# THE PEOPLE'S DECLARATION ON RESTORING THE POWERS OF THE EUROPEAN COURT OF HUMAN RIGHTS

(A gift from those who have nothing to give but themselves and of themselves.)

Drafted by Kevin Galalae At 28 days of hunger strike, on May 9, in the city of Strasbourg, France.



From left to right: Francisco da Silva (Portugal), Kevin Galalae (Canada), Emilia Borková (Slovakia), Gheorghe Frunză (Romania), Andrzej Jańczyński (in the wheelchair, Poland), Didier Jacque Dulepa-Gilles (France), Ismaili Nazlija (Germany).

The European Court of Human Rights is the people's institution of last resort when their rights and liberties have been violated by State Parties. Any change in its structure and operation must therefore be sanctioned by the people by referendum. The following is the people's view of how the Court must be reformed so it can remain effective in the face of an onslaught of applications, an increase that gives clear indication of deteriorating conditions in the social and legal fabric of Europe.

Any new measures of reform must in the people's view rest on the following fundamental principles, principles on which the Court was established and from which it cannot deviate:

- I. That the responsibility for bearing the costs of the Court and addressing its overburdened system must fall not on those who suffer but on those who cause the suffering.
- II. That the Court's accessibility to individuals is of paramount importance since human suffering must take precedence over the political interests and bruised reputations of State Parties that routinely violate the European Convention and wish to limit access to the Court.
- III. That the Court's primary function must remain the protection of individuals from abusive State Parties and not the protection of State Parties from individuals who abuse or misunderstand the Convention.

In the measures adopted by the Committee of Ministers of the Council of Europe through the Izmir Declaration (26-27 April 2011), the people's principles of what the Court must represent and was indeed meant to represent since its inception have been turned upside down. This is an attack on the people's Court and an affront to justice committed by representatives of select State Parties to usurp the people's court of last resort. It cannot be tolerated, as it was executed without the consultation and approval of the people, indeed without even parliamentary oversight.

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#### HOW THE CHIKEN COOP WAS ROBBED

This hijacking of the Court's fate and powers by the Committee of Ministers, who are appointed by the executive branches of their respective governments – governments of State Parties that want to erode the powers and jurisdiction of the Court – is a process that started at Interlaken.

That much was observed by Raporteur Bemelmans-Videc, who was charged to report on the "Effective implementation of the European Convention on Human Rights: the Interlaken process"<sup>1</sup>, in April 2010:

"I found it a pity that no opportunity was provided for a genuine discussion or exchange of views on subjects of importance; the texts prepared ahead of time were simply adopted by consensus."

Ms. Bemelmans-Videc, also noted with dismay the absence of the Parliamentary Assembly from the Interlaken process and thus the absence of a democratic process in deciding how best to reform the European Court.

The Assembly, like the Committee of Ministers, is responsible for protecting the values of the Council of Europe and in ensuring compliance, by member states, of ECHR standards. It was the Assembly which, despite initial reluctance of the Committee of Ministers, was at the origin of the Convention as we know it today, and it is the Assembly which provides 'democratic legitimacy' to the judges on the Court whom it elects (Article 22, ECHR). Hence, the somewhat puzzling feature of the documents adopted in Interlaken which make no mention of the Assembly and contain scarcely a word on the role of national parliaments. The Assembly must therefore reflect upon how best the 'parliamentary dimension' should be fed into the Interlaken process.

A year earlier, in 2009, the former Chairperson of the Legal Affairs Committee, Ms. Däubler-Gmelin, bemoaned the fact that the Organization's executive, instead of having "the courage to 'bite the bullet' to confront the real human rights issues and problems facing member states and the Council of Europe" resorted to the politically expedient method of restricting access to the Court by tightening the qualifications criteria and thus making the Court harder to reach by individuals who are victims of state abuse.<sup>2</sup>

That the offenders, i.e. State Parties, are being allowed to reform the Court without the input and approval of those offended, i.e. the people, is tantamount to allowing a pedophile dictate the rules by which he is to be tried and the eligibility criteria for his victims to qualify for justice. But this should come as no surprise when decisions are made by State Parties only – the pedophiles in my metaphor – while the people have no seat and no say whatsoever at the decision-making table.

Not surprisingly, the Izmir Declaration's sole achievement is to trap victims of State abuse between justice denied in the national courts and justice unreachable at the European Court. Instead of 9 out of 10 applications being refused for failing to meet the eligibility criteria adopted at Interlacken, there will now be 999 out of 1000 screened out by the more stringent rules set in Izmir.

<sup>&</sup>lt;sup>1</sup> Full report available at: http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12221.pdf.

<sup>&</sup>lt;sup>2</sup> See "3rd Annual Report of the Committee of Ministers for 2009 on the Supervision of the Execution of Judgments of the European Court of Human Rights" at: http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM\_annreport2009\_en.pdf.

How did this come to be and who is behind this autocratic hijacking of a previously democratic decision-making process? Let us follow the smoke to find the fire.

The Izmir Conference was organized within the framework of the Turkish Chairmanship of the Committee of Ministers of the Council of Europe, so the first instinct is to blame the Turks. It is easy to suspect them since they have the worst human rights record and are constantly upbraided by the European Court for failing to uphold even the most basic human rights.

If Turkey is the mastermind then it has given Europe a curse that will haunt it for generations and will put European justice at par with Turkish justice, and we all know what that looks like. The European Court's statistics show that in 2007 Turkey ranked easily as the worst offender. 319 judgments finding at least one violation were issued against Ankara, 8 of which involved "torture" and 23 "inhuman or degrading treatment". Russia was a distant second with 175 violations. From 2007 until today, Turkey has remained a top violator vying for first place with Russia and without equal in the gravity of its crimes.

But is Turkey the brain behind the annihilation of the European Court of Human Rights?

Not by a mile. Turkey lacks the legal know-how and the sophistication to conceive and execute such an audacious and Machiavellian destruction plan. The Turkish government, to use another metaphor, could not tie its own shoes when it comes to policy making and legal maneuverings on the international arena. It is therefore wise to conclude that Ahmet Davutoglu, the Chairman of the Committee of Ministers of the Council of Europe and Minister of Foreign Affairs of Turkey, is merely the bearer of someone else's plan.

## But whose plan? Here is the answer:

"At its 1080th meeting on 24 and 26 March 2010, the Ministers' Deputies agreed to set up an open-ended ad hoc working party (GT-SUIVI. Interlaken), to be chaired by the *United Kingdom Ambassador, in order to steer the follow-up process to the Interlaken* Declaration as a whole. When so doing, the Deputies also took into account a document prepared by the Secretary General (document CM (2010) 31) on the modalities of implementation of the Declaration and Action Plan. It is this working party, which had its first meeting on 13 April, that is expected to propose an initial series of draft decisions for adoption at the ministerial session on 11 May.

The Secretary General's document, a "road map" that is to be updated regularly, will permit the Committee of Ministers, through this newly created working party, to steer the process. Relevant activities of civil society organisations will be appended to future updates."3

<sup>&</sup>lt;sup>3</sup> See "Effective implementation of the European Convention on Human Rights: the Interlaken process", pp. 4 & 5, available at: http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12221.pdf. See also https://wcd.coe.int/wcd/ViewDoc.jsp?id=1605757&Site.

So the mandate to steer, under their exclusive authority, the ad hoc working party of the Committee of Ministers' Deputies to follow up the reform process of the European Court was given by none other than the Secretary General of the Council of Europe, Mr. Thorbjørn Jagland.<sup>4</sup> More than this, he handed the chairmanship of the ad hoc working party to the United Kingdom Ambassador, Ms. Eleanor Fuller. And that is how the Brits have put themselves in charge of shaping European policy once again.

Not only are they responsible for the UN Resolution 1624 (2005), which robbed the world and the UK of democracy under the pretext of countering radicalization, and for the Europewide adoption of secret programs of surveillance and censorship of students in universities through the back door of the Stockholm Programme, which robbed the entire continent of Europe of the rule of law, media freedom and an independent civil society; now they are also in charge of annihilating the powers and jurisdiction of the European Court so as to be able to cover the tracks of their egregious violations of human rights at home and throughout the world.<sup>5</sup>

The puppet assembly of the Ministers' Deputies, manipulated by the higher authority of the British Ambassador who chaired their meetings, has propose a series of draft decisions that were cheered on at Izmir and are to be fully adopted at the ministerial session on 11 May, next week, in Istanbul; draft decisions that were undoubtedly dictated by the Brits who have the legislative and legal sophistication to give the unsophisticated and abusive Eastern European governments what they most want, namely a way to get the European Court off their backs so they can continue to treat their citizens with utter disregard for the human rights enshrined in the European Convention.

So what we have here is a coordinated attack on the European Court by the following actors: the Secretary General of the European Council, Mr. Thorbjørn Jagland; the British Government and its Ambassador at the European Council, Ms. Eleanor Fuller; and the Turkish Government, which has the Chairmanship of the Committee of Ministers at the Council of Europe and is represented by Ahmet Davutoglu, the Minister of Foreign Affairs of Turkey.

With these forces aligned for a common purpose (i.e. the annihilation of the European Court's powers, jurisdiction and effectiveness) it was very easy to get the disgruntled nations of the former Eastern Block, who are the main clients of the European Court, because they have not abandoned the totalitarian habits ingrained in their political and legal systems during communism, to vote for the reform package the Brits designed for this purpose, had the

<sup>5</sup> The combined effect of Britain's doings show that the UK is bent on destroying social democracy to reshape Europe in its own image, a Shangri-La for elites whose hereditary rights will destroy the principle of equality between men, will reduce the populace to the inferior status of subjects and will throw Europe back to the dark ages of monarchy.

<sup>&</sup>lt;sup>4</sup> No wonder he refuses to allow the Council's pres office to utter a word about my hunger strike here in Strasbourg!

Deputy Ministers rubberstamp during the ad hoc working party meetings, and the Committee of Ministers adopt through the Izmir Declaration.

That is how the Brits orchestrated the destruction of the European Court from within the Council of Europe, a goal they announced unabashedly in the British media once the European Court slapped Britain for depriving its prisoners of the right to vote<sup>6</sup> and in advance of taking over the Council of Europe's Chairmanship<sup>7</sup>

Now that we have seen how the European Court was annihilated by an unholy coalition of autocrats, imperialists and corrupt EU officials, let us take a look at how the measures put in place have deprived the Court of power and jurisdiction.

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# THE COUNCIL OF EUROPE'S REFORM OF THE EUROPEAN COURT IS A SMOKESCREAN FOR ANNIHILATING ITS POWERS AND JURISDICTION

As a result of Izmir and Interlaken, the number of applicants to the European Court will continue to increase, though hardly anyone will get through the screening process, and the nature of the abuse described by victims will be worse than ever because these individuals will have been victimized longer and by more courts than ever before.

To add insult to injury, the individuals who have gone through years of abuse by their national courts will arrive at the European Court destitute and desperate only to find that this too is just another court where justice is denied and the law is but a travesty. Swimming across a treacherous legal ocean, almost drowning, the victims of state abuse arrive in Strasbourg only to find that the oar of European justice is used to push them under rather than help them out onto the land and safety.

The Izmir Declaration stresses the principle of subsidiarity as the primary means by which to limit the cases accepted by the Court and thus reduce its workload, but in so doing it makes the Court inaccessible to 99.9% of the population<sup>8</sup>. Subsidiarity means that the European Court must apply fully and strictly the admissibility criteria set out in the Convention, in particular the requirement that applicants exhaust all domestic remedies.

Applications are eliminated because they do not fulfill artificial criteria and not because they are devoid of substance or do not represent legitimate complaints. This perversion of justice is scandalous and merits the most severe opprobrium.

<sup>&</sup>lt;sup>6</sup> See http://www.thetrumpet.com/?q=8185.6831.0.0.

<sup>&</sup>lt;sup>7</sup> See <a href="http://www.euronews.net/2011/02/21/britain-promises-european-human-rights-debate/">http://www.euronews.net/2011/02/21/britain-promises-european-human-rights-debate/</a> and <a href="http://www.guardian.co.uk/law/2011/may/06/david-cameron-european-law-allergy">http://www.guardian.co.uk/law/2011/may/06/david-cameron-european-law-allergy</a>.

<sup>&</sup>lt;sup>8</sup> Next week, I will issue a word by word translation and interpretation of the Izmir Declaration's text to demonstrate how nearly all of its measures undermine the power, jurisdiction and effectiveness of the Court.

If the reform measures of the Izmir Declaration adopted by the Committee of Ministers of the Council of Europe are implemented, the European Court will cease to function as it was intended because it will no longer be accessible to anyone other than the wealthy and the well connected.

Who has the resilience, the time and the means to waste on the futile endeavor of going through three or four judicial courts at the national level only to achieve nothing? It is a well-known fact that 9 out of the 47 Member States that are members of the Council of Europe have major structural and/or systemic problems and are incapable of dispensing justice through their courts.<sup>9</sup>

It is a well-kept secret that the counter-radicalization strategy has polluted the legal environment and made respect for human rights but a memory in nations where the rule of law used to mean something. The UK is the primary example of such decline in standards. The statistics compiled by the European Court bear out this fact more clearly than any article on the subject. They show that in the three years (i.e. from 2007 to 2010) since Britain introduced its counter-radicalization strategy as the Prevent strand of its greater counter-terrorism legislation, the number of cases pending against the UK jumped from 1,363 in 2007 to 3,172 in 2010. In other words, the UK nearly tripled its human rights violations against its citizens.

The rights that are being violated by the UK also fully reveal that the damage done to its legal and human rights environment is the direct result of a counter-radicalization agenda carried out through covert and discriminatory programs of surveillance, censorship and repression, programs that fail to respect expressional rights and freedom of conscience even on the sacrosanct ground of the nation's universities, where these rights are to be promoted and defended by law to a far greater extent than anywhere else in society. The rights that are being violated are: prohibition of discrimination, right to respect for privacy and family life, right to liberty and security, right to an effective remedy, right to a fair trial, and lack of effective investigation.

Let us take a look at how the Court should have been reformed in order to stay true to its original principles described on the first page of this paper.

A good faith reform of the European Court would look like this. Bear in mind that I have drafted this entire document and just three days and that I have no legal training whatsoever and no prior knowledge of the Interlaken and Izmir reform packages or the inner workings of the Council of Europe. But this is not rocket science and any reasonably intelligent man or woman could come up with a similarly decent plan.

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<sup>&</sup>lt;sup>9</sup> Read "States with major structural/systemic problems before the European Court of Human Rights: statistics", available at: <a href="http://assembly.coe.int/CommitteeDocs/2011/ajinfdoc05%202011rev\_EN.pdf">http://assembly.coe.int/CommitteeDocs/2011/ajinfdoc05%202011rev\_EN.pdf</a>. The states in question are: Bulgaria, Greece, Italy, Moldova, Poland, Romania, the Russian Federation, Turkey and Ukraine.

# **PRINCIPLE I:** The bad must pay

Measures meant to ensure that the responsibility for bearing the costs of the Court and addressing its overburdened system must fall not on those who suffer but on those who cause the suffering:

- Lawyers, attorneys and judges who are found to have acted in bad faith, contrary to the
  interests of justice and who have miscarried justice must be forced to compensate the
  victims from their own pockets, disciplined or disbarred, depending on the
  grievousness of their offence.
- 2. Those who arrive at the Court's doors destitute and desperate must be provided with accommodation and food and have their applications fast-tracked. The cost must be born by the State Party accused of violating the victim's rights.
- 3. 10% should be added to every compensation awarded to victims by the Court as penalty for repeat offenders to cover the operational costs of the Court caused by State Parties whose judiciaries have failed to apply the letter and spirit of the European Convention. This ensures that the worst offenders pay the lion's share of the Court's costs. The State Party has the option of recuperating those costs from the complainant if the Court rules in its favor. Conversely, if the Court rules in favor of the complainant, the State Party has the option of recuperating its costs from the judge or judges who have miscarried justice.

#### **PRINCIPLE 2:** The door stays open

Measures meant to ensure that the Court's accessibility to individuals is of paramount importance since human suffering must take precedence over the political interests and bruised reputations of State Parties that routinely violate the European Convention and wish to limit access to the Court:

4. Applicants from countries known to have structural and/or systemic problems or from countries that apply covert methods of surveillance, censorship and oppression which deny citizens knowledge of the original source of their abuse must be exempt from the strict application of the eligibility criteria since the risk involved in sending them back to their country's legal systems that have been corrupted to miscarry justice or coopted to create legal dead-ends and to ignore violations is too great and thus unconscionable.

- 5. Applicants from countries that have refused to or have delayed the full implementation of one or more earlier judgments by the Court must be exempt from the strict application of the eligibility criteria. This will act as leverage against State Parties that are repeat offenders and show little intention of honestly following the European Convention or implementing the Court's rulings.
- 6. Humanitarian concerns must supersede legal and technical considerations. This means that judges charged with assessing the legitimacy of an application must have the widest possible latitude to decide if a case merits the Court's attention.

# **PRINCIPLE 3:** People must come first

Measures meant to ensure that the Court's primary function must remain the protection of individuals from abusive State Parties and not the protection of State Parties from individuals who abuse or misunderstand the Convention:

- 7. Governments of State Parties that change or corrupt the law to serve their own interests rather than adhere to the universal principles espoused by the European Convention and international law must be stripped of diplomatic immunity and prosecuted accordingly by the International Criminal Court at The Hague.
- 8. Periodic blanket amnesties must be used to resolve the plight of individuals who endure hardships that are uncommon while protesting and pleading with the Court in person. It is not without reason that the Convention rights are called 'human' rights and not 'legal' rights. The human aspect of the law must prevail over the legal. To this end, broad use of friendly settlements where State Parties are encouraged to be generous and humane towards its people, whether their complaints are strictly rooted in law or not, provide the most civilized and cost-effective manner.
- 9. As a matter of policy, the Assembly must suspend "the voting rights of a national delegation where the national parliament does not seriously exercise parliamentary control over the executive in cases of non-implementation of Strasbourg Court judgments". <sup>10</sup>

### PRINCIPLE 4: No justice without hope

In addition to the above nine measures, I propose a tenth measure, the human effect measure. It has been my experience that the European Court conducts itself in a most insensitive and

<sup>&</sup>lt;sup>10</sup> This measure was proposed by Mr. Christos Pourgourides, the Chairperson and rapporteur of the Legal Affairs Committee on the implementation of judgments of the Court.

rood manner with the people who come to it for justice and who are demoralized, shunned, and desperate. At no time does the Court go through the trouble of granting applicants face-to-face interviews or of informing them periodically of the status of their applications. At no time do the Court's employees condescend to make use of their good manners to offer encouragement, advice or a simple smile to those who day after day wait and hope and beg at the Court's fortified gates. At no time, is protocol eased to account for the fact that human beings have feelings and are guided by emotions and that a word of kindness goes a long way in sustaining those who have long surpassed their limits.

Measure meant to ensure that justice has a human face:

10. The Court, its employees and its protocols must be mindful of and sensitive to the human suffering that applicants have endured, the hope that the Court represents, and of the devastating effect negative closure can have on those who believe with every fiber of their being to have been wronged.

In addition to addressing the Court's budget problems and overburdened system, these ten simple measures will also effectively and fairly address four other major problems that have plagued the Court for the past decade: they will provide a powerful incentive to remedy the structural and systemic problems of states that are repeat offenders; they will lead to the full and expeditious compliance with the judgments of the Court by pressure from within the legal systems of nations that are malfunctioning due to corruption, incompetence or political interference; they will strengthen implementation of Convention rights at the national level, and they will give justice a human face and thus resurrect the dismal record and reputation of the legal system.

I am not a jurist but I can guarantee you that the people's reform plan would win by a margin of ten to one in a referendum.

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#### CANDLE LIGHT VIGIL UNTIL THE COURT IS RESURRECTED

This is our court to defend not theirs to destroy. And defend it we will. We, the injured and the downtrodden, pledge to hold a candle light vigil every evening from 9 to 10 PM until the Court is resurrected. The only way to bring it back to life and to the principles on which it was founded is to fully adopt the People's Declaration.

We invite the Court's employees and judges, as well as members of the public, to join us.