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High-level conference on

The future of the European Court of Human Rights

organised in İzmir, Turkey,
on 26 and 27 April 2011 by the Turkish chairmanship
of the Committee of Ministers of the Council of Europe

Background documents

Directorate General
of Human Rights and Legal Affairs
Council of Europe

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Contents

I. European Convention on Human Rights

European Convention on Human Rights as amended by Protocol No. 14 7

II. Recommendations of the Committee of Ministers to member states

Recommendation No. R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights 31

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 38

Recommendation Rec (2004) 4 on the European Convention on Human Rights in university education and professional training 47

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 56

Recommendation Rec (2004) 6 on the improvement of domestic remedies ... 65

Recommendation CM/Rec (2008) 2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights 76

Recommendation CM/Rec (2010) 3 on effective remedies for excessive length of proceedings 80

I. European Convention on Human Rights

European Convention on Human Rights
as amended by Protocol No. 14

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;

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 1 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 I Rights and freedoms

Article 2 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 3 Prohibition of torture

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

Article 4 Prohibition of slavery and forced labour

1 No one shall be held in slavery or servitude.

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 5 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.

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 6 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;

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

Article 7 **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 8 **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 9 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.

Article 10 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 11 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 protec-

tion 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 12 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.

Article 13 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 14 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 15 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 16 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.

Article 17 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 18 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 II 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.

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 22 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 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 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 25 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;

e elect the Registrar and one or more Deputy Registrars;

f make any request under Article 26, paragraph 2.

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 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 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 29 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 ad-

missibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.

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 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;

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 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, 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.

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 35 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.

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.

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 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 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 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.

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 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 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 Miscellaneous provisions

Article 52 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 53 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.

Article 54 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 55 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 56 Territorial application

1 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.

4 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 57 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 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 58 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.

4 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 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 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.

II. Recommendations of the Committee of Ministers to member states

Recommendation No. R (2000) 2
on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights*†

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 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

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

† 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.

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 circumstances 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.

Explanatory memorandum to Recommendation No. R (2000) 2

Introduction

The Contracting Parties to the Convention enjoy a discretion, subject to the supervision of the Committee of Ministers, as to how they comply with the obligation in Article 46 of the Convention "to abide by the final judgment of the Court in any case to which they are parties."

The Court has held: "a judgment in which the Court finds a breach imposes on the respondent state a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach" (see *inter alia* the Court's judgment in the *Papamichalopoulos case against Greece* of 31 October 1995, paragraph 34, Series A 330-B). The Court was here expressing the well-known international law principle of *restitutio in integrum,* which has also frequently been applied by the Committee of Ministers in its resolutions. In this context, the need to improve the possibilities under national legal systems to ensure *restitutio in integrum* for the injured party has become increasingly apparent.

Although the Convention contains no provision imposing an obligation on Contracting Parties to provide in their national law for the re-examination or reopening of proceedings, the existence of such possibilities have, in special circumstances, proven to be important, and indeed in some cases the only, means to achieve *restitutio in integrum*. An increasing number of states have adopted special legislation providing for the possibility of such re-examination or reopening. In other states this possibility has been developed by the courts and national authorities under existing law.

The present recommendation is a consequence of these developments. It invites all Contracting Parties to ensure that their legal systems contain the necessary possibilities to achieve, as far as possible, *restitutio in integrum*, and, in particular, provide

adequate possibilities for re-examining cases, including reopening proceedings.

As regards the terms, the recommendation uses "re-examination" as the generic term. The term "reopening of proceedings" denotes the reopening of court proceedings, as a specific means of re-examination. Violations of the Convention may be remedied by different measures ranging from administrative re-examination of a case (e.g. granting a residence permit previously refused) to the full reopening of judicial proceedings (e.g. in cases of criminal convictions).

The recommendation applies primarily to judicial proceedings where existing law may pose the greatest obstacles to new proceedings. The recommendation is, however, also applicable to administrative or other measures or proceedings, although such legal obstacles will usually be less important in these areas.

There follow, first, specific comments relating to the two operative paragraphs of the recommendation and, secondly, more general comments on questions not explicitly dealt with in the recommendation.

Comments on the operative provisions

Paragraph 1 sets out the basic principle behind the recommendation that all victims of violations of the Convention should be entitled, as far as possible, to an effective *restitutio in integrum.* The Contracting Parties should, accordingly, review their legal systems with a view to ensuring that the necessary possibilities exist.

Paragraph 2 encourages states which have not already done so, to provide for the possibility of re-examining cases, including reopening of domestic proceedings, in order to give full effect to the judgments of the Court. The paragraph also sets out those circumstances in which re-examination or reopening is of special importance, in some instances perhaps the only means, to achieve *restitutio in integrum*.

The practice of the Convention organs has demonstrated that it is primarily in the field of criminal law that the re-examination of a case, including the reopening of proceedings, is of the greatest importance. The recommendation is, however, not

limited to criminal law, but covers any category of cases, in particular those satisfying the criteria enumerated in sub-paragraphs (i) and (ii). The purpose of these additional criteria is to identify those exceptional situations in which the objectives of securing the rights of the individual and the effective implementation of the Court's judgments prevail over the principles underlying the doctrine of *res judicata*, in particular that of legal certainty, notwithstanding the undoubted importance of these principles.

Sub-paragraph (i) is intended to cover the situation in which the injured party continues to suffer very serious negative consequences, not capable of being remedied by just satisfaction, because of the outcome of domestic proceedings. It applies in particular to persons who have been sentenced to lengthy prison sentences and who are still in prison when the Convention organs examine the "case". It applies, however, also in other areas, for example, when a person is unjustifiably denied certain civil or political rights (in particular in case of loss of, or non-recognition of legal capacity or personality, bankruptcy declarations or prohibitions of political activity), if a person is expelled in violation of his or her right to family life or if a child has been unjustifiably forbidden contacts with his or her parents. It is understood that there must exist a direct causal link between the violation found and the continuing suffering of the injured party.

Sub-paragraph (ii) is intended to indicate, in the cases where the above-mentioned conditions are met, the kind of violations in which re-examination of the case or reopening of the proceedings will be of particular importance. Examples of situations aimed at under item (a) are criminal convictions violating Article 10 because the statements characterised as criminal by the national authorities constitute legitimate exercise of the injured party's freedom of expression or violating Article 9 because the behaviour characterised as criminal is a legitimate exercise of freedom of religion. Examples of situations aimed at under item (b) are where the injured party did not have the time and facilities to prepare his or her defence in criminal pro-

ceedings, where the conviction was based on statements extracted under torture or on material which the injured party had no possibility of verifying, or where in civil proceedings the parties were not treated with due respect for the principle of equality of arms. Any such shortcomings must, as appears from the text of the recommendation itself, be of such a gravity that serious doubt is cast on the outcome of the domestic proceedings.

Other considerations

The recommendation does not deal with the problem of who ought to be empowered to ask for reopening or re-examination. Considering that the basic aim of the recommendation is to ensure an adequate protection of the victims of certain grave violations of the Convention found by the Court, the logic of the system implies that the individuals concerned should have the right to submit the necessary requests to the competent court or other domestic organ. Considering the different traditions of the Contracting Parties, no provision to this effect has, however, been included in the recommendation.

The recommendation does not address the special problem of "mass cases", i.e. cases in which a certain structural deficiency leads to a great number of violations of the Convention. In such cases it is in principle best left to the state concerned to decide whether or not reopening or re-examination are realistic solutions or, whether other measures are appropriate.

When drafting the recommendation it was recognised that reopening or re-examination could pose problems for third parties, in particular when these have acquired rights in good faith. This problem exists, however, already in the application of the ordinary domestic rules for re-examination of cases or reopening of the proceedings. The solutions applied in these cases ought to be applicable, at least *mutatis mutandis*, also to cases where re-examination or reopening was ordered in order to give effect to judgments of the Court.

In cases of re-examination or reopening, in which the Court has awarded some just satisfaction, the question of whether, and if so, how it should be taken into account will be within the discre-

tion to the competent domestic courts or authorities taking into account the specific circumstances of each case.

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*

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

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

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.

Explanatory memorandum to Recommendation Rec (2002) 13

Background The European Convention on Human Rights entered into force on 3 September 1953. Since then, important efforts have been carried out in order to ensure the publication and dissemination of the Convention and the case-law of the European Court of Human Rights, at governmental and parliamentary level as well as at non-state (publishers, bar associations, universities, human rights institutes, individuals …) level.

Nevertheless, the increase in the number of member states of the Council of Europe and the evolution of the case-law of the Court have made further measures necessary at the European

level, in order to ensure that the efforts correspond to the new needs.

Accordingly, the European Ministerial Conference on Human Rights, held in Rome on 3-4 November 2000 to commemorate the 50th anniversary of the Convention encouraged member states 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 [European Court of Human Rights] are sufficiently accessible in the language(s) of the country" (Resolution I, paragraph 14. (iii)).

As part of the follow-up to the Conference, the Ministers' Deputies, at their 736th meeting (10-11 January 2001), instructed the Steering Committee for Human Rights (CDDH) to examine ways and means of assisting member states with a view to a better implementation of the Convention in their domestic law and practice [...] (Decision No. 9). The CDDH gave the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) the task of considering the follow-up to these terms of reference.

DH-PR has recognised the importance of the publication and dissemination in the member states of the text of the Convention and of the case-law of the Court, in order to allow national authorities, and in particular judges, to efficiently implement the Convention as interpreted by the Court. Accordingly, the DH-PR decided, at its 49th meeting (25-27 April 2001) to elaborate a draft recommendation on this subject.

The text of the draft recommendation was elaborated by the DH-PR during its 50th (26-29 September 2001) and 51st meetings (20-22 March 2002). It was examined by the CDDH during its 54th meeting (1-4 October 2002) and transmitted to the Committee of Ministers for adoption.

The accessibility of the Court's case-law depends on the effort of the Court as well as on that of the member states. Therefore, the draft recommendation should be read keeping in mind the draft Resolution of the Committee of Ministers on the publication and dissemination of the case-law of the European Court of Human Rights, which states the need for administrative

measures to be taken within the Court to facilitate access to important judgments and decisions.

The recommendation invites the member states to review their practice on publication and dissemination of the text of the Convention (including the protocols thereto ratified by each state) in the language(s) of the country by:

Ensuring that the text of the Convention, translated into 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

On this matter, member states could follow national practice on the publication of legislation. However, as the question of how the Convention is published is closely linked to that of dissemination, it should be envisaged to publish the Convention in such a form (leaflet, brochure, etc.), so that it can be easily and widely disseminated.

As far as dissemination is concerned, a requirement would be that the text of the Convention be accessible in both paper and electronic form in the main libraries, in the courts and in the documentation centres or the Internet sites of the Government and/or Parliament. Dissemination of the Convention to the larger public would be of great value, for example through universities or professional training centres or other public or private institutions.

The recommendation also invites the member states to examine their practice on publication and dissemination of the Court's judgments and decisions. It takes account of the diversity of traditions and practice in the member states as regards the publication and dissemination of judicial decisions. It notes in particular that some states have a strong tradition whereby civil society caters for this function, just as it does for the national courts (for instance, through specialist private publishing houses, university centres, etc). In other states, this is not the case, for a variety of reasons, and the public authorities have to use their own resources to publish and disseminate the case-law (for instance, some ministries ensure the dissemination of Court judgments and decisions by means of information bulle-

tins for the courts and authorities, in a number of states the judgments are published in the official gazette and in others the supreme courts publish them). With these basic considerations as a background, member states are invited to take a number of measures, evoked in the recommendation.

Ensuring that, whether as a result of state or private initiatives, 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, in their entirety or at least in the form of substantial summaries or excerpts (together with adequate references to the original texts) in the language(s) of the country, in particular in official gazettes, information notes from competent ministries, law journals and other media commonly used by the legal community, including, where appropriate, the Internet sites

The recommendation underlines the necessity that the important judgments and decisions be made available in the national language(s). However, it notes that it is often enough to provide a summary of the case in the national language.

It is not considered realistic or necessary to ask Contracting states to ensure the publication and dissemination of all judgments and decisions. In fact, the Recommendation does not even ask the Court to publish all judgments and decisions, which is in line with its present practice according to which the Court selects the more important judgments and decisions for publication. It must be emphasised that many cases relate to specific problems or are repetitive cases, not adding significantly to the development of the case-law. These cases do not normally merit publication. In this connection, the current practice of the Committee of Ministers in supervising the enforcement of judgments can be noted. This practice does not require the respondent state to publish judgments solely highlighting various administrative shortcomings, without providing clarifications on the content of the rights protected by the Convention. It is therefore often considered sufficient to disseminate such judgments to the authorities directly concerned (see below, page 46).

In the interest of efficiency, the stress should be on those important judgments and decisions, knowledge of which is necessary for the application of the Convention at the national level. However, an effort from member states to publish these judgments and decisions rapidly and widely is requested.

The recommendation gives a number of examples of where these judgments and decisions could be published, such as official gazettes, information notes from competent ministries, law journals and other media commonly used by the legal community, including, where appropriate, the Internet sites. As mentioned above, national practices on the publication of judgments must guide the member states' choice in this respect.

In this context, the contribution of the Council of Europe Information Offices existing in certain member states is underlined.

The interference between publication and dissemination must be underlined. In many cases publication also leads to the desired dissemination.

Encouraging where necessary the regular production of text books 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

The Recommendation stresses the importance of publications at the national level analysing the Strasbourg decisions (textbooks explaining the Convention and the main judgments, etc) and of ensuring their effective dissemination. It may be that in some countries publications of this kind are already sufficiently catered for through private initiatives or within the framework of the existing research programmes of the universities.

It is not sufficient to simply provide a mass of information; it has to be assessed and an appropriate commentary added. Furthermore, such works should be regularly published and sufficiently accessible, in paper and/or electronic form. As a means of achieving this goal could be mentioned providing financial assistance for research and publication on the Convention to the national law faculties, etc.

Publicising the Internet address of the Court's site,* notably by ensuring that links to this site exist in the national sites commonly used for legal research;

The recommendation does not concern the setting up of new national databases which reproduce judgments in one of the official languages of the Council of Europe (Internet sites, etc.) in so far as the HUDOC data base managed by the Council of Europe provides with the essential information. The Recommendation rather invites member states to refer users to the HUDOC database from the national sites commonly used for legal research.

Ensuring 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 to case-law through the Internet

This is perhaps one of the most important elements in the Recommendation, if the aim of the effective implementation of the Convention on the national level is to be achieved. The judiciary must have access to the case-law, but must also, in their training as judges, be informed about the relevance and importance of the texts and about how to access them. An effort must be made in member states in this regard.

Ensuring, where necessary, 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

This means that each member state is to make sure that all the main judgments and decisions affecting its own national system (usually necessitating the adoption of general measures) are rapidly disseminated 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. Whenever it is considered appropriate the judgments and decisions should be accompanied by an explanatory note or a circular.

* http://www.echr.coe.int/.

Ensuring that the domestic authorities or other bodies directly involved in a certain case are rapidly informed of the Court's judgment or decision, e.g. by receiving copies thereof

In this connection, the current practice of the Committee of Ministers in supervising the enforcement of judgments, according to which states are invariably requested to disseminate judgments to the authorities directly involved in the case, can be noted. This is of importance in order to guide the necessary administrative reforms.

Considering the possibility of co-operating with a view to including, in a common compilation, in paper or in electronic form, Court judgments and decisions that are available in the same non-official language of the Council of Europe.

In the light of the efforts made by the Council of Europe to assist certain states in setting up data bases containing translations of judgments into certain languages, the Recommendation encourages the creation of such databases (for instance, Russian and German), on a more general scale. It proposes that countries with the same or partly the same national language(s) co-operate in this respect.

Recommendation Rec (2004) 4

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

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;

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

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".*

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.† The Committee of Ministers has already adopted resolutions and recommendations dealing with different aspects of this issue‡ and encouraging initiatives that may be undertaken notably by independent national human rights institutions and NGOs, with a view to promoting greater understanding and

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

† See Article 1 of the Convention [page 8 in the present volume].

‡ 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.

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 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 (Strasbourg) 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 standards 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 Sporrong 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
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*

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

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

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 en-

sured 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'État 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 particularly 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
on the improvement of domestic remedies*

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;

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

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 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") emphasised that it is States Parties who are primarily responsible for ensuring that the rights and freedoms laid 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.†

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* 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").

† 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.

The case-law of the European Court of Human Rights (hereinafter referred to as "the Court")* 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,† 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.‡ It is precisely within this context that the

* See for instance, *Čonka v. Belgium* judgment of 5 February 2002 (§§64 et seq.)

† *Kudła v. Poland* judgment of 26 October 2000.

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:

- 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.

‡ 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”.

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,* 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.†

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* 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 [page 31 of the present volume].

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.

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.

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† 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) [page 38 of the present volume]; 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 [page 47 of the present volume].

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.

Recommendation CM/Rec (2008) 2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights*

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

a Emphasising High Contracting Parties' legal obligation under Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as "the Convention") to abide by all final judgments of the European Court of Human Rights (hereinafter referred to as "the Court") in cases to which they are parties;

b Reiterating that judgments in which the Court finds a violation impose on the High Contracting Parties an obligation to:

- pay any sums awarded by the Court by way of just satisfaction;
- adopt, where appropriate, individual measures to put an end to the violation found by the Court and to redress, as far as possible, its effects;
- adopt, where appropriate, the general measures needed to put an end to similar violations or prevent them.

c Recalling also that, under the Committee of Ministers' supervision, the respondent state remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention to abide by the final judgments of the Court;

* Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies.

d Convinced that rapid and effective execution of the Court's judgments contributes to enhancing the protection of human rights in member states and to the long-term effectiveness of the European human rights protection system;

e Noting that the full implementation of the comprehensive package of coherent measures referred to in the Declaration "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels", adopted by the Committee of Ministers at its 114th session (12 May 2004), is, *inter alia,* intended to facilitate compliance with the legal obligation to execute the Court's judgments;

f Recalling also that the Heads of State and Government of the member states of the Council of Europe in May 2005 in Warsaw underlined the need for an accelerated and full execution of the judgments of the Court;

g Noting therefore that there is a need to reinforce domestic capacity to execute the Court's judgments;

h Underlining the importance of early information and effective co-ordination of all state actors involved in the execution process and noting also the importance of ensuring within national systems, where necessary at high level, the effectiveness of the domestic execution process;

i Noting that the Parliamentary Assembly recommended that the Committee of Ministers induce member states to improve or, where necessary, to set up domestic mechanisms and procedures – both at the level of governments and of parliaments – to secure timely and effective implementation of the Court's judgments, through co-ordinated action of all national actors concerned and with the necessary support at the highest political level;*

j Noting that the provisions of this recommendation are applicable, *mutatis mutandis*, to the execution of any decision† or

* Parliamentary Assembly Recommendation 1764 (2006) – "Implementation of the judgments of the European Court of Human Rights" [page 96 of the present volume].

judgment of the Court recording the terms of any friendly settlement or closing a case on the basis of a unilateral declaration by the state;

Recommends that member states:

1. designate a co-ordinator – individual or body – of execution of judgments at the national level, with reference contacts in the relevant national authorities involved in the execution process. This co-ordinator should have the necessary powers and authority to:
   - acquire relevant information;
   - liaise with persons or bodies responsible at the national level for deciding on the measures necessary to execute the judgment; and
   - if need be, take or initiate relevant measures to accelerate the execution process;
2. ensure, whether through their Permanent Representation or otherwise, the existence of appropriate mechanisms for effective dialogue and transmission of relevant information between the co-ordinator and the Committee of Ministers;
3. take the necessary steps to ensure that all judgments to be executed, as well as all relevant decisions and resolutions of the Committee of Ministers related to those judgments, are duly and rapidly disseminated, where necessary in translation, to relevant actors in the execution process;
4. identify as early as possible the measures which may be required in order to ensure rapid execution;
5. facilitate the adoption of any useful measures to develop effective synergies between relevant actors in the execution process at the national level either generally or in response to a specific judgment, and to identify their respective competences;
6. rapidly prepare, where appropriate, action plans on the measures envisaged to execute judgments, if possible including an indicative timetable;

† When Protocol No. 14 to the ECHR has entered into force.

7. take the necessary steps to ensure that relevant actors in the execution process are sufficiently acquainted with the Court's case law as well as with the relevant Committee of Ministers' recommendations and practice;
8. disseminate the vade-mecum prepared by the Council of Europe on the execution process to relevant actors and encourage its use, as well as that of the database of the Council of Europe with information on the state of execution in all cases pending before the Committee of Ministers;
9. as appropriate, keep their parliaments informed of the situation concerning execution of judgments and the measures being taken in this regard;
10. where required by a significant persistent problem in the execution process, ensure that all necessary remedial action be taken at high level, political if need be.

Recommendation CM/Rec (2010) 3

on effective remedies for excessive length of proceedings*

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

Recalling that the heads of state and government of the Council of Europe member states, meeting at the 3rd Summit in Warsaw on 16 and 17 May 2005, expressed their determination to ensure that effective domestic remedies exist for anyone with an arguable complaint of a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5 – hereafter referred to as "the Convention");

Recalling Recommendation Rec (2004) 6 of the Committee of Ministers to member states on the improvement of domestic remedies and intending to build upon this by giving practical guidance to member states in the specific context of excessive length of proceedings;

Recalling also the Declaration of the Committee of Ministers on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels (adopted on 19 May 2006 at its 116th session);

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* Adopted by the Committee of Ministers on 24 February 2010 at the 1077th meeting of the Ministers' Deputies.

Welcoming the work of other Council of Europe bodies, notably the European Commission for Democracy through Law (Venice Commission) and the European Commission for the Efficiency of Justice;

Emphasising the High Contracting Parties' obligations under the Convention to secure to everyone within their jurisdiction the rights and freedoms protected thereby, including the right to trial within a reasonable time contained in Article 6.1 and that to an effective remedy contained in Article 13;

Recalling that the case-law of the European Court of Human Rights (hereinafter "the Court"), notably its pilot judgments, provides important guidance and instruction to member states in this respect;

Reiterating that excessive delays in the administration of justice constitute a grave danger, in particular for respect for the rule of law and access to justice;

Concerned that excessive length of proceedings, often caused by systemic problems, is by far the most common issue raised in applications to the Court and that it thereby represents an immediate threat to the effectiveness of the Court and hence the human rights protection system based upon the Convention;

Convinced that the introduction of measures to address the excessive length of proceedings will contribute, in accordance with the principle of subsidiarity, to enhancing the protection of human rights in member states and to preserving the effectiveness of the Convention system, including by helping to reduce the number of applications to the Court,

Recommends that member states:

1. take all necessary steps to ensure that all stages of domestic proceedings, irrespective of their domestic characterisation, in which there may be determination of civil rights and obligations or of any criminal charge, are determined within a reasonable time;
2. to this end, ensure that mechanisms exist to identify proceedings that risk becoming excessively lengthy as well as the under-

lying causes, with a view also to preventing future violations of Article 6;

3. recognise that when an underlying systemic problem is causing excessive length of proceedings, measures are required to address this problem, as well as its effects in individual cases;
4. ensure that there are means to expedite proceedings that risk becoming excessively lengthy in order to prevent them from becoming so;
5. take all necessary steps to ensure that effective remedies before national authorities exist for all arguable claims of violation of the right to trial within a reasonable time;
6. ascertain that such remedies exist in respect of all stages of proceedings in which there may be determination of civil rights and obligations or of any criminal charge;
7. to this end, where proceedings have become excessively lengthy, ensure that the violation is acknowledged either expressly or in substance and that:

a the proceedings are expedited, where possible; or

b redress is afforded to the victims for any disadvantage they have suffered; or, preferably,

c allowance is made for a combination of the two measures;

8. ensure that requests for expediting proceedings or affording redress will be dealt with rapidly by the competent authority and that they represent an effective, adequate and accessible remedy;
9. ensure that amounts of compensation that may be awarded are reasonable and compatible with the case law of the Court and recognise, in this context a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage;
10. consider providing for specific forms of non-monetary redress, such as reduction of sanctions or discontinuance of proceedings, as appropriate, in criminal or administrative proceedings that have been excessively lengthy;

11. where appropriate, provide for the retroactivity of new measures taken to address the problem of excessive length of proceedings, so that applications pending before the Court may be resolved at national level;
12. take inspiration and guidance from the Guide to Good Practice accompanying this recommendation when implementing its provisions and, to this end, ensure that the text of this recommendation and of the Guide to Good Practice, where necessary 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 can take account of it.