



## Copenhagen Declaration

The High Level Conference meeting in Copenhagen on 12 and 13 April 2018 at the initiative of the Danish Chairmanship of the Committee of Ministers of the Council of Europe ("the Conference") declares as follows:

1. The States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") reaffirm their deep and abiding commitment to the Convention, and to the fulfilment of their obligation under the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention. They also reaffirm their strong attachment to the right of individual application to the European Court of Human Rights ("the Court") as a cornerstone of the system for protecting the rights and freedoms set forth in the Convention.
2. The Convention system has made an extraordinary contribution to the protection and promotion of human rights and the rule of law in Europe since its establishment and today it plays a central role in maintaining democratic security and improving good governance across the Continent.
3. The reform process, initiated in Interlaken in 2010 and continued through further High Level Conferences in Izmir, Brighton and Brussels, has provided an important opportunity to set the future direction of the Convention system and ensure its viability. The States Parties have underlined the need to secure an effective, focused and balanced Convention system, where they effectively implement the Convention at national level, and where the Court can focus its efforts on identifying serious or widespread violations, systemic and structural problems, and important questions of interpretation and application of the Convention.
4. The reform process has been a positive exercise that has led to significant developments in the Convention system. Important results have been achieved, in particular by addressing the need for more effective national implementation, improving the efficiency of the Court and strengthening subsidiarity. Nonetheless, the Convention system still faces challenges. The States Parties remain committed to reviewing the effectiveness of the Convention system and taking all necessary steps to ensure its effective functioning, including by ensuring adequate funding.
5. It has been agreed that, before the end of 2019, the Committee of Ministers should decide whether the measures adopted so far are sufficient to assure the sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary. Approaching this deadline, it is necessary to take stock of the reform process with the goal of addressing current and future challenges.

### **Shared responsibility – ensuring a proper balance and enhanced protection**

6. Throughout the reform process, the term shared responsibility has been used to describe the link between the role of the Court and the States Parties. This is vital to the proper functioning of the Convention system and, as the ultimate goal, the more effective protection of human rights in Europe.
7. In the Brighton Declaration, it was decided to add a recital to the Preamble of the Convention affirming that the States Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court. In the Brussels Declaration, the importance of effective national implementation and execution of judgments was given further emphasis.



8. Focusing on the importance of Convention standards being effectively protected at national level reflects the development of the Convention system. The Convention today is incorporated, and to a large extent, embedded into the domestic legal order of the States Parties, and the Court has provided a body of case law interpreting most Convention rights. This enables the States Parties to play their Convention role of ensuring the protection of human rights to the full.

The Conference therefore:

9. Recalls the concept of shared responsibility, which aims at achieving a balance between the national and European levels of the Convention system, and an improved protection of rights, with better prevention and effective remedies available at national level.
10. Reiterates that strengthening the principle of subsidiarity is not intended to limit or weaken human rights protection, but to underline the responsibility of national authorities to guarantee the rights and freedoms set out in the Convention. Notes, in this regard, that the most effective means of dealing with human rights violations is at the national level, and that encouraging rights-holders and decision-makers at national level to take the lead in upholding Convention standards will increase ownership of and support for human rights.
11. Strongly encourages, without any further delay, the ratification of Protocol No. 15 to the Convention by those States which have not done so.

#### **Effective national implementation – the responsibility of States**

12. Ineffective national implementation of the Convention, in particular in relation to serious systemic and structural human rights problems, remains the principal challenge confronting the Convention system. The overall human rights situation in Europe depends on States' actions and the respect they show for Convention requirements.
13. A central element of the principle of subsidiarity, under which national authorities are the first guarantors of the Convention, is the right to an effective remedy under Article 13 of the Convention.
14. Effective national implementation requires the engagement of and interaction between a wide range of actors to ensure that legislation, and other measures and their application in practice comply fully with the Convention. These include, in particular, members of government, public officials, parliamentarians, judges and prosecutors, as well as national human rights institutions, civil society, universities, training institutions and representatives of the legal professions.

The Conference therefore:

15. Affirms the strong commitment of the States Parties to fulfil their responsibility to implement and enforce the Convention at national level.
16. Calls upon the States Parties to continue strengthening the implementation of the Convention at the national level in accordance with previous declarations, especially the Brussels Declaration on "Implementation of the European Convention on Human Rights, our shared responsibility" and the report of the Committee of Ministers' Steering Committee for Human Rights on the longer-term future of the Convention system; in particular by:
  - a) creating and improving effective domestic remedies, whether of a specific or general nature, for alleged violations of the rights and freedoms under the Convention, especially in situations of serious systemic or structural problems;
  - b) ensuring, with appropriate involvement of national parliaments, that policies and legislation comply fully with the Convention, including by checking, in a systematic manner and at an early stage of the process, the compatibility of draft legislation and administrative practice in the light of the Court's jurisprudence;
  - c) giving high priority to professional training, notably of judges, prosecutors and other public officials, and to awareness-raising activities concerning the Convention and the Court's case



law, in order to develop the knowledge and expertise of national authorities and courts with regard to the application of the Convention at the national level; and;

d) promoting translation of the Court's case law and legal materials into relevant languages, which contributes to a broader understanding of Convention principles and standards.

17. Notes the positive effects of the pilot judgment procedure as a tool for improving national implementation of the Convention by tackling systemic or structural human rights problems.
18. Reiterates the significant role that national human rights structures and stakeholders play in the implementation of the Convention, and calls upon the States Parties, if they have not already done so, to consider the establishment of an independent national human rights institution in accordance with the Paris Principles.

### **Execution of judgments – a key obligation**

19. The States Parties have undertaken to abide by the final judgments of the Court in any case to which they are a party. Through its supervision, the Committee of Ministers ensures that proper effect is given to the judgments of the Court, including by the implementation of general measures to resolve wider systemic issues.
20. A strong political commitment by the States Parties to execute judgments is of vital importance. The failure to execute judgments in a timely manner can negatively affect the applicant(s), create additional workload for the Court and the Committee of Ministers, and undermine the authority and credibility of the Convention system. Such failures must be confronted in an open and determined manner.

The Conference therefore:

21. Reiterates the States Parties' strong commitment to the full, effective and prompt execution of judgments.
22. Reaffirms the Brussels Declaration as an important instrument dealing with the issue of execution of judgments and endorses the recommendations contained therein.
23. Calls on the States Parties to take further measures when necessary to strengthen the capacity for effective and rapid execution of judgments at the national level, including through the use of inter-State co-operation.
24. Strongly encourages the Committee of Ministers to continue to use all the tools at its disposal when performing the important task of supervising the execution of judgments, including the procedures under Article 46 (3) and (4) of the Convention keeping in mind that it was foreseen that they would be used sparingly and in exceptional circumstances respectively.
25. Encourages the Committee of Ministers to consider the need to further strengthen the capacity for offering rapid and flexible technical assistance to States Parties facing the challenge of implementing Court judgments, in particular pilot judgments.

### **European supervision – the role of the Court**

26. The Court provides a safeguard for violations that have not been remedied at national level and authoritatively interprets the Convention in accordance with relevant norms and principles of public international law, and, in particular, in the light of the Vienna Convention on the Law of Treaties, giving appropriate consideration to present-day conditions.
27. The quality and in particular the clarity and consistency of the Court's judgments are important for the authority and effectiveness of the Convention system. They provide a framework for national authorities to effectively apply and enforce Convention standards at domestic level.



28. The principle of subsidiarity, which continues to develop and evolve in the Court's jurisprudence, guides the way in which the Court conducts its review.
- a) The Court, acting as a safeguard for individuals whose rights and freedoms are not secured at the national level, may deal with a case only after all domestic remedies have been exhausted. It does not act as a court of fourth instance.
  - b) The jurisprudence of the Court makes clear that States Parties enjoy a margin of appreciation in how they apply and implement the Convention, depending on the circumstances of the case and the rights and freedoms engaged. This reflects that the Convention system is subsidiary to the safeguarding of human rights at national level and that national authorities are in principle better placed than an international court to evaluate local needs and conditions.
  - c) The Court's jurisprudence on the margin of appreciation recognises that in applying certain Convention provisions, such as Articles 8-11, there may be a range of different but legitimate solutions which could each be compatible with the Convention depending on the context. This may be relevant when assessing the proportionality of measures restricting the exercise of rights or freedoms under the Convention. Where a balancing exercise has been undertaken at the national level in conformity with the criteria laid down in the Court's jurisprudence, the Court has generally indicated that it will not substitute its own assessment for that of the domestic courts, unless there are strong reasons for doing so.
  - d) The margin of appreciation goes hand in hand with supervision under the Convention system, and the decision as to whether there has been a violation of the Convention ultimately rests with the Court.

The Conference therefore:

29. Welcomes efforts taken by the Court to enhance the clarity and consistency of its judgments.
30. Appreciates the Court's efforts to ensure that the interpretation of the Convention proceeds in a careful and balanced manner.
31. Welcomes the further development of the principle of subsidiarity and the doctrine of the margin of appreciation by the Court in its jurisprudence.
32. Welcomes the Court's continued strict and consistent application of the criteria concerning admissibility and jurisdiction, including by requiring applicants to be more diligent in raising their Convention complaints domestically, and making full use of the opportunity to declare applications inadmissible where applicants have not suffered a significant disadvantage.

#### **Interaction between the national and European level – the need for dialogue**

33. For a system of shared responsibility to be effective, there must be good interaction between the national and European level. This implies, in keeping with the independence of the Court and the binding nature of its judgments, a constructive and continuous dialogue between the States Parties and the Court on their respective roles in the implementation and development of the Convention system, including the Court's development of the rights and obligations set out in the Convention. Civil society should be involved in this dialogue. Such interaction may anchor the development of human rights more solidly in European democracies.
34. An important way for the States Parties to engage in a dialogue with the Court is through third-party interventions. Encouraging the States Parties, as well as other stakeholders, to participate in relevant proceedings before the Court, stating their views and positions, can provide a means for strengthening the authority and effectiveness of the Convention system.
35. By determining serious questions affecting the interpretation of the Convention and serious issues of general importance, the Grand Chamber plays a central role in ensuring transparency and facilitating dialogue on the development of the case law.



The Conference therefore:

36. Underlines the need for dialogue, at both judicial and political levels, as a means of ensuring a stronger interaction between the national and European levels of the system.
37. Welcomes:
  - a) the future coming into effect of Protocol No. 16 to the Convention;
  - b) the Court's creation of the Superior Courts Network to ensure the exchange of information on Convention case law and encourages its further development;
  - c) an ongoing constructive dialogue between the Government Agents and the Registry of the Court ensuring proper consultations on new procedures and working methods; and
  - d) the use of thematic discussions in the Committee of Ministers on major issues relating to the execution of judgments.
38. Invites the Court to adapt its procedures to make it possible for other States Parties to indicate their support for the referral of a Chamber case to the Grand Chamber when relevant. Expressing such support may be useful to draw the attention of the Court to the existence of a serious issue of general importance within the meaning of Article 43 (2) of the Convention.
39. Encourages the Court to support increased third-party interventions, in particular in cases before the Grand Chamber, by:
  - a) appropriately giving notice in a timely manner of upcoming cases that could raise questions of principle; and
  - b) ensuring that questions to the parties are made available at an early stage and formulated in a manner that sets out the issues of the case in a clear and focused way.
40. Encourages the States Parties to increase coordination and co-operation on third-party interventions, including by building the necessary capacity to do so and by communicating more systematically through the Government Agents Network on cases of potential interest for other States Parties.
41. Appreciates the Danish Chairmanship's invitation to organise and host, before the end of 2018, an informal meeting of the States Parties and other stakeholders, as a follow up to the 2017 High-Level Expert Conference in Kokkedal, where general developments in the jurisprudence of the Court can be discussed, with respect for the independence of the Court and the binding character of its judgments.

#### **The caseload challenge – the need for further action**

42. Improving the Convention system's ability to deal with the increasing number of applications has been a principal aim of the current reform process from the very beginning.
43. When the Interlaken process was initiated, the number of applications pending before the Court amounted to more than 140,000. Since then, the Court has managed to reduce this number considerably despite a continuous high number of new applications. This development testifies to the high ability of the Court to reform and streamline its working methods.
44. Despite notable results, the Court's caseload still gives reason for serious concern. A core challenge lies in bringing down the large backlog of Chamber cases. Having regard to the Court's current annual output in respect of such cases, this may take a number of years.
45. The challenges posed to the Convention system by situations of conflict and crisis in Europe must also be acknowledged. In this regard, it is the Court's present practice, where an inter-State case is



pending, that individual applications raising the same issues or deriving from the same underlying circumstances are, in principle and in so far as practicable, not decided before the overarching issues stemming from the inter-State proceedings have been determined in the inter-State case.

46. The entry into force of Protocol No. 16 is likely to add further to the Court's workload in the short to medium term but should ultimately reduce it in the longer term perspective.

The Conference therefore:

47. Welcomes the efforts of the Court to bring down the backlog, including by continuously reviewing and developing its working methods.
48. Recalls that the right of individual application remains a cornerstone of the Convention system. Any future reforms and measures should be guided by the need to enhance further the ability of the Convention system to address Convention violations promptly and effectively.
49. Expresses serious concern about the large number of applications still pending before the Court. Notes that further steps will need to be taken over the coming years in order to further enhance the ability of the Court to manage its caseload. This will require a combined effort of all actors involved: the States Parties in reducing the influx of cases by effectively implementing the Convention and executing the Court's judgments; the Court in processing applications; and the Committee of Ministers in supervising the execution of judgments.
50. Notes the approach taken by the Court in seeking to focus judicial resources on the cases raising the most important issues and having the most impact as regards identifying dysfunction in national human rights protection. Encourages the Court, in co-operation and dialogue with the States Parties, to continue to explore all avenues to manage its caseload, following a clear policy of priority, including through procedures and techniques aimed at processing and adjudicating the more straightforward applications under a simplified procedure, while duly respecting the rights of all parties to the proceedings.
51. Calls upon the Committee of Ministers to assist the States Parties in solving systemic and structural problems at national level and to consider the most effective means to address the challenge of a massive influx of repetitive applications arising from the non-execution of pilot judgments, which can place a significant burden on the Court without necessarily helping to resolve the underlying issue.
52. Acknowledges the importance of retaining a sufficient budget for the Court, as well as the Department for the Execution of Judgments, to solve present and future challenges.
53. Calls upon the States Parties to support temporary secondments of judges, prosecutors and other highly qualified legal experts to the Court and to consider making voluntary contributions to the Human Rights Trust Fund and to the Court's special account.
54. Invites the Committee of Ministers, in consultation with the Court, and other stakeholders, to finalise its analysis, as envisaged in the Brighton Declaration, before the end of 2019, of the prospects of obtaining a balanced case-load, *inter alia*, by:
- a) conducting a comprehensive analysis of the Court's backlog, identifying and examining the causes of the influx of cases from the States Parties so that the most appropriate solutions may be found at the level of the Court and the States Parties;
  - b) exploring how to facilitate the prompt and effective handling of cases, particularly repetitive cases, that the parties are open to settle through a friendly settlement or a unilateral declaration; and
  - c) exploring ways to handle more effectively cases related to inter-State disputes, as well as individual applications arising out of situations of inter-State conflict, without thereby limiting the jurisdiction of the Court, taking into consideration the specific features of these categories of cases *inter alia* regarding the establishment of facts.



### The selection and election of judges – the importance of co-operation

55. A central challenge for ensuring the long-term effectiveness of the Convention system is to ensure that the judges of the Court enjoy the highest authority in national and international law.
56. As part of the current reform process, the Committee of Ministers has addressed this challenge, *inter alia*, by the creation of the Advisory Panel of Experts on Candidates for Election as Judge to the Court ('the Panel') and by the adoption of guidelines on the selection of candidates. The Parliamentary Assembly has also taken important steps to address the challenge, most notably by the establishment of the Committee on the Election of Judges to the European Court of Human Rights.
57. As concluded by the Steering Committee for Human Rights in its 2017 report, addressing the entire process of selection and election of judges, although progress has been made, there is still room for improvement in several areas.

The Conference therefore:

58. Welcomes the advances already made towards ensuring that the judges of the Court enjoy the highest authority in national and international law.
59. Calls on the States Parties to ensure that candidates included on the lists of three candidates for election as judge to the Court all are of the highest quality fulfilling the criteria set out in Article 21 of the Convention. In particular, the national selection procedures should be in line with the recommendations set out by the Committee of Ministers in the above-mentioned guidelines on the selection of candidates.
60. Calls on the Committee of Ministers and the Parliamentary Assembly to work together, in a full and open spirit of co-operation in the interests of the effectiveness and credibility of the Convention system, to consider the whole process by which judges are selected and elected to the Court with a view to ensuring that the process is fair, transparent and efficient, and that the most qualified and competent candidates are elected. The 2017 report of the Steering Committee for Human Rights should serve as a source of reference for this exercise.
61. Underlines the importance of the States Parties consulting the Panel within the agreed three-month time-limit before presenting to the Parliamentary Assembly lists of three candidates for election as judge to the Court, promptly responding to requests for information from the Panel, and fully considering and responding to the opinion of the Panel; and in particular:
  - a) calls on the States Parties not to forward lists of candidates to the Parliamentary Assembly where the Panel has not yet expressed a view, and if the Panel has expressed a negative opinion in relation to one or more of the candidates, to give this appropriate weight; and
  - b) encourages the Parliamentary Assembly to refuse to consider lists of candidates unless the Panel has had the full opportunity to express its view, and to fully consider the opinions expressed by the Panel.
62. Encourages the Parliamentary Assembly to take into account the suggestions made in the 2017 report from the Steering Committee for Human Rights when amending the Assembly's Rules of Procedure.



## Accession by the European Union

63. The States Parties reaffirm the importance of the accession of the European Union to the Convention as a way to improve the coherence of human rights protection in Europe, and call upon the European Union institutions to take the necessary steps to allow the process foreseen by Article 6 § 2 of the Treaty of the European Union to be completed as soon as possible. In this connection, they welcome the regular contacts between the European Court of Human Rights and the Court of Justice of the European Union and, as appropriate, the increasing convergence of interpretation by the two courts with regard to human rights in Europe.

## Further measures

64. This Declaration addresses the present challenges facing the Convention system. As the current reform has shown, it will require a continued and focused effort by the States Parties, the Court, the Committee of Ministers, the Parliamentary Assembly and the Secretary General to secure the future effectiveness of the European human rights system, building on the results achieved and meeting new challenges as they arise.
65. Protocols Nos. 15 and 16 can both be expected to have important and significant effects on the Convention system, and point to a clear direction for its future. Their effects will, however, be seen only in the longer term.

The Conference therefore:

66. Calls on the Committee of Ministers, as a follow-up to the 2019 deadline and without prejudice to the priorities of upcoming Chairmanships of the Committee of Ministers, to prepare a timetable for the preparation and implementation of any further changes required, including an examination of the effect of Protocols Nos. 15 and 16.

## General and final provisions

67. The Conference:
- a) Invites the Danish Chairmanship to transmit the present Declaration to the Committee of Ministers;
  - b) Invites the States Parties, the Court, the Committee of Ministers, the Parliamentary Assembly and the Secretary General of the Council of Europe to give full effect to this Declaration, and follow up as appropriate on measures they have taken; and
  - c) Invites the future Chairmanships of the Committee of Ministers to ensure the future impetus of the reform process and the implementation of the Convention.