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## **STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)**

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**Contribution of the CDDH  
to the evaluation provided for by the Interlaken Declaration**

**Preliminary draft table of contents  
as suggested by the Bureau  
for discussion at the CDDH meeting in November 2018**

### Note

1. Under the mandate it received, the CDDH is expected to contribute to the evaluation, before the end of 2019, of the reform process towards long-term effectiveness of the system of the European Convention on Human Rights required by the Interlaken Declaration. In that evaluation, proposals are to be made to the Committee of Ministers as to whether the measures adopted so far have proven to be sufficient to ensure sustainable functioning of the system of the Convention or whether more profound changes are necessary.
2. The Bureau considers it useful that the CDDH, at its plenary meeting in November 2018, starts its work on the subject-matter by a discussion on the possible structure of the future report. To this end, it prepared the present **preliminary draft table of contents which could form a basis for the discussion.**

## **CONTRIBUTION OF THE CDDH TO THE EVALUATION PROVIDED FOR BY THE INTERLAKEN DECLARATION**

### **CONTEXT OF THE EVALUATION AND MANDATE OF THE CDDH AND THE DH-SYSC**

1. The evaluation of the reform process towards long-term effectiveness of the system of the European Convention on Human Rights to be carried out according to the Interlaken Declaration is a further stage in the broader context of the reform of the Convention system. Since the Court took up its work in 1959, the member States of the Council of Europe have adopted several protocols to the European Convention on Human Rights with the aim of improving and strengthening its supervisory mechanism. In 1998 in particular, Protocol No. 11 to the Convention entered into force which provided for a wholly judicial system of determination of applications, replacing the original two-tier structure comprising the Court and the Commission by a permanent Court. The continuing rise in the Court's caseload was further addressed by Protocol No. 14, which entered into force in 2010 and notably provided for smaller judicial formations to deal with clearly inadmissible cases and well-founded repetitive cases.
2. In 2010 a first intergovernmental conference on the future of the Court in Interlaken marked the beginning of the so-called Interlaken process of further reform. The Interlaken Declaration sought to establish a roadmap for the reform process towards long-term effectiveness of the Convention system.<sup>1</sup> It notably 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 sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary.<sup>2</sup>
3. Since the Interlaken conference, the measures proposed to guarantee the long-term effectiveness of the Convention system have been further developed in the Declarations adopted at four further high-level conferences in Izmir (2011)<sup>3</sup>, Brighton (2012)<sup>4</sup>, Brussels (2015)<sup>5</sup> and Copenhagen (2018)<sup>6</sup>.
4. According to its terms of reference for the 2018-2019 biennium, the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC), under the supervision of the CDDH, is to:

“contribute to the evaluation set out by the Interlaken Declaration, before the end of 2019, with a view to formulating proposals to the Committee of Ministers as to whether the measures adopted so far have proven to be sufficient to ensure sustainable functioning of the system of the Convention or

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<sup>1</sup> See the [Interlaken Declaration](#) of 19 February 2010, PP 10.

<sup>2</sup> See the [Interlaken Declaration](#), Implementation of the Action Plan, point 6.

<sup>3</sup> See the [Izmir Declaration](#) of 26/27 April 2011.

<sup>4</sup> See the [Brighton Declaration](#) of 19/20 April 2012.

<sup>5</sup> See the [Brussels Declaration](#) of 27 March 2015.

<sup>6</sup> See the [Copenhagen Declaration](#) of 12/13 April 2018.

whether more profound changes are necessary (deadline: 31 December 2019).”<sup>7</sup>

5. This work is to be carried out in the light of the results achieved in the framework of the further ongoing activities of the DH-SYSC, that is, the preparation of a draft report concerning the place of the European Convention on Human Rights in the European and international legal order and the follow-up to the decisions that may be taken by the Committee of Ministers further to the submission, in December 2017, of the CDDH report on the process of selection and election of the judges at the European Court of Human Rights.<sup>8</sup>
6. The following preliminary draft table of contents of the future “Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration” proposes conducting the assessment of the sufficiency of the measures adopted in the Interlaken reform process under three headings: 1) The application of the Convention at the national level – preventing and remedying breaches of the Convention; 2) Applications before the European Court of Human Rights; and 3) The execution of the judgments of the European Court of Human Rights.

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<sup>7</sup> See the terms of reference given by the Committee of Ministers to the DH-SYSC as adopted by the Committee of Ministers at its 1300<sup>th</sup> meeting, 21-23 November 2017.

<sup>8</sup> Ibid.

## PRELIMINARY DRAFT TABLE OF CONTENTS

### INTRODUCTION

- Background: shared responsibility between the States Parties, the Court and the Committee of Ministers in the implementation of the Convention.

### A. THE APPLICATION OF THE CONVENTION AT THE NATIONAL LEVEL – PREVENTING AND REMEDYING BREACHES OF THE CONVENTION

#### ***I. Raising awareness of, and providing training for national authorities on the Convention standards and procedures***

- Translation of significant judgments of the Court into national languages.
- Thematic information on the Court's case-law (with the help of the Court's Registry).
- Training of university students, judges, prosecutors, lawyers, law-enforcement officials, officials responsible for the deprivation of a person's liberty and members of the security forces on well-established case-law concerning their respective (future) professional fields (amongst others via the HELP programme)
- Secondment of national judges and, where appropriate, other lawyers to the Court's Registry.
- Coordination of other existing mechanisms, activities and programmes of the Council of Europe, such as the works on Human Rights and Business and in particular the activities of the Department for the Execution of Judgments of the Court.
- Cooperation with national human rights institutions or other relevant bodies.

#### ***II. Concrete measures to prevent and remedy breaches of the Convention at the national level***

1. Measures to be taken, as appropriate, at the legislative, executive or judicial level:
  - Ensure that all persons with an arguable claim that their rights and freedoms as set forth in the Convention have been violated have available to them an effective remedy before a national authority providing adequate redress.
  - Implement practical measures to ensure that legislation complies fully with the Convention, including by developing parliamentary expertise to evaluate the compatibility with the Convention of draft legislation.
  - Consider setting up an optional mechanism allowing the highest national courts to request advisory opinions.
  - Encourage national courts to take into account the relevant principles of the Convention in conducting proceedings and formulating judgments.
  - Promote exchange of information and experiences concerning the implementation of the Convention at the national level, in coordination in particular with the Government Agents.

2. Measures to be taken to strengthen the role of civil society:
  - Consider the establishment of an independent National Human Rights Institution.
3. Measures to be taken by the Council of Europe:
  - Assisting and encouraging national implementation of the Convention by the provision of technical assistance upon request to States Parties and dissemination of good practices; targeting and coordination of technical assistance; co-operation with the European Union.

## **B. APPLICATIONS BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS**

### ***I. Measures for dealing with the high case-load***

1. Access to the Court and a sound administration of justice
  - Information to applicants and their representatives on the scope and limits of the Convention's protection, on admissibility criteria and the application procedure before the Court.
  - Change of procedural rules / practices.
  - Improvement of the form for applications to the Court.
2. Filtering of applications
  - Examination of the necessity of a new filtering mechanism requiring amendment of the Convention.
  - Setting up of a filtering mechanism within the existing bench.
3. The order of dealing with applications – priority policy
4. Measures for dealing with specific cases
  - Analysis of the Court's backlog.
  - Streamlining of procedures particularly for the handling of inadmissible cases and repetitive cases (e.g. pilot judgment procedure).
  - Facilitation by member States of the adoption of friendly settlements and unilateral declarations with the support of the Court.
  - More effective handling of cases related to inter-State disputes, as well as individual applications arising from situations of conflict between States.
5. The organisational structure of the Court
  - Examination of a simplified procedure for amending certain provisions of the Convention relating to organisational issues.
  - Appointment of additional judges to the Court to deal with pending Chamber applications.
  - Sufficient funding of the Court.
  - Secondment of national judges and, where appropriate, other lawyers to the Court's Registry.

### ***II. Measures to guarantee the authority of the Court and of its case-law***

1. The selection and election of judges of the Court
  - The national selection procedure.
  - The election procedure.

- The post-mandate situation of judges.

2. The clarity and consistency of the Court's case-law

- Ensure clarity and consistency of the Court's judgments, in particular by the Grand Chamber.
- Ensure a consistent application of the principles of subsidiarity and margin of appreciation.
- Give effect to the new admissibility criterion provided for in Protocol No. 14 (*de minimis non curat praetor*).

3. The Convention in the European and international legal order

- The accession of the European Union to the Convention.
- Long-term strategic reflections about the future role of the Court / evaluation of the fundamental role and nature of the Court.

**III. Dialogue of the Court with the actors in the Convention system**

- Judicial dialogue between the Court and the highest courts of the States Parties.
- Introduction of a power of the Court, which States Parties could optionally accept, to deliver advisory opinions upon request on the interpretation of the Convention in the context of a specific case at domestic level.
- Third-party interventions in cases pending before the Court.
- High-level ministerial conferences.
- Dialogue of the Court's President with the Committee of Ministers.
- Regular meetings between the Government Agents and the Registry of the Court.
- Consultations with civil society.

**C. THE EXECUTION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS**

***I. Ensuring domestic capacities for the rapid execution of judgments***

- Develop domestic capacities taking into account the indications in Recommendation 2008(2) and share good practices.
- Develop the States Parties' capacity to rapidly submit comprehensive action plans, make them widely accessible and ensure their follow-up.
- Facilitate the role of the Government Agents or other officials responsible in co-ordinating the execution of judgments.
- Facilitate the role of the national parliaments in scrutinizing the effectiveness of implementation measures.

***II. Ensuring an efficient and transparent process of supervision of the execution of judgments by the Committee of Ministers***

- Refine the procedures to ensure an effective and transparent supervision of the execution of the Court's judgments.
- Prioritisation (cases requiring urgent individual measures and cases disclosing major structural problems).
- Reinforced subsidiarity (States' choice of means to conform to the Convention obligations).

- Foster the exchange of information and best practices between States Parties particularly for the implementation of general measures.
- Foster the accessibility of information relevant for the execution of judgments
- Increased cooperation with other international organisations and non-governmental organisations.
- Enhance, where necessary, the Department for the Execution of Judgment's bilateral dialogue with States Parties to facilitate the execution process.
- Take effective measures in respect of a State Party that fails to comply with its obligations under Article 46.
- Ensure sufficient budgetary resources, including the secondment of national judges or officials to the Department for the Execution of Judgments

### ***III. Developing interaction with other stakeholders***

- Increased cooperation with the Court and its Registry as well as the Parliamentary Assembly in matters relating to the execution of judgments.
- Encourage the relevant entities of the Council of Europe to take account of issues relating to the execution of judgments in their cooperation activities.
- Awareness-raising activities by the Parliamentary Assembly of the Council of Europe for members of national parliaments to follow the execution of judgments.
- Facilitation, on a case-by-case basis, of the execution of judgments raising complex issues by the Secretary General and the Commissioner for Human Rights.

## **CONCLUSIONS**