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Guaranteeing the authority and effectiveness of the European Convention on Human Rights

Reply to Recommendation¹: Recommendation 1991 (2012)
Committee of Ministers

1. The Committee of Ministers has examined with interest Parliamentary Assembly Recommendation 1991 (2012) on “Guaranteeing the authority and effectiveness of the European Convention on Human Rights”, which it has forwarded to the Steering Committee on Human Rights (CDDH) for information and any comments.

2. As stated in the Brighton Declaration, the Committee of Ministers considers that members of national parliaments and the Parliamentary Assembly have an important role to play in the implementation of the European Convention on Human Rights. In particular, it would draw the Assembly’s attention to paragraph 9 of the Declaration in which the States Parties express their commitment to “implementing practical measures to ensure that policies and legislation comply fully with the Convention, including by offering to national parliaments information on the compatibility with the Convention of draft primary legislation proposed by the government”. Moreover, paragraph 29 of the Brighton Declaration encourages States Parties to “facilitate the important role of national parliaments in scrutinising the effectiveness of implementation measures taken [to ensure the execution of the Court’s judgments]”.

3. At its 122nd Session held on 23 May 2012, the Committee of Ministers endorsed the Brighton Declaration and took a number of follow-up decisions, *inter alia*, giving a clear mandate to the CDDH to draw up the relevant texts within a fixed deadline. The Parliamentary Assembly will be invited, in due course, to give its opinion on the draft amendments to the European Convention on Human Rights which will be drawn up by the CDDH.

4. With regard to the question raised in paragraph 1.2 of the Assembly’s recommendation, the Committee of Ministers recalls that the Parliamentary Assembly attends the meetings of the CDDH and its subordinate bodies where reform of the Court and the Convention system is being examined. In so doing, the Assembly is involved in the implementation of the “Interlaken Process” and has received the national reports submitted in this context. In addition, the Committee of Ministers keeps the Parliamentary Assembly regularly informed of progress with the reform, in particular during the meetings of the Joint Committee and in the statements given by the Chairman of the Committee of Ministers to the Assembly.

5. The Committee of Ministers takes note of the Parliamentary Assembly’s wish for it to address a recommendation to member States calling on them to reinforce, by legislative, judicial or other means, the interpretative authority (*res interpretata*) of the judgments of the Court. Without questioning the Court’s important role in interpreting the Convention, the Committee underlines in this context the fundamental principle of subsidiarity and points out that the States Parties to the Convention, most recently through the Brighton Declaration, have expressed their determination to ensure the effective implementation of the Convention at national level.² Moreover, the Interlaken Action Plan “recalls that it is first and foremost the responsibility of the States Parties to guarantee the application and implementation of the Convention and

1. 2012 - Fourth part-session

2. CM(2012)85 – Point 9.c.



consequently calls upon the States Parties to commit themselves to 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 Party, where the same problem of principle exists within their own legal system" (paragraph B.4.c). The Brighton Declaration contains a number of provisions setting out the measures which would enable member States to apply in practice the principle of the interpretative authority of the Court's judgments (paragraphs 9.c.ii, iv, v and 9.d.i).

6. Lastly, the Committee of Ministers notes the Parliamentary Assembly's concern about the financial situation facing the Council of Europe. The current budgetary situation in member States does not make it possible to increase the budget of the Organisation. Nonetheless, in the context of the follow-up to the Brighton Conference, the Committee of Ministers has invited the Secretary General to create a special account to recruit lawyers to deal with the Court's backlog of priority cases. On 20 June 2012, the Secretary General informed the Committee of Ministers that this account had been opened and invited member States to make voluntary contributions. The Brighton Declaration also refers to the fundamental importance of a high-quality Registry with lawyers chosen for their legal capability and their knowledge of the law and practice of States Parties (paragraph 22). The Committee of Ministers will continue to pay close attention to the situation in the Council of Europe's Programme and Budget for future years, with due regard to budgetary caution, to ensure the effective implementation of its human rights mandate.