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Contact: Elise CORNU
Tel: +33(0)3 88 41 23 18

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Réunion : GR-H (12 mars 2020)

Référence du point : 19/48 b. Rapport « Contribution du CDDH à l'évaluation prévue par la Déclaration d'Interlaken »

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

#6558815
11/02/2020

Comment from the European Court on Human Rights on the CDDH contribution to the evaluation of the Interlaken reform process[1]

1. This comment on "The CDDH contribution to the evaluation provided for by the Interlaken Declaration" (hereinafter "the CDDH contribution")[2] has been prepared at the request of the Committee of Ministers[3]. The European Court of Human Rights ("the Court") congratulates the CDDH and in particular the DH-SYSC on its work throughout the 2018-2019 biennium.

2. The Interlaken Declaration (2010) invited the Committee of Ministers to decide before the end of 2019 whether the measures adopted in the course of the reform process, in particular the measures to implement Protocol No. 14 and the Interlaken Action Plan, have proven to be sufficient to assure the sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary. It is recalled here that concerning the challenge of the caseload, the CDDH considered that no further measures appeared necessary regarding the clearance of the backlog of clearly inadmissible and repetitive cases.[4]

3. The present comment should be read together with other relevant contributions which the Court has made to the reform process since the CDDH's mid-term assessment in 2015, namely (i) the Comment from the Court on the CDDH report on the longer-term future of the system of the European Convention on Human Rights (February 2016)[5]; (ii) a report prepared by the Court outlining the measures taken in 2017 (2017); and (iii) a report prepared by the Court outlining measures taken from 2018-June 2019 (June 2019).

4. The Court considers that the Interlaken reform process has been a positive exercise which has enabled States Parties to reaffirm their commitment to the Convention system and to the Court. In each of the five high-level conference declarations the States Parties have recognised the extraordinary contribution of the Court and the Convention system to the protection of human rights in Europe. The reform process has also strengthened the notion of shared responsibility which underpins the Convention system. In this connection the declarations have stressed the crucial role which States Parties must play in implementing the Convention at domestic level and in effectively executing the Court's judgments. Finally, the Court has itself participated fully in the reform process, notably by numerous steps to raise awareness of Convention standards at national level and to enhance dissemination of its case-law as well as improving its internal structure and working methods, streamlining its procedures and innovating to increase efficiency and tackle its backlog. The Court has also reinforced its all-important dialogue with national superior courts.

5. As regards awareness raising/dissemination actions, the Court would cite its case-law translation programme and the extension of the HUDOC database to non-official languages (§ 32 of the CDDH contribution); expansion of the thematic factsheets and publication of further case-law Guides on

[1] As adopted by the Plenary Court on 27 January 2020.
[2] CM(2019)182-add 4 December 2019
[3] See record of 1363rd meeting (11 December 2019)
[4] See the https://rm.coe.int/the-longer-term-future-of-the-system-of-the-european-convention-on-hum/1680695ad4 adopted on 11 December 2015 (see also document CM(2015)176-add1final).
[5] 2016 Comment on CDDH report on longer-term future of Convention

Articles of the Convention as well as publications and videos on the admissibility criteria (§ 33 of the CDDH contribution); assisting member States in providing regular training sessions and study visits for judges and lawyers (§ 38 of the CDDH contribution) and co-operation with the European Union through the joint handbooks published by the Court and the European Union's Fundamental Rights Agency (§ 68 of the CDDH contribution). At the same time the Court has developed an internal Knowledge Sharing Platform which seeks to provide a "one-stop-shop" for all jurisprudential and other relevant information relating to the different substantive articles of the Convention. It is proposed to externalise this platform in the course of 2020. The Court underlines the fact that its awareness raising activities, while extremely necessary, consume the resources of Judges and Registry staff and necessarily affect the time devoted to case-processing.

6. With a view to further facilitating the implementation of the Convention at the domestic level and pursuing judicial dialogue the Court established the Superior Courts Network. The considerable expansion of this network from its inception in October 2015, to its current membership of 87 superior courts from 39 States attests to the appetite at the domestic level for information on the Court's case-law.

7. The central focus of the Interlaken reform process was concern about the high number of applications brought before the Court and the growing backlog of cases. The Court has assisted the CDDH in their analysis of the Court's backlog with a report on "The development of the Court's case-load over ten years – Statistical data for the CDDH (February 2019)"[6].

8. As highlighted by the CDDH the different measures being taken by the Court have led to a dramatic decrease in the number of pending cases before the Court from 160,200 at its highest point in September 2011 to 60,150 cases on 1 November 2019 (§ 70 of the CDDH contribution). However, it should be noted that this reflects principally the reduction of the backlog of clearly inadmissible cases (from 101,800 on 1 September 2011 to 6,200 in December 2019). This was made possible by recourse to the Single Judge procedure and the setting-up of the Filtering Section in 2011. As a result of these measures, the Court has been able to deal with new incoming Single-Judge cases on a "one-in one-out basis" for the last five years (§ 94 of the CDDH contribution). The importance of these measures lies in the fact that they enable the Court to devote more time to new, difficult and non-repetitive cases. However, as the Court has repeatedly stressed, the right to lodge an individual application remains the cornerstone of the Convention system and while filtering is, for the reasons explained above, essential, it does not constitute a goal in itself.

9. The Court draws the attention of the Committee of Ministers to the number and scope of the measures taken to deal with the high case-load, namely (i) extending the availability of the Court's applicants' page on its Website in at least one official language of each member State since 2014 (§ 75 of the CDDH contribution); (ii) revision of Rule 47 of the Rules of Court in order to manage more efficiently the influx of incoming applications (§ 78 of the CDDH contribution); (iii) fine-tuning of its priority policy (§ 97 of the CDDH contribution); and (iv) the introduction of a highly automated workflow system developed by the Registry's IT department (§ 106 of the CDDH contribution). The Court would highlight the fact that there are limits to what can be achieved in relation to managing the high case load through the Court's efforts to continually improve working methods.

10. The Court agrees with the CDDH's assessment that all actors in the Convention system need to continue to address the question of the remaining backlog of repetitive cases (§ 113 of the CDDH contribution), some 34,600 cases as of 1 January 2020. The Court cannot resolve this problem alone. In particular, States Parties must address the underlying structural issues which result in the

[6] See "*The development of the Court's case-load over ten years – Statistical data for the CDDH*" of 27 February 2019, document CDDH(2019)08.

applications being brought. The Court stresses the crucial importance of States Parties providing effective remedies at the domestic level. Clearly, the availability of such remedies would have an important effect on the number of applications lodged at the Court. As to measures taken by the Court regarding repetitive cases, the Court wishes to highlight the setting up of the "well-established case law" procedure ("WECL"), which was further developed into the WECL fast-track procedure (§ 111 of the CDDH contribution). As a result repetitive applications have been processed more quickly and efficiently. The pilot-judgment procedure remains an important tool for dealing with structural and systemic violations.

11. The Court still faces a serious challenge in dealing with Chamber cases which are particularly important for the development of the Convention system as many raise new issues regarding the interpretation and application of the Convention (§ 120 of the CDDH contribution). There are currently just under 20,000 applications pending before a Chamber. In response to this number of applications, the Court has introduced new working methods and procedures, namely the immediate simplified (IMSI) communication procedure (introduced in March 2016) and the dedicated non-contentious phase of the proceedings (introduced on a trial basis as from January 2019 and extended until the end of 2020). The increased recourse to friendly settlements and, in appropriate cases, to unilateral declarations, is intended to provide faster and more effective redress to applicants thereby enabling the Court to concentrate resources on applications which it considers a priority. With this in mind, the Court invites the Committee of Ministers to modify its Rules of Procedure to allow for supervision of the execution of unilateral declarations. Nevertheless, the Court stresses that given its current resources it has great difficulty in dealing adequately with the backlog of non-repetitive cases.

12. The Court has also had increasing recourse to the notion of broader WECL, according to which non-repetitive Chamber cases which can be decided on the basis of established case-law can be dealt with by three Judge Committees under Article 28 § 1 (b) of the Convention. 2,225 applications were identified as broader WECL in 2018 and roughly 2,997 in 2019. While further time is needed to assess the full impact of these measures, it is clear that while they do undoubtedly increase efficiency, they will not in themselves resolve the outstanding backlog problems.

13. The Court will continue tirelessly to explore new means of reducing the backlog while at the same time seeking to ensure that it is able to deal with at least the most serious cases in good time. Thus for example the "single gateway" project is underway to establish a link between filtering and the knowledge sharing platform which will ultimately allow for the automatic extraction of relevant data in respect of identified complaints. Further evolution of the Court's IT system and applications remain crucial for its continuing capacity to cope with the volume of incoming cases. It is important to keep abreast of new technological developments which can and must be harnessed in order to pursue this goal.

14. The Court will also continue its dialogue with Government Agents designed to identify and promote best practices for resolving structural issues but also to investigate other strategies for dealing with non-repetitive "historical" cases and groups of non-repetitive cases which may be suitable for a non-contentious approach. In this connection it has been proposed to set up a joint discussion group with the Government Agents. Dialogue with applicants' representatives, civil society and National Human Rights Institutions is also of particular importance for the Court. Furthermore, the Court has and will continue to intensify its cooperation with Council of Europe monitoring bodies to ensure a harmonized approach.

15. However, there is no single miraculous solution to the backlog and there is also a limit to what the Court can achieve through introducing new working methods without further resources. The

continued reduction at least in real terms of the Court's budget over the last years has reduced the Court's capacity to make further progress. An insufficient number of lawyers to deal with the pending non-repetitive cases mean that although cases are being continually processed, the backlog cannot be effectively reduced. More lawyers are also required to work on the new competences of the Court. The States Parties have committed to providing sufficient resources (paragraph 52 of the Copenhagen declaration). The Court calls on States Parties to ensure that sufficient resources are allocated to the Court to allow it to fulfil its core task of processing and adjudicating in good time the applications which it receives. The credibility of the institution and the Convention system must not be undermined by the length of proceedings before the Court.

16. One concrete result of the Interlaken process has been the entry into force of Protocol No. 16 extending the Court's jurisdiction to giving advisory opinions. In addition to promoting judicial dialogue with national superior courts, it is to be hoped that ultimately it will contribute to implementing Convention provisions more effectively and preventing breaches of the Convention at the national level. It represents an important "cultural" change in how the Convention system operates and is perceived.

17. Effective execution evidently plays a critical role within the Convention system not only in terms of the direct impact of judgments but also in reducing the number of future applications by eliminating the root causes of violations. This is particularly important in cases where the pilot judgment procedure has been applied, given the structural and systemic problems at issue. The ongoing dialogue between the Court and the Department for the Execution of Judgments of the Council of Europe should be encouraged with a view to reducing overlap and increasing synergy.

18. Dealing with cases linked to armed conflicts - and in particular inter-State cases and the high number of individual applications generated - is also a major challenge for the Court (§ 122 of the CDDH contribution). These cases are particularly time-consuming for Judges and Registry staff. The Court is currently implementing the recommendations of its own report on the more efficient processing of inter-State cases prepared by the Committee on Working Methods and adopted by the Plenary in June 2018. A redacted version of this report was shared with the CDDH in June 2019.[7] As more experience is gained in processing inter-State cases, working methods can be evaluated and fine-tuned. The Court underlines that all issues relating to the processing of inter-State cases, including the admissibility of evidence and the establishment of the facts, remain exclusively within the Court's competence.

19. Turning to the question of the Convention in the European and international legal order (§ 140 of the CDDH contribution), the Court stresses that, in any given case, it must be a matter for the Court to decide on the interaction between the Convention and other branches of international law in the independent exercise of its judicial function. The Court also considers that dialogue between the universal and regional human rights mechanisms is one of the most powerful tools to enhance consistency in the case-law and practice. With this in mind, the Court continues to take into account the relevant case-law of other international courts, not least the International Court of Justice, the International Criminal Court and the Court of Justice of the European Union. It also maintains close contact with, *inter alia,* the Inter-American Court of Human Rights, the African Court of Peoples and Human Rights and the United Nations Human Rights Committee.

20. The Court supports the CDDH's call for improving the selection procedure and the election process of judges at the Court to ensure the highest quality of candidates for the post of Judge at the Court (see § 132 of the CDDH contribution). Transparency in the selection of candidates is essential

[7] See for the redacted version of the report adopted by the Plenary of the Court on 18 June 2018, document CDDH(2019)22.

in the Court's view. Positive measures taken by Member States in relation to former judges after their mandate ensure that there are excellent candidates to the post of judge at the European Court of Human Rights.

21. In this latter regard, the Court welcomes the recommendations of the CDDH in relation to the Committee of Ministers addressing the issue of the situation of Judges at the end of their mandate (§ 134 of the CDDH contribution). The independence and the quality of the judges at the European Court of Human Rights must be a key priority not only for this Court, but for the whole of the Council of Europe. It is the Court's view that the subject should not be viewed as a personal issue of post-mandate employment for particular Judges, but rather as an issue of institutional independence. This question is crucial to maintaining the independence of the Court's judges, preserving their impartiality and thus the quality of the Court's judgments. As such, the Court underlines the close links between the independence of the Court's judges and the independence of domestic judges and considers it essential to deal with all applications which reveal threats to the independence of domestic judges with a high degree of priority and particular diligence. Problems encountered by former Court judges after the end of their mandate have largely arisen as a result of the single nine-year term of office. The Court calls on the Committee of Ministers to consider the adoption of a Recommendation in relation to the recognition of service of a judge of the Court at the end of his or her mandate. For those who return to the public sector, for example, the time spent at the Court by the former judge should be taken into account for career advancement purposes. The aim of the proposed Recommendation would be to strengthen the independence of the function of judge at the Court, to ensure that the best candidates apply for the post of judge and to strengthen subsidiarity. In any event, returning to a domestic position (whether in the judiciary, the civil service, at university, as a lawyer, or in another field) should not be jeopardised by a career as a judge at the Court. Further questions which the Recommendation should address are post-mandate employment, immunity, and preventing disguised reprisals. The Court's Committee on the Status of Judges is currently finalising a report on the situation of former Judges after the end of their mandate which it intends to submit to the Plenary for their consideration in deciding on the most appropriate follow-up action.

22. As to further action which may be taken by States Parties, the Court calls on the Committee of Ministers to encourage the remaining States which have not yet ratified Protocol No. 15 to the Convention to do so. Ratification of Protocol No. 16 should also be encouraged by those Member States which have not yet done so.

23. In addition, the Court welcomes the recent initiative of the EU Commission to relaunch negotiations on the accession of the European Union to the European Convention on Human Rights which is necessary to consolidate the place of the Convention in the European legal order.

24. The Court shares the CDDH's broad conclusion that the Interlaken process was crucial for the system in that it provided the foundations for the system to evolve further to meet the remaining challenges without a new major revision of the system. The CDDH has recognised that the Court has made maximum use of the procedural tools and resources available to it. Indeed, the contribution sets out extensively the large number of initiatives and reforms which have been undertaken to optimise procedures and reduce backlog. The Court, in consultation with the Government Agents, is constantly evaluating these new procedures and working methods and will continue to do so, as it will continue to explore new solutions, notably by exploiting new technology. The CDDH also acknowledges that if the different reforms are to achieve their full potential, the Court must be allocated sufficient resources, which the States Parties have committed themselves to provide.

25. In conclusion, bringing this chapter in the Convention system's history to a close does not mean that the different actors in that system can be complacent about its future. The Court has just celebrated its 60th anniversary in 2019 and as it prepares to celebrate the 70th anniversary of the European Convention on Human Rights in 2020, it cannot but endorse the CDDH's assessment that the Convention system remains of vital importance for peace, rule of law and democracy in Europe. Yet it should also be recognised that the system remains fragile and vulnerable to different challenges. The Court's core mission of processing and adjudicating cases in good time should not be endangered by insufficient resources. The end of the Interlaken process in no way diminishes the need for dialogue between the Convention actors, in particular the Court and the States Parties.