



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## **Fourth Summit of Heads of State and Government of the Council of Europe**

### **Memorandum of the European Court of Human Rights**

Strasbourg, 20 March 2023

#### **I Introduction**

1. In preparation for the Fourth Summit of the Council of Europe, it is essential that the contribution of the system established by the European Convention on Human Rights ('Convention') in preserving and protecting the common European values of pluralist and parliamentary democracy, the rule of law and the indivisibility and universality of human rights is fully considered and understood.

2. Member States should reaffirm their commitment to the Convention system as a mechanism for guaranteeing peace and stability in Europe and as the central instrument of European public order in the field of human rights. It is through the judgments and decisions of the European Court of Human Rights ('Court') that defence of the values underpinning the Council of Europe finds concrete expression. A strong Court ensures a strong Council of Europe, and vice versa. Indeed, strong Council of Europe institutions play a critical role in the overall effectiveness of the Convention system.

#### **II The centrality of the Convention system**

3. With the Convention – which entered into force over 70 years ago – the member States of the Council of Europe created an international system for the protection of human rights which is unique of its kind.

4. As highlighted in the Report of the Parliamentary Assembly in preparation for the Summit,<sup>1</sup> the Convention represents the most advanced supranational system for the protection of human rights worldwide, giving individuals the right to take a case before an international court. Member States for their part assume the obligation to effectively protect the rights and freedoms enshrined in the Convention, accepting international monitoring by the Court, while respecting its authority, independence and autonomy as an international judicial body, as well as the binding legal force of its judgments and decisions.

5. The Court has repeatedly emphasised the importance of the principles of subsidiarity and shared responsibility between the States Parties and the Court. Different actors in the Convention system thus have distinct roles, as reflected in the Preamble to the Convention.

6. Over a million applications have been processed by the Court in more than sixty years of its existence. As such, the Court has rendered major services to the development and consolidation of democracy and of the standards necessary to guarantee an independent judiciary and the rule of law. Political stability and good governance, which are also essential for economic growth, are dependent on strong democratic institutions operating within an effective rule of law framework.

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<sup>1</sup> Report "The Reykjavik Summit of the Council of Europe: United around values in the face of extraordinary challenges", Doc. 15681, 9 January 2023.

### III The reform and functioning of the Convention system

7. The Convention system and the Court have been through a decade-long reform process, which started in Interlaken (2010) and was boosted by the conferences in Izmir (2011), Brighton (2012), Oslo (2014), Brussels (2015) and, most recently, Copenhagen (2018).
8. These conferences represented an important reaffirmation by the member States of their commitment to the system of human rights protection set up by the Convention and to the Court.
9. Through sustained reform and the evolution of its working methods the Court has devised differentiated and effective case processing strategies adapted to the different categories and types of applications pending before it.
10. Moreover, in the past three years the Court has introduced rapid identification and more expeditious processing of Chamber cases which have a particular impact in a given State or for the development of the Convention system. These cases raise new issues regarding the interpretation and application of the Convention, whether in relation to democratic good governance, the rule of law, the environment, new technologies or equality and domestic violence, to name but a few. Almost all other cases, with the exception of Grand Chamber cases, are dealt with as efficiently as possible by committees.
11. The Court accords great importance to dialogue with national courts, whether through bilateral exchanges with national courts, the advisory opinion procedure under Protocol No. 16 to the Convention or through its Superior Courts Network. It has also taken various measures to enhance access to its case-law, including the creation of the Knowledge-Sharing platform, and to facilitate Third Party interventions by member States and civil society.

### IV Protecting and preserving the Convention system

12. Whilst the reforms just referred to have enabled the Court to reduce drastically its backlog from the untenable figure of 161,000 pending cases in 2011, it still faces a serious challenge in dealing with meritorious cases. Over 75,000 applications are currently pending before the Court. In the past three years the Court has dealt with, on average, 38,000 applications per year. It has also had to respond to a mass influx of cases related to specific regional, State or societal events such as the invasion of Ukraine in 2014 and 2022, the aftermath of the attempted *coup d'État* in Türkiye or the Covid-19 pandemic.
13. Faced with such a high number of new and pending applications and the complexity and importance of the legal, political and societal issues many of them raise, the Court's internal processes and the constantly developing working methods do not suffice to protect and preserve the Convention system which has served Europe so well.
14. **It is therefore essential that the Summit reaffirms member States' commitment to the Convention system as the beating heart of the Council of Europe's protection of human rights.** National parliaments, executive authorities and courts all bear responsibility for reducing the pressures which are being brought to bear on the Court. This does not just concern quantitative pressure given the size of the docket, but also pressure of a political nature, notably with regard to respect for the independence and impartiality of the Court and in relation to the execution of its binding judgments and decisions.
15. In concrete terms, attention is urgently needed in respect of the following areas.

#### *A. Resources*

16. Insufficient funding poses a permanent challenge to the Court's operation. It limits the Court's ability to fulfil its responsibilities under the Convention in terms of the processing of cases in a timely manner. Lack of resources also impacts in a multitude of ways on the dialogue between the Court and its interlocutors, notably the domestic judiciary.
17. It is true that following the expansion of the Council of Europe and the exponential increase in the number of applications pending before the Court, the member States decided to strengthen its

case processing capacity. The Court receives approximately 28 % of the Council's ordinary budget, just short of 75 million euros<sup>2</sup>. However, this percentage must be viewed in its proper context, namely with reference to the number of applications the Court handles annually and the size and complexity of its docket and to the fact that, unlike other parts of the organisation, it has no EU and relatively limited additional funding through voluntary contributions.

18. The Court has of course had to share the burden imposed by the Council of Europe's restrictive budgetary policy in recent years. Over the last ten years it has lost at least 51 posts. At any given time, the salaries of 7% of staff members are financed from voluntary contributions made by individual States on an annual basis. Such contributions as well as the seconding of national officials are most appreciated. However, the continued loss in human and material resources, despite the increase in the size and complexity of its caseload, should be a cause not just for deep concern but also for concrete action.

**19. A more sustainable means to finance an independent and autonomous judicial institution of the Court's size and importance is needed. It is thus vital that sufficient resources are allocated to enable the Court to effectively exercise its judicial functions and handle pending cases expeditiously, not least inter-State cases to which further reference will be made below.**

*B. Accountability: inter-State and conflicts-related cases*

20. Throughout its history the Court has tackled complex legal cases ensuring that States are held accountable for the most serious human rights violations which occur within their jurisdiction.

21. In recent years, the Court has seen a marked increase in the number of inter-State cases due to an increase in conflicts between Council of Europe member States or former member States. Currently there are 15 pending inter-State cases before the Court, covering 19 applications. 14 of the 15 cases relate to ongoing conflicts between States, 7 of these involve the Russian Federation. These cases are particularly challenging, in terms of their legal and factual complexity and the resources they require. They also give rise to a very high number of individual applications when conflict related, currently some 10,500.

22. In this context, it should be recalled that under Article 58 of the Convention the Court remains competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred until 16 September 2022.<sup>3</sup> Over 14,000 cases of the almost 17,000 cases pending against the Russian Federation are not directly linked to the 2022 invasion, nor related to events in Crimea and Eastern Ukraine following the 2014 invasion. Exercise of the Court's residual jurisdiction ensures that a State that ceases to be a Contracting Party to the Convention due to its expulsion from the Council of Europe cannot retroactively evade its international law obligations under the Convention and accountability for serious violations of human rights.

23. As already noted, inter-State cases, due to their nature, are extremely demanding in terms of resources. The Court has reorganised internally in order to be able to deal more quickly with pending interstate applications. Priority has been accorded to the cases pending in relation to Crimea, Eastern Ukraine and the 2022 invasion. **It is essential that the Court's crucial mission of processing and adjudicating inter-State cases in good time in order to ensure accountability should not be endangered by insufficient resources.**

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<sup>2</sup> For the financial year which ended on 31 December 2022.

<sup>3</sup> Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights, 22 March 2022.

### *C. Execution*

24. As far back as 2007 the Report of the Group of Wise Persons to the Committee of Ministers indicated that for as long as accessible and effective remedies are lacking in member States, the Convention system will suffer from a grave imbalance.
25. The existence of a link between deficient execution of the Court's judgments and the influx of repetitive applications is evidenced by the evolution in the Court's caseload.
26. Close to 80 % of the Court's present docket is composed of applications concerning questions in relation to which the Court has well-established case-law or repetitive cases. The latter are cases where Contracting Parties have failed to take effective steps to remedy the underlying systemic or structural problems previously, and often repeatedly, identified by the Court.
27. This situation is unsustainable, both from the perspective of the principles of subsidiarity and shared responsibility and from the perspective of a court seeking to respond sufficiently quickly to the new and difficult questions to which changes in our societies, democracies, climate and conflict give rise.
28. States must adhere to the principles of subsidiarity and complementarity, both politically and in practice, and respect the Court's case-law in a way that gives full effect to the Convention and avoids the Court being burdened by repetitive applications. This means taking the necessary preventive and corrective measures at national level, notably with the involvement of the Committee of Ministers, when implementing the Court's judgments and dealing with the legal issues identified in them, in particular as regards inadequate legislation, lack of domestic remedies, or ineffective execution of domestic judgments. The States should also have regard to the measures of implementation of the Court's judgments even when they concern other States.
29. It is essential that the States assume ownership of the Convention for the benefit of the persons within their jurisdiction and for the democratic stability and coherence of their legal systems and societies as a whole. Execution of the Court's judgments is a question which goes to the rule of law and is integral to the right of individual application, which lies at the heart of the Convention system.
30. When a High Contracting Party ceases to be a member of the Council of Europe and a party to the Convention new challenges may arise in relation to the process of execution of judgments rendered by the Court in cases brought against that State. It is thus necessary for an effective mechanism for the implementation of the Court's judgments to be developed in such cases.
- 31. Deficiencies in execution and compliance with the Court's judgments and decisions undermine the effectiveness of the Convention system and of the Convention's role as an instrument for the protection of European public order in the field of human rights. It is therefore of paramount importance that the member States reaffirm their commitment to the execution of the Court's judgments and decisions, given their binding nature and the States' parties obligations under the Convention.**

### **V Conclusion**

32. The Council of Europe and the Court have played a decisive role in seeking to maintain high standards of democracy, human rights and the rule of law in the member States. Acknowledgement of this role should be backed up by the necessary political and economic support for the Council of Europe and for the Court to enable both to effectively exercise their functions.
33. As war rages on European soil, Council of Europe member States should not lose sight of what the Convention system is intended to do, namely to monitor compliance with the minimum standards necessary for a democratic society operating within the rule of law. It serves as an early warning system which seeks to prevent the erosion of democracies.
34. We cannot either lose sight, at this critical point in Europe's history, of the Convention's special character as a treaty for the collective enforcement of human rights and fundamental freedoms

and of our profound responsibility to pass on this unique international protection mechanism to future generations.

## **Fourth Summit of Heads of State and Government of the Council of Europe**

### **Conclusion of the European Court of Human Rights**

Strasbourg, 20 March 2023

The European Court of Human Rights calls on the States Parties to:

1. Reaffirm their commitment to the Convention system as a mechanism for guaranteeing peace and stability in Europe and promoting the core values of the Council of Europe namely, democracy, human rights and the rule of law.
2. Pledge sufficient financial resources to enable the Court to exercise effectively its judicial functions and handle its caseload expeditiously.
3. Support the Court's efforts to ensure accountability through its processing of individual and inter-State applications in a timely manner, particularly those which stem from conflicts.
4. Reaffirm their commitment to the execution of the Court's judgments and decisions, given their binding nature and the States' parties obligations under the Convention.