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Amnesty International's Comments on the Interim Activity Report: Guaranteeing the Long-Term Effectiveness of the European Court of Human Rights

I. INTRODUCTION

1. Amnesty International considers that taking measures to ensure the future effectiveness of the European Court of Human Rights is fundamental to human rights protection in Europe. This is why the organization has actively been following the discussions within the Council of Europe, over the last three years, on proposals to ensure better implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the 45 member states of the Council of Europe¹ and to reform the European Court of Human Rights.

2. In recognition of the importance of the discussions about reforming the European Court of Human Rights and the potential impact of such reforms on individuals in the Council of Europe Member States, Amnesty International has been urging governments to inform their populations about the process for reform and to consult with members of civil society, the legal community and their national parliaments before reaching decisions on reforms. As mentioned further below in Section IV, the organization is concerned that, to date, only some 10 out of 45 Member States have held consultations.

3. Amnesty International is grateful for the opportunity to submit the following comments on the Interim Activity Report on Guaranteeing the Long-term Effectiveness of the European Court of Human Rights of 26 November 2003,² which sets out the progress of the work of the Council of Europe's Committee of Ministers' Steering Committee for Human Rights (CDDH) on these issues.

4. Amnesty International considers that the current process of reform must result in effective measures to meet three objectives. It must ensure:

- I. better implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) at national level, which will reduce people's need to apply to the Court for redress;

¹ To date, forty-four of the Member States are parties to the European Convention on Human Rights. Serbia and Montenegro, the newest member state, has signed but not yet ratified this treaty.

² Document Number CDDH(2003)026 Addendum I Final.

II. more efficient and effective screening of the applications received to weed out the overwhelming majority of those that are inadmissible under the current criteria set out in Article 35 of the European Convention or are ill-founded;

III. the expeditious rendering of judgments, particularly on cases that raise repetitive issues concerning violations of the European Convention about which the Court's case law is clear.

5. The right of individuals to submit an application directly to the European Court of Human Rights lies at the heart of the European regional system for the protection of human rights. The essence of this right is the right of individuals to receive a binding determination from the European Court of Human Rights of whether the facts presented constitute a violation of rights secured in the European Convention. The organization believes that the right of individual application to the European Court of Human Rights should and can be strengthened by ensuring speedier resolution of applications submitted to the Court.

6. As detailed below, Amnesty International considers that many of the proposals of the CDDH, if implemented, will meet the first and third objectives cited above; we consider however that some of the proposals do not meet any of these objectives and therefore require further discussion.

II. PROPOSED DRAFT RECOMMENDATIONS TO STRENGTHEN CONVENTION IMPLEMENTATION AT NATIONAL LEVEL

7. Amnesty International joins the Committee of Ministers of the Council of Europe and the CDDH in the belief that better implementation of the European Convention by Member States should be a principal aim of the Council of Europe in general and these reforms in particular. Better implementation of European Convention obligations would lead to fewer violations and better redress mechanisms in Member States - thus reducing the need for people to bring applications to the European Court of Human Rights.

8. Amnesty International therefore welcomes the three draft Recommendations to Member States set out in Appendices I-III of CDDH's Interim Activity Report. These draft Recommendations aim at improving implementation of the European Convention at the national level. Two of these draft Recommendations aim at preventing violations from occurring in the first place by ensuring adequate training about European Convention rights and the case-law and ensuring systems of screening of draft legislation and continuing review of existing law and administrative practice for compatibility with the European Convention.³

³ CDDH(2003)026 Addendum I Final, Appendix III, **Draft Recommendation of the Committee of Ministers to member States on the European Convention on Human Rights in university education and professional training** and Appendix II, **Draft Recommendation on the verification**

The third draft Recommendation aims at ensuring the existence and accessibility of effective remedies at the national level where there are allegations that a right, which is enshrined in the European Convention, has been violated.⁴

9. Amnesty International has suggested a few amendments to the CDDH's sub-Committee of experts for the improvement of procedures for the protection of human rights (known as the DH-PR) aimed at further strengthening these draft Recommendations.

Amnesty International is confident that, if states take the measures set out in these three draft Recommendations to be adopted by the Committee of Ministers, rights will be better safeguarded at home and individuals will have less cause to seek redress before the European Court of Human Rights.

We consider that these three draft Recommendations directly address the first objective for the reform process that we have laid out (at paragraph 4, above): improving implementation at the national level.

III. PROPOSALS TO REFORM THE EUROPEAN COURT OF HUMAN RIGHTS

10. The Interim Activity Report sets out a number of other proposals for reform of the European Court of Human Rights. These proposals will be further discussed by the CDDH during its meeting from 5-8 April 2004. The results of these discussions will be incorporated into a draft amending protocol to the European Convention, (draft Protocol 14), to be included in the CDDH's Final Activity Report.

The CDDH has been mandated to submit a Final Activity Report, including a text of draft Protocol 14, to the Committee of Ministers for its consideration, with a view to the adoption of Protocol 14, at its 114th session in May 2004.

a. Proposals on which the CDDH has reached agreement

11. According to the Interim Activity Report the CDDH has come to agreement on proposals regarding:

of the compatibility of draft laws, existing legislation and administrative practices with the standards laid down in the European Convention on Human Rights.

⁴ CDDH(2003)026 Addendum I Final, Appendix I, **Draft Recommendation of the Committee of Ministers to member States on improving domestic remedies.**

- the procedures for Friendly Settlements;
- the terms of office of Judges of the Court;
- an expedited procedure for the Court to rule on manifestly well-founded Cases;
- the ratification process for Protocol 14 to the European Convention.

i. Friendly Settlements

12. The CDDH has agreed to propose that the Court and the parties to a case should consider Friendly Settlements at all stages of the proceedings, including before a decision on admissibility is made. This changes the current practice in which parties are encouraged to reach Friendly Settlements only after a decision of admissibility has been made.

13. In addition, the CDDH has agreed to propose that the terms of a Friendly Settlement be entered as a Decision of the Court, and that the execution of the terms of the Friendly Settlement, laid out in the Decision, be monitored by the Committee of Ministers. These two proposed changes would require amendments to Articles 39 and 46 of the European Convention.⁵

Amnesty International's position on the proposals relating to Friendly Settlements:

14. Amnesty International welcomes the above described proposed changes to the Friendly Settlement procedure. The organization underscores the view that Friendly Settlements must be agreed to by both parties, the State and the Applicant.

ii. Terms of Office of the Judges of the European Court of Human Rights

15. The CDDH has agreed to propose that the Court's elected Judges serve a single term of nine years. Elected Judges now serve terms of six years, and may be re-elected. This proposed change would require an amendment of Article 23 of the European Convention.⁶

Amnesty International's position on the proposal related to Judges' Terms of Office:

16. Amnesty International welcomes the proposal to amend the European Convention to set a longer and non-renewable term of office for the Judges of the European Court of Human

⁵ See, CDDH Interim Activity Report, CDDH(2003)026 Addendum I Final, at paras 28-29.

⁶ See, CDDH Interim Activity Report, CDDH(2003)026 Addendum I Final, at paras 28-29.

Rights on the grounds that it will give the Court's elected Judges greater security of tenure of office and will therefore reinforce their independence.⁷

iii. Expedited Procedure for 'Manifestly Well-Founded' Cases

17. The CDDH has agreed to propose an expedited procedure for handling manifestly well-founded cases, which would require an amendment to Article 28 of the European Convention. It will propose that the European Convention be amended to give committees of three judges, which now have the power to reach final decisions on inadmissibility, a new power to make decisions at the same time on both the admissibility and merits of applications which raise issues on which the Court's case law is well established, ("manifestly well-founded" cases). According to the proposal, such decisions on admissibility and merits by the Committees of three judges would have to be unanimous. In the event of disagreement between the three judges, the case would be transmitted to a Chamber of seven judges for consideration.

18. According to the CDDH proposal, when the Court is minded to treat an application in this expedited manner, it will be required to give the state which is the subject of the application notice and an opportunity to object. It will be up to the Court, however, to decide whether a case is heard in this expedited manner.

19. According to the CDDH proposal such three-judge Committees would not necessarily include the judge elected on behalf of the state named in the application. However, the CDDH has proposed that the Committee be given the power to request, at any stage of its proceedings, that the judge elected in respect of the state named in the application take the place of one of the judges on the Committee. The Committee would make this request having regard to all relevant factors, including if the State objected to the case being handled in this manner. This proposal requires amendment of Article 28 of the European Convention.⁸

Amnesty International's position on proposed procedure for Manifestly Well-Founded Cases:

20. Amnesty International largely welcomes the proposed new procedure for handling manifestly well-founded cases. We consider that it will help to alleviate one of the two greatest challenges which the Court currently faces: the handling of applications which are currently admissible and are manifestly-well founded, as they raise issues about which the case law of the Court is clear.

⁷ Amnesty International notes that other issues aimed at ensuring the independence of the Judges of the European Court of Human Rights, such as ensuring the Judges have pensions, are currently under discussion within the Council of Europe.

⁸ See, CDDH Interim Activity Report, CDDH(2003)026 Addendum I Final, at paras 30-31.

21. Amnesty International urges that the text setting out this proposal contain wording to ensure that, in the course of the process, the parties are provided with sufficient time and opportunity to comment on the admissibility and merits of the case prior to its determination by a three-judge Committee.

22. Amnesty International is seriously concerned, however, that the current wording proposed by the CDDH to trigger the substitution in the three-judge Committee, of the elected judge from the state which is subject of the application, raises serious issues about the appearance of independence of the Court and has no place in a human rights treaty.

23. Amnesty International considers that the particular expertise about the laws and legal system of the state which is the subject of the application would not be necessary in such cases, as this procedure would only be applied to those applications which raise issues about which the case law of the Court is already clear – manifestly well-founded, repetitive cases.

24. Amnesty International therefore urges the CDDH to omit that part of the proposed amendment to the European Convention that would expressly give the three-judge Committee discretion to substitute a judge elected on behalf of state party that is the subject of the petition, *if that state has contested the application of this procedure*.

In particular, we urge the CDDH to *delete* the following wording from its draft amendment to Article 38(3) of the European Convention: “including whether that State has contested the application of the procedure under paragraph 1(b)”.

iv. Procedure for Ratification of Protocol 14 to the European Convention

25. The CDDH has agreed to propose that Member States of the Council of Europe be urged to ratify or accede to Protocol 14 in accordance with their normal processes, and to suggest that the Committee of Ministers recommend to states that they ratify Protocol 14 within a certain time-frame following its opening for signature, e.g. two years.⁹

Amnesty International’s position on proposals relating to the Ratification Procedure:

26. Amnesty International welcomes the above-described proposal for ratification of Protocol 14 to the European Convention, as we believe that the draft amending Protocol, if adopted, will make significant changes to the European Convention which should be fully considered by the governments and parliaments of each member state of the Council of Europe both before its adoption by the Committee of Ministers and before its ratification by each state.

⁹ See, CDDH Interim Activity Report, CDDH(2003)026 Addendum I Final, at paras 56-59.

b. Issues which CDDH agreed to discuss further

27. In its Interim Activity Report, the CDDH agreed that the following issues required further discussion:

- the addition of new admissibility criteria;
- filtering of applications received by the Court;
- procedure for appointing *ad hoc* Judges;
- proposals relating to the Council of Europe's Commissioner for Human Rights;
- infringement proceedings;
- increasing the number of Judges on the Court;

i. Addition of Admissibility Criteria

28. At the time of the adoption of the Interim Activity Report, four proposals for adding new admissibility criteria to the existing criteria set out in Article 35 of the European Convention were under discussion.¹⁰

29. The first of these proposals to add new admissibility criteria is: to give the Court power to decide that an application is inadmissible if it considers the applicant has not suffered a significant disadvantage and if the application raises neither a serious issue affecting the interpretation or application of the Convention or its Protocols nor a serious issue of general importance.¹¹

30. The second proposal under discussion is: to grant the Court an additional power to decide that an application is inadmissible if it appears that it has been duly examined by a domestic tribunal in accordance with the European Convention and case law of the Court, unless respect for human rights, as defined in the European Convention and its Protocols, requires a further examination of the application or the case raises a serious issue affecting the

¹⁰ The four proposals to add new admissibility criteria under discussion by the CDDH are set out in paragraphs 32-40 of the Interim Activity Report, CDDH(2003)026 Addendum I Final.

¹¹ Amnesty International notes that during the December 2003 meeting of the CDDH-GDR, a sub-committee of the CDDH working on drafting proposed amendments to the European Convention, it was proposed that the wording of this proposal be altered to amend Article 35 to the European Convention by adding the following to Article 35(3)(b): "if the applicant has not suffered a significant disadvantage and unless respect for human rights as defined in the Convention and the protocols thereto does not require an examination of the application on the merits". See, Report of the 3rd meeting of 17-19 December 2003 of the Drafting Group on the Reinforcement of the Human Rights Protection Mechanism (CDDH-GDR), CDDH-GDR(2003)039 Final, at paras 28-29.

interpretation or application of the European Convention or its Protocols or a serious issue of general importance.

31. The third proposal under discussion is: to empower the Court to decide that an application is inadmissible if the applicant has not suffered a significant disadvantage, unless respect for human rights, as defined in the European Convention and its Protocols, requires an examination of the application on the merits. However, in accordance with this proposal, no case may be rejected on these grounds if it has not been considered by a domestic authority, which has applied the European Convention and the Court's case law.

32. The fourth proposal under discussion is: to empower the Court to deem an application inadmissible if the Court considers that the applicant has not suffered a significant disadvantage, notably in view of the examination of the case by the national authorities, unless the Court considers that respect for human rights, as defined in the European Convention and its Protocols, requires that the application be examined on its merits.

Amnesty International's position on proposals to add new admissibility criteria:

33. Amnesty International continues to oppose vigorously any change to the admissibility criteria set out in Article 35 of the European Convention. We consider such proposals, which would have the effect of curtailing the right of individual application, wrong in principle.

34. Adding admissibility criteria would not address the two main challenges faced by the Court: filtering out, in an expeditious manner, the more than 90% of applications received which are inadmissible under existing criteria and dealing with the more than 60% of cases, which are admissible under current criteria, which raise issues about which the Court's case law is clear. This set of proposals does not meet any of the objectives for the reform process set out in paragraph 4 above.

35. In fact, the organization considers that application of any of the four proposals being discussed would make the decisions on admissibility more complex and time-consuming, defeating one of the main purposes of the reform process: that of streamlining filtering of the more than 90% of applications which do not meet current admissibility criteria.

The determination of whether there was "a significant disadvantage" would require more in-depth submissions from the applicant and more in-depth study of the case file at the admissibility stage. Furthermore, many have said that it is likely that the Court's initial decisions about what is "a significant disadvantage", would inevitably be made by a Chamber of seven judges, if not the Court's Grand Chamber.

36. Like some Judges of the Court, whose views are reflected in a position paper which was adopted by the Court in September 2003,¹² Amnesty International considers that the significant disadvantage test is vague, could lead to arbitrary decisions, and could be applied

¹² *Position Paper of the European Court of Human Rights on proposals for reform to the European Convention on Human Rights and other measures as set out in the report of the Steering Committee of Human Rights* of 4 April 2003, CDDH-GDR(2003)024, at paras 3(i), 26-37, and in particular para 34.

differently in respect of different states and by different Chambers of the Court. Some of the Judges also considered that proposals incorporating the significant disadvantage test would also operate independently of whether the application was well-founded. We therefore oppose proposals 1, 3 and 4.

37. While proposal 2 does not contain the significant disadvantage test, Amnesty International nonetheless vigorously opposes it for the reasons set out in paragraphs 33-35, above. In addition, among other things, at its best, the implementation of this proposal would require the Court to examine in detail the proceedings at national level at admissibility stage, in order to decide whether the national bodies had “duly” (i.e., correctly) applied the provisions of the European Convention and the case law of the European Court of Human Rights. Such an examination is often complex and time-consuming – and would hinder the efficiency of the Court at the admissibility stage. It would, in effect, require a merits decision at the admissibility stage.

ii. Filtering of Applications Received by the Court

38. It is widely agreed that the filtering of the more than 90% of all applications received by the Court which fail to meet the current admissibility criteria spelled out in Article 35 of the European Convention is the main challenge faced by the Court.

Amnesty International therefore welcomes the fact that the CDDH has decided to discuss proposals to address the need to strengthen the Court’s capacity to filter out quickly and efficiently the inadmissible applications that it receives.

At the time of the adoption of the Interim Activity Report, the discussions of two proposals relating to the filtering of applications were in their early stages.

39. The first proposal is that one judge in a Committee of three Judges, called the Judge-Rapporteur, make a recommendation on the inadmissibility of an application to the two other judges on a Committee. The two other judges on the Committee would, in turn, be given the opportunity to object to the Judge-Rapporteur’s recommended decision within a certain time frame, e.g. eight days. It is Amnesty International’s understanding that, absent the time-frame, this proposal would, in effect, codify current practice.

40. The second proposal is to grant power to a single judge to make final decisions on admissibility of applications. It has been agreed, in accordance with the principles of judicial independence and impartiality, that the judge elected on behalf of a state would not be empowered to rule on the admissibility of an application against that same state, when sitting as a single judge. The single judge would have discretion to refer the application to a Committee of three judges or to a Chamber of seven Judges.

41. Discussions are ongoing about whether a single judge should be granted the power to rule on admissibility on the basis of any new criteria that may be agreed upon.

42. Discussions are also ongoing about whether a new class of personnel, called “Assessors” or “Assessor/Rapporteurs”, should be created to assist the single judge in the course of

making decisions on the admissibility of Applications; the relationship of such Assessors to the staff of the Registry of the Court; whether or not the text of the amended European Convention should refer to such personnel; whether the states or the Court should recruit such personnel; and the criteria for their recruitment.

Amnesty International's position on proposals for Filtering:

43. Amnesty International welcomes the fact that the CDDH is currently engaged in discussions on how to address the main challenge facing the Court, namely the filtering out of the more than 90% of applications received by the Court that are inadmissible under current admissibility criteria.

Amnesty International notes that there is no way to prevent people from sending applications to the Court - there is no way to turn off the tap.¹³ Further, under the current and proposed systems, the Registry and Court will always have to examine each of the applications that it receives, in order to identify those which meet the admissibility criteria.

44. As stated in the Joint Response to Proposals to Ensure the Long-term Effectiveness of the European Court of Human Rights (Joint Response) which was signed by Amnesty International and 73 other organizations and submitted to the Committee of Ministers in May 2003,¹⁴ Amnesty International's position of principle is that no decision on admissibility and/or merits of an application should be made by less than three judges. This position is based on the view that, given their serious nature, final binding decisions of admissibility of applications seeking redress to an international human rights court for alleged violations of the human rights of individuals, should be collegial in nature.

45. Amnesty International notes that the proposal described above in paragraph 39 appears to codify the existing practice in the three-Judge Committees, with the exception that currently the two other judges are not given a fixed time-frame within which they must object or be deemed to have accepted a Judge-Rapporteur's advice on inadmissibility.

46. Amnesty International notes that the CDDH has not received any information indicating how much time the Court's Judges currently sit in Committees. Nor has the CDDH received information which would indicate that having a single judge decide admissibility, as opposed to a Committee of three Judges, would save judicial time or would enable the Judges to rule on the admissibility of more applications than they currently do.

¹³ Amnesty International and other organizations have suggested that if Member States grant legal aid to persons considering filing applications to the Court, lawyers expert in the European Convention system could help in trying to dissuade people from filing with the Court those applications which are manifestly ill-founded.

¹⁴ See para 7 of the *Joint Response to Proposals to Ensure the Future Effectiveness of the European Court of Human Rights*, AI Index: IOR/008/2003. This Joint Response is available electronically on Amnesty International's website at the following address:
<http://web.amnesty.org/library/index/engior610082003>

47. If the CDDH, however, were to agree to accept the proposal to amend the European Convention to empower a single judge to make decisions on inadmissibility, Amnesty International would vigorously oppose empowering a single judge to make decisions on any of the proposed new admissibility criteria.

We note that some of the Court's Judges and members of the Registry expressed this same view during the Symposium on the Reform of the European Court of Human Rights, sponsored by the Finnish Government which took place on 17 November 2003.

48. Amnesty International would urge that the scope of decision on admissibility by a single judge be limited to those criteria that do not require the exercise of such a wide degree of discretion, i.e., examining whether the application has been filed within six months of exhaustion of remedies at the domestic level; and whether the application is substantially the same as a matter already been examined by the Court or another international body and contains no relevant new information.

49. With regards to providing the Court's Judges with additional resources to assist in their work, Amnesty International continues to urge that the Committee of Ministers take measures to ensure that the financial and human resources of the Court's Registry be increased.

While the CDDH endorsed this recommendation in April 2003¹⁵ and the Court has stated in its Position Paper of 12 September 2003 that it is "firmly of the view that whatever other measures are implemented, the Registry will have to be strengthened",¹⁶ there is no mention of it in the Interim Activity Report.

Amnesty International urges the CDDH to consider the advisability of proposing a Recommendation or some other measure in order to ensure that this recommendation is implemented. In doing so, Amnesty International notes that the budget of the European Court of Human Rights has been estimated to be one-quarter of that of the European Court of Justice.

50. Under the current system, Registry case lawyers already assist in the preparation of files for the Judges' decisions on admissibility.

We urge the CDDH to discuss further with the Judges of the Court and members of the Registry whether there is actually a need to create a new class of personnel, "Assessors" or Assessor/Rapporteurs. We recommend that such discussions address among other things, what role such personnel would play, in the light of the role currently played by the Registry's case lawyers and senior lawyers and Judge-Rapporteurs.

¹⁵ See, CDDH(2003)006 Final of 4 April, 2003, *Guaranteeing the long-term effectiveness of the European Court of Human Rights, Final report containing proposals of the CDDH*, at p.15, Proposal B.6.

¹⁶ *Position Paper of the European Court of Human Rights on proposals for reform to the European Convention on Human Rights and other measures as set out in the report of the Steering Committee of Human Rights of 4 April 2003*, CDDH-GDR(2003)024, at para 3(m).

51. If it is agreed by the majority of Court's Judges and the majority of members of the Registry that the European Court of Human Rights' work would indeed be enhanced by the creation of such a class of personnel, then Amnesty International would urge the CDDH to propose that such personnel be recruited and selected by the Court, rather than the Member States, in an open, transparent and competitive process on the basis of their competence, independence and expertise, particularly in the European Convention system and case law of the Court.

iii. Ad Hoc Judges

52. It is the current practice of the Court, when necessary, to request that a state nominate an ad hoc judge to the Court's panel in respect of an application against that state, after the case papers have been sent the state.¹⁷

Amnesty International welcomes the fact that the CDDH has agreed to discuss the procedures relating to the appointment of ad hoc judges to the Court, in the light of concerns that the current procedures raise issues of the appearance of judicial independence.

To date, the organization is unaware of any proposals under discussion by members of the CDDH to address this issue.

iv. Proposals relating to the Council of Europe's Commissioner for Human Rights

53. The CDDH has considered two proposals relating to the Council of Europe's Commissioner for Human Rights.¹⁸

54. The first is a proposal of the Council of Europe's Commissioner for Human Rights, to amend the European Convention and his mandate, to empower the Commissioner to bring cases before the Court against a state or states on a serious issue of a general nature.

The Commissioner expressed the view that this would be a mechanism of last resort, when other measures had been exhausted.

55. Another proposal under discussion is to amend the European Convention (and the Commissioner's mandate) to expressly empower the Commissioner to intervene as a third party in proceedings before the Court. This would require an amendment to Article 36 of the European Convention.

¹⁷ See, Interim Activity Report, CDDH(2003)039, Addendum I, Final, at paras 26-27.

¹⁸ See, Interim Activity Report, CDDH(2003)039, Addendum I, Final, at paras 22-26.

56. Amnesty International notes that in its Recommendation 1640(2004), adopted on 26 January 2004, the Parliamentary Assembly of the Council of Europe also made both of these recommendations to the Committee of Ministers.¹⁹

Amnesty International's position on proposals relating to the Commissioner for Human Rights:

57. Amnesty International welcomes the fact that the CDDH agreed to discuss further both the proposal for the Commissioner to bring cases before the Court and the proposal that the Commissioner be empowered to intervene as a third party in cases pending before the Court. The organization supports both of these proposals.

58. If either of these proposals were adopted by the Committee of Ministers, Amnesty International considers that their implementation would require the Council of Europe to ensure that the Commissioner's office be strengthened with additional financial and human resources to support the Commissioner in his/her newly acquired powers.

59. Amnesty International also considers that the Commissioner for Human Rights could play a key role in assisting states with the implementation of the Judgments of the Court, particularly when the violations identified by the Court require structural or legislative changes. Such assistance could result in facilitating and expediting positive changes in Member States which could reduce the need for people to file applications to the Court raising the same issue(s).

v. *Infringement Proceedings*

60. The CDDH is continuing to discuss a proposal to amend the Convention to enable the Committee of Ministers to institute proceedings before the Court's Grand Chamber in order to obtain a ruling on whether a state had violated its obligation, under Article 46 of the European Convention to abide by a final judgement of the Court in any case to which it is a party. According to the proposal, such proceedings could be brought by the Committee of Ministers when a state persistently refuses to execute a judgment of the Court. The CDDH agreed to eliminate the possibility that the Court be able to impose a financial penalty on a state which it found to be in breach of its obligation under Article 46 in such proceedings, which had previously been proposed.²⁰

Amnesty International's position on Infringement Proceedings:

61. Amnesty International supports the proposal to amend the Convention to empower the Committee of Ministers to bring proceedings before the Grand Chamber of the Court when it

¹⁹ Recommendation 1640(2004) of the Parliamentary Assembly of the Council of Europe, adopted on 26 January 2004, at para 7 (a) and (b).

²⁰ Interim Activity Report, CDDH(2003)039, Addendum I Final, at paras 43-45.

considers that the state, in violation of Article 46 of the European Convention, has persistently failed to execute a final judgment of the Court to which it is a party.

vi. *Increasing the number of Judges of the Court*

62. A proposal, controversial to some and still under discussion by the CDDH, is to amend the European Convention to allow for an increase in the number of judges of the European Court of Human Rights. Some members of the CDDH consider that the Court's work could be expedited if more than one judge was appointed in respect of a state against which numerous applications had been lodged.²¹

63. A procedure to implement this proposal is being discussed by the CDDH. It is proposed to give the Committee of Ministers the power to modify the number of judges, following a request of the Plenary Assembly of the Court. The request of the Court would specify the number of additional judges and the state party on whose behalf they should be appointed. The Committee of Ministers would not be empowered to decide to create a number of posts greater than that proposed by the Court, or to name other States on behalf of which such additional judges would be appointed other than those designated by the Court. The decision of the Committee of Ministers to increase the number of judges would need to be unanimous.

Amnesty International's position on increasing the number of judges in the Court:

64. Amnesty International has not been convinced, in the course of discussions of this proposal, that an increase of judges to the Court is necessary.²²

65. We are concerned that states that are the subject of the greatest numbers of applications may be given the "privilege" of appointing additional judges to the Court. We consider that this criterion for appointing additional judges may be misconceived.

66. Amnesty International notes that, according to the Court's Position Paper of September 2003, only some of the judges of the European Court of Human Rights supported this idea. Those that support this proposal consider that the additional appointees should have a different status from that of the elected judges. The Judges of the Court who oppose this

²¹ Interim Activity Report, CDDH(2003)039, Addendum I Final, at paras 41-42.

²² The organization notes that the Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights, EG Court (2001)1, 2 September 2001, recommended additional resources to the Registry, and was silent on the issue of additional judges.

proposal warn that an increase in the number of elected judges of the Court could undermine the consistency of the jurisprudence and the collegiality of the Court.²³

IV. CONSULTATION IN COUNCIL OF EUROPE MEMBER STATES

67. The European Court of Human Rights continues to play a central role in ensuring respect and protection of human rights of individuals in the member of states of the Council of Europe.

Amnesty International therefore considers that civil society, the legal community and national parliaments should be informed and consulted about proposals to reform the Court.

68. Over the last three years, Amnesty International has repeatedly urged the governments to inform the population at large about the ongoing discussions which will result in reforms to the Court and an amending Protocol to the European Convention.

69 Amnesty International has also urged governments to ensure that they consult widely, particularly with members of civil society, members of the legal community and national parliaments, about the proposals to reform the Court, prior to formulating the government's position on them.

70. The Council of Europe hosted a consultation with some national court judges in 2002 and another with representatives of selected non-governmental organizations in Strasbourg in 2003. The Finnish Government sponsored a Symposium on Proposals to Reform the European Court of Human Rights in Strasbourg in November 2003. Amnesty International has taken part in each of these consultations.

The Council of Europe also plans to hold another consultation with selected non-governmental organizations in February 2004.

71. Amnesty International has welcomed these consultations but believes that they are not a substitute for consultations in each member state.

72. To date, however, Amnesty International has only been informed of consultations taking place in 10 of the 45 member states of the Council of Europe.

²³ *Position Paper of the European Court of Human Rights on proposals for reform to the European Convention on Human Rights and other measures as set out in the report of the Steering Committee of Human Rights of 4 April 2003*, CDDH-GDR(2003)024, at paras 3(1), 39-41.

Amnesty International's recommendations on consultation in Member States:

73. Amnesty International continues to urge the governments of each of the Council of Europe Member States to ensure that the public is made aware, without delay, of the ongoing discussions about the reform of the European Court of Human Rights and of the likely adoption of an amending Protocol to the European Convention incorporating reforms to the Court in May 2004. The organization also urges the governments of Member States to consult with members of civil society, the legal community and their national parliaments, prior to forming final positions on the proposals for reform of the Court

74. In order to reinforce the recommendations for consultation, which have been endorsed by the CDDH, Amnesty International urges the Committee of Ministers to adopt, without delay, a Recommendation calling on member states to take promptly the action set out in paragraph 73 above.