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## Committee on Legal Affairs and Human Rights

# The future of the Strasbourg Court and reinforcement of ECHR standards: a contribution to Interlaken

## Minutes

### of the hearing held in Paris on 16 December 2009

(Extract from document AS/Jur (2009) PV 09)

**The Chairperson** welcomed the experts:

- Mr Paul Widmer, Ambassador and Permanent Representative of Switzerland to the Council of Europe (Strasbourg)
- Mrs Deniz Akçay, Chairperson of Council of Europe Steering Committee for Human Rights (CDDH)
- Mr Erik Fribergh, Registrar, European Court of Human Rights (Strasbourg)
- Mr Pierre-Henri Imbert, former Director General of Human Rights at the Council of Europe (Strasbourg)
- Mr Rick Lawson, Professor of Human Rights at the University of Leiden (Netherlands)
- Mr Philip Leach, Solicitor, Director of the European Human Rights Advocacy Centre (London)
- Mr Iurii Zaitsev, Ukrainian Government Agent before the European Court of Human Rights, former Chair of the Ukrainian Legal Foundation
- Mr Mark Entin, Professor and Director of the Institute of European Law at the Moscow State Institute of International Relations
- Mr Jens Mayer-Ladewig, former German Government Agent before the European Court of Human Rights
- Mr Andrzej Rzeplinski, Judge on the Polish Constitutional Court

**Mr Widmer** recalled that Switzerland had offered to organise a conference on the future of the European Court in 2008. Invitations to Interlaken had been extended to the representatives of all member states, viz. the Ministers of Justice or Foreign Affairs (delegations of 5 persons), the President of the European Court, the President of the Parliamentary Assembly, the Secretary General of the Council of Europe, the Commissioner for Human Rights, the President of the Conference of INGOs and Mrs Viviane Redding, the European Commission's designated member for justice, fundamental rights and citizenship. These personalities would make statements at the beginning of the conference. The Swiss authorities' invitation had so far received a very good response, having been accepted by the Ministers of Justice of Germany and Russia in particular. As part of the preparation of the conference, a working group made up of members of the European Court and the Secretariat General had been formed. Moreover, the President of the Court and the Commissioner for Human Rights had prepared their memoranda and the CDDH had delivered an opinion. Civil society had also been consulted, and some NGOs including Amnesty International and the Council of the Bars and Law Societies of the European Union had been invited to Interlaken, without the right to speak. The NGOs welcomed the conference and were in favour of the principle of subsidiarity, but against any restriction on access to the European Court, eg the imposition of a fee, the stipulation of a specific language for petitioning the Court, or the obligation to be represented by a lawyer. They wished to obtain further information on the proposed changes to the inadmissibility criteria.

\* Declassified by the Committee on 25 January 2010.

On 14 December 2009 a draft declaration to be adopted in Interlaken had been submitted to the Committee of Ministers and had received a highly positive response. It contained three different parts, a political part, a plan of action and a part dealing with its implementation.

Where the right to individual petition was concerned, reactions to the introduction of the additional criteria had been mixed. The questions of filtering, repetitive applications and election of the judges of the European Court had raised a great deal of interest.

**Mrs Akçay** presented the opinion of the CDDH. It was the only intergovernmental document to be presented at Interlaken. It was intended to improve the functioning of the European Court and was based on two leading ideas: the subsidiarity principle and the macroeconomics of the ECHR system. The reform of the system ought not to entail new costs. It would be necessary to improve national authorities' knowledge of the case-law of the ECHR and to reconsider arrangements for execution of the judgments of the European Court. The Committee of Ministers rules in that respect should be adapted to the current situation, and it would also be useful to develop interaction on pilot judgments between the Committee of Ministers and the European Court. Finally, Protocol No. 14 bis and its effects, Protocol No. 14, if it came into force, and the European Union's possible accession to the ECHR, should be borne in mind.

**Mr Fribergh** noted that the Court was in a very dynamic situation. The entry into force of Protocol 14 was closer than ever. The Treaty of Lisbon, which provided for the accession of the European Union to the Convention, had entered into force. The European Court had a very positive image, although it had a too high case-load. The number of cases brought before it was still increasing.

In 2009 there had been 57 000 new applications, an increase of 14% over 2008. The average increase had been 10% per year for the last 10 years. In 2009 the Court had not received any new resources. 57 % of the backlog originated from four states, Russia, Turkey, Ukraine and Romania.

A specific problem concerned the repetitive cases, accounting for half the judgments delivered by the Court. The backlog included 20 000 such cases. For some time the Court had applied a new policy of treating the most important cases as priority, but it did not manage to dispose of all cases with the requisite celerity, given their number.

At the Interlaken conference, states' representatives should act to reduce the number of cases or decide how to deal with cases more simply. Otherwise the Court's resources would have to be increased, and also the number of judges. Additional resources would also be useful at the national level, particularly for justice and prison administration. It was fallacious to think that Protocol No. 14 would solve the problem although it would improve matters. It was likewise illusory to locate the problem at the level of the Court by accusing it of a too extensive interpretation of the Convention or for awarding too high awards to applicants. After all, more than 90% of the applications were declared inadmissible. No other Court in the world had such a high rejection rate. A substantial reform of the system was necessary.

**Mrs Bemelmans-Vidéc** referred to her report on the effectiveness of the ECHR at national level. She noted that additional resources were required at the national level and that domestic remedies should be introduced. Some questions, like that of advisory opinions, the role of the Committee of Ministers in the execution of judgments and the filtering mechanism, should be examined by the Parliamentary Assembly.

**The Chairperson** called for a discussion. **Mrs Bemelmans-Vidéc** enhanced the need to reinforce the implementation of the Convention at national level and underlined the important role MPs can play in this respect. **Mr Cilevičs** asked whether there were any real chances of the European Union's acceding to the ECHR and whether the Council of Europe could work towards this. **Mr Marty** stressed the dramatic side of these issues, not to be resolved by Protocol No. 14. The problem of the European Court was linked with the faults of the domestic judicial systems, which the Council of Europe should strengthen. **Mr Gross** endorsed Mr Marty's opinion; he did not consider the Court a victim of its own success. The monitoring work done by the Parliamentary Assembly Committee on the Honouring of Obligations and Commitments was also underestimated, and that committee was short of resources. **Mr Holovaty** asked Mr Widmer whether proposals had been made to reform the Committee of Ministers regarding the execution of Court judgments. The Committee of Ministers did not submit regular reports as did the Monitoring Committee. **Mr Kühnel** remarked that insufficient time had been devoted to these questions. **Mr Sasi** considered that there were structural problems in some states, such as undue length of court proceedings, and that it was difficult to solve them in short order. He asked whether the introduction of a compensation system at national level might stop the number of applications from increasing. **Mr Frunda** noted that the states which had the most applications before the Court lacked stable legal systems. He asked what could be done to settle this problem, and thought that the rights of individuals should not be restricted.

**Mr Schokkenbroek**, Council of Europe, gave information in reply to the question on the European Union's accession to the ECHR. In November 2009, the CDDH had held an initial exchange of views on the subject. A committee of experts within the CDDH was expected to be set up in order to prepare a legal instrument. The start of experts' work depended on when the European Union would be ready to do so. A document for the Committee of Ministers would be prepared in February 2010. Recently in Strasbourg, the President of the European Commission, Mr Barroso, had made a strong statement in favour of the European Union's rapid accession to the ECHR, and the previous week in Brussels the Council of the European Union had adopted the Stockholm Programme, emphasising that the European Union was based on the same values as the Council of Europe. The European Union's speedy accession to the Convention was considered a matter of urgency in the Stockholm Programme.

**Mr Fribergh** agreed with Mr Marty. Execution of judgements was crucially important. As to increasing the number of judges, he thought it would be useful if a more advanced filtering system was introduced. Filtration could then be performed by the new judges (see German proposal).

**The Chairperson** noted that Mrs Leutheusser-Schnarrenberger had put forward a proposal to that effect. **Mrs Akçay** agreed that there were breakdowns in the national systems. Nevertheless, 90% of applications were inadmissible, she stressed, and it was not linked with the problem of the national systems. Consequently, the European Court did not have the resources to proceed with the remaining 10% of cases. It should therefore be asked what kind of court one would wish to have in 2019. Concerning execution of judgements, the Ambassadors were better placed to address those questions. At present, there were 25 jurists in the department for the execution of ECHR judgments, and at its DH meetings the Committee of Ministers considered about a score of cases. Some judgments had never been discussed in the Committee of Ministers. **Mr Widmer** thought that there might not be an answer to the problem of remedies. The United Kingdom had made a proposal on the introduction of new machinery for the execution of judgments, which would be valid at the national level too. Concerning Mr Holovaty's question, he thought that the weaknesses of the system for executing judgments were due to the lack of budgetary resources. A second version of the declaration was being prepared, so as to propose short-term measures in Interlaken. In order to propose medium-term measures, there must be instructions from the Committee of Ministers. **The Chairperson** wished the organisers of the Interlaken conference every success, and welcomed the experts who had yet to speak. She would like to know more about the solutions suggested for the problem under discussion.

**Mr Imbert** wondered whether states genuinely had the will to reform the ECHR, since he perceived a discrepancy between assurances and acts. For example, it had been prescribed in Protocol No. 14 that the instrument would come into force after two years although it required no implementation at domestic level, and the Committee of Ministers had waited a year to react to Russia's obstruction of its entry into force. Paradoxically, there was delay in implementing the reform but a sense of urgency was felt. There was too much concentration on the European Court, without its functions being examined. A chance had been missed during the drafting of Protocol No. 11 in 1994, by not taking due account of the events of 1989. The European Court of 1994 was less protected than that of 1959. The Council of Europe did not have a comprehensive approach despite the fact that its missions had changed after 1989. In 1950 there had been no postulate of democracy because it was then a principle, whereas today half the states had to be given the possibility of becoming democratic. Formerly there had been extensive co-operation programmes, but in 1993 at the Vienna Summit the "zero growth" concept had appeared. At present there was no real human rights system.

Mr Imbert commended the Parliamentary Assembly's efforts to interconnect the various mechanisms. As an example, he mentioned the public declarations of the CPT, a powerful weapon but without a reaction from the Committee of Ministers and the Parliamentary Assembly. Their reaction would have made it possible to relieve the European Court.

It would be illusory to rely on the principle of subsidiarity to reduce the number of applications. That important aspect depended on the governments, and so one should stop exhorting the states and instead envisage something coercive.

The Parliamentary Assembly had a major role to perform in this context and could be the actuator of mobilisation. Its composition should be used to advantage. For very important cases, one could envisage giving the Parliamentary Assembly the possibility of lodging applications with the European Court. It had tried to move in that direction by making a recommendation to the Committee of Ministers in 2006; the latter did not react, however. The Parliamentary Assembly should produce a report on this question, and the Committee of Ministers would then have trouble responding to it. In 1997 the NGOs had made the same request.

**Mr Lawson** thought that the draft declaration written for the Interlaken conference had significant content, but lacked several other elements: involvement of national parliaments, particularly in the process of execution of ECHR judgments (paragraph 2 of the declaration), “positive filtering” by the European Court for better identification of the important cases, which should be tried under an accelerated procedure, and the “satellite offices” of the European Court (cf. experience of the Council of Europe information office in Warsaw). He was anxious about § 14 b) of the declaration, relating to the European Court’s subsidiary role in the interpretation of the Convention. It might mean that the governments considered the European Court too dynamic, whereas most of its business concerned repetitive cases.

**The Chairperson** called for a discussion. **Mrs Akçay** reacted to Mr Lawson’s remark about the interpretation of the Convention by the European Court: the paragraph in question referred only to the admissibility criteria.

**The Chairperson** observed that subsidiarity was linked with a problem of competences and of member states. She enquired which other new elements could be considered in this context. **Mrs Bemelmans-Videc** would like to obtain clarifications on paragraph 14b) of the declaration. **Mr Fribergh** was unenthusiastic in this regard. Experience with the Warsaw office had proved that there is a need for information within the member states. It was certainly desirable to extend the provision of information, but it was not for the European Court to assume this role. Concerning the execution of the European Court’s judgments, there was still much to be done, for example, did the simple cases necessarily require the intervention of the Committee of Ministers? The latter’s role should be enhanced with regard to important and repetitive cases. These should be “repatriated” to the respondent State. The Committee of Ministers should also increase its role in cases which are relevant and may have a bearing for more than one member state at a time. **Mr Widmer**, referring to Mr Lawson’s statement, considered that the role of the parliaments in the execution of the European Court’s judgments should be reconsidered at the national level. Concerning paragraph 14b), he considered that the European Court entertained cases which it ought not to entertain. It was thus a question of the dynamics of the admissibility criteria. As to the DH meetings of the Committee of Ministers, he thought that the Committee carried out its role conscientiously; for example, he had recently sent letters as Chairman in two cases. **Mr Lawson** submitted that everything had been said about this over the last 15 years. He had based his statement on the draft declaration for the Interlaken conference. Regarding subsidiarity, the European Court should confine itself to interpreting the ECHR and the question of just satisfaction should be settled at the national level. Where the European Court’s “satellite offices” were concerned, the Convention formed an adequate legal basis for the purpose (Article 35§1 on exhaustion of domestic remedies). A “satellite office” of this kind operated at present in Moldova. The Human Rights Trust Fund might finance this type of activity.

**Mr Pantiru** noted that a “satellite office” of the European Court indeed existed in Moldova, and proposed that one be set up in Moscow. **Mr Holovaty** thought that such a mechanism would not be effective in Ukraine since justice there did not comply with Council of Europe standards, the representatives of the legal professions were not independent, and there was a dearth of human rights experts. Legal education was on the Soviet model. **Mrs Akçay** thought that the “general application” proposed by the CDDH was not a cure-all. Remedies to suit each type of situation should be envisaged.

**The Chairperson** noted that most cases pending before the European Court originated from the four member states mentioned; she would like to know what the Committee of Ministers was doing about those states.

**The Chairperson** stressed the need to obtain more information as to how the member states could improve matters.

According to **Mr Leach**, the statistics showed how fundamental the non-execution of judgments issue was. He observed, however, that the Court now had a more hands-on approach regarding cases of repeated non-execution by certain States Parties. The fairly new device of pilot judgments, requiring the State Party concerned to find a solution to a systemic or structural problem pinpointed by the Court, was so far successful (cf. judgment in the case of *Broniowski v. Poland*). The Court had set a deadline of 6 months for the respondent State to redress the violation, and one year to take action in response to the large number of related applications pending. This procedure was therefore potentially capable of providing an answer to the large number of applications. It would nevertheless be important that the implementation of the pilot judgments, and compliance with the deadlines set, undergo an effective monitoring procedure (based on closer links between the Committee of Ministers and the Court). He also raised the possibility of 'collective applications', stressing that in his opinion the Court's concentration on individual petition was to some extent a weakness. It would be fitting if the Court's judgments had a greater *erga omnes* effect (particularly by systematising the responses which the States Parties were to make to judgments giving rise to a principle).

He observed that the system for supervising the application of the Court's judgments had been criticised (the system of peer pressure seemed minimally effective, with the State authorities transmitting information tardily and incompletely). It was indispensable to improve the implementation of the Court's judgments, which he thought would be impossible under the present system. If need be, he thought that a judicial body might help the Committee of Ministers monitor the enforcement of the Court's judgments, but the arrangements were not yet clear. He stressed what he considered some essential points: the Court should concentrate on the most important questions; the question of sanctions should be addressed; the national machinery responding to the Court's judgments should be improved and made more transparent; it was necessary to develop national parliamentary machinery in that respect.

**Mr Zaitsev** pointed out that Ukraine was one of the four countries generating the largest number of applications before the Court. In his opinion, the current structure of the Court had almost run its race (only 10% of the applications lodged were admissible). Doubling the number of judges might not be the answer. Improvement to the application of the ECHR at national level and reinforcement of the principle of subsidiarity would certainly be more effective. According to Mr Zaitsev, the ECHR was virtually impossible to apply in Ukraine because, in the country's legal culture, the ECHR did not correspond to a legal instrument. Ukrainian jurists were used to having the answer to all questions in the law itself. They were ignorant of the culture of law developed through court precedent and practice. It would have to be possible to adapt this legal subject-matter to the Ukrainian legal culture. A new Ukrainian law defined what the execution of a judgment was (what had to be done to enforce it). Each Court judgment was published with a short explanation.

As to the questions of detention, Ukraine had elected to lay down "guidelines" for compliance with Article 5 of the ECHR (via the Supreme Court). There was also a mechanism of exhaustion of domestic remedies. He raised the further question of judges' training, and the possibility of including a course on the Court's case-law in their training syllabus. For the time being, however, nobody was able to teach such a syllabus. He stressed the need to train a new generation of jurists. That was a real challenge for young democracies.

**Mrs Akçay** thought that the pilot judgments procedure was the most important novelty to be introduced by the Court since 2004. Its peculiarity was that the Court delivered a decision for which it undertook to secure the result (since it had suspended all the other related applications). The important thing was therefore the pilot judgments procedure, not merely the pilot judgments as such. She stressed that the subsidiarity concept also continued to apply at the level of enforcement of the judgments. Turkey had transformed its entire Constitution and its laws pursuant to the Court's judgments. One should not always be pessimistic about the outcome. It was necessary to retain the idea of peer pressure.

**Mr Entin** raised the following questions: 1/ Russia's relations with the ECHR; 2/ the positive measures taken at national level; 3/ the negative measures taken at national level.

Concerning Russia's relations with the ECHR, he pointed out that a big group of the population did not know about the activities of the Council of Europe. The Court was accepted and respected in Russia. Russia objected to its being regarded as a 4<sup>th</sup> tier of jurisdiction, but that was the reality. Some people turned to it out of distrust for the national judicial system. The population supported the Court and compelled the public authorities to take increasingly active measures to harmonise national practice with the Court's case-law. That was why Russia had considerably reformed its judicial system.

Too many applications were inadmissible. He advocated a systematic approach, introducing for example a standard fee to be paid for permission to approach the Court (he referred to the surety deposit arrangement for applying to the German Constitutional Court). It was obviously necessary to ensure that rich and poor alike had the same access to the Court, so a reform along the lines of that made to the Luxembourg Court (loser to defray the successful party's expenses) should be effected.

He considered that before Protocol No. 11 to the ECHR had come into force, the system had been altogether legitimate but alas the baby had been thrown out with the bathwater. Another body should have been created, rather than let the Court deal with all the inadmissible cases. The proper solution would be to create a body to do so (but that would prove very expensive).

At the national level, bodies could be created to perform filtering. He referred to the Italian precedent (Italy had adopted a national procedure along these lines but the problem was recurring because the new procedure had in turn become a bottleneck).

He considered that the best solution would be to embody the principle of precedent in national law in order that the precedents of the Strasbourg Court might have a direct effect in national law.

**Mr Mayer-Ladewig** considered the situation very difficult. He observed that one could still read new judgments in respect of Cyprus, concerning applications which had been pending for 20 years, because it was a case of repetitive applications arising from the Loizidou judgment. Given the number of cases concerning delays in the enforcement of the judgments, and undue length of proceedings, the problem of national law seemed obvious. The member states should therefore organise an effective national justice system in compliance with their obligations under the Convention. The Court continually asked for this, but the situation persisted; why was this so? It was often for financial reasons. The deficiency was often the confidence of individuals in the national judicial system. The support of the national parliaments was essential for improving the position.

A number of phenomena showed that the States Parties were not always very proactive in enforcing the Court's judgments (he alluded to the Italian Government's reactions to the judgment against Italy concerning crucifixes in classrooms). But these phenomena had been familiar for years – countless reports and recommendations addressed the problem but nothing had changed. He thought that the Convention should be part of the national legal system in order to be applied directly.

Concerning undue length of proceedings, individuals should be able to avail themselves of a domestic remedy before going to Strasbourg, and there should be the possibility of reopening domestic proceedings after the finding of a violation in Strasbourg. He recalled the need to translate the judgments and the necessary training of judges.

He stressed that often the Court was the sole judicial authority capable of providing individual legal protection. The Court should not be given discretionary power to decide whether or not to proceed with an application.

Protocol No. 14 would be useful but would not solve the problem. In his opinion, it would be necessary to create an additional filtering body. However, the dual Commission/Court system ought not to be replicated (because of the competition which it caused), but the creation of a body within the Court itself should be considered. Moreover, the assignment of judicial functions to the registry should be avoided; that was for the judges.

**Mr Rzeplinski** stressed two important factors: 1) the historical factor (21 member states since 1991; the legacy of the Soviet era was not so soon to be overcome); 2) the Strasbourg Court was not a separate realm but part of a system subject to internal and external pressures (European and worldwide).

The real problem was repetitive applications, but he did not think that cases should be reopened at national level. A new procedure should be established to deal with repetitive cases, and the payment of heavy fines for such cases should be contemplated. He thought that the Committee of Ministers did not possess adequate democratic legitimacy to deal with this question; a CPT type committee might be set up for the purpose. Finally, he suggested that the Court prepare general comments on the Convention provisions.

**The Chairperson** declared the discussion open.

**Mr Omelchenko** considered the problems in the Ukrainian judicial system to be linked with corruption. He recalled that the PACE had already held debates on reports relating to this question. He asked the Committee Chair to write to the state prosecutor to find out what action had been taken on the PACE resolution concerning the Gongadze case.

**Mr Cilevičs** made three remarks: 1) the Court was indeed often seen as a 4<sup>th</sup> tier of jurisdiction, but he doubted the effectiveness of introducing a fee for lodging an application; 2) preparing general comments would represent too demanding a task; 3) applying the principle of subsidiarity might be dangerous; the States Parties were not the owners of the Court.

**Mr Kühnel** asked Mr Entin why European standards were still not reached in Russia; he wished to know what had been accomplished since 1991. He wondered about the increasing number of unsolved murders in the country, too. He also asked Mr Zaitsev whether all the basic legal principles needed to be introduced to Ukraine, or whether some were already established.

**Mr Holovaty** suggested that the Assembly concern itself with all these questions and discuss them (whether before or after Interlaken). Pilot judgments were one of the Court's greatest advances but should be subject to a monitoring procedure. In fact the Committee of Ministers did not fulfil its collective responsibility. He explained that in the countries of the former Soviet Union there was a real problem of education (particularly among judges). Furthermore, the ECHR had to be written into the national legislation, otherwise the judges would not apply it directly. Lastly, there were the conditions of NGO involvement to consider.

**Mrs de Pourbaix-Lundin** said that in Ukraine judges were not paid enough to be independent. She asked Mr Leach how long a judgment should remain unenforced before sanctions were applied. While in fact the citizens did not know much about the Council of Europe, they were nonetheless better acquainted with the Court. Parliamentarians, whether majority or opposition, should step in and keep watch on what the government did to give effect to the Court's judgments.

**Mr Herkel** enquired about the terms of possible participation by NGOs in the filtering mechanism (especially regarding their professionalism).

**Mr Sasi** wondered about the arrangements for reopening proceedings after the Court's finding of a violation, and how many member states already permitted it.

**Mr Rzeplinski** asked what it meant to make progress in terms of human rights: building more prisons? He saw a contradiction, not a success, in this.

**Mr Mayer-Ladewig** pointed out that German law provided for the reopening of proceedings. Plainly, any reform would be costly, and he urged the parliamentarians to commit themselves to obtaining finance for it from the governments.

**Mr Zaitsev** noted that the Court was at the end of its strength for purely material reasons. Where the foundation of criminal law was concerned (in reply to Mr Kühnel), there was indeed a different ideology in Ukraine, based more on criminal procedure. The Code of Criminal Procedure was evolving, a very positive point.

**Mr Leach** said he was in favour of a fine for countries repeatedly failing to execute judgments. The money should be allocated to the Court. Damages payable to the applicant could be envisaged. He also suggested action regarding the right to vote in the Committee of Ministers. The way in which parliaments supervised the action of the governments should be systematised. They should be made accountable. As a possible outcome of the committee's work, this would be a significant result. He was not greatly in favour of a judicial fee system because it would be difficult to find an arrangement equally fair to someone in Paris and in a Chechen village. Finally, the positive contribution of certain highly professional NGOs should be acknowledged.

**Mr Entin** found that accession to the Council of Europe had helped to develop the Russian legal and judicial system. One-third of the applications from Russia concerned the enforcement of national judgments, so the Strasbourg Court was a body helping the Russian courts to secure execution of their own judgments. He was afraid that sanctions might be counter-productive. Co-operation and joint action should be furthered.

The underlying problem was that Russia applied the classic interpretation of the law. The ECHR was part of the law and should be applied, but not necessarily the construction placed on it by the Court. One of the possible devices could be to ask the Supreme Court to interpret the ECHR as the Strasbourg Court did, and to impose its application on the courts of first instance. But that would not be enough; the Supreme Court would also need to apply the Strasbourg Court's judgments directly while stipulating that they had the status of domestic legislation.

Another problem in his view lay in the number of cases not within its jurisdiction referred to the Strasbourg Court. If the national judicial authorities were asked to handle them, it would be perceived by public opinion as an obstacle to access to Strasbourg. The NGOs could help those concerned to ascertain the chances of success for their applications. The problem called for a systematic approach.

**Mr Lawson** also feared that sanctions could be counterproductive. The Court might hold that there was sometimes aggravated damage (as for example in the case of a systemic violation not followed by remedial measures).

**Mr Imbert** found that the current meeting had been extremely rewarding throughout and fully reflected the problem of the Council of Europe regarding the reforms: nearly all the proposals already made in the past had been mentioned again. In order to succeed, it was necessary above all to consider the method to adopt. An effort should be made to see from the experience of the Court, the Committee of Ministers and the PACE what the tasks and the position of the Court should be. One should at least have a picture of what a European Court of Human Rights ought to be. Ideas were not lacking, but a methodology of approach was. There should be no confusion of the long term and the short term.

**Mr Zaitsev** said that after the passage of the Ukrainian law in 2006, radical systematic changes had been observed. The law prescribed interest in the event of late payment. The law was based almost word for word on a recommendation of the Committee of Ministers. But without adequate financing, its enforcement was obviously problematic.

**The Chairperson** thanked the experts and proposed to send the committee members her conclusions in writing by mid-January 2010.

## Programme of the hearing

Chairperson: Mrs Herta Däubler-Gmelin

### Morning session (10 h 30 – 12 h 30)

10 h 30: **I. The context: Interlaken Conference to be held on 18-19 February 2010**

- **Mr Paul Widmer**, Ambassador and Permanent Representative of Switzerland to the Council of Europe (Strasbourg)
- **Mrs Deniz Akçay** Chairperson of Council of Europe Steering Committee for Human Rights (CDDH)
- **Mr Erik Fribergh**, Registrar, European Court of Human Rights (Strasbourg)

Discussion

**II. The authority and effectiveness of the ECHR: need for a renewed impetus**

- **Mr Pierre-Henri Imbert**, former Director General of Human Rights at the Council of Europe (Strasbourg)
- **Mr Rick Lawson**, Professor of Human Rights at the University of Leiden (Netherlands)

Discussion

12 h 30: Lunch break

### Afternoon session (14 h 00 – 16 h 30)

14 h 00 **III. The authority and effectiveness of the ECHR: need for prompt and full implementation of the Court's judgments**

- **Mr Philip Leach**, Solicitor, Director of the European Human Rights Advocacy Centre (London)
- **Mr Iurii Zaitsev**, Ukrainian Government Agent before the European Court of Human Rights, former Chair of the Ukrainian Legal Foundation

Discussion

**IV. The authority and effectiveness of the ECHR at the national level: stemming the flood of applications**

- **Mr Mark Entin**, Professor and Director of the Institute of European Law at the Moscow State Institute of International Relations
- **Mr Jens Mayer-Ladewig**, former German Government Agent before the European Court of Human Rights
- **Mr Andrzej Rzeplinski**, Judge on the Polish Constitutional Court

Discussion

16 h 20 Concluding remarks by **Mrs Herta Däubler-Gmelin**, Chairperson of the Committee on Legal Affairs and Human Rights