO).

# IMPLEMENTATION OF JUDGMENTS AND DECISIONS OF THE COURT

28. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty agree that the full and rapid execution of judgments of the Court, including where appropriate by implementation of general measures, is essential to achieve respect for human rights, enhance the Convention's control mechanisms and reduce the need for individuals to apply to the Court to seek redress for alleged violations of their Convention rights.

29. We consider that, in addition to the executive branch of the government, national Parliaments can play a key role in this regard. We note the important work already carried out by the Parliamentary Assembly of the Council of Europe on implementation of judgments, including the most recent report on implementation of judgments of the Court. **We the urge the Assembly to consider developing specific recommendations and guidelines to national parliaments for parliamentary scrutiny of implementation of judgements.<sup>14</sup> We urge each national delegation of the Assembly to encourage their Parliament's to monitor the implementation of the Court's judgments by the government.**

30. **In keeping with the Interlaken Declaration<sup>15</sup>, the Committee of Ministers should encourage member states to foster active**

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<sup>14</sup> 7th Report on the Implementation of judgments of the European Court of Human Rights, AS/Jur (2010) 36 by Rapporteur Christos Pourgourides. The draft Resolution and Recommendation, which were adopted unanimously by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe on 17 November 2010 and are to be debated by the Plenary Assembly in January 2011, are available at [http://www.assembly.coe.int/Communication/20101109\\_arretsCE\\_E.pdf](http://www.assembly.coe.int/Communication/20101109_arretsCE_E.pdf).

<sup>15</sup> See, e.g. paragraph 6 of the Preamble to the Interlaken Declaration.

**parliamentary involvement in implementation of judgments.**

31. We consider that, other actors at the national level, including National Human Rights Institutions can play key roles in efforts to ensure the implementation of the Court's judgments.

**SUPERVISION BY THE COMMITTEE OF MINISTERS OF THE  
IMPLEMENTATION OF JUDGMENTS**

**32. We consider that the role of the Committee of Ministers in supervising states' implementation of the Court's judgments needs to be strengthened, not weakened. Its methods should be further developed, be more transparent and effective. When needed, the political pressure of the Committee of Ministers must be brought to bear. The Department of Execution of Judgments, which assists with this task, urgently needs reinforcement, particularly in view of the increased out-put of the Court in recent years. Governments should ensure that the Parliament, National Human Rights Institutions and civil society are consulted about Action Plans to adopt general measures aimed at ensuring non-repetition of the Convention violation identified by a judgment of the Court.**

33. We welcome the decision of the Committee of Ministers to give priority to the monitoring of the implementation of pilot judgments. We consider that such monitoring should aim to ensure that the general measures implemented by states are truly effective in remedying the underlying systemic or structural problems that led to the finding of a Convention violation.

**34. We call on the Committee of Ministers and the Court to evaluate the effects of applying the pilot judgment and similar procedures to address structural problems underlying repetitive Convention violations.**

35. We note that on 2 December 2010 the Committee of Ministers decided to adopt a twin track system for supervising the implementation of judgments, which will come into effect on 1 January 2011. While we regret the lack of consultation with civil society about the new system prior to its adoption, we are hopeful that the publication of States Action Plans and Action Reports, along with information provided by applicants, non-

governmental organisations and national human rights will enhance the transparency of this process. **We urge the Committee of Ministers to evaluate the operation of the new system within one year and in doing so seek the views of applicants, National Human Rights Institutions and civil society.**

36. As indicated in paragraph 27 above, **we echo the call on the Committee of Ministers to amend its *Rules on the supervision of the execution of judgments and of the terms of friendly settlements* to include supervision of decisions of the Court to strike out on the basis of unilateral declarations.**

## ENSURING THE INDEPENDENCE OF JUDGES AND THE IMPARTIALITY AND QUALITY OF THE COURT

37. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty agree that the selection procedures for candidates for election of judges of the European Court of Human Rights are of critical importance to maintaining the authority of the Court and ensuring the overall quality of its judgments.<sup>16</sup>

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<sup>16</sup> We consider that this would hold equally true for any category of judge that might serve on the Court, including with respect to any judges that may be mandated in the future to carry out filtering or rule on repetitive applications. In this regard we note that the Committee of Experts on Reform of the Court (DH-GDR) is discussing proposals to establish a new filtering

38. We consider that the procedures in some of the member states are not open and transparent and do not result in the nomination of three individuals who meet the existing criteria formulated by the Parliamentary Assembly, and the Court,<sup>17</sup> or recommendations made by civil society.<sup>18</sup>

39. We urge the Contracting Parties to review their procedures for the selection of candidates for judge of the European Court of Human Rights, and amend them as necessary to ensure that they are open, fair and transparent and result in the nomination of three candidates who each meet the criteria set out in the Convention and formulated by the Parliamentary Assembly of the Council of Europe.

40. We therefore welcome the fact that the CDDH has agreed that the *Committee of Experts for the improvement of procedures of the protection of human rights* (known as DH-PR) will gather information about and then analyse national practices for the selection of candidates for the post of judge at the European Court of Human Rights in the autumn of 2011. **We consider that analysis of national practice, a guide to good practice in this area, and possibly the drafting of a Committee of Ministers Recommendation could be useful tool to assist states in developing “rigorous, consistent, fair and transparent national selection procedures.”** Given the work already done on these

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body and on the handling of repetitive applications. See, e.g., DH-GDR (2010) 18 , 16 November 2010.

<sup>17</sup> AS/Jur (2010)12 rev 2, Recommendation 1429 (1999), Resolution 1646 (2009), see also Order 558 (1999); Reply from the Committee of Ministers to Recommendation 1649 (200) of 20th April 2005, Doc 10506; European Court of Human Rights Grand Chamber Advisory Opinion on certain legal questions concerning the lists of candidates submitted with a view to the election of judges to the European Court of Human Rights, 12 February 2008; and European Court of Human Rights Grand Chamber Advisory Opinion on certain legal questions concerning the lists of candidates submitted with a view to the election of judges to the European Court of Human Rights (No. 2), 22 January 2010.

<sup>18</sup> Ensuring the long-term effectiveness of the European Court of Human Rights – NGO Comments on the Group of Wise Persons' AI Index: IOR 61/002/2007, at p 13 and Annex B, submitted by Amnesty International, the AIRE Centre, EHRAC, Human Rights Watch, Interights, Justice, Liberty and Redress; Report *Judicial Independence: Law and Practice of Appointments to the European Court of Human Rights*, INTERIGHTS, May 2003 – Professor Dr. Jutta Limbach, Professor Dr. Pedro Cruz Villalon, Mr Roger Errera, Lord Lester of Herne Hill QC, Professor Dr. Tamara Morshchakova, Lord Justice Sedley, Professor Dr. Andrzej Zoll; INTERIGHTS: *Memorandum for Hearing on 2nd June, 2008, Committee on Legal Affairs and Human Rights, Sub-Committee on the Election of Judges to the European Court of Human Rights*, Parliamentary Assembly of the Council of Europe.



issues and its role in the election of judges, we urge that the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe be fully apprised of this work.

41. We consider that the recently-adopted Committee of Ministers resolution establishing a panel of experts to advise on the candidates for election as judges to the European Court of Human Rights<sup>19</sup> is a welcome step in the right direction, in so far as it strengthens the process at the Council of Europe level. In order for the panel to effectively discharge its mandate we urge those appointing the individuals to serve on the panel to ensure that they are both independent and suitably highly qualified and experienced professionals drawn not only from the judiciary but also from civil society. We regret, however that the Contracting Parties are not required to provide the Panel with information about the process for the selection of the candidates at national level and the limited nature of the scope of the Panel's review of the qualifications of the candidates.

42. In parallel with this development, we consider that the Parliamentary Assembly should continue to strengthen its procedures in order to ensure a robust and transparent scrutiny of the list of candidates submitted by states, as well as of the quality of nomination processes at the domestic level.

## SIMPLIFIED PROCEDURE FOR AMENDING PROVISIONS OF THE

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<sup>19</sup> Resolution CM/Res(2010)26 on the establishment of an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights, available at: [http://www.coe.int/t/dghl/standardsetting/minjust/mju30/MJU-30%20\\_2010\\_%20RESOL%202%20E%20final.pdf](http://www.coe.int/t/dghl/standardsetting/minjust/mju30/MJU-30%20_2010_%20RESOL%202%20E%20final.pdf).

# ECHR / ESTABLISHING A STATUTE OF THE COURT

43. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty support in principle the proposal to create a Statue of the Court and/or a simplified amendment procedure relating to certain organizational provisions of Part II of the European Convention on Human Rights.

**44. We consider that the overriding purpose of any such reforms must be to facilitate flexibility of amendments to the organizational and operational procedures of the Court so as to allow the Court to respond effectively and quickly to address changes in its case load. We believe that any changes to the founding and regulating instruments of the Court – no matter what their form – should serve this purpose and this purpose alone.**

45. Such new measures should be designed to ensure a strong and effective Court, able to address the current backlog of cases and to cope with changes to its caseload in the long term, while maintaining and strengthening its role in the protection of human rights. They should be consistent with and reinforce the responsibilities of the Court under Article 19 of the Convention, which are to “ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and Protocols thereto”.

46. Reforms to instruments related to the Court should ensure that the Court can continue to rule effectively and promptly on questions of violation of Convention rights and deliver justice to individual applicants in fulfilment of its role as guarantor of Convention rights, and in accordance with the right of individual petition under Article 34 of the Convention, which the Interlaken Declaration has reaffirmed is a cornerstone of the

Convention system.<sup>20</sup>

47. Furthermore, changes proposed to the instruments related to the Court and/or its proceedings must protect the role and independence of the Court within the Convention system.

48. We believe that the role of the democratic institutions of the member states and of the Council of Europe itself should be protected. **The process of discussion of such amendments as well as the amendment procedures themselves should ensure transparency and inclusiveness. Any such amendments must make provision to compensate for any democratic deficit that may arise if the usual national and international procedures for approval of amendments to the convention are dis-applied in regard to some existing Convention provisions.**

49. While we support in principle a three-tier system comprised of the Convention; a Statute and the Rules of the Court, we are concerned about the proposals under discussion which could undermine the right of individual petition and independence and authority of the Court.

50. **We consider that the Convention should retain provisions on the essential elements of the Court's establishment, jurisdiction and provisions guaranteeing the independence and appearance of independence of the Court (and its judges) and ensure the effectiveness of the Court in fulfilling its rule under Article 19 of the Convention.**

51. **In particular, we consider that any proposal to "elevate" the Court's power to issue Interim Measures (now set out in Rule 39 of the Court and the Court's case law) must ensure that this power is neither amended in substance nor made subject to a flexible amendment procedure.** As the Court has clarified in its jurisprudence its power to order Interim Measures is vital to secure the effective protection of the right of individual petition and of substantive Convention rights.

52. We also believe that **moving significant elements of the Rules of**

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<sup>20</sup> Paragraph A.1 of the Interlaken Declaration: "The Conference reaffirms the fundamental importance of the right of individual petition as a cornerstone of the Convention system which guarantees that alleged violations that have not been effectively dealt with by national authorities can be brought before the Court."

**Court to a Statute, as has been proposed, could erode the independence of the Court by removing its competence to regulate the details of its own operating Procedures guaranteed under Article 25 of the Convention.** Elevating elements of the Rules of Court to a Statute will not assist in achieving the aims of the Interlaken Declaration: quite the reverse, it will make changes to the Court's procedures more inflexible and difficult to adjust to changing circumstances.

## **FILTERING BODY**

53. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty agree that the main challenges facing the Court are 1) screening applications quickly and effectively in order to weed out the very high proportion (90% or more) of applications received which are manifestly inadmissible under the current criteria and 2) handling in an effective and efficient manner admissible applications that raise issues about which the Court's case law is clear (manifestly well- founded "repetitive cases) which have been variously estimated to make up more than 50-60 % of the Court's case load.

54. We would support in principle the establishment of a new filtering body within the Court, should a thorough and transparent evaluation of the one-judge screening mechanism – which came into effect with respect to applications filed against all 47 member states in June 2010 – reveal that further reform is necessary.

55. Any such new panel of judges should be suitably qualified, possessing qualifications necessary for the appointment to judicial office and impartiality, expert knowledge of the case law of the Court and the two official languages of the Court. They should be nominated in open and fair procedures. Following their appointment, they should have a suitable period of training in the Court.

56. Given the importance of the decisions they would make we consider that such filtering decisions should be made by judges.<sup>21</sup> If one judge is

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<sup>21</sup> See Further revised report on the issues of filter-a new filtering mechanism and repetitive applications - judicial treatment, DH-GDR 92010)018, 16 November 2010.

given competence to make inadmissibility rulings, to ensure the appearance of independence of the Court, the principle set out in Article 26(3) of the Convention must be maintained- such single judge should not examine any application against the High Contracting Party in respect of which that judge has been elected.

57. We are concerned about the proposal that a newly established body of “junior” filtering judges would also be given power to rule on cases raising issues about which the Court’s case law is clear.<sup>22</sup> We consider that delegating the power to rule on repetitive cases to a “junior” judge of the Court could send an unfortunate and misleading signal to the Contracting Parties that the issue concerned or the implementation of a judgment finding a violation on a repetitive case was of lower priority. We note that concern has also been raised that judgments by such “junior” judges could be perceived as less important or authoritative by national supreme or constitutional courts.<sup>23</sup>

## ACCESS TO THE COURT AND FEES FOR APPLICANTS

58. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, the International Commission of Jurists, Interights, Justice and Liberty **along with other NGOs throughout the Council of Europe region, oppose the proposal to introduce fees on individuals filing an application with the Court.** The most recent statement of our position on this issue is set out in the Joint NGO statement attached hereto in **Appendix I.**

**59. We welcome the fact that the Committee of Ministers have agreed that a cost benefit analysis of proposals to impose fees**

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<sup>22</sup> The proposal is being discussed by the Committee of Experts on the Reform of the Court, a subsidiary body of the CDDH; see DH-GDR(2010)018, 16 November 2010.

<sup>23</sup> See Further revised report on the issues of filtering, a new filtering mechanism and repetitive applications, judicial treatment: DH-GDR(2010) 018 at paragraph 40.

**will be carried out before a decision is made on this proposal. We consider that such an analysis should examine the human and financial resources which would be required to effectively implement a fee system.**

60. The organizations welcome the fact that the Court will be publishing a Manual on Admissibility, which targets lawyers and NGOs, with a view to assisting in reducing the number of clearly inadmissible applications filed with the Court. We are hopeful that this Manual will be translated into the relevant languages and widely disseminated in all Council of Europe member states

**61. We consider that other measures to inform would-be applicants themselves about the Court's admissibility criteria could be of assistance.** In this regard we have received information indicating that the Court is piloting a new application form or check list and that the Secretary General is due to submit a report to the Committee of Ministers with proposals aimed at providing information and advice to applicants. **With a view to ensuring transparency of these and other reform measures and their effectiveness, we urge the Secretary General, the Committee of Ministers and the Court to publish information about proposed measures to ensure information and advice to applicants and to consult with civil society about such measures and proposals. We also urge member states to consider adopting a national assistance or education programme to provide information in relevant languages about the admissibility criteria for bringing cases to the Court.**

62. Further, as mentioned above in paragraph 22, we consider that **publication of the Court's indicative tables on levels of Just Satisfaction would also be useful to would-be applicants and lawyers.**

# APPENDIX

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## FEES: A BARRIER TO JUSTICE

### IMPOSING A FEE ON APPLICANTS TO THE EUROPEAN COURT OF HUMAN RIGHTS MAY DENY VICTIMS OF HUMAN RIGHTS VIOLATIONS ACCESS TO JUSTICE

The 47 governments of the Council of Europe are considering a proposal which would impose an additional barrier for victims of human rights violations to have access to justice.

The proposal under consideration is to impose fees on individuals who file a case with the European Court of Human Rights. The Court is a last resort for individuals seeking redress for alleged violations of their rights under the European Convention on Human Rights.

If a fee is imposed, some people who have been unable to gain justice in their own countries will be denied redress simply because they cannot pay. Lack of funds should never be an obstacle to an individual's access to a

remedy for an alleged human rights violation

Even if provisions were put in place to permit the fees to be waived, any such scheme would clearly risk deterring, or even preventing, individuals with well founded claims from reaching the Court.

**These are the reasons why some governments and hundreds of non-governmental organizations throughout Europe, including Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre (EHRAC), Human Rights Watch, the International Commission of Jurists, Interights, Justice and REDRESS are calling for the proposal to be rejected outright by the main decision making body of the Council of Europe, the Committee of Ministers.<sup>24</sup>**

The proposal to impose fees, if implemented, would be unprecedented for an international or regional human rights mechanism of redress. Ensuring access to justice for those who are seeking redress for the human rights violations must be the Council of Europe's paramount concern.

The proposal was presented as an effort to address the high number of cases received by the Court which do not meet the established admissibility criteria. It is questionable whether the introduction of fees would alleviate, and not exacerbate, the administrative burdens on the court. The imposition of fees also risks reducing the number of meritorious cases as well, and there are more appropriate means to reduce the number of inadmissible submissions. One example is a new procedure of the Court, only recently put fully into place, to filter applications more efficiently.<sup>25</sup> And both states and the Court itself can do more to ensure that people are

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<sup>24</sup> For information about NGO opposition to this proposal, see inter alia Joint statement of Amnesty International, The AIRE Centre, EHRAC, Human Rights Watch, the International Commission of Jurists, Interights, Justice, Liberty and Redress which was signed by 156 other NGOs across the Council of Europe Region: Human Rights in Europe: Decision Time on the European Court of Human Rights, AI Index: IOR61/009/2009, available at <http://www.amnesty.org/en/library/info/IO61/009/2009/en>, and the contribution of the Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe to the Interlaken Conference on the future of the European Court of Human Rights available at [http://www.coe.int/T/NGO/Articles/Contribution\\_INGO\\_Conf\\_Interlaken\\_en.asp](http://www.coe.int/T/NGO/Articles/Contribution_INGO_Conf_Interlaken_en.asp) (there are more than 350 INGOs who participate in the INGO Conference).

<sup>25</sup> Under this new procedure, which came into force on 1 June 2010 with respect to all applications received by the Court, one judge (rather than 3) makes decisions on clearly inadmissible cases.



informed in a language that they can understand of the requirements for bringing a case before the Court.

Among the specific measures that could reduce inadmissible applications are:

- Ensuring that information about the admissibility criteria is readily available in at least the official language(s) of each of the 47 member states of the Council of Europe.
- Ensuring in all 47 member states of the Council of Europe the availability of independent expert advice for people who seek to file applications to the European Court, which is free of charge to those unable to pay for it.

Moreover, instead of seeking to deter applicants from seeking justice by imposing fees, each of the 47 states should ensure that there are accessible and effective domestic remedies at national level for violations of the rights guaranteed under the European Convention on Human Rights.

**If the proposal to impose a fee on applicants to the Court is not rejected immediately, at a minimum the Committee of Ministers should carry out an assessment of the root causes of the problems and the potential impacts of the imposition of a fee system based on the following information before any decision is made:**

- The number of applications that were dismissed last year as clearly inadmissible per country and the reason(s) for the inadmissibility;
- The reasons why those who filed inadmissible applications did so: whether the applicants were aware of the admissibility criteria; whether this information was accessible in their national language; whether they were advised by a lawyer or an NGO and if not why not);
- The manner in which clearly inadmissible applications are handled by the Court, and the average time spent by the Registry and judges, under the new one-judge system and under the previous system;
- The likely cost of administering a fee system (and the basis for such estimate);
- The likely time needed, per case, to operate a fee system (and the basis of such estimate);
- The sources of the required financial and human resources to operate a fee system;
- The availability of the required financial and human resources within the Court to operate a fee system;

- The potential difficulties applicants could face, including arranging payment of a fee in a required currency;
- A cost-benefit analysis of such a mechanism, based on the information above.

**A decision to recommend the imposition of fees on applicants without this information would be political rather than strategic. It would not be based on an informed analysis and transparent evaluation of both the root causes of the problem and the impact of recent reforms. It could drain the Court of human and financial resources while deterring individuals with well-founded human rights claims from seeking redress before the Court.**

