Ruben de Graaff, Xavier Konter

**Summary of the main points**

According to the NJCM, the following options should (further) be explored:

1. With regard to the caseload and effective judicial protection: the possibilities of a ‘default judgment procedure’ to expedite the resolution of repetitive cases; the appointment of temporary additional judges to the Court; the possibilities for the Court to offer clear guidance in its judgments, with regard to what the Convention requires.

2. With regard to the execution of judgments and supervision on execution: technical assistance based on best practices, including a more binding character of such assistance; the possibility of bringing an infringement procedure under Art. 46(4) ECHR; awarding the mandate to bring such a procedure to another Council of Europe body, for instance the Parliamentary Assembly; the possibility to impose financial penalties within the context of such a procedure.

3. With regard to the implementation of the Convention at the national level: more focus on implementing and spreading best practices; the development of a template by the CDDH, which may serve as a basis for assessing the extent to which States Parties have embedded the Convention in their domestic legal orders.

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

*Comments of the Netherlands Committee of Jurists for Human Rights (NJCM), the Dutch Section of the International Commission of Jurists, in response to the open call for information, proposals and views made by the Council of Europe’s Committee of experts on the reform of the European Court of Human Rights*

Together, the States Parties – by enacting and adhering to the European Convention on Human Rights (the Convention) – and the European Court of Human Rights (the Court) – by protecting individual rights and authoritatively interpreting the Convention – have indisputably created one of the most advanced regional human rights systems in the world. However, it is also true that this human rights system has in the last decades been confronted with several particularly severe challenges, an overwhelming caseload and instances of unduly protracted execution of judgments being among the most serious of these challenges. The Netherlands Committee of Jurists for Human Rights (NJCM) holds the view that further measures are necessary to address these challenges. It invites the Committee of experts on the reform of the European Court of Human Rights (DH-GDR) to consider the views and proposals listed below, and to take these into account in its discussions on the future of the Convention and the Court.

1) **Caseload and Effective Judicial Protection**

Since its inception and by means of its case law the Court has made an extraordinary contribution to the protection of the human rights of individuals. Further measures addressing the Court’s caseload should be aimed at upholding this *acquis*, safeguarding the enjoyment of these rights and safeguarding access to the Court. NJCM considers it essential that future reforms are aimed at ensuring that the Court is in the position to ensure the observance of the full range of Convention rights, by ensuring consistency of standards and providing real protection to individual applicants, not in the least when these applicants are at risk of irreparable damage.
Considerable headway has already been made when it comes to the effectiveness and efficiency of the Court, particularly with regard to processing of manifestly ill-founded applications and repetitive cases. In some instances a group of repetitive cases is now simply referred to the State concerned. A member states’ failure to provide redress within a fixed period of time may lead to a ‘default judgment’ awarding compensation to the applicant. **NJCM is of the opinion that both the Court and the Steering Committee for Human Rights (CDDH) should further explore the practicalities and possibilities of a ‘default judgment procedure’ to expedite the resolution of repetitive cases.** This may eventually make the Court decide to insert a Rule on this procedure in its Rules of Court. The State Parties have already expressed their support for the pilot judgment procedure in the Brighton Declaration.¹ The State Parties could provide similar support to a ‘default judgment procedure’ by expressly endorsing the procedure in the course of the reform process.

**More attention should henceforth be given to what is currently the most pressing matter when it comes to the sustainable functioning of the Court: the increasing number of cases pending before the Court’s Chambers.** What is really needed is an express commitment from the side of the State Parties to reducing the number of cases pending before the Court’s Chambers, thus by and large securing the functioning of the Court for the years to come. The State Parties and the Court have a shared responsibility for ensuring that all these cases are decided upon within a reasonable time. The CDDH could be mandated, as part of wider efforts in this direction, to explore the option and practicalities of temporarily appointing additional judges to the Court, and to investigate whether this could help reducing the Court’s caseload. The Court can also play its role in assisting the State Parties in their efforts to lessen the influx of ‘Chamber cases’ by giving – where possible – clear guidance with regard to what the Convention requires, including with regard to what is necessary to remedy a violation.

2) Execution of Judgments and Supervision on Execution

In well-founded cases, and especially in repetitive cases (41%), more attention should be given to the execution and implementation of judgments. In those repetitive cases, there is clarity about the requirements of the Convention and the consequences for the national legal systems, but States lack commitment or resources to adjust their standards to the minimum levels of the Convention.

This may first of all be caused by a lack of resources or expertise. The Commissioner for Human Rights and the Committee of Ministers should therefore **regularly draw prominent attention to good practices** developed in various states. Furthermore, renewed consideration should be given to establishing a mechanism of **technical assistance by Council of Europe officials** that could help to remedy structural violations by adjusting the national legal system to ECHR standards. This assistance program should not be non-binding or merely dependent upon the request or acceptance of the State concerned. Rather, **it is time to consider a more binding character of the assistance offered by such Council of Europe institutions.**

Secondly, structural non-compliance with ECHR standards may be a question of unwillingness. When States Parties (expressly) refuse to abide by a decision of the Court, an infringement proceeding may be brought against that State under Art. 46(4) ECHR. To date, no infringement proceedings have been brought under this Article. The requirement of a two thirds majority in the Committee of

¹ Brighton Declaration para.  19.c).
Ministers seems to hamper its application. Instead of the Committee of Ministers, another independent Council of Europe body could be given this mandate under Article 46(4) ECHR. This may for instance be the Parliamentary Assembly, which represents a balanced reflection of the political forces in the 47 national parliaments. Consideration should be given to the possibility of imposing financial penalties, once a State Party has failed to fulfill its obligations in such a way that the Parliamentary Assembly deems it necessary and appropriate to bring an infringement procedure.

3) Implementation of the Convention at National Level

NJCM holds the firm conviction that the next steps in the development of the Convention system ought to be taken predominantly in and by the States Parties. Better protection of the human rights of individuals is - to a very considerable extent - dependent upon the capacity of governmental, legislative and judicial structures to apply the Convention. Both the State Parties and Council of Europe bodies ought to focus more closely on implementing and spreading best practices and practical measures that facilitate the implementation of the Convention at national level. Many of such practices and measures have already been identified following previous high-level conferences.² NJCM considers that States Parties should support the spread of these practices by expressly endorsing – in the course of the reform process - several key ways to facilitate the Convention’s implementation. The CDDH could be mandated to develop a template – on the basis of practices and measures already identified – which may serve as a basis for assessing the extent to which State Parties have embedded the Convention in their domestic legal orders.

² See for instance CDDH report on measures taken by the member States to implement relevant arts of the Interlaken Declarations, October 2012, DH-GDR(2012)R2 Addendum I.