



SECRETARIAT

AS/Per (2018) CB 01
21 March 2018

To the members of the Standing Committee

Synopsis of the meeting held in Paris on 16 March 2018

The **Standing Committee**, meeting on 16 March 2018 in Paris, with Mr Michele Nicoletti, President of the Assembly, in the Chair:

- ratified the credentials of new members of the Assembly submitted by the delegations of Denmark, Germany, Ireland, Monaco and a change in the delegation of Andorra;
- approved changes in the composition of Assembly committees;
- took note of the draft agenda of the second part-session of the Assembly (23-27 April 2018);
- ratified the references proposed by the Bureau which are contained in the Appendix I hereafter;
- held an exchange of views with Mr Guido Raimondi, President of the European Court of Human Rights;
- adopted a declaration on the "Draft Copenhagen Declaration on the European Human Rights system in the future Europe" contained in the Appendix II hereafter;
- adopted the following texts on behalf of the Assembly:

Resolution 2207 (2018)

Gender equality and child maintenance

Resolution 2208 (2018)

Modification of the Assembly's Rules of Procedure: the impact of the budgetary crisis on the list of working languages of the Assembly

Recommendation 2124 (2018)

Modification of the Assembly's Rules of Procedure: the impact of the budgetary crisis on the list of working languages of the Assembly

- decided to hold its next meeting in Zagreb on 1 June 2018.

Alfred Sixto

- cc. Secretary General of the Assembly
Director and all staff of the Secretariat of the Assembly
Secretaries of National Delegations and of Political Groups of the Assembly
Secretaries of observer and partner for democracy delegations
Secretary General of the Congress
Secretary to the Committee of Ministers
Directors General
Director of the Private Office of the Secretary General of the Council of Europe
Director of the Office of the Commissioner for Human Rights
Director of Communication
Permanent Representations to the Council of Europe

APPENDIX I

Decisions on documents tabled for references to committees

A. REFERENCES TO COMMITTEES

1. **Greek islands: more needs to be done**
Motion for a resolution tabled by Ms Petra De Sutter and other members of the Assembly
[Doc. 14474](#)

Reference to the Committee on Migration, Refugees and Displaced Persons *for report*

2. **Strengthening parliamentary dialogue with Algeria**
Motion for a resolution tabled by Mr Jacques Maire and other members of the Assembly
[Doc. 14476](#)

Reference to the Committee on Political Affairs and Democracy *for report*

3. **Jewish cultural heritage preservation**
Motion for a resolution tabled by Ms Angela Smith and other members of the Assembly
[Doc. 14477](#)

Reference to the Committee on Culture, Science, Education and Media *for report*

4. **Concerted action on human trafficking**
Motion for a resolution tabled by Mr Vernon Coaker and other members of the Assembly
[Doc. 14478](#)

Reference to the Committee on Migration, Refugees and Displaced Persons *for report* and to the Committee on Equality and Non-Discrimination *for opinion*

5. **Daphne Caruana Galizia's assassination and the rule of law, in Malta and beyond: ensuring that the whole truth emerges**
Motion for a resolution tabled by Mr Pieter Omtzigt and other members of the Assembly
[Doc. 14479](#)

Reference to the Committee on Legal Affairs and Human Rights *for report*

6. **Stepping up co-operation between European initiatives for better child protection against sexual violence**
Motion for a resolution tabled by the Committee on Social Affairs, Health and Sustainable Development
[Doc. 14480](#)

Reference to the Committee on Social Affairs, Health and Sustainable Development *for report*

7. **European weapons and funds for Daesh**
Motion for a resolution tabled by Mr Pieter Omtzigt and other members of the Assembly
[Doc. 14482](#)

Transmission to the Committee on Political Affairs and Democracy *for information*

8. **Improving the protection of whistleblowers all over Europe**
Motion for a resolution tabled by Mr Sylvain Waserman and other members of the Assembly
[Doc. 14483](#)

Reference to the Committee on Legal Affairs and Human Rights *for report*

9. **So-called “tax optimisation” and policy, two incompatible concepts**
Motion for a resolution tabled by Mr Sergiy Vlasenko and other members of the Assembly
[Doc. 14485](#)

Transmission to the Committee on Legal Affairs and Human Rights *for information*

10. **Russian racial discrimination of Crimean Tatars in Crimea**
Motion for a resolution tabled by Ms Kerstin Lundgren and other members of the Assembly
[Doc. 14262](#)

Reference to the Committee on Equality and Non-Discrimination *for report*

B. MODIFICATIONS OF REFERENCES

1. **Defining guidelines for international NGOs**
Motion for a resolution tabled by Ms Deborah Bergamini and other members of the Assembly
[Doc. 14380](#)
Reference No. 4331 du 13 October 2017 – validity: 13 October 2019 (reference to the Committee on Migration, Refugees and Displaced Persons for report)

Reference to the Committee on Migration, Refugees and Displaced Persons *for report* and to the Committee on Legal Affairs and Human Rights *for opinion*

2. **Libya's future between the threats of terrorism and a democratic prospect**
Motion for a resolution tabled by Mr Khalid Chaouki and other members of the Assembly
[Doc. 13812](#)
Ref. 4140 of 26 June 2015 – validity: 15 March 2018 (reference to the Committee on Political Affairs and Democracy for report)

Reference to the Committee on Political Affairs and Democracy *for report* and to the Committee on Migration, Refugees and Displaced Persons *for opinion*

APPENDIX II

Declaration on the Draft Copenhagen Declaration on the European Human Rights system in the future Europe¹

The visionary statesmen who rebuilt Europe from the ruins of the Second World War understood the importance of making states share responsibility for human rights. The system they designed, that of the European Convention on Human Rights, ensures that all States Parties protect the uniformly defined rights of everyone within their jurisdictions, with harmonised national protection mechanisms and a common European control mechanism. The effectiveness of the overall system depends on the proper functioning of each of its constituent elements. This in turn depends primarily on the attitude and conduct of the States Parties.

On 12-13 April 2018, in Copenhagen, the Danish chairmanship of the Committee of Ministers will hold a High Level Conference on the European Human Rights system in the future Europe. A first draft declaration was issued on 5 February 2018. Whilst this draft contains welcome expressions of commitment to the Convention system, its negative tenor risks undermining human rights protection in Europe. As detailed in the attached comments, the draft declaration puts into question:

- The universality of the rights protected by the Convention;
- The independence of the European Court of Human Rights, free from political influence;
- The scope of the Court's jurisdiction over all matters concerning interpretation and application of the Convention;
- The States Parties' unconditional obligation to implement the Court's judgments.

The Committee of Ministers should continue to focus on the main challenges to the Convention system, namely the Court's case-load and its principal cause, which is inadequate national implementation of the Convention in many States.²

Comments on the draft Copenhagen Declaration

1. The visionary statesmen who rebuilt Europe from the ruins of the Second World War understood the importance of making states share responsibility for human rights.³ The system they designed, that of the European Convention on Human Rights (the Convention), ensures that all States Parties protect the uniformly defined rights of everyone within their jurisdictions, with harmonised national protection mechanisms and a common European control mechanism. These essential goals are achieved through a primary obligation on States Parties to respect the rights of everyone within their jurisdiction (article 1) and provide remedies for violations (article 13); under the supervision of an independent European Court of Human Rights (the Court) (article 19), competent in all matters of interpretation and application of the Convention (article 32), adjudicating on cases brought by states (article 33) or individuals claiming to be victims (article 34) on a subsidiary basis, following exhaustion of domestic remedies (article 35); with the States Parties bound to implement the judgments of the Court, under the collective supervision of the Committee of Ministers (article 46). The effectiveness of the overall system depends on the proper functioning of each of these constituent elements, which in turn depends primarily on the attitude and conduct of the States Parties, whose joint creation this system was and to whose overall advantage it operates.

2. On 12-13 April 2018, in Copenhagen, the Danish chairmanship of the Committee of Ministers will hold a High Level Conference on the European Human Rights system in the future Europe. A first draft declaration was issued on 5 February 2018. Whilst this draft contains welcome expressions of commitment to and support for the Convention system, its negative tenor and much of its content risk damaging the system's core structure and undermining human rights protection in Europe.

3. One of the purposes of the Convention is to establish a catalogue of universal human rights, derived from the 1948 Universal Declaration on Human Rights, for special, regional protection according to uniform interpretation and application. Certain provisions of the draft Copenhagen Declaration, however, may

¹ Submitted by the Committee on Legal Affairs and Human Rights.

² The Danish chairmanship of the Committee of Ministers issued a revised draft declaration on 6 March 2018. As this document has been classified as "restricted", its contents are not known and it is not possible to comment upon them.

³ See the preamble of the Convention: "The Governments signatory hereto..., Being resolved ... to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration"

undermine this universality, allowing for rights to be relativized by reference to national considerations,⁴ including the vagaries of political interest and influence,⁵ and permitting incoherent implementation of the Convention across States Parties.⁶

4. Uniform interpretation and application of Convention rights and collective enforcement of decisions on complaints hinge upon the Court's role as an independent judicial decision-making body. Several provisions of the draft declaration are inconsistent with proper respect for the Court's judicial function,⁷ in particular that it decides cases on the basis of submissions made by parties to proceedings and the applicable law, and not of political views expressed by various loosely defined actors in other fora.⁸ The proper way for a non-respondent State or any other actor to seek to influence the Court's judicial decision-making is through the existing possibility of third-party intervention.

5. The draft declaration appears to suggest limitations on the jurisdiction of the Court that are inconsistent with the provisions of the Convention. Through repeatedly highlighting one aspect of subsidiarity, the draft declaration gives the impression that the Court's role should be essentially deferential, or even subordinate to that of national authorities.⁹ It also purports to state as legal fact an unduly limited approach to definition of Convention rights, with the apparent intent to restrict the Court's exercise of its interpretative jurisdiction.¹⁰ The States Parties should scrupulously respect the Court's supervisory jurisdiction over application and interpretation of the Convention.

6. Several provisions of the draft declaration seek to place particular restrictions on the Court's jurisdiction in relation to certain types of case. This is especially so in relation to immigration and asylum cases, whereas there is nothing in the Convention to suggest they should be given special treatment; indeed, such an approach may encourage or facilitate discriminatory treatment at national level, which is prohibited under article 13.¹¹ The draft declaration even appears to suggest that inter-state cases, which historically have addressed some of the most serious and widespread violations, and cases arising from conflicts between States Parties, despite the maintenance of peace being a core concern of the Convention,¹² should no longer be dealt with by the Court.¹³ In other respects, the draft declaration appears inconsistent, at one point implying that widespread, structural or systemic problems are 'core business' for the Court,¹⁴ whilst at another suggesting that the Court is inherently unable to provide individual justice in such cases.¹⁵

⁴ "... rights being protected predominantly at national level by State authorities in accordance with their constitutional traditions and in light of national circumstances" (paragraph 14)

⁵ "In matters of general policy, on which opinions in a democratic society may reasonable differ widely, the role of the domestic policy-maker should be given special weight" (paragraph 23)

⁶ "Consistency in the application of the Convention does not require that States Parties implement the Convention uniformly" (paragraph 57)

⁷ "an ongoing constructive dialogue between States Parties and the Court on their respective roles in applying and developing the Convention" (paragraph 31). Compare article 32(2) of the Convention: "In the event of dispute as to whether the Court has jurisdiction, the Court shall decide."

⁸ "The development of the rights and obligations set out in the Convention by the Court should go hand-in-hand with an ongoing dialogue in which States Parties and their populations are appropriately involved, including civil society" (paragraph 32); "States Parties to discuss the general development of areas of the Court's case law of particular interest to them and, if appropriate, adopt texts expressing their general views" (paragraph 41); "hold a series of informal meetings of States Parties before the end of 2019, where relevant developments in the jurisprudence of the Court can be discussed, with input of other relevant actors" (paragraph 42)

⁹ "The Court ... should not take on the role of States Parties whose responsibility it is to ensure that Convention rights and freedoms are respected and protected at national level" (paragraph 22); see also paragraph 24.

¹⁰ "The scope of the rights and freedoms guaranteed by the Convention is defined within the text of the relevant provisions, as interpreted reasonably in the light of their object and purpose in accordance with the interpretive principles of the Vienna Convention on the Law of Treaties" (paragraph 55)

¹¹ "the Court should not act ... as an immigration appeals tribunal, but respect the domestic courts' assessment of evidence and interpretation and application of domestic legislation, unless arbitrary or manifestly unreasonable" (paragraph 25); "When examining cases related to asylum and immigration, the Court should ... avoid intervening except in the most exceptional circumstances" (paragraph 26)

¹² See the preamble: "Considering that the aim of the Council of Europe is the achievement of greater unity between its members... Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world"

¹³ "the establishment of separate mechanisms or other means to deal with inter-State cases as well as individual communications stemming from a conflict between two or more States Parties" (paragraph 54.b))

¹⁴ "where the Court can focus its efforts on identifying serious or widespread violations, systemic and structural problems" (paragraph 4)

¹⁵ "the number of people affected is such that a solution on an individual basis at international level is unrealistic" (paragraph 13)

7. If the Court's judgments are not respected by the States Parties, the Convention control mechanism becomes ineffective and the Convention system loses most of its added value. States have accepted an unconditional obligation to implement Court judgments, yet the draft declaration seems to make this core principle subject to their 'acceptance' by national actors, including the governments that represent the state in the Convention system.¹⁶ National authorities must implement Court judgments as a matter of basic respect for the rule of law, including the principle *pacta sunt servanda* ('agreements must be kept').

Recommendations to the Committee of Ministers

8. The Committee notes that the forthcoming Copenhagen Conference forms part of a series, beginning at Interlaken (2010) and continuing at Izmir (2011), Brighton (2012) and Brussels (2015). Until now, the main focus of the resulting declarations has been the Court's case-load and its principal cause, which is inadequate national implementation of the Convention in many States. These should remain the targets of inter-governmental work, which should build on the many expert reports adopted over the past eight years by promoting implementation of their recommendations, conducting co-operation activities that address the main weaknesses found in Court judgments and ensuring that the Court is sufficiently resourced to discharge its function, including through an extraordinary injection of funds to allow it to absorb its backlog of applications.

¹⁶ "the ensuing acceptance [of the Court's judgments] by all actors of the Convention system, including governments, parliaments, domestic courts, applicants and the general public as a whole, is vital for ensuring the authority and effectiveness of the Convention system" (paragraph 56)