

**La Dichiarazione di Smirne
sul futuro della Corte europea
dei diritti dell'uomo
27 aprile 2011**

2011 – 2.4

Fogli di lavoro
per il Diritto Internazionale



Direzione scientifica: *Rosario Sapienza*
Coordinamento redazionale: *Elisabetta Mottese*
Redazione: *Adriana Di Stefano, Federica Antonietta Gentile, Giuseppe Matarazzo,*

Volume chiuso nel mese di settembre 2011

FOGLI DI LAVORO *per il Diritto Internazionale* è on line
<http://www.lex.unict.it/it/crio/fogli-di-lavoro>

ISSN 1973-3585
Cattedra di Diritto Internazionale
Via Gallo, 24 - 95124 Catania
E-mail: risorseinternazionali@lex.unict.it
Redazione: foglidilavoro@lex.unict.it
Tel: 095 230857 - Fax 095 230489

Con questa dichiarazione, adottata a Smirne il 27 aprile di quest'anno, prosegue la riflessione avviata sul futuro della Corte europea dei diritti umani l'anno scorso a Interlaken.

La pubblichiamo su richiesta del nostro Gruppo di lavoro sulla Convenzione europea dei diritti umani, che ringraziamo per avercela segnalata.

La redazione

High Level Conference on the Future of the European Court of Human Rights

organised within the framework of the Turkish Chairmanship of the Committee of Ministers of the Council of Europe

IZMIR, Turkey
26 – 27 April 2011

DECLARATION

The High Level Conference meeting at Izmir on 26 and 27 April 2011 at the initiative of the Turkish Chairmanship of the Committee of Ministers of the Council of Europe (“the Conference”),

1. Recalling the strong commitment of the States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and to the control mechanism it established;
2. Expressing its determination to ensure the effectiveness of this mechanism in the short, medium and long terms;
3. Recognising again the extraordinary contribution of the European Court of Human Rights (“the Court”) to the protection of human rights in Europe;
4. Reaffirming the principles set out in the Declaration and Action Plan adopted at the Interlaken HighLevel Conference on 19 February 2010 and expressing the resolve to maintain the momentum of the Interlaken process within the agreed timeframe;
5. Recalling that the subsidiary character of the Convention mechanism constitutes a fundamental and transversal principle which both the Court and the States Parties must take into account;

6. Recalling also the shared responsibility of both the Court and the States Parties in guaranteeing the viability of the Convention mechanism;
7. Noting with concern the continuing increase in the number of applications brought before the Court;
8. Considering that the provisions introduced by Protocol No. 14, while their potential remains to be fully exploited and the results so far achieved are encouraging, will not provide a lasting and comprehensive solution to the problems facing the Convention system;
9. Welcoming the ongoing negotiations on the modalities of European Union accession to the Convention;
10. Welcoming the concrete progress achieved following the Interlaken Conference;
11. Considering, however, that maintaining the effectiveness of the mechanism requires further measures, also in the light of the preliminary contribution by the President of the Court to the Conference and the opinion adopted by the Plenary Court for the Conference;
12. Expressing concern that since the Interlaken Conference, the number of interim measures requested in accordance with Rule 39 of the Rules of Court has greatly increased, thus further increasing the workload of the Court;
13. Taking into account that some States Parties have expressed interest in a procedure allowing the highest national courts to request advisory opinions from the Court concerning the interpretation and application of the Convention;
14. Considering, in the light of the above, that it is time to take stock of the progress achieved so far to consider further steps in the pursuit of the Interlaken objectives and to respond to the new concerns and expectations that have become apparent since the Interlaken Conference;

15. Recalling the need to pursue long-term strategic reflections about the future role of the Court in order to ensure sustainable functioning of the Convention mechanism;

The Conference:

1. Proposes, firstly, to take stock, in accordance with the Interlaken Action Plan, of the proposals that do not require amendment of the Convention and, secondly, having also regard to recent developments, to take necessary measures;

2. Welcomes the measures already taken by the Court so far to implement Protocol No.14 and follow up the Interlaken Declaration, including the adoption of a priority policy;

3. Takes note of the fact that the provisions introduced by Protocol No. 14 will not by themselves allow for a balance between incoming cases and output so as to ensure effective treatment of the constantly growing number of applications, and consequently underlines the urgency of adopting further measures;

4. Considers that the admissibility criteria are an essential tool in managing the Court's caseload and in giving practical effect to the principle of subsidiarity; stresses the importance that they are given full effect by the Court and notes, in this regard, that the new admissibility criterion adopted in Protocol No. 14, which has not yet had the effect intended, is about to be shaped by the upcoming case law and remains to be evaluated with a view to its improvement, and invites the Committee of Ministers to initiate work to reflect on possible ways of rendering the admissibility criteria more effective and on whether it would be advisable to introduce new criteria, with a view to furthering the effectiveness of the Convention mechanism;

5. Reaffirms the importance of a consistent application of the principles of interpretation;

6. Welcomes the recent creation of an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights, responsible for examining the candidatures proposed by States Parties before they are transmitted to the Parliamentary Assembly of the Council of Europe;
7. Invites the Committee of Ministers to continue its reflection on the criteria for office as judge of the Court and on the selection procedures at national and international level, in order to encourage applications by good potential candidates and to ensure a sustainable recruitment of competent judges with relevant experience and the impartiality and quality of the Court;
8. Notes with interest the adoption of a new approach in relation to the supervision of execution of Court judgments by the Committee of Ministers;
9. Adopts the Follow-up Plan below as an instrument, which builds on the Interlaken Action Plan while taking into account recent developments in the Council of Europe, the Court, and the Committee of Ministers as well as the concerns and expectations that have emerged since the Interlaken Conference.

Follow-up Plan

A. Right of individual petition

The Conference:

1. Reaffirms the attachment of the States Parties to the right of individual petition as a cornerstone of the Convention mechanism and considers in this context that appropriate measures must be taken rapidly to dissuade clearly inadmissible applications, without, however, preventing well-founded applications

from being examined by the Court, and to ensure that cases are dealt with in accordance with the principle of subsidiarity;

2. Reiterates the call made for the consideration of additional measures with regard to access to the Court in the Interlaken Declaration and therefore invites the Committee of Ministers to continue to examine the issue of charging fees to applicants and other possible new procedural rules or practices concerning access to the Court;

3. Welcoming the improvements in the practice of interim measures already put in place by the Court and recalling that the Court is not an immigration Appeals Tribunal or a Court of fourth instance, emphasises that the treatment of requests for interim measures must take place in full conformity with the principle of subsidiarity and that such requests must be based on an assessment of the facts and circumstances in each individual case, followed by a speedy examination of, and ruling on, the merits of the case or of a lead case. In this context, the Conference:

- Stresses the importance of States Parties providing national remedies, where necessary with suspensive effect, which operate effectively and fairly and provide a proper and timely examination of the issue of risk in accordance with the Convention and in light of the Court's case law; and, while noting that they may challenge interim measures before the Court, reiterates the requirement for States Parties to comply with them;

- Underlines that applicants and their representatives should fully respect the Practice Direction on Requests for Interim Measures for their cases to be considered, and invites the Court to draw the appropriate conclusions if this Direction is not respected;

- Invites the Court, when examining cases related to asylum and immigration, to assess and take full account of the effectiveness of domestic procedures and, where these procedures are seen to operate fairly and with respect for human rights, to avoid intervening except in the most exceptional circumstances;

- Further invites the Court to consider, with the State Parties, how best to combine the practice of interim measures with the principle of subsidiarity, and to take steps, including the consideration of putting in place a system, if appro-

priate, to trigger expedited consideration, on the basis of a precise and limited timeframe, of the merits of cases, or of a lead case, in which interim measures have been applied;

4. Welcomes the contribution of the Secretary General, which recommends the provision to potential applicants and their legal representatives of objective and comprehensive information on the Convention and the case-law of the Court, in particular on the application procedure and the admissibility criteria, along with the detailed handbook on admissibility and the checklist prepared by the Registry of the Court, in order to avoid, insofar as possible, clearly inadmissible applications;

5. Calls on the Secretary General to implement rapidly, where necessary in co-operation with the European Union, the proposals regarding the provision of information and training contained in the report which he has submitted to the Committee of Ministers.

B. Implementation of the Convention at national level

The Conference:

1. Reiterates calls made in this respect in the Interlaken Declaration and more particularly invites the States Parties to:

a. Ensure that effective domestic remedies exist, be they of a specific nature or a general domestic remedy, providing for a decision on an alleged violation of the Convention and, where necessary, its redress;

b. Co-operate fully with the Committee of Ministers in the framework of the new methods of supervision of execution of judgments of the Court;

c. Ensure that the programmes for professional training of judges, prosecutors and other lawenforcement officials as well as members of security forces contain adequate information regarding

the well-established case-law of the Court concerning their respective professional fields;

d. Consider contributing to translation into their national language of the Practical Guide on Admissibility Criteria prepared by the Registry of the Court;

e. Consider contributing to the Human Rights Trust Fund.

2. Invites the States Parties to devote all the necessary attention to the preparation of the national reports that they must present by the end of 2011, describing measures taken to implement relevant parts of the Interlaken Declaration and how they intend to address possible shortcomings, in order that these reports provide a solid basis for subsequent improvements at national level.

C. Filtering

The Conference:

1. Notes with satisfaction the first encouraging results of the implementation of the new single-judge formation. It nevertheless considers that, beyond measures already taken or under examination, new provisions concerning filtering should be put in place;

2. As regards short term measures, invites the Court to consider and evaluate the system of filtering by judges, of the existing bench who dedicate their working time to single-judge work for a short period, and to continue to explore further possibilities of filtering not requiring amendment to the Convention;

3. As regards long-term measures, invites the Committee of Ministers to continue its reflection on more efficient filtering systems that would, if necessary, require amendments to the Convention. In this context, it recalls that specific proposals for such a filtering mechanism that would require amendments to the Convention have to be prepared by April 2012.

D. Advisory opinions

The Conference:

1. Bearing in mind the need for adequate national measures to contribute actively to diminishing the number of applications, invites the Committee of Ministers to reflect on the advisability of introducing a procedure allowing the highest national courts to request advisory opinions from the Court concerning the interpretation and application of the Convention that would help clarify the provisions of the Convention and the Court's case-law, thus providing further guidance in order to assist States Parties in avoiding future violations;
2. Invites the Court to assist the Committee of Ministers in its consideration of the issue of advisory opinions.

E. Repetitive applications

The Conference, whilst reiterating the calls made in the Interlaken Action Plan concerning repetitive applications and noting with satisfaction the first encouraging results of the new competences of committees of three judges:

1. Invites the States Parties to give priority to the resolution of repetitive cases by way of friendly settlements or unilateral declarations where appropriate;
2. Underlines the importance of the active assistance of the Court to States Parties in their efforts to reach friendly settlements and to make unilateral declarations where appropriate and encourages the Court's role in this respect as well as the need for creating awareness of friendly settlements as an integral part in the Convention for settling disputes between parties to proceedings before the Court;
3. Considers that the Court, when referring to its "well-established case-law" must take account of legislative and factual circumstances and developments in the respondent State;
4. Welcomes the ongoing work of the Committee of Ministers on the elaboration of specific proposals that would require amendment to the Convention, in

order to increase the Court's case-processing capacity, and considers that the proposals made should also enable the Court to adjudicate repetitive cases within a reasonable time;

5. Welcomes the new Rule 61 of the Rules of the Court adopted by the Court on the pilot-judgment procedure.

F. The Court

The Conference:

1. Assures the Court of its full support to realise the Interlaken objectives;
2. Reiterating the calls made in the Interlaken Action Plan and considering that the authority and credibility of the Court constitute a constant focus and concern of the States Parties, invites the Court to:
 - a. Apply fully, consistently and foreseeably all admissibility criteria and the rules regarding the scope of its jurisdiction, *ratione temporis*, *ratione loci*, *ratione personae* and *ratione materiae*;
 - b. Give full effect to the new admissibility criterion in accordance with the principle, according to which the Court is not concerned by trivial matters (*de minimis non curat praetor*);
 - c. Confirm in its case law that it is not a fourth-instance court, thus avoiding the re-examination of issues of fact and law decided by national courts;
 - d. Establish and make public rules foreseeable for all the parties concerning the application of Article 41 of the Convention, including the level of just satisfaction which might be expected in different circumstances;
 - e. Consider that decisions of the panels of five judges to reject requests for referral of cases to the Grand Chamber are clearly rea-

soned, thereby avoiding repetitive requests and ensuring better understanding of Chamber judgments;

f. Organise meetings with Government agents on a regular basis so as to further good co-operation;

g. Present to the Committee of Ministers proposals, on a budget-neutral basis, for the creation of a training unit for lawyers and other professionals;

3. Notes with satisfaction the arrangements made within the Registry of the Court that have allowed better management of budgetary and human resources;

4. Welcomes the production by the Court's Registry of a series of thematic factsheets dealing with different case-law issues and encourages the Court to pursue this work in relation to its case-law on other substantive and procedural provisions which are frequently invoked by applicants;

5. Encourages furthermore the States Parties to second national judges and, where appropriate, other high-level independent lawyers to the Registry of the Court.

G. Simplified procedure for amendment of the Convention

The Conference, taking account of the work that has followed the Inter-laken Conference at different levels within the Council of Europe, invites the Committee of Ministers to pursue preparatory work for elaboration of a simplified procedure for amending provisions relating to organisational matters, including reflection on the means of its introduction, i.e. a Statute for the Court or a new provision in the Convention.

H. Supervision of the execution of judgments

The Conference:

1. Expects that new standard and enhanced procedures for supervision of the execution of judgments will bear fruit and welcomes the decision of the Committee of Ministers to assess their effectiveness at the end of 2011;
2. Reiterates the calls made by the Interlaken Conference concerning the importance of execution of judgments and invites the Committee of Ministers to apply fully the principle of subsidiarity, by which the States Parties have in particular the choice of means to deploy in order to conform to their obligations under the Convention;
3. Recalls the special role given to the Committee of Ministers in exercising its supervisory function under the Convention and underlines the requirement to carry out its supervision only on the basis of a legal analysis of the Court's judgments.

I. Accession of the European Union to the Convention

The Conference welcomes the progress made in the framework of negotiations on accession of the European Union to the Convention and encourages all the parties to conclude this work in order to transmit to the Committee of Ministers as soon as possible a draft agreement on accession and the proposals on necessary amendments to the Convention.

Implementation

The Conference:

1. Invites the States Parties, the Committee of Ministers, the Court and the Secretary General to ensure implementation of the present Follow-up Plan, which builds on the Interlaken Action Plan;
2. Invites the Committee of Ministers to:

- a. Continue its reflection on the issue of charging fees to applicants, including other possible new procedural rules or practices concerning access to the Court, and on more efficient filtering systems that would, if necessary, require amendments to the Convention;
 - b. Reflect on the advisability of introducing a procedure allowing the highest national courts to request advisory opinions from the Court;
 - c. Pursue preparatory work for elaboration of a simplified amendment procedure for provisions relating to organisational matters, including reflection on the means of its introduction, i.e. a Statute for the Court or a new provision in the Convention.
3. Invites the Court to consider and evaluate the system of filtering by judges, of the existing bench who dedicate their working time to single-judge work for a short period, and to continue to explore further possibilities of filtering not requiring amendment to the Convention;
 4. As regards Rule 39, expresses its expectation that the implementation of the approach set out in paragraph A3 will lead to a significant reduction in the number of interim measures granted by the Court, and to the speedy resolution of those applications in which they are, exceptionally, applied, with progress achieved within one year. The Committee of Ministers is invited to revert to the question in one year's time;
 5. Invites the States Parties, the Committee of Ministers, the Court and the Secretary General to pursue long-term strategic reflections about the future role of the Court;
 6. Invites the Committee of Ministers and the States Parties to consult with civil society during the implementation of the present Follow-up Plan, where appropriate, involving it in long-term strategic reflections about the future role of the Court;
 7. Reminds the States Parties of their commitment to submit, by the end of 2011, a report on the measures taken to implement the relevant parts of the Interlaken Declaration and the present Declaration;

8. Invites the Committee of Ministers to confer on the relevant committees of experts the mandates necessary in order that they pursue their work on the implementation of the Interlaken Action Plan in accordance with the calendar defined therein and in the light of the goals set out in the present Declaration;
9. Asks the Turkish Chairmanship to transmit the present Declaration and the Proceedings of the Izmir Conference to the Committee of Ministers;
10. Invites the future Chairmanships to follow-up the implementation of the present Declaration jointly with the Interlaken Declaration.