

CCBE Proposals to DH-SYSC-V on enhancing the national implementation of the European Convention on Human Rights and the execution of judgments of the European Court of Human Rights

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The Council of Bars and Law Societies of Europe (CCBE) represents the Bars and law societies of 45 countries, and through them more than 1 million European lawyers. The regulation of the profession, the defence of the Rule of Law, human rights and democratic values are the most important missions of the CCBE. The CCBE cooperates with the Council of Europe in a number of areas, notably through its membership of the Conference of International Non-Governmental Organisations, its observer status at the Steering Committee on Human Rights (CDDH), the European Commission for the Efficiency of Justice (CEPEJ) and the Consultative Council of European Judges (CCJE), as well as at a number of committees and drafting groups related to the future of the Convention, migration, and freedom of expression. Practically, the CCBE is an accredited observer member of the HELP network, providing focused training on the Convention. The CCBE also has a close relation with the European Court of Human Rights (the Court) which includes among other things the publication and regular updating of a practical guide for lawyers (The European Court of Human Rights - Questions & Answers for Lawyers – last updated in November 2020) and annual bilateral meetings to discuss issues of particular importance for the legal profession.

The context for the present proposals is as follows:

- A. The CCBE has followed the work of the CDDH on the evaluation of the reform of the Convention system during the Interlaken process with close attention and has been attending as an observer the meetings of DH-SYSC-V, the specialist committee tasked with making proposals for enhancing the national implementation of the Convention and the execution of judgments of the Court. This is work of high importance for the practical protection of Convention rights.
- B. As part of the review of the Interlaken process, the CCBE has taken a detailed position on steps which can contribute to reforms and enhanced effectiveness. CCBE proposals based on expert analysis are set out in its Resolution of 28 June 2019 (the [CCBE Resolution](#)), which identified practical steps in which the legal profession can play its part with domestic courts and the Council of Europe institutions to improve the effectiveness and transparency of the protection of human rights through the domestic and international implementation of the Convention.
- C. The CCBE therefore greets with enthusiasm the recognition now given to the place of the legal profession in the DH-SYSC-V terms of reference. The CDDH specified that its work should “be conducted in a prospective and, as far as possible, innovative way, in close cooperation with representatives of the legal profession, civil society and academic research”.
- D. The CDDH has already recognised in its Report on the longer-term future of the Convention system that: “Inadequate national implementation of the Convention by the States Parties remains among the principal challenges confronting the Convention system.” It therefore set the detailed terms of reference for DH-SYSC-V as to “explore possible ways and means to enhance the national implementation of the system of the European Convention on Human Rights, in order to assist the State authorities involved in the operation of the Convention and in the process of the execution of judgments to fulfil their mission in the best possible way, in the light of existing national best practices”. Guidelines should be prepared for adoption by

the Committee of Ministers of the Council of Europe to identify ways to enhance both the national implementation of the Convention and the execution of judgments of the Court.

- E. DH-SYSC-V has initiated this task by inviting its participants, including observers, to make written submission to the Secretariat on the content of the draft Guidelines by 16 November 2020. The CCBE Resolution provides the basis for the following proposals for inclusion in the Guidelines.

The CCBE invites discussion of the proposals from the CCBE Resolution. They could contribute to practical and immediate improvements for which no amendment of the Convention is required. They build on the recognition of the subsidiary role of the Court, the need to enhance national human rights protection, and to improve the transparency and effectiveness of the Court and the CMDH so that the vital work of protecting human rights in Europe can be advanced.

The CCBE proposes that the following points from the CCBE Resolution should be incorporated in the Guidelines:

1. The legal profession and its Bars and law societies play an essential role as actors in the system of justice and so contribute to protecting the rule of law, ensuring access to justice for fellow citizens, and protecting fundamental rights and freedoms. Their independent role in ensuring the dissemination, implementation and respect for the Convention in domestic law, and before the Court, should be highlighted and protected (CCBE Resolution Explanatory Memo 6 to 8).
2. The subsidiary role of the Court means that national courts have the primary task of human rights protection. Senior national courts could contribute immediately to the transparency with which they determine Convention arguments by including in one part of their judgments in which a claim based on the Convention is rejected a succinct statement of the reasons for dismissing the Convention based claims. National courts are already required to apply the Convention, so this proposal does not impose a new obligation. Pinpointing the reasons why Convention arguments are rejected will provide clarity to litigants, serve to focus court users' arguments while ensuring transparency as to the protection of human rights 'at home'. It would also facilitate the Court's review of domestic compliance (CCBE Resolution C1).
3. The legal profession is an extensive resource for supporting HELP and extending practical training in the public and private sectors about the content of Convention rights, their interpretation in the Court's case law, their effective incorporation and implementation in domestic law and for the domestic execution of the Court's judgments (CCBE Resolution B4 and C2).
4. The execution of judgments at European level should be enhanced by (CCBE Resolution B2) :
 - a. Increasing transparency as to the allocation of new judgments to existing grouped cases or 'lead' judgment. The criteria are opaque and their application is inconsistent;
 - b. The development and publication of criteria for priority in the examination of judgments subject to enhanced supervision and their consistent application;
 - c. Informing the legal representatives in cases allocated to enhanced supervision of the relevant 'lead' case and inviting brief submissions under Rule 9;
 - d. Publicly identifying the cases selected for debate in advance of each CMDH meeting; and
 - e. Enlarging the terms of Rule 9 to allow legal representatives and Bars and law societies to make submissions to the CMDH relating to general measures.

5. The execution of judgments at the national level should be enhanced by:

- a. Deploying the resources of Bars and law societies and their members with experience of bringing cases before the Court to provide training about the Convention and its interpretation by the Court to achieve the full implementation of Court judgments (CCBE Resolution C2 and 3); and
- b. Examining and developing the means to facilitate the enforcement by national courts of awards of just satisfaction made by the Court (CCBE Resolution B3c).