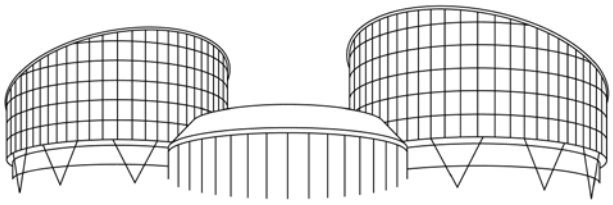

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Contribution of the Court to the Brussels Conference

Introduction

1. The Court welcomes the convening of the fourth high-level conference of the Convention reform process. It commends the Belgian authorities for this initiative, as well as for the theme that they have proposed which is of fundamental importance for the Convention system.

2. The Brussels conference will be a timely event, given that 2015 is the halfway point in the timeframe set out at Interlaken. Much has been achieved since then, in particular the adoption of Protocols 15 and 16. There have been very positive developments in the situation of the Court, due to the Protocol 14 reforms along with the changes in the Court's working methods. The number of applications on the Court's docket has declined steeply and steadily from over 160,000 in 2011 to 70,000 at the end of 2014.

3. Against this background, it is right that the question of the effective implementation of the Convention should now move to the forefront of discussions. While the question has indeed featured in each of the previous conference declarations, the greater prominence accorded to it on this occasion is entirely justified. The notion of the "shared responsibility" of the Contracting States and the Court was an important element in the Interlaken Declaration, which linked it to the principle of subsidiarity. That principle can be regarded as one of the basic principles of the reform of the Convention system. In the Court's view, *sharing* responsibility for the protection of human rights – to be contrasted strongly with any idea of *shifting* responsibility – holds out the prospect of a new, more stable equilibrium in the Convention system, making for a stronger human rights regime in Europe, to the greater benefit of all those who are protected by it.

4. For the Court, implementing the Convention can be approached from two principal, inter-related perspectives: that of the prevention of violations, and that of the execution of judgments.

I. Preventing violations of the Convention

5. A great deal has already been said about the preventive aspect, notably in part A of the Brighton Declaration, which takes a broad approach, spelling out the obligation of the executive, the legislature and the judiciary to ensure that Convention standards are properly observed. The Court would stress the importance of the authorities in all States following the Convention case-law. While a judgment of the Court is formally binding only on the respondent State (or respondent States as the case may be), for the sake of preventing future violations of human rights, *all* States should ensure that their law and administrative practice are in conformity with the principles that are developed in the case-law. The role of the executive is to be underlined when it comes to implementation of the Convention at national level and the execution of the Court's judgments. Moreover, once it is apparent from a judgment finding a violation of the Convention that the underlying problem is not confined to the individual case, States should already at that stage – and without waiting for subsequent judgments or a pilot procedure – set about dealing with it.

6. The Court anticipates that at the conference States will once again encourage national parliaments to give careful consideration to the human rights issues that arise in the course of adopting legislation. There appears to be the beginning of a practice in Europe of creating specific structures within parliaments tasked with briefing legislators on the requirements of the law of the Convention. That is a very valuable development which should be expanded, as has been repeatedly urged by the Parliamentary Assembly in its recent work on the implementation and reform of the Convention. As the Court's case-law shows, the fact that the parliamentary record indicates that there was in-depth consideration of the human rights implications of an enactment can be of significance in certain types of case, i.e. in which the margin of appreciation arises. As reflected in Article 1 of Protocol no. 15, the margin of appreciation arises out of the primary responsibility of States for securing Convention rights and freedoms on the basis of the principle of subsidiarity.

7. The role of the domestic courts in ensuring the observance of human rights will always be a vital one. There are certain practical steps that should be taken in order to place the domestic courts in a position to carry out their Convention role. The Court underlines the importance of continuing with the translation of the case-law into the national languages. Considerable effort and expense have been devoted to this since 2010, with impressive results. However, much of the funding that has made this possible, provided by the Human Rights Trust Fund, will no longer be available as from April 2015. The Brussels conference should ensure that the important work of translation can continue, and indeed expand, beyond that date. At the end of the day it must be for Member States themselves to ensure the translation of case-law.

8. For its part, the Court refers to the steps it has taken in recent years to improve access to and information regarding the case-law of the Convention. It has issued different types of publication, such as case-law guides, the guide to admissibility and numerous thematic factsheets. These have been prepared with different readerships in mind – judges and legal professionals at the domestic level, prospective applicants and their legal advisers, the media, and the public in general. The Court will continue to develop these tools and resources in future, and invites States to make them more accessible through translations.

The Court has also provided and will continue with an active training programme for judges and lawyers from all over Europe who take part in training and study sessions at the Court, conducted by Judges and Registry lawyers. The efforts made at Strasbourg should be amplified by further education and training in human rights law at the national level.

9. In light of discussions that it has held recently with national judges, the Court has identified an area in which it can be of direct assistance to national courts, namely through co-operation in the field of legal research. It intends to create a case-law information network in 2015, under the responsibility of its Jurisconsult. The network will be open to supreme courts to ensure the transfer of information on the case-law of the Convention, so as to assist in a very practical way national courts in applying the Convention. At the same time it will provide information to the Court on the application of the Convention within domestic legal systems. The Court will also continue the vital dialogue with its judicial interlocutors at national level, which could be reflected and supported by a specific reference in the conference declaration.

10. Another point concerning the role of domestic courts is the advisory opinion procedure created by Protocol No. 16. The Court underlines the potential of the procedure to aid national courts in their consideration of Convention issues so that problems are resolved at the national level, and looks forward to its entry into force. Yet to date there have been no ratifications. The Brussels conference should support the Protocol by calling on signatory States to complete the process of ratification, and encouraging more States to accept it.

II. The execution of judgments

11. The second perspective on the implementation of the Convention is the execution of the Court's judgments. The Court recently addressed this topic at the request of the Committee of Ministers, and it refers to the contents of the reply it gave on that occasion[1].

12. For the Court it is clear that the execution stage of Convention proceedings stands in need of improvement. This is most clearly seen in the large number of repetitive cases pending before the Court. The overall number of such cases has declined in the past year, due in large part to the introduction of new remedies by certain States. Nevertheless, this category of applications still accounts for half of the Court's total docket, making it a heavy burden[2]. Even if it is the intention of the Court to process such cases as quickly as possible so that over the next two years or so the backlog of repetitive cases is brought under control, this will not make the underlying phenomenon disappear. On the contrary, these cases will, under present arrangements, be added to the list of the Committee of Ministers, which despite some improvement in the past year remains excessive. The burden can only truly be lifted through improving the execution of judgments. In this regard, the Court agrees with the stance of the Parliamentary Assembly on the important role of national parliaments here, exercising their legislative and oversight powers to bring about compliance by the State with the requirements of the Convention.

[1] See "Reply to Committee of Ministers request for comments on the CDDH Report on Execution", 9 May 2014, published at http://www.echr.coe.int/Documents/2014_Comments_on_CDDH_report_on_execution.pdf.
[2] Over 35,000 at 1 January 2015.

13. The execution of judgments is primarily for national authorities and the Committee of Ministers to ensure. However, the Court has sought to contribute to it by including a passage in the reasoning concerning the type of measures required to implement the judgment. The Court agrees with the CDDH that the conference should provide the opportunity to take stock of the manner in which the roles of the Convention institutions and national authorities are performed once the Court has established a violation of human rights, the key word being the *interaction* among them[3]. The Court therefore invites an open discussion with States and other parties on the subject. An important element here, as mentioned by the CDDH, is the pilot-judgment procedure. This has become an increasingly common feature of Convention proceedings. The Court is presently conducting a review of the results achieved by the procedure over the past ten years. It is ready to bring the conclusions of that review into the discussion.

14. The Court reiterates that its purpose in giving indications under Article 46 is to aid or encourage the national authorities in taking the steps required to execute a judgment, while respecting the limits of the judicial function. The Court is ready to explore with States and other parties possible refinements to its practice. To give one example that might be reflected on, it could be envisaged that in certain types of case the parties be invited to make submissions on the efficacy of identifying specific remedial measures in the Court's judgment. In exceptional cases, this could even be the subject of a distinct phase of the procedure before the Court, taking place after the main judgment has been given, in a manner that may be compared to the current, occasional practice of reserving the application of Article 41.

15. An important point in this context is the possibility for an applicant to seek the reopening of domestic proceedings after the Court has established that the original proceedings were contrary to the Convention. While noting that for civil cases this raises the issue of the rights of third parties, with respect to criminal and administrative cases, the reopening of proceedings can afford to the applicant the fullest redress for the violation of his human rights, by restoring, to the extent possible, his or her legal rights.

16. The interaction between the Convention organs also concerns the as yet unused procedures introduced into Article 46 of the Convention by Protocol no. 14. The potential of Article 46 §§ 4-5 to formally involve the Court at the execution stage, along with the type of circumstances in which recourse to this procedure would be appropriate, deserve in-depth reflection.

17. Regarding Article 46 § 3, it is to be hoped that it would be needed only on very rare occasions. Even so, more than ten years after the provision was adopted by the Contracting States, and nearly five years after it took effect, its potential to aid the execution process deserves fresh appraisal. In this respect, the Court notes that in its dialogue with supreme courts, the point has been made that since it may fall to the national courts to ensure execution, this will be hindered where they have doubt as to the precise implications of the judgment. It would therefore be worth reflecting on possible means to overcome difficulties, whenever they arise. Domestic courts may also have questions about the wider

[3] See the CDDH contribution to the conference, CDDH (2014) R82 Addendum II, paragraph 10.

ramifications of a judgment based on a specific set of facts, or addressing only one part of a broader area of law. In this regard, Protocol No. 16 may have a role to play, underlining the importance of this new procedure.

18. Separately from this, one possibility for bringing greater clarity to the execution stage of proceedings, would be if, in appropriate cases, the Court were to expressly indicate in the judgment that apart from the payment of any just satisfaction awarded, no other measure, individual or general, is required.

19. The Court sees scope for aiding in the supervision of execution by developing its relations with the Council of Europe's Department of Execution. In addition to the regular contacts between members of the Registry and their counterparts in the Department, there was a new development in 2014. This took the form of inviting representatives of the Department to meet with some of the Sections of the Court in order to discuss with judges a number of current issues concerning the execution of judgments. These were very useful discussions, allowing for an exchange of information and perspectives. The Court is open to the prospect of holding them on a periodic basis.

20. The great diversity among the States is such that no single institutional arrangement can be envisaged when it comes to execution. Depending on the exact nature of the violation, very different domestic actors may be concerned. Nevertheless, the Court sees merit in the idea of having, in each country, a designated authority with general responsibility for ensuring that the necessary measures are taken in response to a judgment finding that there has been a violation of the Convention. The key point is to "centralise" the process so that it is conducted in a diligent and timely manner. Such an approach would also be conducive to preventing breaches of human rights.

III. Conclusion

21. There are in today's Europe many difficult challenges for and threats to the enjoyment of fundamental human rights. In such a context, the value of the Convention cannot be over-emphasised. The Court looks to the Brussels conference to signal once again the strong commitment of European States to protecting human rights and upholding the rule of law, now and into the future. The Court also hopes to see a political text that gives impetus and direction to the reform process, so that the successes to date are matched by further progress, and that the long-term future of the Convention is ever more secure.