Joint Response to Proposals to Ensure the Future Effectiveness of the European Court of Human Rights

To the Committee of Ministers:

We, the undersigned NGOs and bodies, submit the following response to proposals to ensure the future effectiveness of the European Court of Human Rights put forward by the Evaluation Group on the European Court of Human Rights[1] and the Committee of Ministers' Steering Committee on Human Rights (CDDH).

1. We recognise that the increasing number of individual applications which are being lodged with the European Court of Human Rights (the Court) has been detrimental to its effectiveness and that, accordingly, reforms are needed.

2. We consider that the measures taken to ensure the long-term effectiveness of the Court should aim to improve the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention) in member states, and to strengthen the right of individual application by ensuring the speedier resolution of applications. We urge you to ensure that the right of individual application - which lies at the heart of the European Convention system - is not prejudiced, restricted or weakened.

3. We believe that better implementation of the European Convention in member states would reduce the number of people who need to seek redress before the Court, and hence its workload. For this reason, we believe the main objective of reform should be to improve the implementation of the European Convention in the member states of the Council of Europe. We therefore particularly welcome the proposals that aim at preventing violations at the national level and improving domestic remedies, including by asking states to ensure continuous screening of draft and existing legislation and practice in the light of the European Convention and the Court's case law; and by asking states to

[1] The Evaluation Group on the European Court of Human Rights was established by the Council of Europe's Committee of Ministers on 7 February 2001. Its report, published on 27 September 2001, EG (Court) 2001, is available on the Council of Europe's web site at http://cm.coe.int/stat/E/Public/2001/rapporteur/clcedh/2001egcourt1.htm

increase information, awareness-raising, training and education in the field of human rights.

4. We consider that new measures are required to screen quickly and effectively the high numbers of applications received by the Court, 90% or more of which are inadmissible or struck out under the current criteria. We also acknowledge the need for the Court to be able to handle in an efficient manner the 65% or more of admissible cases which raise repetitive issues about which its case law is clear.

5. In this respect, we urge the Committee of Ministers to ensure that the Registry receives adequate human and financial resources, including sufficient paralegal, secretarial and clerical support for the Registry lawyers.

6. We welcome proposals to empower committees of three judges to rule on the admissibility and merits of cases which raise repetitive issues, about which there is well-established case law, by amending Article 28 of the European Convention. Given that such a large proportion of the cases now considered substantively by the Court are repetitive cases, we consider that this proposal would have a significant impact on reducing the work-load of the court and expediting the rendering of judgments, while maintaining the essence of the right of individual petition.

7. We oppose proposals to invest judicial status on members of the Registry who have not been elected as judges, as - in accordance with the principle reflected in the Court's own jurisprudence - applicants are entitled to expect their cases to be determined by a court, not by administrative officers. If such proposal is adopted, the system could be subject to criticism that it lacks the appropriate appearance of independence and transparency. We are of the view that no decision on the admissibility and/or merits of an application should be made by less than three judges. We would therefore oppose any proposal that such decisions be made by a single judge.

8. We share concern expressed by some judges of the Court, members of the Registry, representatives of the European National Human Rights Institutions and experts about proposals to change the current admissibility criteria in a manner which would restrict the right of an individual to have currently admissible cases determined on their merits. The right of individual petition is a vital element of the protection of human rights in the Council of Europe system. We consider that curtailing this right would be wrong in principle. Unlike other proposals, curtailing this right would have little impact on the main source of the Court's overburdening, which is disposing of the high number of cases

that are inadmissible under the current criteria. Such a measure would be seen as an erosion of the protection of human rights by Council of Europe member states, an erosion which will have an adverse impact on efforts to promote the protection of the rights of people in countries where systems are significantly weaker. Particularly at a time when human rights - including the right to fair trial and the absolute prohibition of torture and inhuman or degrading treatment or punishment - are under great pressure around the world, we urge the Council of Europe to maintain the integrity of the system it has established.

9. Accordingly, we *vigorously* oppose the proposal which would empower the Court to decline to issue judgments on the merits of applications which are admissible under current criteria but which the Court deems raise "no substantial issue" under the European Convention.

10. We are concerned about the proposal to extend the inadmissibility criteria by amending Article 35 of the European Convention to allow the Court to declare inadmissible cases if the applicant has not suffered a significant disadvantage and if the case does not either raise a serious question affecting the interpretation or application of the Convention or the protocols thereto or any other issue of general importance. We are unconvinced of the necessity or effectiveness of this proposal, particularly as the President of the Court and the Registry has recently indicated their anticipation that this proposal will do little to reduce the Court's caseload.[2] Instead, we believe that by adding additional admissibility criteria, it will make the admissibility process significantly more time-consuming and complex.

11. With a view to improving the quality of applications and reducing the number of inadmissible applications to the Court, we urge the Committee of Ministers to recommend that member states provide resources to lawyers and non-governmental organizations in order for them to provide initial advice to individuals in respect of potential Convention applications. This should include the provision of legal aid by the national authorities. Our experience is that the provision of such advice has dissuaded people from making misconceived applications.

[2] As mentioned by Mr Luzius Wildhaber, President of the European Court of Human Rights in a speech to the Liaison Committee on 4 March 2003, and by the Registry in an impact assessment produced for the Committee of Ministers' Steering Committee for Human Right (Document reference CDDH-GDR(2003)017). The Registry estimated that this proposal would affect only 4.7 % of current Chamber cases.

12. We are concerned that an expansion of the existing friendly settlement process must not be to the detriment of the individual right of application. We consider that the striking out of applications under Article 37 of the Convention should be regarded as a wholly exceptional procedure. The suggestion that an applicant's consent could be dispensed with in striking out an application should be rarely, if ever, invoked. This would require a clear admission of liability by the respondent Government in the particular circumstances of the applicant's case, and could only apply where the applicant's position is manifestly unreasonable. There would have to be a rigorous consideration by the Court of the respondent Government's settlement offer and a careful assessment as to whether the offer provides as full a remedy as is appropriate in the circumstances. Applications should never be struck out in cases concerning arguable violations of those Articles that are non-derogable under Article 15.2.

13. Although we acknowledge that the Court's fact-finding hearings may be time-consuming and expensive, we believe that in exceptional cases such procedures are essential to the Convention system and must be continued. Such hearings have been conducted in complex and serious cases where there has been no or an inadequate investigation by the national authorities. It is the very failure of the national authorities to provide an effective remedy in respect of violations of the Convention which creates the need for the Court to hold fact-findings hearings.

14. We do not support the creation of regional human rights tribunals throughout Europe - with the Court becoming a tribunal of last instance - or the use of preliminary rulings on Convention issues at the request of national courts. We agree with the Evaluation Group, which said about this solution that "it carries the risk of diverging standards and case-law, whereas the essence of the Convention system is that uniform and coherent standards, collectively set and enforced, should obtain throughout the Contracting States".[3]

15. We support proposals to improve and accelerate the execution of judgments of the Court. In particular, we would welcome the Court identifying underlying systemic problems in its judgements, and the Committee of Ministers further developing procedures to give priority to the rapid execution such judgments. We would welcome the Committee of Ministers being enabled to supervise the execution of decisions taken by the Court with respect to friendly settlements. We would encourage the Committee of Ministers to further explore the idea that it be enabled to petition the Court after a persistent failure of a state to execute a Court judgment, and the Court be empowered to impose a financial sanction on the state if it finds a continuous violation by the state of its obligation under

[3] See the report of the Evaluation Group on the European Court of Human Rights, paragraph 83, available at http://cm.coe.int/stat/E/Public/2001/rapporteur/clcedh/2001egcourt1.htm

Article 46 to abide by a judgment against it. We would welcome optimum use being made of other existing institutions, mechanisms and activities, and the Court making more frequent use of the possibility to invite other states to intervene in cases of principle.

16. We consider that adequate financial and human resourcing of the Court is vital for its continued credibility and effectiveness. It is noted that the total budget of the Court of Human Rights is only a quarter of the budget of the Court of Justice. It is essential that Contracting States show greater commitment to the Court system, by providing the Court with sufficient resources to carry out its tasks.

17. Finally, we are concerned that the majority of member states have yet to inform or consult with the legal community and civil society within their jurisdictions about the proposals being considered for ensuring the long-term effectiveness of the Court. According to information available to us, fewer than 12 of the 44 member states have held such consultations. In view of the significant impact the proposed reforms may have on the protection of human rights, we urge the Committee of Ministers to immediately request all states to consult with legal and other appropriate associations and inform it of the outcome of such consultations, before decisions on proposals for reform are taken.

28 March 2003

Signatories to the Joint Response to Proposals to Ensure the Future Effectiveness of the European Court of Human Rights

The "Joint Response to Proposals to Ensure the Future Effectiveness of the European Court of Human Rights" has been signed by the following NGOs and bodies:

1. AIRE Centre (Advice on Individual Rights in Europe) [United Kingdom]
2. Amnesty International
3. APADOR-CH (The Romanian Helsinki Committee) [Romania]
4. Association internationale pour la défense de la liberté religieuse [Switzerland]
5. Association for the Prevention of Torture (APT) [Switzerland]
6. Association for the Rehabilitation of Torture Victims – Center for Torture Victims [Bosnia and Herzegovina]
7. Association for European integration and human rights
8. Ældresagen [Denmark]
9. Bar Human Rights Committee
10. British Institute for Human Rights (BIHR) [United Kingdom]
11. British Irish Rights Watch [United Kingdom]
12. Bulgarian Helsinki Committee [Bulgaria]
13. Bulgarian Lawyers for Human Rights [Bulgaria]
14. Bulgarian Section of ICJ [Bulgaria]
15. Centre for Development of Democracy and Human Rights [Russian Federation]
16. Children's Legal Centre [United Kingdom]
17. Committee on the Administration of Justice (CAJ) [United Kingdom]
18. Conference of European Churches (CEC)
19. Conference of European Justice and Peace Commissions [Netherlands]
20. Dansk Retspolitisk Forening [Denmark]
21. Den Danske Helsingforskomité (Danish Helsinki Committee) [Denmark]
22. European Council on Refugees and Exiles (ECRE)

23. European Human Rights Advocacy Centre [United Kingdom]
24. European Network Against Racism
25. European Roma Rights Centre (ERRC)
26. Fair Trials Abroad
27. Fédération Internationale des Assistants Sociaux (FIAS)
28. Fédération Internationale des ligues des droits de l'Homme (FIDH)
29. Folkekirkens Nødhjælp [Denmark]
30. FN-forbundet (United Nations Association) [Denmark]
31. Georgian Young Lawyers Association [Georgia]
32. Gesellschaft Für Bedrohte Völker [Germany]
33. Greek Helsinki Monitor [Greece]
34. Helsinki Foundation for Human Rights in Poland [Poland]
35. Humanistische Union e.V. [Germany]
36. Human Rights Association
37. Human Rights Watch
38. Hungarian Helsinki Committee
39. Ihmisoikeusjuristit ry (Finnish Section of the ICJ) [Finland]
40. Immigration Law Practitioners' Association (ILPA) [United Kingdom]
41. INQUEST [United Kingdom]
42. Institut de formation en droits de l'homme du barreau de Paris [France]
43. International Commission of Jurists (ICJ)
44. Internationale Gesellschaft für Menscherechte (IGFM) [Germany]
45. International Federation of the Action by Christians Against Torture (FIACAT)
46. International Helsinki Federation
47. Interights [United Kingdom]
48. International Working Group for Indigenous Affairs (IWGIA) [Denmark]
49. Irish Penal Reform Trust [Eire]
50. Justice [United Kingdom]
51. Kindernothilfe e.v. [Germany]

52. Kurdish Human Rights Project (KHRP) [United Kingdom]
53. The Law Society of England and Wales [United Kingdom]
54. League of Human Rights [Czech Republic]
55. Liberty [United Kingdom]
56. Ligue internationale de l'Enseignement, de l'Education et de la Culture populaire [France]
57. Marangopoulos Foundation for Human Rights [Greece]
58. Medical Foundation for the Care of Victims of Torture [United Kingdom]
59. Minority Rights Group [Greece]
60. Moldovan Helsinki Committee for Human Rights [Moldova]
61. Movement against Racism
62. Nottingham University Human Rights Law Centre [United Kingdom]
63. Nürnberger Menschenrechtszentrum [Germany]
64. Opusgay [Portugal]
65. Pat Finucane Centre [United Kingdom]
66. Peace Brigades International (Deutscher Zweig e.V.) [Germany]
67. PRO ASYL [Germany]
68. Red Barnet (Save the Children) [Denmark]
69. Rehabilitation and Research Centre for Torture Victims (RCT) [Denmark]
70. Reporters Sans Frontières (RFS) [France]
71. Resources Center of Moldovan Human Rights NGO's [Moldova]
72. Scottish Human Rights Centre [United Kingdom]
73. Sokadre (Coordinated Organizations and Communities for Roma Human Rights) [Greece]
74. World Organization against Torture (OMCT)