COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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COMMITTEE OF EXPERTS ON THE REFORM OF THE COURT (DH-GDR)

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IMPLEMENTATION OF THE INTERLAKEN DECLARATION:

DRAFT REPORT ON THE ISSUE OF PROPOSALS FOR DEALING WITH REPETITIVE APPLICATIONS THAT WOULD NOT REQUIRE AMENDMENT OF THE CONVENTION

(Adopted by the DH-GDR at its 3rd meeting,
5-7 May 2010)

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3rd Meeting
Strasbourg, 5-7 May 2010

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Implementation of the Interlaken Declaration:

Proposals for dealing with repetitive applications that would not require amendment of the Convention[1]

1. The Court estimates that more than half of applications before the Court that are a priori admissible are repetitive in nature.

2. It is essential that the States assume fully their responsibility in this respect, notably by – in terms of measures that do not require amendment of the Convention – a more active role in the management of cases both in advance (application of the Convention at national level, friendly settlements, unilateral declarations) and following decisions of the Court (execution and its supervision).

3. For its part, the Court could identify more clearly in its decisions the existence of a structural problem, explain the criteria having led to the application of the pilot judgment procedure and, in that context, to the choice of a pilot case and define the possible means of remedy.

4. The appropriate Council of Europe and national bodies could assure monitoring and assistance.

A. Description

5. Repetitive cases could from the outset be described as a great number of applications which arise from similar situations raising the same issues of substance, finding their origin in an easily identifiable structural/ systemic problem and not clearly inadmissible.

6. The underlying problem may originate in legislation or an absence of legislation or an administrative or judicial practice that may be contrary to the Convention (length of pre-trial detention, length of proceedings, detention conditions, non-execution of final judgments, property rights…).

B. Prior to the decisions of the Court

7. It is essential not to lose sight of the fact that **enhanced implementation of the Convention at national level** is the first preventive measure that can as such reduce the number of well-founded repetitive applications before the Court. This enhanced implementation of the Convention falls within the responsibility of the State, to ensure respect for Convention rights (Art. 1 ECHR) and effective and accessible domestic remedies for avoiding similar future violations (Art. 13 ECHR).

8. It has been proposed in this respect that it should be possible to establish guidelines and recommendations concerning situations which are regularly the subject of repetitive applications. **Moreover, the information to be provided by States before the end of 2011**

[1] Draft report adopted by the DH-GDR at its 3rd meeting, 5-7 May 2010.

concerning the implementation of the Interlaken Action Plan could also provide the basis for new recommendations.

[9. The Committee also recalled that the Interlaken Declaration had called for an effective review of the implementation of the seven recommendations to member States adopted by the Committee of Ministers over the past 10 years aiming at better implementation of the Convention at national level and noted that this could help to reduce the number of repetitive applications.[2]]

10. Greater use of **friendly settlements** would also provide scope to reduce the Court's workload and to offer rapid solutions to the State and applicant.

11. For this, it would be necessary to generalise the Registry's practice of putting itself at the disposal of the parties at any time during the proceedings in order to arrive at a friendly settlement of the case. In the management of repetitive applications, this could be manifested through wider use of the practice of communicating case-file(s) (if possible *en masse*), where appropriate with a suggestion of figures and/ or individual measures, or even to leave to the State the job of proposing to the Court a global solution on the basis of a simplified communication by the Registry.

12. **The generalisation of the practice of unilateral declarations** makes it possible to arrive at a series of Court decisions noting the acknowledgement of a violation by the State, the grant of compensation adjudged to be in conformity with the Convention and, where necessary, individual measures. This generalisation would take place in case of an unreasonable refusal by an applicant to accept a satisfactory offer of a friendly settlement but also by the State from the outset, regardless of any negotiations relating to a possible friendly settlement.

13. The practice of unilateral declarations could be developed particularly for cases of a repetitive nature, allowing the State to propose from the outset, in addition to possible compensation and/ or individual measures, general measures with a view to remedying a structural problem, where these are possible and appropriate. For the practice to be understood and accepted by applicants, it is important that it appears in a text (for instance the future Statute or the Rules of Court).

14. The Court can in fact strike a case out of its list in view of the State's commitments or concessions which would be regarded as in conformity with the Convention and thus unblock a situation of unreasonable refusal on the part of the applicant to settle the dispute, or allow forthwith the State to choose concrete means to fulfil its obligations under the Convention. In any case, the Court can compel the State to respect its commitments by restoring an application to its list of cases, if necessary (Art. 37).

15. The decisions to strike a case out following a unilateral declaration should, like friendly settlements under the new Article 39, be subject of modalities of supervision by the Committee of Ministers as far as their execution is concerned.

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[2] Namely Recommendations 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 ECHR and of the case-law of the ECtHR, Rec(2004)4 on the ECHR 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 ECHR, Rec(2004)6 on the improvement of domestic remedies, Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the ECtHR and Rec(2010)3 on effective remedies for excessive length of proceedings.

16. Furthermore, the Court's case-law on the application of Article 41 should be sufficiently foreseeable for the applicants and detailed for the Governments to encourage this type of procedure.

17. Regular meetings between the members of the Registry responsible for dealing with applications against a certain State and its government agent should take place on the existence and processing of repetitive applications.

C. The Court's decisions and their follow-up

18. Cases for which a well-established case law already exists and which concern situations that the State concerned has or has not resolved constitute the core competence of and may be resolved by the **three-judge committees** (new Art. 28 § 1 b), the effectiveness of which, in this respect, should be evaluated as soon as possible.

19. For cases for which such well-established case-law does not yet exist, the adoption of a **pilot judgment** may be the most adequate solution.

20. The Conference notably invited the Committee of Ministers **to consider whether repetitive cases could be handled by a new mechanism**, within the Court and responsible also for filtering, going beyond the committee of three judges, to be defined (see paragraphs 6.c.ii. and 7.c.i. of the Interlaken Declaration Action Plan.

21. When a violation has already been declared by the Court and the State has taken useful measures to avoid its repetition, **the new admissibility criterion introduced by Protocol No. 14** may prove to be very useful for settling similar cases which would no longer pose essential issues concerning human rights, having been duly considered by a domestic tribunal and not having caused the applicant significant disadvantage.

22. The Court could more systematically **identify** in its judgments the existence of a structural/ systemic problem, explain the criteria having led to application of the pilot judgment procedure and, in that context, to the choice of a pilot case and **define possible avenues** to remedy a given repetitive case.

23. In its **supervision** of the execution of judgments, the Committee of Ministers should give a priority to cases that reveal a structural problem and must be able to indicate to the State that it can, on request, obtain the necessary practical and legal assistance from the Council of Europe.

24. These cases are currently grouped in sub-categories according to the violation perceived by the Committee of Ministers, which is sufficient in particular where the violation requires a general measure such as repeal or amendment of a provision of law.

[25. It has been proposed that groups of Deputies confronted with similar problems meet to seek together solutions [and to elaborate draft resolutions for submission to the plenary Committee], in collaboration with an Execution Department reinforced in terms of human resources and other relevant bodies of the Council of Europe. It is recalled that the DH-PR may address the question of supervision of execution in future, notably following the next CM/DH meeting (1-3 June 2010).]

26. **The assistance** of the Council of Europe is desirable to encourage a pro-active approach by States when presenting to the Committee of Ministers action plans and schedules for the introduction of remedies for persons who find themselves in a situation similar to that condemned by the Court, whether or not they have lodged an application.

[27. Regular **review by national institutions** of a State's execution of judgments rendered against it can in the same way prove highly useful.]

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