



EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE



Joint NGO statement

The Brighton Declaration must strengthen human rights protection in Europe and preserve the integrity and authority of the European Court of Human Rights

13 April 2012

As negotiations on the draft Brighton Declaration on the Future of the European Court of Human Rights are coming to their conclusion, 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 recall the fundamental importance of the European system of protection of human rights.

We warmly welcome and strongly support measures under discussion designed to improve national implementation of the European Convention on Human Rights, including the proper execution of the Court's judgments, and to enhance the effectiveness of the Court. For the Convention system to be sustainable, such measures are fundamental.

Greater respect for human rights at home remains the most effective way to ensure the Court can function effectively. Efforts by governmental, parliamentary and judicial authorities to better integrate the Convention standards into national law, policy and practice must be encouraged and we forcefully support commitments by contracting parties to improve mechanisms for domestic implementation of the Convention.

The Brighton Conference provides a vital opportunity for contracting parties to affirm their commitment to improvements in national practice in protecting the Convention rights. This important process should not be derailed by proposals which would undermine the Court. In particular, reforms of the Convention system aimed at strengthening the Court must not end up diluting its integrity and authority by curtailing its jurisdiction or limiting its interpretative role. Such measures risk seriously undermining the effectiveness of the Court in protecting Convention rights.

We urge all delegations to the negotiations to refrain from endorsing measures which would 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.

Codifying principles of judicial interpretation

We strongly oppose the amendment of the Convention to incorporate jurisprudentially developed principles of judicial interpretation, such as the doctrine of the margin of appreciation. This principle, together 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 changes. For the states parties to amend the Convention to elevate the status of certain principles of interpretation, and to define the nature and content of those principles, would undermine the interpretative role of the Court. Furthermore, to single out the margin of appreciation and the principle of subsidiarity for inclusion in the Convention text, without reference to other equally significant key principles of interpretation applied by the Court, misrepresents the role and status of those principles, suggesting that the Court should give them priority in its application of the Convention rights. Since the margin of appreciation is of its nature restrictive of the Convention rights, its elevation to the Convention has potentially far-reaching consequences in distorting the Court's jurisprudence, and undermining the Court's pivotal role in ensuring effective protection of the Convention rights.

Accessing the Court

We firmly oppose the adoption of additional admissibility requirements which would unduly restrict the Court's substantive jurisdiction under Article 19 of the Convention by preventing an assessment on the merits of the states parties' observance of their engagements under the Convention. Admissibility criteria must never be used to restrict the substantive jurisdiction of the Court adversely. Moreover, doing so could, in practice, undermine the pan-European application of the Convention rights across the territory of the Council of Europe and the long-term credibility of the Convention. The Court has carefully developed its case-law on the current admissibility requirements, including on the so-called "manifestly ill-founded" criterion. The Court must be allowed to continue developing its practice independently in this regard in order to ensure that applications needing adjudication on their merits are declared admissible and benefit from a proper analysis at the merits stage.

We also urge all stakeholders to preserve the 6 month time limit for applying to the Court. Such a time period is crucial in many jurisdictions, in particular in the well documented instances where there is a failure or a prolonged delay in notifying applicants of final domestic decisions. Sufficient time for preparing an application to the Court, including finding proper legal advice and assistance, must be given to potential applicants. The proposal to reduce this timeframe has been introduced without adequate time for reflection on its potential impact on applicants and the Court's effectiveness. If contracting parties wish to explore amending the existing deadlines, this should only be done after time for consultation, including with the representatives of applicants in countries where access to legal advice and technology is limited.

Next steps: Brighton and beyond

In addition to Protocol 14, the Interlaken and Izmir conferences have made important contributions to improving the Court's effectiveness. The time has come to allow these reforms to have their effect and to ensure that they are sufficiently resourced. We are not persuaded that codification of the margin of appreciation or subsidiarity in the Convention or amending the current admissibility requirements are necessary or justified, or that they will contribute towards alleviating the very real challenges currently facing the Court.

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

We urge all contracting parties to do their utmost to ensure a sustainable Convention system with an independent and strong Court. We call on contracting parties to ensure that the Brighton Declaration properly focuses on the importance of effective integration of the Convention into national law, policy and practice, and to make sure that adverse measures such as the ones highlighted above will not be included in the final Brighton Declaration and compromise its otherwise very promising content.