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Effective implementation of the European Convention on Human Rights: the Interlaken process

Report
Committee on Legal Affairs and Human Rights
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Summary

The Committee on Legal Affairs and Human Rights welcomes the declaration and action plan which emerged from February's high-level conference on the future of the European Court of Human Rights in Interlaken, especially its recognition of the basic principle that human rights must be guaranteed first and foremost at national level. Convention rights need to be better implemented nationally, states with major structural problems which give rise to repeated breaches of the Convention must deal with these more effectively, and Court judgments should be swiftly and fully executed.

For their part, parliaments can play a key role in stemming the flood of applications by, for example, scrutinising draft laws to make sure they are compatible with Convention standards and keeping up the pressure on governments to execute Court judgments.

Lastly, the committee welcomes the changes introduced by the entry into force in June 2010 of Protocol No. 14 to the Convention, and spells out when the new nine-year term of office for judges will begin.

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A. Draft resolution

1. The Parliamentary Assembly welcomes the initiative taken by the Swiss authorities in organising the High Level Conference on the future of the European Court of Human Rights (the Court), held in Interlaken, on 18 and 19 February 2010, and the adoption, at the Conference, of the Interlaken Declaration and Action Plan.

2. The Assembly associates itself with the statement recognising, in particular, the extraordinary contribution of the Court to the protection of human rights in Europe and the emphasis placed, by the Conference participants, on the subsidiary nature of the supervisory mechanism established by the European Convention on Human Rights (the Convention), notably the fundamental role which national authorities, namely governments, courts and parliaments, must play in guaranteeing and protecting human rights at the national level.

3. The Assembly has also noted a number of decisions recently taken by the Committee of Ministers to maintain the impetus provided by the Conference, known as the "Interlaken process". It intends to closely monitor decisions that are to be taken at the forthcoming ministerial session on 11 May 2010 to help establish a clear roadmap for a reform process to guarantee the long-term effectiveness of the Convention system.

4. In order to ensure the long-term effectiveness of the Convention system, the principle of subsidiarity must be fully operational in all States Parties to the Convention. The Interlaken process should therefore take into account, in particular, a number of matters to which the Assembly attaches particular importance and which do not require amendment of the Convention: the need to strengthen implementation of Convention rights at the national level (including the *res interpretata* authority of the Court's case-law); the improvement of the effectiveness of domestic remedies in states with major structural problems and the need to rapidly and fully execute the judgments of the Court.

5. The Assembly stresses the key role parliaments can play in stemming the flood of applications submerging the Court by, for instance, carefully examining whether (draft) legislation is compatible with the Convention's requirements and in helping states to ensure prompt and full compliance with the Court's judgments.

6. In this connection, the Assembly reiterates its call, made in Resolution 1516 (2006) on the implementation of judgments of the Court, inviting "*all national parliaments to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court's judgments on the basis of regular reports by the responsible ministries"* (paragraph 22.1).

7. The authority of the Court is contingent on the stature of judges and the quality and coherence of the Court's case-law. In this context it is the Assembly's responsibility to elect judges of the highest calibre to the Court from a list of three candidates nominated by States Parties. Recalling its Resolution 1646 (2009) on the nomination and election of judges to the European Court of Human Rights, the Assembly reaffirms its call that national selection procedures must be rigorous, fair and transparent in order to enhance the quality, efficacy and authority of the Court.

8. Finally, the Assembly welcomes the forthcoming entry into force of Protocol No. 14 to the Convention on 1 June 2010 and in so doing, confirms its position that the nine-year term of office of a judge elected by the Assembly to the Court shall commence from the date of taking up of his/her duties, and in any event no later than three months after his/her election. However, if the election takes place more than three months before the seat of the outgoing judge becomes vacant, the term of office shall commence the day the seat becomes vacant. If the election takes place less than three months before the seat of the outgoing judge becomes vacant, the elected judge shall take up his/her duties as soon as possible after the seat becomes vacant and the term of office shall commence as from then and in any event no later than three months after his/her election.

B. Explanatory memorandum by Mrs Bemelmans-Videc, rapporteur

1. Introduction

1. On 11 March 2010, the Bureau of the Parliamentary Assembly requested its Committee on Legal Affairs and Human Rights to present a report – at the Assembly's April 2010 part-session – on the effective implementation of the European Convention on Human Rights ("ECHR"), in the context of what is now coined the "Interlaken process". This principally relates to the follow-up to, and implementation of, the Declaration and Action Plan adopted at the High Level Conference on the future of the European Court of Human Rights which was organised by the Swiss chairmanship of the Committee of Ministers in Interlaken on 18 and 19 February 2010.

2. Subsequently, when the committee met on 16 March 2010, it appointed me as rapporteur. The reason for the Bureau's request – so I understand – is for the Assembly to see whether, and if so how, it can already now 'feed into' the Conference's follow-up decisions which the Committee of Ministers will be taking – at ministerial level – at its 120th Session in Strasbourg on 11 May 2010.

3. As the "Interlaken process" has only just begun, it is obviously too early for the Assembly to take a stand on the entire "roadmap for the reform process towards long-term effectiveness of the Convention system" (Interlaken Declaration, paragraph 10), adopted barely nine weeks ago. I will be in a position to come back to this subject in greater detail in my future report on "Guaranteeing the authority and effectiveness of the European Convention on Human Rights". The present memorandum is therefore limited to a number of specific comments concerning the Interlaken Conference itself and to an overview of measures being taken to implement the Interlaken Declaration and Action Plan. It will also address the need to inject into this process a "parliamentary dimension". I will finish with a few comments relating to the necessity to maintain the Court's authority (and a technical proposal tied to the entry into force, on 1 June 2010, of Protocol No. 14 to the ECHR).

2. The Interlaken Conference

4. I had the honour to take part in the Interlaken Conference, together with the Assembly's President, the Chairperson of the Legal Affairs Committee and Swiss members of the Parliamentary Assembly. I must therefore – at the very outset – congratulate the Swiss Chairmanship for taking this important initiative.

5. The Conference itself started with keynote speeches by a number of personalities, including the Secretary General of the Council of Europe, the President of the Court, the Commissioner for Human Rights, as well as the Assembly's President, Mr Mevlüt Çavuşoğlu, whose intervention was 'inspired' by the then Chairperson's "Reflections" drawn from our Committee's hearing on this subject in December 2009. These were followed by short interventions by ministers responsible for human rights issues (or their representatives) of the 47 member states; a presentation was also made by the European Commission's Vice-President responsible for Justice, Fundamental Rights and Citizenship.

6. At the end of the Conference, the ministers unanimously adopted a Declaration and Action Plan, the text of which is appended to the present report. The fact that over 30 ministers took part in this two-day Conference sends an important political signal that member states are strongly committed to our unique regional human rights control system.

7. In addition to a political Declaration, which recognises the "extraordinary contribution of the Court to the protection of human rights in Europe" and which rightly lays emphasis on "the subsidiary nature of the [Strasbourg] supervisory mechanism", Conference participants adopted a detailed seven-point Action Plan that encompasses topics ranging from the requirement to apply Convention standards at the national level, issues relating to the Court's 'filtering procedure' and repetitive applications, the need to deal appropriately with repetitive cases, effective and rapid execution of the Court judgments and the need to study the possibility of introducing a simplified procedure to amend the Convention.

8. As already indicated in my introductory remarks, it is still too early to comment on "the Interlaken process" as a whole (even though most, if not all, issues listed have been (re-)discussed and (re-)analysed for many years already). Instead, I will limit myself to a few general remarks.

9. The first comment concerns the format of such conferences. Without in any way wishing to belittle the importance of this initiative or to be disrespectful of the efforts undertaken by the Swiss authorities in organising the Interlaken Conference, is there not an element of truth in Professor Philip Leach's question "whether the set-piece conference model, with [...] speakers delivering papers on pre-determined topics, with

only minimum time for discussion amongst the other participants is the most productive way of debating reform"?[1] I ask myself this question in the light of our own work. Although Mrs Däubler-Gmelin's "Reflections on the Interlaken process" were made available to conference participants, I cannot recall any discussion concerning a number of issues raised in her paper (see, in particular, paragraphs 4 and 8; an extract of her text can be found in Appendix II to this report).[2] These observations may be worth bearing in mind, in particular by the forthcoming Turkish Chairmanship of the Committee of Ministers, which is to organise a follow-up conference on this subject in April 2011.

10. My second – more important – comment concerns member states' need to give top priority to the Council of Europe's budgetary predicament, in the light of the now entrenched real zero-growth rate. Here, do we parliamentarians not have an obligation to bring this matter to the attention of our respective countries' political leaders? The present situation is simply untenable, not to say suicidal. I refer, in particular, to the Assembly's Opinion 272 (2009) on Budgets of the Council of Europe for the financial year 2010,[3]the Secretary General's Interlaken contribution pinpointing (potential) difficulties in this respect,[4]as well as Mrs Däubler-Gmelin's observation: "considering that the Court is financed through the Council of Europe's budget, state contributions are totally inadequate, not to say pathetic (several states' contributions to the Council of Europe's budget do not even cover – or only barely – the salary of a single judge on the Court!)". Between 2003 and 2009 the Court's budget grew from 35.4 million to 57 million euros. In 2003 the Court accounted for 19% of the Organisation's ordinary budget, compared with 26.3% in 2009. If, as the Secretary General has indicated, money continues to be transferred from the Council of Europe's Programmes of Activity budget to the Court, there will soon be no money left for programmes of activity. We must find other solutions. And yet, despite the urgency and imperative necessity for member states to deal with this matter, this subject is not even mentioned in the Interlaken Declaration. There was a phrase in a draft version of the Interlaken text, dated 12 February 2010, under the rubric "Implementation", which merely proposed inviting the Committee of Ministers to "determine whether additional budgetary means need to be provided to the Court and to the Committee of Ministers in order to ensure that the [case-law] backlog can be reduced and that new cases can be decided within a reasonable time". This text, instead of being strengthened, did not find its way into the final version of the Interlaken Declaration.

11. With respect to the texts adopted at Interlaken, I wish to draw the Committee's – and the Assembly's – attention to the following matters:

– I find it inappropriate for the Action Plan to refer, in its paragraph 9.b, to the Court's role as being subsidiary in the "interpretation" of the ECHR. This is simply legally wrong: see Article 19 of the Convention, which states that the Court was established to "ensure" the observance of the engagements undertaken by the High Contracting Parties. I do not find satisfactory the (purported) justification to have kept this word in the text by assuming that it refers only to issues of admissibility. Indeed, I consider the tenor of paragraph 9 somewhat dirigiste with respect to an independent judicial body, even though the veiled criticism directed at the Court is somewhat camouflaged by reference to shared responsibility "between the States Parties and the Court".

– The reference, in paragraph 8.a, of the Action Plan specifying the need for all candidates put forward for election by the Assembly to be proficient "in at least one official language" does not reflect the position of the Assembly which, in Resolution 1646 (2009), paragraph 4.4, clearly stipulates "candidates should possess an active knowledge of one and a passive knowledge of the other official language of the Council of Europe". This text also makes reference to the model curriculum vitae which is appended to the Resolution and in which this requirement is clearly stipulated.[5] (Other important comments regarding this part of the Action Plan are also made below, in paragraph 26.)

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1. "Opinion on Reform of the European Court of Human Rights" in European Human Rights Law Review, 2009, pp. 725–735, at page 726.
2. Conference participants were provided with two excellent booklets entitled, respectively, "Background documents" and "Preparatory contributions" to the High Level Conference on the Future of the ECHR, Interlaken, Switzerland, 18-19 February 2010. A third booklet, containing the Interlaken Declaration and Action Plan, as well as all interventions made during the Conference, has also been issued. For access to all the conference documents and speeches see: www.coe.int/t/dc/files/events/2010_interlaken_conf/default_EN.asp
3. "[T]he Assembly cannot accept that the impact of this [economic and financial] crisis may serve as a pretext for the Committee of Ministers to weaken the Council of Europe by starving it of resources through the maintenance of a policy based solely on the principle of zero real growth of the Organisation's budgets" - paragraph 3 of Opinion 272 (2009), adopted by the Assembly on 29 May 2009 (based on Doc. 11911, report of the Committee on Economic Affairs and Development, Rapporteur: Mr P. Wille). See also document AS/Ec (2010) 13, "Some considerations concerning the 2011 budget", of 4 March 2010, Rapporteur: Mr Erol Aslan Cebeci.
4. See http://wcd.coe.int/ViewDoc.jsp?Ref=SG/Inf(2009)20, in particular paragraphs 11-12, 23 and 40.

12. Not being a habitual participant in such 'high level conferences', I found it a pity that no opportunity was provided for a genuine discussion or exchange of views on subjects of importance; the texts prepared ahead of time were simply adopted by consensus. This left me with a flavour of missed opportunities ... as I had come to the Conference with the intention of listening to a real discussion. The Committee of Ministers has already issued a plethora of declarations, recommendations and similar documents which are in effect proposals that member states address to themselves ... If the ministers in Interlaken were not able to address certain questions posed by the former Chairperson of the Legal Affairs Committee, Mrs Däubler-Gmelin – herself a former Minister of Justice of Germany – perhaps this could be done by the Committee of Ministers at its 120th Session in Strasbourg on 11 May 2010? Should not the Organisation's executive, as was so aptly put by Mrs Däubler-Gmelin, "have the courage to "bite the bullet" to confront the real human rights issues and problems facing member states and the Council of Europe". "We are all fully aware", she goes on, "that:

– the Court is not equipped to deal with large scale abuses of human rights (why has the Committee of Ministers not made vigorous use of its 1994 Declaration on Compliance with Commitments?; ditto the Assembly, in refocusing its monitoring priorities?) [and that]

– a number of the Court's main "clients" have made no serious effort to put into effect the 2000–2004 reform package (will ministers take upon themselves the responsibility to 'name and shame' states that have put into jeopardy the existence of the ECHR system?)" (paragraph 4; text in Appendix II).

We too, in the Assembly, may need to seriously re-assess the manner in which we deal with such problems, especially with respect to non- or late implementation of Court judgments by a growing number of States Parties to the Convention, which puts the viability of the whole mechanism into jeopardy.

13. The Organisation's principal bodies, the Committee of Ministers and the Parliamentary Assembly, may have to review their working methods and take a more forceful stand to help the "big sinners" (again, I refer to paragraphs 6 and 8 of Mrs Däubler-Gmelin's text). More targeted action plans and the development of the activities of the Human Rights Trust Fund may not be enough.[6] If indeed the Court is in a desperate situation, as the Secretary General and others have indicated, robust and effective use of the Organisation's monitoring instruments must be resorted to. This was proposed by Mrs Däubler-Gmelin, a solicitation that was clearly reiterated by the Assembly's President, Mr Çavuşoğlu, in his keynote speech in Interlaken.[7]

3. Implementation of the Interlaken Declaration and Action Plan

14. The Interlaken Declaration and Action Plan, adopted on 19 February 2010, has created a significant political momentum and has been given high priority within the Council of Europe. It would appear that, as indicated in paragraph 2 above, a comprehensive set of "follow-up" decisions can be expected at the 120th Ministerial Session on 11 May 2010.

15. At its 1080th meeting on 24 and 26 March 2010, the Ministers' Deputies agreed to set up an open-ended *ad hoc* working party (GT-SUIVI. Interlaken), to be chaired by the United Kingdom Ambassador, in order to steer the follow-up process to the Interlaken Declaration as a whole. When so doing, the Deputies also took into account a document prepared by the Secretary General (document CM (2010) 31) on the modalities of implementation of the Declaration and Action Plan.[8] It is this working party, which had its first meeting on 13 April, that is expected to propose an initial series of draft decisions for adoption at the ministerial session on 11 May.

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5. Resolution 1646 (2009) – Nomination of candidates and election of judges to the European Court of Human Rights. Text adopted by the Assembly on 27 January 2009. For further explanations, see Doc. 11767, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr C. Chope, especially paragraphs 11-12 and 24-25.

6. See 3rd Annual Report of the Committee of Ministers for 2009 on the Supervision of the Execution of Judgments of the European Court of Human Rights, http://wcd.coe.int/ViewDoc.jsp?id=1610685&Site, especially pp. 11-15.

7. See, in this connection "Overview of the monitoring mechanisms in the Council of Europe", Committee of Ministers document CM/Inf (2008) 37 revised, of 18 September 2008, and "Monitoring by the Committee of Ministers of the Council of Europe: a useful 'Human Rights' Mechanism?" in Vol.2 Baltic Yearbook of International Law (ed., I. Ziemele, 2002), pp. 83-103, at pp. 85-93.

8. Decisions taken on this subject can be found on the Committee of Ministers website: 1080th meeting, 24 and 26 March 2010, item 1.7: http://wcd.coe.int/ViewDoc.jsp?id=1605757&Site. Paragraph 8 of this set of decisions indicates that "the Parliamentary Assembly, the Court, the Commissioner for Human Rights and other Council of Europe bodies may be invited to participate in meetings of the working party, as appropriate.", whose mandate is to expire at the end of June 2012.

16. The Secretary General's document, a "road map" that is to be updated regularly, will permit the Committee of Ministers, through this newly created working party, to steer the process. Relevant activities of civil society organisations will be appended to future updates. Briefly stated, the present implementation schedule looks like this:

– the Committee of Ministers provided *ad hoc* terms of reference to the Steering Committee for Human Rights (CDDH) on 10 March 2010, with respect to measures not requiring amendment of the Convention, implementation of which began at the meetings of the CDDH Bureau on 23 March and the Committee of experts on the reform of the Court (DH-GDR) on 24-26 March, with a second meeting of the latter scheduled on 5-7 May 2010; the CDDH is to make a first report to the Committee of Ministers by the end of June 2010;

– The Committee of Ministers is to examine at its DH (Human Rights) meetings the implications of the Interlaken Action Plan for its supervision of the execution of the Court's judgments; its next DH meeting is scheduled for 1-3 June 2010;

– Immediate measures have already been taken by the Court, as announced by President Costa in March: as of 1 June 2010, date of entry into force of Protocol No. 14, ECHR, single judges will start operating for all States Parties, acting as a filtering mechanism; the Court will consider introducing rules on the pilot judgment procedure into its Rules of Court; a letter will be sent, in April 2010, to States Parties to the Convention asking those states that have not already seconded national judges or other high-level independent lawyers to the registry whether they would be willing to do so; the Court is also examining the experience of its new prioritisation policy;

– And last but not least, during the April 2010 part-session, the Assembly will hold a debate, with the participation of Mrs Eveline Widmer-Schlumpf, Head of the Federal Department of Justice and Police of Switzerland, on the subject of "Effective implementation of the European Convention on Human Rights: the Interlaken process", based upon this report, as adopted by the Legal Affairs Committee.

17. A detailed timetable is provided in the Action Plan, under the rubric "Implementation" (see Appendix I for details). Decisions with respect to measures not requiring amendment of the Convention are to be taken by June 2011 by the Committee of Ministers. States Parties are to report, by the end of 2011, on measures they have taken. Proposals, if any, necessitating reform of the ECHR are to be made by June 2012. Then, by the end of 2015, the Committee of Ministers will have to decide if further action is necessary, and – before the end of 2019 – whether a more profound overhaul of the Convention system is necessary.

4. The Parliamentary dimension

18. The Assembly, like the Committee of Ministers, is responsible for protecting the values of the Council of Europe and in ensuring compliance, by member states, of ECHR standards. It was the Assembly which, despite initial reluctance of the Committee of Ministers, was at the origin of the Convention as we know it today,[9] and it is the Assembly which provides 'democratic legitimacy' to the judges on the Court whom it elects (Article 22, ECHR). Hence, the somewhat puzzling feature of the documents adopted in Interlaken which make no mention of the Assembly and contain scarcely a word on the role of national parliaments. The Assembly must therefore reflect upon how best the 'parliamentary dimension' should be fed into the Interlaken process.

19. It is incumbent upon states' national authorities to guarantee the rights and freedoms enshrined in the Convention and its protocols: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention" (Article 1 of the Convention). Hence, as rightly stressed in the 6th preambular paragraph of the Interlaken Declaration and Part B of the Action Plan (see Appendix I), one must bear in mind the subsidiary nature of the supervisory mechanism established by the Convention and the fundamental role played in this respect by national authorities, including legislative bodies.[10] It is therefore somewhat surprising that paragraph 4.a of the Action Plan does not refer to the

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9. See A.H. Robertson, Human Rights in Europe, 1977, pp. 5-16, *passim.* For additional information on the Assembly's considerable influence in developing ECHR standards see, for example, B. Haller "The role of the Parliamentary Assembly of the Council of Europe in defending human rights" in a publication of the Association of Secretaries General of Parliaments, IPU, No. 181 (2001) pp. 200-224:
www.asgp.info/Resources/Data/Documents/POCZGNMYUBIHLFXVDZPOGURQTIRNZX.pdf.

10. No mention of the importance of the "parliamentary dimension" was made in the initial drafts of the Interlaken texts. The word "parliaments" was only added to the 6th preambular paragraph of the draft Interlaken Declaration after our December 2009 AS/Jur hearing on the "Interlaken process". See comments of Mrs Däubler-Gmelin, paragraph 3, in Appendix II to this report.

(potentially) key role played by parliaments. Indeed, it is the responsibility of all the state organs – the executive, the courts and the legislature – to prevent or remedy human rights violations at the national level. Governments and parliaments are principally responsible for prevention, whereas remedying violations is mainly, but not exclusively, the responsibility of the judiciary. In so far as the legislature is concerned, its role is to carefully examine whether draft legislation is compatible with the Convention and its protocols, as interpreted by the Court. Only when the domestic system fails should the Court step in. Subsequently, if and when there is an adverse finding by the Court, the emphasis shifts back to the domestic arena and the state is required to execute the judgment under the supervision of the Committee of Ministers. At this stage too, parliamentary involvement may be necessary, not only as the (rapid) adoption of legislative measures can be required to ensure full compliance with Court judgments, but also parliaments exercise oversight functions in relation to the actions or lack thereof of the executive.

20. Also, the dual role of national parliamentarians – as members of their respective national parliaments and of the Assembly, merits emphasis. In view, for instance, of the goal of substantially reducing the need for individuals to apply to the Court and the key role of national institutions, it is important to stress the need for legislative bodies to be rigorous in systematically verifying the compatibility of draft and existing legislation with ECHR standards, as well as ensuring the existence of effective domestic remedies. Also, although the execution of the Court's judgments is the principal responsibility of the Committee of Ministers under Article 46 of the Convention, the Committee of Ministers has itself acknowledged that the implementation of Court judgments "has greatly benefited in the past and continues to benefit from the Parliamentary Assembly's and national parliaments' greater involvement".[11] That said, the manner in which many national legislative bodies function in this respect is still not satisfactory, in spite of the efforts of the Assembly.[12]

21. Here, I fully endorse the views of Mr Christos Pourgourides, the Chairperson and rapporteur of the Legal Affairs Committee on the implementation of judgments of the Court, who – in all his country visits – systematically stresses the (urgent) need to reinforce parliamentary involvement in this respect.[13] He has even gone so far as to suggest that "the Assembly may – in the future – seriously need to consider suspending the voting rights of a national delegation where its national parliament does not seriously exercise parliamentary control over the executive in cases of non-implementation of Strasbourg Court judgments".[14] This thinking is in line with the strong position our Committee appears to be taking on this subject[15], as I had the opportunity to explain at a colloquy organised in Stockholm, in June 2008, entitled "Towards stronger implementation of the ECHR at national level".[16]

22. The point I am making is this: composed of national parliamentarians, the Parliamentary Assembly has the means to put pressure on States Parties to the Convention to help ensure – through appropriate national parliamentary oversight procedures and mechanisms – rapid and complete implementation of Court judgments.[17] But in order to do so, the Assembly will need to give this work priority, which in turn implies adequate logistical backup. This view is reinforced by the findings of a survey conducted back in 2008, which indicates that relatively few parliaments have instituted such overview mechanisms.[18] This work, both here in Strasbourg and in our national parliaments, should be integrated into the "Interlaken process".

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11. Reply to Assembly Recommendation 1764 (2006) on the implementation of the judgments of the European Court of Human Rights, Doc. 11230, of 2 April 2007, paragraph 1.

12. See, for instance, paragraph 22.1 of Resolution 1516 (2006) on the implementation of judgments of the European Court of Human Rights: "[*the Assembly*] *invites all national parliaments to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court's judgments on the basis of regular reports by the responsible ministries"* and the conclusions presented by Mr Lluís Maria de Puig, the former President of the Assembly, to the European Conference of Presidents of Parliament (Strasbourg, 22 and 23 May 2008).

13. "Implementation of judgments of the European Court of Human Rights. Progress report", with Addendum, documents AS/Jur (2009) 36 and AS/Jur (2009) 36 Addendum, of 31 August 2009 (declassified by the Committee on 11 September 2009), http://assembly.coe.int/CommitteeDocs/2009/ejdoc36_2009.pdf, *passim.*

14. Document AS/Jur (2009) 36, paragraph 23.

15. See document AS/Jur (2010) 07, "Parliamentary scrutiny of ECHR standards. Extract from the minutes of hearing held in Paris on 16 November 2009", http://assembly.coe.int/CommitteeDocs/2010/200100125_ajdoc07%202010.pdf.

16. See document AS/Jur/Inf (2010) 02, "Parliamentary scrutiny of the standards of the ECHR. Background documents" at pp. 1-6. http://assembly.coe.int/CommitteeDocs/2009/ajinfdoc02_2009.pdf. See also, in this connection, my paper on "The effectiveness of the ECHR at national level", document AS/Jur (2007) 35 rev 2, declassified by the AS/Jur on 26 June 2007: http://assembly.coe.int/CommitteeDocs/2008/20070726_effectivenessconvention.pdf.

17. See, in this connection, A. Drzemczewski "The Parliamentary Assembly's involvement in the supervision of the judgments of the Strasbourg Court", to be published in June 2010 in Vol. 28, No. 2, Netherlands Quarterly of Human Rights.

18. By the European Centre for Parliamentary Research and Documentation. For more details, see document AS/Jur (2008) 32 rev., "Stockholm Colloquy: Towards stronger implementation of the European Convention on Human Rights at national level", 9-10 June 2008, selected texts, pp. 8-51. (Available at:

23. The need for pooling our resources is essential. Exchanges of information between governments and parliaments, with the latter – when the need arises – closely monitoring developments, must be encouraged. The Committee of Ministers 3rd Annual Report on the Supervision of Judgments of the Court, issued on 14 April 2010, cites co-operation in the United Kingdom and the Netherlands as "*outstanding examples"* of effective parliamentary scrutiny of implementation of ECHR standards.[19] Hence the importance, in this connection, of Committee of Ministers' Recommendation (2008)2 to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.[20] Persistent long delays and/or failure fully to execute the Court's judgments by member states are not acceptable.

5. Need to maintain the authority and effectiveness of the Strasbourg Court

24. In this final section, I wish briefly to refer to three matters, two of which have been broached in the Interlaken Action Plan.

25. Paragraph 4.c of the Action Plan touches upon, what I believe, is a subject that merits specific attention, namely the need to ensure, in a clear fashion, the interpretative authority (*res interpretata)* of the Court's Grand Chamber judgments of principle within the legal orders of states other than the respondent state in a given case. Here, I refer, in particular, to what the Court's President, Jean-Paul Costa, has written: "[I]t is no longer acceptable that States fail to draw the consequences as early as possible of a judgment finding a violation by another State when the same problem exists in their own legal system".[21] "Subsidiarity" requires that the authority of the Court's case-law be reinforced in national law, as was also highlighted by experts in the hearing our Committee had on the "Interlaken process" in December 2009 (see Mrs Däubler-Gmelin's "Reflections" in Appendix II, paragraph 15), as well as by the Secretary General in his Interlaken contribution.[22] This merits perhaps being one of the key subjects of discussion at a conference "the former Yugoslav Republic of Macedonia" (the in-coming Chairmanship of the Committee of Ministers) is to organise on 4-5 November 2010, entitled "Strengthening subsidiarity – integrating the Strasbourg Court's case-law in national law and practice".

26. In paragraph 8 of the Interlaken Declaration the need to maintain the "quality of the Court" is highlighted. This can be read in conjunction with paragraph 8 of the Action Plan which also stresses the same point when calling upon States Parties to the Convention to improve, if necessary, the transparency and quality of the selection procedure at both national and European levels. This in turn must be read in the light of the Assembly's Resolution 1646 (2009) relating to the need for fair, transparent and rigorous national selection procedures,[23] as well as paragraph 5 of Mrs Däubler-Gmelin's "Reflections on the Interlaken process" (in Appendix II to this report). When national selection procedures are inadequate, the Assembly's hands are tied; the quality of candidates may be good, but it is not always outstanding. If the highest judicial authorities in States Parties are to recognise the Court's findings as authoritative, the Assembly must be in a position to elect judges of the highest possible calibre. I have therefore noticed with interest, in this connection, that the Committee of experts on the reform of the Court (see paragraph 16 above) has rightly placed emphasis on the need to improve national selection procedures.

27. My final proposal is of a purely technical nature. In preambular paragraph 4, the Interlaken Declaration welcomes the imminent entry into force of Protocol No.14 to the ECHR on 1 June 2010. Judges will henceforth be elected for a single term of nine years.[24] With this in mind, Rule 2 of the revised Rules of Court – which are also to enter into force on the same day – will specify that when a seat on the Court is vacant, the term of office of a judge, elected by the Assembly, is to begin as from the date of taking up office (swearing-

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http://assembly.coe.int/CommitteeDocs/2008/20080623_ajdoc32_2008_rev.pdf).

19. Committee of Ministers Annual Report 2009: https://wcd.coe.int/ViewDoc.jsp?id=1610685&Site, at p. 9 (based on information provided by the AS/Jur).

20. The fact that paragraph 9 of this Recommendation specifies that national parliaments are informed "*as appropriate*" of measures taken to execute Strasbourg Court judgments is perhaps not appropriate, to say the least.

21. Memorandum of 3 July 2009, at p. 6 www.echr.coe.int/NR/rdonlyres/80B918C6-6319-4D50-B37B-5F951C1C5B30/2792/03072009_Memo_Interlaken_anglais1.pdf See also, in this connection, *Opuz v Turkey*, Application No. 33401/02, judgment of 9 June 2009, paragraph 163.

22. See document SG/Inf (2009) 20, paragraph 17, footnote 1 above.

23. See, in particular, paragraph 2 of Resolution 1646 (2009) on Nomination of candidates and election of judges to the European Court of Human Rights.

24. See, for details, document AS/Jur (2010) 12, "Procedure for electing judges to the European Court of Human Rights", *passim* http://assembly.coe.int/CommitteeDocs/2010/20100312_ajdoc12.pdf. The Assembly has, as can be seen from this document, undertaken an enormous amount of work over the years to improve procedures for examining candidatures for election of judges to the Court, as well as by underlining the importance of appropriate national selection procedures to ensure and reinforce the quality, efficacy and authority of the Strasbourg Court. See also footnote 4, above.

in), but not later than three months after the date of his or her election; similar provisions are envisaged for a judge when he or she needs to be replaced.[25]This is a sensible tidying-up of a provision that needed amendment, in that it is not always possible for a newly elected judge to take office from the date of election, as is stipulated in the unrevised (old) version of the Rules of Court. Likewise, when the term of office of a judge expires or the judge declares the intention to resign, the successor cannot always take up office on the day of his or her election. And, as it is the Assembly which elects judges (Article 22 of the ECHR), I propose that the Assembly likewise specifies, in a formally adopted text, that the nine-year term of office of a judge elected by the Assembly to the Court shall commence from the date of taking up of his/her duties, and in any event no later than three months after his/her election. However, if the election takes place more than three months before the seat of the outgoing judge becomes vacant, the term of office shall commence the day the seat becomes vacant. If the election takes place less than three months before the seat of the outgoing judge becomes vacant, the elected judge shall take up his/her duties as soon as possible after the seat becomes vacant and the term of office shall commence as from then and in any event no later than three months after his/her election.

25. See recent posting of the text on the Court's portal: www.echr.coe.int/NR/rdonlyres/6AC1A02E-9A3C-4E06-94EF-E0BD377731DA/0/RulesOfCourt_June2010.pdf (This new provision was included in the Rules by the Court on 29 March 2010).

Appendix 1 – Conference on the Future of the European Court of Human Rights. Interlaken Declaration and Action Plan: 18–19 February 2010

Interlaken Declaration

The High Level Conference meeting at Interlaken on 18 and 19 February 2010 at the initiative of the Swiss Chairmanship of the Committee of Ministers of the Council of Europe ("the Conference"):

1. Expressing the strong commitment of the States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the European Court of Human Rights ("the Court");

2. Recognising the extraordinary contribution of the Court to the protection of human rights in Europe;

3. Recalling the interdependence between the supervisory mechanism of the Convention and the other activities of the Council of Europe in the field of human rights, the rule of law and democracy;

4. Welcoming the entry into force of Protocol No. 14 to the Convention on 1 June 2010;

5. Noting with satisfaction the entry into force of the Treaty of Lisbon, which provides for the accession of the European Union to the Convention;

6. Stressing the subsidiary nature of the supervisory mechanism established by the Convention and notably the fundamental role which national authorities, i.e. governments, courts and parliaments, must play in guaranteeing and protecting human rights at the national level;

7. Noting with deep concern that the number of applications brought before the Court and the deficit between applications introduced and applications disposed of continues to grow;

8. Considering that this situation causes damage to the effectiveness and credibility of the Convention and its supervisory mechanism and represents a threat to the quality and the consistency of the case-law and the authority of the Court;

9. Convinced that over and above the improvements already carried out or envisaged additional measures are indispensable and urgently required in order to:

i. achieve a balance between the number of judgments and decisions delivered by the Court and the number of incoming applications;

ii. enable the Court to reduce the backlog of cases and to adjudicate new cases within a reasonable time, particularly those concerning serious violations of human rights;

iii. ensure the full and rapid execution of judgments of the Court and the effectiveness of its supervision by the Committee of Ministers;

10. Considering that the present Declaration seeks to establish a roadmap for the reform process towards long-term effectiveness of the Convention system;

The Conference

(1) Reaffirms the commitment of the States Parties to the Convention to the right of individual petition;

(2) Reiterates the obligation of the States Parties to ensure that the rights and freedoms set forth in the Convention are fully secured at the national level and calls for a strengthening of the principle of subsidiarity;

(3) Stresses that this principle implies a shared responsibility between the States Parties and the Court;

(4) Stresses the importance of ensuring the clarity and consistency of the Court's case-law and calls, in particular, for a uniform and rigorous application of the criteria concerning admissibility and the Court's jurisdiction;

(5) Invites the Court to make maximum use of the procedural tools and the resources at its disposal;

(6) Stresses the need for effective measures to reduce the number of clearly inadmissible applications, the need for effective filtering of these applications and the need to find solutions for dealing with repetitive applications;

(7) Stresses that full, effective and rapid execution of the final judgments of the Court is indispensable;

(8) Reaffirms the need for maintaining the independence of the judges and preserving the impartiality and quality of the Court;

(9) Calls for enhancing the efficiency of the system to supervise the execution of the Court's judgments;

(10) Stresses the need to simplify the procedure for amending Convention provisions of an organisational nature;

(11) Adopts the following Action Plan as an instrument to provide political guidance for the process towards long-term effectiveness of the Convention system.

Action Plan

A. Right of individual petition

1. The Conference reaffirms the fundamental importance of the right of individual petition 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.

2. With regard to the high number of inadmissible applications, the Conference invites the Committee of Ministers to consider measures that would enable the Court to concentrate on its essential role of guarantor of human rights and to adjudicate well-founded cases with the necessary speed, in particular those alleging serious violations of human rights.

3. With regard to access to the Court, the Conference calls upon the Committee of Ministers to consider any additional measure which might contribute to a sound administration of justice and to examine in particular under what conditions new procedural rules or practices could be envisaged, without deterring well-founded applications.

B. Implementation of the Convention at the national level

4. The Conference recalls that it is first and foremost the responsibility of the States Parties to guarantee the application and implementation of the Convention and consequently calls upon the States Parties to commit themselves to:

a) continuing to increase, where appropriate in co-operation with national human rights institutions or other relevant bodies, the awareness of national authorities of the Convention standards and to ensure their application;

b) fully executing the Court's judgments, ensuring that the necessary measures are taken to prevent further similar violations;

c) taking into account the Court's developing case-law, also with a view to considering the conclusions to be drawn from a judgment finding a violation of the Convention by another State, where the same problem of principle exists within their own legal system;

d) ensuring, if necessary by introducing new legal remedies, whether they be of a specific nature or a general domestic remedy, that any person with an arguable claim that their rights and freedoms as set forth in the Convention have been violated has available to them an effective remedy before a national authority providing adequate redress where appropriate;

e) considering the possibility of seconding national judges and, where appropriate, other high-level independent lawyers, to the Registry of the Court;

f) ensuring review of the implementation of the recommendations adopted by the Committee of Ministers to help States Parties to fulfill their obligations.

5. The Conference stresses the need to enhance and improve the targeting and coordination of other existing mechanisms, activities and programmes of the Council of Europe, including recourse by the Secretary General to Article 52 of the Convention.

C. Filtering

6. The Conference:

a) calls upon States Parties and the Court to ensure that comprehensive and objective information is provided to potential applicants on the Convention and the Court's case-law, in particular on the application procedures and admissibility criteria. To this end, the role of the Council of Europe information offices could be examined by the Committee of Ministers;

b) stresses the interest for a thorough analysis of the Court's practice relating to applications declared inadmissible;

c) recommends, with regard to filtering mechanisms,

i. to the Court to put in place, in the short term, a mechanism within the existing bench likely to ensure effective filtering;

ii. to the Committee of Ministers to examine the setting up of a filtering mechanism within the Court going beyond the single judge procedure and the procedure provided for in i).

D. Repetitive applications

7. The Conference:

a) calls upon States Parties to:

i. facilitate, where appropriate, within the guarantees provided for by the Court and, as necessary, with the support of the Court, the adoption of friendly settlements and unilateral declarations;

ii. cooperate with the Committee of Ministers, after a final pilot judgment, in order to adopt and implement general measures capable of remedying effectively the structural problems at the origin of repetitive cases.

b) stresses the need for the Court to develop clear and predictable standards for the "pilot judgment" procedure as regards selection of applications, the procedure to be followed and the treatment of adjourned cases, and to evaluate the effects of applying such and similar procedures;

c) calls upon the Committee of Ministers to:

i. consider whether repetitive cases could be handled by judges responsible for filtering (see above Section C);

ii. bring about a cooperative approach including all relevant parts of the Council of Europe in order to present possible options to a State Party required to remedy a structural problem revealed by a judgment.

E. The Court

8. Stressing the importance of maintaining the independence of the judges and of preserving the impartiality and quality of the Court, the Conference calls upon States Parties and the Council of Europe to:

a) ensure, if necessary by improving the transparency and quality of the selection procedure at both national and European levels, full satisfaction of the Convention's criteria for office as a judge of the Court, including knowledge of public international law and of the national legal systems as well as proficiency in at least one official language. In addition, the Court's composition should comprise the necessary practical legal experience;

b) grant to the Court, in the interest of its efficient functioning, the necessary level of administrative autonomy within the Council of Europe.

9. The Conference, acknowledging the responsibility shared between the States Parties and the Court, invites the Court to:

a) avoid reconsidering questions of fact or national law that have been considered and decided by national authorities, in line with its case-law according to which it is not a fourth instance court;

b) apply uniformly and rigorously the criteria concerning admissibility and jurisdiction and take fully into account its subsidiary role in the interpretation and application of the Convention;

c) give full effect to the new admissibility criterion provided for in Protocol No. 14 and to consider other possibilities of applying the principle *de minimis non curat praetor*.

10. With a view to increasing its efficiency, the Conference invites the Court to continue improving its internal structure and working methods and making maximum use of the procedural tools and the resources at its disposal. In this context, it encourages the Court in particular to:

a) make use of the possibility to request the Committee of Ministers to reduce to five members the number of judges of the Chambers, as provided by Protocol No. 14;

b) pursue its policy of identifying priorities for dealing with cases and continue to identify in its judgments any structural problem capable of generating a significant number of repetitive applications.

F. Supervision of execution of judgments

11. The Conference stresses the urgent need for the Committee of Ministers to:

a) develop the means which will render its supervision of the execution of the Court's judgments more effective and transparent. In this regard, it invites the Committee of Ministers to strengthen this supervision by giving increased priority and visibility not only to cases requiring urgent individual measures, but also to cases disclosing major structural problems, attaching particular importance to the need to establish effective domestic remedies;

b) review its working methods and its rules to ensure that they are better adapted to present-day realities and more effective for dealing with the variety of questions that arise.

G. Simplified Procedure for Amending the Convention

12. The Conference calls upon the Committee of Ministers to examine the possibility of introducing by means of an amending Protocol a simplified procedure for any future amendment of certain provisions of the Convention relating to organisational issues. This simplified procedure may be introduced through, for example:

a) a Statute for the Court;

b) a new provision in the Convention similar to that found in Article 41(d) of the Statute of the Council of Europe.

Implementation

In order to implement the Action Plan, the Conference:

(1) calls upon the States Parties, the Committee of Ministers, the Court and the Secretary General to give full effect to the Action Plan;

(2) calls in particular upon the Committee of Ministers and the States Parties to consult with civil society on effective means to implement the Action Plan;

(3) calls upon the States Parties to inform the Committee of Ministers, before the end of 2011, of the measures taken to implement the relevant parts of this Declaration;

(4) invites the Committee of Ministers to follow-up and implement by June 2011, where appropriate in co-operation with the Court and giving the necessary terms of reference to the competent bodies, the measures set out in this Declaration that do not require amendment of the Convention;

(5) invites the Committee of Ministers to issue terms of reference to the competent bodies with a view to preparing, by June 2012, specific proposals for measures requiring amendment of the Convention; these terms of reference should include proposals for a filtering mechanism within the Court and the study of measures making it possible to simplify the amendment of the Convention;

(6) invites the Committee of Ministers to evaluate, during the years 2012 to 2015, to what extent the implementation of Protocol No. 14 and of the Interlaken Action Plan has improved the situation of the Court. On the basis of this evaluation, the Committee of Ministers should decide, before the end of 2015, on whether there is a need for further action. Before the end of 2019, the Committee of Ministers should decide on whether the measures adopted have proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary;

(7) asks the Swiss Chairmanship to transmit the present Declaration and the Proceedings of the Interlaken Conference to the Committee of Ministers;

(8) invites the future Chairmanships of the Committee of Ministers to follow-up on the implementation of the present Declaration.

Appendix 2 – Reflections on the Interlaken process

(Extract from the conclusions of the Chairperson of the Assembly's Committee on Legal Affairs and Human Rights of a hearing held in Paris on 16 December 2009[26])

(...)

I. The context: Interlaken Conference to be held on 18-19 February 2010

2. Why did I propose to the Committee a hearing on this subject? There were two reasons for this. It struck me as rather odd that the Assembly had not been involved in any of the substantive discussions or in meetings leading up to the conference. Also, it appeared to me that the title of the conference – "*The Future of the European Court of Human Rights"* – was too narrowly circumscribed, suggesting that problems facing the Court should be our primary concern. Our hearing dispelled this misunderstanding: the conference must also urgently address domestic (non-)implementation of Convention standards and determine how best to ensure prompt and full compliance with Strasbourg Court judgments – as our best hope to help stem the flood of applications submerging the Court.

3. When circulating the draft Interlaken Declaration, the Swiss authorities specified that the declaration should pursue three objectives: (i) reaffirm a commitment to the ECHR system (including the right of individual application), (ii) express support for the Strasbourg Court to act autonomously in its initiatives to increase its own efficiency, and (iii) put on track in-depth reform to guarantee the long-term efficiency of the system of individual complaint. This Declaration, together with an eight-point Action Plan, is presently the object of consultations with member states (draft text available on the Committee of Ministers' Chairmanship website www.interlakenconf.admin.ch). But how, and exactly upon whose authority, and in whose name, have these priorities been established and would they be implemented? I note, in this connection that – as yet – the potentially key role of national legislative organs and of the Assembly is not alluded to.

4. The Swiss authorities must be commended for their initiative. But do member states, at ministerial level, have the courage to "bite the bullet" to confront the real human rights issues and problems facing member states and the Council of Europe? We are all fully aware that:

– the Strasbourg Court is not equipped to deal with large scale abuses of human rights (why has the Committee of Ministers not made vigorous use of its 1994 Declaration on Compliance with Commitments?; *ditto* the Assembly, in refocusing its monitoring priorities?);

– a number of the Court's main "clients" have made no serious effort to put into effect the 2000-2004 reform package (will ministers take upon themselves the responsibility to 'name and shame' states that have put into jeopardy the existence of the ECHR system?), and

– considering that the Court is financed through the Council of Europe's budget, state contributions are totally inadequate, not to say pathetic (several states' contributions to the Council of Europe's budget do not even cover – or only barely – the salary of a single judge on the Court!).

II. The authority and effectiveness of the ECHR: need for a renewed impetus

5. The authority of the Strasbourg Court is contingent on the stature of judges and the quality and coherence of the Court's case-law, which certain states have put into question. The most eminent jurists in member states with relevant experience should be encouraged to leave flourishing national careers, preferably in their late 40s, 50s and early 60s, to serve in Strasbourg. When national selection procedures are inadequate, the Assembly's hands are tied; often candidates are good, but not outstanding. If the findings of the Strasbourg Court are to be recognised as authoritative by their peers at the domestic level, the Assembly must be in a position to elect top quality judges.

6. The sheer volume of applications needing attention in Strasbourg has led to unacceptable delays which prevent judges from concentrating on their principal judicial task in dealing with cases that merit priority consideration. In this sense, quality and effectiveness are jeopardised by workload. The Strasbourg Court's Registrar provided us with alarming statistics. By the end of 2009, the Court will have received almost 57,000 new applications, an increase of 14%. On the side of output, the Court will have rendered judgment in more than 2,000 cases, an increase of more than 20% compared to 2008. But the backlog has reached almost

26. "The future of the Strasbourg Court and enforcement of ECHR standards: reflections on the Interlaken process. Conclusions of the Chairperson, Mrs Herta Däubler-Gmelin, of the hearing held in Paris on 16 December 2009", ddocument AS/Jur (2010) 06, of 21 January 2010, declassified by the Committee on 26 January 2010.

120,000, with a deficit of 1,800 applications every month. When analysing the Court's problems, we were informed that a small number of states dominate the Strasbourg Court's backlog: Russia represents nearly 28%, Turkey 11%, Ukraine 8.6% and Romania 8.3%. These four states together represent roughly 57% of the backlog. If one takes the ten high case-count states, the backlog comes to 77% (adding Italy, Poland, Georgia, Moldova, Slovenia and Serbia). Indeed, in 2008, 86% of the Court's judgments (1,543 in total) concerned just 12 states.

7. Another factor to be taken into account is the very high number of repetitive applications before the Court, deriving from the same structural problems at the domestic level, some of which have remained unresolved for many years. Over half of the judgments concern repetitive applications. The registrar estimated that there are probably about 20,000 such cases in the Court's backlog. In 2008 70% of the Court's judgments concerned breaches of the Convention in repetitive or clone cases.

8. To these statistics can be added information about late (and non-)execution of Strasbourg Court judgments. The number of cases pending before the Committee of Ministers at the end of 2000 was 2,298, while the equivalent figure for 2009 was 8,614, of which 80% concern repetitive cases. This too, is unacceptable.

9. Simply put, the Convention system in Strasbourg is in danger of asphyxiation:

– it is impossible for the Court to render justice to all individuals (as recognised by the existence of committee and single-judge procedures, a 'fig-leaf' that maintains the legal fiction of a judicial determination of all applications);

– it is totally absurd for the Court and its staff to waste time and effort in dealing with repetitive applications (surely old democracies, like Italy, not to mention more recent 'persistent defaulters' such as Moldova, Poland, Romania, Russia and Ukraine, ought to be subjected to "aggravated", if not "punitive" or "exemplary", damages)

– failure of many states to provide appropriate effect to their Convention obligations, haphazard implementation of the 2000-2004 reform package and unacceptable delays in full execution of Strasbourg Court judgments (what prevents national parliaments and the Assembly from summoning ministers to account for this at "hearings" in full view of the media, and for the Committee of Ministers to bring "infringement proceedings" against recalcitrant states with respect to non-execution?)

10. The root causes of the Court's workload and increasing backlog have to be eliminated. All meritorious cases, even if mostly repetitive, must be dealt with by the Strasbourg Court. There are no easy solutions, and in this respect reference can be made to ideas mooted, in particular, in the CDDH Opinion and by the Secretary General in their contributions to the Interlaken Conference. But should we embark, already now, on yet another major (internal) reform of the Strasbourg Court? Is there an imperative necessity to create within the Court an additional judicial filtering body, as advocated by the German authorities and others? Why cannot this be done by a "*chambre des requêtes"* composed of (a rotating pool of) existing judges? Could not such work be undertaken by ad *litem* judges taken from within the Court's registry and/or states' judicial *corps?* Should we not wait to see how the "pilot judgment" procedure develops? And what about the introduction of the system of "astreintes" (a fine for delay in performance of a legal obligation) to be imposed on states that persistently fail to comply with Court judgments (see Assembly Opinion No.251 (2004), paragraph 5)? Could one not consider, for example, the utility of imposing a small court fee to discourage potentially hopeless applications being addressed to Strasbourg?

11. There exist no miracle solutions to the difficulties confronting the Strasbourg Court if we are to maintain its dual role of ensuring common European human rights standards and individual supervision and adjudication. Tinkering with such controversial issues as the compulsory use of the Court's official languages or compulsory representation by a lawyer might simply divert precious time and energy from other essential work.

III. The authority and effectiveness of the ECHR: need for prompt and full implementation of the Court's judgments

IV. The authority and effectiveness of the ECHR at the national level: stemming the flood of applications

12. These two subjects were dealt together at the hearing; both touch upon issues in relation to which we parliamentarians – in our dual capacity as national legislators and members of the Assembly – have a crucial role to play. They also concern the "principle of subsidiarity", in that states have primary responsibility to prevent human rights violations and to remedy them when they occur.

13. National parliaments can and should ensure the compatibility of draft laws, existing legislation and administrative practice with Convention standards, and in particular possess "specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court's judgments on the basis of regular reports by the responsible ministries" (Assembly Resolution 1516 (2006), paragraph 22.1). For present purposes suffice to recall work we have been undertaking on this subject since 2000, the hearing we had in November 2009 on "parliamentary scrutiny of ECHR standards" (highlighting the effectiveness of parliamentary procedures in the United Kingdom and in the Netherlands), and the fact that too few parliaments have, to date, set up appropriate oversight mechanisms to ensure the rapid and effective implementation of Strasbourg Court judgments.

14. The Strasbourg supervisory mechanism is "subsidiary" in nature. States are responsible for the effective implementation of the Convention and it is the shared duty of all state organs (the executive, the courts and the legislature) to prevent or remedy human rights violations at the national level. This is principally, but not exclusively, the responsibility of the judiciary. Hence the logic of putting into place an effective human rights complaints mechanism at the national level, which would diminish the risk of the Strasbourg Court acting as a fourth instance appellate jurisdiction. Witness the small amount of complaints, comparatively speaking, that reach the Strasbourg Court from Spain and Germany. Appropriate domestic remedies, intensive training of lawyers, prosecutors and judges, the creation of a human rights culture and the impregnation of the Strasbourg *acquis* within national state structures – especially with respect to the "big sinners" (see paragraphs 6 to 8 above) – would help stem the flood of applications to the Court. Thus, well-functioning national human rights protection mechanisms might make superfluous the idea of creating a separate filtering body within the Strasbourg Court and shift back primary responsibility to national legal systems, where it belongs.

15. One subject of particular significance, discussed at the hearing, was the need to enhance the authority and direct application of the Strasbourg Court's findings in domestic law. Rather than refer to the *erga omnes* effect of Grand Chamber judgments of principle, it is probably more accurate to refer to its interpretative authority (*res interpretata)* within the legal orders of states other than the respondent state in a given case. Here, I have in mind the United Kingdom's 1998 Human Rights Act, Section 2 § 1 of which specifies that national courts "*must take into account"* Strasbourg Court judgments, and Article 17 of Ukrainian Law No.3477–IV of 2006, which reads: "*Courts shall apply the Convention [ECHR] and the case-law of the [Strasbourg] Court as a source of law*". This subject merits special attention in Interlaken.

16. The Council of Europe and its member states must do their utmost to solve a number of – often very serious – human rights problems in a handful of recalcitrant states. Rather than concentrate time, energy and money on reform (primarily) within the Court, is it not better to await, as proposed by the Group of Wise Persons in 2006, the effects of Protocol No.14 (which is to improve the Court's efficiency by 25%), and place greater emphasis on the implementation of the 2000-2004 reform package? I believe that I reflect the majority view of the Committee when citing the CDDH position on this subject:

> *"In order to ensure the long-term effectiveness of the Convention system,* ***the principle of subsidiarity must be fully operational.*** *This should be the central aim of the Interlaken Conference" (CDDH Opinion, § 9, my underlining).*

(...)

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Decision of the Bureau, Reference No. 3657 of 12 March 2010

Draft resolution adopted unanimously by the Committee on 26 April 2010

Members of the Committee: Mr Christos **Pourgourides** (Chairperson), Mr Christopher Chope, Mr Christoph **Strässer**, Mr Serhiy **Holovaty** (Vice-Chairpersons), Mr Florin Serghei Anghel, Ms Marieluise **Beck**, Ms Marie-Louise **Bemelmans-Videc**, Ms Ingrida **Circene**, Ms Ann Clwyd, Mr Agustín **Conde Bajén**, Mr Telmo Correia, Mr Joe Costello (alternate: Mr Terry **Leyden**), Mr Arcadio **Díaz Tejera**, Ms Lydie Err, Mr Renato **Farina**, Mr Valeriy **Fedorov**, Mr Joseph **Fenech Adami**, Ms Mirjana Ferić-Vac (alternate: Mr Milijenko **Dorić**), Mr György **Frunda**, Mr Jean-Charles **Gardetto**, Mr József Gedei, Ms Svetlana **Goryacheva**, Mr Neven Gosović, Ms Carina Hägg, Mr Holger **Haibach**, Ms Gultakin **Hajibayli**, Mr Johannes **Hübner**, Mr Michel Hunault, Mr Rafael **Huseynov**, Mr Shpetim Idrizi, Mr Željko **Ivanji**, Ms Kateřina Jacques, Mr Mogens Jensen (alternate: Mr Per **Dalgaard**), Mr András Kelemen, Ms Kateřina Konečná, Mr Franz Eduard **Kühnel**, Ms Darja Lavtižar-Bebler, Mr Younal Loutfi, Mr Pietro **Marcenaro**, Ms Milica Marković, Mr Dick Marty (alternate: Mr Andreas **Gross**), Ms Ermira Mehmeti Devaja, Mr Akaki **Minashvili**, Mr Philippe Monfils, Mr Felix Müri (alternate: Ms Liliane **Maury Pasquier**), Mr Philippe **Nachbar**, Mr Vitalie Nagacevschi, Mr Adrian Năstase,

Ms Anna Ntalara (alternate: Ms Elsa **Papadimitriou**), Ms Steinunn Valdís Óskarsdóttir, Mr Yüksel Özden, Mr Valery **Parfenov**, Mr Peter Pelegrini (alternate: Mr József **Berényi**), Ms Marietta **de Pourbaix-Lundin**, Mr Valeriy Pysarenko, Mr Janusz Rachoń, Ms Mailis Reps (alternate: Mr Aleksei **Lotman**), Ms Marie-Line Reynaud (alternate: Mr René **Rouquet**), Mr François Rochebloine, Mr Paul Rowen, Mr Armen Rustamyan, Mr Volodymyr Rybak (alternate: Mr Ivan **Popescu**), Mr Kimmo **Sasi**, Ms Marina **Schuster**, Mr Yanaki **Stoilov**, Mr Fiorenzo Stolfi, Lord John **Tomlinson**, Mr Tuğrul Türkeş, Ms Özlem Türköne, Mr Øyvind Vaksdal, Mr Giuseppe Valentino (alternate: Mr Giacomo **Santini**), Mr Hugo Vandenberghe, Mr Egidijus **Vareikis**, Mr Miltiadis Varvitsiotis, Mr Luigi Vitali, Mr Klaas **De Vries**, Ms Nataša **Vučković**, Mr Dimitry **Vyatkin**, Mr Marek Wikiński, Ms Renate **Wohlwend**, Mr Jordi **Xuclà i Costa**

N.B.: The names of the members who took part in the meeting are printed in bold

Secretariat of the committee: Mr Drzemczewski, Mr Schirmer, Ms Szklanna, Ms Heurtin