JOINT STATEMENT

STRENGTHENING THE PROTECTION OF HUMAN RIGHTS IN EUROPE: STATES MUST ASSUME THEIR FAIR SHARE OF RESPONSIBILITY

March 2012

The European system for the protection of fundamental rights and freedoms is one of the most developed in the world. Its crowning achievement, the European Court of Human Rights, is a valuable public resource whose jurisprudence carries global significance. Over the past half century, through rigorous reasoning and interpretation, the Court has established landmark principles which, taken together, give substance to the central promises of a civilized society.

The Court's very success as an impartial, independent judicial body has prompted more applications – over 150,000 pending at present – than it can expeditiously process, with current resources. Some suggest that this "crisis" requires changes to the Court's procedures or limits on its powers.

But the main cause of soaring public demand upon the Court is the failure of national authorities in a number of Council of Europe member states to implement the European Convention on Human Rights and the Court's own judgments.

Principal responsibility for strengthening the protection of human rights and fundamental freedoms in Europe rests with national governments, who must also accept that their efforts are subject to scrutiny at European level.

In the course of 2011, the Registry introduced numerous measures to carry forward the reforms introduced by Protocol No.14, which entered into force in 2010. As a result, marked progress has been made in reducing the backlog of manifestly inadmissible applications – which constitute more than 90% of the Court's case docket.

Notwithstanding this progress, several proposals are circulating to address the number of applications pending before the Court by amending the Convention, including to further restrict the criteria for determining which cases are admissible. Unlike the reform process that led to the adoption of Protocol No. 14 there has as yet been no empirical evidence produced of the impact of the proposed reforms on the Court's efficiency and caseload.

There is a real risk that some of the reforms under consideration will lead to greater delays, restrict the right of individual petition, place the Court in an inappropriate posture of acting as a fourth instance, and provide some governments with greater latitude to avoid their human rights obligations.

In view of the foregoing, the undersigned recommend that the current review of the European human rights system under the UK chairmanship of the Council of Europe refrain from further reform of the Convention and rather focus on three core priorities:

(1) enable, with additional resources as necessary, the Registry and the Committee of Ministers to implement reforms already underway and/or authorized by Protocol No. 14;

(2) improve the national execution of Court judgments and implementation of the Convention more generally, and

(3) enhance the quality and transparency of the processes for national nomination of judicial candidates to serve on the Court.

1. Reform of the Court

Rather than adopt new changes to the Convention, States Parties should invest more resources and political will to enable the reforms already agreed to under Protocol No. 14 to be taken forward. Due deference should be given to the case management expertise within the Registry, and States Parties should avoid inappropriate interference with the operation of the Court by tinkering with peripheral issues. The frequency of inter-governmental conferences on the future of the Court should allow for proper implementation of reforms and analysis of new proposals.

In June 2010, Protocol No.14 allowed for the introduction of numerous reforms to speed up the consideration of cases, including a new single judge formation for dealing with clearly inadmissible cases, applying a new de minimis criterion for admissibility, and the introduction of a filtering section for cases from Russia, Turkey, Romania, Ukraine, and Poland. The new reforms also permitted a three-judge committee to deal with certain well-founded cases, rather than solely the seven-judge chamber previously required.

The Court has also introduced a new procedure to prioritise the most serious cases, and increased the use of friendly settlements and unilateral declarations. These reforms have now taken effect, with what the Committee of Experts for the Reform of the Court of the Committee of Ministers (DH-GDR) has called "a far greater than expected – or hoped for – effect". During 2011 the Court issued more than 47,000 decisions. While the most dramatic reforms have dealt with the processing of inadmissible applications, the effect of the new three-judge Committee on well-founded cases has yet to be fully realized. The Court considers that this impact can be further extended during 2012 and the backlog of inadmissible cases can be cleared by 2015 without the need for any further reform .

The Court estimates that it will be able to filter all incoming cases with an additional 23 lawyers at a cost (according to official figures) of approximately €21,000 per Member State per year. In order to clear the backlog of all inadmissible cases by 2015, the Court would need a total of further 12 seconded lawyers from several countries that generate the most applications. This marked improvement in the output of the Court needs the continued support of the Committee of Ministers:

• *Additional Lawyers*. Further Registry lawyers are needed to bring the judges to their full capacity. Any lawyers seconded or recruited must meet the necessary standards of competence and independence.

• *Financial Resources*. Despite a massive increase in workload, the budget of the Court has not significantly increased since at least 2009. The budget is still significantly less than that of many other international courts and tribunals with a far smaller caseload. Fifteen States Parties do not even contribute sufficient funds to pay for their own judges. Registry proposals for additional resources should be given careful consideration.

• *Ad Litem Judges*. Further judges can only reduce the caseload after the recruitment of more lawyers to prepare cases for them to consider. Any ad litem judges must meet the same criteria for the appointment of a full judge.

• *Filtering System*. In 2011, the Registry introduced a new filtering unit for applications from the five highest volume states. This new procedure can be further utilized without any further reforms. The results of this work should be reviewed before it is changed again.

• *Admissibility*. New admissibility rules would infringe upon the right of individual petition, with no evidence presented that they would alleviate the workload of the Court.

• *Unilateral Declarations and Friendly Settlements*. The use of these tools to settle cases has dramatically increased in the last two years, and should be encouraged where the government admits the human rights violation and guarantees to introduce remedial measures.

2. National Implementation of the Convention and Execution of Judgments

Through Article 46 of the European Convention "The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties," and agree to empower the Committee of Ministers of the Council of Europe to supervise the execution of the final judgment.

Protocol 14 introduced reforms to this supervisory jurisdiction, authorising the Committee of Ministers to sanction States Parties for non-implementation, and allowing the Committee to refer cases back to the Court. Neither power has yet been used.

Primary Duty to Implement. States Parties are obliged to implement judgments of the Court, whether in a case decided against themselves or decided against another country which nonetheless affects their legal system (res interpretata). Subsidiarity is the concept by which States Parties have the primary responsibility to guarantee the application and implementation of the Convention, through the activities of their governments and the decisions of their national courts, and through prompt implementation of judgments of the Court. Strasbourg retains the

supervisory authority to review whether each State is complying with the Convention after the exhaustion of domestic remedies.

Subsidiarity does not mean that Strasbourg must defer to national courts beyond the extent required by the margin of appreciation, a sophisticated doctrine developed through hundreds of judgments of the Court. However, the final decision on the correct interpretation of the Convention must rest with the Court.

Repetitive Violations. A major cause of the current backlog of cases at the ECHR is that governments have failed in their international obligations under the Treaty to implement judgments rapidly and effectively. Approximately 60% of the judgments issued by the Court are repetitive, i.e. the Court has previously found a practice to violate the Convention, but the national government has failed to introduce any change. At the time of the last annual report of April 2011, approximately 10,000 judgments remained pending unresolved before the Committee of Ministers, 80-85% of which concerned clone or repetitive cases caused by a failure to implement earlier judgments.

Commitment to Rapid and Effective Implementation. In the Interlaken Declaration of February 2010, Member States re-iterated their commitment to "ensure that the rights and freedoms set forth in the Convention are fully secured at the national level" by stressing "that full, effective and rapid execution of the final judgments of the Court is indispensable". The Izmir Declaration of April 2011 further called on Member States to "co-operate fully with the Committee of Ministers in the framework of the new methods of supervision of execution of judgments of the Court" and required governments to submit national reports on implementation by the end of 2011.

Additional Powers Unused. Despite the widespread failure to implement judgments, the Committee of Ministers has yet to use the additional powers it was granted under Protocol 14 to decide upon the "measures to be taken" to ensure implementation, and by which the Committee may decide, by a two-thirds majority, to bring proceedings to the Grand Chamber against a state for non-compliance, or to request the Court to give an interpretation of a judgment.

The Committee of Ministers is currently considering nearly 10,000 cases (as of the last Annual Report). The very small staff assigned to support the Committee within the Department for the Execution of Judgments makes it difficult to introduce any further efficiencies. The Committee of Ministers must be encouraged to use its enhanced powers so as to ensure full implementation.

In addition, the Court should be more prescriptive in describing which remedies are appropriate in order to put an end to human rights violations and in what time period. The European Human Rights system will only reach its full potential if all involved take their responsibilities seriously.

Consequently, Member States must make greater investment in implementation of judgments through the following actions:

• *Further Resources at the Department for the Execution of Judgments*. The body responsible for supporting the Committee of Ministers does not even have one lawyer for each Member State of the Council of Europe, compared with 270 lawyers (out of a total staff of 640) at the Court (and compared with over 1,900 staff at the Court of Justice of the European Union). Further staff are necessary in order for the Committee of Ministers to adequately consider the cases under their supervision.

• *Use the Enhanced Powers introduced by Protocol 14*. The Committee of Ministers should fine states for their failure to implement judgments, with the fine to be paid to the Human Rights Trust Fund. The Committee should encourage the Court to issue costs orders against States Parties for the unnecessary expense of considering repetitive cases, to be paid to the Trust Fund. Alternatively, the Committee should refer cases to the Court for non-execution under Article 46, and allow the Court to impose a fine.

• *Introduce National Mechanisms for Execution of Judgments*. National governments must put in place a transparent government mechanism for ensuring execution of ECHR judgments. Successful models of implementation should be highlighted and recommended. • Improve Protection of Human Rights at Home. The greatest way to improve the strength of the Convention is for national governments to improve the protection of human rights in their own countries, including by: (i) training and capacity-building of their own judiciaries, prosecution services, and the professional bar, (ii) government-funded legal aid for national redress of matters giving rise to Convention violations; and (iii) public information campaigns to raise European Convention awareness among all government officials and the public at large. In addition, governments should increase investments in the Human Rights Trust Fund for projects

in non-EU member states to improve the functioning of the Convention at national level. Member States should make a political declaration affirming their commitment to implement ECHR judgments in full.

• *Public Review of National Reports on Interlaken*. Member States were expected to submit reports on their efforts to implement the Interlaken Declaration by the end of 2011. The consideration of these reports should be a transparent process, with the involvement of the Parliamentary Assembly of the Council of Europe, national parliaments, and Civil Society.

3. Selection of Judges

States Parties must reform national procedures for nominating candidates for selection as Judges of the European Court. Only individuals qualified to hold high judicial office should be proposed for selection. Clear guidelines should be issued as to how national nominating processes should be conducted. These guidelines should require transparency in the process, so that civil society is able to comment meaningfully on the proposed candidates.

SIGNED:

1. Albanian Helsinki Committee, Albania
2. Helsinki Citizens' Assembly – Vanadzor, Armenia
3. Helsinki Committee of Armenia, Armenia
4. HumanRights Center of Azerbaijan
5. Belarusian Helsinki Committee, Belarus
6. International Partnership for Human Rights, Belgium
7. European Roma Information Office, Brussels, Belgium
8. Bulgarian Helsinki Committee, Bulgaria
9. Bulgarian Lawyers for Human Rights Foundation, Bulgaria
10. Bulgarian Gender Research Center, Bulgaria
11. Center for Civic Initiatives, Porec, Croatia
12. B.a.B.e - Human Rights House, Zagreb, Croatia
13. Center for Peace Studies, Croatia
14. Documenta, Zagreb, Croatia
15. Vukovar Center for Peace, Legal Advice and Psychosocial Assistance, Croatia
16. Serbian Democratic Forum, Croatia
17. The Alliance of Tenants Associations, Croatia
18. League of Human Rights, Czech Republic
19. People in Need, Czech Republic
20. Danish Documentation and Advisory Center on Racial Discrimination
21. Estonian Patients Advocacy Association, Estonia
22. Georgian Young Lawyers' Association Georgia
23. Article 42 of the Constitution, Georgia
24. Greek Helsinki Monitor, Greece
25. Hungarian Civil Liberties Union, Hungary
26. Hungarian Helsinki Committee, Hungary
27. Mental Disability Advocacy Centre, Budapest, Hungary
28. European Roma Rights Center, Budapest, Hungary
29. The Latvian Centre for Human Rights, Latvia
30. Zelda: Resource Centre for People with Mental Disability, Latvia
31. Human Rights Monitoring Institute, Lithuania
32. Legal Resources Centre, Moldova
33. Promo LEX Association, Moldova
34. Greenpeace International, Netherlands
35. Netherlands Helsinki Committee, Netherlands
36. Advocaten voor Advocaten, Netherlands
37. Spanda Foundation, Netherlands
38. Justitia et Pax, Netherlands
39. Human Rights House Foundation, Norway
40. Nowegian Helsinki Committee, Norway
41. Helsinki Foundation for Human Rights, Warsaw, Poland
42. Euroregional Center for Public Initiatives, Romania
43. Centre for the Development of Democracy and Human Rights (CDDHR), Russia

44. The Public Verdict Foundation, Russia
45. Center for the Development of Democracy and Human Rights, Russia
46. Moscow Helsinki Group, Russia
47. NGO Sutyajnik, Russia
48. Lawyers for Constitutional Rights and Freedoms-JURIX, Russia
49. Freedom Files, Russia
50. Perm Regional Center on the Protection of Human Rights, Russia
51. Stichting Russian Justice Initiative, Russia
52. Human Rights Committee Valjevo, Serbia
53. Belgrade Centre for Human Rights, Serbia
54. Initiative for Development and Cooperation Association of Citizens, Belgrade, Serbia
55. Peace Institute, Slovenia
56. Barcelonaradical, Spain (Catalonia)
57. The Shine - Association for Social Affirmation of People with Psychosocial Disabilities, Switzerland
58. TRIAL (Track Impunity Always), Switzerland
59. Article 19, London, UK
60. Index on Censorship, UK
61. DPI–Democratic Progress Initiative, UK
62. Gender Alternatives Foundation, UK
63. René Cassin, UK
64. Black South West Network, UK
65. Ukrainian Helsinki Union, Ukraine
66. Centre for Civil Liberties, Ukraine
67. Foundation of Regional Initiatives, Ukraine
68. Ukrainian Women Bar Association, Ukraine
69. Kryvyi Rih Human Rights Union, Ukraine
70. Kharkiv Regional Foundation "Public Alternative" (Ukraine)
71. Kharkiv Human Rights Protection Group

72. Kazakhstan International Bureau for Human Rights and Rule of Law, Kazakhstan
73. Legal Policy Research Centre, Kazakhstan
74. Golos Svobody, Kyrgyzstan
75. Public Foundation "Nota Bene", Tajikistan
76. Network for Justice and Democracy, Nigeria
77. Human Rights Watch, USA
78. Open Society Justice Initiative, USA
79. Committee to Protect Journalists, USA
80. Crude Accountability, USA
81. Center for International Free Expression, USA

INDIVIDUALS

82. Emma Bonino, vice-president Italian Senate
83. Karinna Moskalenko, lawyer, Russia
84. Anita Soboleva, lawyer, Russia
85. Antonio Bultrini, Professor of Internatinal Law, University of Florence, Italy
86. Roberto Mastroianni, Professor of European Law, University of Naples “Federico II”
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98. Xavier Diez de Urdanivia, Instituto Miguel Ramos Arizpe, Mexico
99. Luis Peraza, Panamerica University Mexico
100. Yonko Grozev, lawyer, Bulgaria
101. Andrea Saccucci, lawyer, Italy

102. Sergei Burov, Board member, Ukrainian Helsinki Human Rights Union
103. Silvano Radobuljac, lawyer, Zagreb, Croatia
104. Jasminka Biloš, lawyer, Osijek, Croatia
105. Višnja Drenški Lasan, lawyer, Zagreb, Croatia
106. Siniša Štimac, lawyer, Croatia
107. Ines Bojiæ, lawyer, Croatia
108. Lovorka Kušan, lawyers, Croatia
109. Maximilian Steinbeis, lawyer and journalist, Berlin, Germany
110. Elena Garagorri-Atristain. Lawyer, Geneva, Switzerland.
111. Charlie Bagnall, solicitor, London, UK
112. Tamar Gurchiani, Tiblisi, Georgia
113. Vahram Ayvazyan, Armenia
114. Alina Trkulkja, Sarajevo, Bosnia and Herzegovina
115. Milica Matijevic, Belgrade, Serbia
116. Roxana Calarasus, Bucharest, Romania
117. Milena Cuk, Novi Sad, Serbia
118. Milena Sosic, Belgrade, Serbia
119. Ivana Spasic, Belgrade, Serbia
120. Branislav Tekic, Vukovar, Croatia
121. Bernd Sprenger, Berlin, Germany
122. Leslie R. Wolfe, President, Center for Women Policy Studies, USA
123. Bakary Tandia, New York, USA
124. Denise B. Dailey, New York, USA
125. John Hirst (ECHR applicant in *Hirst v UK (No2)*)
126. Dee Wells, London, UK
127. Ayaba Jana, co-founder, Women Empowerment Network Group, UK
128. Eric Graham, Whitehaven, UK
129. Michael Cook, West Kirby, UK
130. Simone Abel, London, UK
131. Reinhold Gärtner, Telfs, Austria
132. Freydoon Khoie, UAE
133. Tedson Ngwale, Tanzania
134. Patrick N. Johnbull, Center for Access to Justice, Peace and Human Rights, Sierra Leone
135. Halya Coynash, Ukraine

To add your name to this list, please email: jbirchall@justiceinitiative.org