CDDH(2019)12

25/04/2019

STEERING COMMITTEE FOR HUMAN RIGHTS /
COMITÉ DIRECTEUR POUR LES DROITS DE L'HOMME

(CDDH)

Follow-up work to the Copenhagen Declaration /

Travaux de suivi de la Déclaration de Copenhague

COMPILATION OF THE CONTRIBUTIONS RECEIVED FROM THE MEMBER STATES /

COMPILATION DES CONTRIBUTIONS REÇUES DES ÉTATS MEMBRES

Note:

1. Following the High-Level Conference regarding the reform of the Convention system in Copenhagen on 12–13 April 2018, the Ministers' Deputies, at their meeting on 30 May 2018,[1] had invited the CDDH to include the following additional elements in its future *Contribution to the evaluation provided for by the Interlaken Declaration*:

(i) a comprehensive analysis of the Court's backlog of cases, identifying and examining the causes of the influx of cases from the States parties in order to identify the most appropriate solutions at the level of the Court and the States parties;

(ii) proposals on how to facilitate the prompt and efficient handling of cases, in particular repetitive cases, which the parties were prepared to settle by means of a friendly settlement or a unilateral declaration;

(iii) proposals on how to handle more effectively cases related to inter-State disputes, as well as individual applications arising from situations of conflict between States, without thereby limiting the jurisdiction of the Court, taking into account the specific features of these categories of cases, *inter alia* regarding the establishment of facts, and;

(iv) questions relating to the situation of 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 process of selection and election of judges of the European Court of Human Rights (document CM(2018)18-add1).

2. Having regard to the fact that the budgetary situation does not permit the setting up of another Drafting Group, the CDDH agreed at its 90th meeting that its Bureau, with the help of the Secretariat, would elaborate a first draft text which the CDDH will be invited to consider at its 91st meeting in June 2019. This first draft text will be elaborated notably on the basis of written contributions from the Member States' delegations which were submitted by 22 March 2019 following an explanatory document prepared by the Secretariat.[2]

3. The present document contains the written contributions from the Member States' delegations.

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[1] 1317th meeting of the Deputies, decisions following the 128th Session of the Committee of Ministers held in Helsingør (Denmark) on 17–18 May 2018. Reference documents: CM/PV(2018)128-prov, CM/PV(2018)128-add, CM(2018)OJ-prov5, SG(2018)1, CM/Inf(2018)10, CM/Inf(2018)11, CM(2018)18-add1.

[2] See document CDDH(2018)R90, §§ 26–29.

Note :

1. Suite à la Conférence de haut niveau sur la réforme du système de la Convention qui s'est tenue à Copenhague les 12–13 avril 2018, les Délégués des Ministres, lors de leur réunion du 30 mai 2018[3], ont invité le CDDH à inclure les éléments supplémentaires suivants dans sa future *Contribution à l'évaluation prévue par la Déclaration d'Interlaken* :

(i) une analyse exhaustive de l'arriéré de la Cour, en identifiant et en examinant les causes de l'afflux d'affaires en provenance des États parties afin d'identifier les solutions les plus appropriées au niveau de la Cour et des États parties ;

(ii) des propositions sur la manière de faciliter le traitement rapide et efficace des affaires, en particulier des affaires répétitives, que les parties sont prêtes à régler par un règlement amiable ou par une déclaration unilatérale ;

(iii) des propositions sur la manière de traiter plus efficacement les affaires relatives aux différends interétatiques, ainsi que les requêtes individuelles découlant de situations de conflit entre États, sans pour autant limiter la compétence de la Cour, en tenant compte des spécificités de ces catégories d'affaires, notamment en matière d'établissement des faits, et ;

(iv) les questions relatives à la situation des juges de la Cour européenne des droits de l'homme après la fin de leur mandat, mentionnées aux paragraphes 154 et 159 du Rapport 2017 du CDDH sur le processus de sélection et d'élection des juges de la Cour européenne des droits de l'homme (document CM(2018)18-add1).

2. Compte tenu du fait que la situation budgétaire ne permet pas de constituer un autre Groupe de rédaction, le CDDH a convenu lors de sa 90e réunion que son Bureau, avec l'aide du Secrétariat, élaborera un premier projet de texte que le CDDH sera invité à examiner à sa 91e réunion en juin 2019. Ce premier projet de texte sera élaboré notamment sur la base des contributions écrites des délégations des États membres, qui ont été soumises avant le 22 mars 2019 à la suite d'un document explicatif établi par le Secrétariat.[4]

3. Le présent document contient ces contributions écrites des délégations des États membres.

[3] 1317e réunion des Délégués, décisions faisant suite à la 128e Session du Comité des Ministres tenue à Helsingør (Danemark) les 17-18 mai 2018. Documents de référence : CM/PV(2018)128-prov, CM/PV(2018)128-add, CM(2018)OJ-prov5, SG(2018)1, CM/Inf(2018)10, CM/Inf(2018)11, CM(2018)18-add1.

[4] Voir document CDDH(2018)R90, §§ 26–29.

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CYPRUS / CHYPRE

REPUBLIC OF CYPRUS
LAW OFFICE OF THE REPUBLIC

A.G. 45/1980/41

According to the Explanatory document prepared by the Secretariat of the Steering Committee for Human Rights (CDDH) dated 14/01/2019, and sent on 18/01/2019, the CDDH participants are invited to send any comments on the subject of "effective handling of cases related to inter-State disputes including the question of fact finding". With regard to the question of fact-finding, the Secretariat invites the CDDH participants to address in particular the following points:

> (a) Description of the practice of the Court with respect to evidence (e.g. the required standard ("beyond reasonable doubt"); the burden of proof; the use of presumptions), in particular: (i) a description of the exceptional situations in which the Court itself had to establish the facts instead of the national authorities; (ii) means employed and (iii) difficulties encountered.
> (b) Comments by the participants in the CDDH concerning the question of fact-finding, in particular the modalities decided by the Court for, inter alia, (i) on-site visits; (ii) the selection and hearing of witnesses.

The practice of the Court with respect to the above questions is derived from the Court's case law (see among others, *Ireland v. the United Kingdom* judgement of 18/01/1987, *Cyprus v. Turkey* judgment of 10/05/2001, *Georgia v. Russia (I)* judgment of 3/07/2014, *Ilascu and others v. Moldova and Russia* judgment of 8/07/2004). The Commission's Reports also constitute a source on the matter (e.g. *Cyprus v. Turkey*, Report of the Commission of 10/07/1976 (vol. I and II), *Cyprus v. Turkey*, Report of the Commission of 4/06/1999), given that prior to the entry into force of Protocol No. 11 to the Convention in 1998, it was primarily the role of the European Commission of Human Rights to establish and verify the facts of a case, though the Court was not bound by the Commission's findings of fact. The Rules of Court (and in particular Annex to the Rules) are also important.

Description of the practice of the Court

1. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. The Court adopts the conclusions that are, in its view supported by the free evaluation of all facts, including such inferences as they flow from the facts and the parties' submissions (*Georgia v. Russia (I*), para. 94). It seems that there is no form of evidence which is considered to be inadmissible *per se.*
2. Proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Georgia v. Russia (I)*, para. 94).
3. The standard of proof adopted by the Court when evaluating the available material is proof "beyond reasonable doubt", it being noted that such proof may follow from the coexistence of sufficiently strong, clear and concordant inference or of similar unrebutted presumptions (*Cyprus v. Turkey*, para. 112). This standard should not

however be equated to the standard applied in criminal proceedings in the common law system. It has an independent meaning and content, reflecting the fact that the Court's role is not to rule on criminal guilt or civil liability but on Contracting States' responsibilities under the Convention (*Georgia v. Russia (I)*, para.94).

4. As regards the establishment of the existence of administrative practices, the Court does not rely on the concept that the burden of proof is borne by one or the other of the two Governments concerned. Rather it examines all the material before it, irrespective of its origin (*Cyprus v. Turkey*, para. 113).
5. The Court may draw inferences from the conduct of the parties in relation to the Court's efforts to obtain evidence. (see Rule 44C "the Court may draw such inferences as it deems appropriate.", *Ilascu and others v. Moldova and Russia*, para. 14).
6. It seems that the Court may adopt investigative measures and on-the-spot investigations in the absence of clear facts, which are indispensable for the determination of the case (Rule A1(1)), or in order to determine which state has jurisdiction (see *Ilascu and others v. Moldova and Russia*, para. 12).
7. The essential criterion for selecting a particular witness is the likely relevance of his or her testimony.

<u>Difficulties encountered recorded in the Court's case law</u>

1. A number of witnesses summoned fail to appear, the anticipated testimony of a missing witness may be highly significant.
2. The Court has no power to compel witnesses to appear.
3. Witnesses that need protection.
4. Assessing depositions obtained through interpreters (any witness, expert or other person appearing before the Court may use his or her own language, Rule 34(6)).
5. Lack of cooperation by the respondent state.
6. Sheer number of alleged violations of the Convention.
7. Relevant facts may have taken place years before the hearing.
8. Difficulties which any court of first instance is bound to meet when seeking to establish the facts, plus difficulties arising from the fact that the Court does not have direct and detailed knowledge of the conditions obtaining in the region.

ESTONIA / ESTONIE

Follow-up work for the Copenhagen Declaration
Estonian remarks, 18 March 2019

(i) The Court's backlog of cases

In § 50 of the Copenhagen Declaration the States Parties encouraged the Court, in co-operation and dialogue with the States Parties, to continue to explore all avenues to manage its caseload, following a clear policy of priority, including through procedures and techniques aimed at processing and adjudicating the more straightforward applications under a simplified procedure, while duly respecting the rights of all parties to the proceedings.

The Court has already successfully taken measures to diminish the backlog of cases. The Court has started to apply the simplified communication proceedings (IMSI) and has broadened the initial meaning of "repetitive applications" in order to classify more applications under WECL proceedings. Although these decisions have enabled the Court to communicate cases speedily to the Governments and have enabled allocating more cases to the three-judge committees, these developments might, however, raise issues of concern, too.

One of the dangers of simplified communication procedure is that – by, at least partially, reversing the burden of proof – it is putting excessive burden of proof on the Governments. Namely, in IMSI proceedings the Governments are often asked to submit documents the applicant has not submitted. That, in turn, could entail different undesirable consequences: it is obvious that this obligation lengthens the Government's observations on the facts, but it also brings along the applicants' wish to amend the facts in their comments to the Government's observations. Thus, it lengthens the communication on facts between the parties and might demand more time and work from the Court in the end.

What is even more problematic is that in such cases, after the Government have submitted the full statement of facts, it might reveal that had the applicant himself or herself been under an obligation to submit these documents the application might not have been communicated to the Government at all. Thus, if the communication is too simplified, it might result in communicating cases that would not have been communicated under normal proceedings. That, in turn, creates more work to the Court as well.

Thus, the reversal of the applicants' burden of proof – which is evident in IMSI proceedings – might not be an effective solution in long term.

The new solutions are not problematic only burden-wise, but one must be careful to strike the balance not to undermine the rights of a Respondent Government, especially regarding the broader WECL cases. It is the Respondent Government's right to contest the facts submitted by the applicant and to argue that the case is not similar to the ones' referred to by the Court in its questions (which are drawn up solely proceeding from the facts submitted by the applicant). For the sake of the authority of the Court, it is of utmost importance to reflect the facts of the case and the Government's objections also in the Committee judgments, otherwise it might be difficult to explain the legality of a judgment to the domestic authorities.

(ii) *Non-contentious phase of the proceedings*

Although Estonia has not yet received any applications sent with compulsory non-contentious phase for friendly settlements, we would like to express some hesitations.

If the Court (the Registry) decides the "price" of the application based only on the facts received from the applicant, that might create false expectations among the applicants and be harmful for the system in the long-run by attracting even more applications. It also raises a question regarding the sum proposed as it is decided based on the applicant's application (which is especially problematic in IMSI proceedings). Even if the Government find it reasonable to discuss a settlement, if a sum proposed by the Court is too high, taking into account all facts of the case, it would be very difficult for the Government to be able to have an agreement with the applicant in diminished sum.

We also find that if the Government are on the opinion that the Convention has not been violated there are no reasons to discuss settlement. Even in cases that the Court might consider repetitive (length of proceedings, length of detention, prison conditions) – if the facts of the cases are different, the applicant might not be a victim of a violation. In such cases, the Government's right to oppose should be an option also without the need to discuss settlement – which, like noted above, might create false expectations in applicants.

Concerning the idea that the Court could propose to a Government to undertake to re-open the case, it has to be underlined that it is not for the Governments to decide; in a democratic society it would be only for the domestic courts to decide whether there are grounds for re-opening or not.

Therefore, it would be desirable not to use the new non-contentious phase as widely as reflected in the CDDH document CDDH(2019)09 of February 2019.

(iii) *Situation of judges*

The CDDH has decided in the end of 2017 that guidance given to the states in the Guidelines on the selection of candidates for the post of judge at the Court (CM(2012)40), which lay down a set of reasonable procedural requirements and selection criteria, is sufficient for the time being, especially taking into account the sovereignty of the states to organise their systems.

Estonia is on the opinion that also other questions on the situation of judges should not be re-opened at this stage.

FRANCE

COMITE DIRECTEUR POUR LES DROITS DE L'HOMME (CDDH)

Travaux de suivi de la Déclaration de Copenhague

Contribution de la France

1. Dans le cadre du suivi de la Déclaration de Copenhague, le Comité directeur pour les droits de l'homme du Conseil de l'Europe (CDDH) a invité les Etats membres à fournir, s'ils le souhaitaient, des commentaires écrits contenant leur point de vue sur quatre thèmes : analyse exhaustive de l'arriéré de la Cour, propositions sur la manière de faciliter le traitement rapide et efficace des affaires, propositions sur la manière de traiter plus efficacement les affaires relatives aux différends interétatiques et questions relatives à la situation des juges de la Cour après la fin de leur mandat.

2. La France souhaite apporter la contribution suivante à ce titre.

1. Analyse statistique de l'arriéré de la Cour

3. Sont ici analysées, sur la base des éléments statistiques de la Cour, l'ensemble des requêtes pendantes au 31 décembre de chaque année, c'est-à-dire l'ensemble des requêtes depuis leur attribution à une formation judiciaire (juge unique, comité de 3 juges, chambre de 7 juges ou grande chambre de 17 juges) et jusqu'à leur traitement par la Cour par une décision ou un arrêt définitif (une requête pour laquelle un arrêt non encore définitif a été rendu est toujours considérée comme pendante).

A. L'arriéré général de la Cour

4. Le nombre de nouvelles requêtes attribuées à une formation judiciaire a tendance à diminuer ces dernières années (61 300 en 2010 ; 56 208 en 2014 et 43 075 en 2018[5]), sauf en 2016 et 2017.

5. Le nombre de requêtes traitées par une formation judiciaire (requêtes déclarées irrecevables, rayées du rôle par une décision ou faisant l'objet d'un arrêt définitif) varie quant à lui beaucoup selon les années, de sorte qu'il n'est pas possible de dégager une tendance. Les années 2012 à 2015 et 2017 ont toutefois permis de traiter un nombre très important de requêtes, notamment en raison d'arrêts pilotes[6] et d'un nombre massif de décisions d'irrecevabilité (voir tableau 1).

[5] Les chiffres reproduits dans la présente note et dans les tableaux annexés sont les chiffres exacts issus des statistiques fournis par la Cour et non les chiffres arrondis.

[6] Voir, par exemple, l'arrêt *Burmych et autres c. Ukraine*, arrêt de Grande Chambre du 12 octobre 201, qui a permis de rayer du rôle 12143 requêtes.

6. Dans le même temps, le nombre total de requêtes pendantes devant une formation judiciaire de la Cour a considérablement chuté jusqu'en 2017 (128 100 en 2012 ; 69 924 en 2014 ; 56 260 en 2017). En revanche, en 2018 le nombre total de requêtes pendantes est resté stable (56 365) (voir tableau 2).

7. Lors de l'audience solennelle de rentrée de 2016, le Président de la Cour, Guido Raimondi, a déclaré que l'arriéré des requêtes attribuées à un juge unique (requêtes relevant des catégories VI et VII)[7] avait été éliminé en 2015[8]. Cela a été notamment permis par les réformes issues du Protocole n° 14 entré en vigueur en 2010. Toutefois, on constate une légère augmentation du nombre de requêtes pendantes présentant un problème de recevabilité ou manifestement irrecevables ces 3 dernières années (3 867 en 2016 ; 4 407 en 2017 ; 4 815 en 2018) (voir tableau 2).

8. Le nombre de requêtes pendantes répétitives qui font donc suite à un arrêt pilote ou un arrêt de principe (catégorie V), a fortement chuté ces dernières années (35 395 en 2014 ; 34 741 en 2016 ; 13 442 en 2018) (voir tableau 2). Cela est principalement dû au recours à la formation du comité de 3 juges (au lieu de 7 juges) dans ce type d'affaires et à la procédure de la jurisprudence bien établie.

9. Le nombre de requêtes pendantes qui ne sont ni prioritaires ni répétitives mais potentiellement bien fondées (catégorie IV)[9] est quant à lui stable (2014 : 18 630 ; 2016 : 21 159 ; 2018 : 17 426) (voir tableau 2). En effet, le traitement de ces requêtes n'a pas été prioritaire pour la Cour ces dernières années. Or le traitement de ces requêtes nécessite un travail important de la Cour du fait de leur caractère complexe pour certaines et non-répétitif. Il s'agit actuellement d'un défi important pour la Cour.

10. Les requêtes pendantes prioritaires (catégories I à III), répétitives ou non, ont quant à elles fortement augmenté ces dernières années (7 574 en 2014 ; 19 983 en 2016 ; 20 682 en 2018) (voir tableau 2). Cette augmentation n'est pas corrélée à l'augmentation du nombre de requêtes prioritaires communiquées aux gouvernements (2 174 en 2014 ; 3 972 en 2016 ; 2 871 en 2018).

[7] Depuis 2009, les requêtes sont réparties en 7 catégories**,** étant précisé que les requêtes des catégories I, II et II sont considérées comme prioritaires :
Cat. I : requêtes urgentes (notamment risque pour la vie ou la santé du requérant, privation de liberté du requérant en conséquence directe de la violation alléguée de droits consacrés par la Convention, autres circonstances liées à la situation personnelle ou familiale du requérant, en particulier lorsque le bien-être des enfants est en jeu, application de l'article 39 du règlement ;
Cat. II : requêtes pilote et « leading » : affaires soulevant des questions susceptibles d'avoir une incidence sur l'efficacité du système de la Convention (notamment problème structurel ou situation endémique que la Cour n'a pas encore eu l'occasion d'examiner, procédure de l'arrêt pilote) ou affaires soulevant une question importante d'intérêt général (notamment une question grave susceptible d'avoir des répercussions majeures sur les systèmes juridiques nationaux ou sur le système européen) ;
Cat. III : requêtes répétitives ou non dont les griefs, *a priori*, soulèvent principalement des questions sur le terrain des articles 2, 3, 4 ou 5 § 1 de la Convention (« droits les plus fondamentaux ») ;
Cat. IV : requêtes non répétitives et non prioritaires, potentiellement fondées, basées sur d'autres articles que les articles 2, 3, 4 ou 5§1 de la Convention ;
Cat. V : requêtes répétitives soulevant des questions déjà traitées dans un arrêt pilote ou de principe ;
Cat. VI : requêtes révélant un problème de recevabilité ;
Cat. VII : requêtes manifestement irrecevables.
[8] https://www.echr.coe.int/Documents/Dialogue_2016_FRA.pdf#page=19.
[9] Ces requêtes sont celles potentiellement fondées, basées sur d'autres articles que les articles 2, 3, 4 et 5,1 de la Convention.

11. Ces requêtes relèvent majoritairement de la catégorie III (19 621 en 2018), c'est-à-dire qu'il s'agit de requêtes dont les griefs soulèvent principalement des questions concernant les articles 2 (droit à la vie), 3 (interdiction de la torture et des peines ou traitements inhumains ou dégradants), 4 (interdiction de l'esclavage et du travail forcé) et 5§1 (droit à la liberté et à la sûreté) (2014 : 6 405 ; 2016 : 18 825 ; 2018 : 19 621). Le nombre de requêtes pendantes devant faire l'objet d'un arrêt pilote ou de principe (catégorie II) est bien inférieur et a même tendance à diminuer (374 en 2014 ; 317 en 2016 ; 231 en 2018). Le nombre de requêtes urgentes (catégorie I) est quant à lui assez stable (795 en 2014 ; 841 en 2016 ; 830 en 2018) (voir tableau 2). **Le défi majeur pour la Cour n'est donc pas tant le traitement des requêtes devant conduire à un arrêt pilote ou de principe, mais plutôt celui des requêtes de catégorie III (requêtes répétitives ou non) qui soulèvent des problèmes au regard des « droits les plus fondamentaux ».**

B. L'arriéré des Etats gros pourvoyeurs de requêtes

12. Depuis 2014, les Etats gros pourvoyeurs de requêtes (Russie, Turquie, Roumanie, Ukraine, Italie notamment, bien que cela varie en fonction des années) comptabilisent, selon les années, entre 54 % et 74 % des nouvelles requêtes attribuées à une formation judiciaire (voir tableau 3).

13. Au 1er janvier 2019, les requêtes pendantes des Etats gros pourvoyeurs sont majoritairement attribuées à un comité de 3 juges (à l'exception de l'Ukraine) (voir tableau 4). Il s'agit donc principalement de requêtes dont les griefs portent *a priori* sur des questions qui font l'objet d'une jurisprudence bien établie de la Cour et qui relèvent de la catégorie V (requêtes répétitives soulevant des questions déjà traitées dans un arrêt pilote ou de principe).

14. En 2018, 87 % des requêtes prioritaires traitées par la Cour concernaient 5 pays : la Russie (43 %), la Roumanie (21 %), la Hongrie (10 %), la Turquie (9 %) et l'Ukraine (4 %)[10].

C. L'arriéré de la France

15. Au 1er janvier 2019, 1 004 requêtes concernant la France sont enregistrées devant la Cour. Parmi elles, 411 sont attribuées à une formation judiciaire[11]. De manière plus spécifique, 253 requêtes sont pendantes devant une chambre, 82 devant un comité de 3 juges et 76 devant un juge unique. Aucune requête n'est pendante devant la Grande chambre. Les requêtes pendantes concernant la France relèvent donc principalement des catégories I à IV[12].

16. Par ailleurs, en 2018, la Cour s'est prononcée à l'égard de la France dans 77 affaires.

[10] Conférence de presse du Président de la Cour Européenne des droits de l'Homme, Strasbourg, 24 janvier 2019, p 3.

[11] Avant d'être attribuées à une formation judicaire les dossiers sont enregistrés par la Cour. Ils ne sont ensuite attribués à une formation judiciaire que si toutes les conditions prévues par l'article 47 du Règlement de la Cour sont respectées (formulaire de la requête bien remplie ; pièces justificatives fournies…) (https://www.echr.coe.int/Documents/Rule_47_FRA.pdf).

[12] Voir Fiche pays France, Cour européenne des droits de l'Homme, janvier 2019.

D. Propositions de solutions

a) La réduction de l'afflux annuel d'affaires

17. Cette réduction dépend avant tout d'une meilleure mise en œuvre de la Convention au niveau national, y compris en ce qui concerne l'exécution des arrêts. Les efforts à fournir à cet égard incombent aux Etats membres.

18. A ce titre, il paraît essentiel que les deux derniers Etats ne l'ayant pas encore fait ratifient prochainement le Protocole n° 15, qui vient ajouter un paragraphe au préambule de la Convention sur le principe de subsidiarité : « *Affirmant qu'il incombe au premier chef aux Hautes Parties contractantes, conformément au principe de subsidiarité, de garantir le respect des droits et libertés définis dans la présente Convention et ses protocoles, et que, ce faisant, elles jouissent d'une marge d'appréciation, sous le contrôle de la Cour européenne des Droits de l'Homme instituée par la présente Convention* ».

19. En outre, il n'est pas exclu que l'entrée en vigueur du Protocole n° 15 à la Convention puisse avoir un impact sur l'afflux annuel des requêtes dans la mesure où il réduit le délai pour le dépôt d'une requête à la Cour (de six à quatre mois) et élargit le champ d'application du critère du préjudice important (en supprimant la condition que l'affaire ait été dument examinée par un tribunal interne en l'absence de préjudice important).

b) L'arriéré des affaires

20. Au regard des éléments statistiques exposés précédemment, les deux défis majeurs de la Cour sont le traitement, d'une part, des requêtes prioritaires de catégorie III c'est-à-dire les requêtes répétitives ou non dont les griefs, a priori, soulèvent principalement des questions sur le terrain des « droits les plus fondamentaux » et, d'autre part, des requêtes non prioritaires de catégorie IV c'est-à-dire des requêtes non répétitives, potentiellement fondées, basées sur d'autres articles que les articles 2, 3, 4 ou 5 §1 de la Convention. Les solutions à envisager doivent être distinguées car chacune de ces catégories de requêtes soulève des difficultés différentes.

21. Pour les requêtes prioritaires de catégorie III : cette catégorie comprend beaucoup de requêtes répétitives, mettant en avant des problèmes internes aux Etats membres, notamment dans l'exécution d'arrêts précédents de la Cour. C'est donc là encore au niveau national que les Etats membres doivent prendre des mesures. Dans la droite ligne de la déclaration de Copenhague, il paraîtrait opportun que davantage de ressources soient allouées au dialogue et à l'assistance technique des Etats membres confrontés aux défis de mettre en œuvre les arrêts de la Cour, en particulier les Etats gros pourvoyeurs de requêtes.

22. Pour les requêtes non prioritaires et non répétitives de catégorie IV : jusqu'à présent le traitement de ces requêtes n'a pas été considéré comme prioritaire par la Cour. Toutefois, il convient d'éviter une situation dans laquelle il y aurait une accumulation trop importante de ces requêtes qui, pour certaines, peuvent poser des questions complexes. L'augmentation des ressources de la Cour et le développement éventuel de nouvelles méthodes de travail pourraient permettre de maîtriser leur volume.

2. Propositions sur la manière de faciliter le traitement rapide et efficace des affaires, en particulier des affaires répétitives, que les parties sont prêtes à régler par un règlement amiable ou par une déclaration unilatérale

23. Pour l'ensemble des requêtes pendantes, un recours accru aux procédures du règlement amiable et de la déclaration unilatérale devrait également être envisagé. A cet égard, le Gouvernement français salue la nouvelle initiative de la Cour, mise en place au début de l'année 2019, qui consiste à distinguer, dans certaines affaires, les deux phases (phase de règlement amiable puis phase de défense au fond), ce qui devrait être de nature à donner plus de temps aux Etats pour tenter de parvenir à un règlement amiable dans les affaires appropriées. A cet égard, l'indication par la Cour d'un montant acceptable de règlement amiable est un facteur important pour faciliter une éventuelle transaction.

24. Par ailleurs, il paraîtrait intéressant d'envisager une rationalisation des procédures existantes, qui sont déjà nombreuses (IMSI, WECL, broader WECL, fast track WECL).

25. La réflexion doit être poursuivie à ce titre quant à la constitution d'un groupe de travail, proposée par le Greffe de la Cour, qui aurait pour missions principales d'identifier les meilleures pratiques en matière de règlement non contentieux, d'encourager les méthodes de règlement non contentieuses et de rationaliser les procédures.

26. Enfin et de manière générale, une collaboration encore plus étroite entre le Greffe et les Agents serait à encourager, selon des modalités qui restent à déterminer.

3. Questions relatives à la situation des juges de la Cour européenne des droits de l'homme après la fin de leur mandat, mentionnées aux paragraphes 154 et 159 du rapport 2017 du CDDH sur le processus de sélection et d'élection des juges de la Cour européenne des droits de l'homme (document CM(2018)18-add1)

27. Le rapport de 2018 du CDDH[13] intitulé « Rapport sur le processus de sélection et d'élection des juges de la Cour européenne des droits de l'homme » a notamment pour objectif de souligner les défis et proposer des solutions pour que des candidats hautement qualifiés soient attirés par le poste de juge à la Cour.

28. Dans ce cadre, est examinée la situation des juges de la Cour après la fin de leur mandat[14]. Parmi les questions abordées**,** le paragraphe 154 de ce rapport du CDDH traite de la protection contre les représailles déguisées[15] et le paragraphe 159 celui de la question de la reconnaissance des états de service en tant que **juge à la Cour**[16]**.**

[13] Il s'agit d'un rapport de 2018 et non de 2017.

[14] Rapport 2018 du Comité directeur pour les droits de l'homme (CDDH), « Rapport sur le processus de sélection et d'élection des juges de la Cour européenne des droits de l'homme », « B. Conditions d'emploi à la Cour: réponses possibles dans le cadre des structures existantes, *ii) Aspects relatifs à la situation des juges après la fin de leur mandat* », p.71. Disponibles à: https://rm.coe.int/selection-et-election-des-juges-de-la-cour-europeenne-des-droits-de-l-/16807b915f.

[15] « 154. Selon la Cour et à la lumière de la Résolution 1914 (2013) de l'Assemblée parlementaire, il y a lieu d'explorer tous les moyens possibles de faire en sorte que les anciens juges soient protégés contre le risque de subir des représailles déguisées après la fin de leur mandat. Le CDDH a noté qu'une immunité diplomatique à vie était une proposition trop ambitieuse. Néanmoins, tel que la Cour l'a noté, cette proposition paraît inspirée par l'idée que les anciens juges doivent bénéficier d'une protection contre des actes de représailles qui pourraient être dirigés contre eux par les autorités nationales par le biais de l'introduction d'une garantie procédurale. Cela signifierait en substance qu'il ne serait pas possible de poursuivre un ancien juge ou de le soumettre à une procédure juridique sauf si la Cour plénière était convaincue que pareille action était dénuée de

29. ***D'une part*, il** est important que les juges soient protégés par leurs Etats contre le risque de subir des représailles déguisées ou des poursuites judiciaires qui pourraient être dirigées contre eux par les autorités nationales en raison d'opinions tenues lorsqu'ils siégeaient à la Cour. Une analyse plus approfondie de cette question pourrait être conduite par la Cour et le CDDH.

30. ***D'autre part*, la reconnaissance des états de service en tant que juge à la Cour** est déterminante **pour l'attractivité de ce poste**. Cependant, cette difficulté ne se pose pas en pratique pour les juges français. En effet, les juges français élus à la Cour bénéficient d'une reconnaissance de leurs états de service, peuvent regagner une fonction ultérieure en France et la durée de leur mandat à la Cour est comptabilisée pour leurs droits à la retraite[17]. ./.

tout rapport avec l'exercice par ce juge de son mandat à la Cour. Le CDDH convient que cette question doit être examinée davantage sur la base d'expériences concrètes afin de garantir que d'anciens juges ne soient pas sujets à des « poursuites» ou à d'autres procédures judiciaires après leur mandat qui s'avèreraient en réalité être une réponse à des opinions qu'ils ont tenues lorsqu'ils siégeaient à la Cour. Ces travaux pourraient mener à une nouvelle révision de la Résolution (2009)5 du Comité des Ministres sur le statut et les conditions de service des juges à la Cour européenne des droits de l'homme.».

[16] « 159. Au cours de la 1ère réunion du Groupe de rédaction, il a été décidé d'examiner si les données de l'étude susmentionnée sont toujours valables et, le cas échéant, de les mettre à jour (voir également le rapport de réunion, doc. DH-SYSC-I(2016)R1, § 6). En vue d'aider le Groupe de rédaction dans ses travaux sur cette question, le Secrétariat a préparé un document de travail distinct (doc. DH-SYSC-I(2017)018) contenant trois tableaux [115] basés sur l'étude comparative DD(2013)1321 et les informations ultérieures des États membres concernant la reconnaissance des états de service en tant que juge à la Cour. Ce document pourrait servir de base pour tous travaux de suivi qui seront menés. Ces travaux de suivi pourraient être envisagés afin de garantir une réponse appropriée des États membres à cette question. Toutes suites données à cette question pourraient se faire dans le cadre des structures existantes, menant éventuellement à une recommandation du Comité des Ministres. Ces travaux devraient tenir compte de la diversité des systèmes juridiques, constitutionnels et politiques. Dans ce contexte et tel qu'il est noté par la Cour, les autorités compétentes du Conseil de l'Europe pourraient envisager la possibilité d'établir un contact avec l'État concerné suffisamment tôt au sujet de la situation que connaîtra un juge dont le mandat à la Cour approche de son terme. Il conviendrait d'explorer les différentes manières de mettre à profit l'expertise acquise par les anciens juges. ».

[17] Voir le tableau comparatif sur la reconnaissance des états de service en tant que juge à la Cour : https://rm.coe.int/tableaux-sur-la-reconnaissance-des-etats-de-service-en-tant-que-juge-a/168075ad59.

ANNEXES

Tableau 1 : évolution de l'afflux des requêtes par année[18]

	Requêtes attribuées à une formation judiciaire (juge unique, comité, chambre, grande chambre)	Requêtes traitées par une formation judiciaire (arrêt ou décision d'irrecevabilité ou de radiation)	Ratio
2018	**43 075**	42 761	+ 314
2017	63 369	**85 951**	- 22 582
2016	**53 493**	38 505	+ 14 988
2015	40 629	**45 576**	- 4 947
2014	56 275	**86 063**	- 29 788
2013	65 791	**93 396**	-27 501
2012	65 162	**87 879**	- 22 717
2011	**64 547**	52 188	+ 12 359
2010	**61 300**	41 182	+ 20 124

[18] Sources : Cour européenne des droits de l'Homme, analyses statistiques 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011 et 2010 (pp. 6 et 11 à chaque fois).

Tableau 2 : évolution des requêtes pendantes depuis 2014[19]

		31/12/2018	31/12/2017	31/12/2016	31/12/2015	31/12/2014
Requêtes irrecevables Catégories VI - VII		4 815	4 407	3 867	3 232	8 325
Requêtes répétitives Catégorie V		13 442	14 295	**34 741**	**30 508**	**35 395**
Requêtes non prioritaires et non répétitives Catégorie IV		17 426	**19 594**	21 159	19 604	18 630
Requêtes prioritaires	**Requêtes dont les griefs, *a priori*, soulèvent principalement des questions sur le terrain des articles 2, 3, 4 ou 5 § 1 de la Convention** Catégorie III	**19 621**	16 903	18 825	10 345	6 405
	Requêtes pilote Catégorie II	231	269	317	318	374
	Requêtes urgentes Catégorie I	830	794	841	827	795
	Sous total	20 682	17 966	19 983	11 490	7 574
Total		56 365	56 260	79 750	64 834	69 924

[19] Sources : Cour européenne des droits de l'Homme, analyses statistiques 2018, 2017, 2016, 2015 et 2014 (p. 9 à chaque fois)

Tableau 3 : requêtes pendantes par Etat gros pourvoyeur de requêtes depuis 2014[20]

2018		2017		2016		2015		2014	
Russie	11 750	**Roumanie**	9 900	**Ukraine**	18 150	**Ukraine**	13 850	**Ukraine**	13 650
Roumanie	8 500	Russie	7 750	Turquie	12 600	Russie	9 200	Italie	10 100
Ukraine	7 250	Turquie	7 500	Hongrie	8 950	Turquie	8 450	Russie	10 000
Turquie	7 100	Ukraine	7 100	Russie	7 800	Italie	7 550	Turquie	9 500
Italie	4 050	Italie	4 650	Roumanie	7 400	Hongrie	4 600	Roumanie	3 400
Total	38 650 (sur 56 350) Soit 68%	**Total**	36 900 (sur 56 250) Soit 67%	**Total**	54 900 (sur 79 750) Soit 68%	**Total**	43 650 (sur 64 850) Soit 67%	**Total**	46 650 (sur 69 950) 66%

Tableau 4 : répartition des requêtes attribuées à une formation judiciaires par Etat gros pourvoyeur de requêtes depuis 2014[21]

2018		2017		2016		2015		2014	
Etat	**Requêtes**	**Etat**	**Requêtes**	**Etat**	**Requêtes**	**Etat**	**Requêtes**	**Etat**	**Requêtes**
Russie	12 148	Turquie	25 978	Ukraine	8 644	Ukraine	6 007	Ukraine	14 181
Turquie	6 717	Russie	7 957	Turquie	8 303	Russie	6 003	Russie	8 913
Roumanie	3 369	Roumanie	6 509	Roumanie	8 192	Roumanie	4 604	Italie	5 490
Ukraine	3 207	Ukraine	4387	Russie	5 587	Hongrie	4 234	Roumanie	4 425
Serbie	2 128	Pologne	2 066	Hongrie	5 568	Turquie	2 212	Serbie	2 786
Total	27 569 (sur 43 075) 64%	**Total**	46 897 (sur 63 369) 74%	**Total**	36 294 (sur 53427) 67%	**Total**	23 060 (sur 40 557) 56%	**Total**	37 795 (sur 56 208) 63%

[20] Sources : Cour européenne des droits de l'Homme, analyse statistiques 2018, 2017, 2016, 2015 et 2014 (page 8 à chaque fois).
[21] Sources : Cour européenne des droits de l'Homme, analyse statistiques 2018, 2017, 2016, 2015 et 2014 (p. 11 à chaque fois).

Tableau 5 : répartition des arrêts depuis 2016[22]

2018			2017			2016		
Formation	**Arrêts**	**Requêtes**	**Formation**	**Arrêts**	**Requêtes**	**Formation**	**Arrêts**	**Requêtes**
Comité	537	2000	Comité	523	2 664	Comité	310	971
Chambre	463	712	Chambre	526	777	Chambre	656	922
Grande chambre	477	738	Grande chambre	19	12 167	Grande chambre	27	33
Total	1 477	2 738	Total	1 068	15 608	Total	993	1 926

[22] Sources : Cour européenne des droits de l'Homme, Rapports annuels 2018, 2017 et 2016.

GEORGIA / GÉORGIE

Georgia's Comments on Effective Handling of Cases Related to inter-State, as well as Individual Applications Arising from the Situations of Conflict between the Member States

The CDDH is invited to include, as one of the additional elements, in its future report *Contribution to the evaluation provided for by the Interlaken Declaration* the proposals on ways how "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 account the specific features of these categories of cases inter alia regarding the establishment of facts."

In this respect, Georgia recalls that the CDDH shall remain within its mandate and work in line with the wording given by the Copenhagen Declaration.

Thus, the CDDH is tasked to elaborate on the procedural issues "**how to handle more effectively"** such cases and at the same time "**without limiting the jurisdiction of the Court".** The wording should not be interpreted broadly and the discussions on the substantive legal issues should be excluded. The working group should not address the issues that would in any manner limit the Court's jurisdiction, especially in connection with the inter-State cases and conflict-related disputes.

At the current stage, the Court has an inter-State as well as individual applications arising from the situations of armed conflict between the member States and in that cases the Court has to elaborate on numerous legal issues, including required standard for fact-finding, burden of proof, etc. In particular, the Court is in the process of deliberation with respect to the inter-State case *Georgia v. Russia (II)*. All the written and oral procedures are finalized and the respective judgment is currently awaited. Thus, until the Court has to determine its approach on evidentiary standards, *inter alia* regarding the establishment of facts, it is too early to address the issue within the CDDH.

Moreover, we consider that for the purposes of ensuring the Court's effectiveness, **the shared responsibility of the States** should be recalled. The member states should strengthen the cooperation with the Court and fulfill their obligations envisaged under Article 38 of the Convention by furnishing it with the requested information and materials in inter-State or conflict-related cases.

Georgia's Comments on Effective Handling of the Court's Backlog and Friendly settlement/unilateral declarations

From January 2019 the Court started the new "non-contentious procedure" which allows the parties to explore possibilities of a friendly settlement in response to a draft declaration, prepared by the Court's Registry, setting out the friendly-settlement details to the parties in selective cases. At the same time, the Governments are not limited to make counter-proposals, if they wish so. If the first phase appears unsuccessful, it will be followed by the contentious one, where the parties exchange their observations.

The CDDH is still tasked to explore 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.

In order to enhance the effectiveness of the Court in handling the cases, Georgia proposes to set an example of Alternative Dispute Resolution (ADR) at the European level within the system of the Court. In particular, we suggest, in consultation with the Court, and other stakeholders to explore the possibility to introduce an in-court mediation mechanism to which relevant cases could be remitted thus diminishing the Court's backlog and opening the proceedings to the parties an alternative to the litigation.

ADR will enable the Court to dedicate time and resources to the cases not suitable for mediation. In fact, using friendly settlement and unilateral declarations can be facilitated if the Court develops strong incentives, more appropriate procedures and effective tools.

PORTUGAL

SUIVI de COPENHAGUE

1. En ce qui concerne ***l´arrieré de la Cour***, il faut souligner le grand effort entrepris par la Cour, pendant les dernières années, dans le sens de réduire le nombre de requêtes pendantes. Cependant nous sommes aussi d´avis qu´il faudrait que les Etats connaissent les requêtes qui sont rejetées, ce qui aurait l'avantage de leur permettre de mieux comprendre l'incidence réelle des requêtes présentées par les citoyens devant la Cour (indépendamment de leur viabilité).

En particulier, devant les chiffres présentés, l'augmentation si significative des requêtes relatives à des conditions de détention, qui, à elles seules, forment désormais près d'un quart du total et qui, en une période de huit ans, sont passées de 1% à 22% du total, est un sujet qui mérite notre préoccupation.

Par delà les aspects spécifiques afférents à chacun des Etats, cette croissance exponentielle – et, semble-t-il, transversale à plusieurs Etats – doit mériter une attention particulière du CDDH. Ainsi que le suggère le document de la Cour, il semble pertinent et de toute nécessité que le CDDH entreprenne un travail autour de ce sujet, qui permette d'identifier les causes de l'augmentation des requêtes, avec une particulière incidence sur l'identification des moyens de recours internes adéquats, en prenant à profit l'expérience d'autres pays.

En outre, nous sommes d'avis que l'impact des nouvelles procédures introduites par la Cour doit faire l'objet d'attention et d'évaluation.

Ainsi, en ce qui concerne la récente procédure *ISMI*, nous n´avons pas de réserves pour ce qui est des principes, nommément le contradictoire et la charge de la preuve. Cependant, des difficultés d'ordre pratique pourront émerger, vu que, en l'absence de la délimitation des faits pertinents - qui était faite auparavant par la Cour elle-même - les parties pourront introduire une plus grande complexité et augmenter le volume des affaires, invoquant des faits excessives et non pertinentes ou joignant un nombre illimité de documents, ce qui pourra demander de nouvelles réponses et de contre réponses, dans une certaine reproduction du litige tel qu'il s'est déroulé devant les juridictions internes. Nous craignons que la Cour soit confrontée avec des problèmes accrus lors de la phase décisionnelle; c'est à dire, ce que l'on a gagné au départ, on peut le perdre et l'alourdir au final.

Des règles plus rigoureuses quant au nombre de pages et de documents ou au nombre de pièces susceptibles d'être jointes devraient être établies lesquelles, sauf d'éventuelles exceptions légitimes, doivent être observées.

En ce qui concerne la procédure *WECL*, nous sommes d'avis que sa généralisation peut poser des problèmes d'une autre nature, affectant la qualité et l'autorité des arrêts de la Cour, basés sur des références à d'autres arrêts, déjà rendus par la Cour à l´encontre d'autres Etats, au détriment de la pondération des circonstances concrètes de l´ affaire et des particularités des systèmes internes, ce qui pourra faiblir leur compréhension par les destinataires et leur assimilation par les juridictions internes.

2. L'introduction d'une *phase de conciliation* dans les requêtes, actuellement en état expérimental, se présente à nos yeux comme positive permettant aux parties une résolution du litige plus rapide et plus conforme à leurs intérêts.

Cependant, l'expérience récente (avec plusieurs affaires déjà communiquées dans ce modèle contre le Portugal) nous amène à formuler les commentaires suivants :

- à notre avis, la simple introduction d'une étape conciliatoire, sans l'indication d'une proposition concrète qui devrait être envisagée par les deux parties, ne permettra que peu d'avancées; en effet, selon notre expérience, en cette phase initiale, les valeurs demandées par les requérants sont généralement très élevées (même vis-à-vis ceux que la Cour généralement accorde), se rapprochant d'avantage des sommes demandées dans les procès internes et qui ne leur ont pas été attribuées (il existe encore une grande confusion, en ce qui concerne la demande de la satisfaction équitable, entre l'objet de la requête et l'objet du procès interne).
D'autre part, la référence qui est parfois faite, dans les communications à la possibilité de "*l'aide du greffe*", s´avère quelque peu vague.

- en outre, la diversité de procédures concrètes qui peuvent être définies, s'agissant de chaque requête en particulier, nous soulèvent quelques réserves. En effet, si nous tenons pour positive l'inclusion d'une étape conciliatoire dans toutes les affaires (éventuellement avec quelques exceptions, identifiables *a priori* et de façon abstraite), l'existence d'une diversité de possibilités, à définir en fonction de chaque requête concrète, peut soulever des questions, dans la mesure où un certain jugement préalable sur le fond pourra être implicite.

Enfin, concernant la possibilité d´introduire, dans les textes des résolutions amiables, l'engagement des parties à la réouverture ou à l´accélération des procédures internes, il faut tenir compte que les autorités qui relèvent de l´exécutif ne sauraient en principe assumer cet engagement, dans la mesure où ces décisions incombent aux juridictions. En d'autres situations, par exemple, s´il s´agit des procédures concernant des infractions administratives ou disciplinaires, il faut tenir compte des délais de prescription, de la présomption d'innocence (dans les cas d'acquittement) ou de l'existence d'éventuels intérêts d'autres parties en conflit déjà réglés au moyen d'une décision définitive.

3. En ce qui concerne les questions qui portent sur **les affaires relatives aux différends interétatiques,** du fait que nous n´avons aucune expérience en ce domaine, nous nous abstenons, pour lors, de toute considération.

4. Enfin**,** quant à la **situation des juges de la Cour après la fin de leur mandat**, nous nous rallions aux travaux récemment développés, ainsi qu´aux conclusions auxquelles le CDDH est déjà parvenues.

Lisboa, 29 mars 2019

Maria de Fátima da Graça Carvalho (représentante du Portugal au CDDH)

RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE

Comments of the Russian Government concerning implementation of the provisions of the Copenhagen Declaration on the issues raised by the Steering Committee for Human Rights (CDDH) at the meeting on 27-30 November 2018

1. Provision of the Copenhagen Declaration

(i) a comprehensive analysis of the Court's backlog of cases, identifying and examining the cases of the influx of cases from the States parties in order to identify the most appropriate solutions at the level of the Court and the State parties.

Comments of the Russian Government

1.1. Analysis of the European Court's case-law shows that a significant number of applications lodged with the ECHR is justified by the existence of systemic problems in the legal systems of the Member States and/or absence of effective domestic remedies.

In this connection, reducing the number of the applications pending before the ECHR is directly connected to resolution by the States of the respective structural problems and creation of effective national human rights protection mechanisms.

Resolution of these issues is the exclusive right of the States themselves, inter alia within the framework of execution of the ECHR judgments under the control of the CMCE. This practice should be continued.

As far as creation of domestic remedies is concerned, and in order to avoid disbalance between the European Conventional and national justice, there is noted the need (taking into account the existing experience of some countries) of elaboration by the Member States of the issue on the possibility of more active involvement of applications to the higher national courts before lodging an application with the European Court. This matter requires additional insight, and determining the need of mandatory exhaustion of the relevant domestic remedies before applying to the ECHR should become the subject of further dialogue.

It also appears justified to continue already established practice of the European Court to suspend already pending cases of a certain category referring the applicants to newly created effective domestic remedies.

1.2. The Court's workload is also due to the fact that it increasingly exceeds its authority providing recommendations for execution of its judgments, while the choice of the means and procedure for elimination of the violations discovered by the Court lies within the competence of the Member States. It appears that the European Court must exercise the functions imposed on it by the Convention, refraining from increasingly wide realization of the powers, extrinsic for a judicial authority, consisting in recommendations on the issue of execution of its own judgments, especially when these recommendations do not take into view the specific features of the national legal system.

1.3. One of the reasons for the increasing influx of new applications to the Court is the unjustified interpretation by the ECHR of the rights enshrined in the Convention, proceeding from its approach to the Convention as to a "living instrument".

In the course of examination of cases the Court more often gives such wide interpretation of the Convention provisions that was not applied at the moment when the States were joining this treaty and in fact changes their initial sense. What is more, such interpretation in a number of instances does not agree with the norms and principles of international law and the practice of other international courts, and it also contradicts the provisions of the Member States' fundamental laws (e.g. when the Court examines the issues of extraterritorial responsibility via its own "effective control doctrine").

Such dynamic and increasingly wider interpretation of the Convention provisions results in a situation where the subjects for examination of the European Court become applications that were earlier regarded as inadmissible for examination (and protection of the respective rights was effected in other international bodies including the judicial instances). There actually is observed the tendency for the ECHR seeking to accept for examination all complaints about violations rights and freedoms including those not protected by the Convention (for example, violation of employment rights, rights in the sphere of tax relation, the right to adoption, the right to euthanasia, etc.).

It appears that broadening the European Court's competence should move only along the way where the Member States make amendments to the Convention in due course, or where the Member States adopt and approve the Statute of the European Court.

1.4. In the context of the unjustified and non-Conventional broadening of the European Court's powers entailing the increasing influx of application the ECHR more and more often departs from its subsidiary role and begins examination of issues on the merits, in particular overestimating the analysis of evidence and national courts' conclusions in civil and criminal cases.

In substantiation of such approaches the European Court points out that it understands the exceeding its subsidiary authority, however justifying the same by the importance of the issue and objectives of the Convention. Therefore the European Court, contrary to the provisions of the Convention, actually plays the role of the court of the fourth instance (in relation to the three national instances) and creates the grounds for increasing the backlog of the cases pending before it.

1.5. Among the reasons for the Court's workload may be listed the absence, as of the present moment, of transparent and predictable rules for determining the precedence of examination of cases by the European Court.

In this connection the priority in examination of politically motivated cases as compared to applications from individuals (including those related to violations of such absolute rights guaranteed by the Convention as the right to life, prohibition of tortures) appears unjustified and resulting in disproportionate distribution of the Court's resources. It is noted that the issue of review of the backlog of the cases accumulated in the ECHR should be examined, inter alia, in the context of determining by this Court of the precedence of their examination.

Precise, clear and predictable criteria for determining the precedence of examination of lodged applications, not depending on the political situation in the pan-European territory, need to be developed.

1.6. Using by the Court of simplified and accelerated examination procedures definitely contributed to decreasing the number of the cases pending before the Court.

However, launching of these procedures was accompanied by a whole range of problems related to mass-scale communication of applications without possibility to extend the time-limits set for providing information by the authorities, formal (superficial) examination of documents submitted by the authorities, including their unilateral declarations, as well as by absence of proper reasoning of the Court's judgments delivered under simplified procedures, thereby not allowing their proper enforcement.

The Russian Government managed to defuse the aforementioned problems within the frames of cooperation with the Court. At the same time, it appears that further reform of the ECHR and using by it simplified and accelerated procedures, including delivering judgments by a Committee of three Judges, should undergo further improvements.

2. Provision of the Copenhagen Declaration

(ii) proposals on how to facilitate the prompt and efficient handling of cases, in particular repetitive cases, which the parties were prepared to settle by means of friendly settlement or a unilateral declaration.

Comments of the Russian Government

In the recent years the European Court, in close cooperation with the authorities of the Member States, has widely used friendly settlement procedures including those by signing friendly settlements (friendly settlement agreements) or sending unilateral declarations by the states. This practice has been proved successful and must be continued.

2.1. At the same time it appears that the number of cases communicated by the European Court with a proposal to examine the issue of their friendly settlement should be aligned with the possibility for the State to examine the respective communications within the established periods and ensure timely payments on the delivered decisions. Searching for such balance must be one of the important elements in conducting the work for friendly settlement of applications pending before the ECHR.

2.2. It also appears that in the course of the work for expanding the scope of friendly settlement instruments it is necessary to refrain from increasing the compensations amounts regarded by the European Court sufficient for such settlement. A different approach may lead to decreasing the interest of the authorities in application of the aforementioned instruments including due to limited opportunities within the budget process.

2.3. An important constituent element for expanding friendly settlement practice will be providing for the Court's equal approach to evaluation of the circumstances in which the ECHR may accept unilateral declarations. For example, such equal approaches may be ensured in case the Member States send declarations on settlement of complaints against lack of effective investigation in the facts of ill-treatment and deaths that occurred long ago therefore not providing for an objective opportunity to conduct effective investigation. Regretfully, earlier the ECHR used a different approach to this issue in respect of the declarations submitted by Poland[1] and Russia[2].

[1] See. no. 20416/13 *M.P. v. Poland*, no. 6738/12 *Wygoda v. Poland*, no. 16009/12 *Gruzhka v. Poland*, no. 5147/13 *Kaminska v. Poland*

3. Provision of the Copenhagen Declaration

(iii) Proposals on how to handle more effectively cases related to inter-State disputes, as well as individual applications arising from situations of conflict between States, without thereby limiting the jurisdiction of the Court, taking into account the specific features of these categories, inter alia regarding the establishment of facts.

3.1. Article 33 of the Convention provides for the possibility for every Member State to refer to the European Court an issue concerning any alleged violation of provisions of the Convention and the Protocols thereto by another High Contracting Party.

However, the Convention does not contain regulations that would settle the issues of relation of such interstate case to individual applications raising the same issue that has been raised in the interstate case; nor does it contain provisions pointing to the fact that an interstate case may be initiated with the aim to protect the rights of particular persons with lodging claims for awarding compensation, nor provisions stipulating the procedure for lodging and examination of such interstate applications.

The Rules of the European Court that have been approved by the Court itself without involvement of the Member States indicate (Rule 46) that an interstate application, along with statement of the facts and list of the violated Convention provisions, should, inter alia, state the subject of the application and general description of any claims for just satisfaction based on Article 41 of the Convention, on behalf of the allegedly affected person or persons. Thus, the Rules go beyond the Convention creating a new provision and allow that an interstate application may be lodged in the interest of the affected persons stating claims for just satisfaction. However, like the Convention, the Rules. lack any provisions that would regulate the issue of relation of an interstate case to individual applications raising the same issue as raised in the interstate case, and it also lacks provisions regulating the procedure for lodging and examination of such interstate applications.

Such uncertainty in legal regulation in practice outlined a number of the following problematic issues.

3.2. In the recent decades, not a single interstate application was lodged with the ECHR that could not have been lodged by individuals based on Article 34 of the Convention. Moreover, in many cases there was duplication of the process on interstate and individual applications lodged in connection with the same events. This gives rise to a number of issues needing additional elaboration and further regulation.

• It appears that states lodging an interstate application for protection of rights of particular persons must explain why an private individual may not apply to the European Court independently on this issue.

• There is no clarity on whether an interstate application may be lodged if individual applications in connection with the same events are already pending before the ECHR and there are no obstacles whatsoever for lodging similar individual applications by other applicants. And actually at the present moment several interstate and individual applications have been lodged with the European Court and in some instances the processes for examination of such applications are going simultaneously or duplicate each other.

[2] See. no. 30204/08 *Mishina v. Russia*

It appears that if in relation to any events there are individual applications pending before the European Court, and there are no obstacles for lodging similar individual applications by other applicants, there is no need for accepting for examination an interstate application for protection of rights of particular persons. Especially since, as noted above, the Convention does not contain indication that an interstate application may be lodged for protection of particular persons with claims on awarding them satisfaction.

• Before introducing the necessary legal regulation of the aforementioned issues, and taking into consideration that nowadays both interstate and individual applications concerning the same events are pending before the Court, it is necessary to immediately formalize in the legislation the procedure where at first an interstate case will be examined as to admissibility and on the merits, and only after that individual applications will be examined.

Such approach will allow to systematize and optimize the examination process and exclude any possibility of duplicating. It is especially urgent in the light of the fact that some interstate applications raise strategic issues (for example that of jurisdiction via the “effective control” doctrine) that may have decisive influence when recognising individual applications admissible and at their examination on the merits. Accordingly, prior to delivering a decision on an interstate application examination of individual applications (including their communication and respective correspondence) must be suspended.

• The Convention (Article 35) and the Rules of the ECHR (Articles 46 and 47) provide for different admissibility for interstate and individual applications.

In particular, an interstate application (including that for protection of concrete persons) may be recognised admissible only if the domestic remedies have been exhausted an the six-month time-limit for lodging an application has been complied with. At the same time an individual application lodged by a concrete person may be recognised admissible not only if these conditions have been observed but also if it is not similar to the application already examined by the Court, or if it is not a subject of any other international proceedings or settlement and if it contains any new facts relevant for the case. Moreover, in compliance with Article 35 § 3 of the Convention, the Court declares unacceptable any individual application in case it considers that such an application is inconsonant with the provisions of the Convention or Protocols thereto, manifestly ill- founded or abusing the right of submission of an [individual] application, or if the applicant has not suffered significant disadvantage.

Therefore, the Convention and the applicable Rules of the Court provide for significantly different admissibility criteria for individual applications and interstate applications which are lodged for protection of individuals in connection with the same events. That is, the conditions for protection in the European Court of individual rights of applicants are objectively different, depending on whether the application is lodged by the applicant himself/herself or by the State for his/her protection. Such approach appears erroneous and does not comply with the objectives of the Convention that guarantees equal approach to protection of citizens’ rights.

In practice, it leads to the situation where many interstate applications lodged within the recent period, including those for protection of particular citizens, contain mostly declarative, abstract and even absurd statements, while the Applicant State does not bother itself with providing sufficient facts and evidence in support of the respective statements in order that the application being lodged would comply with the criteria of compatibility with the provisions of the Convention, relevance and lack of abuse of the right to lodge an application.

Legal regulation of this issue is needed.

• Another important issue requiring additional regulation within the framework of lodging and examination of interstate applications for protection of concrete persons is imposing on the Applicant State the obligation to identify the alleged victims of violation of the provisions of the Convention and to submit to the ECHR duly issued documents confirming the declaration of will of the respective persons for being represented before the European Court by the State.

It looks evident that a person who is represented before the European Court by the State must be aware of the same, regard himself or herself as a victim of violation of the Convention, claim that a just satisfaction should be awarded to him or her in view of the violations committed against him or her (if any) and wish that the State represents his or her interests before the European Court.

Unfortunately, the experience of examination of the interstate application *Georgia v. Russia (1)* for protection by Georgia of interests of concrete nationals showed that, with regard to most of the alleged victims, the Georgian party has not provided any written evidence of the fact that the respective persons believed that they were victims, claimed any satisfaction and wished to be represented before the Court by the Georgian Government.

Moreover, given the low requirements for admissibility in an interstate application, there were not provided sufficient data on the personalities of the alleged victims allowing to identify them, nor were there provided any evidence confirming the committed violations. In this context, it is enough to note that, as found by the European Court, a number of persons reported by the Georgian party as victims not only did not consider themselves as such but, on the contrary, acquired Russian nationality and moved for permanent place of residence to Russia.

3.3. One of the key issues related to examination of interstate applications as well as individual applications ensuing from situations related to interstate conflicts is the issue of using by the ECHR of the standards of proving.

Interstate applications are a special type of applications ensuing from interstate conflicts which have not been the subject of examination by national courts. This demands especially thorough approach by the ECHR to recognising such evidence admissible and to their evaluation.

At the same time, analysis of the European Court's practice shows that in evaluation of evidence the ECHR applies a general and quite unspecific standard "beyond any reasonable doubt[3], that nowadays serves as the basis for its case-law[4] but does not provide for sufficient filter for screening out inadmissible evidence.

[3] See *Ireland v. United Kingdom*, 18 January 1978, § 161, Series A, no. 25, and *Cyprus v. Turkey* [GC], no. 25781/94, § 113, ECHR 2001-IV

[4] See in particular Ilascu and Others v. Moldova and Russia [GC], no. 48787/99, § 26, ECHR 2004-VII, and Davydov and Others v. Ukraine, | July 2010, nos. 17674/02 and 39081/02, § 158.

In particular, as the ECHR repeatedly noted:

- jt never aimed to borrow the national authorities' approach in criminal cases, which proceed from the fact that any offence must be proved by direct and irrefutable evidence, while any doubts are interpreted in favour of the accused As noted, the role of the European Court consists in delivering decisions not regarding criminal or civil and legal responsibility but rather regarding the responsibility of the Member States under the Convention;
- its approach to the issues of proving and evaluation of evidence is conditioned by the specifics of its task pursuant to Article 19 of the Convention — to guarantee compliance of the High Contracting Parties with their obligations for protection of the fundamental rights enshrined by the Convention;
- it often outsteps the framework of the evidence submitted by the parties in an interstate case (including where an argument on existence of administrative practice is asserted), takes into consideration and examines all materials submitted to it and obtained independently, notwithstanding their source[5], without checking reliability of the respective materials and data[6]. The parties' behaviour in view of the ECHR's attempts to obtain evidence may be an element to be taken into consideration[7].

- it accepts conclusions that are, in its view, supported by the free evaluation of all evidence, including such conclusions as may follow from the facts and the parties' submissions. As noted, proving may ensue from the complex of fairly reliable, clear and consistent conclusions or similar irrefutable presumptions of fact. With that, the level of persuasion necessary to reach a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of facts, the nature of the allegations made and the Convention right at stake. The seriousness of the conclusion that the Member State has violated the fundamental rights should be also taken into consideration[8].

Therefore, even in the description of its approaches the European Court, as appears, declares that in interstate cases it may not have direct or irrefutable evidence for recognising the State guilty of violation of the provisions of the Convention, and that its conclusions may be based on speculations and non-refuted presumptions if the same appear to the ECHR consistent and not raising any doubts.

Such standard of proving applied by the European Court is of quite a general nature, it does not provide for clear, precise and predictable criteria of relevance and admissibility of the evidence that could ensure establishing the truth in an interstate case.

[5] See Ireland v. the United Kingdom, Cyprus v. Turkey [GC], cited above, ibid.

[6] See *Georgia v. Russia (1)* [GC] (no. 13255/07, 3 July 2014).

[7] See *Ireland v. the United Kingdom*, *Ilascu and Others v. Moldova and Russia* [GC], *Davydov and Others v. Ukraine*, cited above, ibid.

[8] See in particular *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII, and *Mathew v. Netherlands*, no. 24919/03, § 156, ECHR 2005-IX.

In this context, attention is drawn to inadmissibility of acceptance by the European Court of publications in the media and reports issued by non-government organisation as the only evidence of violation of Convention provisions.

For example, during examination of the interstate application *Georgia v. Russia* (I) the European Court based its conclusion mostly on the allegation of the Georgian Government, including those with reference to reports of non-government organisations. At the same time, the unreliability of the testimony of a number of witnesses to which the Georgian party referred was apparently demonstrated at the hearing of the Grand Chamber of the European Court. During the interview of the author of the report one of the non- governmental organisations there was discovered the absence of any proof for the data included in the respective report and of any other evidence in support of such data. In the same application the European Court, finding trustworthy the Georgian party's allegations about violation by the Russian authorities of the rights of 4,600 Georgian nationals, established the existence of the administrative practice on the part of Russia. At the same time, during examination of the issue of awarding just satisfaction the number of the suffered persons was reduced threefold as the Georgian Government have not submitted any evidence of violation of the Conventional provisions in respect of the other persons. In this regard the European Court just pointed out that recognising the Georgian party's allegations trustworthy at the stage of examination on the merits (that served as the basis for the conclusion on existence of the administrative practice in Russia) still not meant that those allegations had been proved "beyond reasonable doubts". That is, it appears evident that the "beyond reasonable doubt" criterion with regard to the victims of violation of the Convention has actually not been applied by the European Court at the stage of examination of the case on the merits.

Positive experience of other international courts is noted in this respect.

For example, the Rules of the African Court on Human and Peoples' Rights contain a provision expressly forbidding substantiating an application by references to any news disseminated by the media. Any application or a part thereof, where the only supporting evidence is reference to the media is recognised inadmissible (Rule 40 of the said Rules).

The necessity for using such approaches by the European Court as well is conditioned by the fact that, in the era of information wars and freedom of speech, information which it is difficult - or even just impossible — to prove and refute is disseminated and "legalised" via the media and reports of many non-government organisations. Moreover, as of today there is a number of examples of unreliable or even knowingly false information disseminated via the media and reports of the so-called non- government organisations.

Consequently, it appears that publications in the media and reports of non- government organisations may not be included into the body of evidence in interstate applications by reason of simple trust to such information on the part of the European Court. The respective information may be included in the system of evidence if it has been expressly proved by other relevant, admissible and convincing evidence.

In general, the ECHR's approaches to accepting and evaluating of evidence and the practice of their applying in interstate applications, as appears, do not fully serve the purposes and objectives of interstate applications examination. They open for the States non-controlled opportunity to lodge unmotivated applications and applications objectively not supported by appropriate evidence, including those supported by fake evidence, while resolving their political objectives instead of pursuing the aims of protection of rights and freedoms of population of this or that State.

It should be taken into consideration that interstate applications touch upon a very important and sensitive sphere of interstate relations and consequently the conclusions drawn by the European Court in the respective applications must be based on thoroughly checked, relevant, admissible and undeniable evidence.

Also, we should not forget that resolution of an inter-state application by the European Court must lead to resolution, rather than aggravation, of an interstate conflict.

The respective criteria need to be developed and approved by the Member States and be consistently used in the European Court's case-law.

3.4. The Russian Government believe that in discussing the issues related to ensuring more effective examination of cases concerning international disputes, as well as the ensuing individual applications, it could be possible to use the materials of the scientific workshop "Evidence before International Courts and Tribunals: Distinct Fora, Similar Approaches?" held in Moscow on 9 November 2018.

This workshop was organised by the International and Comparative Law Research Center with the support of the Russian Arbitration Center at the Russian Institute of Modern Arbitration and was held in the format of panel discussions — "Evidence in Inter- State Litigation", "Evidence before Regional Courts of Human Rights", "Evidence in International Criminal Jurisdiction", "Evidence in International Investment, Commercial and Sport Arbitration".

Among the speakers and moderators of the workshop were participants of proceedings in international courts and tribunals, professors of Russian and foreign universities, including A. Rajput (Member of the UN International Law Commission), Ph. Couvreur (Registrar of the International Court of Justice), A. Harutyunyan, A.I. Kovler, Kh. Gajiyev, A. Austin (judges and Deputy Jurisconsult of the ECHR, accordingly), A. Matusse (Judge of the African Court on Human and Peoples' Rights), F. Sundberg (Head ad interim of the Department for the Execution of Judgments of the European Court of Human Rights, Council of Europe), R. Kolodkin, G. Eiriksson (judges of the International Tribunal for the Law of the Sea), K. Parlett (Counsel, International Court of Justice, London Court of International Arbitration, International Chamber of Commerce), D. Devaney (Professor, University of Glasgow), B.R. Tuzmukhamedov (Judge, International Criminal Tribunal for Rwanda, International Criminal Tribunal for the former Yugoslavia (2009-2015)), Lord I. Bonomy (Judge, International Criminal Tribunal for the former Yugoslavia (2004-2009)), P. Kremer (QC, former Chief of Appeals and Acting Deputy Prosecutor (2005-2014), International Criminal Tribunal for the former Yugoslavia (2012-2014)), K. Prost (Judge of the International Criminal Court), I. Hrdlitkova, President, Special Tribunal for Lebanon), M. Swainston (QC, Barrister, Brick Court Chambers), M. Kazazi,(Vice-President, Institut de Droit International, Arbitrator), R.M. Khodykin (Partner, Bryan Cave Leighton Paisner, Visiting Professor, the Centre for Commercial Law at Queen Mary University of London), N. Comair-Obeid (Professor, Lebanese University, Founding Partner, Obeid Law Firm, president of CIARb (2017), Arbitrator), D.-R. Martens (Partner, Martens Rechtsanwdlte, founder of Basketball Arbitral Tribunal (BAT), Arbitrator).

The workshop was also attended by representatives of the Council of Europe, the Court of the Eurasian Economic Union, Russian and foreign legal firms, universities and research centres, officials from Russian state authorities.

During the discussions important comments were made concerning the situation that has formed in international courts and tribunals with examination of evidence-related issues from the point of view of establishing of facts, distribution of the burden of proof, methods, forms and standards of proving, as well as the need for further improvement of the law enforcement practice in this regard.

The respective comments were used by the Russian authorities in preparation of the aforementioned proposals in order to ensure more effective examination of interstate disputes and ensuing individual applications.

The recording of the speeches made during the workshop in the official languages of the Council of Europe is available on the official website of the International and Comparative Law Research Center (http://iclrc.ru/ru/events/36). It is planned to complete the work for preparation of the collected workshop materials (which will be submitted to the CDDH Secretariat for possible use) by April 2019.

4. Provision of the Copenhagen Declaration

(iv) questions relating to the situation of 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 process of selection and election of judges of the European Court of Human Rights (document CM(2018)18-add1).

It appears reasonable to support the conclusion contained in the report of the Steering Committee for Human Rights as to dismissing of the initiative aimed to confer upon the ECHR judges, after expiry of their respective authority, lifelong diplomatic status; the idea is excessively ambitious.

The issues concerning provision of additional guarantees for the Court's judges at the national level, including their protection against the risk of covert prosecution, as well as including the period of their service as ECHR judges in their employment record, needs additional detailed review both at the CDDH level and at the level of the Member States, taking into consideration the specifics of their national legal systems.

At the same time, it appears that no amendments need to be included in the Convention for settling the issues concerning the situation of the ECHR judges.

UNITED KINGDOM / ROYAUME-UNI

STEERING COMMITTEE ON HUMAN RIGHTS

Follow-up Work to the *Copenhagen Declaration*

Contribution of the United Kingdom

We are grateful for the opportunity to provide comments on matters that might be included in the review of the reform process over the past decade starting with the Interlaken Conference in 2010.

*(i) a comprehensive analysis of the Court's **backlog** of cases, identifying and examining the causes of the influx of cases from the States parties in order to identify the most appropriate solutions at the level of the Court and the States parties*

The question of measures to deal with the backlog of cases before the Court has clearly been a central focus of much work that has gone in the course of the reform process. The Court itself has done much in this respect, including measures to streamline its procedures, to filter out clearly inadmissible applications, and to ensure that applications arising issues that have already been determined in the well-established caselaw of the Court should not absorb undue judicial time. We warmly applaud these measures. At the intergovernmental level focus has been on a more system-wide approach to seeking to ensure that the backlog does not grow unsustainably. There has, in our view rightly, been a focus on national implementation to ensure that the requirements of the Convention are firmly embedded in national systems in accordance with the principle of subsidiarity. Again we applaud this work, but note that more needs to be done. As an example we note that Protocol 15 is still not in force and urge those last States that have not done so yet to ratify this measure.

However the question of the backlog is one that can be measured, and we note with concern that there remains a significant problem. This is demonstrated by the Registrar's analysis of the current backlog of some 56,000 cases, of which there are likely to be around 15,000 cases that raise issues which require consideration by a full Chamber or Grand Chamber of the Court. Whilst the work of the reform process to date has made some inroads on the overall numbers, it cannot yet be said that the problem has been solved or that there is a sustainable basis for the good functioning of the Court. As such we do not consider that this aspect of the reform process can yet be concluded. We think it important that we acknowledge that there is more work that needs to be done by all those involved in making the Convention system work, in order to achieve our shared goal of its sustainability. This will require meaningful measures to address the Court's continued backlog of applications whilst respecting the proper prioritisation of cases and avoid simply shifting problems elsewhere in the Convention system. For our part, we stand ready to play our part in the further consideration of all feasible solutions.

*(ii) proposals on how to facilitate the prompt and efficient handling of cases, in particular **repetitive** cases, which the parties were prepared to settle by means of a friendly settlement or a unilateral declaration;*

As mentioned above, we welcome the efforts that the Court has made in these respects to date. We consider these have promoted greater efficiency in the disposition of cases, to the benefit of the parties and the Court. We would support further streamlining by the Court in order to deal with such cases and encourage the Court to consider whether there are further efficiencies that can be made in this respect, and stand ready to assist in such consideration.

*(iii) proposals on how to handle more effectively cases related to **inter-State disputes**, as well as individual applications arising from situations of conflict between States, without thereby limiting the jurisdiction of the Court, taking into account the specific features of these categories of cases, inter alia regarding the establishment of facts;*

It is not clear to us exactly what would be envisaged in this respect, and we do not have proposals to make at this stage. If others agreed, we would be happy to see the establishment of a study group to consider the issues, with a view (a) to establishing whether this is a discrete set of issues/problems, and if so to define them and (b) to consider appropriate solutions.

*(iv) questions relating to the situation of **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 process of selection and election of judges of the European Court of Human Rights (document CM(2018)18-add1).*

We consider that it is a fundamental aspect of the independence of the judiciary, that judges must be able to carry their function “without fear or favour” and we are very concerned at reports former judges of the Strasbourg Court have faced victimisation or discriminatory treatment because their national authorities views of their judicial work whilst in post. Whilst we condemn any such action unreservedly, we are also cognisant that there is not a straightforward solution that can be achieved at the international level. What is essential is that national authorities must respect the independence and authority of the judiciary. If a re-statement of this core principle at the international level would be helpful, with further oversight by the CM, or indeed a revision of Resolution (2009)5 of the CM on the status and conditions of service of judges of the European Court of Human Rights, we would be happy to subscribe to such an initiative.

Another important aspect may be to ensure that the candidates for appointment to the Court are persons who enjoy high authority and respect at the national level. This is also likely to help former judges of the Court to maintain their career prospects at the national level after the end of their mandate. Ensuring a clearer path for judges including the possibility of suitable further employment at the national or international levels at the end of the term of office, should also assist in attracting high-calibre candidates to the Court.

7 March 2019