



JOINT STATEMENT FOR THE HIGH LEVEL CONFERENCE ON THE FUTURE OF THE EUROPEAN COURT OF HUMAN RIGHTS IZMIR, TURKEY (26-27 APRIL 2011)

The European Court of Human Rights is at the heart of the system for the protection of human rights in Europe. Its role is to ensure the observance of the obligations of the 47 states which are party to the European Convention on Human Rights for some 800 million people. The Court makes binding judgments in cases where individuals claim that their Convention rights have been violated and that the state has not granted effective redress. Securing the long term effectiveness of the European Court of Human Rights (the Court) is therefore crucial. The High Level Conference at Izmir presents an opportunity to consider the measures needed to strengthen the Court further in the context of the Convention system as a whole, including implementation of the Convention, and of the Court's judgments, at national level.

Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, Interights, the International Commission of Jurists, JUSTICE, and Liberty consider that the following principles should inform the debate and conclusions of the Izmir Conference.

Protect the integrity and authority of the Court

Respect for the essential role of the Court in the protection of individual rights under the Convention and respect for the **independence and impartiality of the Court** must serve as guiding principles for any current and future reform of the European Court of Human Rights. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, Interights, the International Commission of Jurists, JUSTICE, and Liberty urge that the Izmir Conference be guided by these principles. The states should not view the independence of the Court as an obstacle to its reform, and should not allow the reform process to be used to put forward grievances against particular aspects of the Court's jurisprudence. Rather, **the Izmir Conference should be an occasion for states to affirm their commitment to a strong and independent Court.**

Protect the right of individual application

The Interlaken Action Plan describes **the right of individual application** "as a cornerstone of the Convention system which guarantees that alleged violations that have not been effectively dealt with by national authorities can be brought before the Court". Furthermore, the Council of Europe's Steering Committee for Human Rights identified this right, together with the judicialisation of the complaint resolution mechanism, as "fundamental principles" of the Convention system.¹ Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, Interights, the International Commission of Jurists, JUSTICE, and Liberty consider that **the right of individual petition is at the heart of the Convention protection system and it would be wrong to treat it as the**

¹ CDDH Interim Activity Report, 72nd meeting Strasbourg, 29 March – 1 April 2011, para 9.

cause of the problems of the Court rather than the reason for the Court's existence.

Guarantee effective access to the Court

In the organisations' view, two reform proposals currently under consideration would significantly undermine the right of individual petition: **the introduction of a system of fees** on applicants to the Court and **the revision of or establishment of additional admissibility criteria** with the aim of curtailing access of applicants to the Court. The Court itself opposes the introduction of a fee for applicants, both due to objections of principle and that it would give rise to considerable practical and administrative problems.² **We therefore oppose the introduction of a system which would impose fees on individuals who apply to the Court seeking redress for alleged violations of their Convention rights, together with some 270 civil society organizations from over 40 countries who signed a petition opposing the introduction of fees for applicants to the Court.**³ The Conference of International NGOs of the Council of Europe shares this view.⁴

As the current admissibility criteria have been in force with regard to all applications filed against all state parties for less than a year, **we consider that further review of the admissibility criteria by the Committee of Ministers would be premature.** Moreover, any such eventual review should be limited by the principle that, in light of the independence of the Court, the interpretation and application of the present admissibility criteria under Article 35 is a matter for the Court alone. **We would oppose additional admissibility criteria that would curtail redress by the Court for violations of Convention rights.**

Preserve effective Interim Measures

Interim Measures are a necessary means for the Court's effective discharge of its role in ensuring the observance of the engagements undertaken by the states parties to the Convention, in certain cases, including but not limited to cases where the principle of non-refoulement is in issue. Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, Interights, the International Commission of Jurists, JUSTICE, and Liberty consider it **essential that the Court's power to indicate such measures, and the obligation of states to comply with them, should not be in any way curtailed, hampered, or delayed, including by requiring the Court to provide reasoned decisions on Rule 39 applications.** This latter requirement would risk undermining the effectiveness of the Interim Measures system whose purpose is to maintain the status quo pending the Court's determination of the justification for the measure when there is an imminent risk of irreparable damage to the enjoyment by the applicant of one of the core rights under the Convention. **The Izmir Declaration should however highlight the importance and the potential that the effective implementation of the Convention at the national level has in reducing the need for recourse to Interim Measures.** The need for such measures could be substantially reduced if effective national remedies against removal with suspensive effect were in place in all member states.

Ensure national implementation

Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, Interights, the International Commission of Jurists, JUSTICE, and Liberty **urge states to use the opportunity presented by the Izmir Conference to renew their commitment to better implementation of the Convention at national level, and thereby reduce the need for individuals to apply to the Court.** The current reform proposal to expand the powers of the Court to provide **Advisory Opinions** on Convention issues at the request of the highest national Courts of the 47 parties could also contribute in this regard.

² Opinion of the Court for the Izmir Conference (adopted by the Plenary Court on 4 April 2011), para. 10.

³ See Civil society petition "Fees: a barrier to justice" (with list of signatories), available at <http://www.amnesty.org/en/library/info/IOR61/005/2011/en>.

⁴ Recommendation adopted by the INGO Conference on 27 January 2011, http://www.coe.int/t/ngo/Articles/CONF_PLE_2011_REC2_Cour_en.asp.

The responsibility of states to make the Convention rights a reality at the national level is central to the idea of subsidiarity. This was acknowledged by the Interlaken Declaration, which referred, in regard to the subsidiary nature of the Convention mechanism, to “the fundamental role which national authorities, i.e. governments, courts and parliaments, must play in guaranteeing and protecting human rights at the national level.” **Renewed efforts by states to implement the Convention in national law, policy and practice are now essential for effective application of the principle of subsidiarity, in accordance with the aims of the Interlaken Declaration.** The principle of subsidiarity does not, by contrast, justify states placing inappropriate pressure on the Court with regard to its interpretation and application of the Convention.

Preserving an effective legal framework for the Court

While welcoming the current work within the Steering Committee on Human Rights on a mechanism for enabling the simplified amendment of some Convention provisions of an organizational nature, **we consider that further discussions are needed to fully analyse two options: a new provision in the Convention allowing for simplified amendment or a Statute for the Court.** We also note that additional study on the proposal overall is required in the light of recent clarifications that the national law in several states imposes obstacles to simplified amendment of an international treaty that had been subject to parliamentary ratification. We consider that at this stage of the discussions, it would be premature to take a decision which would prioritise one of the possible mechanisms for simplified amendment – that of a Statute – over the possible addition of a provision of the Convention for this purpose. Any new mechanism must preserve the independence of the Court, including its authority to regulate its procedures through the Rules of Court.

Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre, Interights, the International Commission of Jurists, JUSTICE, and Liberty consider that **the High Level Conference of Izmir is an opportunity for states to inform and deepen current discussions on reform of the Court.** It should complement current reform discussions rather than pre-empt conclusions on issues that affect the fundamental role of the Court in the protection of human rights in Europe. Appropriate solutions to the problems faced by the Court must be devised on the basis of informed analysis and transparent evaluation of both the root of the problems and recent and future reforms.

In brief, Amnesty International, the AIRE Centre, the International Commission of Jurists, The European Human Rights Advocacy Centre, Interights, JUSTICE, and Liberty consider that any reforms to the Convention system should ensure that:

- the fundamental right of individual petition is preserved and not further curtailed by imposing a fee on applicants or adding additional admissibility criteria;
- there is an efficient, fair, consistent, transparent and effective screening of applications received, in order to identify the admissible applications from the very high proportion (around 90 per cent) of applications that are inadmissible under the current criteria;
- judgments are given within a reasonable time, particularly in cases where time is of the essence, or that raise repetitive issues where the Court’s case law is clear and those that arise from systemic problems;
- the Court, including its Registry, is given adequate financial and human resources, without adversely impacting the budgets of other Council of Europe human rights mechanisms and bodies.