

Strasbourg, 03/02/10

CAHDI (2010) 1

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)

39th meeting
Strasbourg, 18-19 March 2010

COMMITTEE OF MINISTERS' DECISIONS OF RELEVANCE TO THE CAHDI'S ACTIVITIES
INCLUDING REQUESTS FOR THE CAHDI'S OPINION

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Document prepared by the Secretariat of the CAHDI

1. CAHDI

1.a CM/Del/Dec(2009)1073/10.1E / 16 December 2009

**Committee of Legal Advisers on Public International Law (CAHDI) –
Abridged report of the 38th meeting (Strasbourg, 10-11 September 2009)**

Decision

“The Deputies took note of the abridged report of the 38th meeting of the Committee of Legal Advisers on Public International Law (CAHDI), as it appears in document CM(2009)150.”

1.b CM/Del/Dec(2009)1068/3.1E / 23 October 2009

**Parliamentary Assembly –
4th part of the 2009 Session (Strasbourg, 28 September – 2 October 2009) –
Texts adopted
(2009 Session (Provisional Compendium of texts adopted))**

Decisions

“The Deputies (...)

7. concerning Recommendation 1888 (2009) – “Towards a new ocean governance” **[See below]**

- a. decided to bring it to the attention of their governments;
- b. agreed to communicate it to the Council of Europe Conference of Ministers responsible for regional/spatial planning (CEMAT), to the Standing Committee of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) and to the European and Mediterranean Major Hazards Agreement (EUR-OPA), for information;
- c. agreed to communicate it to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by 31 March 2010;
- d. in the light of possible comments, invited their Rapporteur Group on Legal Co-operation (GR-J) to prepare a draft reply for adoption at one of their forthcoming meetings; (...)

8. took note of the following resolutions: (...)

Resolution 1694 (2009) – “Towards a new ocean governance” **[See below]**

Parliamentary Assembly Recommendation 1888 (2009)¹ “Towards a new ocean governance”

1. The Parliamentary Assembly refers to its Resolution 1694 (2009) “Towards a new ocean governance”.
2. The Assembly draws attention to the proposals in the Blue Book issued in 2007 under the title “An integrated maritime policy for the European Union”, which call for Europe to take steps as quickly as possible to define policies and actions geared towards a common vision of the role of the oceans for the future of humankind.
3. The Assembly also refers to the principles set out in the EurOcean intergovernmental project for co-ordinating maritime scientific and technological information.

¹ Assembly debate on 2 October 2009 (35th Sitting) (see Doc.12005, report of the Committee on the Environment, Agriculture and Local and Regional Affairs, rapporteur: Mrs de Melo). Text adopted by the Assembly on 2 October 2009 (35th Sitting).

4. It also believes that the Council of Europe is the most appropriate institution for promoting a new vision of the oceans through a new legal and institutional framework aimed at establishing a new type of governance of the oceans.

5. In view of the increase in maritime insecurity and in illegal immigration, human trafficking and piracy, the Assembly underlines the need to take measures to guarantee the social rights of people who work on the sea as set out in the European Social Charter (ETS No. 35) and to establish standards for maritime security and pollution.

6. In the more specific case of the North Atlantic, the Assembly notes that there have been rapid changes in the nature of the pollution it suffers. Indeed, its waters have also been affected by land-based pollution, shipping, over-exploitation of resources and oil production.

7. The Assembly observes that new regions, such as the Arctic and Greenland, are being intensively exploited, and that this can have harmful consequences for the environment and climate change in general.

8. The Assembly therefore calls on the Committee of Ministers to:

8.1. instruct a committee of experts to define a legal and institutional framework for new ocean governance;

8.2. invite the Parliamentary Assembly to take part in the work of the committee of experts.

9. The Assembly also recommends that the Committee of Ministers call on governments of member states to:

9.1. take part in the EurOcean intergovernmental project;

9.2. promote the establishment and proper management of marine protected areas.

10. The Assembly also calls on the Congress of Local and Regional Authorities of the Council of Europe to:

10.1. analyse and encourage cases of good practice in sharing information and governance of the seas and oceans at regional level;

10.2. develop awareness-raising programmes that deal with defending and conserving the oceans and their potential;

10.3. adopt policies for coastline management, sewage treatment, supervision of economic activity and water basin preservation.

* * *

Parliamentary Assembly Resolution 1694 (2009)² “Towards a new ocean governance”

1. The Parliamentary Assembly notes with great concern that, in recent decades, the oceans, which cover two thirds of the earth's surface, have been particularly affected by environmental problems, in spite of the 1982 United Nations Convention on the Law of the Sea and the many standard-setting legal instruments that have supplemented it.

² Assembly debate on 2 October 2009 (35th Sitting) (see Doc.12005, report of the Committee on the Environment, Agriculture and Local and Regional Affairs, rapporteur: Mrs de Melo). Text adopted by the Assembly on 2 October 2009 (35th Sitting). See also Recommendation 1888 (2009).

2. The Assembly underlines that climate change and the greenhouse effect are closely inter-related with ocean processes, leading to harmful consequences such as rising sea levels, alteration of marine currents, imbalances in ecosystems, the decline of biodiversity, the rarefaction of certain fish species and, in particular, the flagrant decrease in the capacity of the oceans to absorb carbon dioxide.

3. The Assembly notes that the trends affecting coastal areas also have major repercussions for the preservation of the oceans. The reduction in sedimentation caused by the building of dams and the extraction of sand has combined with the pressure of urbanisation to speed up coastal erosion. Moreover, the use of coastal areas for activities as varied as tourism, fishing, port services, industry, agriculture and urban activity (waste, wastewater, etc.) has had a strong impact on the pollution of the oceans.

4. Scientific and technological know-how have also led to our extracting ever more value from the oceans and to speedier deterioration of the marine environment. This situation is all the more alarming since it is now recognised that ocean resources are limited.

5. The Assembly therefore calls on scientific experts and institutions to share all the available information and their knowledge in this area and make them accessible to the public and political and economic decision makers.

6. The Assembly therefore supports the establishment of an information network in order to introduce a new type of governance offsetting the irrationality, injustice and unsustainability of exploiting the resources of the oceans.

7. The Assembly therefore calls on member and non-member states to:

7.1. take measures to raise public awareness of the problems and potential of the oceans;

7.2. make sure that resources are distributed fairly and help less-developed countries to manage ocean resources;

7.3. put in place an integrated maritime policy based on the principles in the European Union "Blue Book";

7.4. encourage scientific research on the oceans and its application to territorial waters and oceanic platforms;

7.5. encourage the establishment of a network of scientific and technological institutions, universities and companies for sharing and monitoring data on the oceans and disseminating it widely;

7.6. adopt ocean-friendly policies for coastline management, supervision of economic activity and water-basin preservation;

7.7. implement or, if they have not already done so, sign and/or ratify existing conventions on the law of the sea and in particular on people who work on, or make use of, the sea.

8. The Assembly wishes to continue its consideration of this area, in particular with regard to the preservation and potential of the oceans and the impact of the exploitation of maritime resources on the various aspects of sustainable development.

2. ELECTION OF THE SECRETARY GENERAL

CM/Del/Dec(2010)1074/1.7E / 15 January 2010

**Rules and procedures for future elections of the Secretary General -
Draft joint interpretative statement
(CM/Del/Dec(2009)1073/1.6, CM(2009)195 rev)**

Decisions

“The Deputies

1. approved the revised draft joint interpretative statement on the rules and procedures for the future elections of the Secretary General, as it appears in document CM(2009)195 rev³;
2. agreed to transmit it to the Assembly with a view to its adoption;
3. agreed to come back to its formal adoption in the light of decision 2 at one of their forthcoming meetings after the March 2010 Standing Committee.”

3. EXTERNAL RELATIONS

CM/Del/Dec(2010)1074/7.3E / 15 January 2010

**European Cultural Convention (ETS No. 18)
Request by Kazakhstan to be invited to accede
(CM(2009)173)**

Decisions

“The Deputies

1. took note of the request of Kazakhstan to be invited to accede to the European Cultural Convention (ETS No. 18) and noted that the Committee of Ministers agreed in principle to granting this request;
2. instructed the Secretariat to consult the non-member states which are Contracting States to the Convention, i.e. Belarus and Holy See, and set 19 February 2010 as the deadline for a reply;
3. agreed that, if there was no objection from the non-member states consulted, the decision to invite Kazakhstan to accede to the European Cultural Convention would be regarded as adopted on 24 February 2010 (1077th meeting of the Ministers’ Deputies);
4. agreed to resume consideration of this item if the non-member states consulted raise an objection concerning the accession of Kazakhstan to the Convention.”

³ This document appears as Appendix I to the present one.

4. EUROPEAN COURT OF HUMAN RIGHTS

4.a CM/Del/Dec(2009)1066/1.6E / 25 September 2009

Conditions for service of the judges of the European Court of Human Rights and of the Commissioner for Human Rights

Decision

“The Deputies adopted Resolution CM/Res(2009)5 on the status and conditions of service of judges of the European Court of Human Rights and of the Commissioner for Human Rights, as it appears at Appendix 3 to the present volume of Decisions ⁴.”

4.b CM/Del/Dec(2009)1070/4.3E / 20 November 2009

Procedure for the election of judges of the European Court of Human Rights

Decisions

“The Deputies

1. decided to no longer apply the informal procedure for the examination of candidatures provided in the decision adopted at their 593rd meeting (2 May 1997, item 4.1a);

2. noted accordingly that, in conformity with Article 22, paragraph 1, of the European Convention on Human Rights, the submission of lists of candidates for election of judges of the European Court of Human Rights takes place directly between the competent authorities of the High Contracting Parties to the Convention and the Parliamentary Assembly;

3. nonetheless invited the competent authorities of the High Contracting Parties, when submitting their lists to the Assembly, to make copies available to the Secretariat to be distributed to all delegations for information.”

4.c CM/Del/Dec(2009)1073/13.1E / 16 December 2009

Letter from the Representative of the Russian Federation concerning Protocol No. 14

Decisions

The Deputies

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as “the Convention”) and to Protocol No. 14 to the Convention, amending the control system thereof;

Having regard to the statement adopted at the 119th Ministerial Session of the Committee of Ministers (Madrid, 12 May 2009) on the Conference of the High Contracting Parties to the European Convention on Human Rights where the Ministers stressed that the entry into force of Protocol No. 14 should remain the first priority of the States Parties to the Convention;

Recalling that the Ministers further stressed in their statement that in order to achieve the objective of an entry into force of Protocol No. 14, “interpretive declarations or reservations could be formulated in conformity with the principles of the international law of treaties and relevant provisions of the Convention”;

⁴ This Resolution appears as Appendix II to the present document.

Noting with satisfaction that in his letter of 2 November 2009 to the Chair of the Ministers' Deputies **[See below]**, the Permanent Representative of the Russian Federation recalled that on 23 September 2009 the State Duma of the Federal Assembly of the Russian Federation issued a public statement according to which it is possible to consider again the issue of ratification of Protocol no. 14 to the Convention;

Having regard to the request for clarification made by the Permanent Representative of Russia in this letter, aiming at facilitating and accelerating the process of consideration of that issue:

1. noted the explanations concerning the practical implementation of Articles 28 and 38 of the Convention, as amended respectively by Articles 8 and 14 of Protocol No. 14, provided by the Registrar of the European Court of Human Rights in his reply to the letter addressed to him on 4 November 2009 by the Chair of the Ministers' Deputies;
2. took due note of the declaration of 7 December 2009 by the Russian Federation regarding paragraphs 3 and 4 of Article 46 of the Convention, introduced by Protocol No. 14 and confirmed that in line with its established practice, the Committee of Ministers engages in a dialogue with the state concerned with a view to securing the full execution of the Court's judgment and that nothing in the text or the drafting history of Protocol No. 14 indicates that this should be different as regards the question of a possible application of new paragraphs 3 and 4 of Article 46, or that these provisions aim at giving the Court a new power to prescribe a particular manner of implementing a judgment;
3. encouraged the Russian Federation to pursue its efforts with a view to depositing as soon as possible the instrument of ratification of Protocol No. 14, which would pave the way for its entry into force.

* * *



PERMANENT MISSION
OF THE RUSSIAN FEDERATION
TO THE COUNCIL OF EUROPE

75, allée de la Robertsau, F-67000 STRASBOURG
Tél. (+33) (0) 3 88 24 20 15 Fax (+33) (0) 3 88 24 19 74

H.E. Mr. Paul WIDMER
Chairman of the Ministers' Deputies
of the Council of Europe

Strasbourg, December 7, 2009
N/15/ce

Excellency,

I am sending you enclosed the text of the Declaration on behalf of the Russian Federation relating to the application by the Committee of Ministers of paragraphs 3 and 4 of Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Article 16 of Protocol N°14, once the latter will have entered into force. It is my intention to make this Declaration on behalf of my authorities at the forthcoming 1073 meeting of the Deputies on 9 December.

Having obtained on 6 November last from the Registrar of the Court the explanations required in my letter of 2 November to Ambassador Meta BOLE, the text of the enclosed Declaration constitutes an attempt by my Government to deal with the outstanding issue of concern raised by the State Duma of the Federal Assembly of the Russian Federation in its Declaration of 23 September 2009 in relation to the ratification of Protocol n° 14.

I would be grateful, Mr Chairman, if you could agree to distribute the text of this Declaration with a view to facilitating its consideration by the Deputies.

Yours, faithfully

Alexander ALEKSEEV
Ambassador,
Permanent Representative

**Text of the Declaration to be done on behalf of the Russian Federation
at the 1073 meeting of the Deputies on 9 December 2009**

“The Russian Federation, acknowledging that the Committee of Ministers of the Council of Europe is vested with the function of supervising the implementation by the States-Parties to the Convention on Human Rights and Fundamental Freedoms of the judgments rendered in their respect by the European Court of Human Rights in Strasbourg, proceeds from the understanding that before transmitting to the Court in accordance with paras.3 and 4 of Article 46 of the Convention of the issues mentioned therein the Committee of Ministers will hold consultations with the State in respect of which the judgment was rendered with a view to elaborate a mutually-acceptable way forward.

The Russian Federation believes moreover that the provisions contained in paras.3 and 4 of Article 46 of the Convention are aimed exclusively at facilitating the supervision by the Committee of Ministers of implementation of the Court's judgments and do not empower the Court to prescribe particular fashion of their implementation to the State concerned.”

APPENDICES

APPENDIX I

Ministers' Deputies
CM Documents
CM(2009)195 revised 14 January 2010

Rules and procedures for the future elections of the Secretary General – Draft joint interpretative statement

Having regard to the Statute of the Council of Europe, in particular Article 36.b;

Having regard to the Regulations relating to the appointment of the Secretary General, Deputy Secretary General and Secretary General of the Assembly having the rank of Deputy Secretary General which were adopted by the Committee of Ministers in 1956 with the agreement of the Assembly;

Having regard to the proposals for enhanced dialogue and co-operation between the Parliamentary Assembly and the Committee of Ministers, as they appear in document CM(2009)142 and Appendix to Parliamentary Assembly Doc. 12028 Part II;

1. The Committee of Ministers and the Assembly agreed that the rules for future elections of the Secretary General need to be clarified in respect of the consultation process between the Assembly and the Committee of Ministers and that the gender aspects need to be strengthened.

2. In accordance with Article 36.b of the Statute of the Council of Europe, the election of the Secretary General is a shared responsibility. It is the responsibility of the Committee of Ministers to draw up a list of candidates to be transmitted to the Assembly. It is the responsibility of the Assembly to elect the Secretary General from the candidates included in that list.

3. The criteria for determining the choice of candidates is set out in Article 2 of the Regulations relating to the appointment of the Secretary General. These are:

“a. The recruitment of persons of the highest ability and integrity and suitability for the post to be filled.

b. The qualifications and experience of persons already employed by the Council of Europe shall be taken into consideration, so that members of the Secretariat may have reasonable prospects of promotion.

c. The desirability of ensuring an equitable geographical allocation of appointments among nationals of the Member States subject to the overriding interests of efficiency. No office in the Secretariat shall be considered to be the prerogative of any particular Member State.”

In this connection, the Committee of Ministers will interpret the criteria of “highest ability and suitability” in particular by reference to the decision taken at the 117th Ministerial Session (Strasbourg, 10-11 May 2007) whereby the Committee of Ministers agreed to present to the Parliamentary Assembly “candidates who enjoy a high level of recognition, are well-known among their peers and the people of Europe, and have previously served as Heads of State or Government, or held senior ministerial office or similar status relevant to the post”. When assessing candidates against these criteria, the Committee of Ministers will have a merit based

approach and use the appended competence framework it has prepared to that effect (cf. Appendix 2).

4. With a view to strengthening gender aspects, both organs will, taking into account their different responsibilities in the election process, strive to make gender equality a reality, in line with the declaration adopted by the Committee of Ministers at its 119th session in Madrid in May 2009. The Chair of the Committee of Ministers, when calling for candidatures, will strongly encourage member states to put forward candidatures of both sexes. Furthermore and bearing in mind paragraph 3 above, when the Committee of Ministers draws up its recommendation to be transmitted to the Parliamentary Assembly, it will pay due regard to the desirability of ensuring an equitable gender balance of appointments.

5. In accordance with Article 4 of the Regulations relating to the appointment of the Secretary General, the Committee of Ministers shall consult the Assembly through the medium of the Joint Committee before transmitting the recommendation to the Assembly.

6. The Committee of Ministers shall seek the Assembly's views before the Committee of Ministers draws up its recommendation. Therefore, consultation of the Assembly by the Committee of Ministers will take place at an early stage of the election procedure through the Joint Committee. It shall include a discussion on all the candidatures proposed by governments. The revised timeframe, which is part of this statement, to accommodate this early consultation, is set out in Appendix 1.

7. After the consultation of the Assembly within the Joint Committee, the Committee of Ministers will decide on the list of candidates to be included in the recommendation to the Assembly, in accordance with its own procedures. This may include voting when drawing-up the list of candidates. In this context, it is recalled that Article 20.d of the Statute of the Council of Europe applies to the adoption of the recommendation of the Committee of Ministers to the Assembly in the absence of a consensus.

Appendix 1: calendar for the election of the Secretary General

For a mandate beginning on 1 October of year n:

- January n-1: after informal discussions between the President of PACE and the Chair of the CM, PACE confirms the date (June of year n) of the election in the Joint Committee;
- February n-1: the CM fixes the timetable and calls for candidatures to be received before 15 December n-1. The Chair of the CM writes to his colleagues asking for suitable candidates and drawing attention to the "Juncker criteria" and to the gender aspects;
- 15 December n-1: deadline for member states to propose candidates;
- January n: consultation with PACE through the Joint Committee on all proposed candidates
- February n: interviews of candidates by CM, drawing up of the recommendation and subsequent transmission to PACE;
- Before June n: interviews by the Assembly of the candidates included in the recommendation;
- June n: election by PACE;
- 1 October n: start of the mandate of the new Secretary General.

If only one candidate appears in the Recommendation:

- A discussion in the April n PACE part-session or during the March n Standing Committee to seek agreement in the Joint Committee on the submission of only one candidate in the CM recommendation;

- If agreement is reached in the Joint Committee, subsequent transmission of recommendation;
- June n: election by PACE;
- 1 October n: start of the mandate of the new Secretary General.

If the CM considers that no candidates are suitable to appear in the recommendation or if no agreement is reached in the Joint Committee on the submission of only one candidature in the recommendation:

- February/March n: prolongation of deadline for submission of candidates by 2 months;
- May/June n: new consultation in Joint Committee on candidatures proposed by member states, either at the May n Standing Committee or the June n part-session;
- June/July n: interview of candidatures by CM, drawing up of the recommendation and subsequent submission to PACE;
- September n: election by PACE;
- 1 October n: start of the mandate of the new Secretary General.

Appendix 2: Competence framework

The Secretary General is responsible to the Committee of Ministers for the work of the Secretariat and provides secretariat and other assistance to the Parliamentary Assembly. She/he represents the values of the Council of Europe to the outside at the highest levels and provides leadership to a culturally diverse Secretariat. The budgets of the Council of Europe amount to approximately € 300 million in 2010.

a) To assess the “suitability for the post” (Regulations):

- “high level of recognition, well-known among their peers”, “has previously served as Heads of State or government, or held senior ministerial office or similar status relevant to the post” (117th Session’s decisions):
- strong and effective relations with governments of member states; ability to work with the Committee of Ministers at all levels;
- demonstrated commitment to human rights, democracy, rule of law;
- very good knowledge of at least one of the official languages of the Council of Europe;
- at least a passive knowledge of the second official language, or a declared readiness to follow appropriate training during the first six months of the mandate.

b) To assess “highest ability” (Regulations):

- political vision and insight on international affairs; including the role of the Council of Europe; strategic thinking;
- leadership skills; trust-building; inspires and motivates a culturally diverse staff of 2,000 from 47 countries;
- skills to manage a large Organisation; delegates authority and empowers staff while remaining accountable; innovative thinking; promotes and accompanies change;
- pro-active planning ability and priority setting, both in his/her responsibility and in making proposals to the Committee of Ministers;

- delivers results, with efficiency and transparency;
- communication skills, both oral and written;
- negotiating skills; ability to tackle sensitive issues while promoting Council of Europe values;
- advocacy skills; proven ability to establish, maintain and use strong and effective networks; capacity to interact effectively with diverse interlocutors (political and cultural figures, officials, NGOs, media, etc); highly developed ability to explain and to persuade.

c) To assess “highest integrity” (Regulations)

- proven personal commitment to the ethical values of the Council of Europe;
- respect for diversity;
- openness to scrutiny.

APPENDIX II

Resolution CM/Res(2009)5

on the status and conditions of service of judges of the European Court of Human Rights and of the Commissioner for Human Rights⁵

The Committee of Ministers, acting pursuant to Article 16 of the Statute of the Council of Europe,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ("the Convention");

Having regard to the General Agreement on Privileges and Immunities of the Council of Europe, signed in Paris on 2 September 1949;

Having regard to Resolution Res(2004)50 on the status and conditions of service of judges of the European Court of Human Rights ("the Court"), adopted on 15 December 2004;

Having regard to the actuarial study;⁶

On a proposal of the Secretary General,

Resolves as follows:

Article 1 – Status

Elected members of the Court shall enjoy the special status of "judges of the European Court of Human Rights" ("judges").

Article 2 – Privileges and immunities

In accordance with Article 51 of the Convention, judges and ad hoc judges appointed pursuant to Article 27, paragraph 2, of the Convention 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, including in particular the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe.

Article 3 – Remuneration

1. The basic salary of judges shall be equal to step 6 of the grade A7 pay scale for Council of Europe staff members based in France. It shall be adjusted in accordance with any adjustments made to salaries of staff members based in France. Judges shall be paid monthly in advance.

2. Each judge shall also receive a displacement allowance equal to 12.5% of basic salary.

3. Additional remuneration at the following annual rates shall be paid, on a pro rata temporis basis, to the following office-holders:

- the President of the Court: €13 885

⁵ Adopted by the Committee of Ministers on 23 September 2009 at the 1066th meeting of the Ministers' Deputies

⁶ Study dated 19 December 2007 prepared by the Joint Pensions Administrative Section (JPAS) and the JPAS Memorandum dated 21 August 2009, contained in DD(2009)449.

- the Vice-Presidents of the Court and the Presidents of Sections: €6 942.

These amounts shall be adjusted annually by applying the rate used for the adjustment in Article 3.1.

4. The judges shall not be entitled to any of the allowances/indemnities provided for in the Staff Regulations.

Article 4 – Payment of expenses by the Council of Europe

1. The Council of Europe shall pay:

- (a) the travel and subsistence expenses of a judge on an official journey;
- (b) travel, subsistence and removal expenses incurred by judges and their household when taking up or on termination of their duties, according to the rules applying to staff members.

2. On the death of a judge during his or her term of office, the Council of Europe shall defray, according to the rules applying to staff members:

- (a) the cost of transporting the body of the judge from the place of death to the place of funeral;
- (b) the cost of transporting the deceased judge's personal belongings;
- (c) the travel costs of the survivors who were dependent on the judge and were part of the judge's household.

3. The rules issued by the Secretary General of the Council of Europe applicable to payment of expenses to staff members of the Council of Europe shall apply to judges, save that the amounts payable in respect of travel and subsistence expenses shall be governed by the rules issued by the Secretary General applicable to the reimbursement of Ministers' Deputies when travelling at the charge of the Council of Europe.

Article 5 – Place of residence

Judges shall reside at or near the seat of the Court.

Article 6 – Medical examination

Judges, when taking up their duties, shall undergo the medical examination that staff members undergo as part of their appointment process. Where the medical examination shows a judge to be suffering from an illness or disablement, the Council of Europe may decide that, as regards risks arising from an illness or disablement existing before s/he took up his or her duties, the said judge shall not be entitled to the invalidity or death benefits provided for in Appendix V bis to the Staff Regulations until the expiry of a period not exceeding five years from the date of his or her taking up his or her duties.

Article 7 – Annual leave

The Court shall remain permanently in session. The duration of court vacations shall be determined by the President of the Court with due regard to the needs of business. During such court vacations, judges shall make themselves available as required. Judges may absent themselves from Strasbourg outside court vacations only exceptionally and with the President's authorisation.

Article 8 – Sick leave

Whenever judges are absent and unable to perform their duties for health reasons, they shall inform the President of the Court and provide appropriate medical certificates to the Directorate of Human Resources of the Directorate General of Administration and Logistics.

Article 9 – Maternity, paternity and adoption leave

Judges shall be entitled to the same maternity, paternity and adoption leave as staff members. Pregnancies, births and adoptions shall be notified to the Directorate of Human Resources.

Article 10 – Pension

1. Judges shall benefit from the Pension Scheme for staff members which is in force at the Council of Europe at the time of their appointment, subject to any modifications rendered necessary by their particular status and conditions of service.

2. The New Pension Scheme "NPS" (Appendix V bis to the Staff Regulations), in force as at the date of adoption of this resolution, shall apply to judges subject to the following modifications:

(i) Judges with fewer than five years' reckonable service at the Court shall be entitled to a leaving allowance. Judges with at least five but fewer than ten years of reckonable service shall be able to choose between a leaving allowance and a retirement pension to be paid according to subparagraph (ii) here below. Judges who have ten or more years of reckonable service shall only be entitled to a retirement pension to be paid according to subparagraph (ii) here below;

(ii) The age at which judges become entitled to a retirement pension, without reduction due to early departure, shall be 63 years;

(iii) In the case of judges, the salary for the purposes of Appendix V bis to the Staff Regulations shall be the monthly basic salary of the judge, according to the scales in force in the Organisation at the time when the pension is assessed, and updated in accordance with the provisions of Article 36, and the judge's displacement allowance; the President's, Vice Presidents' and Section Presidents' additional remuneration is not to be taken into account;

(iv) Chapter VI as well as Article 33.2 to 33.7 of Appendix V bis to the Staff Regulations shall not apply to judges;

(v) The survivor's pension shall be 60% of the pension the judge would have received had s/he reached the end of his or her mandate and the reversion pension shall be 60% of the judge's pension. The minimum amounts provided for in Appendix V bis to the Staff Regulations shall not be applicable;

(vi) The invalidity pension shall be equal to the pension the judge would have received had s/he reached the end of his or her mandate.

Article 11 – Medical and social insurance

Judges shall be affiliated to the Council of Europe Medical and Social Insurance Scheme. Appendix XII to the Staff Regulations shall apply to them, with the exception that the capital sum paid in the event of death shall be reduced as follows in the case of judges who die in service following their 65th birthday: by 10% when a judge dies before turning 66, by 20% when a judge dies before turning 67, by 30% when a judge dies before turning 68, by 40% when a judge dies before turning 69 and by 50% when a judge dies before turning 70. No capital sum shall be paid in the case of judges who die in service following their 70th birthday.

Article 12 – Ad hoc judges

1. For each day on which they exercise their functions, ad hoc judges shall receive an allowance of an amount equal to 1/365th of the annual basic salary of judges of the Court provided for in Article 3 § 1 above. The allowance shall be free of all taxation.
2. The Council of Europe shall also reimburse to ad hoc judges travel and subsistence expenses incurred by them in connection with the performance of their functions, according to the rules applying to staff members. The rules applicable to the reimbursement of the expenses of Ministers' Deputies when travelling at the charge of the Council of Europe shall apply.
3. Ad hoc judges shall not benefit from any social or medical cover provided by the Council of Europe.

Article 13 – Council of Europe Commissioner of Human Rights (“the Commissioner”)

The Commissioner shall enjoy a special status which shall be the same as that of an elected judge. The above provisions shall apply to him or her.

Article 14 – Entry into force and transitional provisions

1. This resolution shall enter into force on the first day of the month following its adoption.
2. The conditions of service of judges in office on the date of entry into force of this resolution shall be those contained in Resolution Res(2004)50. However, the conditions of service contained in this resolution shall be applied to any such judge upon his or her request.
3. Judges in office on the date of entry into force of this resolution who have decided to be covered by it shall be able to have all or part of their years of service as judges recognised as reckonable years of service under the New Pension Scheme by paying 2.5 times the staff contribution for the period they wish to validate. Their rights shall be calculated on the basis of the first basic salary and the displacement allowance which they shall be paid under this resolution.
4. The conditions of service of the Council of Europe Commissioner of Human Rights in office on the date of the entry into force of this resolution shall be those contained in Decision 668/11.2b of 27 April 1999 of the Ministers' Deputies. However, the conditions of service contained in the present resolution can be applied to him following the modalities of paragraphs 2 and 3.