



Mr Jean-Claude Mignon
President of the Parliamentary Assembly
Council of Europe

Brussels, 17 April 2012

Our Ref: B1129

Dear President,

JOINT NGO STATEMENT: BRIGHTON DECLARATION MUST STRENGTHEN HUMAN RIGHTS PROTECTION IN EUROPE AND PRESERVE INTEGRITY AND AUTHORITY OF EUROPEAN COURT OF HUMAN RIGHTS

I am writing in the context of concluding negotiations on the draft Brighton Declaration on the future of the European Court of Human Rights. Please find enclosed the NGO statement, co-signed by Amnesty International, the AIRE Centre, the British Institute of Human Rights (BIHR), the European Human Rights Advocacy Centre (EHRAC), the Helsinki Foundation for Human Rights (HFHR), Human Rights Watch, Interights, the International Commission of Jurists (ICJ), JUSTICE, Open Society Justice Initiative and REDRESS which we have sent on 13 April to all permanent representatives to the Council of Europe.

While we welcome and support measures under discussion designed to improve national implementation of the European Convention on Human Rights (ECHR), including the proper execution of the Court's judgments, and to enhance the Court's effectiveness, we have serious concerns regarding proposals which could seriously undermine the Court's integrity and authority, notably by curtailing its jurisdiction or limiting its interpretative role.

We and our partners are calling on all Council of Europe member states to refrain from seeking to amend the convention so as to codify, or seek to prioritise, the principles of subsidiarity and the margin of appreciation or to add new admissibility requirements. We are also calling for the preservation of the six-month time limit for applying to the Court.

Codifying principles of judicial interpretation

We strongly oppose an amendment of the ECHR to incorporate jurisprudentially developed principles of judicial interpretation, such as the doctrine of the margin of appreciation. This principle, with other principles of equal importance, has been developed by the Court and it should remain the Court's prerogative to adapt these principles to evolving circumstances and societal change. Amendments to the ECHR which would elevate the status of certain principles of interpretation, and define the nature and content of those principles, could undermine the Court's interpretative role. Singling out the margin of appreciation and the principle of subsidiarity for inclusion in the ECHR text, without reference to other equally significant key principles of interpretation applied by the Court, would misrepresent the role and status of those principles, suggesting that the Court should give them priority in its application of ECHR rights. Since the margin of appreciation by its nature restricts ECHR rights, its elevation to the ECHR has potentially far-reaching consequences in distorting the Court's jurisprudence, and undermining the Court's pivotal role in ensuring effective protection of ECHR rights.

Accessing the Court

We firmly oppose adoption of additional admissibility requirements which would unduly restrict the Court's substantive jurisdiction under Article 19 of the ECHR by preventing an assessment on the merits of the states parties' observance of their engagements under the ECHR. Admissibility criteria must never be used to restrict the substantive jurisdiction of the Court adversely. Doing so could, in practice, undermine pan-European application of ECHR rights across the Council of Europe region and the ECHR's long-term credibility.

In calling for Council of Europe member states to preserve the six-month time limit for applying to the Court, we wish to allow individual applicants enough time to prepare an application to the Court, including finding proper legal advice and assistance. Reducing the time limit would also have prejudicial consequences in jurisdictions where there is a failure or a prolonged delay in notifying

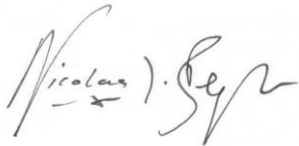
applicants of final domestic decisions. The proposal to reduce this period has been introduced without adequate reflection on its potential impact on applicants and the Court's effectiveness.

In addition to Protocol 14, the Interlaken and Izmir conferences have made important contributions to improving the Court's effectiveness. We must allow these reforms time to take full effect. We are not persuaded that codifying the margin of appreciation or subsidiarity in the ECHR or amending the current admissibility requirements are necessary or justified, or that they would help alleviate the real challenges facing the Court.

Any further discussion must allow time for existing improvements to the Court's work to be evaluated. If, in the long-term, further reform is demonstrated to be necessary, a clear opportunity should be provided for those interested, including applicants and those who represent them, national human rights institutions and civil society, to contribute to the debate.

For the sake of an effective convention system, we hope you will share our concerns and remind all negotiating parties that the Brighton Declaration must not weaken human rights protection in Europe and instead aim to strengthen national implementation of the convention and preserve the European Court of Human Rights' integrity and authority, in line with Parliamentary Assembly Resolution 1856 (2012) and Recommendation 1991 (2012) on Guaranteeing the authority and effectiveness of the European Convention on Human Rights.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Nicolas J. Beger". The signature is fluid and cursive, with the first name "Nicolas" written in a larger, more prominent script than the last name "Beger".

Dr Nicolas J Beger
Director