

CDDH comments on the Parliamentary Assembly Recommendation 2129(2018) “Copenhagen Declaration, appreciation and follow-up”

89th meeting - 19–22 June 2018 - CDDH(2018)R89

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2129(2018) - “*Copenhagen Declaration, appreciation and follow-up*”.
2. It notes that, at its 128th ministerial session (18 May 2018) the Committee of Ministers endorsed the Declaration adopted on 13 April 2018 and invited the various stakeholders to implement it.
3. The CDDH is convinced that the Committee of Ministers will continue to take concrete and effective measures for addressing problems relating to the ineffectiveness of national implementation of the Convention, including the insufficient execution of the judgments of the Court. It also welcomes the willingness of the Assembly to continue its commitment in the process of the reform of the Convention system, in order to protect its fundamental principles, in particular the independence of the Court, to reinforce the role of national parliaments and to compel member States to account for the respect of their obligations.
4. In this respect, the CDDH considers it crucial that the Assembly continues ensuring that national parliaments effectively implement Recommendation CM/Rec(2004)5 of the Committee of Ministers to the member States 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.¹ Indeed, as it is stated in the Copenhagen Declaration, the CDDH considers it of outmost importance that national parliaments are appropriately involved in ensuring that policies and legislation comply fully with the Convention, notably by checking, in a systematic manner and at an early stage of the process, the compatibility of draft legislation and administrative practice in the light of the Court’s jurisprudence².
5. The CDDH also recalls that the Copenhagen Declaration referred to the 2017 CDDH report on the selection of candidates and election of judges of the Court and that in this report the various actors, including the Assembly both on its own and in close cooperation with the Committee of Ministers, are called to ensure that the most qualified and competent candidates are elected.
6. Furthermore, the CDDH recalls the importance of the involvement of national parliaments in the process of the execution of judgments, as it has been highlighted in the Brussels Declaration³.
7. Finally, the CDDH considers that the Copenhagen Declaration, which stresses the importance of an effective protection of the Convention standards at the national level, which develops, in light of Protocol No. 15 to the Convention, the ideas concerning the principle of subsidiarity and the margin of appreciation of national courts, and which envisages new avenues to increase the effectiveness of the Court, provides useful elements to the reflection that the Committee of Ministers must conclude before the end of 2019 on whether the measures taken until now are sufficient to ensure sustainable functioning of the Convention’s control mechanism or whether it is appropriate to envisage more significant changes.

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¹ Adopted by the Committee of Ministers on 12 May 2004 at its 114th Session.

² See § 16 (b) of the Declaration.

³ Adopted at the High-level Conference on 26 and 27 March 2015 at the initiative of the Belgian Chairmanship of the Committee of Ministers. See in particular § 2 (h) of section B of the Action Plan appended to the Declaration.

Text of Recommendation 2129(2018)

Copenhagen Declaration, appreciation and follow-up

Parliamentary Assembly

1. The Parliamentary Assembly takes note of the Declaration adopted at the Conference on the Continued Reform of the European Human Rights Convention System o Better Balance, Improved Protection, organised in Copenhagen on 12 and 13 April 2018 by the Danish Chairmanship of the Committee of Ministers.

2. The Assembly refers to its own previous work on the reinforcement and reform of the system of the European Convention on Human Rights (ETS No. 5, "the Convention"), notably [Resolution 1726 \(2010\)](#) "Effective implementation of the European Convention on Human Rights: the Interlaken Process", [Resolution 1856 \(2012\)](#) and [Recommendation 1991 \(2012\)](#) on guaranteeing the authority and effectiveness of the European Convention on Human Rights, and [Resolution 2055 \(2015\)](#) and [Recommendation 2070 \(2015\)](#) "The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond".

3. The Assembly welcomes the reaffirmation in the Copenhagen Declaration by the States parties of their commitment to the Convention, to the fulfilment of their obligations thereunder and to the right of individual application as a cornerstone of the system. It shares their recognition of the fact that the Convention has made an extraordinary contribution to the protection and promotion of human rights and the rule of law in Europe and continues to play a central role in maintaining democratic security and improving good governance.

4. The Assembly is also appreciative of the fact that the Copenhagen Declaration, as adopted, largely reflects the approach advocated by the Assembly in its declaration adopted by the Standing Committee on 16 March 2018. In particular, it fully agrees that ineffective national implementation "remains the principal challenge confronting the Convention system" and that the caseload of the European Court of Human Rights ("the Court") "still gives reason for serious concern". It also welcomes the States parties' reaffirmation of their "strong commitment to the full, effective and prompt execution of judgments".

5. The Assembly is nevertheless greatly concerned that a founding member of the Council of Europe saw fit to submit a draft declaration that would have put in question some of the fundamental principles on which the Convention system depends. This is all the more disappointing for the fact of apparently being motivated by purely domestic considerations, regardless of their consequences for Europe's core human rights protection mechanism. The Assembly trusts that future chairmanships of the Committee of Ministers will take a more constructive and supportive approach towards the Convention and the Court.

6. Despite the significant progress made in refining the initial draft text in order to arrive at the final, adopted version, the Assembly has certain concerns with regard to the Copenhagen Declaration, in particular the following:

- 6.1. whilst recognising that ineffective national implementation and inadequate execution of Court judgments are still the main problems facing the Convention system, the Declaration proposes very few new solutions;
- 6.2. the Declaration still contains vaguely defined and conceptually problematic ideas about "dialogue" between the States parties and the Court, including on the interpretation of Convention rights, which could be developed in ways that would threaten the Court's independence;
- 6.3. the Declaration fails to appreciate and encourage in an adequate manner the role and contributions of other stakeholders and actors, including the Assembly, national parliaments, the Council of Europe Commissioner for Human Rights and civil society.

7. The Assembly therefore calls on the Committee of Ministers to:

- 7.1. take concerted and effective action to address the problems of ineffective national implementation of the Convention, including inadequate execution of Court judgments, notably on the basis of recommendations contained in Assembly [Resolutions 1726 \(2010\)](#), [1856 \(2012\)](#) and [2055 \(2015\)](#) and [Recommendations 1991 \(2012\)](#) and [2070 \(2015\)](#), and in the intergovernmental expert reports prepared in the course of the Interlaken reform process;
- 7.2. avoid any statements or actions that might undermine the independence of the Court when exercising its jurisdiction under Article 32 of the Convention, and call on States parties to seek to influence the Court's interpretation of the Convention only in the course of judicial proceedings, including through third-party interventions;
- 7.3. engage fully all stakeholders in the Convention system, including the Assembly, in the reform process and ensure that their roles and contributions are recognised and encouraged as part of the overall package of measures intended to reinforce the Convention system.

8. The Assembly resolves to continue following the process of reform of the Convention system, with a view to protecting its fundamental principles, including the independence of the Court, reinforcing the role of national parliaments and holding States parties to account for the fulfilment of their obligations.