

APPLYING AND SUPERVISING THE ECHR

Guaranteeing the effectiveness of the European Convention on Human Rights

Collected texts

Directorate General of Human Rights
Council of Europe
2004

French edition: *Garantir l'efficacité de la Convention européenne des Droits de l'Homme :
Recueil de textes*

Directorate General of Human Rights
Council of Europe
F-67075 Strasbourg Cedex

© Council of Europe, 2004

First printing September 2004

Printed at the Council of Europe

CONTENTS

| | |
|---|----|
| Declaration of the Committee of Ministers: Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels (12 May 2004) | 5 |
| Final activity report of the CDDH “Guaranteeing the long-term effectiveness of the European Court of Human Rights”. Implementation of the declaration adopted by the Committee of Ministers at its 112th session (14-15 May 2003) . . | 8 |
| Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms amending the control system of the Convention . . | 16 |
| Explanatory report to Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms amending the control system of the Convention | 24 |
| Recommendation No. R (2000) 2 of the Committee of Ministers to member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights | 52 |
| Recommendation Rec (2002) 13 of the Committee of Ministers to member States on the publication and dissemination in the member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights | 54 |
| Recommendation Rec (2004) 4 of the Committee of Ministers to member States on the European Convention on Human Rights in university education and professional training | 56 |
| Recommendation Rec (2004) 5 of the Committee of Ministers to member States on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights | 62 |
| Recommendation Rec (2004) 6 of the Committee of Ministers to member States on the improvement of domestic remedies | 69 |
| Resolution Res (2002) 58 on the publication and dissemination of the case-law of the European Court of Human Rights | 77 |
| Resolution Res (2002) 59 concerning the practice in respect of friendly settlements | 79 |
| Resolution Res (2004) 3 on judgments revealing an underlying systemic problem | 80 |

| | |
|---|----|
| Rules adopted by the Committee of Ministers for the application of Article 46, paragraph 2, of the European Convention on Human Rights | 82 |
|---|----|

| | |
|---|----|
| Appendix I Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols Nos. 11 and 14 | 85 |
|---|----|

| | |
|--|-----|
| Appendix II Wording of certain Convention provisions prior to the entry into force of Protocol No. 14 | 106 |
|--|-----|

DECLARATION

OF THE COMMITTEE OF MINISTERS

Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels (12 May 2004)

**Adopted by the Committee of Ministers
on 12 May 2004 at its 114th session**

The Committee of Ministers,

Referring to the Declaration *The European Convention on Human Rights at 50: what future for the protection of human rights in Europe?* adopted by the European Ministerial Conference on Human Rights, held in Rome to commemorate the 50th anniversary of the Convention on 4 November 2000;

Reaffirming the central role that the Convention must continue to play as a constitutional instrument of European public order, on which the democratic stability of the Continent depends;

Recalling that the Ministerial Conference Declaration emphasised that it falls in the first place to the member States to ensure that human rights are respected, in full implementation of their international commitments;

Considering that it is indispensable that any reform of the Convention aimed at guaranteeing the long-term effectiveness of the European Court of Human Rights be accompanied by effective national measures by the legislature, the executive and the judiciary to ensure protection of Convention rights at the domestic level, in full conformity with the principle of subsidiarity and the obligations of member States under Article 1 of the Convention;

Recalling that, according to Article 46, paragraph 1 of the Convention, “the High Contracting Parties undertake to abide by the final judgments of the Court in any case to which they are parties”;

Recalling the various recommendations it adopted to help member States to fulfil their obligations:¹

- Recommendation Rec (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;

1. Editor’s note: the texts here referred to appear on pp. 52-80 of this volume.

- Recommendation Rec (2002) 13 on the publication and dissemination in the member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights;
- Recommendation Rec (2004) 4 on the European Convention on Human Rights in university education and professional training;
- Recommendation Rec (2004) 5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights;
- Recommendation Rec (2004) 6 on the improvement of domestic remedies;

Recalling that the following resolutions were brought to the attention of the Court:

- Resolution Res (2002) 58 on the publication and dissemination of the case-law of the European Court of Human Rights;
- Resolution Res (2002) 59 concerning the practice in respect of friendly settlements;
- Resolution Res (2004) 3 on judgments revealing an underlying systemic problem;

Recalling that, on 10 January 2001, it adopted new Rules for the supervision of the execution of the Court's judgments under Article 46, paragraph 2 of the Convention, following the instructions given at the Ministerial Conference;

Considering that the Ministerial Conference Declaration gave the decisive political impetus for a determined initiative of member States aimed at guaranteeing the long-term effectiveness of the Court so as to enable it to continue to protect human rights in Europe;

Welcoming the fact that the work which began immediately after the Conference has made it possible for the Committee of Ministers, at its 114th Session on 12-13 May 2004, to open for signature amending Protocol No. 14 to the Convention;

Considering that the reform introduced by the Protocol aims at preserving the effectiveness of the right of individual application in the context of steadily growing numbers of applications;

Considering, in particular, that the Protocol addresses the main problems with which the Court is confronted, on the one hand, the filtering of the very numerous individual applications and, on the other hand, the so-called repetitive cases;

Considering that a new provision has been introduced by the Protocol to ensure respect for the Court's judgments and that the Ministers' Deputies are developing their practices under Article 46, paragraph 2 of the Convention with a view to helping member States to improve and accelerate the execution of the judgments, notably those revealing an underlying systemic problem;

Considering that these texts, measures and provisions are interdependent and that their implementation is necessary for ensuring the effectiveness of the Convention at national and European levels;

Paying tribute to the significant contribution to this work made by the Court, the Parliamentary Assembly and the Council of Europe Commissioner for Human Rights, as well as by representatives of national courts, national institutions for the promotion and protection of human rights and non-governmental organisations;

I. URGES member States to:

- take all necessary steps to sign and ratify Protocol No. 14 as speedily as possible, so as to ensure its entry into force within two years of its opening for signature;
- implement speedily and effectively the above-mentioned Recommendations;

II. Asks the Ministers' Deputies to:

- take specific and effective measures to improve and accelerate the execution of the Court's judgments, notably those revealing an underlying systemic problem;
- undertake a review, on a regular and transparent basis, of the implementation of the above-mentioned Recommendations;
- assess the resources necessary for the rapid and efficient implementation of the Protocol, in particular for the Court and its registry in the framework of the new mechanism for the filtering of applications, and to take measures accordingly;

III. INVITES the Secretary General of the Council of Europe and the States concerned to take the necessary steps to disseminate appropriately, in the national language(s), this Declaration and the various instruments mentioned in it.

FINAL ACTIVITY REPORT OF THE CDDH

“GUARANTEEING THE LONG-TERM EFFECTIVENESS OF THE EUROPEAN COURT OF HUMAN RIGHTS”

Implementation of the declaration adopted by the Committee of Ministers at its 112th session (14-15 May 2003)

Adopted by the CDDH on 8 April 2004 and transmitted
to the Ministers’ Deputies, which took note on 5 May 2004,
at their 883rd meeting, document CM (2004) 65

1. The European Ministerial Conference on Human Rights held in Rome in November 2000 adopted the Declaration: *The European Convention on Human Rights at 50: What future for human rights protection in Europe?*. In this text, the Ministers reaffirmed in particular the central role of the Convention and its unique system of monitoring the protection of human rights in Europe and underlined its unifying effect.
2. They noted however that, having regard to the ever-increasing number of applications, it was indispensable that “urgent measures be taken to assist the Court in carrying out its functions and that an in-depth reflection be started as soon as possible on the various possibilities and options with a view to ensuring the effectiveness of the Court in the light of this new situation”.¹
3. In February 2001, the Ministers’ Deputies set up an Evaluation Group to consider ways of guaranteeing the effectiveness of the European Court of Human Rights. Concurrently, the Steering Committee for Human Rights (CDDH) set up a Reflection Group on the Reinforcement of the Human Rights Protection Mechanism. Its Activity Report was sent to the Evaluation Group in June 2001, so that the latter could take it into account in its work.² For their part, the Deputies also undertook in 2001 a reflection on specific questions relating to the monitoring of the execution of judgments of the Court.
4. In November 2001, at its 109th Ministerial Session, the Committee of Ministers adopted the Declaration on “The protection of human rights in Europe: Guaranteeing the long-term effectiveness of the European Court of Human Rights”.³

-
1. Declaration of the Ministerial Conference.
 2. The report of the Reflection Group on the Reinforcement of the Human Rights Protection Mechanism is set out in Appendix III to the Evaluation Group’s report to the Committee of Ministers on the European Court of Human Rights (Strasbourg, Council of Europe, 27 September 2001), published in the *Human Rights Law Journal* (HRLJ), 2001, pp. 308 and ff.

In this text, it welcomed the report submitted by the Evaluation Group and, with a view to giving it effect, it instructed the CDDH⁴ to (i) carry out a feasibility study of the most appropriate way to conduct the preliminary examination of applications,⁵ particularly by reinforcing the filtering of applications, and (ii) to examine and, if appropriate, submit proposals for amendments of the Convention, notably on the basis of the recommendations in the report of the Evaluation Group.⁶ On this occasion, it also invited the CDDH to accelerate the work in progress on measures that could be taken at national level.

5. In October 2002, the CDDH reported on progress in these two areas in an interim report.⁷
6. In November 2002, at its 111th Ministerial Session, the Committee of Ministers adopted a Declaration on “The Court of Human Rights for Europe”,⁸ in which it took note of the reflections of the CDDH and wished to be in a position to examine a set of concrete, coherent proposals at its May 2003 Ministerial Session⁹ in the three following areas:
 - prevention of violations on a national level and improvement of domestic remedies;
 - optimisation of the efficiency of filtering and dealing with subsequent applications;
 - improvement and acceleration of the execution of judgments of the European Court of Human Rights.
7. In April 2003, the CDDH submitted a final report¹⁰ to the Ministers’ Deputies containing its proposals in these three areas. In its report, it also referred to several relevant instruments that it elaborated and that were adopted by the Committee of Ministers after the Ministerial Conference, namely Recommendation Rec (2002) 2 of the Committee of Ministers to member States on the re-examination or the reopening of certain cases at domestic level following judgments of the European Court of Human Rights;¹¹ Rules adopted by the Com-

3. Declaration published in the *Revue Universelle des Droits de l’Homme* (RUDH), 2002, pp. 331 and *ff*.

4. 21 November 2001 at the 773rd meeting of the Ministers’ Deputies.

5. Cf. Deputies’ decision, §12.

6. Cf. Deputies’ decision, §12.

7. Document CM (2002) 146.

8. Declaration published in the *Revue Universelle des Droits de l’Homme* (RUDH), 2002, pp. 331 and *ff*.

9. Decisions of the Ministers’ Deputies adopted on 13 November 2002 at the 816th meeting, item 1.5.

10. Document CM (2003) 55.

11. Adopted on 19 January 2000 at the 694th meeting of the Ministers’ Deputies [see p. 52 of this collection].

mittee of Ministers for the application of article 46, paragraph 2, of the European Convention on Human Rights;¹² Recommendation Rec (2002) 13 of the Committee of Ministers to member States on the publication and dissemination in the member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights;¹³ Resolution Res (2002) 58 of the Committee of Ministers on the publication and dissemination of the case-law of the European Court of Human Rights;¹⁴ and Resolution Res (2002) 59 of the Committee of Ministers concerning the practice in respect of friendly settlements.¹⁵

8. In May 2003, at its 112th Ministerial Session, the Committee of Ministers adopted its Declaration “Guaranteeing the long-term effectiveness of the European Court of Human Rights”, in which it welcomed the CDDH’s report and instructed the Ministers’ Deputies to implement the proposals, taking account of certain issues referred to in the Declaration, so that it could examine the texts for adoption at its 114th session, in 2004. It also asked them to take account of other questions raised in the report, such as the possible accession of the European Union to the Convention, the term of office of judges of the Court, and the need to ensure that future amendments to the Convention were given effect as rapidly as possible.
9. In the light of these instructions, the CDDH continued its work on the following draft legal instruments:
 - (i) draft Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, with an explanatory report;
 - (ii) draft recommendation of the Committee of Ministers to member States on the European Convention on Human Rights in university education and professional training, with an explanatory memorandum;
 - (iii) draft recommendation of the Committee of Ministers to member States on verification of the compatibility of draft laws, existing legislation and administrative practices with the standards laid down in the European Convention on Human Rights, with an explanatory memorandum;

12. Approved on 10 January 2001 at the 736th meeting of the Ministers’ Deputies [see p. 82 of this collection].

13. Adopted on 18 December 2002 at the 822nd meeting of the Ministers’ Deputies [see p. 54 of this collection].

14. Adopted on 18 December 2002 at the 822nd meeting of the Ministers’ Deputies [see p. 77 of this collection].

15. Adopted on 18 December 2002 at the 822nd meeting of the Ministers’ Deputies [see p. 79 of this collection].

- (iv) draft recommendation of the Committee of Ministers to member States on the improvement of domestic remedies, with an explanatory memorandum;
 - (v) draft resolution of the Committee of Ministers on judgments revealing an underlying systemic problem.
10. In November 2003 the CDDH submitted an interim activity report on this subject to the Committee of Ministers.¹⁶
 11. In April 2004 the CDDH adopted this final report and submitted it to the Committee of Ministers. It contains all the above-mentioned draft legal instruments, together with a draft Declaration on "Ensuring the effective implementation of the European Convention on Human Rights at national and European level", for examination and adoption by the Committee of Ministers at the 114th Ministerial Session (12-13 May 2004).
 12. The draft Declaration prepared by the CDDH for the Ministerial Session is the response to the Declaration of the Ministerial Conference in Rome. It contains a triple political commitment on behalf of the Committee of Ministers of the Council of Europe:
 - Firstly, it urges member states to take all necessary steps to sign and ratify Protocol No. 14 as speedily as possible, so as to ensure its entry into force within two years of its opening for signature, and to implement speedily and effectively the above-mentioned recommendations.
 - Secondly, it asks the Ministers' Deputies to take specific and effective measures to improve and accelerate the execution of the Court's judgments, notably those revealing an underlying systemic problem; undertake a review, on a regular and transparent basis, of the implementation of the above-mentioned recommendations with a view to improving the implementation of the Convention at national level; take the necessary steps to ensure that adequate resources are directed to the rapid and efficient implementation of Protocol No. 14, in particular for the Court and its registry in the framework of the new mechanism for the filtering of applications.
 - Finally, it invites the Secretary General of the Council of Europe and the States concerned to take the necessary steps to disseminate appropriately, in the national language(s), the Declaration and the various instruments mentioned in it.
 13. This final activity report summarises the main results of the work done.
 14. Concerning the drafting of Protocol No. 14, which was the most delicate and complex part of the process, it should be noted that the CDDH carefully examined the opinions and proposals submitted by the Parliamentary Assembly's

16. Document CM (2003) 165 addendum.

Committee on Legal Affairs and Human Rights, the Court, the Commissioner for Human Rights and certain member states, as well as national human rights institutions and non-governmental organisations. The CDDH set about its task in a transparent manner. Its reports, those of its reflection and drafting groups and those of its committee of experts were published. These various meetings were attended by representatives of the Parliamentary Assembly, the Court's registry, the Department for the Execution of Judgments and the Office of the Council of Europe Commissioner for Human Rights, who played an active part in their work. The CDDH and its subordinate bodies also made good use of some particularly rewarding exchanges of views, *inter alia* with non-governmental organisations or national judges. The Ministers' Deputies were closely involved throughout. Draft Protocol No. 14 is thus the fruit of a collective reflection.

SECTION A

Prevention of violations at national level and improvement of domestic remedies

15. It became clear from the outset that a fundamental element of the effort to guarantee the long-term effectiveness of the control system set up by the Convention had to be an improvement in the prevention of violations of the Convention at national level. It was therefore decided to appeal for increased efforts from the member states to this end. The chosen method was to set up non-binding legal instruments to encourage member states to take effective national steps to ensure proper protection of Convention rights at the domestic level, in full conformity with the principle of subsidiarity and the obligations of member states under Article 1 of the Convention.
16. This work led to the preparation of the five recommendations mentioned in paragraphs 7 and 9 above. They aim in particular at improving the quality of national laws, the efficiency of remedies, including the reopening of domestic procedures to give effect to the Court judgments, and the awareness of the requirements of the Convention, including those ensuing from the judgments of the Court, by measures in the fields of publication, dissemination, education and training. The CDDH express the wish that the implementation be reviewed on a regular and transparent manner.

SECTION B

Optimising the effectiveness of filtering and subsequent processing of applications

17. It is worth noting that, unlike Protocol No. 11, draft Protocol No. 14 prepared by the CDDH does not radically alter the control system set up by the Conven-

tion. The changes concern the functioning rather than the nature of the system. They aim above all to improve it in order to give the Court the procedural tools and flexibility it needs to process all applications in a reasonable time, while allowing it to concentrate on the most important cases, which require as thorough a judicial examination as possible. These changes should also enable the Committee of Ministers to ensure swifter execution of the judgments and decisions of the Court (see below, Section C, p. 12). To achieve this, amendments are made at three main areas:

- reinforcement of the Court’s filtering capacity in respect of the numerous applications which are without foundation;
 - a new admissibility criterion concerning cases in which the applicant has not suffered a significant disadvantage and which in terms of respect for human rights do not otherwise require an examination on the merits by the Court;
 - a considerably simplified procedure for dealing with repetitive cases.
18. The CDDH considered that, together, these aspects of the reform will help to reduce the time the Court devotes to applications which are manifestly not admissible, thereby allowing it to concentrate on well-founded applications, particularly those which raise important human rights issues.
 19. Furthermore, it should be noted that the draft protocol prepared by the CDDH provides henceforth for a single nine-year term of office for the judges, for the possibility of increasing the number of judges and a procedure for so doing, and for the possibility for the European Union to accede to the Convention. In response to a wish expressed by the Parliamentary Assembly, the CDDH has also devised a new procedure for selecting *ad hoc* judges, whereby they are selected by the President of the Court from a list submitted by each state party. The draft protocol provides a transitional provision concerning the duration of the term of office of judges on the date of entry into force of the protocol, so as to ensure that the renewal of judges takes place gradually.
 20. The explanatory report, particularly paragraphs 34 to 48, gives an overview of the changes made to the control system of the Convention by Protocol No. 14.
 21. It should be noted that, in addition to the changes proposed in the draft protocol, the CDDH submitted two other proposals to the Committee of Ministers in its 2003 report, which the Committee of Ministers accepted:
 - Encouraging more frequent third party intervention by other states in cases of principle pending before the Court. Both the States Parties themselves and the Court should be more attentive to the possibilities for requesting and allowing such intervention. The Court could also adopt an annual report on trends in its case-law;

- Strengthening the registry of the Court to enable it to deal with the influx of cases whilst maintaining the quality of the judgments. The following measures could be envisaged: (i) recruiting experienced national lawyers for a determined period of time, in addition to the lawyers/international civil servants of the registry; (ii) increasing the research resources and other support staff available to judges in the exercise of their judicial functions; (iii) optimising the internal control functions of the registry in order to maintain the quality of the judgments.

SECTION C

Improving and accelerating the execution of the Court's judgments

22. The Rome Declaration not only emphasised that it falls in the first place to the member states to ensure that human rights are respected, in full implementation of their international commitments; it also stressed the obligation of member states to execute the Court's judgments.
23. First, it should be noted that the draft protocol prepared by the CDDH gives the Committee of Ministers new powers in its supervision of the execution of judgments (an expansion of the monitoring of the friendly settlements, the possibility of asking the Court to interpret a judgment, and even of referring the matter to the Court if it considers that the contracting party is refusing to comply with a judgment).
24. Furthermore, the CDDH submitted to the Committee of Ministers, in April 2004, a draft resolution on judgments revealing an underlying systemic problem. And in its 2003 report, the CDDH submitted another three proposals, which the Committee of Ministers accepted:
 - developing the Committee of Ministers' procedures and practice under Article 46, paragraph 2 of the Convention to give priority to the rapid execution of judgments revealing systemic problems (without detriment to the priority attention accorded to important other judgments) and to strengthen the Service of the execution of judgments;
 - ensuring maximum publicity during the execution process in such cases;
 - associating the Parliamentary Assembly more closely with the exercise.
25. It is important to note that the various recommendations that aim at improving the implementation of the Convention at national level also invite the member states to take measures to improve and accelerate the execution of judgments of the Court.
26. Finally, as accompanying measures, the CDDH recommended making optimum use of other existing institutions, mechanisms and activities in promoting the execution of judgments. In particular the CDDH mentioned:

- the Council of Europe Commissioner for Human Rights;
 - the Secretary General of the Council of Europe (Article 52 of the Convention);
 - the assistance and expertise of the Council of Europe and of the Venice Commission;
 - other treaty bodies;
 - the Parliamentary Assembly;
 - the Committee of Ministers’ monitoring system.
27. With the adoption of this final activity report and the draft texts appended to it, the CDDH considers that it has fulfilled the *ad hoc* terms of reference given to it by the Ministers’ Deputies.

PROTOCOL NO. 14
TO THE CONVENTION
FOR THE PROTECTION OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS
amending the control system of the Convention

Strasbourg, 13.5.2004

PREAMBLE

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatories to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”),

Having regard to Resolution No. 1 and the Declaration adopted at the European Ministerial Conference on Human Rights, held in Rome on 3 and 4 November 2000;

Having regard to the Declarations adopted by the Committee of Ministers on 8 November 2001, 7 November 2002 and 15 May 2003, at their 109th, 111th and 112th Sessions, respectively;

Having regard to Opinion No. 251 (2004) adopted by the Parliamentary Assembly of the Council of Europe on 28 April 2004;

Considering the urgent need to amend certain provisions of the Convention in order to maintain and improve the efficiency of the control system for the long term, mainly in the light of the continuing increase in the workload of the European Court of Human Rights and the Committee of Ministers of the Council of Europe;

Considering, in particular, the need to ensure that the Court can continue to play its pre-eminent role in protecting human rights in Europe,

Have agreed as follows:

ARTICLE 1

Paragraph 2 of Article 22 of the Convention shall be deleted.

ARTICLE 2

Article 23 of the Convention shall be amended to read as follows:

“Article 23

Terms of office and dismissal

- 1 The judges shall be elected for a period of nine years. They may not be re-elected.
- 2 The terms of office of judges shall expire when they reach the age of 70.
- 3 The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.
- 4 No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.”

ARTICLE 3

Article 24 of the Convention shall be deleted.

ARTICLE 4

Article 25 of the Convention shall become Article 24 and its text shall be amended to read as follows:

“Article 24

Registry and rapporteurs

- 1 The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court.
- 2 When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court’s registry.”

ARTICLE 5

Article 26 of the Convention shall become Article 25 (“Plenary Court”) and its text shall be amended as follows:

- 1 At the end of paragraph *d*, the comma shall be replaced by a semi-colon and the word “and” shall be deleted.
- 2 At the end of paragraph *e*, the full stop shall be replaced by a semi-colon.
- 3 A new paragraph *f* shall be added which shall read as follows:
“f make any request under Article 26, paragraph 2.”

ARTICLE 6

Article 27 of the Convention shall become Article 26 and its text shall be amended to read as follows:

“Article 26

**Single-judge formation, committees,
Chambers and Grand Chamber**

- 1 To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court’s Chambers shall set up committees for a fixed period of time.
- 2 At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.
- 3 When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.
- 4 There shall sit as an *ex-officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.
- 5 The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.”

ARTICLE 7

After the new Article 26, a new Article 27 shall be inserted into the Convention, which shall read as follows:

“Article 27

Competence of single judges

- 1 A single judge may declare inadmissible or strike out of the Court’s list of cases an application submitted under Article 34, where such a decision can be taken without further examination.

- 2 The decision shall be final.
- 3 If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.”

ARTICLE 8

Article 28 of the Convention shall be amended to read as follows:

“Article 28

Competence of committees

- 1 In respect of an application submitted under Article 34, a committee may, by a unanimous vote,
 - a declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or
 - b declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.
- 2 Decisions and judgments under paragraph 1 shall be final.
- 3 If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.b.”

ARTICLE 9

Article 29 of the Convention shall be amended as follows:

- 1 Paragraph 1 shall be amended to read as follows:

“If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.”
- 2 At the end of paragraph 2 a new sentence shall be added which shall read as follows:

“The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.”
- 3 Paragraph 3 shall be deleted.

ARTICLE 10

Article 31 of the Convention shall be amended as follows:

- 1 At the end of paragraph *a*, the word “and” shall be deleted.
- 2 Paragraph *b* shall become paragraph *c* and a new paragraph *b* shall be inserted and shall read as follows:

“*b* decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and”.

ARTICLE 11

Article 32 of the Convention shall be amended as follows:

At the end of paragraph 1, a comma and the number 46 shall be inserted after the number 34.

ARTICLE 12

Paragraph 3 of Article 35 of the Convention shall be amended to read as follows:

“3 The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

- a* the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or**
- b* the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.”**

ARTICLE 13

A new paragraph 3 shall be added at the end of Article 36 of the Convention, which shall read as follows:

“3 In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.”

ARTICLE 14

Article 38 of the Convention shall be amended to read as follows:

“Article 38

Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.”

ARTICLE 15

Article 39 of the Convention shall be amended to read as follows:

“Article 39

Friendly settlements

- 1 At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.
- 2 Proceedings conducted under paragraph 1 shall be confidential.
- 3 If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.
- 4 This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.”

ARTICLE 16

Article 46 of the Convention shall be amended to read as follows:

“Article 46

Binding force and execution of judgments

- 1 The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
- 2 The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
- 3 If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the Committee.

- 4 If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
- 5 If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.”

ARTICLE 17

Article 59 of the Convention shall be amended as follows:

- 1 A new paragraph 2 shall be inserted which shall read as follows:
“2 **The European Union may accede to this Convention.**”
- 2 Paragraphs 2, 3 and 4 shall become paragraphs 3, 4 and 5 respectively.

FINAL AND TRANSITIONAL PROVISIONS

ARTICLE 18

- 1 This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by
 - a signature without reservation as to ratification, acceptance or approval;
or
 - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 19

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 18.

ARTICLE 20

- 1 From the date of the entry into force of this Protocol, its provisions shall apply to all applications pending before the Court as well as to all judgments whose execution is under supervision by the Committee of Ministers.
- 2 The new admissibility criterion inserted by Article 12 of this Protocol in Article 35, paragraph 3.*b* of the Convention, shall not apply to applications declared admissible before the entry into force of the Protocol. In the two years following the entry into force of this Protocol, the new admissibility criterion may only be applied by Chambers and the Grand Chamber of the Court.

ARTICLE 21

The term of office of judges serving their first term of office on the date of entry into force of this Protocol shall be extended *ipso jure* so as to amount to a total period of nine years. The other judges shall complete their term of office, which shall be extended *ipso jure* by two years.

ARTICLE 22

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c the date of entry into force of this Protocol in accordance with Article 19;
and
- d any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

DONE AT STRASBOURG, THIS 13TH DAY OF MAY 2004, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

EXPLANATORY REPORT
TO PROTOCOL NO. 14
TO THE CONVENTION FOR THE PROTECTION
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

amending the control system of the Convention

Adopted by the CDDH on 7 April 2004

INTRODUCTION

1. Since its adoption in 1950, the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”) has been amended and supplemented several times: the High Contracting Parties have used amending or additional protocols to adapt it to changing needs and to developments in European society. In particular, the control mechanism established by the Convention was radically reformed in 1994 with the adoption of Protocol No. 11 which entered into force on 1 November 1998.
2. Ten years later, at a time when nearly all of Europe’s countries have become party to the Convention,¹ the urgent need has arisen to adjust this mechanism, and particularly to guarantee the long-term effectiveness of the European Court of Human Rights (hereinafter referred to as “the Court”), so that it can continue to play its pre-eminent role in protecting human rights in Europe.

***I. Need to increase the effectiveness
of the control system established by the Convention***

Protocol No. 11

3. Protocol No. 11 substituted a full-time single Court for the old system established by the 1950 Convention, namely, a Commission, a Court and the Committee of Ministers which played a certain “judicial” role.
4. Protocol No. 11, which was opened for signature on 11 May 1994 and came into force on 1 November 1998, was intended, firstly, to simplify the system so as to reduce the length of proceedings, and, secondly, to reinforce their judicial character. This protocol made the system entirely judicial (abolition of the Committee of Ministers’ quasi-judicial role, deletion of the optional clauses

1. In early 2004, Belarus and Monaco were the only potential or actual candidates for membership still outside the Council of Europe.

concerning the right of individual application and the compulsory jurisdiction of the Court) and created a single full-time Court.

5. In this way Protocol No. 11 contributed to enhancing the effectiveness of the system, notably by improving the accessibility and visibility of the Court and by simplifying the procedure in order to cope with the influx of applications generated by the constant increase in the number of States. Whereas the Commission and Court had given a total of 38 389 decisions and judgments in the forty-four years up to 1998 (the year in which Protocol No. 11 took effect), the single Court has given 61 633 in five years.² None the less, the reformed system, which originated in proposals first made in the 1980s, proved inadequate to cope with the new situation. Indeed, since 1990, there has been a considerable and continuous rise in the number of individual applications as a result, amongst other things, of the enlargement of the Council of Europe. Thus the number of applications increased from 5 279 in 1990 to 10 335 in 1994 (+96%), 18 164 in 1998 (+76%) and 34 546 in 2002 (+90%). Whilst streamlining measures taken by the Court enabled no less than 1 500 applications to be disposed of per month in 2003, this remains far below the nearly 2 300 applications allocated to a decision body every month.
6. This increase is due not only to the accession of new States Parties (between the opening of Protocol No. 11 for signature in May 1994 and the adoption of Protocol No. 14, thirteen new States Parties ratified the Convention, extending the protection of its provisions to over 240 million additional individuals) and to the rapidity of the enlargement process, but also to a general increase in the number of applications brought against States which were party to the Convention in 1993. In 2004, the Convention system was open to no fewer than 800 million people. As a result of the massive influx of individual applications, the effectiveness of the system, and thus the credibility and authority of the Court, were seriously endangered.

The problem of the Court's excessive case-load

7. It is generally recognised that the Court's excessive caseload (during 2003, some 39 000 new applications were lodged and at the end of that year, approximately 65 000 applications were pending before it) manifests itself in two areas in particular: i. processing the very numerous individual applications which are terminated without a ruling on the merits, usually because they are declared inadmissible (more than 90% of all applications), and ii. processing individual applications which derive from the same structural cause as an

2. Unless otherwise stated, the figures given here are taken from the document "Survey of Activities 2003" produced by the European Court of Human Rights or based on more recent information provided by its registry.

earlier application which has led to a judgment finding a breach of the Convention (repetitive cases following a so-called “pilot judgment”). A few figures will illustrate this. In 2003, there were some 17 270 applications declared inadmissible (or struck out of the list of cases), and 753 applications declared admissible. Thus, the great majority of cases are terminated by inadmissibility or strike-out decisions (96% of cases disposed of in 2003). In the remaining cases, the Court gave 703 judgments in 2003, and some 60% of these concerned repetitive cases.

8. Such an increase in the caseload has an impact both on the registry and on the work of the judges and is leading to a rapid accumulation of pending cases not only before committees (see paragraph 5 *in fine* above) but also before Chambers. In fact, as is the case with committees, the output of Chambers is far from being sufficient to keep pace with the influx of cases brought before them. A mere 8% of all cases terminated by the Court in 2003 were Chamber cases. This stands in stark contrast with the fact that no less than 20% of all new cases assigned to a decision-making body in the same year were assigned to a Chamber. This difference between input and output has led to the situation that, in 2003, 40% of all cases pending before a decision-making body were cases before a Chamber. In absolute terms, this accumulation of cases pending before a Chamber is reflected by the fact that, on 1 January 2004, approximately 16 500 cases were pending before Chambers. It is clear that the considerable amount of time spent on filtering work has a negative effect on the capacity of judges and the registry to process Chamber cases.
9. The prospect of a continuing increase in the workload of the Court and the Committee of Ministers (supervising execution of judgments) in the next few years is such that a set of concrete and coherent measures – including reform of the control system itself – was considered necessary to preserve the system in the future.
10. At the same time – and this was one of the major challenges in preparing the present protocol – it was vital that reform should in no way affect what are rightly considered the principal and unique features of the Convention system. These are the judicial character of European supervision, and the principle that any person claiming to be the victim of a breach of the rights and freedoms protected by the Convention may refer the matter to the Court (right of individual application).
11. Indeed, the Convention’s control system is unique: the Parties agree to subject themselves to international judicial supervision of their obligation to secure to everyone within their jurisdiction the rights and freedoms set out in the Convention. This control is exercised by the Court, which gives judgments on individual applications brought under Article 34 of the Convention and on State applications – which are extremely rare³ – brought under Article 33. The

Court's judgments are binding on respondent Parties and their execution is supervised by the Committee of Ministers of the Council of Europe.

12. The principle of subsidiarity underlies all the measures taken to increase the effectiveness of the Convention's control system. Under Article 1 of the Convention, it is with the High Contracting Parties that the obligation lies "to secure to everyone within their jurisdiction the rights and freedoms" guaranteed by the Convention, whereas the role of the Court, under Article 19, is "to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention". In other words, securing rights and freedoms is primarily the responsibility of the Parties; the Court's role is subsidiary.
13. Forecasts from the current figures by the registry show that the Court's caseload would continue to rise sharply if no action were taken. Moreover, the estimates are conservative ones. Indeed, the cumulative effects of greater awareness of the Convention in particular in new States Parties, and of the entry into force of Protocol No. 12, the ratification of other additional protocols by States which are not party to them, the Court's evolving and extensive interpretation of rights guaranteed by the Convention and the prospect of the European Union's accession to the Convention, suggest that the annual number of applications to the Court could in the future far exceed the figure for 2003.
14. Measures required to ensure the long-term effectiveness of the control system established by the Convention in the broad sense are not restricted to Protocol No. 14. Measures must also be taken to prevent violations at national level and improve domestic remedies, and also to enhance and expedite execution of the Court's judgments.⁴ Only a comprehensive set of interdependent measures tackling the problem from different angles will make it possible to overcome the Court's present overload.

Measures to be taken at national level

15. In accordance with the principle of subsidiarity, the rights and freedoms enshrined in the Convention must be protected first and foremost at national level. Indeed this is where such protection is most effective. The responsibility of national authorities in this area must be reaffirmed and the capacity of national legal systems to prevent and redress violations must be reinforced. States have a duty to monitor the conformity of their legislation and administrative practice with the requirements of the Convention and the Court's case-law. In order to achieve this, they may have the assistance of outside bodies. If fully applied, these measures will relieve the pressure on the Court in several ways: they should not only help to reduce the number of well-founded individual applications by ensuring that national laws are compatible with the Convention, or

3. As at 1 January 2004, there have only been 20 interstate applications.

by making findings of violations or remedying them at national level, they will also alleviate the Court's work in that well-reasoned judgments already given on cases at national level make adjudication by the Court easier. It goes without saying, however, that these effects will be felt only in the medium term.

Measures to be taken concerning execution of judgments

16. Execution of the Court's judgments is an integral part of the Convention system. The measures that follow are designed to improve and accelerate the execution process. The Court's authority and the system's credibility both depend to a large extent on the effectiveness of this process. Rapid and adequate execution has, of course, an effect on the influx of new cases: the more rapidly general measures are taken by States Parties to execute judgments which point to a structural problem, the fewer repetitive applications there will be. In this regard, it would be desirable for States, over and above their obligations under Article 46, paragraph 1, of the Convention, to give retroactive effect to such measures and remedies. Several measures advocated in the above-mentioned recommendations and resolutions (see footnote 4) pursue this aim. [Editor's note: the texts mentioned appear on pages 52-80 in this volume.] In addition, it would be useful if the Court and, as regards the supervision of the execution

-
4. The Committee of Ministers has adopted a series of specific instruments for this purpose:
 - Recommendation No. R (2000) 2 of the Committee of Ministers on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;
 - Recommendation Rec (2002) 13 of the Committee of Ministers on the publication and dissemination in the member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights;
 - Recommendation Rec (2004) 4 of the Committee of Ministers on the European Convention on Human Rights in university education and professional training;
 - Recommendation Rec (2004) 5 of the Committee of Ministers on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down by the European Convention on Human Rights;
 - Recommendation Rec (2004) 6 of the Committee of Ministers on the improvement of domestic remedies;
 - Resolution Res (2002) 58 of the Committee of Ministers on the publication and dissemination of the case-law of the European Court of Human Rights;
 - Resolution Res (2002) 59 of the Committee of Ministers concerning the practice in respect of friendly settlements;
 - Resolution Res (2004) 3 of the Committee of Ministers on judgments revealing an underlying systemic problem.

All these instruments, as well as this protocol, are referred to in the general declaration of the Committee of Ministers "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels", adopted on 12 May 2004 [p. 5 in this collection].

of judgments, the Committee of Ministers, adopted a special procedure so as to give priority treatment to judgments that identify a structural problem capable of generating a significant number of repetitive applications, with a view to securing speedy execution of the judgment. The most important Convention amendment in the context of execution of judgments of the Court involves empowering the Committee of Ministers to bring infringement proceedings in the Court against any State which refuses to comply with a judgment.

17. The measures referred to in the previous paragraph are also designed to increase the effectiveness of the Convention system as a whole. While the supervision of the execution of judgments generally functions satisfactorily, the process needs to be improved to maintain the system's effectiveness.

Effectiveness of filtering and of subsequent processing of applications by the Court

18. Filtering and subsequent processing of applications by the Court are the main areas in which Protocol No. 14 makes concrete improvements. These measures are outlined in Chapter III below, and described in greater detail in Chapter IV, which comments on each of the provisions in the protocol.
19. During the preparatory work on Protocol No. 14, there was wide agreement as to the importance of several other issues linked to the functioning of the control system of the Convention which, however, did not require an amendment of the Convention. These are the need to strengthen the registry of the Court to enable it to deal with the influx of cases whilst maintaining the quality of the judgments, the need to encourage more frequent third party interventions by other States in cases pending before the Court which raise important general issues, and, in the area of supervision of execution, the need to strengthen the department for the execution of judgments of the General Secretariat of the Council of Europe and to make optimum use of other existing Council of Europe institutions, mechanisms and activities as a support for promoting rapid execution of judgments.

II. Principal stages in the preparation of Protocol No. 14

20. The European Ministerial Conference on Human Rights, held in Rome in November 2000 to mark the 50th anniversary of the signing of the Convention, found that "the effectiveness of the Convention system [...] is now at issue" because of "the difficulties that the Court has encountered in dealing with the ever-increasing volume of applications" (Resolution I on institutional and functional arrangements for the protection of human rights at national and European level).⁵ It accordingly called on the Committee of Ministers to "initiate, as soon as possible, a thorough study of the different possibilities and

options with a view to ensuring the effectiveness of the Court in the light of this new situation".⁶ The conference also thought it "indispensable, having regard to the ever-increasing number of applications, that urgent measures be taken to assist the Court in carrying out its functions and that an in-depth reflection be started as soon as possible on the various possibilities and options with a view to ensuring the effectiveness of the Court in the light of this new situation".⁷

21. As a follow-up to the ministerial conference, the Ministers' Deputies set up, in February 2001, an Evaluation group to consider ways of guaranteeing the effectiveness of the Court. The group submitted its report to the Committee of Ministers on 27 September 2001.⁸
22. Concurrently, the Steering Committee for Human Rights (CDDH) set up its own Reflection Group on the Reinforcement of the Human Rights Protection Mechanism. Its activity report was sent to the Evaluation group in June 2001, so that the latter could take it into account in its work.⁹
23. To give effect to the conclusions of the Evaluation group's report, the Committee of Ministers agreed in principle to additional budgetary appropriations for the period from 2003 to 2005, to allow the Court to recruit a significant number of extra lawyers, as well as administrative and auxiliary staff. It took similar action to reinforce the Council of Europe Secretariat departments involved in execution of the Court's judgments.
24. The Court also took account of the Evaluation group's conclusions and those of its Working party on working methods.¹⁰ On this basis it adopted a number of measures concerning its own working methods and those of the registry. It also amended its Rules of Court in October 2002 and again in November 2003.
25. At its 109th session (8 November 2001) the Committee of Ministers adopted its declaration on "The protection of human rights in Europe – Guaranteeing the long-term effectiveness of the European Court of Human Rights".¹¹ In this

5. Paragraph 16 of the resolution.

6. Paragraph 18.ii of the resolution.

7. Declaration of the Rome Ministerial Conference on Human Rights: "The European Convention on Human Rights at 50: what future for the protection of human rights in Europe?"

8. "Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights", Strasbourg, Council of Europe, 27 September 2001, published in the *Human Rights Law Journal* (HRLJ), 22, 2001, pp. 308 ff.

9. The Report of the Reflection Group on the Reinforcement of the Human Rights Protection Mechanism is contained in Appendix III to the Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights (*op. cit.*).

10. *Three years' work for the future. Final report of the Working Party on Working Methods of the European Court of Human Rights*, Strasbourg, Council of Europe, 2002.

text it welcomed the Evaluation group's report and, with a view to giving it effect, instructed the CDDH to:

- carry out a feasibility study on the most appropriate way to conduct the preliminary examination of applications, particularly by reinforcing the filtering of applications;
 - examine and, if appropriate, submit proposals for amendments to the Convention, notably on the basis of the recommendations in the report of the Evaluation group.
26. In the light of the work done, particularly by its Reflection Group on the Reinforcement of the Human Rights Protection Mechanism (CDDH-GDR) and its Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR), the CDDH reported on progress in these two areas in an interim report, adopted in October 2002 (document CM (2002) 146). It focused on three main issues: preventing violations at national level and improving domestic remedies, optimising the effectiveness of filtering and subsequent processing of applications, and improving and accelerating the execution of the Court's judgments.
27. In the light of this interim report, and following the declaration, "The Court of Human Rights for Europe", which it adopted at its 111th session (6-7 November 2002),¹² the Committee of Ministers decided that it wished to examine a set of concrete and coherent proposals at its ministerial session in May 2003. In April 2003, the CDDH accordingly submitted a final report, detailing its proposals in these three areas (document CM (2003) 55). These served as a basis for preparation of the Committee of Ministers' recommendations to the member States and for the amendments made to the Convention.
28. In its declaration, "Guaranteeing the long-term effectiveness of the European Court of Human Rights", adopted at its 112th session (14-15 May 2003), the Committee of Ministers welcomed this report and endorsed the CDDH's approach. It instructed the Ministers' Deputies to implement the CDDH's proposals, so that it could examine texts for adoption at its 114th session in 2004, taking account of certain issues referred to in the declaration. It also asked them to take account of other questions raised in the report, such as the possible accession of the European Union to the Convention, the term of office of judges of the Court, and the need to ensure that future amendments to the Convention were given effect as rapidly as possible.

11. Declaration published in French in the *Revue universelle des droits de l'homme* (RUDH) 2002, p. 331.

12. Declaration published in French in the *Revue universelle des droits de l'homme* (RUDH) 2002, p. 331.

29. The CDDH was accordingly instructed to prepare, with a view to their adoption by the Committee of Ministers, not only a draft amending protocol to the Convention with an explanatory report, but also a draft declaration, three draft recommendations and a draft resolution. Work on the elaboration of Protocol No. 14 and its explanatory report was carried out within the CDDH-GDR (renamed Drafting Group on the Reinforcement of the Human Rights Protection Mechanism), while work concerning the other texts was undertaken by the DH-PR.
30. The Committee of Ministers also encouraged the CDDH to consult civil society, the Court and the Parliamentary Assembly. With this in view, the CDDH carefully examined the opinions and proposals submitted by the Parliamentary Assembly's Committee on Legal Affairs and Human Rights, the Court, the Council of Europe Commissioner for Human Rights and certain member States, as well as non-governmental organisations (NGOs) and national institutions for the promotion and protection of human rights. The CDDH-GDR and CDDH have benefited greatly from the contributions of representatives of the Parliamentary Assembly, the Court's registry and the Commissioner's office, who played an active part in its work. The reports and draft texts adopted by the CDDH and the CDDH-GDR were public documents available on the Internet, and copies were sent directly to the Court, Parliamentary Assembly, Commissioner for Human Rights and NGOs. The CDDH-GDR also organised two valuable consultations with NGOs and the CDDH benefited from the contribution of the NGOs accredited to it. The Ministers' Deputies were closely involved throughout the process. Protocol No. 14 is thus the fruit of a collective reflection, carried out in a very transparent manner.
31. After an interim activity report in November 2003 (document CM (2003) 165, Addendum I), the CDDH sent the Committee of Ministers its final activity report (document CM (2004) 65) in April 2004. This contained the draft amending protocol to the Convention. The Parliamentary Assembly adopted an opinion on the draft protocol (Opinion No. 251 (2004) of 28 April 2004).
32. As well as adopting the amending protocol at the 114th ministerial session, held on 12 and 13 May 2004, the Committee of Ministers adopted the declaration "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels" [see p. 5]. In that declaration the member States recognised the urgency of the reform, and committed themselves to ratifying Protocol No. 14 within two years.
33. The text of the amending protocol was opened for signature by Council of Europe member States, signatory to the European Convention on Human Rights on 13 May 2004.

III. Overview of the changes made by Protocol No. 14 to the control system of the European Convention on Human Rights

34. During the initial reflection stage on the reform of the Convention's control system, which started immediately after the European Ministerial Conference on Human Rights in 2000, a wide range of possible changes to the system were examined, both in the Evaluation group and the CDDH's Reflection group. Several proposals were retained and are taken up in this protocol. Others, including some proposals for radical change of the control system, were for various reasons rejected during the reflection stage.¹³ Some of these should be mentioned here. For example, the idea of setting up, within the framework of the Convention, "regional courts of first instance" was rejected because, on the one hand, of the risk it would create of diverging case-law and, on the other hand, the high cost of setting them up. Proposals to empower the Court to give preliminary rulings at the request of national courts or to expand the Court's competence to give advisory opinions (Articles 47-49 of the Convention) were likewise rejected. Such innovations might interfere with the contentious jurisdiction of the Court and they would, certainly in the short term, result in additional, not less, work for the Court. Two other proposals were rejected because they would have restricted the right of individual application. These were the proposal that the Court should be given discretion to decide whether or not to take up a case for examination (system comparable to the certiorari procedure of the United States Supreme Court) and that it should be made compulsory for applicants to be represented by a lawyer or other legal expert from the moment of introduction of the application (see however Rule 36, paragraph 2, of the Rules of Court). It was felt that the principle according to which anyone had the right to apply to the Court should be firmly upheld. The proposal to create a separate filtering body, composed of persons other than the judges of the Court, was also rejected. In this connection, the protocol is based on two fundamental premises: filtering work must be carried out within the judicial framework of the Court and there should not be different categories of judges within the same body. Finally, in the light of Opinion No. 251 (2004) of the Parliamentary Assembly, it was decided not to make provision for permitting an increase of the number of judges without any new amendment to the Convention.

13. See, for a fuller overview, the activity report of the CDDH's Reflection group (document CDDH-GDR (2001) 10, especially its Appendices I and II), the report of the Evaluation group (see footnote 8 above) as well as the CDDH's interim report of October 2002 (document CM (2002) 146), which contains a discussion of various suggestions made at the Seminar on Partners for the Protection of Human Rights: Reinforcing Interaction between the European Court of Human Rights and National Courts (Strasbourg, 9-10 September 2002).

35. Unlike Protocol No. 11, Protocol No. 14 makes no radical changes to the control system established by the Convention. The changes it does make relate more to the functioning than to the structure of the system. Their main purpose is to improve it, giving the Court the procedural means and flexibility it needs to process all applications in a timely fashion, while allowing it to concentrate on the most important cases which require in-depth examination.
36. To achieve this, amendments are introduced in three main areas:
 - reinforcement of the Court’s filtering capacity in respect of the mass of unmeritorious applications;
 - a new admissibility criterion concerning cases in which the applicant has not suffered a significant disadvantage; the new criterion contains two safeguard clauses;
 - measures for dealing with repetitive cases.
37. Together, these elements of the reform seek to reduce the time spent by the Court on clearly inadmissible applications and repetitive applications so as to enable the Court to concentrate on those cases that raise important human rights issues.
38. The filtering capacity is increased by making a single judge competent to declare inadmissible or strike out an individual application. This new mechanism retains the judicial character of the decision-making on admissibility. The single judges will be assisted by non-judicial rapporteurs, who will be part of the registry.
39. A new admissibility requirement is inserted in Article 35 of the Convention. The new requirement provides the Court with an additional tool which should assist it in concentrating on cases which warrant an examination on the merits, by empowering it to declare inadmissible applications where the applicant has not suffered a significant disadvantage and which, in terms of respect for human rights, do not otherwise require an examination on the merits by the Court. Furthermore, the new requirement contains an explicit condition to ensure that it does not lead to rejection of cases which have not been duly considered by a domestic tribunal. It should be stressed that the new requirement does not restrict the right of individuals to apply to the Court or alter the principle that all individual applications are examined on their admissibility. While the Court alone is competent to interpret the new admissibility requirement and decide on its application, its terms should ensure that rejection of cases requiring an examination on the merits is avoided. The latter will notably include cases which, notwithstanding their trivial nature, raise serious questions affecting the application or the interpretation of the Convention or important questions concerning national law.

40. The competence of the committees of three judges is extended to cover repetitive cases. They are empowered to rule, in a simplified procedure, not only on the admissibility but also on the merits of an application, if the underlying question in the case is already the subject of well-established case-law of the Court.
41. As for the other changes made by the protocol, it should be noted, first of all, that the Court is given more latitude to rule simultaneously on the admissibility and merits of individual applications. In fact, joint decisions on admissibility and merits of individual cases are not only encouraged but become the norm. However, the Court will be free to choose, on a case by case basis, to take separate decisions on admissibility.
42. Furthermore, the Committee of Ministers may decide, by a two-thirds majority of the representatives entitled to sit on the Committee, to bring proceedings before the Grand Chamber of the Court against any High Contracting Party which refuses to comply with the Court's final judgment in a case to which it is party, after having given it notice to do so. The purpose of such proceedings would be to obtain a ruling from the Court as to whether that Party has failed to fulfil its obligation under Article 46, paragraph 1, of the Convention.
43. The Committee of Ministers will in certain circumstances also be able to request the Court to give an interpretation of a judgment.
44. Friendly settlements are encouraged at any stage of the proceedings. Provision is made for supervision by the Committee of Ministers of the execution of decisions of the Court endorsing the terms of friendly settlements.
45. It should also be noted that judges are now elected for a single nine-year term. Transitional provisions are included to avoid the simultaneous departure of large numbers of judges.
46. Finally, an amendment has been introduced with a view to possible accession of the European Union to the Convention.
47. For all these, as well as the further amendments introduced by the protocol, reference is made to the explanations in Chapter IV below.

IV. Comments on the provisions of the Protocol¹⁴

Article 1 of the amending protocol

ARTICLE 22 – ELECTION OF JUDGES

48. The second paragraph of Article 22 has been deleted since it no longer served any useful purpose in view of the changes made to Article 23. Indeed, there will be no more “casual vacancies” in the sense that every judge elected to the Court will be elected for a single term of nine years, including where that judge’s predecessor has not completed a full term (see also paragraph 51 below). In other words, the rule contained in the amended Article 22 (which is identical to paragraph 1 of former Article 22) will apply to every situation where there is a need to proceed to the election of a judge.
49. It was decided not to amend the first paragraph of Article 22 to prescribe that the lists of three candidates nominated by the High Contracting Parties should contain candidates of both sexes, since that might have interfered with the primary consideration to be given to the merits of potential candidates. However, Parties should do everything possible to ensure that their lists contain both male and female candidates.

Article 2 of the amending protocol

ARTICLE 23 – TERMS OF OFFICE AND DISMISSAL

50. The judges’ terms of office have been changed and increased to nine years. Judges may not, however, be re-elected. These changes are intended to reinforce their independence and impartiality, as desired notably by the Parliamentary Assembly in its Recommendation 1649 (2004).
51. In order to ensure that the introduction of a non-renewable term of office does not threaten the continuity of the Court, the system whereby large groups of judges were renewed at three-year intervals has been abolished. This has been brought about by the new wording of paragraph 1 and the deletion of paragraphs 2 to 4 of former Article 23. In addition, paragraph 5 of former Article 23 has been deleted so that it will no longer be possible, in the event of a casual vacancy, for a judge to be elected to hold office for the remainder of his or her predecessor’s term. In the past this has led to undesirable situations where judges were elected for very short terms of office, a situation perhaps understandable in a system of renewable terms of office, but which is unacceptable

14. Unless otherwise specified, the references to articles are to the Convention as amended by the Protocol.

in the new system. Under the new Article 23, all judges will be elected for a non-renewable term of nine years. This should make it possible, over time, to obtain a regular renewal of the Court's composition, and may be expected to lead to a situation in which each judge will have a different starting date for his or her term of office.

52. Paragraphs 6 and 7 of the former Article 23 remain, and become paragraphs 2 and 3 of the new Article 23.
53. In respect of paragraph 2 (the age limit of 70 years), it was decided not to fix an additional age limit for candidates. Paragraphs 1 and 2, read together, may not be understood as excluding candidates who, on the date of election, would be older than 61. That would be tantamount to unnecessarily depriving the Court of the possibility of benefiting from experienced persons, if elected. At the same time, it is generally recommended that High Contracting Parties avoid proposing candidates who, in view of their age, would not be able to hold office for at least half the nine-year term before reaching the age of 70.
54. In cases where the departure of a judge can be foreseen, in particular for reasons of age, it is understood that the High Contracting Party concerned should ensure that the list of three candidates (see Article 22) is submitted in good time so as to avoid the need for application of paragraph 3 of the new Article 23. As a rule, the list should be submitted at least six months before the expiry of the term of office. This practice should make it possible to meet the concerns expressed by the Parliamentary Assembly in its Recommendation 1649 (2004), paragraph 14.
55. Transitional provisions are set out in Article 21 of the protocol.
56. For technical reasons (to avoid renumbering a large number of Convention provisions as a result of the insertion of a new Article 27), the text of former Article 24 (Dismissal) has been inserted in Article 23 as a new fourth paragraph. The title of Article 23 has been amended accordingly.

Article 3 of the amending protocol

57. For the reason set out in the preceding paragraph, former Article 24 has been deleted; the provision it contained has been inserted in a new paragraph 4 of Article 23.

Article 4 of the amending protocol

ARTICLE 24 – REGISTRY AND RAPPORTEURS

58. Former Article 25 has been renumbered as Article 24; it is amended in two respects. First of all, the second sentence of former Article 25 has been deleted since the legal secretaries, created by Protocol No. 11, have in practice never had

an existence of their own, independent from the registry, as is the case at the Court of Justice of the European Communities. Secondly, a new paragraph 2 is added so as to introduce the function of rapporteur as a means of assisting the new single-judge formation provided for in the new Article 27. While it is not strictly necessary from a legal point of view to mention rapporteurs in the Convention text, it was none the less considered important to do so because of the novelty of rapporteur work being carried out by persons other than judges and because it will be indispensable to create these rapporteur functions in order to achieve the significant potential increase in filtering capacity which the institution of single-judge formations aims at. The members of the registry exercising rapporteur functions will assist the new single-judge formations. In principle, the single judge should be assisted by a rapporteur with knowledge of the language and the legal system of the respondent Party. The function of rapporteur will never be carried out by a judge in this context.

59. It will be for the Court to implement the new paragraph 2 by deciding, in particular, the number of rapporteurs needed and the manner and duration of appointment. On this point, it should be stressed that it would be advisable to diversify the recruitment channels for registry lawyers and rapporteurs. Without prejudice to the possibility to entrust existing registry lawyers with the rapporteur function, it would be desirable to reinforce the registry, for fixed periods, with lawyers having an appropriate practical experience in the functioning of their respective domestic legal systems. Since rapporteurs will form part of the Court's registry, the usual appointment procedures and relevant staff regulations will apply. This would make it possible to increase the work capacity of the registry while allowing it to benefit from the domestic experience of these lawyers. Moreover, it is understood that the new function of rapporteur should be conferred on persons with a solid legal experience, expertise in the Convention and its case-law and a very good knowledge of at least one of the two official languages of the Council of Europe and who, like the other staff of the registry, meet the requirements of independence and impartiality.

Article 5 of the amending protocol

ARTICLE 25 – PLENARY COURT

60. A new paragraph f has been added to this article (formerly Article 26) in order to reflect the new function attributed to the plenary Court by this protocol. It is understood that the term “Chambers” appearing in paragraphs *b* and *c* refers to administrative entities of the Court (which in practice are referred to as “Sections” of the Court) as opposed to the judicial formations envisaged by the term “Chambers” in new Article 26, paragraph 1, first sentence. It was not considered necessary to amend the Convention in order to clarify this distinction.

Article 6 of the amending protocol

ARTICLE 26 – SINGLE-JUDGE FORMATION, COMMITTEES, CHAMBERS AND GRAND CHAMBER

61. The text of Article 26 (formerly Article 27) has been amended in several respects. Firstly, a single-judge formation is introduced in paragraph 1 in the list of judicial formations of the Court and a new rule is inserted in a new paragraph 3 to the effect that a judge shall not sit as a single judge in cases concerning the High Contracting Party in respect of which he or she has been elected. The competence of single judges is defined in the new Article 27. In the latter respect, reference is made to the explanations in paragraph 67 below.
62. Adequate assistance to single judges requires additional resources. The establishment of this system will thus lead to a significant increase in the Court's filtering capacity, on the one hand, on account of the reduction, compared to the old committee practice, of the number of actors involved in the preparation and adoption of decisions (one judge instead of three; the new rapporteurs who could combine the functions of case-lawyer and rapporteur), and, on the other hand, because judges will be relieved of their rapporteur role when sitting in a single-judge formation and, finally, as a result of the multiplication of filtering formations operating simultaneously.
63. Secondly, some flexibility as regards the size of the Court's Chambers has been introduced by a new paragraph 2. Application of this paragraph will reduce, for a fixed period, the size of Chambers generally; it should not allow, however, for the setting up of a system of Chambers of different sizes which would operate simultaneously for different types of cases.
64. Finally, paragraph 2 of former Article 27 has been amended to make provision for a new system of appointment of *ad hoc* judges. Under the new rule, contained in paragraph 4 of the new Article 26, each High Contracting Party is required to draw up a reserve list of *ad hoc* judges from which the President of the Court shall choose someone when the need arises to appoint an *ad hoc* judge. This new system is a response to criticism of the old system, which allowed a High Contracting Party to choose an *ad hoc* judge after the beginning of proceedings. Concerns about this had also been expressed by the Parliamentary Assembly. It is understood that the list of potential *ad hoc* judges may include names of judges elected in respect of other High Contracting Parties. More detailed rules on the implementation of this new system may be included in the Rules of Court.
65. The text of paragraph 5 is virtually identical to that of paragraph 3 of former Article 27.

Article 7 of the amending protocol

ARTICLE 27 – COMPETENCE OF SINGLE JUDGES

66. Article 27 contains new provisions defining the competence of the new single-judge formation.
67. The new article sets out the competence of the single-judge formations created by the amended Article 26, paragraph 1. It is specified that the competence of the single judge is limited to taking decisions of inadmissibility or decisions to strike the case out of the list “where such a decision can be taken without further examination”. This means that the judge will take such decisions only in clear-cut cases, where the inadmissibility of the application is manifest from the outset. The latter point is particularly important with regard to the new admissibility criterion introduced in Article 35 (see paragraphs 77 to 85 below), in respect of which the Court’s Chambers and Grand Chamber will have to develop case-law first (see, in this connection, the transitional rule contained in Article 20, paragraph 2, second sentence, of this protocol, according to which the application of the new admissibility criterion is reserved to Chambers and the Grand Chamber in the two years following the entry into force of this protocol). Besides, it is recalled that, as was explained in paragraph 58 above, single-judge formations will be assisted by rapporteurs. The decision itself remains the sole responsibility of the judge. In case of doubt as to the admissibility, the judge will refer the application to a committee or a Chamber.

Article 8 of the amending protocol

ARTICLE 28 – COMPETENCE OF COMMITTEES

68. Paragraphs 1 and 2 of the amended Article 28 extend the powers of three-judge committees. Hitherto, these committees could, unanimously, declare applications inadmissible. Under the new paragraph 1.b of Article 28, they may now also, in a joint decision, declare individual applications admissible and decide on their merits, when the questions they raise concerning the interpretation or application of the Convention are covered by well-established case-law of the Court. “Well-established case-law” normally means case-law which has been consistently applied by a Chamber. Exceptionally, however, it is conceivable that a single judgment on a question of principle may constitute “well-established case-law”, particularly when the Grand Chamber has rendered it. This applies, in particular, to repetitive cases, which account for a significant proportion of the Court’s judgments (in 2003, approximately 60%). Parties may, of course, contest the “well-established” character of case-law before the committee.

69. The new procedure is both simplified and accelerated, although it preserves the adversarial character of proceedings and the principle of judicial and collegiate decision-making on the merits. Compared to the ordinary adversarial proceedings before a Chamber, it will be a simplified and accelerated procedure in that the Court will simply bring the case (possibly a group of similar cases) to the respondent Party's attention, pointing out that it concerns an issue which is already the subject of well-established case-law. Should the respondent Party agree with the Court's position, the latter will be able to give its judgment very rapidly. The respondent Party may contest the application of Article 28, paragraph 1.*b*, for example, if it considers that domestic remedies have not been exhausted or that the case at issue differs from the applications which have resulted in the well-established case-law. However, it may never veto the use of this procedure which lies within the committee's sole competence. The committee rules on all aspects of the case (admissibility, merits, just satisfaction) in a single judgment or decision. This procedure requires unanimity on each aspect. Failure to reach a unanimous decision counts as no decision, in which event the Chamber procedure applies (Article 29). It will then fall to the Chamber to decide whether all aspects of the case should be covered in a single judgment. Even when the committee initially intends to apply the procedure provided for in Article 28, paragraph 1.*b*, it may declare an application inadmissible under Article 28, paragraph 1.*a*. This may happen, for example, if the respondent Party has persuaded the committee that domestic remedies have not been exhausted.
70. The implementation of the new procedure will increase substantially the Court's decision-making capacity and effectiveness, since many cases can be decided by three judges, instead of the seven currently required when judgments or decisions are given by a Chamber.
71. Even when a three-judge committee gives a judgment on the merits, the judge elected in respect of the High Contracting Party concerned will not be an *ex officio* member of the decision-making body, in contrast with the situation with regard to judgments on the merits under the Convention as it stands. The presence of this judge would not appear necessary, since committees will deal with cases on which well-established case-law exists. However, a committee may invite the judge elected in respect of the High Contracting Party concerned to replace one of its members as, in some cases, the presence of this judge may prove useful. For example, it may be felt that this judge, who is familiar with the legal system of the respondent Party, should join in taking the decision, particularly when such questions as exhaustion of domestic remedies need to be clarified. One of the factors which a committee may consider, in deciding whether to invite the judge elected in respect of the respondent Party to join it, is whether that Party has contested the applicability of paragraph 1.*b*. The

reason why this factor has been explicitly mentioned in paragraph 3 is that it was considered important to have at least some reference in the Convention itself to the possibility for respondent Parties to contest the application of the simplified procedure (see paragraph 69 above). For example, a respondent Party may contest the new procedure on the basis that the case in question differs in some material respect from the established case-law cited. It is likely that the expertise of the “national judge” in domestic law and practice will be relevant to this issue and therefore helpful to the committee. Should this judge be absent or unable to sit, the procedure provided for in the new Article 26, paragraph 4 *in fine* applies.

72. It is for the Court, in its rules, to settle practical questions relating to the composition of three-judge committees and, more generally, to plan its working methods in a way that optimises the new procedure’s effectiveness.

Article 9 of the amending protocol

ARTICLE 29 – DECISIONS BY CHAMBERS ON ADMISSIBILITY AND MERITS

73. Apart from a technical change to take into account the new provisions in Articles 27 and 28, paragraph 1 of the amended Article 29 encourages and establishes the principle of the taking of joint decisions by Chambers on the admissibility and merits of individual applications. This article merely endorses the practice which has already developed within the Court. While separate decisions on admissibility were previously the norm, joint decisions are now commonly taken on the admissibility and merits of individual applications, which allows the registry and judges to process cases faster whilst respecting fully the principle of adversarial proceedings. However, the Court may always decide that it prefers to take a separate decision on the admissibility of a particular application.
74. This change does not apply to interstate cases. On the contrary, the rule of former Article 29, paragraph 3, has been explicitly maintained in paragraph 2 of Article 29 as regards such applications. Paragraph 3 of former Article 29 has been deleted.

Article 10 of the amending protocol

ARTICLE 31 – POWERS OF THE GRAND CHAMBER

75. A new paragraph *b* has been added to this article in order to reflect the new function attributed to the Grand Chamber by this protocol, namely to decide on issues referred to the Court by the Committee of Ministers under the new

Article 46, paragraph 4 (question whether a High Contracting Party has failed to fulfil its obligation to comply with a judgment).

Article 11 of the amending protocol

ARTICLE 32 – JURISDICTION OF THE COURT

76. A reference has been inserted to the new procedures provided for in the amended Article 46.

Article 12 of the amending protocol

ARTICLE 35 – ADMISSIBILITY CRITERIA

77. A new admissibility criterion is added to the criteria laid down in Article 35. As explained in paragraph 39 above, the purpose of this amendment is to provide the Court with an additional tool which should assist it in its filtering work and allow it to devote more time to cases which warrant examination on the merits, whether seen from the perspective of the legal interest of the individual applicant or considered from the broader perspective of the law of the Convention and the European public order to which it contributes. The new criterion therefore pursues the same aim as some other key changes introduced by this protocol and is complementary to them.
78. The introduction of this criterion was considered necessary in view of the ever-increasing caseload of the Court. In particular, it is necessary to give the Court some degree of flexibility in addition to that already provided by the existing admissibility criteria, whose interpretation has become established in the case-law that has developed over several decades and is therefore difficult to change. This is so because it is very likely that the numbers of individual applications to the Court will continue to increase, up to a point where the other measures set out in this protocol may well prove insufficient to prevent the Convention system from becoming totally paralysed, unable to fulfil its central mission of providing legal protection of human rights at the European level, rendering the right of individual application illusory in practice.
79. The new criterion may lead to certain cases being declared inadmissible which might have resulted in a judgment without it. Its main effect, however, is likely to be that it will in the longer term enable more rapid disposal of unmeritorious cases. Once the Court's Chambers have developed clear-cut jurisprudential criteria of an objective character capable of straightforward application, the new criterion will be easier for the Court to apply than some other admissibility criteria, including in cases which would at all events have to be declared inadmissible on another ground.

80. The main element contained in the new criterion is the question whether the applicant has suffered a significant disadvantage. These terms are open to interpretation (this is the additional element of flexibility introduced); the same is true of many other terms used in the Convention, including some other admissibility criteria. Like those other terms, they are legal terms capable of, and requiring, interpretation establishing objective criteria through the gradual development of the case-law of the Court.
81. The second element is a safeguard clause to the effect that, even where the applicant has not suffered a significant disadvantage, the application will not be declared inadmissible if respect for human rights as defined in the Convention or the protocols thereto requires an examination on the merits. The wording of this element is drawn from the second sentence of Article 37, paragraph 1, of the Convention where it fulfils a similar function in the context of decisions to strike applications out of the Court's list of cases.
82. A second safeguard clause is added to this first one. It will never be possible for the Court to reject an application on account of its trivial nature if the case has not been duly considered by a domestic tribunal. This clause, which reflects the principle of subsidiarity, ensures that, for the purposes of the application of the new admissibility criterion, every case will receive a judicial examination whether at the national level or at the European level.
83. The wording of the new criterion is thus designed to avoid rejection of cases warranting an examination on the merits. As was explained in paragraph 39 above, the latter will notably include cases which, notwithstanding their trivial nature, raise serious questions affecting the application or interpretation of the Convention or important questions concerning national law.
84. As explained in paragraph 67 above, it will take time for the Court's Chambers or Grand Chamber to establish clear case-law principles for the operation of the new criterion in concrete contexts. It is clear, having regard to the wording of Articles 27 and 28, that single-judge formations and committees will not be able to apply the new criterion in the absence of such guidance. In accordance with Article 20, paragraph 2, second sentence, of this protocol, single-judge formations and committees will be prevented from applying the new criterion during a period of two years following the entry into force of this protocol.
85. In accordance with the transitional rule set out in Article 20, paragraph 2, first sentence, of this protocol (see also paragraph 105 below), the new admissibility criterion may not be applied to applications declared admissible before the entry into force of this protocol.

Article 13 of the amending protocol

ARTICLE 36 – THIRD PARTY INTERVENTION

86. This provision originates in an express request from the Council of Europe Commissioner for Human Rights,¹⁵ supported by the Parliamentary Assembly in its Recommendation 1640 (2004) on the 3rd Annual Report on the Activities of the Council of Europe Commissioner for Human Rights (1 January-31 December 2002), adopted on 26 January 2004.
87. It is already possible for the President of the Court, on his or her own initiative or upon request, to invite the Commissioner for Human Rights to intervene in pending cases. With a view to protecting the general interest more effectively, the third paragraph added to Article 36 for the first time mentions the Commissioner for Human Rights in the Convention text by formally providing that the Commissioner has the right to intervene as third party. The Commissioner's experience may help enlighten the Court on certain questions, particularly in cases which highlight structural or systemic weaknesses in the respondent or other High Contracting Parties.
88. Under the Rules of Court, the Court is required to communicate decisions declaring applications admissible to any High Contracting Party of which an applicant is a national. This rule cannot be applied to the Commissioner, since sending him or her all such decisions would entail an excessive amount of extra work for the registry. The Commissioner must therefore seek this information him- or herself. The rules on exercising this right of intervention, and particularly time limits, would not necessarily be the same for High Contracting Parties and the Commissioner. The Rules of Court will regulate practical details concerning the application of paragraph 3 of Article 36.
89. It was not considered necessary to amend Article 36 in other respects. In particular, it was decided not to provide for a possibility of third party intervention in the new committee procedure under the new Article 28, paragraph 1.b, given the straightforward nature of cases to be decided under that procedure.

Article 14 of the amending protocol

ARTICLE 38 – EXAMINATION OF THE CASE

90. Article 38 incorporates the provisions of paragraph 1.a of former Article 38. The changes are intended to allow the Court to examine cases together with the Parties' representatives, and to undertake an investigation, not only when the de-

15. The Council of Europe Commissioner for Human Rights was established by Resolution (99) 50, adopted by the Committee of Ministers on 7 May 1999.

cision on admissibility has been taken, but at any stage in the proceedings. They are a logical consequence of the changes made in Articles 28 and 29, which encourage the taking of joint decisions on the admissibility and merits of individual applications. Since this provision applies even before the decision on admissibility has been taken, High Contracting Parties are required to provide the Court with all necessary facilities prior to that decision. The Parties' obligations in this area are thus reinforced. It was not considered necessary to amend Article 38 (or Article 34, last sentence) in other respects, notably as regards possible non-compliance with these provisions. These provisions already provide strong legal obligations for the High Contracting Parties and, in line with current practice, any problems which the Court might encounter in securing compliance can be brought to the attention of the Committee of Ministers so that the latter take any steps it deems necessary.

Article 15 of the amending protocol

ARTICLE 39 – FRIENDLY SETTLEMENTS

91. The provisions of Article 39 are partly taken from former Article 38, paragraphs 1.b and 2, and also from former Article 39. To make the Convention easier to read with regard to the friendly settlement procedure, it was decided to address it in a specific article.
92. As a result of the implementation of the new Articles 28 and 29, there should be fewer separate decisions on admissibility. Since under the former Article 38, paragraph 1.b, it was only after an application had been declared admissible that the Court placed itself at the disposal of the parties with a view to securing a friendly settlement, this procedure had to be modified and made more flexible. The Court is now free to place itself at the parties' disposal for this purpose at any stage in the proceedings.
93. Friendly settlements are therefore encouraged, and may prove particularly useful in repetitive cases, and other cases where questions of principle or changes in domestic law are not involved.¹⁶ It goes without saying that these friendly settlements must be based on respect for human rights, pursuant to Article 39, paragraph 1, as amended.
94. The new Article 39 provides for supervision of the execution of friendly settlements by the Committee of Ministers. This new provision was inserted to reflect a practice which the Court had already developed. In the light of the text of former Article 46, paragraph 2, the Court used to endorse friendly settle-

16. See, in this connection, Resolution Res (2002) 59 concerning the practice in respect of friendly settlements (adopted by the Committee of Ministers on 18 December 2002 at the Deputies' 822nd meeting) [p. 79 in this collection].

ments through judgments and not – as provided for in former Article 39 of the Convention – through decisions, whose execution was not subject to supervision by the Committee of Ministers. The practice of the Court was thus in response to the fact that only the execution of judgments was supervised by the Committee of Ministers (former Article 39). It was recognised, however, that adopting a judgment, instead of a decision, might have negative connotations for respondent Parties, and make it harder to secure a friendly settlement. The new procedure should make this easier and thus reduce the Court's workload. For this reason, the new Article 39 gives the Committee of Ministers authority to supervise the execution of decisions endorsing the terms of friendly settlements. This amendment is in no way intended to reduce the Committee's present supervisory powers, particularly concerning the strike-out decisions covered by Article 37. It would be advisable for the Committee of Ministers to distinguish more clearly, in its practice, between its supervision function by virtue of the new Article 39, paragraph 4 (friendly settlements), on the one hand and that under Article 46, paragraph 2 (execution of judgments), on the other.

Article 16 of the amending protocol

ARTICLE 46 – BINDING FORCE AND EXECUTION OF JUDGMENTS

95. The first two paragraphs of Article 46 repeat the two paragraphs of the former Article 46. Paragraphs 3, 4 and 5 are new.
96. The new Article 46, in its paragraph 3, empowers the Committee of Ministers to ask the Court to interpret a final judgment, for the purpose of facilitating the supervision of its execution. The Committee of Ministers' experience of supervising the execution of judgments shows that difficulties are sometimes encountered due to disagreement as to the interpretation of judgments. The Court's reply settles any argument concerning a judgment's exact meaning. The qualified majority vote required by the last sentence of paragraph 3 shows that the Committee of Ministers should use this possibility sparingly, to avoid overburdening the Court.
97. The aim of the new paragraph 3 is to enable the Court to give an interpretation of a judgment, not to pronounce on the measures taken by a High Contracting Party to comply with that judgment. No time-limit has been set for making requests for interpretation, since a question of interpretation may arise at any time during the Committee of Ministers' examination of the execution of a judgment. The Court is free to decide on the manner and form in which it wishes to reply to the request. Normally, it would be for the formation of the Court which delivered the original judgment to rule on the question of inter-

pretation. More detailed rules governing this new procedure may be included in the Rules of Court.

98. Rapid and full execution of the Court's judgments is vital. It is even more important in cases concerning structural problems, so as to ensure that the Court is not swamped with repetitive applications. For this reason, ever since the Rome ministerial conference of 3 and 4 November 2000 (Resolution I),¹⁷ it has been considered essential to strengthen the means given in this context to the Committee of Ministers. The Parties to the Convention have a collective duty to preserve the Court's authority – and thus the Convention system's credibility and effectiveness – whenever the Committee of Ministers considers that one of the High Contracting Parties refuses, expressly or through its conduct, to comply with the Court's final judgment in a case to which it is party.
99. Paragraphs 4 and 5 of Article 46 accordingly empower the Committee of Ministers to bring infringement proceedings in the Court (which shall sit as a Grand Chamber – see new Article 31, paragraph b), having first served the State concerned with notice to comply. The Committee of Ministers' decision to do so requires a qualified majority of two thirds of the representatives entitled to sit on the Committee. This infringement procedure does not aim to reopen the question of violation, already decided in the Court's first judgment. Nor does it provide for payment of a financial penalty by a High Contracting Party found in violation of Article 46, paragraph 1. It is felt that the political pressure exerted by proceedings for non-compliance in the Grand Chamber and by the latter's judgment should suffice to secure execution of the Court's initial judgment by the State concerned.
100. The Committee of Ministers should bring infringement proceedings only in exceptional circumstances. None the less, it appeared necessary to give the Committee of Ministers, as the competent organ for supervising execution of the Court's judgments, a wider range of means of pressure to secure execution of judgments. Currently the ultimate measure available to the Committee of Ministers is recourse to Article 8 of the Council of Europe's Statute (suspension of voting rights in the Committee of Ministers, or even expulsion from the Organisation). This is an extreme measure, which would prove counter-productive in most cases; indeed the High Contracting Party which finds itself in the situation foreseen in paragraph 4 of Article 46 continues to need, far more than others, the discipline of the Council of Europe. The new Article 46 therefore adds further possibilities of bringing pressure to bear to the existing ones. The procedure's mere existence, and the threat of using it, should act as an effective new incentive to execute the Court's judgments. It is foreseen that the outcome of infringement proceedings would be expressed in a judgment of the Court.

17. See paragraphs 19 to 22 of the resolution.

Article 17 of the amending protocol

ARTICLE 59 – SIGNATURE AND RATIFICATION

101. Article 59 has been amended in view of possible accession by the European Union to the Convention. A new second paragraph makes provision for this possibility, so as to take into account the developments that have taken place within the European Union, notably in the context of the drafting of a constitutional treaty, with regard to accession to the Convention. It should be emphasised that further modifications to the Convention will be necessary in order to make such accession possible from a legal and technical point of view. The CDDH adopted a report identifying those issues in 2002 (document DG-II (2002) 006). This report was transmitted to the Committee of Ministers, which took note of it. The CDDH accepted that those modifications could be brought about either through an amending protocol to the Convention or by means of an accession treaty to be concluded between the European Union, on the one hand, and the States Parties to the Convention, on the other. While the CDDH had expressed a preference for the latter, it was considered advisable not to refer to a possible accession treaty in the current protocol so as to keep all options open for the future.
102. At the time of drafting of this protocol, it was not yet possible to enter into negotiations – and even less to conclude an agreement – with the European Union on the terms of the latter's possible accession to the Convention, simply because the European Union still lacked the competence to do so. This made it impossible to include in this protocol the other modifications to the Convention necessary to permit such accession. As a consequence, a second ratification procedure will be necessary in respect of those further modifications, whether they be included in a new amending protocol or in an accession treaty.

Final and transitional provisions

Article 18 of the amending protocol

103. This article is one of the usual final clauses included in treaties prepared within the Council of Europe. This protocol does not contain any provisions on reservations. By its very nature, this amending protocol excludes the making of reservations.

Article 19 of the amending protocol

104. This article is one of the usual final clauses included in treaties prepared within the Council of Europe. The period of three months mentioned in it corresponds to the period which was chosen for Protocols Nos. 12 and 13. As the

implementation of the reform is urgent, this period was chosen rather than one year, which had been the case for Protocol No. 11. For Protocol No. 11, the period of one year was necessary in order to allow for the setting up of the new Court, and in particular for the election of the judges.

Article 20 of the amending protocol

105. The first paragraph of this transitional provision confirms that, upon entry into force of this protocol, its provisions can be applied immediately to all pending applications so as not to delay the impact of the system's increased effectiveness which will result from the protocol. In view of Article 35, paragraph 4 in fine of the Convention it was considered necessary to provide, in the second paragraph, first sentence, of Article 20 of the amending protocol, that the new admissibility criterion inserted by Article 13 of this protocol in Article 35, paragraph 3.b, of the Convention shall not apply to applications declared admissible before the entry into force of the protocol. The second sentence of the second paragraph explicitly reserves, for a period of two years following the entry into force of this protocol, the application of the new admissibility criteria to the Chambers and the Grand Chamber of the Court. This rule recognises the need to develop case-law on the interpretation of the new criterion before the latter can be applied by single-judge formations or committees.

Article 21 of the amending protocol

106. This article contains transitional rules to accompany the introduction of the new provision in Article 23, paragraph 1, on the terms of office of judges (paragraphs 2 to 4 of new Article 23 are not affected by these transitional rules). The terms of office of the judges will not expire on the date of entry into force of this protocol but continue to run after that date. In addition, the terms of office shall be extended in accordance with the rule of the first or that of the second sentence of Article 21, depending on whether the judges are serving their first term of office on the date of the entry into force of this protocol or not. These rules aim at avoiding a situation where, at any particular point in time, a large number of judges would be replaced by new judges. The rules seek to mitigate the effects, after entry into force of the protocol, of the existence – for election purposes – under the former system of two main groups of judges whose terms of office expire simultaneously. As a result of these rules, the two main groups of judges will be split up into smaller groups, which in turn will lead to staggered elections of judges. Those groups are expected to disappear gradually, as a result of the amended Article 23 (see the commentary in paragraph 51 above).
107. For the purposes of the first sentence of Article 21, judges completing their predecessor's term in accordance with former Article 23, paragraph 5, shall be deemed to be serving their first term of office. The second sentence applies to

the other judges, provided that their term of office has not expired on the date of entry into force of the protocol.

Article 22 of the amending protocol

108. This article is one of the usual final clauses included in treaties prepared within the Council of Europe.

RECOMMENDATION NO. R (2000) 2
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
**on the re-examination or reopening of certain cases at domestic level
following judgments of the European Court of Human Rights¹**

Adopted by the Committee of Ministers on 19 January 2000
at the 694th meeting of the Ministers' Deputies

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to bring about a closer union between its members;

Having regard to the Convention for the protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention");

Noting that under Article 46 of the Convention on Human Rights and Fundamental Freedoms ("the Convention") the Contracting Parties have accepted the obligation to abide by the final judgment of the European Court of Human Rights ("the Court") in any case to which they are parties and that the Committee of Ministers shall supervise its execution;

Bearing in mind that in certain circumstances the above-mentioned obligation may entail the adoption of measures, other than just satisfaction awarded by the Court in accordance with Article 41 of the Convention and/or general measures, which ensure that the injured party is put, as far as possible, in the same situation as he or she enjoyed prior to the violation of the Convention (*restitutio in integrum*);

Noting that it is for the competent authorities of the respondent State to decide what measures are most appropriate to achieve *restitutio in integrum*, taking into account the means available under the national legal system;

Bearing in mind, however, that the practice of the Committee of Ministers in supervising the execution of the Court's judgments shows that in exceptional circum-

-
1. Considering that the quasi-judicial functions of the Committee of Ministers under the former Article 32 of the Convention will cease in the near future, no mention of the Committee of Ministers' decisions is made. It is understood, however, that should certain cases still be under examination when the recommendation is adopted, the principles of this recommendation will also apply to such cases.

stances the re-examination of a case or a reopening of proceedings has proved the most efficient, if not the only, means of achieving *restitutio in integrum*;

- I. Invites, in the light of these considerations the Contracting Parties to ensure that there exist at national level adequate possibilities to achieve, as far as possible, *restitutio in integrum*;
- II. Encourages the Contracting Parties, in particular, to examine their national legal systems with a view to ensuring that there exist adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention, especially where:
 - (i) the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and
 - (ii) the judgment of the Court leads to the conclusion that
 - a. the impugned domestic decision is on the merits contrary to the Convention, or
 - b. the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of.

RECOMMENDATION REC (2002) 13
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
on the publication and dissemination in the member States of the text
of the European Convention on Human Rights and of the case-law
of the European Court of Human Rights

Adopted by the Committee of Ministers on 18 December 2002
at the 822nd meeting of the Ministers' Deputies

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering the importance of the European Convention on Human Rights (hereafter referred to as "the Convention") as a constitutional instrument for safeguarding public order in Europe, and in particular of the case-law of the European Court of Human Rights (hereafter referred to as "the Court");

Considering that easy access to the Court's case-law is essential for the effective implementation of the Convention at national level, as it enables to ensure the conformity of national decisions with this case-law and to prevent violations;

Considering the respective practices of the Court, of the Committee of Ministers in the framework of its control of the execution of the Court's judgments, and of the member States with respect to publication and dissemination of the Court's case-law;

Considering that member States were encouraged, at the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000), to "ensure that the text of the Convention is translated and widely disseminated to national authorities, notably the courts, and that the developments in the case-law of the Court are sufficiently accessible in the language(s) of the country";

Taking into account the diversity of traditions and practice in the member States as regards the publication and dissemination of judicial decisions;

Recalling Article 12 of the Statute of the Council of Europe, according to which the official languages of the Council of Europe are English and French,

Recommends that the governments of the member States review their practice as regards the publication and dissemination of:

- the text of the Convention in the language(s) of the country,
- the Court's judgments and decisions,

in the light of the following considerations.

It is important that the governments of member States:

- i. ensure that the text of the Convention, in the language(s) of the country, is published and disseminated in such a manner that it can be effectively known and that the national authorities, notably the courts, can apply it;
- ii. ensure that judgments and decisions which constitute relevant case-law developments, or which require special implementation measures on their part as respondent States, are rapidly and widely published, through State or private initiatives, in their entirety or at least in the form of substantial summaries or excerpts (together with appropriate references to the original texts) in the language(s) of the country, in particular in official gazettes, information bulletins from competent ministries, law journals and other media generally used by the legal community, including, where appropriate, the Internet sites;
- iii. encourage where necessary the regular production of textbooks and other publications, in the language(s) of the country, in paper and/or electronic form, facilitating knowledge of the Convention system and the main case-law of the Court;
- iv. publicise the Internet address of the Court's site (<http://www.echr.coe.int/>), notably by ensuring that links to this site exist in the national sites commonly used for legal research;
- v. ensure that the judiciary has copies of relevant case-law in paper and/or electronic form (CD-Rom, DVD, etc.), or the necessary equipment to access case-law through the Internet;
- vi. ensure, where necessary, the rapid dissemination to public bodies such as courts, police authorities, prison administrations or social authorities, as well as, where appropriate, to non-State entities such as bar associations, professional associations etc., of those judgments and decisions which may be of specific relevance for their activities, where appropriate together with an explanatory note or a circular;
- vii. ensure that the domestic authorities or other bodies directly involved in a specific case are rapidly informed of the Court's judgment or decision, for example by receiving copies thereof;
- viii. consider the possibility of co-operating, with a view to publishing compilations, in paper or in electronic form, of Court judgments and decisions that are available in non-official languages of the Council of Europe.

RECOMMENDATION REC (2004) 4

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

on the European Convention on Human Rights in university education and professional training

**Adopted by the Committee of Ministers
on 12 May 2004 at its 114th Session**

The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”) must remain the essential reference point for the protection of human rights in Europe, and recalling its commitment to take measures in order to guarantee the long-term effectiveness of the control system instituted by the Convention;

Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all States Parties;

Stressing the preventive role played by education in the principles inspiring the Convention, the standards that it contains and the case-law deriving from them;

Recalling that, while measures to facilitate a wide publication and dissemination in the member States of the text of the Convention and of the case-law of the European Court of Human Rights (hereinafter referred to as “the Court”) are important in order to ensure the implementation of the Convention at national level, as has been indicated in Recommendation Rec (2002) 13, it is crucial that these measures are supplemented by others in the field of education and training, in order to achieve their aim;

Stressing the particular importance of appropriate university education and professional training programmes in order to ensure that the Convention is effectively applied, in the light of the case-law of the Court, by public bodies including all sectors responsible for law enforcement and the administration of justice;

Recalling the resolutions and recommendations it has already taken on different aspects of the issue of human rights education, in particular: Resolution (78) 41 on the teaching of human rights; Resolution (78) 40 containing regulations on Council of Europe fellowships for studies and research in the field of human rights; Recommendation No. R (79) 16 concerning the promotion of human rights research in the member States of the Council of Europe; Recommendation No. R (85) 7 on teaching and learning about human rights in schools, as well as its appendix containing suggestions for teaching and learning about human rights in schools;

Recalling the role that may be played by the national institutions for the promotion and protection of human rights and by non-governmental organisations, particularly in the field of training of personnel responsible for law enforcement, and welcoming the initiatives already undertaken in this area;

Taking into account the diversity of traditions and practice in the member States as regards university education, professional training and awareness-raising regarding the Convention system;

Recommends that member States:

- I. ascertain that adequate university education and professional training concerning the Convention and the case-law of the Court exist at national level and that such education and training are included, in particular:
 - as a component of the common core curriculum of law and, as appropriate, political and administrative science degrees and, in addition, that they are offered as optional disciplines to those who wish to specialise;
 - as a component of the preparation programmes of national or local examinations for access to the various legal professions and of the initial and continuous training provided to judges, prosecutors and lawyers;
 - in the initial and continuous professional training offered to personnel in other sectors responsible for law enforcement and/or to personnel dealing with persons deprived of their liberty (for example, members of the police and the security forces, the personnel of penitentiary institutions and that of hospitals), as well as to personnel of immigration services, in a manner that takes account of their specific needs;
- II. enhance the effectiveness of university education and professional training in this field, in particular by:
 - providing for education and training to be incorporated into stable structures – public and private – and to be given by persons with a good knowledge of the Convention concepts and the case-law of the Court as well as an adequate knowledge of professional training techniques;
 - supporting initiatives aimed at the training of specialised teachers and trainers in this field;

- III. encourage non-State initiatives for the promotion of awareness and knowledge of the Convention system, such as the establishment of special structures for teaching and research in human rights law, moot court competitions, awareness-raising campaigns;

Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of those States parties to the European Cultural Convention which are not members of the Council of Europe.

Appendix to Recommendation Rec (2004) 4

Introduction

1. The Ministerial Conference held in Rome on 3 and 4 November 2000 to commemorate the 50th anniversary of the European Convention on Human Rights (hereinafter referred to as “the Convention”), invited the member States of the Council of Europe to “take all appropriate measures with a view to developing and promoting education and awareness of human rights in all sectors of society, in particular with regard to the legal profession”.¹
2. This effort that national authorities are requested to make is only a consequence of the subsidiary character of the supervision mechanism set up by the Convention, which implies that the rights guaranteed by the Convention be fully protected in the first place at national level and applied by national authorities.² The Committee of Ministers has already adopted resolutions and recommendations dealing with different aspects of this issue³ and encouraging initiatives that may be undertaken notably by independent national human rights institutions and NGOs, with a view to promoting greater understanding and awareness of the Convention and the case-law of the European Court of Human Rights (hereinafter referred to as “the Court”).
3. Guaranteeing the long-term effectiveness of the Convention system is among the current priorities of the Council of Europe and, in this context, the need for a better implementation of the Convention at national level has been found to be vital. Thus, it appears necessary that all member States ensure that adequate

1. European Ministerial Conference on Human Rights, H-Conf (2001) 001, Resolution II, paragraph 40.

2. See Article 1 of the Convention.

3. In particular: Resolution (78) 41 on the teaching of human rights; Resolution (78) 40 containing regulations on Council of Europe fellowships for studies and research in the field of human rights; Recommendation No. R (79) 16 concerning the promotion of human rights research in the member States of the Council of Europe; Recommendation No. R (85) 7 on teaching and learning about human rights in schools, as well as its appendix containing suggestions for teaching and learning about human rights in schools.

education on the Convention is provided, in particular concerning legal and law enforcement professions. This might contribute to reducing, on the one hand, the number of violations of rights guaranteed by the Convention resulting from insufficient knowledge of the Convention and, on the other hand, the lodging of applications which manifestly do not meet admissibility requirements.

4. This recommendation refers to three complementary types of action, namely:
 - i. the incorporation of appropriate education and training on the Convention and the case-law of the Court, notably in the framework of university law and political science studies, as well as professional training of legal and law enforcement professions;
 - ii. guaranteeing the effectiveness of the education and training, which implies in particular a proper training for teachers and trainers; and
 - iii. the encouragement of initiatives for the promotion of knowledge and/or awareness of the Convention system.
5. Bearing in mind the diversity of traditions and practice in the member States in respect of university education, professional training and awareness-raising regarding the Convention, it is the member States' responsibility to shape their own education programmes according to their respective national situations, in accordance with the principle of subsidiarity, while ensuring that the standards of the Convention are fully presented.

University education and professional training

6. Member States are invited to ensure that appropriate education on the Convention and the case-law of the Court is included in the curricula of university law degrees and Bar examinations as well as in the continuous training of judges, prosecutors and lawyers.

University education

7. It is essential that education on the Convention be fully incorporated into faculty of law programmes, not only as an independent subject, but also horizontally in each legal discipline (criminal law, civil law, etc.) so that law students, whatever their specialisation, are aware, when they graduate, of the implications of the Convention in their field.
8. The creation of post-graduate studies specialised in the Convention, such as certain national master's degrees or the European Master in Human Rights and Democratisation (E.MA) which involves twenty-seven universities over fifteen European States, as well as shorter university programmes such as the summer courses of the Institut international des droits de l'homme René Cassin (Stras-

bourg) or those of the European University Institute (Florence), should be encouraged.

Professional training

9. Professional training should facilitate a better incorporation of Convention standards and the Court's case-law in the reasoning adopted by domestic courts in their judgments. Moreover, legal advice which would be given to potential applicants by lawyers having an adequate knowledge of the Convention could prevent applications that manifestly do not meet the admissibility requirements. In addition, a better knowledge of the Convention by legal professionals should contribute to reducing the number of applications reaching the Court.
10. Specific training on the Convention and its standards should be incorporated in the programmes of law schools and schools for judges and prosecutors. This could entail the organisation of workshops as part of the professional training for lawyers, judges and prosecutors. In so far as lawyers are concerned, such workshops could be organised at the initiative of Bar associations, for instance. Reference may be made to a current project within the International Bar Association to set up, with the assistance of the Court, training for lawyers on the rules of procedure of the Court and the practice of litigation, as well as the execution of judgments. In certain countries, the Ministry of Justice has the task of raising awareness and participating in the training of judges on the case-law of the European Court: judges in post may take advantage of sessions of one or two days organised in their jurisdiction and of a traineeship of one week every year; "justice auditors" (student judges) are provided with training organised within the judges' national school (École nationale de magistrature). Workshops are also organised on a regular basis within the framework of the initial and continuous training of judges.
11. Moreover, seminars and colloquies on the Convention could be regularly organised for judges, lawyers and prosecutors.
12. In addition, a journal on the case-law of the Court could be published regularly for judges and lawyers. In some member States, the Ministry of Justice publishes a supplement containing references to the case-law of the Court and issues relating to the Convention. This publication is distributed to all courts.
13. It is recommended that member States ensure that the standards of the Convention be covered by the initial and continuous professional training of other professions dealing with law enforcement and detention, such as security forces, police officers and prison staff but also immigration services, hospitals, etc. Continuous training on the Convention standards is particularly important given the evolving nature of the interpretation and application of these stand-

ards in the Court's case-law. Staff of the authorities dealing with persons deprived of their liberty should be fully aware of these persons' rights as guaranteed by the Convention and as interpreted by the Court in order to prevent any violation, in particular of Articles 3, 5 and 8. It is therefore of paramount importance that in each member State there is adequate training within these professions.

14. A specific training course on the Convention and its standards and, in particular, aspects relating to rights of persons deprived of their liberty should be incorporated in the programmes of police schools, as well as schools for prison warders. Workshops could also be organised as part of continuous training of members of the police forces, warders and other authorities concerned.

Effectiveness of university education and professional training

15. For this purpose, member States are recommended to ensure that university education and professional training in this field are carried out within permanent structures (public and private) by well-qualified teachers and trainers.
16. In this respect, training teachers and trainers is a priority. The aim is to ensure that their level of knowledge corresponds with the evolution of the case-law of the Court and meets the specific needs of each professional sector. Member States are invited to support initiatives (research in fields covered by the Convention, teaching techniques, etc.) aimed at guaranteeing a quality training of specialised teachers and trainers in this sensitive and evolving field.

Promotion of knowledge and/or awareness of the Convention system

17. Member States are finally recommended to encourage initiatives for the promotion of knowledge and/or awareness of the Convention system. Such initiatives, which can take various forms, have proved very positive in the past where they have been launched and should therefore be encouraged by member States.
18. One example could be the setting-up of moot court competitions for law students on the Convention and the Court's case-law, involving at the same time students, university professors and legal professionals (judges, prosecutors, lawyers), for example the Sporrang and Lönnroth competition organised in the Supreme Courts of the Nordic countries, and the pan-European French-speaking René Cassin competition, organised by the association Juris Ludi in the premises of the Council of Europe.

RECOMMENDATION REC (2004) 5
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
on the verification of the compatibility of draft laws, existing laws
and administrative practice with the standards laid down
in the European Convention on Human Rights

Adopted by the Committee of Ministers
on 12 May 2004 at its 114th Session

The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”) must remain the essential reference point for the protection of human rights in Europe, and recalling its commitment to take measures in order to guarantee the long-term effectiveness of the control system instituted by the Convention;

Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all States Parties and noting in this respect the important role played by national courts;

Recalling that, according to Article 46, paragraph 1, of the Convention, the high contracting parties undertake to abide by the final judgments of the European Court of Human Rights (hereinafter referred to as “the Court”) in any case to which they are parties;

Considering however, that further efforts should be made by member States to give full effect to the Convention, in particular through a continuous adaptation of national standards in accordance with those of the Convention, in the light of the case-law of the Court;

Convinced that verifying the compatibility of draft laws, existing laws and administrative practice with the Convention is necessary to contribute towards preventing human rights violations and limiting the number of applications to the Court;

Stressing the importance of consulting different competent and independent bodies, including national institutions for the promotion and protection of human rights and non-governmental organisations;

Taking into account the diversity of practices in member States as regards the verification of compatibility;

Recommends that member States, taking into account the examples of good practice appearing in the appendix:

- I. ensure that there are appropriate and effective mechanisms for systematically verifying the compatibility of draft laws with the Convention in the light of the case-law of the Court;
- II. ensure that there are such mechanisms for verifying, whenever necessary, the compatibility of existing laws and administrative practice, including as expressed in regulations, orders and circulars;
- III. ensure the adaptation, as quickly as possible, of laws and administrative practice in order to prevent violations of the Convention;

Instructs the Secretary General of the Council of Europe to ensure that the necessary resources are made available for proper assistance to member States which request help in the implementation of this recommendation.

Appendix to Recommendation Rec (2004) 5

Introduction

1. Notwithstanding the reform, resulting from Protocol No. 11, of the control system established under the European Convention on Human Rights (hereinafter referred to as "the Convention"), the number of applications submitted to the European Court of Human Rights (hereinafter referred to as "the Court") is increasing steadily, giving rise to considerable delays in the processing of cases.
2. This development reflects a greater ease of access to the European Court, as well as the constantly improving human rights protection in Europe, but it should not be forgotten that it is the parties to the Convention, which, in accordance with the principle of subsidiarity, remain the prime guarantors of the rights laid down in the Convention. According to Article 1 of the Convention, "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". It is thus at national level that the most effective and direct protection of the rights and freedoms guaranteed in the Convention should be ensured. This requirement concerns all State authorities, in particular the courts, the administration and the legislature.

3. The prerequisite for the Convention to protect human rights in Europe effectively is that States give effect to the Convention in their legal order, in the light of the case-law of the Court. This implies, notably, that they should ensure that laws and administrative practice conform to it.
4. This recommendation encourages States to set up mechanisms allowing for the verification of compatibility with the Convention of both draft laws and existing legislation, as well as administrative practice. Examples of good practice are set out below. The implementation of the recommendation should thus contribute to the prevention of human rights violations in member States, and consequently help to contain the influx of cases reaching the Court.

Verification of the compatibility of draft laws

5. It is recommended that member States establish systematic verification of the compatibility with the Convention of draft laws, especially those which may affect the rights and freedoms protected by it. It is a crucial point: by adopting a law verified as being in conformity with the Convention, the State reduces the risk that a violation of the Convention has its origin in that law and that the Court will find such a violation. Moreover, the State thus imposes on its administration a framework in line with the Convention for the actions it undertakes *vis-à-vis* everyone within its jurisdiction.
6. Council of Europe assistance in carrying out this verification may be envisaged in certain cases. Such assistance is already available, particularly in respect of draft laws on freedom of religion, conscientious objection, freedom of information, freedom of association, etc. It is none the less for each State to decide whether or not to take into account the conclusions reached within this framework.

Verification of the compatibility of laws in force

7. Verification of compatibility should also be carried out, where appropriate, with respect to laws in force. The evolving case-law of the Court may indeed have repercussions for a law which was initially compatible with the Convention or which had not been the subject of a compatibility check prior to adoption.
8. Such verification proves particularly important in respect of laws touching upon areas where experience shows that there is a particular risk of human rights violations, such as police activities, criminal proceedings, conditions of detention, rights of aliens, etc.

Verification of the compatibility of administrative practice

9. This recommendation also covers, wherever necessary, the compatibility of administrative regulations with the Convention, and therefore aims to ensure that human rights are respected in daily practice. It is indeed essential that bodies, notably those with powers enabling them to restrict the exercise of human rights, have all the necessary resources to ensure that their activity is compatible with the Convention.
10. It has to be made clear that the recommendation also covers administrative practice which is not attached to the text of a regulation. It is of utmost importance that States ensure verification of their compatibility with the Convention.

Procedures allowing follow-up of the verification undertaken

11. In order for verification to have practical effects and not merely lead to the statement that the provision concerned is incompatible with the Convention, it is vital that member States ensure follow-up to this kind of verification.
12. The recommendation emphasises the need for member States to act to achieve the objectives it sets down. Thus, after verification, member States should, when necessary, promptly take the steps required to modify their laws and administrative practice in order to make them compatible with the Convention. In order to do so, and where this proves necessary, they should improve or set up appropriate revision mechanisms which should systematically and promptly be used when a national provision is found to be incompatible. However, it should be pointed out that often it is enough to proceed to changes in case-law and practice in order to ensure this compatibility. In certain member States compatibility may be ensured through the non-application of the offending legislative measures.
13. This capacity for adaptation should be facilitated and encouraged, particularly through the rapid and efficient dissemination of the judgments of the Court to all the authorities concerned with the violation in question, and appropriate training of the decision makers. The Committee of Ministers has devoted two specific recommendations to these important aspects: one on the publication and the dissemination in member States of the text of the Convention and the case-law of the Court (Rec (2002) 13) and the other on the Convention in university education and professional training (Rec (2004) 4).
14. When a court finds that it does not have the power to ensure the necessary adaptation because of the wording of the law at stake, certain States provide for an accelerated legislative procedure.
15. Within the framework of the above, the following possibilities could be considered.

Examples of good practice

16. Each member State is invited to give information as to its practice and its evolution, notably by informing the General Secretariat of the Council of Europe. The latter will, in turn, periodically inform all member States of existing good practice.

I. Publication, translation and dissemination of, and training in, the human rights protection system

17. As a preliminary remark, one should recall that effective verification first demands appropriate publication and dissemination at national level of the Convention and the relevant case-law of the Court, in particular through electronic means and in the language(s) of the country concerned, and the development of university education and professional training programmes in human rights.

II. Verification of draft laws

18. Systematic supervision of draft laws is generally carried out both at the executive and at the parliamentary level, and independent bodies are also consulted.

By the executive

19. In general, verification of conformity with the Convention and its protocols starts within the ministry which initiated the draft law. In addition, in some member States, special responsibility is entrusted to certain ministries or departments, for example, the Chancellery, the Ministry of Justice and/or the Ministry of Foreign Affairs, to verify such conformity. Some member States entrust the agent of the government to the Court in Strasbourg, among other functions, with seeking to ensure that national laws are compatible with the provisions of the Convention. The agent is therefore empowered, on this basis, to submit proposals for the amendment of existing laws or of any new legislation which is envisaged.
20. The national law of numerous member States provides that when a draft text is forwarded to parliament, it should be accompanied by an extensive explanatory memorandum, which must also indicate and set out possible questions under the constitution and/or the Convention. In some member States, it should be accompanied by a formal statement of compatibility with the Convention. In one member State, the minister responsible for the draft text has to certify that, in his or her view, the provisions of the bill are compatible with the Convention, or to state that he or she is not in a position to make such a statement, but that he or she nevertheless wishes parliament to proceed with the bill.

By the parliament

21. In addition to verification by the executive, examination is also undertaken by the legal services of the parliament and/or its different parliamentary committees.

Other consultations

22. Other consultations to ensure compatibility with human rights standards can be envisaged at various stages of the legislative process. In some cases, consultation is optional. In others, notably if the draft law is likely to affect fundamental rights, consultation of a specific institution, for example the Conseil d'Etat in some member States, is compulsory as established by law. If the government has not consulted as required, the text will be tainted by procedural irregularity. If, after having consulted, it decides not to follow the opinion received, it accepts responsibility for the political and legal consequences that may result from such a decision.
23. Optional or compulsory consultation of non-judicial bodies competent in the field of human rights is also often foreseen. In particular these may be independent national institutions for the promotion and protection of human rights, the ombudspersons, or local or international non-governmental organisations, institutes or centres for human rights, or the Bar, etc.
24. Council of Europe experts or bodies, notably the European Commission for Democracy through Law ("the Venice Commission"), may be asked to give an opinion on the compatibility with the Convention of draft laws relating to human rights. This request for an opinion does not replace an internal examination of compatibility with the Convention.

III. Verification of existing laws and administrative practice

25. While member States cannot be asked to verify systematically all their existing laws, regulations and administrative practice, it may be necessary to engage in such an exercise, for example as a result of national experience in applying a law or regulation or following a new judgment by the Court against another member State. In the case of a judgment that concerns it directly, by virtue of Article 46, the State is under obligation to take the measures necessary to abide by it.

By the executive

26. In some member States, the ministry that initiates legislation is also responsible for verifying existing regulations and practices, which implies knowledge of the latest developments in the case-law of the Court. In other member States, governmental agencies draw the attention of independent bodies, and particu-

larly courts, to certain developments in the case-law. This aspect highlights the importance of initial education and continuous training with regard to the Convention system. The competent organs of the State have to ensure that those responsible in local and central authorities take into account the Convention and the case-law of the Court in order to avoid violations.

By the parliament

27. Requests for verification of compatibility may be made within the framework of parliamentary debates.

By judicial institutions

28. Verification may also take place within the framework of court proceedings brought by individuals with legal standing to act or even by State organs, persons or bodies not directly affected (for example before the Constitutional Court).

By independent non-judicial institutions

29. In addition to their other roles when seized by the government or the parliament, independent non-judicial institutions, and particularly national institutions for the promotion and protection of human rights, as well as ombudspersons, play an important role in the verification of how laws are applied and, notably, the Convention which is part of national law. In some countries, these institutions may also, under certain conditions, consider individual complaints and initiate enquiries on their own initiative. They strive to ensure that deficiencies in existing legislation are corrected, and may for this purpose send formal communications to the parliament or the government.

RECOMMENDATION REC (2004) 6

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

on the improvement of domestic remedies

**Adopted by the Committee of Ministers
on 12 May 2004 at its 114th Session**

The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”) must remain the essential reference point for the protection of human rights in Europe, and recalling its commitment to take measures in order to guarantee the long-term effectiveness of the control system instituted by the Convention;

Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all States parties;

Emphasising that, as required by Article 13 of the Convention, member States undertake to ensure that any individual who has an arguable complaint concerning the violation of his rights and freedoms as set forth in the Convention has an effective remedy before a national authority;

Recalling that in addition to the obligation of ascertaining the existence of such effective remedies in the light of the case-law of the European Court of Human Rights (hereinafter referred to as “the Court”), States have the general obligation to solve the problems underlying violations found;

Emphasising that it is for member States to ensure that domestic remedies are effective in law and in practice, and that they can result in a decision on the merits of a complaint and adequate redress for any violation found;

Noting that the nature and the number of applications lodged with the Court and the judgments it delivers show that it is more than ever necessary for the member

States to ascertain efficiently and regularly that such remedies do exist in all circumstances, in particular in cases of unreasonable length of judicial proceedings;

Considering that the availability of effective domestic remedies for all arguable claims of violation of the Convention should permit a reduction in the Court's workload as a result, on the one hand, of the decreasing number of cases reaching it and, on the other hand, of the fact that the detailed treatment of the cases at national level would make their later examination by the Court easier;

Emphasising that the improvement of remedies at national level, particularly in respect of repetitive cases, should also contribute to reducing the workload of the Court;

Recommends that member States, taking into account the examples of good practice appearing in the appendix:

- I. ascertain, through constant review, in the light of case-law of the Court, that domestic remedies exist for anyone with an arguable complaint of a violation of the Convention, and that these remedies are effective, in that they can result in a decision on the merits of the complaint and adequate redress for any violation found;
- II. review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court;
- III. pay particular attention, in respect of aforementioned items I and II, to the existence of effective remedies in cases of an arguable complaint concerning the excessive length of judicial proceedings;

Instructs the Secretary General of the Council of Europe to ensure that the necessary resources are made available for proper assistance to member States which request help in the implementation of this recommendation.

Appendix to Recommendation Rec (2004) 6

Introduction

1. The Ministerial Conference¹ held in Rome on 3 and 4 November 2000 to commemorate the 50th anniversary of the European Convention on Human Rights (hereinafter referred to as "the Convention") emphasised that it is States Parties who are primarily responsible for ensuring that the rights and freedoms laid

1. European Ministerial Conference on Human Rights, see paragraph 14.i of Resolution No. 1 on institutional and functional arrangements for the protection of human rights at national and European levels, section A ("Improving the implementation of the Convention in member States").

down in the Convention are observed and that they must provide the legal instruments needed to prevent violations and, where necessary, to redress them. This necessitates, in particular, the setting-up of effective domestic remedies for all violations of the Convention, in accordance with its Article 13.² The case-law of the European Court of Human Rights (hereinafter referred to as “the Court”)³ has clarified the scope of this obligation which is incumbent on the States Parties to the Convention by indicating notably that:

- Article 13 guarantees the availability in domestic law of a remedy to secure the rights and freedoms as set forth by the Convention.
 - this article has the effect of requiring a remedy to deal with the substance of any “arguable claim” under the Convention and to grant appropriate redress. The scope of this obligation varies depending on the nature of the complaint. However, the remedy required must be “effective” in law as well as in practice;
 - this notably requires that it be able to prevent the execution of measures which are contrary to the Convention and whose effects are potentially irreversible;
 - the “authority” referred to in Article 13 does not necessarily have to be a judicial authority, but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy it provides is indeed effective;
 - the “effectiveness” of a “remedy” within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant; but it implies a certain minimum requirement of speediness.
2. In the recent past, the importance of having such remedies with regard to unreasonably long proceedings has been particularly emphasised,⁴ as this problem is at the origin of a great number of applications before the Court, though it is not the only problem.
 3. The Court is confronted with an ever-increasing number of applications. This situation jeopardises the long-term effectiveness of the system and therefore calls for a strong reaction from contracting parties.⁵ It is precisely within this context that the availability of effective domestic remedies becomes particularly important. The improvement of available domestic remedies will most probably have quantitative and qualitative effects on the workload of the Court:

2. Article 13 provides: “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority”. It is noted that this appendix does not contain particular reference to the procedural guarantees resulting from substantive rights, such as Articles 2 and 3.

3. See for instance, *Conka v. Belgium* judgment of 5 February 2002 (paragraphs 64 et seq.)

4. *Kudla v. Poland* judgment of 26 October 2000.

5. See Declaration of the Committee of Ministers of the Council of Europe of 14 May 2003 “Guaranteeing the long-term effectiveness of the European Court of Human Rights”.

- on the one hand, the volume of applications to be examined ought to be reduced: fewer applicants would feel compelled to bring the case before the Court if the examination of their complaints before the domestic authorities was sufficiently thorough;
 - on the other hand, the examination of applications by the Court will be facilitated if an examination of the merits of cases has been carried out beforehand by a domestic authority, thanks to the improvement of domestic remedies.
4. This recommendation therefore encourages member States to examine their respective legal systems in the light of the case-law of the Court and to take, if need be, the necessary and appropriate measures to ensure, through legislation or case-law, effective remedies as secured by Article 13. The examination may take place regularly or following a judgment by the Court.
 5. The governments of member States might, initially, request that experts carry out a study of the effectiveness of existing domestic remedies in specific areas with a view to proposing improvements. National institutions for the promotion and protection of human rights, as well as non-governmental organisations, might also usefully participate in this work. The availability and effectiveness of domestic remedies should be kept under constant review, and in particular should be examined when drafting legislation affecting Convention rights and freedoms. There is an obvious connection between this recommendation and the recommendation on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the Convention.
 6. Within the framework of the above, the following considerations might be taken into account.

The Convention as an integral part of the domestic legal order

7. A primary requirement for an effective remedy to exist is that the Convention rights be secured within the national legal system. In this context, it is a welcome development that the Convention has now become an integral part of the domestic legal orders of all States parties. This development has improved the availability of effective remedies. It is further assisted by the fact that courts and executive authorities increasingly respect the case-law of the Court in the application of domestic law, and are conscious of their obligation to abide by judgments of the Court in cases directly concerning their State (see Article 46 of the Convention). This tendency has been reinforced by the improvement, in accordance with Recommendation Rec (2000) 2,⁶ of the possibilities of having competent domestic authorities re-examine or reopen certain proceedings which have been the basis of violations established by the Court.

8. The improvement of domestic remedies also requires that additional action be taken so that, when applying national law, national authorities may take into account the requirements of the Convention and particularly those resulting from judgments of the Court concerning their State. This notably means improving the publication and dissemination of the Court's case-law (where necessary by translating it into the national language(s) of the State concerned) and the training, with regard to these requirements, of judges and other State officials. Thus, the present recommendation is also closely linked to the two other recommendations adopted by the Committee of Ministers in these areas.⁷

Specific remedies and general remedy

9. Most domestic remedies for violations of the Convention have been set up with a targeted scope of application. If properly construed and implemented, experience shows that such systems of "specific remedies" can be very efficient and limit both the number of complaints to the Court and the number of cases requiring a time-consuming examination.
10. Some States have also introduced a general remedy (for example before the Constitutional Court) which can be used to deal with complaints which cannot be dealt with through the specific remedies available. In some member States, this general remedy may also be exercised in parallel with or even before other legal remedies are exhausted. Some member States add the requirement that the measure being challenged would grossly infringe constitutional rights and that a refusal to deal with the appeal would have serious and irreparable consequences for the appellant. It should be pointed out that States which have such a general remedy tend to have fewer cases before the Court.
11. This being said, it is for member States to decide which system is most suited to ensuring the necessary protection of Convention rights, taking into consideration their constitutional traditions and particular circumstances.

-
6. Recommendation Rec (2000) 2 of the Committee of Ministers to member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19 January 2000, at the 694th meeting of the Ministers' Deputies.
 7. Recommendation Rec (2002) 13 of the Committee of Ministers to member States on the publication and dissemination in the member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights (adopted by on 18 December 2002 at the 822nd meeting of the Ministers' Deputies), as well as Recommendation Rec (2004) 4 of the Committee of Ministers on the European Convention on Human Rights in university education and professional training, adopted on 12 May 2004 at the 114th Session of the Committee of Ministers.

12. Whatever the choice, present experience testifies that there are still shortcomings in many member States concerning the availability and/or effectiveness of domestic remedies, and that consequently there is an increasing workload for the Court.

Remedies following a “pilot” judgment

13. When a judgment which points to structural or general deficiencies in national law or practice (“pilot case”) has been delivered and a large number of applications to the Court concerning the same problem (“repetitive cases”) are pending or likely to be lodged, the respondent State should ensure that potential applicants have, where appropriate, an effective remedy allowing them to apply to a competent national authority, which may also apply to current applicants. Such a rapid and effective remedy would enable them to obtain redress at national level, in line with the principle of subsidiarity of the Convention system.
14. The introduction of such a domestic remedy could also significantly reduce the Court’s workload. While prompt execution of the pilot judgment remains essential for solving the structural problem and thus for preventing future applications on the same matter, there may exist a category of people who have already been affected by this problem prior to its resolution. The existence of a remedy aimed at providing redress at national level for this category of people might allow the Court to invite them to have recourse to the new remedy and, if appropriate, declare their applications inadmissible.
15. Several options with this objective are possible, depending, among other things, on the nature of the structural problem in question and on whether the person affected by this problem has applied to the Court or not.
16. In particular, further to a pilot judgment in which a specific structural problem has been found, one alternative might be to adopt an ad hoc approach, whereby the State concerned would assess the appropriateness of introducing a specific remedy or widening an existing remedy by legislation or by judicial interpretation.
17. Within the framework of this case-by-case examination, States might envisage, if this is deemed advisable, the possibility of reopening proceedings similar to those of a pilot case which has established a violation of the Convention, with a view to saving the Court from dealing with these cases and where appropriate to providing speedier redress for the person concerned. The criteria laid out in Recommendation Rec (2000) 2 of the Committee of Ministers might serve as a source of inspiration in this regard.

18. When specific remedies are set up following a pilot case, governments should speedily inform the Court so that it can take them into account in its treatment of subsequent repetitive cases.
19. However, it would not be necessary or appropriate to create new remedies, or give existing remedies a certain retroactive effect, following every case in which a Court judgment has identified a structural problem. In certain circumstances, it may be preferable to leave the cases to the examination of the Court, particularly to avoid compelling the applicant to bear the further burden of having once again to exhaust domestic remedies, which, moreover, would not be in place until the adoption of legislative changes.

**Remedies in the case of an arguable claim
of unreasonable length of proceedings**

20. The question of effective remedies is particularly topical in cases involving allegations of unreasonable length of proceedings, which account for a large number of applications to the Court. Thus the Court has emphasised in the *Kudla v. Poland* judgment of 26 October 2000 that it is important to make sure there is an effective remedy in such cases, as required by Article 13 of the Convention. Following the impetus given by the Court in this judgment, several solutions have been put forward by member States in order to provide effective remedies allowing violations to be found and adequate redress to be provided in this field.

Reasonable length of proceedings

21. In their national law, many member States provide, by various means (maximum lengths, possibility of asking for proceedings to be speeded up) that proceedings remain of reasonable length. In certain member States, a maximum length is specified for each stage in criminal, civil and administrative proceedings. The integration of the Convention into the domestic legal systems of member States, particularly the requirement of trial within a reasonable time, as provided for in Article 6, has reinforced and completed these national law requirements.

Preventing delays, accelerating proceedings

22. If time limits in judicial proceedings – particularly in criminal proceedings – are not respected or if the length of proceedings is considered unreasonable, the national law of many member States provides that the person concerned may file a request to accelerate the procedure. If this request is accepted, it may result in a decision fixing a time limit within which the court – or the prosecutor, depending on the case – has to take specific procedural measures, such as closing the investigation or setting a date for the trial. In some member States,

courts may decide that the procedure has to be finished before a certain date. Where a general remedy exists before a Constitutional Court, the complaint may be submitted, under certain circumstances, even before the exhaustion of other domestic remedies.

Different forms of redress

23. In most member States, there are procedures providing for redress for unreasonable delays in proceedings, whether ongoing or concluded. A form of redress which is commonly used, especially in cases already concluded, is that of financial compensation. In certain cases, the failure by the responsible authority to issue a decision within the specified time limit means that the application shall be deemed to have been granted. Where the criminal proceedings have exceeded a reasonable time, this may result in a more lenient sentence being imposed.

Possible assistance for the setting-up of effective remedies

24. The recommendation instructs the Secretary General of the Council of Europe to ensure that the necessary resources are made available for proper assistance to member States which request help in setting up the effective remedies required by the Convention. It might take the form, for instance, of surveys carried out by expert consultants on available domestic remedies, with a view to improving their effectiveness.

RESOLUTION RES (2002) 58

on the publication and dissemination of the case-law of the European Court of Human Rights

**Adopted by the Committee of Ministers on 18 December 2002
at the 822nd meeting of the Ministers' Deputies**

The Committee of Ministers, under the terms of Article 16 of the Statute of the Council of Europe,

Considering the importance of the European Convention on Human Rights (hereafter referred to as "the Convention") as a constitutional instrument for safeguarding public order in Europe, and in particular of the case-law of the European Court of Human Rights (hereafter referred to as "the Court");

Considering that easy access to the Court's case-law is essential for the effective implementation of the Convention at national level, as it enables to ensure the conformity of national decisions with this case-law and to prevent violations;

Considering the respective practices of the Court, of the Committee of Ministers in the framework of its control of the execution of the Court's judgments, and of the member States with respect to the publication and dissemination of the Court's case-law;

Considering that member States were encouraged, at the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000), to "ensure that the text of the Convention is translated and widely disseminated to national authorities, notably the courts, and that the developments in the case-law of the Court are sufficiently accessible in the language(s) of the country";

Taking into account the diversity of traditions and practice in the member States as regards the publication and dissemination of judicial decisions;

Recalling Article 12 of the Statute of the Council of Europe, according to which the official languages of the Council of Europe are English and French,

Invites the Court to review its practice as regards the publication and dissemination of its judgments and decisions. It stresses in this respect the importance for the Court that:

- i. its judgments and decisions are made available immediately in an electronic database on the Internet;
- ii. its main judgments, important decisions on admissibility and information notes on case-law are made accessible rapidly, in both paper and electronic form (CD-Rom, DVD, etc.);

- iii. it indicates rapidly and in an appropriate manner, in particular in its electronic database, the judgments and decisions which constitute significant developments of its case-law.

RESOLUTION RES (2002) 59

concerning the practice in respect of friendly settlements

**Adopted by the Committee of Ministers on 18 December 2002
at the 822nd meeting of the Ministers' Deputies**

The Committee of Ministers,

Recalling that the European Convention on Human Rights (hereinafter referred to as "the Convention") must continue to play a central role as a constitutional instrument for safeguarding public order in Europe;

Having noted the significant increase in the number of individual applications lodged with the European Court of Human Rights (hereinafter referred to as "the Court");

Recalling that Article 38, paragraph 1.*b*, of the Convention provides that if the Court declares an application admissible, it shall "place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto";

Noting in this respect with interest the increasing practice of resorting to friendly settlements in order to solve repetitive cases or cases that do not raise any question of principle or of changes of the domestic legal situation;

Considering that the conclusion of a friendly settlement, while remaining a matter left entirely to the discretion of the parties to the case, may constitute a means of alleviating the workload of the Court, as well as a means of providing a rapid and satisfactory solution for the parties,

Underlines the importance:

- of giving further consideration in all cases to the possibilities of concluding friendly settlements and,
- if any such friendly settlement is concluded, of ensuring that its terms are duly fulfilled.

RESOLUTION RES (2004) 3

on judgments revealing an underlying systemic problem

**Adopted by the Committee of Ministers
on 12 May 2004 at its 114th Session**

The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”) must remain the essential reference point for the protection of human rights in Europe, and recalling its commitment to take measures in order to guarantee the long-term effectiveness of the control system instituted by the Convention;

Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all States Parties;

Recalling that, according to Article 46 of the Convention, the high contracting parties undertake to abide by the final judgment of the European Court of Human Rights (hereinafter referred to as “the Court”) in any case to which they are parties and that the final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution;

Emphasising the interest in helping the State concerned to identify the underlying problems and the necessary execution measures;

Considering that the execution of judgments would be facilitated if the existence of a systemic problem is already identified in the judgment of the Court;

Bearing in mind the Court’s own submission on this matter to the Committee of Ministers session on 7 November 2002;

Invites the Court:

- I. as far as possible, to identify, in its judgments finding a violation of the Convention, what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applica-

tions, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments;

- II. to specially notify any judgment containing indications of the existence of a systemic problem and of the source of this problem not only to the State concerned and to the Committee of Ministers, but also to the Parliamentary Assembly, to the Secretary General of the Council of Europe and to the Council of Europe Commissioner for Human Rights, and to highlight such judgments in an appropriate manner in the database of the Court.

RULES

ADOPTED BY THE COMMITTEE OF MINISTERS

for the application of Article 46, paragraph 2, of the European Convention on Human Rights

on 10 January 2001 at the 736th meeting of the Ministers' Deputies

RULE 1

General provisions

- a. The Committee of Ministers' supervision of the execution of judgments of the Court will in principle take place at special human rights meetings, the agenda of which is public.
- b. Unless otherwise provided in the present rules, the general rules of procedure of the meetings of the Committee of Ministers and of the Ministers' Deputies shall apply to the examination of cases under Article 46, paragraph 2, of the Convention.
- c. If the chairmanship of the Committee of Ministers is held by the representative of a state which is a party to a case referred to the Committee of Ministers under Article 46, paragraph 2, of the Convention, that representative shall relinquish the chairmanship during any discussion of that case.

RULE 2

Inscription of cases on the agenda

When a judgment is transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention, the case shall be inscribed on the agenda of the Committee without delay.

RULE 3

Information to the Committee of Ministers on the measures taken in order to abide by the judgment

- a. When, in a judgment transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention, the Court has decided that there has been a violation of the Convention or its protocols and/or has awarded just satisfaction to the injured party under Article 41 of the Convention, the Committee shall invite the State concerned to inform it of the measures which the State has taken in consequence of the judgment, having regard to its obligation to abide by it under Article 46, paragraph 1, of the Convention.

- b. When supervising the execution of a judgment by the respondent State, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine whether:
- any just satisfaction awarded by the Court has been paid, including as the case may be default interest;
- and, if required, and taking into account the discretion of the State concerned to choose the means necessary to comply with the judgment, whether
- individual measures¹ have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;
 - general measures² have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.

RULE 4

Control intervals

- a. Until the State concerned has provided information on the payment of the just satisfaction awarded by the Court or concerning possible individual measures, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, unless the Committee decides otherwise.
- b. If the State concerned informs the Committee of Ministers that it is not yet in a position to inform the Committee that the general measures necessary to ensure compliance with the judgment have been taken, the case shall be placed again on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise; the same rule shall apply when this period expires and for each subsequent period.

RULE 5

Access to information

Without prejudice to the confidential nature of Committee of Ministers' deliberations, in accordance with Article 21 of the Statute of the Council of Europe, infor-

-
1. For instance, the striking out of an unjustified criminal conviction from the criminal records, the granting of a residence permit or the re-opening of impugned domestic proceedings (see on this latter point Recommendation No. R (2000) 2 of the Committee of Ministers to the member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19 January 2000 at the 694th meeting of the Ministers' Deputies [p. 52 in this collection]).
 2. For instance, legislative or regulatory amendments, changes of case-law or administrative practice or publication of the Court's judgment in the language of the respondent State and its dissemination to the authorities concerned.

mation provided by the State to the Committee of Ministers in accordance with Article 46 of the Convention and the documents relating thereto shall be accessible to the public, unless the Committee decides otherwise in order to protect legitimate public or private interests. In deciding such matters, the Committee of Ministers shall take into account reasoned requests by the State or States concerned, as well as the interest of an injured party or a third party not to disclose their identity.

RULE 6

Communications to the Committee of Ministers

- a.* The Committee of Ministers shall be entitled to consider any communication from the injured party with regard to the payment of the just satisfaction or the taking of individual measures.
- b.* The Secretariat shall bring such communications to the attention of the Committee of Ministers.

APPENDIX I

CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

as amended by Protocols Nos. 11 and 14¹

Rome, 4.XI.1950

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

-
1. This document reproduces an unofficial consolidated version of the Convention, as it will look once Protocol No. 14 amending the control system of the Convention (CETS No. 194), which was opened for signature on 13 May 2004, has entered into force. The original text of the Convention of 4 November 1950 (ETS No. 5) had previously been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these protocols were replaced by Protocol No. 11 (ETS No. 155), which entered into force on 1 November 1998. On that date, Protocol No. 9 (ETS No. 140), which had entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS No. 146) lost its purpose.
The current state of signatures and ratifications of the Convention and its protocols is available at <http://conventions.coe.int/>.

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

ARTICLE 1¹

Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I¹ RIGHTS AND FREEDOMS

ARTICLE 2¹

Right to life

- 1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- 2 Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a in defence of any person from unlawful violence;
 - b in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3¹

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4¹

Prohibition of slavery and forced labour

- 1 No one shall be held in slavery or servitude.

1. Heading added according to the provisions of Protocol No. 11 (ETS No. 155).

- 2 No one shall be required to perform forced or compulsory labour.
- 3 For the purpose of this article the term “forced or compulsory labour” shall not include:
 - a* any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - b* any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - c* any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - d* any work or service which forms part of normal civic obligations.

ARTICLE 5¹

Right to liberty and security

- 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a* the lawful detention of a person after conviction by a competent court;
 - b* the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - c* the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - d* the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - e* the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - f* the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

1. Heading added according to the provisions of Protocol No. 11 (ETS No. 155).

- 2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- 3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
- 4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
- 5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

ARTICLE 6¹

Right to a fair trial

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3 Everyone charged with a criminal offence has the following minimum rights:
 - a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - b to have adequate time and facilities for the preparation of his defence;
 - c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

1. Heading added according to the provisions of Protocol No. 11 (ETS No. 155).

- e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7¹

No punishment without law

- 1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
- 2 This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8¹

Right to respect for private and family life

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9¹

Freedom of thought, conscience and religion

- 1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

1. Heading added according to the provisions of Protocol No. 11 (ETS No. 155).

ARTICLE 10¹

Freedom of expression

- 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11¹

Freedom of assembly and association

- 1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
- 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ARTICLE 12¹

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

1. Heading added according to the provisions of Protocol No. 11 (ETS No. 155).

ARTICLE 13¹**Right to an effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

ARTICLE 14¹**Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 15¹**Derogation in time of emergency**

- 1 In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
- 2 No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
- 3 Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 16¹**Restrictions on political activity of aliens**

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

1. Heading added according to the provisions of Protocol No. 11 (ETS No. 155).

ARTICLE 17¹

Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 18¹

Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II²
EUROPEAN COURT OF HUMAN RIGHTS

ARTICLE 19

Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as “the Court”. It shall function on a permanent basis.

ARTICLE 20

Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

ARTICLE 21

Criteria for office

- 1 The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
- 2 The judges shall sit on the Court in their individual capacity.

1. Heading added according to the provisions of Protocol No. 11 (ETS No. 155).

2. New Section II according to the provisions of Protocol No. 11 (ETS No. 155).

- 3 During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

ARTICLE 22¹

Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

ARTICLE 23¹

Terms of office and dismissal

- 1 The judges shall be elected for a period of nine years. They may not be re-elected.
- 2 The terms of office of judges shall expire when they reach the age of 70.
- 3 The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.
- 4 No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

ARTICLE 24²

Registry and rapporteurs

- 1 The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court.
- 2 When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's registry.

ARTICLE 25²

Plenary Court

The plenary Court shall

- a* elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;

1. Text amended according to the provisions of Protocol No. 14 (CETS No. 194).
 2. Article renumbered and text amended according to the provisions of Protocol No. 14 (CETS No. 194).

- b* set up Chambers, constituted for a fixed period of time;
- c* elect the Presidents of the Chambers of the Court; they may be re-elected;
- d* adopt the rules of the Court;
- e* elect the Registrar and one or more Deputy Registrars;
- f* make any request under Article 26, paragraph 2.

ARTICLE 26¹

Single-judge formation, committees, Chambers and Grand Chamber

- 1 To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
- 2 At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.
- 3 When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.
- 4 There shall sit as an *ex-officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.
- 5 The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

1. Article renumbered and text amended according to the provisions of Protocol No. 14 (CETS No. 194).

ARTICLE 27¹**Competence of single judges**

- 1 A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.
- 2 The decision shall be final.
- 3 If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

ARTICLE 28¹**Competence of committees**

- 1 In respect of an application submitted under Article 34, a committee may, by a unanimous vote,
 - a* declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or
 - b* declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.
- 2 Decisions and judgments under paragraph 1 shall be final.
- 3 If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.*b*.

ARTICLE 29²**Decisions by Chambers on admissibility and merits**

- 1 If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.

1. New article according to the provisions of Protocol No. 14 (CETS No. 194).
2. Text amended according to the provisions of Protocol No. 14 (CETS No. 194).

- 2 A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

ARTICLE 30

Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

ARTICLE 31¹

Powers of the Grand Chamber

The Grand Chamber shall

- a* determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;
- b* decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and
- c* consider requests for advisory opinions submitted under Article 47.

ARTICLE 32¹

Jurisdiction of the Court

- 1 The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.
- 2 In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

ARTICLE 33

Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

1. Text amended according to the provisions of Protocol No. 14 (CETS No. 194).

ARTICLE 34

Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

ARTICLE 35¹**Admissibility criteria**

- 1 The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
- 2 The Court shall not deal with any application submitted under Article 34 that
 - a* is anonymous; or
 - b* is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
- 3 The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
 - a* the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or
 - b* the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.
- 4 The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

1. Text amended according to the provisions of Protocol No. 14 (CETS No. 194).

ARTICLE 36¹

Third party intervention

- 1 In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
- 2 The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.
- 3 In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

ARTICLE 37

Striking out applications

- 1 The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
 - a the applicant does not intend to pursue his application; or
 - b the matter has been resolved; or
 - c for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

- 2 The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

ARTICLE 38¹

Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

1. Text amended according to the provisions of Protocol No. 14 (CETS No. 194).

ARTICLE 39¹**Friendly settlements**

- 1 At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.
- 2 Proceedings conducted under paragraph 1 shall be confidential.
- 3 If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.
- 4 This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

ARTICLE 40

Public hearings and access to documents

- 1 Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
- 2 Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

ARTICLE 41

Just satisfaction

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

ARTICLE 42

Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

-
1. Text amended according to the provisions of Protocol No. 14 (CETS No. 194).

ARTICLE 43

Referral to the Grand Chamber

- 1 Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
- 2 A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
- 3 If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

ARTICLE 44

Final judgments

- 1 The judgment of the Grand Chamber shall be final.
- 2 The judgment of a Chamber shall become final
 - a* when the parties declare that they will not request that the case be referred to the Grand Chamber; or
 - b* three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
 - c* when the panel of the Grand Chamber rejects the request to refer under Article 43.
- 3 The final judgment shall be published.

ARTICLE 45

Reasons for judgments and decisions

- 1 Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
- 2 If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

ARTICLE 46¹

Binding force and execution of judgments

- 1 The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

1. Text amended according to the provisions of Protocol No. 14 (CETS No. 194).

- 2 The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
- 3 If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
- 4 If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
- 5 If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

ARTICLE 47

Advisory opinions

- 1 The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
- 2 Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
- 3 Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

ARTICLE 48

Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

ARTICLE 49

Reasons for advisory opinions

- 1 Reasons shall be given for advisory opinions of the Court.
- 2 If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
- 3 Advisory opinions of the Court shall be communicated to the Committee of Ministers.

ARTICLE 50

Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

ARTICLE 51

Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

SECTION III^{1,2}
MISCELLANEOUS PROVISIONS

ARTICLE 52¹

Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

ARTICLE 53¹

Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

-
1. Heading added according to the provisions of Protocol No. 11 (ETS No. 155).
 2. The articles of this section are renumbered according to the provisions of Protocol No. 11 (ETS No. 155).

ARTICLE 54¹**Powers of the Committee of Ministers**

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

ARTICLE 55¹**Exclusion of other means of dispute settlement**

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

ARTICLE 56¹**Territorial application**

- 1² Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
- 2 The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
- 3 The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
- 4² Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

ARTICLE 57¹**Reservations**

- 1 Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not

1. Heading added according to the provisions of Protocol No. 11 (ETS No. 155).

2. Text amended according to the provisions of Protocol No. 11 (CETS No. 155).

in conformity with the provision. Reservations of a general character shall not be permitted under this article.

- 2 Any reservation made under this article shall contain a brief statement of the law concerned.

ARTICLE 58¹

Denunciation

- 1 A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
- 2 Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
- 3 Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
- 4² The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

ARTICLE 59^{1,3}

Signature and ratification

- 1 This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
- 2 The European Union may accede to this Convention.
- 3 The present Convention shall come into force after the deposit of ten instruments of ratification.
- 4 As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
- 5 The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of

1. Heading added according to the provisions of Protocol No. 11 (CETS No. 155).
2. Text amended according to the provisions of Protocol No. 11 (CETS No. 155).
3. Text amended according to the provisions of Protocol No. 14 (CETS No. 194).

the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

DONE AT ROME THIS 4TH DAY OF NOVEMBER 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

APPENDIX II

WORDING OF CERTAIN CONVENTION PROVISIONS

prior to the entry into force of Protocol No. 14

ARTICLE 22

Election of judges

[...]

- 2 The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

ARTICLE 23

Terms of office

- 1 The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.
- 2 The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.
- 3 In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.
- 4 In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.
- 5 A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.
- 6 The terms of office of judges shall expire when they reach the age of 70.
- 7 The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

ARTICLE 24

Dismissal

No judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfil the required conditions.

ARTICLE 25

Registry and legal secretaries

The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court. The Court shall be assisted by legal secretaries.

ARTICLE 26

Plenary Court

The plenary Court shall

- a elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
- b set up Chambers, constituted for a fixed period of time;
- c elect the Presidents of the Chambers of the Court; they may be re-elected;
- d adopt the rules of the Court, and
- e elect the Registrar and one or more Deputy Registrars.

ARTICLE 27

Committees, Chambers and Grand Chamber

- 1 To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
- 2 There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge.
- 3 The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.

ARTICLE 28

Declarations of inadmissibility by committees

A committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an application submitted under Article 34 where such a decision can be taken without further examination. The decision shall be final.

ARTICLE 29

Decisions by Chambers on admissibility and merits

- 1 If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34.
- 2 A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33.
- 3 The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

ARTICLE 31

Powers of the Grand Chamber

The Grand Chamber shall

- a determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and
- b consider requests for advisory opinions submitted under Article 47.

ARTICLE 32

Jurisdiction of the Court

- 1 The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.
- 2 In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

ARTICLE 35

Admissibility criteria

[...]

- 3 The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.

[...]

ARTICLE 36

Third party intervention

- 1 In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
- 2 The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

ARTICLE 38

**Examination of the case
and friendly settlement proceedings**

- 1 If the Court declares the application admissible, it shall
 - a pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;
 - b place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.
- 2 Proceedings conducted under paragraph 1.b shall be confidential.

ARTICLE 39

Finding of a friendly settlement

If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

ARTICLE 46

Binding force and execution of judgments

- 1 The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
- 2 The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

ARTICLE 59

Signature and ratification

- 1 This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
- 2 The present Convention shall come into force after the deposit of ten instruments of ratification.
- 3 As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
- 4 The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.