|  |  |  |  |
| --- | --- | --- | --- |
| **MINISTERS’ DEPUTIES** | CM Documents | **CM(2019)70-final** | 10 May 2019 |

|  |
| --- |
| **129th Session of the Committee of Ministers(Helsinki, 16-17 May 2019)**Report on securing the long-term effectiveness of the system of the European Convention on Human Rights |

1. The Council of Europe’s action to secure the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights was given important political impetus through the adoption of the Interlaken (2010), Izmir (2011), Brighton (2012), Brussels (2015) and Copenhagen (2018) Declarations.

2. Pursuant to the Committee of Ministers’ request, this report presents the measures taken by the parties concerned since the 128th Ministerial Session held in Elsinore on 17-18 May 2018, where the Ministers adopted a number of decisions on the follow-up of the work in this field (see Appendix 1).

A. Measures taken by the Committee of Ministers

*Protocol No. 15 amending the European Convention on Human Rights*

3. Protocol No.15 amending the Convention was adopted by the Committee of Ministers at its 123rd Session (16 May 2013) and opened for signature in Strasbourg on 24 June 2013. To date, it has been ratified by 45 States Parties to the Convention and signed by two others. The Protocol will enter into force after ratification by all the Parties to the Convention.

*Protocol No. 16 to the European Convention on Human Rights*

4. On 10 July 2013, the Ministers’ Deputies adopted Protocol No. 16 to the Convention, which allows highest domestic courts to request the European Court of Human Rights (the Court) to give advisory opinions. The Protocol was opened for signature in Strasbourg on 2 October 2013 and entered into force on 1 August 2018. To date, it has been ratified by 12 States Parties to the Convention and signed by 10 others. As of 10 April 2019, the Court delivered its first advisory opinion, following a request from the French *Cour de cassation* made on 12 October 2018.

*Improving the supervision of the execution of the Court’s judgments*

5. The Interlaken process has put a strong focus on the importance of improving the execution of the judgments and decisions of the Court and the Committee of Ministers’ supervision thereof. In response, a series of measures have been adopted in a number of areas. At national level, the structures and procedures in place to ensure rapid execution of the Court’s judgments, including the effectiveness of domestic remedies, have been improved. At the level of the Committee of Ministers, the working methods introduced in 2011 have increased the efficiency and transparency of the supervision process. The regular presence of relevant domestic authorities, including, where necessary, at ministerial level, at human rights (DH) meetings has become a very welcome practice. In addition, the Council of Europe support to execution has been improved, notably through reinforced possibilities of obtaining expert advice and better access to co-operation programmes and activities.

6. The possibilities for civil society, national human rights institutions and other international organisations to participate into the supervision process have also been improved. Since June 2016, an indicative list of cases which it is proposed to examine at a forthcoming DH meeting is published at the end of each meeting, giving all interested ample time to react. The HUDOC Exec database gives access to information about the progress of the implementation of judgments. A series of factsheets with basic information about the situation in respect of the execution of the Court’s judgments in each member State has also been developed.

7. As underlined by the Chairs of the DH meetings in the 2018 Annual Report of the Committee of Ministers[[1]](#footnote-1) (Croatia, Finland and France), the supervision process demonstrates in a very clear manner the system’s capacity to help member States in overcoming obstacles to execution in a Convention-compliant manner and to maintain the mutual trust necessary for good interstate co-operation. This capacity is also well in evidence at the thematic debates held in 2018 on conditions of detention and in 2019 on the obligation to investigate violations of Articles 2 and 3 of the Convention.

8. The statistics in the above-mentioned 2018 Annual Report confirm the trends in recent years. The total number of pending cases again decreased considerably (by 21%), to 6,151 at the end of 2018, the lowest figure since 2006.The number of pending cases that reveal structural or systemic problems (so-called leading cases) has also decreased from 1,379 in 2017 to 1,248 in 2018. The same applies to the number of cases placed under enhanced supervision due to the importance of the problem: 317 in 2017 and 309 in 2018. However, the number of cases or groups of cases closed remained the same as far as leading cases under enhanced supervision are concerned: 35 were closed in 2018. Moreover, the number of leading cases under standard supervision which were closed in 2018 decreased: 254 cases closed compared to 276 in 2017.

9. The percentage of payments of just satisfaction made on time suffered a decrease, albeit small, and was at 69% in 2018 (70% in 2017).

10. Even with the statistical trend above, the Committee of Ministers noted in Elsinore that “the Convention system continues to face significant challenges, notably linked to serious or widespread violations, to systemic and structural problems of human rights in States Parties, and to the situation in unresolved conflict zones”. The maintenance and development of Council of Europe support to execution, in particular through the availability of expert advice and co‑operation activities and programmes, thus remain important. A number of execution processes have, in addition, encountered substantial problems or obstacles, or even a lack of political will, and it can be expected that they will also continue to require detailed work,intensive discussions and consultations, including at a high level.

11. In 2017, the Committee of Ministers made use for the first time of Article 46 §4 of the European Convention on Human Rights by referring the question to the Court whether Azerbaijan has failed to fulfil its obligation under Article 46 §1 to implement the Court’s judgment in the case Ilgar Mammadov v. Azerbaijan (Application n° 15172/13). The Court’s judgment is expected in 2019.

*Measures concerning the selection and election of judges to the European Court of Human Rights*

12. The importance of the quality and qualifications of judges has been emphasised on many occasions and various measures have been taken in recent years, such as the establishment by the Committee of Ministers of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights, and the adoption of the Committee of Ministers’ Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights.

13. The Advisory Panel, which gives advice to States Parties on the suitability of the candidates they intend to put forward for office as judges of the Court, has continued its work. The Ministers’ Deputies held an exchange of views with the Chairperson of the Panel, former Judge of the European Court of Human Rights in respect of Croatia, Ms Nina Vajić, in March 2019.

14. The importance of this matter was underlined again in the Copenhagen Declaration, which was endorsed by the Committee of Ministers at its 128th session in Elsinore. On 30 May 2018, the Ministers’ Deputies agreed to consider, in co-operation with the Parliamentary Assembly, and on the basis of the 2017 report of the Steering Committee for Human Rights (CDDH) on the selection and election of judges of the European Court of Human Rights (document [CM(2018)18-add1](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM(2018)18-add1" \o "Steering Committee for Human Rights (CDDH) - b. Report on the process of selection and election of judges of the European Court of Human Rights [1309 meeting])), the whole process by which judges are selected and elected to the Court with a view to ensuring that the process is fair, transparent and efficient, and that the most qualified and competent candidates are elected.

15. On the basis of a thorough analysis, carried out in consultation with the relevant stakeholders between June and December 2018, the Ministers’ Deputies adopted in January 2019 a series of decisions by which they recalled the primary role of the States in submitting candidates of the highest quality for election as judge to the Court and took note of the recent measures taken by the Parliamentary Assembly to further improve its election procedure. The Deputies also called on States to fully implement the Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the Court, having regard to the orientations provided by the Advisory Panel and the Parliamentary Assembly. They welcomed the dialogue developed between the Parliamentary Assembly and the Advisory Panel and encouraged the Assembly to consider further changes in the election procedure. Finally, they agreed to keep the operation of the whole system for the election of judges under review, and to decide by the end of 2020, in light of the elections and other events in the meantime, whether further action is required.

*Accession of the European Union to the European Convention on Human Rights*

16. The Opinion of the Court of Justice, which stated *inter alia* that the draft agreement on the accession of the European Union to the European Convention on Human Rights did not take sufficiently into account the autonomy of EU law, was delivered in December 2014. In 2018, the Copenhagen Declaration called on the EU institutions to take the necessary steps to complete this process as soon as possible. An exchange of letters in June and September 2018 between the Secretary General of the Council of Europe and the President of the European Commission indicated that negotiations on the EU accession to the Convention could be envisaged once the ongoing consultations within the EU Council have been completed.

17. As part of the follow-up to the 2015 CDDH report on the longer-term future of the system of the European Convention on Human Rights, the Ministers’ Deputies have instructed the CDDH to carry out a detailed analysis of all questions relating to the place of the Convention in the European and international legal order and on the medium- and longer-term prospects. The CDDH should finalise its report by the end of 2019.

B. Measures taken by the European Court of Human Rights

18. The Ministers’ Deputies have a well-established practice of holding regular exchanges of views with the President of the European Court of Human Rights. Since the 128th Ministerial Session, there have been two such meetings with Mr Guido Raimondi. In these exchanges the President explained that a significant number of applications before the Court stem from structural situations in certain States, and stressed that it is at domestic level, in compliance with the principle of subsidiarity, that these cases should be resolved. He highlighted measures taken by the Court during the Interlaken process that show its capacity to play a leading role, and that demonstrate its ingenuity and creativity. The further application of the pilot-judgment procedure is an example of this. It allows the Court to identify a systemic problem and the respondent State to taken measures remedy it – a good example of shared responsibility for implementing the Convention. Another example, very recent, is the non-contentious phase introduced in January 2019, aimed at promoting the friendly settlement of cases. The President also commended the success of the Superior Courts Network. In addition, he presented the Court’s plan to launch internally a knowledge-sharing platform to aid in the drafting judgments and decisions. It is planned to make the platform available to external users at a later date, to facilitate their access to the Court’s case-law. In this respect, the President emphasised the importance of the Court’s IT system for maintaining efficient working methods. Referring to the Council of Europe’s difficult budgetary situation, the President stated that the Court was ready to contribute to the Organisation’s efforts to reduce expenditure, provided that this did not undermine the progress made.

*Dealing with applications*

19. In 2018[[2]](#footnote-2), the Court delivered a total of 1,014 judgments (compared with 1,068 in 2017). 14 judgments were delivered by the Grand Chamber, 463 by Chambers and 537 by Committees of three judges. Approximately 200 applications were declared inadmissible or struck out of the list by Chambers, and some 6,650 by Committees. In addition, single judges declared inadmissible or struck out some 33,200 applications (66,150 in 2017). At the end of 2018, the number of pending cases was 56,350, which is stable compared to 2017. More than 84% of the pending cases concern 10 States.

20. Following the entry into force of Protocol No. 14, the Court has been able to pursue its strategy for managing its backlog for some years, an important part of which is based on a system for the classification of cases. In 2018, the number of cases designated as high priority increased by 15%, after a decrease in 2017, to reach almost 20,000 cases. It should be noted that 88% of these cases emanate from four States Parties. Many of the new applications raised complaints under Article 3 of the Convention regarding conditions of detention.

21. There were approximately 17,400 non-priority, non-repetitive potentially admissible applications pending before the Court as of 1 April 2019, which represents a decrease of 10% compared to the beginning of 2018. Four States Parties accounted for over half of these applications. Since these cases require in-depth judicial examination, it can be said that the greatest weight of the Court’s docket rests here. As a response to this, the Court introduced a new approach to such cases, involving immediate, simplified communication to the respondent State. This new procedure (IMSI) applies since 2017 to 27 States. The Court has a positive assessment of its implementation in so far as it appears to foster the friendly settlement of cases. The Court has pursued its reflection on and is testing for one year, as from 1 January 2019, a new procedure, which introduces a dedicated non-contentious phase, prior to the contentious phase, aiming at facilitating the conclusion of friendly settlements and easing the workload of both the Registry and Government Agents. In addition, it is recalled that in 2017 the Plenary Court took a policy decision by raising the ratio of non-repetitive cases decided at Committee level through a broader interpretation of the notion of “well-established case-law” (WECL procedure).

22. Repetitive cases continue to form the largest category of pending applications before the Court. In 2014, the Court developed a streamlined procedure for dealing with these cases, backed by an advanced IT workflow system. It has indicated that this new approach will enable it to bring the backlog of repetitive cases under control within a few years. The procedure became operational in 2015 and that same year there was a reduction in the Brighton backlog (see below) for this category by 28%. In 2018, the Brighton backlog for this category continued to decrease (by 19%).

23. As regards single judge or committee applications, by 1 April 2019, the number of applications pending was 4,085, a decrease of 7% since January 2018. 318 of these cases were part of the Brighton backlog.

24. The Court has pursued its efforts to reduce the length of proceedings before it, with the objective of achieving the goal set by the Brighton Declaration (paragraph 20 h), i.e. to decide whether to communicate a case within one year, and thereafter to make all communicated cases the subject of a decision or judgment within two years of communication. There was a decrease in the Brighton backlog for all categories of cases in 2018 (13%). The total number of cases in the Brighton backlog amounted to 24,950 cases as of 1 April 2019.

*Interim measures under Rule 39 of the Rules of the Court*

25. In 2018, the number of requests for interim measures decreased by 8% compared to 2017.The Court granted 143 requests for interim measures in 2018, which represents an increase of 22% compared to 2017. 59% of the requests granted concerned expulsion or immigration cases.

*Information policy and dialogue with governments and other stakeholders*

26. The Court has maintained its efforts to strengthen dialogue with the States Parties to the Convention, through regular visits to States, working meetings with high-level delegations of national judges, periodic meetings with government agents and training sessions for groups of judges and lawyers from States Parties. It also launched in 2015 a network for exchanges on case law with the member States’ supreme courts, the Superior Courts Network, which now counts 74 courts from 36 European States. In a few years, the Network has become an important tool for dialogue between the Court and the numerous superior courts members of the Network.

27. Along with its dialogue with national courts, the Court continued to hold annual meetings with the Court of Justice of the European Union. On 15 October 2018, a delegation of 15 judges from the Court visited the Court in Luxembourg for exchanges and discussions on themes of general interest. In addition, the Registry of the Court pursued its contacts with the Human Rights Committee of the United Nations.

28. In 2016, the Court incorporated a new rule into the Rules of Court (Rule 111), providing that the States Parties, organisations with experience in representing applicants and relevant bar associations will be consulted on any proposal to amend rules that directly concern the conduct of proceedings. With this amendment, the Court has reacted positively to the wish of the States, expressed in the Brighton Declaration and again in the report by the CDDH on the longer-term future of the system of the European Convention on Human Rights, to have a role in the rule-making procedure. In 2018, in application of Rule 111, the Court consulted representatives of the States Parties, organisations with experience in representing applicants and relevant Bar associations on the new Rule 44F of the Court’s Rules on treatment of classified documents.

29. The Court has continued to develop its information policy. As regards communication with applicants, a new downloadable application form has been made available which can be printed, signed and sent to the Court, where its contents can be extracted electronically. In addition, the eComms platform was launched in 2018. It allows the Court and applicant representatives to exchange documents on communicated cases.

30. In addition, further improvements are made to the Courts’ search engine (HUDOC). In 2018, the HUDOC interface in Georgian was launched. This interface is today available in six languages (English, French, Georgian, Russian, Spanish and Turkish) and it is envisaged to develop the Bulgarian and Ukrainian versions. Moreover, as a result of the Court’s case law translation programme, partly financed by some member States and partly by the Human Rights Trust Fund (HRTF), over 26,000 texts in 31 languages other than English and French have now been made available in HUDOC.

31. The Court has also continued to produce and update its case law guides and has prepared more than 60 fact sheets on various Convention-related topics, many of which have been translated into several languages. Furthermore, updates of two handbooks (Handbook on European non-discrimination law and Handbook on European data protection law) were published in 2018.

C. Measures taken by member States

*Implementation of the European Convention on Human Rights at national level*

32. It appears clearly, notably in the context of the supervision of execution, that significant progress has been achieved in putting in place effective remedies or in ensuring the effectiveness of existing ones, in particular in a number of areas frequently involving major structural problems, for example, the length of judicial proceedings, or the non-enforcement or delayed enforcement of domestic judgments against State authorities. This trend is reflected also before the Court where it can be noted that, from January 2010 to January 2019, the percentage of pending applications concerning the length of proceedings dropped from 14% to 3%.

33. The effectiveness of remedies has also been improved in other ways, including by the setting-up of more general remedies, more efficient dissemination of the Court’s case law in national languages, more guidance as to the requirements of the Convention from Supreme Courts and better and more regular training of law officials, especially judges and prosecutors, thanks to the HELP Programme in particular.

34. In addition, the follow-up at national level of the execution of the Court’s judgments has been developed, in particular through new structures within national parliaments and annual reports by Governments.

35. As part of the follow-up to the CDDH report on the longer-term future of the system of the European Convention on Human Rights, the Ministers’ Deputies invited States Parties to take a number of measures to improve the implementation of the Convention at national level, such as to better take account of the general principles found in the Court’s judgments in cases against other States Parties, even if not legally binding, improving or creating effective domestic remedies, and verifying the compatibility of draft legislation and administrative practice with the Convention.

*Secondment of national judges and high-level lawyers to the European Court of Human Rights*

36. With the aim of reducing the large number of pending applications, several States Parties have seconded judges or high-level lawyers to the Court. Presently, there are 24 seconded officials from 13 States Parties. Further secondments are expected in the course of the year.

*Contributions to the Court's special account*

37. Since its creation in mid-2012, the Court's special account has received contributions from 26 member States. By the end of 2018, a total of €6 654 595 had been received, of which 75% has been spent. In 2018, 11 lawyers were paid from this account to reduce the Court’s backlog. Most of them have already worked at the Court and were therefore operational immediately. Staff members recruited on this basis increase the Court’s capacity to deal with high-priority cases. However, further contributions are required to maintain the current staffing level.

D. Measures taken by the Secretary General

38. Ensuring the long-term effectiveness of the system of the European Convention on Human Rights has been the Secretary General's first priority since taking office.

39. In his high-level political contacts with the member States, he very regularly raises questions concerning respect for the Convention, the effectiveness of the system and the execution of the Court's judgments. He promotes the swift ratification of the protocols to the Convention, in particular Protocol No. 15 – whose ratification by all States Parties is necessary for its entry into force.

40. In the spirit of the Brussels Declaration, he has continued, on a case-by-case basis, to use his authority to facilitate the execution of judgments raising complex and/or sensitive issues at the national level.

41. With regard to the most recent developments, in view of the budgetary constraints facing the Council of Europe, he has taken care only to propose, as far as possible, reductions to the Committee of Ministers which would not impair the Court's capacity to pursue its reforms, nor negatively impact case processing and the supervision of the execution of the Court's judgments. It is further recalled that it was the Secretary General who, as early as 2012, set up the Court’s special account (see above).

Conclusions

42. The reform process initiated in Interlaken in 2010 and continued in Izmir, Brighton, Brussels and Copenhagen demonstrates the commitment of the States Parties to the European Convention on Human Rights and their attachment to the right of individual application to the European Court of Human Rights. This process has led to very encouraging results in the implementation of the Convention at national level, the handling of cases by the Court and the supervision of the execution of judgments, through the joint efforts of the Court, the Committee of Ministers and the States Parties.

43. However, despite steady progress, the Convention system continues to face important challenges. In 2018, the backlog of cases before the Court continued to decrease, but the number of pending applications remained stable at a high level. Moreover, even if the number of pending cases revealing important structural problems has slightly decreased in 2018, the continued existence of such problems, especially where effective domestic remedies have not been developed, continue to give rise to an important volume of incoming repetitive applications. It has been noted that 88% of the applications before the Court emanate from four States Parties to the Convention. Urgent action is needed here. Moreover, the Court is sometimes confronted with criticisms of its case-law and serious execution problems may arise as a result of domestic judicial decisions challenging the Court’s conclusions. Measures have to be taken to overcome the problem of non-execution which undermines the Court’s authority and the credibility of the whole Convention system. It is therefore of the utmost importance to ensure that the independence of the Court and the binding nature of its judgments are preserved and respected by all the actors of the Convention system.

44. In 2010, the Interlaken Declaration invited the Committee of Ministers “to decide [before the end of 2019] 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”. As agreed during the Brighton Conference, a first assessment was made in 2015-2016. The Ministers’ Deputies examined the above-mentioned CDDH report on the longer-term future of the system of the Convention, together with comments made by the Court on this report. Both found that the challenges facing the system could in all likelihood be dealt with within the framework of the existing system. The Deputies endorsed the solutions proposed in response to the present and future challenges identified in the CDDH report concerning (i) the authority of the Convention: its implementation at national level; (ii) the authority of the Court; (iii) the authority of the Court’s judgments (execution of judgments and its supervision); and (iv) the place of the Convention mechanism in the European and international legal order.

45. The evaluation report of the measures taken since Interlaken is being prepared by the CDDH and will finalised by the end of 2019. At the request of the Ministers’ Deputies, this report will, in particular, cover the following aspects:

* a comprehensive analysis of the Court’s backlog, identifying and examining the causes of the influx of cases from the States Parties with a view to identifying the most appropriate solutions at the level of the Court and the States Parties,
* proposals on how to facilitate the prompt and effective handling of cases, particularly repetitive cases, that the parties are open to settle through a friendly settlement or a unilateral declaration,
* proposals on ways to handle more effectively cases related to inter-State disputes, as well as individual applications arising out of situations of inter-State conflict, without thereby limiting the jurisdiction of the Court, taking into consideration the specific features of these categories of cases, inter alia regarding the establishment of facts, and
* questions relating to the situation of the judges of the European Court of Human Rights after the end of their mandate, mentioned in paragraphs 154 and 159 of the 2017 CDDH report on the selection and election of judges of the European Court of Human Rights, and proposals for possible responses.

46. The report will also include an analysis of the reports submitted by member States on the implementation at national level of the Brussels Declaration.

47. At its ministerial session in Elsinore in May 2018, the Committee of Ministers asked for a timetable for the preparation and implementation of any further changes required, including an examination of the effect of Protocols Nos.15 and 16 to the Convention. The following timetable could be envisaged:

* 26-29 November 2019, approval by the CDDH of its report “Contribution to the evaluation foreseen by the Interlaken Declaration” and transmission to the Ministers’ Deputies;
* January-April 2020, consideration by the Ministers’ Deputies of the CDDH report and of any other relevant element that would be transmitted to them, in particular by the Court, regarding the effects of Protocols Nos. 15 and 16;
* May 2020, possible decisions by the Committee of Ministers at its 130th session.

**Appendix**

**Decisions taken by the Committee of Ministers at its 128th Session (Elsinore, 17-18 May 2018)**

**Securing the long-term effectiveness of the system of the European Convention on Human Rights**

*Decisions*

The Committee of Ministers

1.         reiterated its commitment to the European Convention on Human Rights and its unique system for the protection of human rights in Europe and reaffirmed the principles set out in the Interlaken, Izmir, Brighton and Brussels Declarations;

2.         endorsed the Declaration adopted on the occasion of the High-level Conference held in Copenhagen on 12 and 13 April 2018, commended the Danish authorities for their initiative and invited all stakeholders to give full effect to the parts of the Copenhagen Declaration which concern them directly;

3.         welcomed the action taken by all relevant stakeholders since 2010 and the positive results that have been achieved including through the efforts made to strengthen the implementation of the Convention at the national level, in particular the solution of many important and long-standing systemic and structural problems in member States, and which can be seen in the significant decrease in the number of cases pending before the Court and the increase in the number of cases closed in the supervision of the execution of judgments;

4.         noted with concern, however, that the Convention system continues to face significant challenges, notably linked to serious or widespread violations, to systemic and structural problems of human rights in States Parties, and to the situation in unresolved conflict zones;

5.         urged those States Parties that have not yet signed and ratified Protocol No. 15 to the Convention to do so without further delay in order to allow its entry into force;

6.         welcomed the imminent entry into force of Protocol No. 16 to the Convention and invited those States Parties which have not yet done so to consider signing and ratifying it;

7.         instructed its Deputies to continue to give priority to the long-term effectiveness of the Convention system, to report to it at the next Session on the measures taken and, having in mind the Interlaken 2019 deadline and the Copenhagen Declaration, to prepare a timetable for the preparation and implementation of any further changes required, including an examination of the effect of Protocols Nos. 15 and 16.

1. Committee of Ministers’ 12th annual report 2018: Supervision of the execution of judgments and decisions of the European Court of Human Rights. [↑](#footnote-ref-1)
2. European Court of Human Rights, Annual report 2018, p.161. [↑](#footnote-ref-2)