



Submission of the European Network of National Human Rights Institutions on draft Declaration of Copenhagen

ENNHRI, the European Network of National Human Rights Institutions, is a membership organisation, comprised of all 42 National Human Rights Institutions (NHRIs) from the Council of Europe region. ENNHRI is the only network of NHRIs across Europe.

NHRIs are state bodies, independent of government, with a broad mandate to promote and protect human rights. Their functions include monitoring, research, advising government and parliament, reporting to international treaty bodies, complaints handling, providing legal assistance, human rights education, training, and awareness raising. One of their core functions is to ensure compliance of national laws and practices with international human rights treaties, including the European Convention on Human Rights (ECHR).

As bridges between national authorities and civil society, NHRIs have a unique overview of the needs and challenges in the implementation of human rights standards within a country, as well as the authority and mandate to engage with their state party. NHRIs are therefore ideally placed to advise states on effective compliance with judgments, and to provide independent information and views to the Committee of Ministers.

ENNHRI welcomes any initiative aimed at improving the substantive protection and promotion of human rights at European level, and which reinforces the efficacy of the Convention system in upholding fundamental rights. At the same time, ENNHRI notes that the Convention system has undergone a series of reforms over recent years many of which have not yet had time to have their full effect on the Court.

Accordingly, ENNHRI strongly cautions against taking steps that might lead to a situation where only the most egregious cases are adjudicated upon by the Court. ENNHRI sincerely trusts that any further necessary reform process will keep political influence away from the Court and will not adversely affect the right of individual petition. For that reason, ENNHRI welcomes the passages of the draft Declaration that confirm respect to the independence of the Court and the binding character of its judgments; and reaffirm the right of individual application.

ENNHRI considers that most of the issues facing the Court derive from delayed or ineffective implementation of the Convention at national level, so that rather than focussing on any particular aspect of the Court's procedure, much stronger efforts should be made by the Committee of Ministers to ensure the prompt execution of

judgments so as to eliminate the need for repetitive applications. States' responsibility for the implementation at the national level is also central to the effectiveness of the Convention system.

The draft Declaration contains elements that are problematic, and ENNHRI considers that aspects of the proposal will need very careful consideration and scrutiny in the light of the risk they pose to the proper independent functioning of the Court. These include the following issues:

- i. National implementation of the Convention, as set out in the Brussels Declaration, is an important concept. However, despite recognising the shared responsibility between States parties and the Court, the draft Declaration refers to the primary role of State Parties, which devalues the important role of the Court in the development of the interpretation of the Convention which is ultimately a matter for the Court alone;
- ii. The role of the Court is properly understood as supervisory not subsidiary; the test for whether the Court should find a violation in any case is not "the most exceptional circumstances". Any proposal that would deprive the Court of its current jurisdiction to assess proportionality in each case would greatly undermine its position, independence and authority;
- iii. The intention to limit the Court's review in cases relating to asylum and immigration is a totally unacceptable attempt to curtail the Court's independence and should be deleted in its entirety;
- iv. The emphasis on increased dialogue between States and the Court risks encouraging political influence on the Court's processes. Allowing governments to advise the Court on the interpretation of the Convention, to request consensus at the national level of developments in the case law, or to limit the Court's power to determine the evolving interpretation of the Convention would politicise the judicial process;
- v. The requests for "reasonable, careful and balanced" interpretation, in the absence of robust guarantees of independence of the Court, could diminish the capacity of the Court to continue to develop Convention jurisprudence in accordance with its own principles of interpretation; and
- vi. Any proposal to increase the number of third party interventions by State Parties will not reduce the Court's workload; however, in the event that this is agreed it should be matched by measures which facilitate more frequent intervention by NHRIs and civil society actors.

NHRIs are legally mandated to advise the executive and legislative branches of state on the application of international human rights standards, and they may exercise litigation functions in this regard. Through their promotion mandates, they often perform educational and awareness-raising functions, which can also encourage implementation. Third party interventions are often used by the NHRI's to inform the Court about the important developments at the national level and assist it with national

expertise, and the international legal framework and jurisprudence. Thus, NHRIs are crucial actors for the implementation of judgements of the Court.

ENNHRI welcomes the recognition of NHRIs as important actors in the effective national implementation of the Convention, and the call for States, if they have not already done so, to consider the establishment of an independent National Human Rights Institution in accordance with the UN Paris Principles. It notes however with regret that in spite of that call in the Brighton and Brussels Declarations, progress has been slow. Six (6) States Parties of the Council of Europe have not yet established NHRIs; even among those established, twelve (12) are not in full compliance with the UN Paris Principles and several are not adequately funded to effectively perform their functions. In addition, NHRIs should be much more closely involved in the execution of the Court's judgments, including under rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

ENNHRI cherishes its close relationship and longtime co-operation with the Council of Europe and looks forward to working further with the Department for Execution of Judgments, the CDDH, the Court Registry, the Commissioner and other actors for increased implementation of Convention standards and enjoyment of human rights throughout Europe.

About ENNHRI

ENNHRI is made up of 42 National Human Rights Institutions (NHRIs) from across wider Europe. It works to enhance the promotion and protection of human rights across wider Europe. NHRIs are independent bodies with a broad state mandate to promote and protect human rights. They are a key element of a strong and effective national, regional and global human rights framework. NHRIs are accredited by reference to international standards, the UN Paris Principles, to ensure their independence, pluralism, impartiality, and accountability. ENNHRI supports NHRIs throughout Europe, including on establishment and accreditation, exchange of good practices, capacity building, and engagement with regional human rights mechanisms.