



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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PREVENTION OF HUMAN RIGHTS VIOLATIONS IS NECESSARY THROUGH SYSTEMATIC IMPLEMENTATION OF EXISTING STANDARDS AT NATIONAL LEVEL

Memorandum of the Commissioner for Human Rights

**in view of the High-Level Conference
on the Future of the European Court of Human Rights**

Interlaken, Switzerland, 18-19 February 2010

1. The Commissioner wants to contribute to a successful outcome of the Interlaken Conference. It is essential that the 47 member states of the Council of Europe reaffirm their commitment to the protection of human rights and that a roadmap for the evolution of the European Court of Human Rights (the Court) is established.
2. The Commissioner has been following closely the impressive casework of the Court which has been accompanied by mounting pressure on this institution, whose annual judgments between the years 2000 and 2008 increased from 695 to 1 543. Despite the invaluable guidance that the Court, through its judgments and decisions, has been providing to member states for half a century, this has not led to a decrease of applications before this institution which is regarded by all people in Europe as their *ultimum remedium*. The Court's rising caseload, with the number of pending cases in October 2009 amounting to around 115 000, is of deep concern to the Commissioner. Moreover, in over 81% of the judgments delivered since 1959, the Court has found at least one violation of the Convention by the respondent state.
3. At the same time, the Commissioner has noted with concern that approximately 50% of the admissible cases are 'repetitive applications', i.e. cases raising issues that have already been the subject of Court judgments in the past, and which normally should have been resolved by the respondent member states.
4. The fact that 90% of new applications before the Court are clearly inadmissible or manifestly ill-founded appears to indicate serious deficiencies in the provision of information on the European Convention on Human Rights (the Convention) and the Court's procedures.
5. The above situation confirms that there is a *serious gap of systematic implementation* by states of their undertakings under the Convention, as interpreted by the Court's judgments which, in turn, require a prompt, full and effective execution by member states so that recurrence of similar violations is prevented. Despite the significant progress made, effective embeddedness of the Convention's standards in European states' domestic law and practice is far from being attained.
6. The Commissioner wishes to stress that the credibility of the Council of Europe human rights standards ultimately depends on whether they are made effective in practice by the member states. This requires a systematic approach at national level for the prevention of violations and implementation of the agreed-upon standards. This is the focus of the present memorandum.
7. The fundamental importance of prevention of violations at national level has been stressed by the Steering Committee for Human Rights (CDDH) in its Final Activity Report on *Guaranteeing the long-term effectiveness of the European Court of Human Rights*, adopted on 8 April 2004. In this Report, the CDDH noted, *inter alia*, the need of reviewing in a regular and transparent manner the implementation of the five relevant Committee of Ministers Recommendations which the Commissioner considers to be of utmost importance.¹

¹ Rec (2000) 2 on the re-examination or the reopening of certain cases at domestic level following judgments by the Court, Rec (2002) 13 on the publication and dissemination in the member states of the Convention and of the Court's case law, Rec (2004) 4 on the Convention in university education and professional training, Rec (2004) 5 on the verification of the compatibility of draft and existing laws and administrative practice with the Convention standards, Rec (2004) 6 on the improvement of domestic remedies.

8. The Commissioner recommends that member states give effect to and supervise systematically the implementation of these five CM Recommendations which are complemented, in fact, by the CM Recommendation (2008)2 on efficient domestic capacity for rapid execution of the Court's judgments.
9. In this context, the Commissioner considers imperative the translation by member states of *all* leading judgments of the Court into their national language so that domestic courts understand important Convention principles when they apply the law. This practice would also facilitate and enhance the effective verification of the compatibility of draft and existing domestic laws and administrative practice with the Court's evolving case-law and standards.
10. There is no doubt that much more energy has to be directed towards the implementation of the European human rights standards, given the inherently subsidiary nature of the European human rights protection system which can in no way act as a long-term substitute for the national systems.
11. In order to bridge the implementation gap, governments need to work out *promptly a systematic and holistic strategy* that would ensure within their jurisdiction the full realisation of the European human rights treaties, starting of course with the Convention and the Court's case-law.
12. In this context the Commissioner notes that the Convention (through the Court) is not a solo player. Rather, it is complemented by other major European human rights treaties, such as the Revised European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Framework Convention for the Protection of National Minorities. The effective implementation of these treaties should also be given priority since they are in effect complementary to the Convention. They all belong to the European human rights protection system.
13. Any exercise of systematic implementation by member states of the Convention standards should be holistic. This implies systematically taking measures for the domestication of the standards contained in the other major Council of Europe human rights treaties as well. Reinforcement of the valuable work of the existing independent monitoring bodies of the Council of Europe should also be seriously considered. The idea of systematic human rights work by states is not novel. However, it has been underestimated and insufficiently explored. The Commissioner believes that the High-Level Conference in Interlaken is the right moment and place to re-launch and reinvigorate this idea in cooperation with all Council of Europe member states.
14. Already in 1993, the World Conference on Human Rights had expressed concern about the gap between the agreed norms and the reality in a number of countries. It recommended that all governments should produce a *national plan* for the implementation of their human rights obligations. Sixteen years have passed since that conference in Vienna, but only few countries have produced national plans. Several member states, however, are now in the process of developing such plans.
15. Even though there is no universal formula to be given to states in order to systematise their work of effective implementation of human rights standards, the Commissioner has laid down a number of practical guidelines² addressed to member states which he deems useful to reiterate on the present occasion.

² See also Commissioner's Recommendation on systematic work for implementing human rights at the national level, CommDH(2009)3, 18/02/2009.

16. It is advisable to start systematic human rights work with a *national baseline study* giving a broad and accurate picture of the current human rights situation in a particular country. A thorough evaluation of existing policies and practices and recognition of problematic areas is key to effective human rights implementation. The status of domestic implementation of the core international and European human rights treaties, such as the Convention, should form a necessary part of the national baseline studies. In this regard, the Commissioner highlights the need that the Court's leading judgments, irrespective of the country in respect of which they have been rendered, form part and parcel of all national baseline studies.
17. The second major step should be the development of a *national human rights action plan* to address the human rights challenges identified in the baseline study. Such plans should contain concrete activities and indicate the authorities responsible for their implementation. The activities should be coupled with time-frames and benchmarks for follow-up and evaluation. International reporting obligations should be integrated into the process.
18. During all these processes states should *involve all stakeholders*, including National Human Rights Structures (NHRs), civil society and representatives of disadvantaged groups of people. Such an inclusive and participatory approach will contribute to the legitimacy of the plan, create shared ownership and make implementation effective. All communication with NHRs and civil society representatives must be conducted with full respect for their integrity and independence.
19. The *implementation of action plans should be reviewed* in a regular way and there should be independent evaluation of results upon their completion. It is equally important to assess the process, in terms of participation, inclusiveness and transparency, as it is to evaluate the end result.
20. States should ensure *high-level and long-term support for the action plans* through the active involvement of politicians and the leadership of the authorities and agencies responsible for the plan's implementation. Action plans stretching over national and local elections should be discussed and/or adopted by the parliament to ensure continuity.
21. Equally important is that the human rights work planning is *coordinated with the budgetary process* to secure proper funding for human rights work. It is necessary to review budget proposals from a human rights perspective to inform politicians of the consequences of their decisions and to hold them accountable.
22. It is also a significant part of this policy to integrate human rights into the ordinary work of the public administration and to ensure effective coordination and cooperation between the authorities at all levels by setting up *networks or other fora for the exchange of experiences and information, discussions and planning*.
23. Fostering a *human rights culture* through the full integration of human rights in education and training as well as through awareness-raising is another major building block. It is essential that concrete and accessible language is used in all human rights education. *Curricula and teaching materials* should be reviewed and participatory learning methods should be applied to this effect. The *needs of public officials and other professionals* who deal with the human rights of others should be assessed, systematically and on a permanent basis, to ensure that they have a thorough and up-to-date knowledge of the international standards relevant to their field of competence.
24. It is also necessary to set up *adequate systems for data collection and analysis*, including data on disadvantaged groups of people. Collection of sensitive data should be voluntary and accompanied by proper safeguards to prevent the identification of individuals belonging to a particular group. Official data should be complemented with relevant information from NHRs and NGOs.

25. *Local authorities* should be encouraged to develop comprehensive local baseline studies, action plans or similar documents ensuring regular review of the local situation and coordinated efforts to address human rights challenges. Adequate systems should be established for monitoring the provision of health care, education or social services, whether provided by private or public actors, using the rights-based approach. The experience of the Council of Europe Congress of Local and Regional Authorities may be of great value in this context.
26. Last but not least, states should review the mandates of *NHRs* to make sure that they comply with the Paris Principles.³ States should ensure that *NHRs* have adequate resources to fulfil their role in systematising human rights work. Consideration should be given to establishing such institutions at the regional or local level to facilitate easy access for those whose rights may have been violated. *NHRs*, if adequately resourced, may also facilitate the establishment of national systems of information on the Convention and the Court's procedures and make this information easily accessible for every interested individual.
27. The above is certainly not an easy task. For the implementation of the systematic human rights work there is one basic prerequisite: the member states' determination to work much harder to invest in the maintenance and further realisation of the effectiveness of human rights and fundamental freedoms on this continent. The Commissioner invites all member states to do so urgently.
28. During its more than ten years of work, the Office of the Commissioner, as an independent and impartial institution of the Council of Europe, has proven that it can play a catalytic role in the prevention of human rights violations by acting flexibly and rapidly, promoting awareness of the Council of Europe human rights standards as well as their implementation, especially the standards enshrined in the Convention, as interpreted by the Court.
29. One of the Commissioner's major objectives under his mandate is to identify possible shortcomings in the law and practice of member states concerning the compliance with human rights as embodied in the instruments of the Council of Europe, starting with the Convention, as well as to promote the effective implementation of these standards by member states and *to assist them, with their agreement, in their efforts to remedy such shortcomings*.
30. The Commissioner acts in fact as a bridge between the Council of Europe and its member states. He always stands ready to provide his good services and engage national authorities in discussions concerning, for example, legal and other reforms that may be necessary in order to give full effect to the Convention standards, i.e. the Court's case-law. Certainly much more work is necessary in order to bridge the gap of implementation by member states of these standards.
31. Over the past decade the Commissioner has established a fluid, constructive dialogue with all member states. His continuous efforts and input in all major human rights issues have been appreciated by the member states. The effective implementation of the Convention and other major treaty standards by all states in Europe remains on top of the agenda for the Commissioner's numerous country visits every year.

³ The "Paris Principles" on national institutions tasked to promote human rights were endorsed by the UN General Assembly already in 1993. These principles apply to the different human rights structures which may coexist in various countries: ombudsmen, human rights commissions or institutions, equality bodies and other more specialised structures.

32. While the Commissioner has continued to provide his guidance and input to member states it is beyond doubt that the very limited resources available to his Office have stretched far beyond their capacity. The Commissioner's achievements up until now have created new expectations which he strives to meet. This will be feasible on condition that his Office and staff are properly reinforced.
33. The times ahead of all institutions involved in the European system of human rights protection will not be easy. Human rights are *not* a quick fix. Decisive steps towards a rights-based Europe require a lot of investment by all parties concerned.
34. *Prevention* of human rights violations is the keyword and systematic human rights work by states may indeed bridge the gap between human rights standards and reality. The Commissioner calls upon all member states present at the Interlaken Conference to commit themselves to initiating and/or implementing systematic work for implementing human rights at national level. Protection of human rights in Europe should, one day soon, start and finish at home.