



AS/Per (2018) PV 01
21 May 2018

Standing Committee

Minutes¹

**of the meeting held in Paris
on 16 March 2018**

¹ Approved by the Assembly on 23 April 2018.

1. OPENING OF THE MEETING

The meeting began at 9.00 am with **Mr Nicoletti**, President of the Assembly, in the Chair.

The President informed the members of some preliminary developments that occurred since the last meeting. He participated in the OECD Parliamentary Days in Paris on 8 February, met its Secretary General, Mr Gurría, to whom he presented his project of Academic Networks. Mr Gurría suggested to closely associate the OECD with the anti-corruption network. He then referred to some alarming developments on our continent, for instance the murder of the Maltese investigative journalist Daphne Caruana Galizia on 16 October 2017, followed by the murder of another investigative journalist, Jan Kuciak from Slovakia on 22 February 2018 near Bratislava. He strongly condemned those attacks and emphasized that media freedom is basic in any free society.

2. EXAMINATION OF NEW CREDENTIALS

Doc. 14512

The Standing Committee **ratified** the credentials of the new members and substitute members, as set out in document Doc. 14512, including those of the Andorran delegation to bring it into conformity with the Rules of Procedure following the challenge to its credentials at the January 2018 part session (Resolution 2205 (2018)).

3. MODIFICATIONS IN THE COMPOSITION OF COMMITTEES

Commissions (2018) 03
and addendum

The Standing Committee **ratified** the changes in the composition of Assembly committees, as set out in the document Commissions (2017) 08 and its addendum.

4. AGENDA

AS/Per (2018) OJ 01 rev

The revised draft agenda was **adopted**.

The President drew attention to the request from the Committee on Legal Affairs and Human Rights to adopt a draft declaration on the European Human Rights system in the future Europe, which the Committee had approved on 14 March. It would be discussed under item 8 on the agenda.

Mr Schwabe presented the draft declaration. It was currently being discussed at ministerial level and concerned the importance and long-term viability of the European Human Rights Convention and the enforcement of the Court's judgments and its independence. It was the Assembly's responsibility to take a position to defend the Court and also with regard to the execution of the Court's judgments by member States.

5. SECOND PART-SESSION OF THE PARLIAMENTARY ASSEMBLY (23-27 APRIL 2018)

AS/Bur (2018) 09

As required by Rule 27.4 of the Assembly's Rules of Procedure, the Standing Committee **took note** of the draft agenda for the second part-session of 2018.

The Secretary General of the Assembly said that some twenty members of the Turkish delegation had submitted a request for debate under urgent procedure on "Rising anti-Semitism, Islamophobia and xenophobia in Europe: a threat to European values".

Sir Roger Gale referred to the recent events in the United Kingdom in the Skripal case and said that a request might be submitted for debate under urgent procedure on this subject.

6. REFERENCES TO COMMITTEES

AS/Per (2018) 01

The Standing Committee **ratified** the references and transmissions to the committees, as set out in Appendix I.

7. EXCHANGE OF VIEWS WITH MR GUIDO RAIMONDI, PRESIDENT OF THE EUROPEAN COURT OF HUMAN RIGHTS

The President welcomed the President of the European Court of Human Rights (hereinafter “the Court”), Mr Guido Raimondi, and pointed out that this was the first time that such an exchange of views was taking place. He believed that the Assembly, which elected the Court’s judges, should also support the Court in its work. That same day the Standing Committee was due to adopt a declaration on the ministerial conference to be held in Copenhagen on 12 and 13 April 2018.

Mr Raimondi underlined the importance of this exchange of views since it was the first time that he was addressing the Parliamentary Assembly, which was one of the main actors in the European system for the protection of human rights. He referred to the Assembly’s role in electing the Court’s judges, but also as a contact with national parliaments, which themselves played a very important role in the enforcement of the European Human Rights Convention (hereinafter “the Convention”). A growing number of parliaments now set up committees responsible for ensuring that draft legislation was compatible with the Convention, which was why an effort needed to be made to ensure that members of national parliaments and parliamentary officials were aware of the Court’s case-law. Their role was also crucial for the proper execution of judgments, which sometimes required legislative modifications.

In the early 2010s, the Court had experienced great difficulties with 160 000 applications pending, but the entry into force of Protocol No. 14 and of its internal reforms had helped find effective solutions. By late February 2018, the number had been reduced to 56 750 applications, 9 900 of which concerned Romania (17.4%), 8 150 Russia (14.4%), 7 250 Ukraine (12.8%), 7 150 Turkey (12.6%), 4 700 Italy (8.3%) and 3 500 Hungary (6.2%), in other words a total of 71.7% of application concerning these six countries alone. In 2017, the number of applications increased by 19%, in other words 63 350 applications, mainly from Turkey, and the Court had ruled on over 85 950 cases (an increase of 123%). Following the attempted coup d’état, some 30 000 applications had been lodged against Turkey, 27 800 of which had been declared inadmissible on grounds of failure to exhaust domestic remedies.

In order to deal with large numbers of applications of a repetitive nature, the Court, together with the Committee of Ministers, had invented the pilot judgment technique, establishing principles which the State concerned is obliged to apply by legislating or taking the necessary measures, subject to the supervision of the Committee of Ministers. One of the most promising paths for the future was Protocol No. 16 which, once it had come into force after 10 ratifications, was designed to establish a new dialogue between the Court and the highest national courts, which would be able to send requests for advisory opinions to the Court on questions of principle concerning the interpretation or application of the rights and freedoms set out in the Convention. The advisory opinion issued by the Court would include reasons and be non-binding. As members of national parliaments, the members of the Assembly had a role to play in the ratification of this fundamental instrument. However, what Mr Raimondi considered to be most important was the quality and the acceptability of the decisions taken by the Court, which often had to take a position on complex and unprecedented cases. The Court had a great responsibility to European citizens and needed the Assembly’s support.

Mr Kox referred to the debate currently taking place on the Convention, which was being challenged in several member States. He asked what were the advantages for member States of the existence of this European system for protecting human rights.

Mr Raimondi compared the Convention system to a sort of European human rights insurance, as the protection and preservation of human rights helped to improve the everyday life of Europeans. The Court’s judgments helped to bring about practical legislative changes. Generally speaking the system protected people from situations of tyranny.

Ms Kavvadia also referred to the pressures exerted on the Court and the principles it upheld and asked what the Court’s role was with regard to European problems in the XXIst century and how its functioning could be improved.

Mr Raimondi said that the situation should not be dramatized, even if the Court was now confronted with countries wishing to restore political or judicial sovereignty, the current situation was much more positive than it had been some years ago, in particular at the highest judicial levels. He mentioned the draft Copenhagen Declaration currently being drawn up, which was designed to solve the problem of shortage of resources to deal with the 57 000 pending applications (in particular those concerning Turkey). The key could be found at national level by improving the quality of the measures for implementing the Convention, in particular in the six aforementioned countries. He also stressed the importance of Protocol No. 16 and of its entry into force, which they hoped would take place in 2018. He also mentioned the establishment of a

network of European supreme courts, which currently comprised 65 courts in 35 countries, to improve the protection of fundamental rights.

Ms Schou referred to paragraphs 14 and 26 of the draft Copenhagen Declaration and to the criticisms of and political pressures exerted on the Court.

Mr Raimondi said that the Court had been consulted on the draft declaration and that the Committee of Ministers had taken account of its observations although the drafting had not yet been finalised. As far as the Court was concerned the two points raised were important, as was the question of subsidiarity (without any special preserves for national law) and political dialogue on the Court's case-law.

Mr Corlăţean said that there had been a positive development in member States with regard to the Court's case-law (i.e. with regard to property nationalised during the communist period). He stressed the strict and universal nature of fundamental rights and asked the President of the Court what his expectations were with regard to the ministerial conference in Copenhagen and the draft declaration.

Mr Raimondi referred to the Court's role in the political transition of the countries of Central and Eastern Europe and the Court's concerns with regard to the draft declaration. Nevertheless the Court had to respect the sovereign will of member States, in particular with regard to the implementation of treaties. Although the Court was pleased to have been consulted on the draft declaration, it could not become involved in the negotiation procedure.

Mr Schwabe wondered whether it was necessary to challenge the very foundations of the Court and about the dialogue between the Court and member States' judicial bodies, or even with other organisations throughout the world.

Mr Raimondi said that, in the 1950s, member States had genuinely wished to commit themselves to upholding human rights. Over time, however, criticism had been levelled at the way in which the Court's case-law had developed and at the way its case-law had been interpreted to adapt it to changes in society. But that was perfectly normal and it would not be right to prevent it from developing in that way. Moreover, the Convention system was a regional (European) system but one which had a much wider impact, for example, at the Supreme Court of Japan. The Court also co-operated with other bodies which upheld human rights, in particular the Inter-American Court of Human Rights in Costa Rica, and the UN Human Rights Committee, which was a quasi-judicial body.

Mr Schennach regretted that some member States ignored the Court's judgments (for example Bosnia and Herzegovina in the Sejdic and Finci case, or in cases concerning prisoners) and asked what the members of the Assembly could do to help the Court.

Mr Raimondi said that that was a crucial question because the failure to execute judgments posed a threat to the entire system. However it was a complex political problem. He pointed out that 95% of judgments were enforced and that there were sometimes delays in executing them. With regard to the Sejdic and Finci judgment, the government of Bosnia and Herzegovina was doing its best but was faced with political difficulties, which, according to some parties, could even jeopardise the Dayton Agreements. With regard to the Mammadov case, the Committee of Ministers had considered applying Protocol No.14 but the case was still pending before the Court. With regard to the Russian Law of 2015 making it possible to challenge an international judgment, the Russian Constitutional Court was demonstrating good will with a view to finding a solution to the issue of prisoners' voting rights but that it caused a constitutional problem that had to be settled first. With regard to the Hirst versus the United Kingdom case, a solution had been presented to the Committee of Ministers with a view to settling the problem.

Mr Zingeris referred to national resistance during the Stalin regime and asked how the Court responded to current cases of human rights violations in occupied territories, for example Crimea.

Mr Raimondi pointed out that the Court could not apply legal solutions to conflicts of a historical nature. Such conflicts were not covered by the Convention, which could only rely on Article 15 (Derogation in time of emergency). The Convention system had limits in such cases, in particular with regard to the establishment of the facts. He also referred to the Court's case-law in cases concerning Transnistria.

Ms De Sutter asked what progress had been made with regard to the European Union's accession to the Convention and about the Court's co-operation with the EU Court of Justice.

Mr Raimondi said that no further progress had been made and that the decision to resume the negotiations

lay with the European Union. He underlined the excellent co-operation existing with the EU Court of Justice, with which annual meetings were held and referred to the joint declaration made by the presidents of the two courts in 2011 with a view to ensuring that their decisions were harmonious. He underlined the principle that the EU Charter of Fundamental Rights should not afford less protection than the Convention, and that this had been acknowledged by the EU Court of Justice.

8. DRAFT STATEMENT ON THE “DRAFT COPENHAGEN DECLARATION ON THE EUROPEAN HUMAN RIGHTS SYSTEM IN THE FUTURE EUROPE”

AS/Per (2018) 03

Submitted by the Committee on Legal Affairs and Human Rights

Mr Kox stressed how important it was that the Standing Committee give its opinion on the draft declaration. It was the Assembly’s responsibility to do so, particularly given that this matter was also being discussed in national parliaments. He was in favour of the draft that had been presented and thought that a signal should be sent to the Committee of Ministers as it had not officially consulted the Assembly on this subject.

The President, also speaking on behalf of the Presidential Committee, endorsed the position expressed by Mr Kox and underlined the important role played by the Assembly in electing the Court’s judges and in monitoring the execution of its judgments.

The Standing Committee unanimously adopted the draft declaration (see Appendix III).

9. EQUALITY AND NON-DISCRIMINATION

Gender equality and child maintenance

Doc. 14499
and amendments

*Rapporteur of the Committee on Equality and Non-Discrimination:
Ms Gisela Wurm (Austria, SOC)*

*Rapporteur of the Committee on Social Affairs, Health
and Sustainable Development (for opinion):
Ms Liliane Maury Pasquier (Switzerland, SOC)*

Doc. 14504

In the absence of the rapporteur, Ms Wurm, who left the Assembly, the report is presented by Ms Kovacs, Chairperson of the Committee.

Ms Kovács recalls that over the last few decades the nature of the family has changed in Europe. A high number of marriages end in separation and divorce, with the consequence that a growing number of children live with only one parent or in blended families. In fact, the parents, mostly fathers, who bear the financial obligation of the upbringing of their children, do not necessarily pay or do it only partially. This puts resident parents in difficult economic situations which can be considered as economic violence, which in turn is a form of psychological violence.

Since most resident parents are mothers, the challenges that they face lead to a form of inequality that should be considered as gender based discrimination. But the subject of child maintenance in itself is of course also highly relevant to children’s rights. Today, families are often bi-national and mobility is an increasing part of modern life. Family law in general and child maintenance require therefore international harmonisation of standards and, often, international judicial co-operation.

The core recommendation of this report is that effective and easily accessible substitute maintenance mechanisms should be introduced. These mechanisms should be based on advance payment granted by the public authorities. In case of intentional non-compliance or partial or irregular compliance of payments, effective sanctions should be foreseen for the non-compliant parent.

Ms Maury Pasquier presented the opinion of the Committee on Social Affairs, Health and Sustainable Development. She fully supported the establishment in member States of a genuine culture of paying child maintenance. Child maintenance was a right granted to children and not to parents. She made a brief presentation of the amendments submitted by the committee.

Mr O’Reilly mentioned situations where men to whom the courts had not granted custody of their child felt they were denied right of access and experienced feelings of alienation, which could result in their not paying the child maintenance they ought to pay. In Ireland there was an association which brought together men in this situation.

Mr Schennach stressed the importance and the need for child maintenance to be paid to cover the child's education and of ensuring that the amount was sufficient to meet the child's needs. Such payment should be made compulsory on pain of arrest, as in Austria.

Mr Corlăţean referred to the growing number of divorces and separations in Europe nowadays, which affected children's future. Such situations often resulted in long judicial proceedings whereas the children required urgent judicial decisions. He stressed the case of couples of different nationalities whose separation had a very great impact on the level of protection afforded to children.

Ms Brynjólfsdóttir asked whether the question of paid parental leave had been taken into account when the report had been drafted and encouraged States to put such a system in place so that both parents could take an active part in bringing up their children as in the Scandinavian system.

Ms Kyriakides stressed the need to protect children's rights, as set out in the International Convention on the Rights of the Child. She suggested a sub-amendment to amendment No. 3 saying that children "are traumatised" rather than "can be traumatised".

Mr Van de Ven drew attention to the fact that some tax or welfare benefits could lead to abuses which should be avoided. Only the child's best interests should be taken into account.

Ms Kovács concluded by pointing out that it was important that child maintenance be paid in good time for the benefit of children. There was frequent discrimination against mothers, who were often at the head of single-parent families. She endorsed the proposed sub-amendment.

As the Committee on Equality and Non-Discrimination had unanimously approved the seven amendments tabled, the Standing Committee also adopted them, including amendment No. 3 as sub-amended.

The draft resolution was unanimously adopted.

10. RULES OF PROCEDURE, IMMUNITIES AND INSTITUTIONAL AFFAIRS

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

Doc. 14511
and amendments

*Rapporteur of the Committee on Rules of Procedure, Immunities and Institutional Affairs:
Ms Petra De Sutter (Belgium, SOC)*

Ms De Sutter refers to the unprecedented budgetary crisis affecting the Assembly, and the Council of Europe as a whole. The Assembly is required to freeze €1.5 million (9% of its total budget) as a consequence of the Turkish government's decision to no longer be a major contributor to the Council of Europe budget as from 1 January 2018. The first measure to take is to no longer cover the cost of Turkish interpretation since it is no longer funded in the Assembly's budget. The report contains proposals to amend the provisions in the Rules of Procedure on working languages in order to implement this measure. However, as was the case before, Turkish interpretation may still be provided with its cost being borne by the Turkish Parliament (as also happens with Greek and Spanish).

The Rules Committee proposes to codify the longstanding practice recognising as working languages of the Assembly the languages of the States which are major contributors to the Council of Europe budget, but making it conditional on the corresponding budgetary allocations.

The budgetary difficulties of the Assembly have been amplified by the refusal of the Russian Federation to pay two thirds of its contribution to the 2017 budget and the first third to the 2018 budget. In this framework the Committee of Ministers is invited to meet its obligations and to defend the Organisation. Member States should be urged to comply with the Statute of the Council of Europe (According to Article 39, Member States must pay their contribution not later than six months after notification). They are also called upon to make unspent amounts available to the Organisation instead of returning them.

Mr Disli submitted a dissenting opinion to the report and the amendments submitted by the Turkish delegation were unanimously rejected by the committee.

Mr Kiliç said that the decision was a sensitive one which would have major consequences. To date there was no connection between the status of major contributor and working languages. In fact, it was not a

financial problem, given that Turkey was prepared to cover the costs of interpretation (voluntary contribution). It was a political decision to rule out use of the language of the 3rd most highly populated member state of the Council of Europe and that it was unacceptable to make working languages conditional on a member state holding the status of major contributor. Turkey was not the main country contributing to the budgetary crisis.

Mr Schennach suggested that the German speaking parliaments could be contacted with regard to a possible voluntary contribution to cover the cost of verbatim records in German.

Mr Nick made a distinction between Turkey, which had taken a legitimate decision, and Russia, which had not paid its financial contribution, and asked whether Russian should therefore continue to be a working language. With regard to verbatim records in German, a language spoken in several member States, he was against their suppression.

Ms De Sutter pointed out that the objections of the Turkish delegation had already been examined by the Committee on Rules of Procedure. Before becoming a major contributor, Turkey had met the costs of interpretation and in the past there had always been a link between working languages and the status of major contributor. Consequently they were only returning to the situation which had previously existed. Regarding verbatim records in German and Italian, she noted that some countries would be ready to pay voluntary contributions.

The President said that seven amendments had been tabled (four to the draft resolution and three to the draft recommendation).

Mr Kiliç spoke in support of the four amendments to the draft resolution, all of which were rejected.

The draft resolution was adopted.

Mr Kiliç and Mr Gunnarsson withdrew their respective amendments to the draft recommendation.

The draft recommendation was adopted.

11. OTHER BUSINESS

None

12. NEXT MEETING

The Standing Committee **decided** to hold its next meeting in Zagreb on Friday 1 June 2018, on the occasion of the Croatian chairmanship of the Committee of Ministers.

The meeting **rose** at noon.

APPENDIX I

Decisions on documents tabled for references to committees

A. REFERENCES TO COMMITTEES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. MODIFICATIONS OF REFERENCES

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

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

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

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

APPENDIX II

List of participants

President of the Parliamentary Assembly / Présidente de l'Assemblée parlementaire

Mr Michele NICOLETTI Italy

Chairpersons of Political Groups / Président(e)s des groupes politiques

Mme Liliane MAURY PASQUIER Socialists, Democrats and Greens Group (SOC) /
Groupe des socialistes, démocrates et verts (SOC)
Mr Cezar Florin PREDA Group of the European People's Party (EPP/CD) /
Groupe du Parti populaire européen (PPE/DC)
Mr Ian LIDDELL-GRAINGER European Conservatives Group (EC) /
Groupe des conservateurs européens (CE)
Mr Hendrik DAEMS Alliance of Liberals and Democrats for Europe (ALDE) /
Alliance des démocrates et des libéraux pour l'Europe (ADLE)
Mr Tiny KOX Group of the Unified European Left (UEL) /
Groupe pour la gauche unitaire européenne (GUE)
Ms Adele GAMBARO Free Democrats Group (FDG) / Groupe des démocrates libres
(GDL)

Vice-Presidents of the Assembly / Vice-président(e)s de l'Assemblée

Sir Roger GALE United Kingdom
Mr Joseph O'REILLY Ireland
Ms Stella KYRIAKIDES Cyprus
Mr Włodzimierz BERNACKI Poland
Mme Nicole TRISSE France
Mr Samad SEYIDOV Azerbaijan
Mr Andreas NICK Germany
Mr Titus CORLĂȚEAN Romania
Mr Werner AMON Austria
Mme Ana Catarina MENDES Portugal
Ms Rósa Björk BRYNJÓLFSDÓTTIR Iceland
Mr Volodymyr ARIEV Ukraine
Mr Akif Çağatay KILIÇ Turkey
Mr Ľuboš BLAHA Slovak Republic
Mr Jonas GUNNARSSON Sweden

Chairpersons of National Delegations / Président(e)s de délégations nationales

Ms Arpine HOVHANNISYAN Armenia
Mr Werner AMON Austria
Mr Samad SEYIDOV Azerbaijan
Mr Hendrik DAEMS Belgium
Ms Stella KYRIAKIDES Cyprus
Ms Miroslava NĚMCOVÁ Czech Republic
Mr Michael Aastrup JENSEN Denmark
Ms Maria GUZENINA Finland
Mme Nicole TRISSE France
Ms Tamar CHUGOSHVILI Georgia
Mr Andreas NICK Germany
Ms Ioanetta KAVVADIA Greece
Ms Rósa Björk BRYNJÓLFSDÓTTIR Iceland
Mr Joseph O'REILLY Ireland
Mr Michele NICOLETTI Italy
Ms Susanne EBERLE-STRUB Liechtenstein
Mr Emanuel MALLIA Malta
Mr Predrag SEKULIĆ Montenegro
Mr Mart van de VEN Netherlands

Ms Ingjerd SCHOU	Norway
Mr Włodzimierz BERNACKI	Poland
Mme Ana Catarina MENDES	Portugal
Mr Betian KITEV	Republic of Macedonia
Mr Marian LUPU	Republic of Moldova
Mr Titus CORLĂȚEAN	Romania
Ms Vanessa D'AMBROSIO	San Marino
Ms Aleksandra TOMIĆ	Serbia
Mr Ľuboš BLAHA	Slovak Republic
Ms Ksenija KORENJAK KRAMAR	Slovenia
M. Pedro AGRAMUNT	Spain
Mr Jonas GUNNARSSON	Sweden
M. Filippo LOMBARDI	Switzerland
Mr Akif Çağatay KILIÇ	Turkey
Mr Volodymyr ARIEV	Ukraine
Sir Roger GALE	United Kingdom

**Chairperson of the Committee on Political Affairs and Democracy /
Président de la Commission des questions politiques de la démocratie**

Mr Titus CORLĂȚEAN Romania
(in the absence of the Chairperson /
en l'absence du Président)

**Chairperson of the Committee on Legal Affairs and Human Rights /
Président de la Commission des questions juridiques et des droits de l'homme**

Mr Frank SCHWABE Germany

**Committee on Social Affairs, Health and Sustainable Development /
Commission des questions sociales, de la santé et du développement durable**

Mr Stefan SCHENNACH Austria

**Chairperson of the Committee on Culture, Science, Education and Media /
Présidente de la Commission de la culture, de la science, de l'éducation et des médias**

Ms María Concepción de SANTA ANA Spain

**Chairperson of the Committee on Equality and Non-Discrimination /
Présidente de la Commission sur l'égalité et la non-discrimination**

Ms Elvira KOVÁCS Serbia

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) / Commission pour le respect des obligations et engagements des États membres du Conseil de l'Europe (Commission de suivi)

Sir Roger GALE United Kingdom

**Chairperson of the Committee on Rules of Procedure, Immunities and Institutional Affairs /
Présidente de la Commission du règlement, des immunités et des affaires institutionnelles**

Ms Petra de SUTTER Belgium

Other members of the Assembly and MPs / Autres membres de l'Assemblée et parlementaires

Mr Andris BĒRZIŅŠ Latvia

(in the absence of Ms Inese LĪBIŅA-
EGNERE / *en l'absence de Mme Inese
LĪBIŅA-EGNERE*)

Mr Emanuelis ZINGERIS Lithuania

Mr Yves CRUCHTEN Luxembourg
(in the absence of Ms Anne BRASSEUR
*/ en l'absence de Mme Anne
BRASSEUR*)

Invited personalities / Personnalités invitées

M. Guido RAIMONDI President of the European Court of Human Rights /
Président de la Cour européenne des droits de l'homme

M. Patrick TITIUN Head of Private Office, European Court of Human Rights /
Chef de Cabinet, Cour européenne des droits de l'homme

Delegation Secretaries / Secrétaires de délégations

Mr Emin MAMMADOV Azerbaijan
Ms Sonja LANGENHAECK Belgium
Ms Martina PETEK-STUPAR Croatia
Mr Panicos POURGOURIDES Cyprus
Ms Veronika KRUPOVÁ Czech Republic
Ms Liisi VAHTRAMÄE Estonia
Ms Gunilla CARLANDER Finland
M. Laurent SAUNIER France
M. Ali SI MOHAMMED France
Mr Michael HILGER Germany
Ms Voula SYRIGOS Greece
Ms Bylgia ÁRNADÓTTIR Iceland
Ms Valeria GALARDINI Italy
Mr Martins OLEKŠS Latvia
Ms Laura ŠUMSKIENĖ Lithuania
Ms Jovana ADŽIĆ Montenegro
Mr Arjen WESTERHOFF Netherlands
Ms Ingrid HØDNEBØ Norway
Ms Anna TRĘBACZKIEWICZ Poland
Ms Ana KACHAKOVA Republic of Macedonia
Mme Rodica IOVU Republic of Moldova
Ms Alina Georgiana ILIE Romania
Mr Razvan TANASE Romania
Mr Vladimir FILIPOVIĆ Serbia
Ms Barbora ŠKÁPIKOVÁ Slovak Republic
Ms Alja ŠKIBIN Slovenia
Mr Daniel ZEHNDER Switzerland
Mr Fikret Oğuz ATEŞ Turkey
Mr Nicholas WRIGHT United Kingdom

Secretaries of Political Groups / Secrétaires des Groupes politiques

Mme Francesca ARBOGAST SOC
Ms Denise O'HARA EPP/CD / PPE/DC
Ms Maria BIGDAY ALDE / ADLE
Mr Tom VAN DIJCK EC / CE
Ms Anna KOLOTOVA UEL / GUE

Secretariat of the Parliamentary Assembly / Secrétariat de l'Assemblée Parlementaire

Mr Wojciech SAWICKI Secretary General / Secrétaire Général

Mr Horst SCHADE Director of General Services / Directeur des Services Généraux

Mr Mark NEVILLE	Head of the Private Office / Chef de Cabinet
Mr Alfred SIXTO	Head of the Table Office / Chef du Service de la Séance
Mme Isild HEURTIN	Head of the Secretariat of the Bureau / Chef du Secrétariat du Bureau
Mme Valérie CLAMER	Head of the Secretariat, Rules Committee / Chef du Secrétariat, Commission du Règlement
Mr Francesc FERRER	Deputy to the Head of the Communication Division / Adjoint au Chef de la Division de la communication
Ms Sally-Ann HONEYMAN	Specialised Administrative Assistant, Table Office / Assistante administrative spécialisée du Service de la Séance
Mme Martine MEYER	Assistant of the Standing Committee / Assistante de la Commission permanente
Mme Annick SCHNEIDER	Assistant to the Secretary General / Assistant to the Bureau and the Ad hoc Committee of the Bureau Assistante du Secrétaire Général / Assistante du Bureau et de la Commission ad hoc du Bureau
Mme Anne GAREL	Assistant of the Bureau / Assistante du Bureau
Council of Europe / Conseil de l'Europe	
Mr Bjorn BERGE	Secretary to the Committee of Ministers / Secrétaire du Comité des Ministres

APPENDIX III

Declaration on the Draft Copenhagen Declaration on the European Human Rights system in the future Europe²

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

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

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

The Committee of Ministers should continue to focus on the main challenges to the Convention system, namely the Court's case-load and its principal cause, which is inadequate national implementation of the Convention in many States.³

Comments on the draft Copenhagen Declaration

1. The visionary statesmen who rebuilt Europe from the ruins of the Second World War understood the importance of making States share responsibility for human rights.⁴ The system they designed, that of the European Convention on Human Rights (the Convention), ensures that all States Parties protect the uniformly defined rights of everyone within their jurisdictions, with harmonised national protection mechanisms and a common European control mechanism. These essential goals are achieved through a primary obligation on States Parties to respect the rights of everyone within their jurisdiction (article 1) and provide remedies for violations (article 13); under the supervision of an independent European Court of Human Rights (the Court) (article 19), competent in all matters of interpretation and application of the Convention (article 32), adjudicating on cases brought by States (article 33) or individuals claiming to be victims (article 34) on a subsidiary basis, following exhaustion of domestic remedies (article 35); with the States Parties bound to implement the judgments of the Court, under the collective supervision of the Committee of Ministers (article 46). The effectiveness of the overall system depends on the proper functioning of each of these constituent elements, which in turn depends primarily on the attitude and conduct of the States Parties, whose joint creation this system was and to whose overall advantage it operates.

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

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

² Submitted by the Committee on Legal Affairs and Human Rights.

³ The Danish chairmanship of the Committee of Ministers issued a revised draft declaration on 6 March 2018. As this document has been classified as "restricted", its contents are not known and it is not possible to comment upon them.

⁴ See the preamble of the Convention: "The Governments signatory hereto..., Being resolved ... to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration"

undermine this universality, allowing for rights to be relativized by reference to national considerations,⁵ including the vagaries of political interest and influence,⁶ and permitting incoherent implementation of the Convention across States Parties.⁷

4. Uniform interpretation and application of Convention rights and collective enforcement of decisions on complaints hinge upon the Court's role as an independent judicial decision-making body. Several provisions of the draft declaration are inconsistent with proper respect for the Court's judicial function,⁸ in particular that it decides cases on the basis of submissions made by parties to proceedings and the applicable law, and not of political views expressed by various loosely defined actors in other fora.⁹ The proper way for a non-respondent State or any other actor to seek to influence the Court's judicial decision-making is through the existing possibility of third-party intervention.

5. The draft declaration appears to suggest limitations on the jurisdiction of the Court that are inconsistent with the provisions of the Convention. Through repeatedly highlighting one aspect of subsidiarity, the draft declaration gives the impression that the Court's role should be essentially deferential, or even subordinate to that of national authorities.¹⁰ It also purports to state as legal fact an unduly limited approach to definition of Convention rights, with the apparent intent to restrict the Court's exercise of its interpretative jurisdiction.¹¹ The States Parties should scrupulously respect the Court's supervisory jurisdiction over application and interpretation of the Convention.

6. Several provisions of the draft declaration seek to place particular restrictions on the Court's jurisdiction in relation to certain types of case. This is especially so in relation to immigration and asylum cases, whereas there is nothing in the Convention to suggest they should be given special treatment; indeed, such an approach may encourage or facilitate discriminatory treatment at national level, which is prohibited under article 13.¹² The draft declaration even appears to suggest that inter-state cases, which historically have addressed some of the most serious and widespread violations, and cases arising from conflicts between States Parties, despite the maintenance of peace being a core concern of the Convention,¹³ should no longer be dealt with by the Court.¹⁴ In other respects, the draft declaration appears inconsistent, at one point implying that widespread, structural or systemic problems are 'core business' for the Court,¹⁵ whilst at another suggesting that the Court is inherently unable to provide individual justice in such cases.¹⁶

⁵ "... rights being protected predominantly at national level by State authorities in accordance with their constitutional traditions and in light of national circumstances" (paragraph 14)

⁶ "In matters of general policy, on which opinions in a democratic society may reasonable differ widely, the role of the domestic policy-maker should be given special weight" (paragraph 23)

⁷ "Consistency in the application of the Convention does not require that States Parties implement the Convention uniformly" (paragraph 57)

⁸ "an ongoing constructive dialogue between States Parties and the Court on their respective roles in applying and developing the Convention" (paragraph 31). Compare article 32(2) of the Convention: "In the event of dispute as to whether the Court has jurisdiction, the Court shall decide."

⁹ "The development of the rights and obligations set out in the Convention by the Court should go hand-in-hand with an ongoing dialogue in which States Parties and their populations are appropriately involved, including civil society" (paragraph 32); "States Parties to discuss the general development of areas of the Court's case law of particular interest to them and, if appropriate, adopt texts expressing their general views" (paragraph 41); "hold a series of informal meetings of States Parties before the end of 2019, where relevant developments in the jurisprudence of the Court can be discussed, with input of other relevant actors" (paragraph 42)

¹⁰ "The Court ... should not take on the role of States Parties whose responsibility it is to ensure that Convention rights and freedoms are respected and protected at national level" (paragraph 22); see also paragraph 24.

¹¹ "The scope of the rights and freedoms guaranteed by the Convention is defined within the text of the relevant provisions, as interpreted reasonably in the light of their object and purpose in accordance with the interpretive principles of the Vienna Convention on the Law of Treaties" (paragraph 55)

¹² "the Court should not act ... as an immigration appeals tribunal, but respect the domestic courts' assessment of evidence and interpretation and application of domestic legislation, unless arbitrary or manifestly unreasonable" (paragraph 25); "When examining cases related to asylum and immigration, the Court should ... avoid intervening except in the most exceptional circumstances" (paragraph 26)

¹³ See the preamble: "Considering that the aim of the Council of Europe is the achievement of greater unity between its members... Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world"

¹⁴ "the establishment of separate mechanisms or other means to deal with inter-State cases as well as individual communications stemming from a conflict between two or more States Parties" (paragraph 54.b))

¹⁵ "where the Court can focus its efforts on identifying serious or widespread violations, systemic and structural problems" (paragraph 4)

¹⁶ "the number of people affected is such that a solution on an individual basis at international level is unrealistic" (paragraph 13)

7. If the Court's judgments are not respected by the States Parties, the Convention control mechanism becomes ineffective and the Convention system loses most of its added value. States have accepted an unconditional obligation to implement Court judgments, yet the draft declaration seems to make this core principle subject to their 'acceptance' by national actors, including the governments that represent the state in the Convention system.¹⁷ National authorities must implement Court judgments as a matter of basic respect for the rule of law, including the principle *pacta sunt servanda* ('agreements must be kept').

Recommendations to the Committee of Ministers

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

¹⁷ "the ensuing acceptance [of the Court's judgments] by all actors of the Convention system, including governments, parliaments, domestic courts, applicants and the general public as a whole, is vital for ensuring the authority and effectiveness of the Convention system" (paragraph 56)