

AI Index: PRE01/214/2012
20 April 2012

Brighton declaration: States must be serious about European Court's judgments instead of tampering with its independence

A political declaration by the 47 Council of Europe member states fails to address key challenges faced by the European Court of Human Rights even if it contains some positive measures, Amnesty International said.

The Declaration – which comes at the end of Brighton Conference - contains proposals to reform the Court and amend the European Convention on Human Rights.

“The amendments to the Convention proposed today will do little to alleviate the workload of the Court, while some of them instead undermine the independence of the Court and curtail individuals’ access to justice,” said Michael Bochenek, Director of Law and Policy at Amnesty International.

“If member states are serious about ensuring the future of the Court, they must start by being serious about implementing the Convention and executing the Court’s decisions.

“Better respect for human rights at home is the most effective way to guarantee the sustainability of the Court.”

“The Brighton Declaration contains many welcomed commitments by states to do a better job at implementing the Convention and to take concrete measures in this direction. Actions speak louder than words and states must now demonstrate that they mean what they say”.

One of the main challenges facing the Court is the sheer accumulation of so-called repetitive cases.

These cases are originated by the persistent failure of member states to fulfil the human rights obligations they committed to respect. “While the Brighton Declaration acknowledges this problem, it remains soft on solutions,” said Bochenek.

In particular, more robust tools should be at the disposal of the Council of Europe to exert effective pressure on those states which continue to disregard the Court’s decisions.

While the possibility of sanctions, including financial penalties, has initially been considered during the negotiations, their explicit inclusion in the Brighton Declaration was eventually dropped.

“This setback is a missed opportunity to have effective incentives for states to stop ignoring the Court’s judgments.”

Instead of tackling head on the crucial need to address the repetitive violations of the Convention and the non-execution of the Court’s judgments, the Brighton Declaration worryingly shows member states telling the Court how it should interpret the Convention.

“Member states should not tamper with the Court’s independence by telling how it should fulfil its role to supervise their respect of human rights” said Bochenek.

In particular, the Brighton Declaration singles out specific ways of interpreting the Convention, proposes to amend the Convention to introduce these principles of interpretation, and puts pressure on the Court to give them prominence when it applies the Convention.

The Court already uses these principles in its case-law, together with other equally important principles of interpretation. In fact, the Court itself established them as part of its role.

“In addition to tampering with the Court’s independent role to interpret the Convention, it is difficult to see how this will help to alleviate the current challenges the Court faces,” Bochenek said.

Similarly, the Brighton Declaration tells the Court how it should interpret the admissibility requirements contained in the Convention. These admissibility requirements indicate the conditions that applications must fulfil in order for individuals’ claims to be examined by the Court. Their proper interpretation is crucial in guaranteeing effective access to justice.

“Rule of law is about respecting the independence of courts. Whereas states should not interfere with the way national tribunals interpret domestic laws, they must likewise respect the independence of the Court.”

While member states rightly reaffirm in the Declaration the fundamental importance of the right of individuals to go to the Court to seek redress for the violation of their human rights, the Brighton Declaration unfortunately aims to reduce the time limit to apply to the Court from 6 to 4 months.

“Although this amendment seeks to reduce the number of applications reaching the Strasbourg Court, it may in fact end up undermining the substantive quality of these applications, especially in instances where access to legal advice and assistance is limited”, says Bochenek.

Finally, and as underlined by the Secretary General of the Council of Europe in its intervention at Brighton, it is important to acknowledge that meaningful reforms do not come for free. Member states must provide the resources the Court needs to address the challenges it faces. “Yet this is one of the aspects where the Brighton Declaration remains largely silent”.

For the European human rights system to fulfil its promises to protect human rights, doing nothing is no solution. Instead, while the Court must continue to develop and improve its working methods, with recent significant results having been achieved in reducing the backlog of cases, states must make good on their commitments to apply the Convention.

All in all, whereas the Brighton Declaration was supposed to establish an ambitious agenda for ensuring the viability of the Convention system, it largely ends up avoiding the difficult questions while infringing on the Court’s independence and authority.

Background

The High Level Conference on the Future of the European Court of Human Rights took place in Brighton on 18-20 April. The Conference was organized by the British government as part of its Chairmanship of the Council of Europe’s Committee of Ministers, the organization’s main decision-making body. On Friday 20 April, Ministers of the Council of Europe countries have adopted the “Brighton Declaration” which incorporates a package of proposed measures to reform of the Court.

For further information see:

[*European ministers must protect the integrity and authority of the European Court of Human Rights*](#), 18 April 2012

The Brighton Declaration must strengthen human rights protection in Europe and preserve the integrity and authority of the European Court of Human Rights, 13 April 2012

Joint NGO input to the ongoing negotiations on the draft Brighton Declaration on the Future of the European Court of Human Rights, 20 March 2012

Joint NGO preliminary comments on the first draft of the Brighton Declaration on the Future of the European Court of Human Rights, 5 March 2012