

LONGER-TERM FUTURE OF  
THE SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND  
THE EUROPEAN COURT OF HUMAN RIGHTS

Open call for information, proposals and views: submission form

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Relevant qualifications/ experience:	<p>The Human Rights Centre (HRC) is an autonomous and independent expert institution whose task is to promote the implementation of fundamental and human rights and increase cooperation and exchange of information between various actors. The National Human Rights Institution (NHRI) consists of the Human Rights Centre, its pluralistic 40-member Human Rights Delegation and the Office of the Parliamentary Ombudsman. The Institution was established by law (changes to the Law on the Parliamentary Ombudsman 535/2011), effective as of 1 January 2012.</p> <p>More information on the NHRI in Finland can be found on our website <a href="http://www.humanrightscentre.fi/in-english">www.humanrightscentre.fi/in-english</a>.</p>
Please indicate whether you are acting in an individual capacity or on behalf of an organisation; if the latter, please indicate which:	Human Rights Centre, Finland (as the National Human Rights Institution)
Check this box if you do <u>not</u> wish your contribution to be published by the Council of Europe:	
Check this box if you do <u>not</u> agree to receiving follow-up questions concerning your contribution:	
Check this box if you would <u>not</u> be willing, if invited, to attend a meeting to discuss your contribution further:	
Summary of the main points (200 words maximum):	<p>Focus of Court's work on significant, complex and novel cases, however, no unnecessary limitations to the right of individual application. Sanctions to States that constantly disregard the judgments. Better national implementation on all levels of the society. Sufficient funding for translation and distribution of judgments domestically. Better utilisation of precedents in case law. Enhanced knowledge on national level of Convention, its case law and the procedures relating to Court.</p>



Check the box(es) of the topic(s) that correspond most closely to the content of your contribution:	Future challenges to the Convention system	
	Subsidiarity	x
	Implementation of the Convention at national level	x
	Execution of Court judgments	x
	Council of Europe technical support and assistance to States	
	Mechanisms required at the European level to ensure effective protection of individual rights and authoritative interpretation of the Convention	
	Margin of appreciation	
	Interaction between the Court and national judicial systems	
	Role of the Court in interpreting the Convention	
	Right of individual application to the Court/ right to a judicial decision	x
	Admissibility criteria	x
	Clearly inadmissible applications	
	Repetitive applications	x
	Alternative dispute resolution	
	Restoring the position of the victim of a violation (including the award of just satisfaction (compensation) by the Court)	
	Rules of Court	
	Internal organisation of the Court (including the case-management system)	
	Status and judicial composition of the Court	
	Supervision of the execution of Court judgments: role of the Committee of Ministers	x
	Supervision of the execution of Court judgments: powers and procedure	
Other issues/ none of the above		



CONTRIBUTION:

**Submission to Council of Europe's Committee of Experts on the Reform of the European Court of Human Rights (DH-GDR) on the longer term future of the system of the European Convention on Human Rights, and the European Court of Human Rights.**

### **Human Rights Centre - Finland**

The HRC refers, in addition to its own submissions, to those of the ENNHRI (The European Network of National Human Rights Institutions) that coordinates 40 National Institutions (NHRIs) for the Protection and Promotion of Human Rights in accordance with the UN-Paris Principles from across wider Europe.

#### **Aims of the reform**

The aim of any reform of the Convention system must be to ensure that the system works efficiently for the vindication of rights for all persons within the Member States of the Council of Europe. Any efforts to the contrary, i.e. frivolous limitations/obstacles in the Court's ability to consider applications should be prevented.

However, at the same time, any reform should ensure that the Court is enabled to act effectively and meaningfully while concentrating on **significant, complex or novel cases** that require particular scrutiny to ensure compliance with the Convention. These two aims are hard to fulfil at the same time.

#### **Repetitive applications**

The Member States must bare their responsibility and develop their domestic systems to be in line with the developing interpretation of the Convention.

There needs to be an incentive/punishment for those States that regularly disregard the responsibility to address effectively the already known systematic issues regarding compliance with the Convention that exist in individual States.

Equally, where an application is *prima facie* substantively well-founded, in cases other than Articles 2-4 (which should be examined by Court), the States should be incentivised to undertake and be more open minded about voluntary friendly settlements or unilateral declarations (even where respondent State may believe admissibility criteria may not have been met). This could occur where there is well-founded case law and also for prevention of repetitive cases.

#### **Admissibility criteria**

The latest changes in the admissibility criteria in the beginning of 2014 already place considerable burden for applicants without legal representation. Any further limitation, if deemed necessary, must be better advertised and information to the public must be available in all languages well in advance in order to avoid the surprise factor.



## **Execution of Court Judgments**

Court Judgments should be understandable and clear on a general measures issue, thus a link between general measures and Article 46 will assist the Department of Execution of Judgments in overseeing execution and the national authorities in effecting execution.

There should be increased synergy between the Court and the Department of Execution of Judgments on how pilot Judgments are identified and executed.

Following a Court Judgment, in order to secure an effective and efficient execution the States should ensure translation of the decision, wide distribution to various levels of legislative and executive structures, not forgetting the general public and legal practitioners. It should be made clear what and how needs to be done in order to fulfil the judgments' general measures requirements.

Sufficient funds should be allocated to the translation and distribution of the Court's decision on domestic level.

## **Supervision of the execution of Court judgments**

The role of the Committee of Ministers is by its nature highly politicised, and this is reflected in the unwillingness of the Committee to place political pressure on recalcitrant States.

The Committee of Ministers should consider real and effective measures in relation to States with repetitive applications and the States concerned should respond urgently. Such measures should begin with support for the State concerned, but also have the ability to move from incentives to graded sanctions where the State proves intransigent in relation to execution.

The Committee of Ministers should find means to highlight important cases which require implementation by States generally.

## **Subsidiarity**

The principle of subsidiarity must not be interpreted in any way which may undermine the right to individual petition. In particular, proposals to further restrict meritorious applications, such as new admissibility criteria, should not be developed in light of Protocol 15.

Subsidiarity should be understood in the way in which the concept has been developed in the Court's case law. The Court must retain the ability to manage its own affairs, and no proposals should be considered that may impinge on its independence.

Any discussion of subsidiarity must focus on national implementation of the ECHR under Article 1, and provision of effective remedies under Article 13.



### **Implementation at national level**

The existing mechanisms for national implementation should be strengthened, and in particular the work of the Committee of Ministers in ensuring effective implementation of the Court's judgments.

The CM Recommendations 2004 (6) on the improvement of domestic remedies, and 2004 (5) on the verification of compatibility of draft laws, existing laws and administrative practice with Convention standards should be fully recognized and implemented on national level.

More information on States obligations under the Convention should be published in national languages and they should be more widely disseminated. This should include the Toolkit adopted at the 78<sup>th</sup> meeting of CDDH in June 2013, and any other measures aimed at increasing awareness of the Convention system.

Consideration should be given to the role of the NHRIs, and other relevant bodies including civil society, in how they could improve the implementation of the Convention.

Sanctions should be considered against states who fail to implement the court's judgments and thereby create repetitive applications;

Guidelines should be created on drawing conclusions from precedential court judgements against another state (where the same problem of principles exists in a different legal jurisdiction);

The role and the resources (funding, personnel) of the State agent *vis a vis* other State officials should be enhanced to ensure effective national implementation of Convention provisions.

Sufficient funding should be provided for national legal data base/government Agent's offices for translation and distribution on-line of the relevant Court jurisprudence for the use of legal professionals and public at large.