



Provisional version

## Committee on Legal Affairs and Human Rights

# The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond

## Report\*

Rapporteur: Mr Yves Pozzo di Borgo, France, Group of the European People's Party

### A. Draft resolution

1. The Parliamentary Assembly welcomes the initiative taken by the authorities of the United Kingdom in organising the High Level Conference on the future of the European Court of Human Rights (the Court), held in Brighton on 19 and 20 April 2012, and the adoption, at the Conference, of the [Brighton Declaration](#). It acknowledges the contribution of the Brighton Conference to maintaining the impetus of the reform process commenced with the 2010 Interlaken and 2011 Izmir Conferences.
2. The Assembly welcomes the renewed commitment by member states, in the [Brighton Declaration](#), to ensure the long-term effectiveness of what is the most advanced regional human rights protection mechanism of the world, and the states' recognition of their responsibility, shared with the Court, for the effective implementation of the European Convention on Human Rights ([CETS No. 5](#), the Convention).
3. The Assembly underscores the extraordinary contribution made by the Court to the protection of human rights in Europe for half a century. It congratulates the Court for the progress it has achieved in decreasing the backlog of pending applications and increasing its efficiency.
4. At the same time, the Assembly deplores the fact that this progress has not been met by corresponding positive developments at the level of States Parties to the Convention. It notes with concern that the prevailing challenges facing the Court, most notably the high number of repetitive applications as well as persisting human rights violations of a particularly serious nature, reveal a failure by certain High Contracting Parties to discharge their obligations under the Convention.
5. The Assembly therefore reiterates its call upon member states to reinforce the principle of subsidiarity, by more effectively embedding Convention standards in their domestic legal order and enhancing the authority of the Court's case law.
6. In this connection, the Assembly urges national parliaments to use their potential in overseeing the implementation of Convention standards, including by supervising the execution of the Court's judgments at the national level. It reiterates its previous calls, made in [Resolution 1516 \(2006\)](#) on implementation of judgments of the European Court of Human Rights, [Resolution 1726 \(2010\)](#) on effective implementation of the European Convention on Human Rights: the Interlaken process, and [Resolution 1823 \(2011\)](#) on national parliaments: guarantors of human rights in Europe, that those member States which have not yet done so should devise dedicated mechanisms and procedures for examining whether legislation is compatible with Convention standards, and for ensuring effective oversight of the implementation of the Court's judgments.

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\* Draft resolution and draft recommendation adopted unanimously by the committee on 10 December 2014.

7. The Assembly encourages those member states that have not yet done so to sign and ratify amending Protocol No. 15 to the Convention ([CETS No. 213](#)), while confirming its position, expressed in [Opinion 283 \(2013\)](#), that the reference to the margin of appreciation doctrine must be understood to be consistent with the doctrine developed by the Court in its case law.
8. The Assembly also invites member States to sign and ratify additional Protocol No. 16 to the Convention ([CETS No. 2014](#)) which will strengthen the link between the Strasbourg Court and the states' highest courts by creating a platform for judicial dialogue, thereby facilitating the application of the Court's case law by national courts.
9. The Assembly regrets that the Committee of Ministers has to date failed to respond to its call, last made in [Recommendation 1991 \(2012\)](#), that the Council of Europe's difficult budgetary situation be tackled at the highest political level. It calls upon the Secretary General to take all possible action in this respect.
10. The Assembly fully supports the conclusions of the [Brighton Declaration](#), in which member states confirmed their commitment to uphold the right of individual application to the Court and comply with their obligation to abide by its judgments. It resolves to continue to monitor closely steps undertaken and progress achieved in guaranteeing the long-term viability of the Convention system.

**B. Draft recommendation**

1. The Parliamentary Assembly, referring to its Resolution ... (2015) on “The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond”, urges the Committee of Ministers to:

1.1. reinforce and improve all means at its disposal to accelerate the implementation of the judgments of the European Court of Human Rights (the Court);

1.2. take firmer measures in cases of dilatory, continuous or repetitive non-compliance with the Court’s judgments and, in so doing, work towards reinforcing synergies with the Parliamentary Assembly and civil society;

1.3. tackle, as a matter of urgency, the Council of Europe’s difficult budgetary situation, and consider granting the Court a temporary extraordinary budget in order to enable it to clear the backlog of well-founded applications.

2. The Assembly also reaffirms its call, made in [Recommendation 1991 \(2012\)](#) on guaranteeing the authority and effectiveness of the European Convention on Human Rights, that the Committee of Ministers address a recommendation to the member states to reinforce the interpretative authority (*res interpretata*) of the judgments of the European Court of Human Rights.

## C. Explanatory memorandum by Mr Yves Pozzo di Borgo

### 1. Introduction

#### 1.1. Procedure

1. On 27 April 2012 the Parliamentary Assembly's Bureau decided to transmit the topic of "The future of the European Court of Human Rights and the Brighton Declaration" to the Committee on Legal Affairs and Human Rights for report,<sup>1</sup> mandating it to follow-up on the implementation of the [Declaration](#) adopted at the High Level Conference on the future of the European Court of Human Rights (the Court) which was organised by the United Kingdom chairmanship of the Committee of Ministers in Brighton on 19 and 20 April 2012. At its meeting on 21 May 2012, the Committee designated me as Rapporteur.

2. On 11 December 2012, the Committee considered a [background memorandum](#) prepared by the Secretariat upon my instructions. Upon my request, the Committee agreed to change the title of the report to "The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond", which underscores that the viability of the Convention system depends not only on the functioning of the Strasbourg Court, but of the Convention mechanism as a whole.

3. With the agreement of the Committee, I organised two hearings on the longer-term future of the system encapsulated in the European Convention on Human Rights ([CETS No. 5](#), the Convention). On 28 May 2013, the Committee held an [exchange of views](#) with the participation of Ms Nina Vajić, Professor of International Law at the University of Zagreb, Croatia, and former judge and Section President of the European Court of Human Rights; and Mr Vít Schorm, then Chairperson of the [Committee of Experts on the Reform of the Court](#) (DH-GDR), and Agent of the Government of the Czech Republic to the European Court of Human Rights. The second [exchange of views](#), likewise with the participation of Mr Vít Schorm, then Chairperson of the [Steering Committee for Human Rights](#) (CDDH), as well as Mr Morten Ruud, current Chairperson of the DH-GDR and Senior Advisor to the Norwegian Ministry of Justice, was held on 25 June 2014. These experts provided valuable insights and helped me identify the most pertinent challenges that will need to be addressed in the future so as to consolidate and reinforce the effectiveness of the Convention mechanism. I also drew guidance from the [responses](#) to the "[open call for information, proposals and views](#)" on the longer-term reform of the Convention system of the [DH-GDR](#), which, in my view, provide a very wide and nuanced picture of the challenges likely to face the Convention system in the years, and possibly decades to come, as perceived by various civil society actors and academics from across Europe.

#### 1.2. The issues at stake

4. I wish to note at the outset that I profoundly regret that ongoing reform debates at both national and European levels still largely revolve around the future of the European Court of Human Rights. Especially in light of the criticism currently facing the Court, this sends a dangerously misleading message that the prevailing problems can be attributed, first and foremost, to the Strasbourg Court.

5. I recall that the Convention system is based upon the premise of a shared responsibility between the Strasbourg institutions and the High Contracting Parties for ensuring the viability of its mechanisms, as was reaffirmed in the [Brighton Declaration](#) (paragraph 4). Ensuring the long-term authority and effectiveness of the system will naturally have to be a joint enterprise for the executive, legislative and judicial organs, at both national and European levels.

6. As regards the scope of my report, I recall that the [Steering Committee for Human Rights](#) (CDDH) is expected to submit to the Committee of Ministers its report containing opinions and possible proposals concerning the longer-term future of the Convention system and the Court, in accordance with paragraphs 35(c)-(f) of the [Brighton Declaration](#), by the end of 2015. Pending the final proposals at the inter-governmental level,<sup>2</sup> I intend to provide, in this report, an interim assessment of follow-up action that has been taken subsequent to the [Brighton Declaration](#) of 20 April 2012. I also identify areas which, in my view, require further action by both the Strasbourg institutions and member States.

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<sup>1</sup> Reference 3864 of 27 April 2012.

<sup>2</sup> During its exchange of views in June 2014, Morten Ruud informed the Committee that work was currently being carried out by working groups under the auspices of the [Committee of Experts on the Reform of the Court](#) (DH-GDR). He referred, in particular, to [Working Group 'F'](#) (GT-GDR-F), which is tasked with coming up with proposals concerning the longer-term future of the Convention system.

7. The Assembly has repeatedly affirmed its commitment to guaranteeing the long-term authority and effectiveness of the Strasbourg mechanism for the protection of human rights. The ongoing reform process has occupied a prominent place on the Assembly's agenda for several years, and the Committee on Legal Affairs and Human Rights has examined a range of issues related to safeguarding the effectiveness of the Convention system, such as the effectiveness of the Convention at national level and the implementation of the Court's judgments by Contracting States. The Committee's work has *inter alia* culminated in the adoption, by the Assembly, of [Resolution 1856 \(2012\)](#) and [Recommendation 1991 \(2012\)](#) on "Guaranteeing the authority and effectiveness of the European Convention on Human Rights"<sup>3</sup>, [Resolution 1982 \(2014\)](#) and [Recommendation 2039 \(2014\)](#) on "The European Convention on Human Rights: the need to reinforce the training of legal professionals"<sup>4</sup>, and of [Resolution 2009 \(2014\)](#) and [Recommendation 2051 \(2014\)](#) on "Reinforcement of the independence of the European Court of Human Rights"<sup>5</sup>. In elaborating the present report, I was therefore able to draw extensively from the work of several of my colleagues.

8. With a view to addressing the main concerns at the Brighton Conference, my report focusses on two issues that I perceive to be the most pertinent when dealing with the long-term future of the Convention system: first, the need to reinforce the implementation of Convention standards at national level, and, second, ways and means to foster the full, effective, and prompt execution of judgments of the European Court of Human Rights.

## 2. Background: the Brighton Conference and Declaration

9. I should like to recall that the 2012 Brighton High Level Conference on the Future of the European Court of Human Rights was a continuation of the reform process set in motion with the adoption of Protocol No. 14 to the Convention ([CETS No. 194](#)) in 2004, and the [Report of the Group of Wise Persons](#) submitted to the Committee of Ministers in 2006, which, in turn, was followed by the high level conferences in [Interlaken](#) (2010) and [Izmir](#) (2011). In both the [Interlaken Declaration](#) as well as the [Izmir Declaration](#), member States reaffirmed their commitment to the Convention system and their intention to give new impetus to the reform process.

10. In this connection, I share the reaction voiced by many – among them our former Committee Chairperson Ms Herta Däubler-Gmelin in her [conclusions](#) of our Committee meeting held in Paris in December 2009, and echoed by Morten Ruud during the Committee's [exchange of views](#) in June 2014 – with regard to the title of these conferences, which is misleading for it suggests that the current challenges facing the Convention mechanism can be remedied by reforming the Court alone.

11. The [Brighton Declaration](#) reaffirmed the pre-eminent role of the Court in protecting human rights in Europe, while highlighting, at the same time, every State's own responsibility to effectively implement the Convention domestically and the subsidiary role of the Strasbourg Court in cases where violations were not remedied at the national level. It covered a variety of issues that had been identified as prerequisites for the effective functioning of the Convention mechanism, ranging from the implementation of the Convention at national level and the execution of the Court's judgments, to interaction between the Court and national authorities, the lodging and processing of individual applications to the Court as well as issues pertaining to the latter's judges and case-law, to the long-term future of the Convention system.

## 3. Follow-up to the Brighton Declaration

### 3.1. Reforms tied directly to the working of the European Court of Human Rights

12. It is apparent that the reforms introduced by virtue of [Protocol No. 14](#) to the Convention (which entered into force already before the Brighton Conference), in particular the single judge mechanism and the creation, by the Court, of a special filtering section within its Registry to make full use of that mechanism,<sup>6</sup> continue to produce positive effects. The number of pending cases has strongly decreased, from 151,600 on 1 January 2012 to 78,000 as of 1 November 2014.

13. These procedures have led to a more efficient filtering of incoming applications and allocation of meritorious cases. Besides, the Court's prioritisation of applications and its increasingly frequent use of the

<sup>3</sup> See also the explanatory report by Ms Marie-Louise Bemelmans-Videc (Netherlands, EPP/CD), [Doc. 12811](#), 3 January 2012.

<sup>4</sup> See also the explanatory report by Mr Jean-Pierre Michel (France, SOC), [Doc. 13429](#), 9 March 2012.

<sup>5</sup> See also the explanatory report by Mr Boriss Cilevičs (Latvia, SOC), [Doc. 13524](#), 5 June 2014.

<sup>6</sup> See the speech delivered by Dean Spielmann, President of the European Court of Human Rights, at the Court's [annual press conference](#) (30 January 2014).

pilot judgment procedure – both internal reforms that pre-date the Interlaken Conference – likewise continue to show positive effects. Certain pilot judgments have led to the creation of new, effective remedies in a number of member states.<sup>7</sup> The Court has made progress in improving the dissemination of its case law and it should be congratulated for the continuous development of its information policy. Its [annual reports](#) highlight judgments and decisions which establish new or clarify existing principles, or raise issues of general interest on which to pronounce itself the Court had not previously had a chance. The Court maintains its practice of regularly publishing up-to date thematic and country-specific [factsheets](#), and has recently made available a Turkish and Russian version of its case law database HUDOC. The latter, moreover, now contains more than 10,000 translations covering 27 languages. Last, but not least, the Court has also ensured that information for persons wishing to apply to the Court is now available [online](#) in all the official languages of the State Parties to the Convention.

14. The fact that the Court has demonstrated its capability to maintain a high quality in its legal reasoning while at the same time significantly reducing the backlog of inadmissible applications bears witness to the effectiveness of its working methods. External auditors have highlighted that “[t]he Court is one of the best performing bodies we have ever audited”<sup>8</sup>, and the overall tenor at a recent conference on the long-term future of the Convention system, held in Oslo on 7 and 8 April 2014 ([Oslo Conference](#)) was that, as far as the working methods of the Court were concerned, there merely remained some “fine-tuning” to be done.<sup>9</sup> These developments are likely to continue, and the backlog of manifestly inadmissible cases pending before Single Judge formations is expected to be eradicated by late 2015.<sup>10</sup> With broader tasks now being assigned to the filtering section,<sup>11</sup> there is reason to be confident (as was said during the Committee’s [exchange of views](#) in June 2014) that a balance can be achieved between incoming applications and cases disposed of, which will enable the Court to further reduce delays in issuing judgments without compromising the quality of its reasoning. Against this background, it does not come as a surprise that the Court’s Registrar, Erik Fribergh, asserted that the Court could continue to work efficiently for many years with roughly the same set-up as today.<sup>12</sup>

15. Can we regard these achievements and the steps undertaken to date as reassurance that the Court is capable of effectively tackling the remaining challenges? As was outlined at the [Oslo Conference](#),<sup>13</sup> these challenges include the long time lapse between submitting an application to the Court and getting a judgment (commonly referred to as the “Brighton backlog”)<sup>14</sup>; a lack of reasoning, in particular in inadmissibility decisions; and a lack of effective implementation of certain of the Court’s judgments and interim measures.

16. But most importantly, the considerable backlog of admissible and potentially well-founded applications remains a problem, as acknowledged by the Committee of Ministers.<sup>15</sup> The Court’s [2013 statistics](#) suggest that the impressive number of decisions issued by single judges (more than 160,000 over the past two years<sup>16</sup>) could only be achieved to the detriment of the treatment of Chamber cases:<sup>17</sup> whereas in 2010,

<sup>7</sup> At the Oslo Conference, Dean Spielmann noted the positive example of Italy, which adopted suitable general measures to remedy the systemic problem of prison overcrowding following the Court’s pilot judgment in the case of *Torreggiani and Others* (Application Nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, Judgment of 8 January 2013), see Conference [Proceedings](#), page 43.

<sup>8</sup> Speech made to Registry officials by the Registrar, Erik Fribergh, in July 2012 (on file with the Secretariat).

<sup>9</sup> See the intervention by Martin Kuijer, Senior legal advisor on human rights law of the Ministry of Security and Justice of the Netherlands and Chair of [Drafting Group ‘F’ on the Reform of the Court](#) (GT-GDR-F), *ibid.*, page 34.

<sup>10</sup> See the [speech](#) by President Dean Spielmann at his exchange of views with the Committee of Ministers, at the 1204<sup>th</sup> Meeting of the Ministers’ Deputies, 2 July 2014, page 2.

<sup>11</sup> See *ibid.*

<sup>12</sup> See Drafting Group ‘F’ on the Reform of the Court, “Presentation to the 3rd meeting by the Registrar of the European Court of Human Rights”, [Doc. GT-GDR-F\(2014\)021](#), 24 September 2014, page 1. See also Alice Donald, [“The remarkable shrinking backlog at the European Court of Human Rights”](#), UK Human Rights Blog (1 October 2014).

<sup>13</sup> See Conference [Proceedings](#), page 29.

<sup>14</sup> Paragraph 20(h) of the [Brighton Declaration](#) sets out clear time limits for the processing of cases, laying down that applications should be communicated to the government within one year of their filing, and dealt with by means of a decision or judgment within two years of the date of communication. Applications not satisfying these requirements are referred to as “Brighton backlog”. On 1 July 2014, there were 54,465 cases on the Brighton backlog.

<sup>15</sup> ‘Report on the follow-up to the Brighton Declaration’, adopted by the Ministers’ Deputies in Vienna, 5-6 May 2014, at the 124<sup>th</sup> Session of the Committee of Ministers, CM Doc. [CM\(2014\)39](#) 30 April 2014.

<sup>16</sup> Single-judge formations issued 80,583 decisions in 2013 and 81,764 in 2012.

<sup>17</sup> This impression was shared by Frank Schürmann, Government Agent, Federal Office of Justice, Switzerland, at the Oslo Conference (see [Proceedings](#), page 103).

1,499 Chamber judgments were rendered, this figure dropped to 916 in 2013. The backlog is particularly worrying with regard to meritorious, non-repetitive cases of a lower priority and repetitive cases.<sup>18</sup>

17. As regards the latter, however, I note with satisfaction that the Court is starting to proactively tackle its growing backlog of repetitive cases, having devised a swifter procedure for communicating to governments cases that correspond to well-established case-law and may be disposed of by means of friendly settlement. I also understand that the Court is in the process of devising procedures to deal with repetitive cases in a more streamlined way, supported by the use of IT tools, and that it has already introduced an approach of specialisation, within the Court's Registry, which allows for a speedier handling of certain groups of cases. The Court's Registrar has confirmed that the Court will be able to deal with the annual influx of cases, respecting the time limits set by the [Brighton Declaration](#), once the backlog has been eradicated.<sup>19</sup> This can be regarded as yet a further confirmation (if that were necessary) that the Court is living up to its responsibility to strive for enhancing the efficiency of its working methods and allocating its scarce resources in a manner that allows it to effectively respond to the most pressing general issues while not abandoning other cases.

18. Moreover, the backlog of well-founded applications could be of a temporary nature. The Registrar of the Court presented a strategy that would allow it to swiftly eradicate this backlog. He argued that the Court should be given a temporary extraordinary budget of a total of 30 million euros as from 2015/16, to be used over a period of eight years during which an additional 40 or so lawyers would be able to clear a substantial part of the remaining backlog. The Registrar made a convincing case for the need of these additional resources. I fully endorse his proposal and hope that the Assembly will call upon the Committee of Ministers to ensure that the stated amount is made available to the Court. Given that member states have repeatedly confirmed their commitment to strengthen the effectiveness of the Court's functioning, this is an opportunity to put rhetoric into practice and discharge their responsibilities under the Convention.

19. Another solution would be to call for a stricter interpretation of the existing admissibility criteria and the idea that amendments to the Rules of Court should be subject to the approval of Governments. But this question falls squarely within the Court's competence to design its own procedures in a manner that will allow for tailor-made responses to the challenges. I concur with Professor Føllesdal that "[f]or the Court to maintain its authority in pursuit of its objectives, it must thus enjoy independence from particular states, and a broad scope of discretion."<sup>20</sup>

20. Moreover, an examination of the most pressing outstanding issues listed above reveals that these must first and foremost be tackled by the member States of the Council of Europe, rather than the Court.<sup>21</sup> The challenges largely stem from the flood of repetitive cases reaching the Court from certain member States with systemic problems. These States Parties, most notably Italy, Ukraine, Turkey, the Russian Federation, Serbia, Romania and the United Kingdom (all of which have more than 1,000 repetitive cases pending before the Court)<sup>22</sup> bear primary responsibility for this unacceptable situation.<sup>23</sup> I agree with the Court that it cannot be the case that the Court must invest a significant proportion of its scarce resources in dealing with repetitive applications.<sup>24</sup>

<sup>18</sup> See the interventions by Professor Luzius Wildhaber, former President of the Court, and Frank Schürmann, Government Agent, Federal Office of Justice, Switzerland, at the Oslo Conference (Conference [Proceedings](#), pages 93 and 103, respectively). See also European Law Institute, '[Statement on Case-Overload at the European Court of Human Rights](#)', 6 July 2012; Paul Mahoney, 'The European Court of Human Rights and its ever-growing caseload: Preserving the mission of the Court while ensuring the viability of the individual petition system', in Spyridon Flogaitis et al. (eds.), *The European Court of Human Rights and its Discontents*, 2013, 18-26; and Luzius Wildhaber, 'Criticism and case-overload: Comments on the future of the European Court of Human Rights', *ibid.*, 9-17.

<sup>19</sup> See Drafting Group 'F' on the Reform of the Court, 'Presentation to the 3rd meeting by the Registrar of the European Court of Human Rights', [Doc. GT-GDR-F\(2014\)021](#), 24 September 2014, pages 5 and 10-11.

<sup>20</sup> Speech by Andreas Føllesdal, Professor, Director of PluriCourts (University of Oslo, Norway) at the Oslo Conference, see the Conference [Proceedings](#), page 80.

<sup>21</sup> This was highlighted by a number of speakers at the Oslo Conference, including Anders Anundsen, Minister of Justice of Norway (see the Conference [Proceedings](#), page 14), Philippe Boilat (*ibid.*, pages 15-16), and Andreas Føllesdal (*ibid.*, pages 81-82), and was likewise emphasised by Morten Ruud during the Committee's [exchange of views](#) in June 2014.

<sup>22</sup> On 1 July 2014, the figures for pending Category V (repetitive) applications were, respectively: 11,639 (Italy), 11,558 (Ukraine), 5,871 (Turkey), 2,551 (Russian Federation), 1,702 (Serbia), 1,633 (Romania), and 1,047 (UK). See the statistics provided in the "Written presentation by the Registrar of the European Court of human Rights" to the Drafting Group 'F' on the Reform of the Court, [Doc. GT-GDR-F\(2-14\)015](#), 16 September 2014, Annex, Table 1.

<sup>23</sup> See, in this connection, the interventions by Philippe Boilat, Director General of the Directorate General of Human Rights and Rule of Law of the Council of Europe, at the Oslo Conference (see Conference [Proceedings](#), page 16) and by Morten Ruud during the Committee's [exchange of views](#) in June 2014.

<sup>24</sup> See the 'Reply of the European Court of Human Rights to Committee of Ministers' request for comments on the CDDH Report on Execution', 21 May 2014, [Doc. DD\(2014\)650](#), paragraph 9.

21. But repetitive applications are not the sole cause for concern. A careful perusal of the Court's case law database HUDOC has shown that, for example, over the period of one year (October 2013 – October 2014), the Court has found major human rights violations – i.e. (substantial and procedural) violations of Articles 2 (right to life) and 3 (prohibition of torture, inhuman and degrading treatment or punishment) of the Convention – in respect of 23 Contracting States, most notably Russia (130), Turkey (82), Romania (68), Ukraine (43), the Republic of Moldova (42), Bulgaria (35), and Greece (30).<sup>25</sup>

22. In other words, in order for the ongoing reform process to be successful, "improvements at Strasbourg must be reflected by improvements at the national level, through better observance of the Convention and the existence of effective domestic remedies in case of breach", as the President of the European Court of Human Rights, Dean Spielmann, aptly stated in an [address](#) in May 2014. It is crucial that we now shift our focus to the responsibility of member States, in conformity with the principle of subsidiarity upon which the Convention system is based. This is all the more true since it is only a small number of States that are burdening the Court, accounting for 67.5 percent of all applications; in 2013, these were Russia, Ukraine, Italy, Serbia and Turkey.<sup>26</sup> Action needs to be taken to remedy this situation.

23. The [Brighton Declaration](#) also called for a number of specific amendments to be made to the Convention. These are reflected in Protocols Nos. 15 and 16 to the ECHR, which were opened for ratification in 2013.

24. By virtue of amending Protocol No. 15<sup>27</sup> ([CETS No. 213](#)) to the Convention, an explicit reference to the principle of subsidiarity and the margin of appreciation doctrine will be inserted in the Preamble of the Convention. In this connection, I recall the reservations expressed by the [Court](#) and acknowledged in the Assembly's [opinion 283 \(2013\)](#) on "Draft Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms" about the wording of the new recital. The reference to the margin of appreciation doctrine must be understood as being "consistent with the doctrine of the margin of appreciation as developed by the Court in its case law", as emphasised in the [explanatory report](#) to [Protocol No. 15](#) (paragraph 7).

25. The remaining changes introduced by [Protocol No. 15](#)<sup>28</sup> relate to the extension of the age limit for judges, admissibility criteria, and objections to a decision of relinquishment of a case to the Grand Chamber. I endorse the Assembly's view, expressed in its abovementioned [opinion 283 \(2013\)](#), that the amendments to the Convention will have a positive impact on the Court's workload, and will contribute to further strengthening the quality and independence of (candidates for) judges to the Court. I therefore encourage all the High Contracting Parties to swiftly sign and ratify this amending Protocol.

26. Additional Protocol No. 16<sup>29</sup> ([CETS No. 214](#)) to the ECHR introduces the possibility for the highest national courts to request the Strasbourg Court to give a non-binding<sup>30</sup> advisory opinion on a question of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto. As rightly stated in the Assembly's [opinion 285 \(2013\)](#) on "Draft Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms", the entry into force of [Protocol No. 16](#) will create new opportunities for judicial dialogue between the Strasbourg Court and higher national courts of those states which opted to ratify it, besides adjudication of individual and inter-state applications.<sup>31</sup> It will allow the Court to clarify *ex ante* the scope of certain Convention rights, elucidate its own case law<sup>32</sup>

<sup>25</sup> The remainder of cases pertain to Ireland (20), Slovenia (16), Italy (11), Latvia (11), Azerbaijan (10), France (10), Belgium (6), Poland (6), Serbia (6), Croatia (4), Estonia (4), Spain (4), and the Czech Republic (2).

<sup>26</sup> See European Court of Human Rights, '[Analysis of statistics 2013](#)', Chart 3 at page 8.

<sup>27</sup> Protocol No. 15 has to date been signed by 29 member States and ratified by 10. It will enter into force after ratification by all the States Parties to the Convention.

<sup>28</sup> See paragraph 5 of the [background memorandum](#).

<sup>29</sup> Protocol No. 16 will enter into force after the deposition of ten ratifications. It has to date been signed by 15 States Parties, and ratified by none.

<sup>30</sup> The [Explanatory Report](#) to Protocol No. 16 to the Convention sets out, in paragraph 27: "Advisory opinions under this Protocol would have no direct effect on other later applications. They would, however, form part of the case-law of the Court, alongside its judgments and decisions. The interpretation of the Convention and the Protocols thereto contained in such advisory opinions would be analogous in its effect to the interpretative elements set out by the Court in judgments and decisions."

<sup>31</sup> Judge Julia Laffranque indicated that the potential for intensifying dialogue could be particularly well used if national courts sought the Court's opinion on a matter while themselves proposing a potential solution. See the [Proceedings](#) of the Oslo Conference, page 77.

<sup>32</sup> See also David Harris, Michael O'Boyle, Ed Bates and Carla Buckley, [UK withdrawal from the Convention? A broader view](#), UK Constitutional Law Association Blog, 24 July 2014.

and pronounce itself on recurring problems in a non-adversarial procedure. In so doing, it has the potential to ameliorate both the quality of national courts' judgments and the implementation of the Strasbourg Court's judgments, as observed by Julia Laffranque, Judge at the Court in respect of Estonia.<sup>33</sup> Last, but not least, active interaction between courts<sup>34</sup> will secure the margin of appreciation while ensuring that it is not exceedingly wide. It accommodates the repeated calls for reinforcing the notion of subsidiarity. I therefore believe that the entry into force of [Protocol No. 16](#) will foster a positive perception of the Court as well as the feeling of "ownership" of the Convention among national courts, as it will create another forum for national authorities to explain any particularities of their respective national legal systems that the Court should have regard to, leaving the choice of means to achieve the goal set by the Court to the domestic authorities. This is why I draw attention to the Assembly's call upon States Parties to swiftly sign and ratify this additional Protocol.

### 3.2. Accession of the European Union to the European Convention on Human Rights

27. As stated by the Assembly in its [Resolution 1610 \(2008\)](#) on "The accession of the European Union/European Community to the European Convention on Human Rights" and reflected in [Recommendation 1834 \(2008\)](#), human rights protection in Europe will be further strengthened by the forthcoming [accession](#) of the European Union ("EU") to the Convention. The Assembly has repeatedly acknowledged that the intensified partnership between the Council of Europe and the EU will enhance the coherent application of human rights in Europe and "should ultimately lead to a common space for human rights protection across the continent in the interest of all people in Europe."<sup>35</sup>

28. The Committee on Political Affairs and Democracy is currently following-up on this issue and will present its text on "The Memorandum of Understanding between the Council of Europe and the European Union – evaluation 5 years after"<sup>36</sup> to the Assembly during its 2015 first part-session. For the Committee on Legal Affairs and Human Rights, my colleague Mr Jordi Xuclà (Spain, ALDE) will, when the time comes, elaborate a report on "Accession of the European Union to the European Convention on Human Rights: election of judges",<sup>37</sup> and my colleague Mr Michael McNamara (Ireland, SOC) is preparing his report on "European institutions and human rights in Europe".<sup>38</sup> In order not to prejudge the outcome of this ongoing work, I shall restrict my comments regarding the EU's accession to the Convention to recalling the current state of play in the accession proceedings.

29. Concluding extended negotiations, the [draft accession agreement](#) was finalised in April 2013. Its adoption requires the completion of internal procedures by the 47 member States of the Council of Europe and the EU on the one hand, and the Council of Europe on the other hand. In so far as the EU is concerned, the Court of Justice of the EU (CJEU) was seized by the European Commission for Opinion on the draft text, and the Opinion is expected before the end of this year. Provided that the Luxembourg Court finds the draft Accession Agreement to be compatible with EU law, the European Parliament must then give its consent and the Council of the EU will have to unanimously adopt the decision authorising the signature of the accession agreement. All EU member States and the EU itself will have to ratify the agreement. On the part of the Council of Europe, the Accession Agreement will have to be adopted by the Committee of Ministers and be opened for signature and ratification by all 47 member states after having received the (formal) opinions on the text(s) from both the Strasbourg Court and the Parliamentary Assembly.<sup>39</sup>

<sup>33</sup> See the Oslo Conference [Proceedings](#), page 74. The potential effectiveness of this mechanism was likewise stressed by Jean-Paul Jaqué, 'Preliminary references to the European Court of Human Rights', in European Court of Human Rights: Dialogue between judges, [How can we ensure greater involvement of national courts in the Convention system?](#) (2012), pages 17-23, here at page 20.

<sup>34</sup> The President of the German *Bundesverfassungsgericht*, Andreas Voßkuhle, described the relationship between the Strasbourg Court and national courts as resembling a mobile in which movement by one part will trigger a reaction from the others and *vice versa*, giving rise to a need for constant rebalancing. See Andreas Voßkuhle, 'Pyramid or Mobile? – Human Rights Protection by the European Constitutional Courts', speech delivered on the occasion of the Opening of the Judicial Year 2014, see [Dialogue Between Judges 2014](#), European Court of Human Rights, Council of Europe, 2014, pages 36-40.

<sup>35</sup> [Resolution 1836 \(2011\)](#) on "The impact of the Lisbon Treaty on the Council of Europe", paragraph 4.

<sup>36</sup> Reference 3887 of 29 June 2012, rapporteur: Kerstin Lundgren (Sweden, ALDE).

<sup>37</sup> Reference 3700 of 4 October 2010.

<sup>38</sup> Reference 3886 of 29 June 2012.

<sup>39</sup> For a comprehensive overview, see Andrew Drzemczewski, 'EU Accession to the ECHR: The Negotiation Process', in Vasiliki Kosta et al. (eds.), *The EU Accession to the ECHR* (Oxford: Hart Publishing, 2014), pages 17-28, here pages 26-27. See also Johan Callewart, 'Accession of the European Union to the European Convention on Human Rights', Council of Europe, 2014.

### 3.3. *Election of judges to the European Court of Human Rights*

30. In response to the call, in Section E of the [Brighton Declaration](#), that the Assembly and the Committee of Ministers, respectively, reflect upon possible improvements of the procedures for electing judges to the Strasbourg Court, the Assembly unanimously adopted [Resolution 2009 \(2014\)](#) and [Recommendation 2051 \(2014\)](#) on “Reinforcement of the independence of the European Court of Human Rights”,<sup>40</sup> in which it reiterated that “[t]he authority and effectiveness of the European Court of Human Rights is contingent on the genuine independence and impartiality of its judges ...” (paragraph 1 of the Resolution).

31. In the present circumstances, where the Court is facing criticism, it is important that States Parties do their utmost to improve, where necessary, their national selection procedures for examining candidatures for the election of judges to the Court. In 2015 we will need to elect 15 new judges onto the Court: see, in this connection, the Assembly’s [website](#) on which is provided a country-by-country “[table of progress](#)” of the election procedure.

32. Also, given the uncontested importance of ensuring that candidates are of the highest calibre so as to safeguard the quality, clarity and consistency of the Court’s case-law and the latter’s authority, it is commendable that the Assembly has agreed to establish a new general Committee on the Election of Judges to the European Court of Human Rights<sup>41</sup> which will replace the current Sub-Committee on the election of judges. The Committee, which is due to take up its work at the end of January 2015 and which will be composed of parliamentarians with demonstrable legal knowledge and experience, will be responsible for assessing the qualifications of and conducting interviews with candidates for the post of judges. I have no doubt that, in performing this task, the new Committee will exercise the same scrutiny as the current Sub-Committee, and will not hesitate to reject a list submitted in respect of a particular state – if necessary, more than once – if persons on the list are deemed to not meet the criteria set out in Article 21, paragraph 1, of the Convention.

### 3.4. *Implementation of the Convention at the national level*

33. As I emphasised above, enhancing the effectiveness of the Convention will, first and foremost, be contingent on member states’ commitment to making the Convention rights “practical and effective” within their respective national legal orders. There is universal agreement that the Convention system is based on the notion of subsidiarity. Article 1 of the Convention places primary responsibility on States Parties to secure fundamental rights and freedoms to everyone within their jurisdiction. As has been stressed by our former colleague, Marie-Louise Bemelmans-Videc, “the principle of subsidiarity has two aspects: one procedural, requiring individuals to go through all the relevant procedures at national level before seizing the Court, and the other substantive, based on the assumption that states parties are, in principle, better placed to assess the necessity and proportionality of specific measures.”<sup>42</sup> A margin of appreciation is left to states in both the interpretation and the application of the Conventions, as well as in choosing the measures for implementing adverse judgments by the Strasbourg Court. Crucially, however, it is the Court that has the power to authoritatively interpret the Convention and its application to all cases brought before it.

34. The principle of subsidiarity finds further reflection in the requirement for applicants to exhaust domestic remedies, and strong emphasis during the reform process has been placed on achieving improvements in this respect. In pursuit of this aim, the Committee of Ministers adopted, in September 2013, a [Guide to good practice in respect of domestic remedies](#), as well as a recommendation ([Recommendation CM/Rec\(2010\)3](#)) on effective remedies for excessive length of proceedings. At their 124<sup>th</sup> Session held in Vienna from 5 to 6 May 2014, the Committee of Ministers [noted](#) that significant progress had been achieved in the execution of judgments (including pilot judgments) concerning important structural or systemic problems. A noteworthy positive example supporting this observation is that of Turkey, which had long occupied second place in terms of applications pending before the Court, and is currently the country with the fifth-highest case-count. What has proven particularly effective in reducing the number of pending cases was – in addition to the creation of a Compensation Commission with respect to the situation in Cyprus, which permitted the ‘repatriation’ of cases – the introduction of a procedure of individual complaints to the

<sup>40</sup> See also the explanatory report by Mr Boriss Cilevičs (Latvia, SOC), [Doc. 13524](#), 5 June 2014.

<sup>41</sup> See [Resolution 2002 \(2014\)](#) on “Evaluation of the implementation of the reform of the Parliamentary Assembly”, paragraphs 9 and 10, as well as the Appendix to the resolution.

<sup>42</sup> “Guaranteeing the authority and effectiveness of the European Convention on Human Rights”, explanatory memorandum (rapporteur: Ms Marie-Louise Bemelmans-Videc, Netherlands, EPP/CD), [Doc. 12811](#) of 3 January 2012, paragraph 25.

Constitutional Court.<sup>43</sup> While states are of course free to choose among a variety of possible means to comply with their obligation under Article 13 of the Convention, this example corroborates the assumption, based on the experience of a number of member States, that granting individuals a right to petition before the national constitutional court can prove to be an effective means to resolve structural problems that would otherwise continue to produce large numbers of repetitive applications to the Strasbourg Court.<sup>44</sup>

35. Still, as already indicated above (see paragraphs 20-22), some major issues need to be resolved on the domestic plane. In this regard, I take note with interest of the observations by the Committee's rapporteur on the implementation of judgments of the Court, Mr Klaas de Vries, who has pointed out that his mandate is limited to only certain states (Bulgaria, Greece, Italy, Poland, Romania, the Russian Federation, Turkey, and Ukraine), which precludes him from following-up on similar issues which are coming up in respect of a considerable number other states that are seemingly failing to comply with their duty to ensure the respect of Convention rights and adhere to the final judgments of the Strasbourg Court.<sup>45</sup> It is worrying to learn that at the end of 2013, 18 Contracting States had leading cases pending execution before the Committee of Ministers for more than five years under both standard and enhanced supervision procedures.<sup>46</sup> A review of the average execution time yields a similarly worrying picture.

36. In light of this and the challenges identified above, it is of importance that the Convention standards become better entrenched in the laws and practice of member states, and that Strasbourg case-law principles are better internalised. Belgium, which has assumed the Chairmanship of the Committee of Ministers for the duration of six months in November 2014, has underlined its dedication to contribute to the reform process commenced at Interlaken, with a special focus on capacity-building for the purpose of strengthening the effective implementation of the Convention at national level. In pursuit of this aim, the Belgian Chairmanship will organise a conference entitled "the implementation of the ECHR, our shared responsibility" which will be held in Brussels in March 2015.<sup>47</sup>

37. Relatedly, I note that the Court has been living up to its promise to strengthen its dialogue with States Parties to the Convention, through visits to States Parties and meetings in Strasbourg with high-level delegations of national judges as well as government agents.<sup>48</sup> Additional ways must be found to intensify dialogue between national authorities and the Strasbourg institutions must be found, and to foster mutual understanding and enhance the authority of Convention rights at the national plane. One proposal which, in my view, merits closer consideration, namely that national parliaments – or, where they exist, the specialised parliamentary structures tasked with overseeing their State's compliance with the Convention and the Strasbourg Court's judgments – invite their national judge of the Court to inform parliamentarians about relevant developments in the Court's case law.<sup>49</sup>

38. Mention should also be made of the positive experience with regard to some States Parties with judges who, having completed their term in office at the Strasbourg Court, reintegrate into the national judicial system where they can contribute to fostering legal practitioners' knowledge of the Convention. Looking into how best to make use of former Strasbourg judges' know-how and familiarity with the Convention system merits the continuous attention by national authorities, in line with [Resolution 2009 \(2014\)](#) and [Recommendation 2051 \(2014\)](#) on "Reinforcement of the independence of the European Court of Human Rights".

<sup>43</sup> See Dean Spielmann, '[The best practices of individual complaint to the Constitutional Courts in Europe](#)', speech delivered at the Palais de l'Europe, Strasbourg, on 7 July 2014.

<sup>44</sup> See *ibid.*, as well as the recent report of the European Commission for the Efficiency of Justice (CEPEJ) on '[European judicial systems – Edition 2014 \(2012 data\): efficiency and quality of justice](#)', 9 October 2014. My colleague Mr Jordi Xuclà (Spain, ALDE) is at present working to explore the potential of online dispute resolution as well as the integration of modern information and communication technology in courts of law to facilitate access to justice within the meaning accorded to that notion under the Convention by the Strasbourg Court.

<sup>45</sup> See "The implementation of judgments of the European Court of Human Rights: preparation of the 8<sup>th</sup> report" (rapporteur: Mr Klaas de Vries, Netherlands, SOC), [Doc. AS/Jur \(2013\) 14](#) of 10 May 2013, paragraph 14.

<sup>46</sup> These states are Turkey (with a total of 87 leading cases pending for over five years), the Russian Federation (69), Ukraine (37), Latvia (34), the Republic of Moldova (34), Bulgaria (32), Greece (26), Romania (26), Poland (17), Croatia (14), Serbia (11), Azerbaijan (10), Albania (6), Belgium (6), Georgia (6), Portugal (4), the United Kingdom (4), and Hungary (2), see the Committee of Ministers' 2013 [annual report](#), Annex 1, table C.4., pages 58-60.

<sup>47</sup> A similar conference, focussing on "Application of the European Convention on Human Rights and Fundamental Freedoms on national level and the role of national judges" was held in Baku from 24-25 October 2014, under the auspices of the Azerbaijani Chairmanship of the Committee of Ministers (May – November 2014). See the [opening remarks](#) of the Court's President, Dean Spielmann.

<sup>48</sup> 'Report on the follow-up to the Brighton Declaration', adopted by the Ministers' Deputies in Vienna, 5-6 May 2014, at the 124<sup>th</sup> Session of the Committee of Ministers, CM Doc. [CM\(2014\)39](#) 30 April 2014.

<sup>49</sup> See the [submission](#) made by Paul Murray in response to the DH-GDR's "[open call for contributions](#)", at pages 3-4.

39. In order to avoid repetitive applications to the Court it is moreover necessary, as the Assembly has stressed on several occasions,<sup>50</sup> that both the Strasbourg organs and member states make it a priority to enhance the *res interpretata* authority of the Court's judgments. The principle of *res interpretata* refers to the duty (based on Articles 1, 19 and 32 of the Convention) for national legislators and courts to take into account the Convention as interpreted by the Strasbourg Court – beyond the binding effect of a particular judgment for the parties concerned.<sup>51</sup> I do not question that this necessitates thorough reasoning on the part of the Court and that national courts must have appropriate tools at their disposal to stay informed about relevant case-law developments in Strasbourg. While some progress has been achieved in this respect – I will restrict myself to mentioning the examples of the governments of Germany and the Netherlands which regularly provide parliament with information on judgment against other Contracting Parties which may have repercussions for their own national legal system<sup>52</sup> – we cannot place enough emphasis on reinforcing the interpretative authority of the Court's judgments, because the failure of member States to do so will give rise to similar violations which should not have to be dealt with in Strasbourg.<sup>53</sup> It is unfortunate that the Committee of Ministers has not taken up the Assembly's proposal that it address a recommendation to member States calling on them to reinforce without delay, by legislative, judicial or other means, the *res interpretata* authority of the Court's judgments. Both the Committee of Ministers and the High Contracting Parties ought to reinforce their efforts in enhancing the *res interpretata* authority, thus harnessing the full preventive potential of the Court's interpretative function.

#### 3.4.1. Capacity building on the European Convention on Human Rights

40. The Assembly, adopting [Resolution 1982 \(2014\)](#) on "The European Convention on Human Rights: the need to reinforce the training of legal professionals", acknowledged that improving the application of the Convention at the national level requires better training of legal professionals, adapted to the legal system and general circumstances. Correspondingly, the [HELP \(Human Rights Education for Legal Professionals\) Programme](#) supports the Council of Europe member states in implementing the Convention at the national level, in accordance with the Committee of Ministers' [Recommendation Rec\(2004\)4](#) on the European Convention on Human Rights in university education and professional training, the [Brighton Declaration](#) and the abovementioned Assembly [Resolution 1982 \(2014\)](#). This is done by enhancing the capacity of judges, lawyers and prosecutors of all 47 member states to apply the Convention in their daily work.

41. In this context, it is interesting to note that the Secretariat of the Committee on Legal Affairs and Human Rights, jointly with the Assembly's [Parliamentary Projects Support Division, organises – since 2013 –](#) training seminars for both national parliamentarians and parliamentary staff, with the two-fold aim of promoting the establishment, in national parliaments, of specialised structures and procedures for the supervision of the implementation of Strasbourg's judgments, and fostering the understanding and knowledge, among parliamentarians and staff of national parliaments, of the Convention and the Court's case-law. To date, three seminars have been held for parliamentarians, in cooperation with the Parliament of the United Kingdom (October 2013), the Polish Sejm (February 2014) and the Spanish Parliament (October 2014), and three separate seminars have been held for staff of national parliaments in Strasbourg (in September 2013 and January and September 2014). These seminars met with positive response from participants who appreciated these for peer-to-peer exchange of practices and experience. Further capacity building activities are envisaged, possibly also with specific thematic foci, and can only encourage colleagues to make use of this opportunity.

42. Also, when adopting [Resolution 1982 \(2014\)](#) on "The European Convention on Human Rights: the need to reinforce the training of legal professionals", the Assembly, in its [Recommendation 2039 \(2014\)](#) called upon the Committee of Ministers to "ensure that the budget allocated to the European Programme for Human Rights Education for Legal Professionals (HELP Programme) is consistent with the task assigned to it, namely to provide different types of co-operation in the training of law professionals in any member state that requests it". I endorse the view expressed by my former colleague Mr Jean-Pierre Michel (France,

<sup>50</sup> See, in particular, [Resolution 1726 \(2010\)](#) on effective implementation of the European Convention on Human Rights: the Interlaken process, paragraph 4. See also the declassified conclusions of the former Committee Chairperson, Mrs Herta Däubler-Gmelin, of the hearing held in Paris on 16 December 2009, [Doc. AS/Jur \(2010\)06](#).

<sup>51</sup> See the Presentation by Mr Christos Pourgourides, former Chairperson of the Committee, at the Conference on the Principle of Subsidiarity, Skopje, 1-2 October 2010, entitled 'Strengthening Subsidiarity: Integrating the Strasbourg Court's Case law into National Law and Judicial Practice', [AS/Jur/Inf \(2010\) 04](#).

<sup>52</sup> See the intervention by Alice Donald at the Oslo Conference (Conference [Proceedings](#), page 182).

<sup>53</sup> See also Andrew Drzemczewski, 'Recent parliamentary initiatives to ensure compliance with Strasbourg Court judgments', in Elisabeth Lambert-Abdelgawad et al. (eds.), *Mélanges en hommage au Professeur Jean-François Flauss. L'homme et le droit* (Paris: Pédone 2014), pages 293-304, at page 300.

SOC),<sup>54</sup> that this can best be achieved by allocating more funding from the Organisation's ordinary budget to the HELP Programme.

43. A critical concern in relation to capacity building on Convention standards relates, more generally, to the Organisation's budgetary predicament. As the former European Commissioner for Human Rights, Thomas Hammarberg, aptly stated, "it is amazing that so much has been achieved in relation to the finances made available (to the Council of Europe)."<sup>55</sup> The Organisation's policy of a zero-increase-budget has been in place for more than a decade, and the financial policy has been subject to debate for a number of years. I recall that my colleague Ms Bemelmans-Videc revealed that the annual contribution of 15 member states does not even cover the expenditure needed to cover the costs for their own judge.<sup>56</sup> Just as strikingly, the Strasbourg Court's budget is less than a quarter of that of the Court of Justice of the EU which deals, I recall, with cases from only 28 states.<sup>57</sup>

44. The precariousness of the Council of Europe's financial situation is further aggravated by the fact that the past years have seen a tendency towards allocating a greater portion of the Council of Europe's budget to the Court, to the detriment of the Organisation's other activities and programmes. What is urgently needed therefore is a substantial increase not only of the budget of the Court as well as that of the Department for the execution of judgments (or, more generally, the enforcement machinery), but of the Organisation's overall budget. In this respect, I share the concern expressed at the [Oslo Conference](#)<sup>58</sup> that essential functions of the Council of Europe in general and the Court specifically are being covered by voluntary contributions instead of from the ordinary budget. The Parliamentary Assembly must undoubtedly continue to take a firm stance on the matter of the Organisation's budget. Given, however, that the Assembly's calls for a budgetary increase have thus far not met with strong support within the part of the Committee of Ministers, we should also call upon the Secretary General to more proactively advocate improvements in this respect.

#### 3.4.2. *Ensuring the implementation of Convention standards in national legislation and practice*

45. The reduction of the number of cases coming before the Strasbourg Court, especially those of a repetitive nature stemming from structural or systemic deficiencies in States Parties, depends in large part on enhancing the notion of subsidiarity by effectively securing the full implementation of the rights enshrined in the Convention at the domestic level. Strengthening the Convention system for the protection of human rights in this manner does (and will continue to) necessitate concerted efforts by a variety of actors. Within the Strasbourg system, all bodies of the Council of Europe must be engaged. At the national level, both the legislative and executive branches of government and the judiciary, as well as national human rights institutions (NHRIs), lawyers, and civil society should interact closely.

46. That said, national parliaments have, as already indicated above, a specific role to play in preventing and remedying human rights violations,<sup>59</sup> for at least two reasons. First, parliaments have an obligation to ascertain the compatibility of draft legislation with the Convention. Second, in terms of remedial action, parliaments are capable of holding governments to account for the swift and effective execution of adverse judgments, and proactively engage in preparing those legislative changes which are necessary to give effect to the Strasbourg Court's judgments.<sup>60</sup> Besides, striving to strengthen parliamentary involvement in and democratic discourse about implementing human rights, including the Court's judgments, appears

<sup>54</sup> "The European Convention on Human Rights: the need to reinforce the training of legal professionals," explanatory report by Mr Jean-Pierre Michel (France, SOC), [Doc. 13429](#), paragraphs 40-41 and 45.

<sup>55</sup> Thomas Hammarberg, '[Council of Europe as an Instrument for Human Rights](#)', Seminar at Utrecht University (13 March 2014).

<sup>56</sup> "Guaranteeing the authority and effectiveness of the European Convention on Human Rights", explanatory memorandum (rapporteur: Ms Marie-Louise Bemelmans-Videc, Netherlands, EPP/CD), [Doc. 12811](#) of 3 January 2012, paragraph 20.

<sup>57</sup> The Strasbourg Court's budget for the year 2014 is € 67 650 400, see Council of Europe [Programme and Budget 2014-2015](#), Table 1. The expenditure of the CJEU in the same year was € 355 367 500, see the Official Journal of the European Union, [OJ I/249](#) of 20 February 2014, at page 249.

<sup>58</sup> See the intervention by Vít Schorm, Chairperson of the CDDH and Government agent in respect of the Czech Republic, Conference [Proceedings](#), page 54.

<sup>59</sup> As i.a. stressed in [Resolution 1823 \(2011\)](#) on "National parliaments: guarantors of human rights in Europe", [Resolution 1787 \(2011\)](#) and [Recommendation 1955 \(2011\)](#) on "Implementation of judgments of the European Court of Human Rights"; [Resolution 1726 \(2010\)](#) on "Effective implementation of the European Convention on Human Rights: the Interlaken process", the Committee of Ministers' [reply](#) to Assembly [Recommendation 1764 \(2006\)](#), and in the [statements](#) by former Assembly President, Mr Jean-Claude Mignon.

<sup>60</sup> See "National parliaments: guarantors of human rights in Europe", explanatory report by Mr Christos Pourgourides (Cyprus, EPP/CD), [Doc. 12636](#), 6 June 2011, paragraph 56.

particularly vital in the current climate in certain member states, where the adoption of legislation to remedy a situation that has been found by the Court to violate the Convention is perceived by some as lacking democratic legitimacy.<sup>61</sup>

47. The Brighton Conference re-emphasised the fundamental importance of the parliamentary dimension of safeguarding states' Convention compliance.<sup>62</sup> For several years, the Parliamentary Assembly has been working to ensure more active involvement of parliaments in issues relating to the European Convention on Human Rights. For this purpose, a number of resolutions invited the national parliaments to create mechanisms and procedures dedicated to ensure effective parliamentary oversight of ECHR standards.<sup>63</sup>

48. Progress has been made in several member states in this respect. I will limit myself to citing a recent example: in February 2014, the Polish Sejm decided to set up a permanent sub-commission to its Commission of Justice & Human Rights and its Foreign Affairs Commission, tasked with supervising the execution of judgments issued against Poland by the European Court of Human Rights. In so doing, the 11 members of the sub-commission will, *inter alia*, monitor actions taken to amend laws and change governmental practices.<sup>64</sup>

### 3.4.3. *Timely and effective execution of Strasbourg Court judgments*

49. Just like safeguarding the protection of Convention rights at the domestic level generally, the crucial importance of states' rapid and full compliance with the Court's judgments for guaranteeing the long-term viability of the Convention system appears to be undisputed, and has been recognised by both the Committee of Ministers<sup>65</sup> and the Assembly.<sup>66</sup> The [Brighton Declaration](#), in Chapter F, places strong emphasis on improving the supervision of the Court's judgments, and the Court's statistics corroborate that the overall success of the reform process is contingent on improvements in the execution process.<sup>67</sup> Crucially, the execution of the Court's judgments is also integral to the right of individual petition laid down in Article 34 of the Convention.<sup>68</sup>

50. Positive trends in this regard are discernible from the statistics contained in the Committee of Ministers' [annual report](#) for the year 2013. In particular, the total number of cases pending before the Committee of Ministers for supervision has decreased for the first time ever, and a record number of 1,398 cases were closed through final resolutions in 2013.

51. At the same time, a considerable number of judgments are still awaiting to be executed, which remains a cause of concern. On 16 September 2014, a total of 11,594 cases were pending before the Committee of Ministers.<sup>69</sup> The latter's 2013 [annual report](#) also evidences an increase in the number of leading cases pending execution (which currently represent 14% of all cases). The number of leading cases (i.e. those pertaining to structural or systemic issues or other complex problems) on the Committee of Ministers' docket that were closed by the adoption of a final resolution has decreased in 2013 for the third consecutive year,<sup>70</sup> and the number of leading cases pending before the Committee of Ministers for more than five years has increased significantly, from 61 in 2007<sup>71</sup> to 483 in 2013.<sup>72</sup>

52. Also, the situation of prolonged non-implementation of general and individual measures, subsequent to a finding of a violation, is intolerable and necessitates urgent action. It severely impedes the Court's

<sup>61</sup> This was highlighted, *inter alia*, by Philip Leach, 'The Effectiveness of the Committee of Ministers in Supervising the Enforcement of Judgments of the European Court of Human Rights', 3 Public Law (2006), pages 443-456, at page 455.

<sup>62</sup> See, in particular, paragraphs 9 and 29 of the [Brighton Declaration](#).

<sup>63</sup> See, in particular, [Resolution 1516 \(2006\)](#) on "Implementation of judgments of the European Court of Human Rights".

<sup>64</sup> For other examples see "The role of parliaments in implementing ECHR standards: overview of existing structures and mechanisms" Assembly doc. PPSD (2014) 22.

<sup>65</sup> See the [decision](#) of the Committee of Ministers, 'Follow-up to the High-level Conference on the Future of the European Court of Human Rights (Interlaken, 18-19 February 2010)', 120th Session, 11 May 2010, paragraph 8.

<sup>66</sup> See, in particular, [Resolution 1856 \(2012\)](#) on 'Guaranteeing the authority and effectiveness of the ECHR', paragraph 3; [Resolution 1914 \(2013\)](#) on 'Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties'.

<sup>67</sup> See the Court's 'Reply to Committee of Ministers' request for comments on the CDDH Report on Execution', 21 May 2014, [Doc. DD\(2014\)650](#), paragraph 7.

<sup>68</sup> See *ibid.*, paragraph 5.

<sup>69</sup> See the Presentation to the 3<sup>rd</sup> meeting of the GT-GDR-F by Christos Giakoumopoulos, Director of Human Rights, [Doc. GT-GDR-F\(2014\)022](#), at paragraph 5.

<sup>70</sup> In 2011, 322 leading cases were closed by final resolution. In 2012, this number dropped to 185, with a further decrease in 2013 (182). See the Committee of Ministers' 2013 [annual report](#), March 2014, Annex 1, page 38.

<sup>71</sup> See Committee of Ministers, Supervision of the execution of judgments of the European Court of Human Rights, [1<sup>st</sup> annual report 2007](#) (March 2008), appendix 2, table 23.

<sup>72</sup> See the Committee of Ministers' 2013 [annual report](#), Annex 1, page 38.

essential task, stipulated in Article 32, paragraph 1, of the Convention, of interpretation and application of the Convention and its protocols.<sup>73</sup> There is also a direct link between failures to comply with the Strasbourg Court's judgments – especially failures to implement general measures aimed at effectively preventing similar violations from occurring – and the unacceptably high number of repetitive applications burdening the Court.<sup>74</sup> The execution of judgments therefore deserves a prominent place in the ongoing reform process. It necessitates a concerted effort by all actors involved, in particular effective implementation by respondent States (taking due account of the *res interpretata* authority of the Court's case-law), and effective supervision by the Committee of Ministers. Not only the Committee of Ministers, but also the Court and the Parliamentary Assembly as well as national parliaments can and must play a proactive role in the execution process.

#### 3.4.3.1. Role of the Court

53. The Court, although not the principal body tasked with supervising the execution of judgments, can and does facilitate the execution process, in three distinct ways which were neatly summarised as follows by Judge Helen Keller: “Firstly, the Court has examined whether a previous judgment was duly implemented in the context of a new case related to the same underlying issue and resulting in a fresh violation of the Convention.<sup>75</sup> Secondly, by dissociating the examination of the merits from the award of just satisfaction, the Court can inquire into whether the judgment on the merits was implemented or not and take into account its finding in a separate judgment on just satisfaction. Thirdly, under paragraphs 3 and 4 of Article 46 ECHR, the Court can be seized with a question concerning the interpretation of a judgment or with a view to establishing whether a State has failed to execute a judgment (so-called infringement procedure).”<sup>76</sup>

54. It is particularly noteworthy that, in recent years, the Court has overcome its reluctance to indicate, on the basis of Article 46 of the Convention, what individual and general measures a respondent state to a case before it should take to remedy a situation that has been found to constitute a Convention violation.<sup>77</sup> In line with what was stressed at the [Oslo Conference](#)<sup>78</sup>, such indications (or, in some instances, orders), are of considerable value because, on the one hand, they have proven to lead states to exercise special diligence in giving effect to a judgment of the Court and, on the other, they give the Committee of Ministers additional means of exerting political pressure. The Court should be encouraged to more frequently and on a more systematic basis resort to making such indications (including setting out time limits for the implementation of the recommended measures),<sup>79</sup> while being mindful of the principle of subsidiarity and the freedom of choice that states enjoy regarding the means for executing a judgments. That way, the Court can better harness its potential of influencing and facilitating the repairing of structural deficiencies, especially in those countries which account for a significant number of repetitive cases.

#### 3.4.3.1. Role of the Parliamentary Assembly and national parliaments

55. As regards the role of the Assembly and that of national parliaments in the execution process, it should be noted the importance of dedicated oversight mechanisms for effective parliamentary scrutiny at the domestic level, which can help render the execution process more efficient and contribute to

<sup>73</sup> This was acknowledged, *inter alia*, in a ‘Report of the Group of Wise Persons to the Committee of Ministers’, CM Doc. [CM\(2006\)203](#) of 15 November 2006, paragraph 35.

<sup>74</sup> See the ‘Reply of the European Court of Human Rights to Committee of Ministers’ request for comments on the CDDH Report on Execution’, 21 May 2014, [Doc. DD\(2014\)650](#), paragraph 6.

<sup>75</sup> I should like to note, however, that the Court has consistently stressed that it “does not have jurisdiction to verify whether a Contracting Party has complied with the obligations imposed on it by one of the Court’s judgments” and that it cannot “examine complaints concerning the failure by States to execute its judgments”. See [Fischer v. Austria](#) (dec.), Application No. 27569/02, Inadmissibility Decision of 6 May 2003); and [Lyons and Others v. the United Kingdom](#) (dec.), Application No. 15227/03, Inadmissibility Decision of 8 July 2003.

<sup>76</sup> See the [Proceedings](#) of the Oslo Conference, pages 147-148, containing further references.

<sup>77</sup> The first such occasion was the Grand Chamber case of [Assanidze v. Georgia](#), Application No. 71503/01, judgment of 8 April 2004, in which the Court considered that the only means capable of adequately redressing the applicant’s arbitrary detention was his release. For a detailed overview, see Leach Philip, “No longer offering fine mantras to a parched child? The European Court’s developing approach to remedies”, in Andreas Føllesdal et al. (eds.), *Constituting Europe: The European Court of Human Rights in a National, European and Global Context* (Cambridge: Cambridge University Press, 2013, pages 142 et seqq.

<sup>78</sup> Professor Elisabeth Lambert-Abdelgawad (University of Strasbourg, France) at the Oslo Conference (see the Conference [Proceedings](#), page 153). See also Linos-Alexander Sicilianos. “The involvement of the European Court of Human Rights in the implementation of its judgments: recent developments under Article 46 ECHR”, 32(3) *Netherlands Quarterly of Human Rights* 2014, 235-262.

<sup>79</sup> Contribution made by Professor Elisabeth Lambert-Abdelgawad (University of Strasbourg, France) to the work of Drafting Group ‘F’ on the Reform of the Court, see [Doc. GT-GDR-F\(2014\)008](#), page 6.

institutionalise a democratic human rights discourse, thus enhancing the (perceived) legitimacy of human rights.<sup>80</sup>

56. The past years have seen an ever-increasing involvement of the Assembly in contributing to the effective and expeditious execution of the Court's judgments. The Committee on Legal Affairs and Human Rights has proactively engaged in this process, for which it was commended by the Committee of Ministers.<sup>81</sup> Its rapporteurs have repeatedly underscored the need to reinforce the execution of judgments at the national level, and the Committee continues to issue regular reports on the implementation of the Court's judgments,<sup>82</sup> giving priority treatment to the examination of major structural problems concerning cases in which extremely worrying delays in implementation have arisen. It has organised, in this context, a number of hearings (which are open to civil society representatives) at which the national delegations to the Parliamentary Assembly were called upon to account for their states' failure in complying with the Court's judgments. These meetings have proven to be very useful and it would be desirable if this practice were to continue, and ideally become more systematically employed.

57. In this connection, my colleague, Mr Klaas de Vries, has made a proposal of how to make this practice even more efficient (and less time-consuming). He suggested during the seminar on "the role of national parliaments in the implementation of judgments of the European Court of Human Rights" held in Madrid on 31 October 2014, that the Committee on Legal Affairs and Human Rights should set up, as of 2015, a new Sub-Committee on "Implementation of Judgments of the European Court of Human Rights", which could, on a regular basis, invite experts both from the parliamentary and inter-governmental side, as well as relevant civil society actors, in order to discuss topical implementation issues. The results of these meetings could feed into the work of the Committee's rapporteur on the implementation of judgments. I fully endorse this proposal which, in my view, will allow us to address particularly salient cases of non-implementation, especially those pointing to the existence of systemic problems, or cases requiring urgent individual measures, in a more timely and flexible way, and to share good practices.

58. As I outlined above, the commitment of Assembly members to put pressure on their respective Governments to diligently comply with the Court's adverse judgments too often falls short of what would be needed to effectively accelerate and the execution process.

#### 3.4.3.2. *Role of the Committee of Ministers*

59. The importance of a strong and permanent supervisory mechanism for the execution of the Court's judgments and the crucial role played by the Committee of Ministers, assisted by the Department for the Execution of Judgments of the European Court of Human Rights ('Execution Department'), is well accepted.<sup>83</sup> It should be noted that the monitoring of states' compliance with the Court's judgments through peer review "creates collective ownership of compliance processes, provides a range of opportunities for constructive exchange regarding technical challenges to implementation, and exerts pressure on unwilling compliers."<sup>84</sup> Any reform undertaken with a view to rendering the execution process and its supervision more effective should therefore be designed to maintain the vital institutional balance between the different stakeholders engaged.

60. My previous remark that both the Court's and the Assembly's role in the execution process are – and should remain – complementary to that of the Committee of Ministers is corroborated by the Convention itself, which expressly stipulates in Article 46, paragraph 2, that the Committee of Ministers bears the primary responsibility for the supervision of the execution of judgments.

<sup>80</sup> See further Andrew Drzemczewski, 'Recent parliamentary initiatives to ensure compliance with Strasbourg Court judgments', in Elisabeth Lambert-Abdelgawad et al. (eds.), *L'homme et le droit*, Mélanges en hommage au Professeur Jean-François Flauss (Paris: Pedone 2014), pages 293-304, at page 299.

<sup>81</sup> Committee of Ministers, [Reply](#) to Assembly Recommendation 1764 (2006) on "Implementation of the judgments of the European Court of Human Rights", Doc. 11230, 30 March 2007, paragraph 1. The Assembly's dedication to fostering the execution of judgments was also commended by the Director of the Council of Europe Directorate General of Human Rights and the Rule of Law (DGI), Philippe Boilat, Director General of the Directorate General of Human Rights and Rule of Law of the Council of Europe, in his closing remarks at the Oslo Conference (Conference [Proceedings](#), page 196).

<sup>82</sup> My colleague Mr Klaas de Vries (Netherlands, SOC) is currently preparing the latest follow-up report, see his stock-taking and proposals: "The implementation of judgments of the European Court of Human Rights: preparation of the 8<sup>th</sup> report", [Doc. AS/Jur \(2013\) 14](#) of 10 May 2013.

<sup>83</sup> See, in this respect, the intervention by Judge Linos-Alexandre Sicilianos, "From the point of view of the Court: its role in the implementation of its judgments, powers and limits", at the 2014 Dialogue between judges on [Implementation of the judgments of the European Court of Human Rights: a shared responsibility?](#), page 18.

<sup>84</sup> Başak Çali and Anne Koch, ['Foxes Guarding the Foxes? The Peer Review of Human Rights Judgments by the Committee of Ministers of the Council of Europe'](#), 14(3) Human Rights Law Review 2014, 1-25, at page 4.

61. The accumulation of cases pending examination before the Committee of Ministers is worrying. What is particularly worrying in this respect is that 80 percent of those cases emanate from just eight States, namely Italy (2,593 cases pending), Turkey (1,727), the Russian Federation (1,325), Ukraine (957), Poland (764), Romania (702), Hungary (495), and Bulgaria (357) – accounting for 8,920 out of a total of 11,018 cases<sup>85</sup> (most of which moreover account for a large number of applications before the Court), which underscores the need to remedy the systemic dysfunctions in these countries.

62. In this context, I note that, through the establishment of a twin-track system foreseeing a standard and an enhanced supervision procedure, the Committee of Ministers is able to better focus its attention on cases warranting particular focus.<sup>86</sup> Besides, [Protocol No. 14](#) created a new infringement procedure, set out in Article 46, paragraph 4 of the Convention, allowing the Committee of Ministers, in exceptional cases, to refer to the Court the question whether a Party has failed to fulfil its obligation to give effect to an adverse judgment by the Court. The actual impact of this procedure on a State's readiness to fully comply with an adverse judgment of the Court is difficult to assess, since the procedure has not been tested to date. Similarly, the Committee of Ministers has thus far been reluctant to set strict time limits for the implementation of a particular measure, or to refuse to allow the State concerned to occupy leading positions at the level of the Organisation.<sup>87</sup> The fact that the Committee of Ministers refrains from using the means at its disposal to exert pressure on non-complying States may warrant closer examination for failing to acknowledge some weakness on its part, which indirectly weakens the action of the Court.

### 3.5. *The long-term future of the Convention system and the design of the Court*

63. A report on the long-term future of the Convention system cannot evade the question of whether more fundamental changes will be indispensable for ensuring the viability of the Convention. I note with satisfaction that intense deliberations are being held about possible alternative models at the intergovernmental level and that various options are being openly discussed, irrespective of their political feasibility at this point in time.

64. The proposals advocating an alternative model all essentially revolve around the argument that the Court should adopt a more constitutional role, with some advocating a model where it could freely determine how many cases it has the capacity to process, and pick and choose which cases to adjudicate, and others being in favour of the Court dealing exclusively with matters of law (i.e. the interpretation of the Convention) rather than facts.<sup>88</sup> Further options that have been suggested include that the Court adopt a two track approach, with certain cases of particular importance being adjudicated like under the present system, and a "leave-to-appeal" system applying to the remainder of applications<sup>89</sup>; or that applications stemming from systemic or structural deficiencies within member States should be dealt with by the Committee of Ministers,<sup>90</sup> if it showed any interest for a minimum of authority.

65. Most of these proposals may, while seemingly entailing profound changes to the current system, in practice not be so very radical. There exists broad consensus that the Court's role, already today, is not confined to that of being a "guardian of the rights of individuals"; in some of its methods and functions – notably in the upholding of constitutional values<sup>91</sup> – it resembles, to an extent, national constitutional courts. By engaging with national constitutional courts and interpreting the Convention, the Strasbourg Court (and especially its Grand Chamber, as was pointed out by Morten Rudd at the Committee's second [exchange of](#)

<sup>85</sup> See the Committee of Ministers' 2013 [annual report](#), Annex 1, table C.1., pages 39-41.

<sup>86</sup> See CM Doc. [CM/Inf/DH\(2010\)37](#) of 6 September 2010, 'Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system', endorsed by the Committee of Ministers at the 1092<sup>nd</sup> meeting of the Ministers' Deputies (14-15 September 2010). At the end of 2013, the Contracting Parties with the most cases under enhanced supervision were: Turkey (13%), the Russian Federation (11%), Ukraine (8%), Bulgaria (7%), Romania (6%), Moldova (5%), Italy (5%), Greece, Poland and Croatia (4% each).

<sup>87</sup> See the Committee of Ministers' 2013 [annual report](#), March 2014, at page 178.

<sup>88</sup> A handy overview of the different 'constitutional models' that are being proposed is provided in a background document prepared by the Secretariat of Drafting Group 'F' on the Reform of the Court: 'Thematic overview of the results of the 'open call for contributions'', [Doc. GT-GDR-F\(2014\)003](#), 12 March 2014, at paragraphs 36-37.

<sup>89</sup> See the intervention by Professor Luzius Wildhaber, former President of the Court, at the Oslo Conference (Conference [Proceedings](#), page 96).

<sup>90</sup> See the intervention by Geir Ulfstein, Professor and Co-director of PluriCourts, University of Oslo, at the Oslo Conference (Conference [Proceedings](#) at the Oslo Conference (Conference [Proceedings](#), page 101), as well as the comments made by Frank Schürmann, Government Agent, Federal Office of Justice, Switzerland (ibid., page 106).

<sup>91</sup> See also the intervention by Geir Ulfstein at the Oslo Conference (Conference [Proceedings](#), page 100).

[views](#)) creates a supranational human rights order across Europe,<sup>92</sup> determining common European standards of human rights protection which all High Contracting Parties must adhere to.<sup>93</sup> The Court itself regards the “Convention as a constitutional instrument of European public order”,<sup>94</sup> and has underlined that “[a]lthough the primary purpose of the Convention system is to provide individual relief, its mission is also to determine issues on public-policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (references omitted).”<sup>95</sup> Finally, the procedures adopted by the Court in recent years, such as its prioritisation policy, the pilot judgment procedure and the indication of general measures to be taken by the respondent State under Article 46 of the Convention, as well as the grouping of similar applications for a single judgment or decision, underscore the validity of the claim that the Court has already developed some constitutional characteristics.

66. While all of these proposals deserve to be explored, we must be careful with any institutional re-design. I would make three observations in this respect.

67. First, I agree with those who regard the two tasks of the Court – that of adjudicating individual applications and that of laying down common European human rights standards – as equally important.<sup>96</sup> At the same time, I concur with what was said at the Committee’s second hearing, namely that, although there is no doubt that the Court is capable of discharging both of these functions, one should assess whether this was an efficient way of handling the case load. I believe that we should engage in a debate about whether or not these tasks should be handled by the same judicial organ.<sup>97</sup> In reflecting on this question, we might wish to take up an idea mooted as a response to the DH-GDR’s [“open call for contributions”](#), namely to retain the single full-time Court, but supplement it with a Grand Chamber tasked with examining cases raising constitutional issues.<sup>98</sup> Such a Grand Chamber could, in my view, be composed of, for example, 15 to 17 part-time judges from the highest national courts of member States, serving on a rotating basis. This would further intensify the ties between the Strasbourg Court and national courts.

68. Second, in my view, there are certain basic features and mechanisms characterising the Convention system that lie at the very heart of its continuous success. I believe that we should be very cautious not to make any drastic changes to the system that would in effect bereave it of its strengths. The elements that I regard must by all means be preserved are:<sup>99</sup> the subsidiary nature of the Court, the judicial determination of complaints and the compulsory jurisdiction of the Court, and the system of collective enforcement and effective supervision of the execution of judgments. Lastly, and maybe most importantly, there can be no backsliding on the material rights set out in the Convention (or an abandonment of the living instrument doctrine, which would likely result in exactly such a regression), and the right to individual application to the Court must be upheld.

69. Finally, it has been recognised that the Court is working well, and it is expeditiously tackling the outstanding issues that need to be resolved. Against this backdrop, we should be cautious not to prematurely enter into deliberations on any proposals which in fact appear to be motivated not by a genuine endeavour to foster the effectiveness of the system with a view to strengthening human rights protection, but rather by a desire to dismantle the Court and undermine its authority. As I stated above, we are currently seeing that the Court has come to terms with the backlog and I believe we can trust the Court’s Registrar, Erik Fribergh, when he assures us that – subject to making available some additional resources – the Court

<sup>92</sup> See also Steven Greer and Luzius Wildhaber, [‘Revisiting the debate about “constitutionalising” the European Court of Human Rights’](#), 12(4) Human Rights Law Review 2012, 655-687.

<sup>93</sup> The Court’s “quasi-constitutional” mission was highlighted by our former colleague and rapporteur, Ms Bemelmans-Videc, in the explanatory memorandum to her report on “Guaranteeing the authority and effectiveness of the European Convention on Human Rights”, [Doc. 12811](#) of 3 January 2012, paragraph 8.

<sup>94</sup> [Loizidou v. Turkey \(preliminary objections\)](#), Application No. 15318/89, Judgment of 23 March 1995, paragraph 75.

<sup>95</sup> [Konstantin Markin v. Russia](#) (GC), Application No. 30078/06, Judgment of 22 March 2012, paragraph 89.

<sup>96</sup> This point of view was *inter alia* expressed by Morten Ruud, during the Committee’s second [exchange of views](#).

<sup>97</sup> The same view was expressed by Morten Ruud at the Oslo Conference, see Conference [Proceedings](#), page 26. See also the closing remarks by Philippe Boillat, Director General of the Directorate General of Human Rights and Rule of Law of the Council of Europe, at the said Oslo Conference (Conference [Proceedings](#), page 194: “a proposal was made which is in certain respects innovative: a body should be created within the Court, specialising in the processing of cases that could be decided on the basis of existing jurisprudence, along with a further body which would become a genuine constitutional court. In any event, it must be borne in mind that the ultimate aim would be to ensure the best possible protection for the rights and freedoms enshrined in the Convention.”).

<sup>98</sup> See the [contribution](#) by Kanstantsin Dzehtsiarou, pages 1-3.

<sup>99</sup> These elements essentially correspond to the attributes identified by Philippe Boillat, Director General of the Directorate General of Human Rights and Rule of Law of the Council of Europe, at the Oslo Conference (see the Conference [Proceedings](#), page 16).

will soon be able to deal with all the applications coming before it within the time limit set out in the [Brighton Declaration](#). This is a good achievement. I therefore concur with the Registrar that “the Court should be allowed to continue with its steady progress without the distraction of constant and sometimes confused calls for further reform.”<sup>100</sup> Let us not reform a system which works well, or, to put it even more bluntly: “if it ain’t broke, don’t fix it”.

#### 4. Conclusions

70. It transpires from the foregoing examination that the Court has made substantial progress in clearing the backlog of manifestly inadmissible applications, and is moving to tackle the outstanding challenges. Moreover, the Court deserves to be congratulated for continuing to intensify its dialogue with national judges and making its case law more widely accessible. Unfortunately, the achievements within the Court have to date not been met by corresponding improvements within Contracting Parties to the Convention. Indeed, serious violations must still be looked into, with renewed urgency.<sup>101</sup>

71. Certain States Parties have failed to eradicate (often long-standing) systemic dysfunctions which result in a large number of repetitive applications burdening the Strasbourg Court. Although progress has been made in a few countries in recent years as regards, for example, the setting up of supervisory mechanisms for the implementation of the Court’s judgments, the situation is far from satisfactory. National parliaments must more proactively engage in routinely monitoring whether their (draft) laws are compatible with the Convention, as interpreted by the Strasbourg Court in its case law, and scrutinise the remedial action taken by the government following a judgment of the Court finding a Convention violation.

72. Lastly, it transpires from the foregoing that ensuring the long-term effectiveness of the Convention system will be contingent on the commitment of all member states to ensure that the Organisation, most notably the Court, the HELP Programme and the execution department, be allocated appropriate funds to carry out their respective tasks effectively.

73. In sum, seeking further improvements of the Convention system will have to remain a priority for our Assembly and the Organisation as a whole. It is important, however, that the purpose of the ongoing reform debates remains to genuinely strengthen human rights protection across Europe, while upholding the right of individual petition to the Strasbourg Court, which is – and should remain – the ultimate arbiter of human rights in Europe. Thus, rather than focussing on further possible ways to reform the Court, the reform process must continue on the premise that States Parties bear the primary responsibility for ensuring that the Convention is applied effectively at national level, in conformity with the principle of subsidiarity upon which the Convention system is based.

<sup>100</sup> Drafting Group ‘F’ on the Reform of the Court, “Presentation to the 3rd meeting by the Registrar of the Europe an Court of Human Rights”, [Doc. GT-GDR-F\(2014\)021](#), 24 September 2014, page 9.

<sup>101</sup> See, *inter alia*, “The implementation of judgments of the European Court of Human Rights: preparation of the 8<sup>th</sup> report” (rapporteur: Mr Klaas de Vries, Netherlands, SOC), [Doc. AS/Jur \(2013\) 14](#) of 10 May 2013, especially paragraphs 10 and 14.