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Copenhagen Declaration, appreciation and follow-up

Reply to Recommendation[1]: Recommendation 2129 (2018)
Committee of Ministers

1. The Committee of Ministers welcomes Parliamentary Assembly Recommendation 2129 (2018), "Copenhagen Declaration, appreciation and follow-up", which it has transmitted to the Steering Committee for Human Rights (CDDH).

2. Since the adoption of Recommendation 2129 (2018), the Copenhagen Declaration has been endorsed by the Committee of Ministers, at its 128th Session held at Elsinore (Denmark) on 18 May 2018. On that occasion, the Committee of Ministers invited all stakeholders to give full effect to the parts of the Declaration that concern them directly, including the Parliamentary Assembly, and decided to continue to give priority to ensuring the long-term effectiveness of the Convention system. It requested a report on this matter for the next Ministerial Session in Helsinki in May 2019.

3. The Committee of Ministers notes and welcomes the Assembly's positive commentary on core aspects of the Declaration, in particular the clear reiteration by States of their commitment to the Convention system, and their strong attachment to the right of individual application to the European Court of Human Rights. In restating these fundamental points, the Copenhagen Declaration displays a high degree of consistency with the previous high-level declarations that launched and directed this important process of reform of the Convention system. Furthermore, it is clear that the analyses of the Committee and the Assembly as regards the principal challenges facing the Convention system today largely coincide.

4. As for the Assembly's concerns, set out in paragraph 6 of its Recommendation, the Committee of Ministers would make the following remarks. To the Assembly's concern that the Declaration proposes few new solutions (paragraph 6.1), the Committee underlines the deliberate continuity of the text with the Declarations adopted at previous high-level conferences, in particular the Brussels Declaration, and with the extensive analysis of the CDDH in its 2015 report on the longer-term future of the Convention system (both texts recalled at paragraph 16 of the Copenhagen Declaration). In relation to the execution of judgments the text explicitly endorses the comprehensive set of recommendations that were included in the Action Plan adopted at the Brussels Conference. The new elements that the Copenhagen Declaration has added to the reform process should not be understated, however. These correspond to the current and continuing challenges for the Convention system, the aim being to adapt and equip it so as to ensure the effective and durable protection of human rights in Europe.

5. As for the concern expressed in relation to dialogue between the national and European levels (paragraph 6.2), it ought to be clear from the relevant passage of the Declaration (see in particular paragraph 33) that this dialogue is conceived of as being integral to shared responsibility, a key notion guiding the reform process that has as its aim an improved protection of human rights. The multifaceted nature of dialogue as currently practiced in the context of the Convention system is reflected and affirmed at paragraph 37 of the Declaration. The ideas set out in the four following paragraphs of the Declaration seek to develop new forms of interaction with the Court. It is relevant to recall that in its comments on the first draft of the Declaration, the Court was receptive to the ideas contained in paragraphs 38 and 39 of the text, and also expressed support for paragraph 40. As for the remaining paragraph in this part of the Declaration, it is clear from its wording that

1. Adopted at the 1323rd meeting of the Ministers' Deputies (on 12 September 2018).

the discussions at the envisaged informal meeting, bringing together State representatives and other stakeholders, will be conducted in a way that respects the independence of the Court and the binding character of its judgments.

6. The third concern (paragraph 6.3) relates to the manner in which the Declaration reflects the role and contribution of stakeholders in the Convention system such as the Assembly itself, national parliaments, the Human Rights Commissioner of the Council of Europe, and civil society. Here it may be repeated that the Declaration expressly builds on the existing reform documents, especially the Brussels Declaration, which gives ample recognition and encouragement to the stakeholders referred to above in the implementation of the Convention and in executing the Court's judgments. In addition, the key role of national parliaments in ensuring that domestic legislation and policies are compatible with the Convention, as repeatedly advocated by the Assembly, is expressly affirmed in the Copenhagen Declaration (at paragraph 16).

7. As for the points addressed to it in paragraph 7 of the Recommendation, the Committee of Ministers assures the Assembly of its determination to bring improvement regarding the principal challenge that faces the Convention system regarding national implementation. In its role under Article 46 of the Convention, it will confront failures to execute the Court's judgments in an open and determined manner. In these and other respects, the ideas and suggestions brought forward by the Assembly in the various texts referred to paragraph 7.1 will be borne in mind.

8. The Assembly's call in paragraph 7.2 to respect the Court's independence is already met by the very clear language used in the Declaration, as stated above. As has also been made clear, the proposed interaction with the Court as regards serious issues of general importance and important questions of principle is envisaged essentially within the present procedural framework, the modalities of which will ultimately be for the Court to decide in the exercise of its rule-making power under Article 26 of the Convention. It is relevant to add here that as part of the follow-up to the Declaration the Committee of Ministers has instructed the CDDH to continue to work on the questions of the immunity of judges and of their professional situation after they have completed their term of office, these issues having been raised in the past by the Court as being of concern from the perspective of judicial independence.

9. In terms of engaging with all stakeholders in the Convention system (paragraph 7.3), the passage of the Declaration concerning the process for the selection and election of judges should be mentioned, which urges a full and open spirit of co-operation between the Assembly and the Committee of Ministers in reviewing the process in its entirety. Given the obvious importance of electing to the Court judges of the highest calibre, this being fundamental to its authority, the Committee anticipates entering into this discussion with the Assembly in the near future. More generally, the Committee looks forward to having the benefit of future contributions from the Assembly, including in connection with the evaluation to be conducted in 2019 of the impact of all of the various reform measures adopted since the Interlaken conference.

10. Finally, the Committee would observe that the reform process has not been restricted to intergovernmental circles, but has been broader and more inclusive. This is best exemplified in the open call for contributions organised by the CDDH as part of its examination of the longer-term future of the Convention system. As a result, the reform discussions have been enriched by the participation and input of many other actors, including national human rights institutions, civil society organisations, representative bodies of the legal profession, members of the academic community, as well as interested individuals. It is in this spirit that the Committee of Ministers intends to proceed with the subsequent stages of the reform.