



The Law Society
of England and Wales



THE AIRE CENTRE
Advice on Individual Rights in Europe

HR HELSINKI FOUNDATION
for HUMAN RIGHTS



Joint NGO Statement on the draft Brussels Declaration on the “Implementation of the European Convention on Human Rights, our shared responsibility”

The undersigned organizations welcome and support the initiative of the Belgian Chairmanship to dedicate its efforts, in the form of a high-level conference, to addressing the need for more effective implementation of the European Convention on Human Rights and for the full, rapid execution of European Court of Human Rights judgments. The Brighton Declaration of 2012 recognized that the long-term sustainability of the European Convention must be built around better national implementation of Convention rights at the domestic level. Greater respect for human rights at home remains the most important way to ensure both the Convention and the Court function effectively. The proposed Brussels Declaration builds on the Brighton commitment, recognizing that implementation depends both on a political commitment by States Parties and better supervision by all stakeholders in the Council of Europe.

We warmly welcome the opportunity afforded by the Belgian Chairmanship to offer comments on the draft Declaration provided to us as of 2 February 2015. We have prepared this brief summary of our key positions to assist the ongoing negotiations and to highlight some areas for improvement of the text.

All efforts by executive, parliamentary and judicial authorities to better integrate the Convention standards into national law, policy and practice must be encouraged and we strongly support commitments by States Parties to improve mechanisms for domestic implementation of the

Convention. Effective execution of judgments is at the core of securing the effectiveness of the Court and the Convention system as a whole.

There are a number of proposals in the draft Declaration that we therefore welcome. These include:

- Increased cooperation and bilateral dialogue amongst bodies of the Council of Europe and States Parties with regard to implementation of the Convention.
- Enhancing, at the level of both the Committee of Ministers and States Parties, the effectiveness of the system of supervision of the execution of Court judgments.
- The use, in a graduated manner, by the Committee of Ministers of “all of the tools at its disposal” in the supervision process, as well as the calls for it to hold “thematic debates” on issues relating to the execution of judgments and to have national experts with “sufficient authority and expertise” take part in Committee meetings.
- Concrete proposals for how States Parties can better ensure implementation of the Convention at national level, including through the preparation of high-quality action plans and the involvement of national parliaments in the execution process.
- Increased resources for the Department for the Execution of Judgments.

We wish, however, to highlight below our principal concerns with the current draft, as well as recommendations for improvement.

Declaration

The invitation to the Court to “maintain its vigilance with regard to respect for the ... margin of appreciation” should be removed. In particular, it is difficult to see this reference to a judicial doctrine of interpretation developed by the Court as being relevant to the issue of execution of judgments. While States have some flexibility regarding the specific types of measure appropriate to execute a Court’s judgment, this is not to be confused with the judicial doctrine of the margin of appreciation. In any event, the proposed wording serves to undermine the independence of the Court, as the Conference would be prescribing to it how to apply its juridical doctrine. The use of the term “invites” does not obviate the undue influence and pressure that may be carried by this text.

Reference to the “need to simplify the procedure for amending Convention provisions of an organizational nature” should be removed. In particular, as this Declaration’s primary focus is on the execution of judgments, a reference to such a simplified amendment procedure does not appear to be relevant.

Acknowledgement of civil society’s role in the implementation of Convention rights should be added. Civil society has played an important role—both domestically, in cooperation with States Parties, and through the provision of information to the Committee of Ministers—in the effective implementation of the Convention and the execution of judgments. Given the reference

to civil society in the search for effective means to implement the Action Plan, such a reference should naturally be included in the Declaration as well.

Action Plan

A. Interpretation and implementation of the Convention by the Court

The invitation to the Court to “seek to obtain a qualified majority” in certain cases should be removed. Such an invitation relating to a purely organizational matter internal to the Court and intrinsic to the judicial function trespasses on the independence of the Court and the principles of the Convention system as a whole. Moreover, it would encourage judges to treat judgments as objects in political “horse-trading” in a manner inconsistent with their judicial office and effectively serve to accord greater weight to the views of individual judges.

B. Implementation of the Convention at national level

“[E]nabling a reinforcement of national synergies” should be encouraged over the value of a “relay” mechanism” per se; furthermore, the “if appropriate” language with respect to civil society participation should be deleted. We strongly support the promotion of close cooperation amongst executive authorities, judiciary authorities, members of parliament, National Human Rights Institutions (NHRIs), and civil society; however, the inclusion of “if appropriate” with respect to the latter is misplaced and unfortunate. While this clause may be intended to refer solely to NHRIs or related institutions (which evidently do not exist in all States Parties), we do not see any circumstances when it would be inappropriate to involve civil society representatives in a coordinated approach to the execution of judgments. Furthermore, while cooperation amongst national-level stakeholders is essential in supervising the execution of judgment, the emphasis on a “relay” mechanism per se could be to read to suggest necessity or desirability of establishing a uniform process across all States Parties. Such a one-size-fits all approach could have the unfortunate consequence in certain instances of undercutting, rather than bolstering effective national implementation. A more general wording encouraging the creation of appropriate supervision structures may therefore be more appropriate.

The role that civil society actors can play in supporting the efforts of States Parties to better embed Convention rights at the national level should be clearly stated. It is evident that implementation is most successful where national-level civil society participation is recognized as an integrated part of the implementation process. Similarly, where States Parties struggle with non-implementation, it is often civil society that drives the process for change.

C. Supervision of the execution of Judgments

Clarify that the Committee of Ministers shall be entitled to consider any communications from other international organizations or bodies under Rule 9(2), as well as non-governmental organizations and National Human Rights Institutions. Assuming that this is the intended purpose of this provision the text, as currently drafted, is not clear.

The singling out of “representatives of civil society” with respect to the date and sources of communications transmitted to the Committee should be removed. Greater transparency about the source and timing of submissions to the Committee of Ministers is welcome; however, notwithstanding the importance of civil society’s inclusion in the Declaration, information provided by civil society representatives to the Committee need not be treated in a different manner than other sources of information.

Support for “additional ordinary meetings” would be preferable to “*ad hoc* meetings.”

While the proposal to convene more frequent meetings to supervise the execution of judgments, and to hold separate meetings for inter-state cases, is welcome, *ad hoc* meetings may limit the transparency of regular, periodic review. The ability for civil society representatives and other relevant actors to receive adequate notice of such *ad hoc* meetings, and their ability to provide relevant information in advance, may likewise be imperiled.

Implementation of the Action Plan

Remove the invitation to the Committee of Ministers to prepare specific proposals to make amendment of the Convention simpler. As noted, a simplified amendment procedure does not appear to be relevant for a Declaration whose primary focus is on the execution of judgments. Furthermore, changing the mechanism for amendment of the Convention is a major undertaking with constitutional significance for the Council of Europe; it should not be encouraged as an afterthought.

It would be useful to include an invitation to the Secretary General to report back to the Committee of Ministers on his findings in this regard within a specified timeframe. In light of the welcome encouragements to the Secretary General and, through him, the Department for the Execution of Judgments, such an invitation would be appropriate.

Finally, we urge all contracting parties to do their utmost in the upcoming negotiations and final conclusion of the Brussels Declaration to ensure a sustainable Convention system with an independent and effective Court. As stakeholders in this system, civil society organizations will continue their long-standing efforts to support the execution of Court judgments and the effective integration of the European Convention into national law, policy and practice.