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the Helsinki Foundation for Human Rights ("HFHR") would like to welcome the Danish Presidency of the Committee of Ministers of the Council of Europe. The HFHR is the oldest and largest human rights NGO operating in Poland. It was founded in 1989 by the members of the Helsinki Committee in Poland. Our mission is to promote the development of a culture based on the respect of freedom and human rights in Poland and in the post-soviet region. Since Poland joined the Council of Europe we have been regularly submitting cases to the European Court of Human Rights ("ECtHR"). Throughout the years we have observed how the system contributed to the enhancement of human rights standards in Poland and neighbouring countries.

At the eve of the High-level Expert Conference „2019 and Beyond – Taking Stock and Moving Forward from the Interlaken Process" we would like to share some comments about the scope of the conference and the planned topics for discussion. We are particularly concerned by the focus on the reform of the ECtHR. Both the Interlaken and Izmir declarations concentrated on the reform of the Court system, proposing particular instruments to limit the backlog. Although we admit that the process still remains slow, the Court has substantially limited the number of cases and further reforms seem inopportune. Therefore the current discussions, in our opinion, instead of reforming the Court system, should particularly focus on the implementation of the ECtHR judgments, bearing in mind that almost 10,000 cases are pending before the Committee of Ministers ("CoM"). Given the significant increase in the caseload of the European Court of Human Rights in 2017 (in particular from Turkey), the number of cases transmitted to the CoM from the Court can only increase further this in coming years.

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Political pressure

According to its 2015 annual report, the CoM is increasingly confronted with difficulties related to "pockets of resistance" linked to deeply-rooted problems of a social nature (for example toward Roma or certain minorities), related to political or national security considerations or to the situation in areas/regions of "frozen conflict"[1]. The long lasting resistance of some of the member states to implement judgments undermines the system as a whole. The refusal of implementation of judgments by “old” members of the Council of Europe, such as the United Kingdom, has lead members such as Russia, Ukraine or Azerbaijan to increasingly ignore the system.
In this context there is a need to return to grass root ideas of the Convention and for a confirmation by the member states of their will of engagement and full participation in the system.

One of the steps confirming such an engagement is the increasing importance and institutionalization of the parliamentary supervision over the implementation of judgments at the national level. Only few member states have established such well-functioning mechanisms. This process should be enhanced, with a greater engagement from the Council of Europe and the CoM.

Clarification of the rules

Protocol 14 allows the CoM to refer a case to the ECHR if the State refuses to abide by a judgment. Despite the ECHR’s concern over the State’s “manifest disregard” for the binding judgment in *Mammadov v. Azerbaijan,* accompanied by several requests from NGOs urging the CoM to initiate infringement proceedings, the CoM has failed to use this tool. While opinions differ as to the potential effectiveness of this procedure, it is possible that in some “exceptional circumstances,” referral to the ECHR would aid in defining specific obligations to implement judgments.

The clarification of circumstances in which the CoM could start infringement proceedings against a state could encourage the CoM to use the procedure in cases of the most serious non-implementation of judgments. The role of NGOs in the process could also be specified.

Lack of supervision of unilateral declarations

According to Rule 43 of the Rules of the Court, “[i]f an award of costs is made in a decision striking out an application which has been declared admissible, the President of the Chamber shall forward the decision to the Committee of Ministers”. In the ECtHR case-law this Rule has been interpreted broadly, so as to include any payments that were awarded to the applicant in the Court’s decision, including decisions regarding unilateral declarations. However, no such provisions were made for other terms and obligations established by the Court’s decisions regarding unilateral declarations. Protocol 14 to the Convention extended the Committee of Ministers’ responsibilities to the supervision of the Court’s decisions about

[1] 2016 Annual report of the CM, p. 10.

friendly settlements. This provision's aim was to enhance the efficiency of the Court (and the Council of Europe) in protecting human rights and, in particular, in resolving the structural problems leading to the repetitive violations of human rights. Friendly settlements and unilateral declarations may effectively contribute to the reduction of the backlog of the Court and they may increase the Court's efficiency, as expressed in the Interlaken Declaration. With the increased application of unilateral declarations, not only in repetitive cases, but also in strategic ones, there is a need to extend the oversight of the Committee of Ministers beyond the sole payment, to include terms and obligations established by the Court's decisions regarding unilateral declarations.

Need for support

Improving the working methods of the CoM will be ineffective if its resources, including personnel capacities, are not also increased. The Department for Execution of ECHR judgments (DEJ) assists the CoM in its supervisory role. Budget constraints hinder the department's capacity to hire and retain a sizeable, expert workforce well versed in all 47 legal systems of the CoE.

In our opinion, the Committee of Ministers cannot rely too much on the practice of secondments. Legal officers at the Secretariat should be highly independent from national institutions, as their opinions have a significant impact on the resolution of cases.

Special Rapporteur for implementation of judgments

The activity of the CoE Commissioner for Human Rights is limited in the field of the implementation of judgments. The Commissioner's competences are limited to action in concrete cases. Therefore, a new institution could be established within the CoE, one which would be responsible for the implementation of judgments and would have a more general stand. It could also be concerned with identifying general problems (e.g. reopening of proceedings after ECtHR judgment at national level) and providing the CoM with information.

The Special Rapporteur could be a "face" of the whole process. Please note that during proceedings before the Committee of Ministers state parties may present positions that are not counter-balanced by an independent view, but only by views of other state parties or - to a limited extent - by the Secretariat of the CoM. The PACE has a good practice with appointing rapporteurs on execution of judgments. Their reports proved to be important in indicating significant shortcomings in the case of major violators of the Convention. Special Rapporteur may be also important as regards contacting NGOs or lawyers in different states facing implementation problems, especially those without sufficient capacity to produce Rule 9 communications on a regular basis.

NGO engagement

The Registry of the ECtHR meets regularly with NGOs representatives. Meetings regarding the work of the Registry and concerns raised by civil society are organized every two year.

The HFHR would like to underline that in order to improve the implementation of judgments it would be vital to organize each year or every two years a meeting of lawyers working in the Secretariat (Execution Department) of the Committee of Ministers with NGO representatives. Such meetings would be an occasion to discuss the relevance of different submissions prepared by NGOs and problems NGOs face in the process of implementation of judgments. It is vital to underline that there are no official guidelines as to the content of NGOs submissions under rule 9 of the Rules of Committee of Ministers. Such meetings would be relevant to increase the quality of NGOs submissions and to understand which information provided by the civil society are relevant for the Execution Department.

ECtHR judicial independence

We would also like to express our concern over the idea presented in the conference description that "member states should have better means to influence the ECtHR's interpretation of the ECHR". Such a broad idea, without specification, can lead to misunderstandings. The idea of the influence of member states on the decision making process of the ECtHR and its case law seems alarming bearing in mind the division of powers and the competences attributed to courts and the executive respectively.

Moreover, the HFHR would like to underline that member states have the possibility to present their third party submissions in the proceedings before the ECtHR. Member states vigorously make use of this possibility. We therefore do not see the need to create an extraordinary procedure enabling member states to express their legal arguments and potential concerns.

The HFHR believes that the above mentioned deficiencies of the system should be addressed by the current and subsequent presidencies. We also hope that some of these issues, vital from the perspective of NGOs, would be addressed during the upcoming conference. Operating in a country with increasing democratic deficiencies, where the division of powers is under constant attack, we need, more than ever a strong human rights protection mechanism at the international level. Therefore, the idea of weakening the ECtHR's judicial freedom raises our strong concerns.

On behalf of the Helsinki Foundation for Human Rights,

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President of the Board