



Ref: TIGO IOR 61/2009.039

BY EMAIL
Mr Paul Seger

Mr Frank Schurmann

18 December 2009

Dear Mr Seger and Mr Schurmann,

DRAFT DECLARATION FOR INTERLAKEN MINISTERIAL CONFERENCE

Thank you for forwarding the Draft Declaration for the Interlaken Ministerial Conference.

Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre (EHRAC), Interights, the International Commission of Jurists (ICJ) and Justice consider that there is much to welcome in the draft Declaration including:

- the reaffirmation of the right of individual petition to the European Court of Human Rights,
- the reaffirmation of the principle of subsidiarity, which, in accordance with Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, places the responsibility on the States Parties to secure the rights in the Convention;
- the many recommendations aimed at strengthening implementation of the Convention at national level;
- encouragement of friendly settlements compatible with the respect for Convention rights;
- the adoption of fair, transparent and objective procedures for the nomination and selection of judges at the national and Council of Europe levels;
- measures to ensure the Court enjoys an appropriate level of administrative autonomy within the Council of Europe;
- the recognition of the crucial role played by the Committee of Ministers in supervising the execution of the Court's judgments, and the agreement to develop measures, working methods, rules and means to allow it to carry out this task more effectively and transparently;

- the invitation to the Committee of Ministers to provide the Court with the necessary budget to determine pending applications within a reasonable time and to increase resources for the supervision of the execution of judgments; and
- the setting of time frames within which to give effect to the Interlaken Action Plan.

Recommendations:

The above-named organisations urge the strengthening of the draft Declaration as follows:

- 1) Consultation with Civil Society:** the Operative Part of the Declaration should call on States and the Committee of Ministers to consult with civil society on effective means to implement the Action Plan and to consider their views when developing positions on reform of the Convention's control mechanisms.
- 2) Analysis:** the draft Declaration should call for the resources needed to obtain and analyse information about the reasons for declaring applications inadmissible; the effectiveness of the single-judge system; and the impact of the reforms that have been and are to be implemented.

Such information will assist in finding durable and effective solutions to the challenges faced by the Court by identifying the root causes of the challenges and evaluating the impact of reforms. Inclusion of such a paragraph would be consistent with the recommendations of the CDDH and non-governmental organizations (see paragraph 3 of the *CDDH Opinion on the Issues to be covered at the Interlaken Conference* (CDDH (2009)019 Addendum I), and page 2 of the Joint NGO document, *Human rights in Europe: Decision time on the European Court of Human Rights*, 11 December 2009, AI Index: IOR 61/009/2009). We note that the call in paragraph 9(c) of the draft Declaration focuses on the need for an analysis of the Court's practice with regard to inadmissible applications, rather than an analysis of the grounds for inadmissibility, and evaluation of reforms that we recommend.

- 3) The Preamble:** There needs to be an expression not only of the strong commitment to the Convention itself, but also to its implementation by the Member States of the Council of Europe and the commitment to collective enforcement of these rights. This would be consistent not only with Article 1 and the Preamble of the Convention, but also with the wording of paragraph 1 of the Action Plan.

In addition, the essential role of all branches of the state in the protection of human rights should be emphasised in Preamble paragraph 4, which should be amended to include reference to the executive and legislature as well as the judiciary, and to the particular role of national human rights institutions in implementation of Convention rights. Doing so would also be consistent with recommendations made by the Commissioner for Human Rights.

- 4) Implementation at the National Level:**

We consider that the draft should be strengthened to express a more concrete commitment to the implementation of Convention obligations. Paragraph 1 (a) of the Declaration should therefore be amended to read "To make renewed efforts to effect progress in the fields of democracy, the rule of law and human rights and thereby to ensure the effective protection of the Convention rights".

In line with the Commissioner for Human Rights' Memorandum, we consider that specific reference to the existing Committee of Ministers Recommendations which formed a part of the 2000-2004 reform package as well as the addition of a sub paragraph about Recommendation (2008) 2 on efficient domestic capacity for rapid execution of the Court's judgments, and the need to implement these Recommendations would also strengthen this section of the text.

In relation to the execution of judgments, the text should emphasise the role of all national institutions in securing general measures of execution which are effective in preventing future violations, and the need for a systematic and coherent approach to execution and the implementation of judgments of principle. In the introductory phrase to paragraph 2, the declaration should call on "Governments, with the active co-operation and scrutiny of Parliament and national human rights institutions, to take the necessary steps and put appropriate systems in place to"... take the steps listed in sub-sections (a) to (e).

We consider that reference to the Commissioner for Human Rights' recommendation for the development and implementation of a comprehensive national human rights action plan, following a base-line study, should be included as a recommendation.

We welcome the language calling attention to the need to strengthen the Council of Europe's mechanisms aimed at assisting states to implement their Convention obligations. We recommend the amendment of Paragraph 4(b) to make it clear that consideration of the possible need for a new mechanism should be carried out subsequent to the enhancement of existing mechanisms, including by the investment of additional resources. Such an amendment to the text would place emphasis on maximizing the effectiveness of existing mechanisms first, before exploring the creation of new bodies or mechanisms, in line with the recommendation set out in paragraph 21 of the CDDH Opinion.

5) Right of Individual Petition: We strongly oppose the three proposals listed in paragraph 7 of the draft Declaration (the imposition of fees for applicants, requiring an applicant to be represented by a lawyer and to communicate with the Court in French or English at all stages of the proceedings) since they are inconsistent with the right of individual application and would obstruct effective access to the Court to individuals based on their ability to pay (the fee, and a lawyer who can communicate in English or French) rather than on the merits of their complaint. We strongly recommend these suggestions will be removed from the draft.

6) Filtering: paragraph 9 should be supplemented with a call upon the Committee of Ministers: to evaluate the need for a filtering mechanism in the light of information gained from an evaluation of the newly introduced single judge system, and subsequently to establish a new body if necessary; to carry out an analysis of the reasons for inadmissible applications and to propose methods to address the causes including, for example, funding projects such as the Warsaw Pilot Project in some states with a view to reducing inadmissible applications.

7) Repetitive Applications: We consider that the recommendation to the Committee of Ministers in the second bullet point of paragraph 11 (d) is unclear. We would recommend at a minimum that this bullet point should include a recommendation for discussion of the need to set up a new structure within the Council of Europe or to give a new role to the Commissioner for Human Rights.

8) The Court: paragraph 14 should be re-framed in a manner which is consistent with the independence and authority of the Court, as set out in Articles 19 and 32 of the Convention. In particular we recommend: deleting sub paragraph (c), which we consider impacts on the independence of the Court and risks eroding the right of individual petition to the Court; and amending sub-paragraphs 14 (a) and (b) so paragraph (a) reiterates the Court's purpose in accordance with Article 19 of the Convention and paragraph 14(b) sets out the Court's jurisdiction in accordance with Article 32 of the Convention. For example:

14. The Conference, acknowledging the shared responsibility between the ~~Court~~ and States **and the Court**, stresses that ~~the Court~~:

(a) ~~is not a fourth instance called upon to correct errors of fact or law allegedly committed by national authorities~~ **the purpose of the Court is to ensure the observance of the parties of their obligations under the Convention;**

(b) ~~should apply admissibility criteria rigorously and should take into account its subsidiary role in the application and interpretation of the Convention~~ **the Court has jurisdiction to adjudicate on all matters regarding the interpretation and application of the Convention, with due regard to the admissibility criteria established in the Convention.**

c) ~~should give effect to the principle *de minimis non curat praetor*.~~

9) Execution of Judgments: Given the importance attached to ensuring the prompt and effective implementation of the Court's judgments by Member States, and the collective responsibility of the states in ensuring the implementation of the Convention, we are concerned that paragraph 21, calling for a review of the system for execution of Court judgments, in the long -term may send a conflicting message which risks undermining the strengthening of the current system which is recommended in paragraph 20. We are hopeful that the measures undertaken in accordance with paragraph 20 and enhanced resources afforded will lead to the development of measures, working methods, rules and means to allow this task to be carried out more effectively and transparently.

10) Procedure for Amendment of the Convention: to ensure consistency with the CDDH Opinion (paragraph 25) and with the Recommendation of the Group of Wise Persons (paragraph 50) , we urge that paragraph 22 be amended so as to exclude from consideration of amendment by simplified procedure any provisions of the Convention that relate to "procedural issues".

Yours sincerely,



Jill Heine
Legal Adviser

