

Strasbourg, 01/03/10

CAHDI (2010) Inf 6

**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

**39th meeting
Strasbourg, 18-19 March 2010**

**HIGH LEVEL CONFERENCE ON THE FUTURE OF
THE EUROPEAN COURT OF HUMAN RIGHTS**

19 February 2010

INTERLAKEN DECLARATION

High Level Conference on the Future of the European Court of Human Rights

Interlaken Declaration

19. February 2010

The High Level Conference meeting at Interlaken on 18 and 19 February 2010 at the initiative of the Swiss Chairmanship of the Committee of Ministers of the Council of Europe ("the Conference"):

PP 1 Expressing the strong commitment of the States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the European Court of Human Rights ("the Court");

PP 2 Recognising the extraordinary contribution of the Court to the protection of human rights in Europe;

PP 3 Recalling the interdependence between the supervisory mechanism of the Convention and the other activities of the Council of Europe in the field of human rights, the rule of law and democracy;

PP 4 Welcoming the entry into force of Protocol No. 14 to the Convention on 1 June 2010;

PP 5 Noting with satisfaction the entry into force of the Treaty of Lisbon, which provides for the accession of the European Union to the Convention;

PP 6 Stressing the subsidiary nature of the supervisory mechanism established by the Convention and notably the fundamental role which national authorities, i.e. governments, courts and parliaments, must play in guaranteeing and protecting human rights at the national level;

PP 7 Noting with deep concern that the number of applications brought before the Court and the deficit between applications introduced and applications disposed of continues to grow;

PP 8 Considering that this situation causes damage to the effectiveness and credibility of the Convention and its supervisory mechanism and represents a threat to the quality and the consistency of the case-law and the authority of the Court;

PP 9 Convinced that over and above the improvements already carried out or envisaged additional measures are indispensable and urgently required in order to:

- i. achieve a balance between the number of judgments and decisions delivered by the Court and the number of incoming applications;
- ii. enable the Court to reduce the backlog of cases and to adjudicate new cases within a reasonable time, particularly those concerning serious violations of human rights;
- iii. ensure the full and rapid execution of judgments of the Court and the effectiveness of its supervision by the Committee of Ministers;

PP 10 Considering that the present Declaration seeks to establish a roadmap for the reform process towards long-term effectiveness of the Convention system;

The Conference

- (1) Reaffirms the commitment of the States Parties to the Convention to the right of individual petition;**
- (2) Reiterates the obligation of the States Parties to ensure that the rights and freedoms set forth in the Convention are fully secured at the national level and calls for a strengthening of the principle of subsidiarity;**
- (3) Stresses that this principle implies a shared responsibility between the States Parties and the Court;**
- (4) Stresses the importance of ensuring the clarity and consistency of the Court's case-law and calls, in particular, for a uniform and rigorous application of the criteria concerning admissibility and the Court's jurisdiction;**
- (5) Invites the Court to make maximum use of the procedural tools and the resources at its disposal;**
- (6) Stresses the need for effective measures to reduce the number of clearly inadmissible applications, the need for effective filtering of these applications and the need to find solutions for dealing with repetitive applications;**
- (7) Stresses that full, effective and rapid execution of the final judgments of the Court is indispensable;**
- (8) Reaffirms the need for maintaining the independence of the judges and preserving the impartiality and quality of the Court;**
- (9) Calls for enhancing the efficiency of the system to supervise the execution of the Court's judgments;**
- (10) Stresses the need to simplify the procedure for amending Convention provisions of an organisational nature;**
- (11) Adopts the following Action Plan as an instrument to provide political guidance for the process towards long-term effectiveness of the Convention system.**

Action Plan

A. Right of individual petition

1. 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.
2. With regard to the high number of inadmissible applications, the Conference invites the Committee of Ministers to consider measures that would enable the Court to concentrate on its essential role of guarantor of human rights and to adjudicate well-founded cases with the necessary speed, in particular those alleging serious violations of human rights.
3. With regard to access to the Court, the Conference calls upon the Committee of Ministers to consider any additional measure which might contribute to a sound administration of justice and to examine in particular under what conditions new procedural rules or practices could be envisaged, without deterring well-founded applications.

B. Implementation of the Convention at the national level

4. The Conference recalls that it is first and foremost the responsibility of the States Parties to guarantee the application and implementation of the Convention and consequently calls upon the States Parties to commit themselves to:
 - a) continuing to increase, where appropriate in co-operation with national human rights institutions or other relevant bodies, the awareness of national authorities of the Convention standards and to ensure their application;
 - b) fully executing the Court's judgments, ensuring that the necessary measures are taken to prevent further similar violations;
 - c) taking into account the Court's developing case-law, also with a view to considering the conclusions to be drawn from a judgment finding a violation of the Convention by another State, where the same problem of principle exists within their own legal system;
 - d) ensuring, if necessary by introducing new legal remedies, whether they be of a specific nature or a general domestic remedy, that any person with an arguable claim that their rights and freedoms as set forth in the Convention have been violated has available to them an effective remedy before a national authority providing adequate redress where appropriate;
 - e) considering the possibility of seconding national judges and, where appropriate, other high-level independent lawyers, to the Registry of the Court;
 - f) ensuring review of the implementation of the recommendations adopted by the Committee of Ministers to help States Parties to fulfil their obligations.
5. The Conference stresses the need to enhance and improve the targeting and coordination of other existing mechanisms, activities and programmes of the Council of Europe, including recourse by the Secretary General to Article 52 of the Convention.

C. Filtering

6. The Conference:

- a) calls upon States Parties and the Court to ensure that comprehensive and objective information is provided to potential applicants on the Convention and the Court's case-law, in particular on the application procedures and admissibility criteria. To this end, the role of the Council of Europe information offices could be examined by the Committee of Ministers;
- b) stresses the interest for a thorough analysis of the Court's practice relating to applications declared inadmissible;
- c) recommends, with regard to filtering mechanisms,
 - i. to the Court to put in place, in the short term, a mechanism within the existing bench likely to ensure effective filtering;
 - ii. to the Committee of Ministers to examine the setting up of a filtering mechanism within the Court going beyond the single judge procedure and the procedure provided for in i).

D. Repetitive applications

7. The Conference:

- a) calls upon States Parties to:
 - i. facilitate, where appropriate, within the guarantees provided for by the Court and, as necessary, with the support of the Court, the adoption of friendly settlements and unilateral declarations;
 - ii. cooperate with the Committee of Ministers, after a final pilot judgment, in order to adopt and implement general measures capable of remedying effectively the structural problems at the origin of repetitive cases.
- b) stresses the need for the Court to develop clear and predictable standards for the "pilot judgment" procedure as regards selection of applications, the procedure to be followed and the treatment of adjourned cases, and to evaluate the effects of applying such and similar procedures;
- c) calls upon the Committee of Ministers to:
 - i. consider whether repetitive cases could be handled by judges responsible for filtering (see above Section C);
 - ii. bring about a cooperative approach including all relevant parts of the Council of Europe in order to present possible options to a State Party required to remedy a structural problem revealed by a judgment.

E. The Court

8. Stressing the importance of maintaining the independence of the judges and of preserving the impartiality and quality of the Court, the Conference calls upon States Parties and the Council of Europe to:

a) ensure, if necessary by improving the transparency and quality of the selection procedure at both national and European levels, full satisfaction of the Convention's criteria for office as a judge of the Court, including knowledge of public international law and of the national legal systems as well as proficiency in at least one official language. In addition, the Court's composition should comprise the necessary practical legal experience;

b) grant to the Court, in the interest of its efficient functioning, the necessary level of administrative autonomy within the Council of Europe.

9. The Conference, acknowledging the responsibility shared between the States Parties and the Court, invites the Court to:

a) avoid reconsidering questions of fact or national law that have been considered and decided by national authorities, in line with its case-law according to which it is not a fourth instance court;

b) apply uniformly and rigorously the criteria concerning admissibility and jurisdiction and take fully into account its subsidiary role in the interpretation and application of the Convention;

c) give full effect to the new admissibility criterion provided for in Protocol No. 14 and to consider other possibilities of applying the principle *de minimis non curat praetor*.

10. With a view to increasing its efficiency, the Conference invites the Court to continue improving its internal structure and working methods and making maximum use of the procedural tools and the resources at its disposal. In this context, it encourages the Court in particular to:

a) make use of the possibility to request the Committee of Ministers to reduce to five members the number of judges of the Chambers, as provided by Protocol No. 14;

b) pursue its policy of identifying priorities for dealing with cases and continue to identify in its judgments any structural problem capable of generating a significant number of repetitive applications.

F. Supervision of execution of judgments

11. The Conference stresses the urgent need for the Committee of Ministers to:

a) develop the means which will render its supervision of the execution of the Court's judgments more effective and transparent. In this regard, it invites the Committee of Ministers to strengthen this supervision by giving increased priority and visibility not only to cases requiring urgent individual measures, but also to cases disclosing major structural problems, attaching particular importance to the need to establish effective domestic remedies;

b) review its working methods and its rules to ensure that they are better adapted to present-day realities and more effective for dealing with the variety of questions that arise.

G. Simplified Procedure for Amending the Convention

12. The Conference calls upon the Committee of Ministers to examine the possibility of introducing by means of an amending Protocol a simplified procedure for any future amendment of certain provisions of the Convention relating to organisational issues. This simplified procedure may be introduced through, for example:

a) a Statute for the Court;

b) a new provision in the Convention similar to that found in Article 41(d) of the Statute of the Council of Europe.

Implementation

In order to implement the Action Plan, the Conference:

- (1) calls upon the States Parties, the Committee of Ministers, the Court and the Secretary General to give full effect to the Action Plan;**
- (2) calls in particular upon the Committee of Ministers and the States Parties to consult with civil society on effective means to implement the Action Plan;**
- (3) calls upon the States Parties to inform the Committee of Ministers, before the end of 2011, of the measures taken to implement the relevant parts of this Declaration;**
- (4) invites the Committee of Ministers to follow-up and implement by June 2011, where appropriate in co-operation with the Court and giving the necessary terms of reference to the competent bodies, the measures set out in this Declaration that do not require amendment of the Convention;**
- (5) invites the Committee of Ministers to issue terms of reference to the competent bodies with a view to preparing, by June 2012, specific proposals for measures requiring amendment of the Convention; these terms of reference should include proposals for a filtering mechanism within the Court and the study of measures making it possible to simplify the amendment of the Convention;**
- (6) invites the Committee of Ministers to evaluate, during the years 2012 to 2015, to what extent the implementation of Protocol No. 14 and of the Interlaken Action Plan has improved the situation of the Court. On the basis of this evaluation, the Committee of Ministers should decide, before the end of 2015, on whether there is a need for further action. Before the end of 2019, the Committee of Ministers should decide on whether the measures adopted have proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary;**
- (7) asks the Swiss Chairmanship to transmit the present Declaration and the Proceedings of the Interlaken Conference to the Committee of Ministers;**
- (8) invites the future Chairmanships of the Committee of Ministers to follow-up on the implementation of the present Declaration**