

Public

# **Council of Europe:**

## **Ensuring the long-term effectiveness of the European Court of Human Rights – NGO Comments on the Group of Wise Persons' Report**

**16 January 2007**

**Summary**

**AI Index: IOR 61/002/2007**

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The following document sets out the views of Amnesty International, the European Human Rights Advocacy Centre (EHRAC), Human Rights Watch, INTERIGHTS, Justice, Liberty, Redress and The AIRE Centre on proposals by the Council of Europe's Group of Wise Persons aimed at ensuring the long-term effectiveness of the European Court of Human Rights, in a manner which protects the basic philosophy underlying the European Convention on Human Rights (the ECHR). It also contains additional recommendations.

We welcome the commitment of the member states of the Council of Europe to ensuring the long-term effectiveness of the European Court of Human Rights (the Court), which is recognized as a pillar in the European system for the protection of human rights. We recognize that the enormous number of individual applications which are being lodged with the Court, coupled with the backlog of cases pending before it, in the context of the Court's current resources, jeopardize its functioning and consequently the right of individual application.

While addressing these issues was precisely the objective of the package of reforms adopted by the Council of Europe's Committee of Ministers in May 2004, including a series of recommendations of the Committee of Ministers to Member States and the adoption of Protocol 14 to the ECHR, these measures have yet to be implemented. Furthermore, it is clear that more is needed.

We consider that any reform should be designed to meet the following seven objectives:

- I. Better implementation of the ECHR at national level, thereby reducing the need to apply to the Court for redress;
- II. Preservation of the fundamental right of individual petition (the essence of which is the right of individuals to receive a binding determination on admissible cases from the European Court of Human Rights on whether the facts presented constitute a violation of rights secured in the ECHR);
- III. III. Efficient, fair, consistent, transparent and effective screening of applications received, to weed out the very high proportion (around 90%) of applications that are inadmissible under the current criteria;

- IV. The expeditious rendering of judgments, particular in cases that raise repetitive issues concerning violations of the ECHR where the Court's case law is clear—which represent some 60% of the Court's judgments on the merits—and those that arise from systemic problems;
- V. Effective execution of the Court's judgments by Council of Europe member states, including appropriate follow-up by the Committee of Ministers where individual member states are slow to act or respond inadequately to Court judgments;
- VI. Adequate financial and human resources for the Court, without drawing on the budgets of other Council of Europe human rights monitoring mechanisms and bodies;
- VII. Transparent expert monitoring and assessment of the impact any reforms agreed on the workload of the court, and their effect on the right of individual application.

In summary, measured against these criteria the above-listed NGOs:

**support** the following proposals of the Group of Wise Persons:

- Any reforms to the Court should preserve the right of application; (para 3)<sup>1</sup>
- The creation of a separate body within the Court, composed of judges, to screen individual applications received by the Court; (para 26)
- The laying down of time limits, to be supervised by the Court, for the freezing of like-applications to those being considered under the “pilot judgment” procedure; (para 33)
- Strengthening the processes by which judges of Court are nominated and elected by member states and the Parliamentary Assembly of the Council of Europe, respectively; (paras 41- 45 and Annex B);

and;

**oppose** the following proposals of the Group of Wise Persons

- The addition of a treaty provision obligating states parties to the ECHR to introduce domestic legal mechanisms to redress the damage resulting from any violation of the ECHR (para 13)
- That Council of Europe Information Offices take on the function of advising individuals about existing domestic and other non-judicial remedies; (para 18)
- Any requirement that the information necessary for a determination of admissibility of an Application must be submitted *only* on the Court's application form; (para 29)
- The referral of decisions on awards of compensation back to the state concerned. (para 36-38)

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<sup>1</sup> The paragraph references in this Summary refer the paragraphs of the full document: *Council of Europe: Ensuring the long-term effectiveness of the European Court of Human Rights- NGO comments on the Groups of Wise Persons' Report*, of 16 January 2007 (AI Index: IOR 61/00/2007).

We consider **further reflection** is needed on the proposals

- to empower the Court to issue Advisory Opinions at the request of national courts; (para 40)
- to enable the Committee of Ministers to amend certain “operating Procedures” of the Court in a “simplified amendment procedure” (paras 47-49).

In addition, the above-mentioned NGOs make the following **additional recommendations**:

- The Committee of Ministers should clarify, as a matter of urgency, the impact of the reform process of the recent negative vote by the Russian Duma on the ratification of Protocol 14; (para 7)
- Each Council of Europe member state should take all necessary measures to implement fully the recommendations of the Committee of Ministers Recommendations adopted during the 2000-2004 reform discussions, which aim to ensure better implementation of the ECHR at national level; (paras 14-15)
- Council of Europe member states should ensure that ombudspersons and national institutions for the promotion and protection of human rights are truly independent, appropriately mandated, staffed with experts and adequately resourced, and thus are in a strong position to play a significant role in providing information about and promoting observance of human rights; (para 16)
- Council of Europe member states should provide adequate resources to lawyers and NGOs, including free legal aid, to facilitate their expert assessment and provision of initial advice to would-be applicants to the Court; (para 18)
- The Council of Europe should ensure that any reforms to the Court, including those which may be implemented if Protocol 14 enters into force, are carefully and transparently monitored over a reasonable period of time to assess their impact, in particular on the Court’s effectiveness and the right of individual application; (paras 8, 24,)
- The Council of Europe should ensure that the Court’s application form is made available in all major languages used by individuals in its member states; (para 28)
- The Council of Europe should ensure comprehensive monitoring of the effectiveness and impact of the “pilot judgment” procedure, over a reasonable period of time; (paras 34-35)
- A ‘Just Satisfaction Unit’ within the Court’s Registry should be created; (para 39)
- Council of Europe member states should increase the budget of the Council of Europe overall, including the budget allocated to the Court, so that any increase in the Court’s budget are not made at the expense of funding for other core Council of Europe activities (para 46).

We also urge each of the 46 Council of Europe member states and the Council of Europe to ensure that the public is informed about the on-going discussion on reform. Past and future applicants to the Court have an interest in ensuring its future at least equal to that of member states of the Council of Europe. Representatives of civil society across the Council of Europe region should be consulted, and their views taken into account before any further reforms to the Court are made (para 50).

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