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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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**COMMITTEE OF EXPERTS ON THE SYSTEM OF
THE EUROPEAN CONVENTION ON HUMAN RIGHTS
(DH-SYSC)**

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Reference document in view of the first exchange of views of DH-SYSC (1st meeting, 25-27 April 2016) on the implementation of the Convention and the execution of judgments : mechanisms for ensuring the compatibility of laws with the Convention (arrangements, advantages, obstacles)

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INTRODUCTION

1. At the 9th meeting of DH-GDR (17-20 November 2015), it was decided that the first exchange of information of the DH-SYSC on implementation of the Convention and the execution of the judgments of the Court would focus on the mechanisms for ensuring the compatibility of legislation with the Convention (arrangements, advantages, obstacles). The CDDH endorsed this decision at its 84th meeting (see CDDH(2015)R84, para. 8).

2. To facilitate this exercise, the Secretariat has prepared the present document, containing the text of Committee of Ministers Recommendation (2004)5 on this subject (Appendix I), the previous work carried out by the CDDH in this field in 2008 (Appendix II) as well as a selection of relevant texts on this issue (Appendix III).

3. It should be pointed out that the issue of compatibility of domestic law with the Convention has been the subject of Council of Europe work before the adoption of the abovementioned Recommendation, namely between 1994 and 1996. With the accession of new member States to the Council of Europe, compatibility reviews have become a regular, important activity among others, for the Directorate of Human Rights' section in charge of relations with Central and East European countries.

4. As part of its follow-up on this issue in 2008, the CDDH had the opportunity to consider several types of mechanisms, sometimes cumulative, in States Parties to the Convention and their impact. As part of the possible follow-up, the CDDH noted that States Parties have shown a real desire to implement the Recommendation, the main impediment to their monitoring of implementation being the difficulty of accurately assessing the effectiveness of the verification mechanisms in use.

5. The importance of the verification of the compatibility of draft laws under Recommendation (2004)5 was underlined at the High-Level Conferences (more recently in the Brussels Declaration of 27 March 2015, item B.1.d)). The CDDH addressed this issue in its report on the longer-term future of the system of the European Convention on Human Rights adopted on 11 December 2015 (paras. 38, 52-54, 58 and 71) and concluded:

> "Governments should fully inform parliaments on issues relating to the interpretation and application of Convention standards, including the compatibility of (draft) legislation with the Convention (para. 197 v));
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> Sufficient expertise on Convention matters should be made available to members of parliament, where appropriate, by the establishment, where appropriate, of parliamentary structures assessing human rights and/or by means of the support of a specialised secretariat and/or by means of ensuring access to impartial advice on human rights law, if appropriate in cooperation with the Council of Europe (para. 197 vi));
>
> There is a need for national authorities to check in a systematic manner the compatibility of draft legislation and administrative practice (including as expressed in regulations, orders and circulars) with the Convention at an early stage

in the drafting process and consider, where appropriate, substantiating in the explanatory memorandum to draft laws why the draft bill is deemed compatible with the requirements of human rights provisions (para. 197 vii));

The CDDH also stresses the importance of enhanced recourse by member States to the existing mechanisms of the Council of Europe (among them the Venice Commission), which offer the possibility of assessing compliance of legislation with Convention standards (para. 197 viii));

The CDDH reiterates the significant role that national human rights structures and civil society can play in the implementation of the Convention. […] (para. 197 ix))".

APPENDIX I. RECOMMENDATION REC(2004)5 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE VERIFICATION OF THE COMPATIBILITY OF DRAFT LAWS, EXISTING LAWS AND ADMINISTRATIVE PRACTICE WITH THE STANDARDS LAID DOWN IN THE EUROPEAN CONVENTION ON HUMAN RIGHTS

(adopted by the Committee of Ministers on 12 May 2004 at its 114th Session)

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

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

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

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

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

Recalling that, according to Article 46, paragraph 1, of the Convention, the high contracting parties undertake to abide by the final judgments of the European Court of

Human Rights (hereinafter referred to as "the Court") in any case to which they are parties;

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

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

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

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

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

I. ensure that there are appropriate and effective mechanisms for systematically verifying the compatibility of draft laws with the Convention in the light of the case-law of the Court;

II. ensure that there are such mechanisms for verifying, whenever necessary, the compatibility of existing laws and administrative practice, including as expressed in regulations, orders and circulars;

III. ensure the adaptation, as quickly as possible, of laws and administrative practice in order to prevent violations of the Convention;

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

Appendix to Recommendation Rec(2004)5

Introduction

1. Notwithstanding the reform, resulting from Protocol No. 11, of the control system established under the European Convention on Human Rights (hereinafter referred to as "the Convention"), the number of applications submitted to the European Court of Human Rights (hereinafter referred to as "the Court") is increasing steadily, giving rise to considerable delays in the processing of cases.

2. This development reflects a greater ease of access to the European Court, as well as the constantly improving human rights protection in Europe, but it should not be

forgotten that it is the parties to the Convention, which, in accordance with the principle of subsidiarity, remain the prime guarantors of the rights laid down in the Convention. According to Article 1 of the Convention, "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". It is thus at national level that the most effective and direct protection of the rights and freedoms guaranteed in the Convention should be ensured. This requirement concerns all state authorities, in particular the courts, the administration and the legislature.

3. The prerequisite for the Convention to protect human rights in Europe effectively is that states give effect to the Convention in their legal order, in the light of the case-law of the Court. This implies, notably, that they should ensure that laws and administrative practice conform to it.

4. This recommendation encourages states to set up mechanisms allowing for the verification of compatibility with the Convention of both draft laws and existing legislation, as well as administrative practice. Examples of good practice are set out below. The implementation of the recommendation should thus contribute to the prevention of human rights violations in member states, and consequently help to contain the influx of cases reaching the Court.

Verification of the compatibility of draft laws

5. It is recommended that member states establish systematic verification of the compatibility with the Convention of draft laws, especially those which may affect the rights and freedoms protected by it. It is a crucial point: by adopting a law verified as being in conformity with the Convention, the state reduces the risk that a violation of the Convention has its origin in that law and that the Court will find such a violation. Moreover, the state thus imposes on its administration a framework in line with the Convention for the actions it undertakes vis-à-vis everyone within its jurisdiction.

6. Council of Europe assistance in carrying out this verification may be envisaged in certain cases. Such assistance is already available, particularly in respect of draft laws on freedom of religion, conscientious objection, freedom of information, freedom of association, etc. It is none the less for each state to decide whether or not to take into account the conclusions reached within this framework.

Verification of the compatibility of laws in force

7. Verification of compatibility should also be carried out, where appropriate, with respect to laws in force. The evolving case-law of the Court may indeed have repercussions for a law which was initially compatible with the Convention or which had not been the subject of a compatibility check prior to adoption.

8. Such verification proves particularly important in respect of laws touching upon areas where experience shows that there is a particular risk of human rights violations, such as police activities, criminal proceedings, conditions of detention, rights of aliens, etc.

Verification of the compatibility of administrative practice

9. This recommendation also covers, wherever necessary, the compatibility of administrative regulations with the Convention, and therefore aims to ensure that human rights are respected in daily practice. It is indeed essential that bodies, notably those with powers enabling them to restrict the exercise of human rights, have all the necessary resources to ensure that their activity is compatible with the Convention.

10. It has to be made clear that the recommendation also covers administrative practice which is not attached to the text of a regulation. It is of utmost importance that states ensure verification of their compatibility with the Convention.

Procedures allowing follow-up of the verification undertaken

11. In order for verification to have practical effects and not merely lead to the statement that the provision concerned is incompatible with the Convention, it is vital that member states ensure follow-up to this kind of verification.

12. The recommendation emphasises the need for member states to act to achieve the objectives it sets down. Thus, after verification, member states should, when necessary, promptly take the steps required to modify their laws and administrative practice in order to make them compatible with the Convention. In order to do so, and where this proves necessary, they should improve or set up appropriate revision mechanisms which should systematically and promptly be used when a national provision is found to be incompatible. However, it should be pointed out that often it is enough to proceed to changes in case-law and practice in order to ensure this compatibility. In certain member states compatibility may be ensured through the non-application of the offending legislative measures.

13. This capacity for adaptation should be facilitated and encouraged, particularly through the rapid and efficient dissemination of the judgments of the Court to all the authorities concerned with the violation in question, and appropriate training of the decision makers. The Committee of Ministers has devoted two specific recommendations to these important aspects: one on the publication and the dissemination in member states of text of the Convention and the case-law of the Court (Rec(2002)13) and the other on the Convention in university education and professional training (Rec(2004)4).

14. When a court finds that it does not have the power to ensure the necessary adaptation because of the wording of the law at stake, certain states provide for an accelerated legislative procedure.

15. Within the framework of the above, the following possibilities could be considered.

Examples of good practice

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

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

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

II. Verification of draft laws

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

By the executive

19. In general, verification of conformity with the Convention and its protocols starts within the ministry which initiated the draft law. In addition, in some member states, special responsibility is entrusted to certain ministries or departments, for example, the Chancellery, the Ministry of Justice and/or the Ministry of Foreign Affairs, to verify such conformity. Some member states entrust the agent of the government to the Court in Strasbourg, among other functions, with seeking to ensure that national laws are compatible with the provisions of the Convention. The agent is therefore empowered, on this basis, to submit proposals for the amendment of existing laws or of any new legislation which is envisaged.

20. The national law of numerous member states provides that when a draft text is forwarded to parliament, it should be accompanied by an extensive explanatory memorandum, which must also indicate and set out possible questions under the constitution and/or the Convention. In some member states, it should be accompanied by a formal statement of compatibility with the Convention. In one member state, the minister responsible for the draft text has to certify that, in his or her view, the provisions of the bill are compatible with the Convention, or to state that he or she is not in a position to make such a statement, but that he or she nevertheless wishes parliament to proceed with the bill.

By the parliament

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

Other consultations

22. Other consultations to ensure compatibility with human rights standards can be envisaged at various stages of the legislative process. In some cases, consultation is optional. In others, notably if the draft law is likely to affect fundamental rights, consultation of a specific institution, for example the Conseil d'Etat in some member states, is compulsory as established by law. If the government has not consulted as required, the text will be tainted by procedural irregularity. If, after having consulted, it

decides not to follow the opinion received, it accepts responsibility for the political and legal consequences that may result from such a decision.

23. Optional or compulsory consultation of non-judicial bodies competent in the field of human rights is also often foreseen. In particular these may be independent national institutions for the promotion and protection of human rights, the ombudspersons, or local or international non-governmental organisations, institutes or centres for human rights, or the Bar, etc.

24. Council of Europe experts or bodies, notably the European Commission for Democracy through Law ("the Venice Commission"), may be asked to give an opinion on the compatibility with the Convention of draft laws relating to human rights. This request for an opinion does not replace an internal examination of compatibility with the Convention.

III. Verification of existing laws and administrative practice

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

By the executive

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

APPENDIX II. DRAFT REVIEW OF THE IMPLEMENTATION OF RECOMMENDATION (2004) 5 OF THE COMMITTEE OF MINISTERS TO THE MEMBER STATES ON THE VERIFICATION OF THE COMPATIBILITY OF DRAFT LAWS, EXISTING LAWS AND ADMINISTRATIVE PRACTICE WITH THE STANDARDS LAID DOWN IN THE EUROPEAN CONVENTION ON HUMAN RIGHTS[1]

[As adopted by the CDDH at its 66th meeting, 25-28 March 2008, in the framework of its Activity Report: Sustained action to ensure the effectiveness of the implementation of the ECHR at national and European levels (CDDH(2008)008 Add I)]

I. INTRODUCTION ON THE STATE OF PLAY OF AVAILABLE INFORMATION:

1. The results are broadly satisfactory in that all the member states have now provided information on the implementation of Recommendation (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.

2. The replies to the two successive questionnaires issued during the first and then second phases of follow-up, taken as a whole, were compiled into a single document for each Member State.

3. It is also necessary to welcome the important contribution made by the Office of the Council of Europe Commissioner for Human Rights, who after the Round Table on cooperation with Ombudsmen and national human rights institutions (Athens, April 2007) expressed readiness to be involved in the follow-up of implementation of the Recommendations. Contributions were thereby obtained from almost all the contact persons for the Office of the Commissioner within the National Human Rights Structures. This information supported and confirmed the responses given by member States. It brought particular added value to the work by specifying the role of national institutions in this field.

4. The present review has been drawn up using all this information, on the basis of the first review drawn up at the conclusion of the first phase of the exercise and of the analysis that was made of the replies received to the second questionnaire. A global approach was preferred insofar as the task conferred by the Committee of Ministers was reaching its end and it was therefore now necessary to arrive at a summary of the state of implementation of the Recommendation, with the emphasis on existing good practices. For this reason, it had been decided to follow the provisions of the Recommendation when structuring the review, rather than referring to the successive questions put to member States.

[1] Extract from Activity report: Sustained action to ensure the effectiveness of the implementation of the ECHR at national and European levels (doc. CDDH(2008)008 Add. I)

II. ASSESSMENT OF THE IMPLEMENTATION OF THE RECOMMENDATION

5. Whilst several types of mechanisms, sometimes cumulative, for verifying the compatibility of draft laws, existing laws and administrative practice with the standards of the Convention were identified, it is important to underline that, according to the terms of the Recommendation, verification must take place against the Convention *"in the light of the case-law of the Court"* and that it is important that member States take into account also judgments in cases to which they were not a party insofar as these judgments are relevant for their internal legal order.

1) As concerns the compatibility of draft laws with the standards laid down in the Convention,

6. While many member states do not have a specific parliamentary procedure solely for verifying the compatibility of draft laws with the Convention, most do have mechanisms, often cumulative, which systematically verify compatibility.

7. Systematic supervision of draft laws is generally carried out both at the executive and then at the parliamentary level. Independent bodies are also consulted and, in this regard, contributions by the National Human Rights Structures, collected by the Office of the Commissioner for Human Rights, were of particular interest.

8. In many member states, the drafters of the law are requested to examine the compatibility of their draft with the Convention, (the Czech Republic, Denmark, Finland, Germany, Iceland, Ireland, Italy, Lithuania, the Netherlands, Norway, Sweden, Switzerland, United Kingdom), this does not preclude these states from having additional subsequent verification carried out by other bodies.

9. The examination of the compatibility of draft laws with existing laws, international conventions in general, and with the Convention in particular, can be provided for, step by step, by the Constitution (Finland).

a. Verification by the executive

10. In general, verification of conformity with the Convention and its protocols starts within the ministry which initiated the draft law. In addition, in a large number of member states, special responsibility is entrusted to certain ministries or departments, in most cases, the Chancellery, the Ministry of Justice and/or the Ministry of Foreign Affairs, to verify such conformity. In some member states, the agents of the government to the Court, beside other functions, have the opportunity to give their opinion on whether draft laws are compatible with the provisions of the Convention (Latvia, Romania, Ukraine). The agent is therefore empowered, on this basis, to submit proposals for the amendment of these draft laws or of any new legislation which is envisaged.

11. Some member states have a specialised office (a specific entity within a ministry, for example) to examine draft laws. This office has an in-depth knowledge of the European Convention on Human Rights and the case-law of the Court (Cyprus, Georgia, Greece, Lithuania, Monaco). In some other member states there are no specialised offices

but the offices in charge of the examination of draft laws are required to have a good knowledge of the European Convention on Human Rights and the case-law of the Court (the Netherlands).

12. The national law of some 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 (Bosnia and Herzegovina, Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, the Netherlands, Portugal, Slovakia, Slovenia, Switzerland, United Kingdom).

b. Verification by the Parliament

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

14. Recently, the Italian Parliament instituted the permanent Committee for the examination of the judgments of the Court with two main tasks: collecting data about the specific requirements of the Convention and putting them at disposal of the Parliament during the legislative process, and suggesting to the Parliament the need of adopting specific laws in order to meet the requirements of the Convention, as interpreted by the Court.

15. Many Member States do not have a specific parliamentary procedure dedicated exclusively to the verification of compatibility of draft laws with the Convention. In many Member States, a specific body within the Parliament may be charged with the verification of draft laws with the Convention, in addition to verification with other texts.

16. One or several parliamentary committees may be responsible for the systematic and continuous verification of the compatibility of all draft laws (Human Rights Committee in Cyprus, Croatia, Estonia, Latvia, Lithuania, Romania, United Kingdom; Constitutional Law Committee in Austria, Finland, Italy, Portugal, Slovakia; Legal Affairs Committee in Cyprus, Germany, Lithuania). Otherwise, it can happen that committees in charge of studying draft laws more generally are also requested to examine them with a view to their compatibility with human rights standards (Andorra, Bulgaria, Croatia, Denmark, Greece, Iceland, Poland, Sweden).

17. If the parliamentary committee in charge of examining the compatibility of draft laws considers that there are inconsistencies with the Convention, it may request additional information from those who drafted the law (Finland). In a member state, the consent of the President of the Assembly is needed before a draft law is accepted for discussion.

18. Finally, if in the third reading of a draft law by the parliament, it seems necessary to making it compatible with the Convention, it is possible to decide to the request from thirty MPs, to renew the second reading if the necessary modification can be voted at this stage through proposals for amendments (Slovakia).

c. Other consultations

19. 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 is compulsory as established by law.

20. Compulsory consultations include, *inter alia*, consultation of a higher court, be it a constitutional court (Poland, Portugal, Romania), the state council (Belgium, France, Luxembourg, the Netherlands, Spain) or the supreme court (Cyprus). 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.

21. Consultation can also be optional, as it is the case in numerous member states. The example of the Council on Legislation (comprising members coming from both the Supreme Court and the Supreme Administrative Court) should also be mentioned (Sweden). In some states it can also be provided for that the Head of State may refer to the Supreme Court for its opinion on the text in question (Cyprus, Ireland), or refuse to sign the draft law and send it back to the parliament (Finland, Slovakia).

22. Consultation of non-judicial bodies competent in the field of human rights may also be foreseen, be it optional or compulsory. In particular, these may be independent national institutions for the promotion and protection of human rights (Denmark, France, Greece, Latvia, Ireland, Luxembourg, Portugal), non-governmental organisations (Austria, Finland, Latvia, Sweden), individual experts (Latvia), institutes or centres for human rights (Norway), political parties (Switzerland) or professional associations (Austria, the Netherlands). This may also be territorial authorities (Austria, Switzerland), the Office of the Attorney-General (Cyprus, Malta), the Government Council for Human Rights (chaired by the Commissioner for Human Rights) (the Czech Republic), the Legislative Council (Romania, Slovakia), the Legislative Studies Section of the Office of the State Attorney (San Marino), the Institute for Approximation of Law (under the authority of the Government) (Slovakia).

23. The contributions by the National Human Rights Structures to the review of the Recommendation highlighted some good practices. For instance, the Danish Institute for Human Rights conducts a legal analysis and assessment of draft bills, submits it to the relevant ministries and makes it publicly available on the web page of the institute.

24. In Finland, the Parliamentary Ombudsman has the right to make proposals *ex officio* to ministries in order to amend draft laws, as well as existing laws and administrative practices. The Ombudsman's proposals are as a rule well respected and followed by respective ministries.

25. In other member states, all draft legislation is subject to a public hearing which gives the opportunity to human rights experts in the Ministries of Justice and Foreign affairs to consider whether the draft is in conformity with applicable international conventions (Norway), and the parliament can invite specialists on civil society or academics to ask them their opinions on the draft law in question (Austria, Slovakia).

26. Draft laws are also, in some member states, referred to the Council of Europe for expertise (Armenia, Azerbaijan, Bulgaria, Moldova, Serbia). However, this request for an opinion does not replace an internal examination of compatibility with the Convention.

2) As concerns the compatibility of existing laws with the standards laid down in the Convention,

27. The main general mechanism used to ensure that existing laws are compatible with the standards laid down in the Convention is the referral to a court, where it is the case the Constitutional Court. Control by specific bodies is nevertheless a relatively frequent option.

a. Verification by the executive

28. In some member states, a specialised office within a ministry is entrusted to examine all new judgments of the Court and to inform the ministries which are responsible for the legislation concerned (France) as well as domestic courts (Denmark, Georgia, Monaco, Ukraine). In some others, all the ministries are responsible to check the laws under their purview (Germany, Norway). In one state, both systems work in parallel (Sweden).

29. Some member states entrust the agent of the government to the Court, beside 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 (Bosnia and Herzegovina, Croatia, Latvia, Lithuania, Serbia). The Office of the Government Agent can also be authorised to draw the attention on other similar situations within the ministry concerned (Germany).

30. In one member state, the Human Rights Sector which is part of the Legal Department of the Office of the Attorney-General (who is the legal adviser of the Republic and who is also the Government agent) is responsible for the examination of the laws brought to its attention, in order to determine whether they need to be revised in the light of the Convention and the case law of the European Court of Human Rights. If they do need to be revised, it advises the competent authority accordingly (Cyprus).

31. Mechanisms that may be called “alert mechanisms” are sometimes set up. A body which notices that a law does not comply with the Convention, in particular, must notify it to the relevant body so that modifications to the law are made (Bulgaria, Romania, Russian Federation).

b. Verification by the parliament

32. Requests for verification of compatibility of existing laws may be made within the framework of parliamentary debates. However, no practice was mentioned by member states.

c. Verification by judicial institutions

33. In most cases, judicial institutions are only required to examine the compatibility of an existing law when a case raises compatibility issues (in such circumstances they apply the relevant provision of the Convention and not the law in question). It is very rarely possible to bring a case directly before these bodies with a view to challenging an existing law, if the person who brought the case is not necessarily affected by the implementation of this law.

34. In many member states a case may be lodged with the Constitutional Court to challenge an existing law (Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Germany, Hungary, Latvia, Lithuania, Moldova, Poland, Portugal, Romania, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Spain, "the former Yugoslav Republic of Macedonia", Ukraine). In most of them, the case may be referred to the Constitutional Court by the highest State authorities (Head of State, Parliament, Chair of the Supreme Court, …). Sometimes, it can study it *ex officio* (the Czech Republic, Hungary), or the case may even be submitted by an individual (Austria, Latvia, Slovenia). If the challenged legislation is not in conformity with the relevant provisions, the Constitutional Court can annul it or decide that it loses effect (Croatia, the Czech Republic, Germany, Hungary, Portugal, Slovakia, Spain, "the former Yugoslav Republic of Macedonia"). In addition, by way of an example, the Slovakian Constitutional Court can suspend the effect of the challenged regulation. If the Constitutional Court finds the said regulation not to be in conformity, it shall be considered null and void. The body that issued this text will have to harmonise it, within six months.

35. Several member states referred to their general courts which can decide not to apply to the specific case a law that is found in contradiction with the Convention (Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Iceland, Luxembourg, Portugal, Norway, Sweden, Switzerland, Turkey) or to rule that a law is contrary to the Convention, in which case the relevant ministry must consider whether the law in question ought to be amended (United Kingdom).

d. Verification by independent non-judicial institutions

36. In addition to their other roles, independent non-judicial institutions, and particularly national institutions for the promotion and protection of human rights, as well as ombudspersons, may decide to consider existing laws with a view to their compatibility with the standards laid down in the Convention (Finland, France, Greece, Ireland, Latvia, Norway, Portugal, Romania, Sweden). They may send the formal conclusions of such exercises to the parliament and the government.

37. These conclusions may take the form of recommendations (Belgium, the Czech Republic, Ireland, the Netherlands, Portugal, Spain), reports (Croatia, Cyprus, Hungary, Ukraine), or decisions (Sweden).

38. It should be noted that, whilst the Norwegian Parliamentary Ombudsman has no formal power to systematically verify the compatibility of draft laws, existing laws and

administrative practices with the Convention, he has the responsibility to monitor the government's follow-up of judgments against Norway.

39. The Slovak Ombudsman can apply for commencement of proceedings before the Constitutional Court as regards consistency of legal regulations if their further application could represent a threat to human rights.

3) As concerns the compatibility of administrative practice with the standards laid down in the Convention,

40. Whilst some Member States have no definition of "administrative practice" in their domestic legal order, other Member States gave a long list of different meanings given to this notion. However, the mechanisms which exist for the verification of the compatibility of administrative practice with the standards laid down in the Convention are often the same as those which exist for the compatibility of laws.

a. Verification by the executive

41. 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 (Germany, Monaco). In one member state, it is specified that each ministry must follow the development of the case-law of the Court in its area of competence, even if the Ministry of Justice bears a special responsibility in this respect (Norway).

42. In other member states, governmental agencies draw the attention of independent bodies, and particularly courts, to certain developments in the case-law (this can be a function for the Government agent: Latvia, Serbia). 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.

43. In another member state, in order to involve more the officials of local or regional authorities, these latter are required to be aware of and follow the case-law of the Court; when the Court finds a violation of the Convention, the state may ask the responsible authority to reimburse the amount paid in respect of compensation (Romania).

b. Verification by judicial institutions

44. 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, either before domestic jurisdictions (Denmark, France, Iceland, Lithuania, Luxembourg, Norway, Sweden, Switzerland, Turkey, United Kingdom), the Constitutional Court (Armenia, Serbia, Slovak Republic), or both (the Czech Republic, Slovenia, Spain). In most cases, judicial institutions are only required to examine the compatibility of an administrative practice when a case raises compatibility issues (in such circumstances they apply the relevant provision of the Convention and not the administrative practice in question).

c. Verification by independent non-judicial institutions

45. 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, mediators or chancellors of justice, play an important role in the verification of how administrative practice are applied and, notably, the Convention which is part of national law (Austria, Estonia, Finland, Greece, Ireland, Latvia, Lithuania, Luxembourg, Norway, Portugal, Spain, Sweden). In some countries, it is specified that these institutions may also, under certain conditions, consider individual complaints and initiate enquiries on their own initiative (Austria, Finland, France, Latvia, Luxembourg, Sweden). They strive to ensure that deficiencies are corrected, and may for this purpose send formal communications to the parliament or the government.

III. CONCLUSIONS ON THE IMPACT OF THE MEASURES TAKEN ON THE LONG TERM EFFECTIVENESS OF THE CONVENTION

A. A positive situation as regards the implementation of the recommendation and its impact on the long-term effectiveness of the Convention

46. In the light of all that has been said above and the many examples of good practices cited, it is clear that the findings are generally positive about the implementation of Recommendation (2004)5 by member states and its impact on the long-term effectiveness of the Convention.

1) As concerns the compatibility of draft laws with the standards laid down in the Convention,

47. It has been made clear that while many member states do not have a specific parliamentary procedure solely for verifying the compatibility of draft laws with the Convention, such verification is systematically carried out through other mechanisms at executive or legislative level.

48. In practice, the impact of verification mechanisms on the long-term effectiveness of the Convention is obvious. By adopting legislation whose conformity with the Convention has been verified, the state reduces the risk of violating the Convention and being found wanting by the Court, and places its authorities in a situation where they must always show due regard for the Convention in their dealings with anyone within the state's jurisdiction.

49. While it is difficult to quantify the true impact of verification mechanisms, as many draft laws that would infringe the Convention are amended long before they come before parliament, a number of member states gave examples of draft laws that were amended at a later stage (Austria, Belgium, Croatia, Denmark, Georgia, Lithuania, Norway, Switzerland and the United Kingdom)[2].

[2] Examples appear in annex to the present follow-up note.

2) As concerns the compatibility of existing laws with the standards laid down in the Convention,

50. As well as arranging verification by specialised or more general offices within the executive, member states often make provision for verification through their courts.

51. The examination of existing laws should take account not only of the Convention itself, but also of the Court's case-law, as this may have repercussions for a law which was initially compatible with the Convention, or one that was not checked for compatibility before adoption.

52. Verification of this type is particularly important in the case of laws relating to areas in which there is an objective possibility and a higher risk of a violation of human rights (such as policing, criminal procedure, prison conditions and legislation relating to foreigners). This is another field where there are many examples of existing laws being amended after being found to be incompatible with the standards set by the Convention (Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, France, Germany, Hungary, Iceland, Italy, the Netherlands, Poland, Romania, Slovakia, Sweden, Switzerland, Turkey, United Kingdom)[3], even though they sometimes related to situations in which a state was obliged, under Article 46 of the Convention, to comply with a judgment against itself.

53. It should also be noted that, in addition to the impact that amendment of a law has on the long-term effectiveness of the Convention, lowering the risk that the Convention will be violated and hence reducing the number of potential applications to the Court, examples of an even clearer impact are provided by laws which now allow cases to be brought directly before the national courts seeking compensation for losses connected with excessive length of proceedings, thereby relieving the Court even more directly (Italy).

3) As concerns the compatibility of administrative practice with the standards laid down in the Convention,

54. The type of mechanism used to verify the compatibility of administrative practices varies greatly, although in most cases verification seems to be carried out by the national courts or specific independent bodies (ombudspersons or national human rights institutions).

55. In the same way that the member states cannot reasonably be asked to verify systematically all their existing laws, they cannot be asked to check the compatibility of all their existing rules, regulations and practices. It is necessary, however, to run checks of this sort in a specific area when, for instance, some experience has been gained with the application of a rule at national level, or following a new judgment by the Court with regard to another member state.

56. Although member states provided considerably less information in this area than in others, largely because the interpretation of the concept of "administrative practices"

[3] Ibid.

varies so much between them, some countries did provide examples of specific amendments (Cyprus, Lithuania, Switzerland, United Kingdom)[4].

B. Possible follow-up

57. Although member states have shown a real desire to implement the Recommendation, the main impediment to their monitoring of implementation has been the difficulty of accurately assessing the effectiveness of the verification mechanisms in use.

58. In fact, little information was forthcoming on the assessment of the effectiveness of these tools, and the main explanations given to account for this lack of information were as follows:

- member states have not considered it helpful to assess the effectiveness of control mechanisms, as they already regard them as effective and appropriate;
- control mechanisms are regarded as too new to be assessed;
- the complexity of the subject involved makes it difficult to consider making an overall assessment of the mechanisms that verify compatibility;
- compatibility with human rights standards is only one of several criteria; the others needing to be checked are the compatibility of laws with the constitution, international law, European law and the domestic legal system;
- to carry out an assessment, criteria would need to be set for measuring the success or failure of the functioning of a verification mechanism, and it would be difficult to determine what these criteria should be.

59. While more time and hindsight will most certainly be needed for more detailed conclusions to be drawn in this area, it is nevertheless essential for member states to continue to pursue the aims set by the Recommendation :
*"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;"*
60. In addition to the good practices appended to the Recommendation, states should be able to draw on the large number of examples given in the present document, so that they can continue improving their mechanisms for implementation of the Recommendation.

61. As to whether the mechanisms for verifying compatibility are **appropriate** and **effective**, it has already been stated that the question of how to assess effectiveness remains open, for the reasons outlined above. One important sign of the effectiveness of mechanisms is probably the number of judgments highlighting incompatibilities, whether issued by national constitutional courts or by the European Court of Human Rights,

[4] Ibid.

although one must also bear in mind that other factors, such as public knowledge and the accessibility of the Court, are also potentially significant.

62. The effectiveness of verification mechanisms depends largely on the proficiency of those running them and their knowledge of the Convention and the Court's case-law**,** it being fundamental that verification take place in the light of the case-law and that States take into account also judgments in cases to which they were not a party. In this connection, government agents should be given a prime role in alerting the bodies concerned.

63. To ensure that the compatibility of draft laws is **systematically** verified, states should endeavour to ascertain the reasons for any failures to carry out systematic monitoring.

64. As to the **need** for verification of the compatibility of existing laws and administrative practices, states must continue to give thought to the criteria used to judge whether there is such a need. States should not necessarily wait for a judgment by the Court before beginning a process of verification, and should make a specific body responsible for monitoring, as far as possible, the Court's case-law as it evolves, so that legislation can be kept in line.

65. The Council of Europe's Commissioner for Human Rights plays a particularly important role in this respect and has already said that he would like to follow up the work done by the CDDH. The Commissioner could systematically discuss the implementation of the Recommendation with the authorities of the countries he visits and make use of his ongoing contacts with ombudspersons and national human rights institutions (NHRIs).

66. Furthermore, pursuant to the instructions given in the Recommendation by the Committee of Ministers to the Secretary General of the Council of Europe,[5] member states must be able to continue to draw on the Council of Europe's expertise when seeking assistance to improve their draft laws, existing laws and administrative practices in the light of the Convention. This assistance seems to be useful, as some member states referred to it in the information they provided on the implementation of the Recommendation. The important thing is for the opinions that are given to be duly taken into account.

67. States must also try to ensure that the change to bring the law or administrative practice into line is done as quickly as possible after a finding of incompatibility. The Committee of Ministers, assisted by the Department for the Execution of Judgments of the Court, plays an important role at this stage, when a state is required to comply with a judgment in accordance with Article 46 of the Convention.

[5] "The Committee of Ministers […] 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 the draft review

Non exhaustive list of examples of situations where the use of verification mechanisms led to changes in a draft law, an existing law or an administrative practice

I. Modification of a draft law:

Austria	- In the course of 1998, the Ministry for Defence elaborated a new Military Service Powers Act. The Constitutional Service advised the Ministry to formulate the provisions concerning life threatening use of weapons according to Art. 2 of the Convention. In 2000, the law bill was finally adopted and contained the required formulation. - In the course of preparing a new asylum law in 2005, the Constitutional Service found that the envisaged provisions refusing aliens that are found and arrested within a certain zone near the border any asylum procedure might constitute a violation Art. 3 or 8 of the Convention. The ministry for Interior therefore refused to take up this provision into the draft.
Belgium	- In the draft that led to the Law of 8 August 1997 on bankruptcies, the "faillite d'office" was removed from our positive law because it constituted a flagrant denial of the rights of the defence, as well as having the potential to lead to a violation of Article 1 of the Additional Protocol to the Convention (protection of property). - in the draft that led to the Law of 17 July 1997 concerning the "concordat judiciaire", communication of information concerning the state of the debtor's financial difficulty was included in the safeguards intended to protect the right to private life; - in the draft law on withdrawal of title of ownership, the procedure leading to the removal of title whose owner remains unknown was redrafted in such a way as to avoid a violation of Article 1 of the Additional Protocol to the Convention (protection of property).
Croatia	- In respect of enactment of the amendments of the Criminal Act (Official Gazette, no 71/06) the Committee for human rights and national minorities intervened considering that certain provisions of the bill were not in conformity with the International Convention on the Elimination of All Forms of Racial Discrimination. The Croatian parliament accepted proposed changes. - The Committee for human rights and national minorities did not support the amendments on Public Assembly Act considering that it was contrary to the Article 11 of the ECHR and Article 21 of International Act on Civil and Political Right. The Draft bill was, subsequently withdrawn and rewritten respecting suggested changes.
Denmark	Danish Radio and Television Act : In the autumn of 2002, the Minister of Culture tabled an amendment to the Radio and Television Act which was adopted. The amendment implied inter alia that it was not allowed to broadcast commercials concerning employers' associations, trade unions, religious movements or political parties on television. However, the amendment implied an unintended liberalization of the rules regarding political commercials since the old rules completely prohibited TV-commercials regarding political opinions and not just political parties. Therefore, in the spring of 2003 during the Parliament's second reading of an already tabled amendment to the Radio and Television Act, the Minister of Culture tabled yet another amendment which was intended to re-establish the previous prohibition concerning commercials regarding political opinions. However, in consequence of the Court's judgment of 28 June 2001, *Vgt Verein gegen Tier-fabriken v. Switzerland*, the former prohibition could not be re-established since it would be considered as a violation of Article 10 following the reasoning of the Court in the said judgment. Based

	on this, it would have been a violation of Article 10 if the minister's amendment of 2003 had been adopted and the former prohibition had been re-established. Thus, commercials regarding political opinions may be transmitted in Denmark today – as long as they are not a commercial for a political party.
Georgia	The draft law "On Restitution of Property and Compensation for Victims as a Result of Conflict in the Autonomous Region of Former South Ossetia".
Lithuania	- The draft amendment of Article 8 (confidentiality of information source) of the Law on Provision of Information to the Public was rejected in the Parliament after the European Law Department expressed its opinion (on 8 July 2005) that the draft amendment contradicts Article 10 of the Convention, the case-law of the European Court of Human Rights and of the Constitutional Court of Lithuania. - The draft amendment of Point 9 Paragraph 1 of Article 366 (grounds of the re-opening of the proceedings) of the Code of Civil Proceedings was rejected in the Parliament after the European Law Department expressed its opinion (on 8 February 2006) that the draft amendment contradicts Article 6 of the Convention and its interpretation in the case-law of the European Court of Human Rights. - The Order of the Minister of the Interior of 15 November 2004 "On the approval of the rules of the examination of the demands of foreigners concerning the asylum, of the decision-making and of the implementation of the decisions", the draft of which was amended according to the proposals of the European Law Department, in which *inter alia* the doubt of compatibility with the Convention was expressed.
Norway	Examples of proposals having been returned by the Parliament to the Government because of insufficient information on compatibility with human rights obligations: This happened when the Government in 1995 proposed provisions to regulate the use of force towards certain mentally handicapped clients of the social services, and when a proposal relating to the teaching of Christianity, religion and stances of life was proposed in 1996.
Switzerland	The judgment of 25 March 1998 of the ECtHR in the case of *Kopp v. Switzerland* led to a change in the draft federal law on surveillance of correspondence by post and by telecommunication (adopted on 6 January 2000).
United Kingdom	During its passage through Parliament the Joint Committee on Human Rights made five reports on the Asylum and Immigration (Treatment of Claimants etc.) Bill. The Bill raised many issues with relation to compliance with Convention rights and was subsequently amended by Government to reflect these concerns.

II. Modification of an existing law:

Azerbaijan	- Law on media - Law on state registration and state register of legal persons - Law on lawyers and advocacy
Belgium	- The opinion of the *Conseil d'Etat* and of the Commission for the Protection of Private Life obliged the legislator to modify the law of 22 March 1999 concerning the procedure for identification by DNA analysis in penal matters - An opinion of the *Conseil d'Etat* obliged the Belgian legislator to equip itself with a framework law defining the purposes and means of the *Sûretè de l'Etat*; namely, the Organic Law of 30 November 1998 on the intelligence services.
Bosnia and Herzegovina	- Following the decisions of the Constitutional Court establishing violations of Article 6 of the Convention and the Article 1 of the Protocol 1 to the Convention relating to inability of the appellants to dispose of their "old" foreign currency savings and following the decisions' order for adoption of

	the new law at state level which shall regulate the issue of payment of the "old" foreign currency savings in compliance with the standards of the Convention, in 2006 BiH authorities adopted the Old Foreign-Currency Savings Act fully complying with the guidelines given in the decisions of the BiH Constitutional Court. - 2. Following the judgment of the ECHR in the case *Jelicic v. Bosnia and Herzegovina,* where the Court found violation of Article 6 of the Convention and Article 1 of the Protocol 1 to the Convention due to failure to enforce the judgment which ordered the payment of the "old" foreign currency savings to the applicant, the Old Foreign-Currency Savings Act of 14 April 2006 was amended, so as to revoke the provision which prevented the enforcement of the final and enforceable courts' judgments ordering the payment of the old foreign currency savings.
Croatia	- *Horvat v. Croatia* case (judgment 26 July 2001, apl.51585/99) induced introduction of effective remedy for excessive length of proceedings against court proceedings. - *Mikulić v. Croatia* judgment (7 February 2002, apl.53176/99) initiated change of Family Act in respect of determination of paternity in court proceeding. - *Kutić v. Croatia* (apl. 48778/99, 1 March 2002) and *Aćimović v. Croatia* (apl.61237/00, 9 October 2003) judgments brought effective remedy in respect of violation of access to court in proceeding stayed for a long time by legislative intervention.
Cyprus	- In the light of the Judgment of the Court in *Hirst v. the UK*, the Electoral Law of Cyprus was amended following legal advice from the Human Rights Sector of the Legal Service of the Republic on behalf of the Attorney-General, so as to give the right to prisoners to vote in elections (parliamentary, presidential and local elections). The Law was enacted before the last Parliamentary elections held in May 2006, and prisoners were able to vote under the amended law. - The UN Convention against Torture Ratification Law was so amended as to create a presumption of ill-treatment in detention concerning persons who at the time of commencement of detention bear no external marks of injuries but bear such marks when they leave detention. - Comprehensive legislation was drafted for the first time by the Human Rights Sector of the Legal Service of the Republic, on the rights of persons arrested, and detained on remand/pending trial (rights to a lawyer, visits, correspondence, telephone-calls, and conditions of detention). - Legislation was drafted by the Human Rights Sector of the Legal Service of the Republic for setting up an independent authority satisfying the Convention's norms and case-law, for investigating allegations/complaints as to inter alia human rights violations committed by the police.
Denmark	In consequence of the Court's judgment of 11 January 2006 (*Sørensen and Rasmussen v. Denmark*, applications numbers 52562/99 and 52620/99), an amendment of the Freedom of Association Act (*Foreningsfrihedslov*) has been adopted in Denmark. The Court held that the fact that both applicants had been compelled to become members of a certain trade union constituted a violation of Article 11. Furthermore, the Court held that the State in authorising the use of the closed-shop agreements at issue failed in the circumstances to secure the applicants' effective enjoyment of their negative right to freedom of association. In light of this the Government has adopted an amendment to the Freedom of Association Act which prohibits closed-shop agreements and thereby secures an effective enjoyment of the negative right to freedom of association.
Estonia	- The adoption of Administrative Procedure Act and its implementation made it clear that the existing system of state liability did not meet the contemporary needs and several important areas (such as compensation for damages) were not covered by the law. The working group that elaborated the draft State Liability Act paid much attention to the compatibility of the

	draft act with the principles of state responsibility deriving from the Convention. Also the working group paid attention to the Committee of Ministers Recommendation No (84)15 from 18 September 1984 that emphasizes the liability of the state instead of the liability of the official. - In 2005 Chancellor of Justice submitted two proposals to the Parliament concerning the issues of health insurance system and misdemeanour procedure. In both cases the Parliament took into account the suggestions of the Chancellor of Justice and made relevant amendments to the acts.
France	French law has been modified on several occasions following judgments of the Court. One could, for example, mention the following texts: - as regards telephone tapping, Law No. 91-646 of 10 July 1991 was introduced after the judgment in *Kruslin v. France* (24/04/1990); - as regards inheritance law, Law No. 2001-1135 of 3 December 2001 followed on from the judgment in *Mazurek v. France* (01/02/2000); - as regards asylum at the frontier (effectiveness of the remedy), the Law No. 2007-1631 of 20 November 2007 came as a consequence of the judgment in *Gebremedhin v. France* (26/4/2007).
Germany	A bill was drafted on the introduction of a remedy against court inaction in civil proceedings which was initiated after the Court's judgment in *Kudla vs. Poland*. In this case, the Office of the Agent analysed the judgment and, in conjunction with the department for procedural law, advised the minister that the jurisprudence of the Court called for action.
Hungary	In connection with case *Dallos v. Hungary* the code on criminal procedure has been amended upon the initiative of the Unit for the Agent before the ECHR.
Iceland	- The new bill to a Code on Criminal Procedure: The bill was prepared by the Commission on Procedural law and recently introduced by the Minister of Justice. It is expected to be adopted by the parliament before next spring and will replace the present legislation of criminal procedure, Act No. 19/1991. This is intended to be a comprehensive legislation on criminal procedure. In the explanatory report, number of detailed references are made to the European Convention of Human Rights and the practice of the ECHR or even specific judgments on the application of Article 6 of the Convention. - The new comprehensive legislation on prison matters adopted in 2005, the Act on enforcement of punishment No. 49/2005: In the explanatory report following the bill, a special reference is made to the conclusions of the Ombudsman regarding prison matters and right of prisoners, as well as Article 3 of the European Convention of Human Rights and the European Prison Rules of 1987.
Italy	- Entry into force of the law n. 89 of March the 24th 2001 (named "Pinto" law), that satisfies the principle of the auxiliary competence of the European Court of Human Rights (art. 35 and art 13 of the Convention); - Art. 175 of Code of criminal law (as modified by law n. 60 of April the 22nd 2005), regarding the re-examination of cases closed with final judgments by default.
The Netherlands	Major changes to military disciplinary law, the law on committal to psychiatric hospitals, various sections of criminal law and the law of criminal procedure, administrative law and administrative procedural law, aliens law, family law, social security law and the law of civil procedure.
Poland	Act of 17 June 2004 on a complaint against violation of the party's right to have a case examined without undue delay in judicial proceedings which establishes the rules and the course of lodging and examining a party's complaint when its right to have the civil executive case or other case concerning execution of a court decision examined without undue delay has been violated by an action or omission of a court or a court enforcement officer.
Romania	- The abolishment, by Article 1 point 56 of Law no. 278/12 July 2006, entered into force on 11 August 2006, of Articles 205 and 206 of the Criminal code, regarding the insult and the defamation as a consequence of the judgments

	rendered by the ECHR in cases based on Article 10 of the Convention (such as Dalban, Cumpana and Mazare, Sabou and Pircalab); - The abolishment of the extraordinary remedy called recurs in anulare, provided by the Code of criminal procedure, after the *Brumarescu v. Romania* case; - After the *Ignaccolo Zenide v. Romania* judgment, Romania adopted Law no. 369/2004 regarding the appliance of the Convention on civil aspects of international kidnap of children, adopted in Hague, on 25 October 1980 (entered into force on 29 December 2004); - Modification of the Code of criminal procedure consequently to the *Pantea v. Romania* judgment with regard to preventive measures (Law no. 281/2003, Government Ordinance no. 109/2003, Government Ordinance no. 748/26); - As a consequence to the *Petra v. Romania* judgment, the Ministry of Justice issued Order no. 2036/C regarding the correspondence of the detainees and guaranteed its secrecy; Government Ordinance no. 56/2003 regarding some rights of the persons executing punishments of imprisonment was issued and approved by Law no. 403/7 October 2003; Law no. 294/28 June 2004 regarding the execution of punishments and measures ordered by the judicial organs during the penal trial was adopted and entered into force on 29 June 2005; - Following *Vasilescu v. Romania* judgment, Government Ordinance no. 190/9 November 2000 regarding the regime of precious metals was adopted, its Chapter VII regulating the procedure of the restitution of precious metals abusively taken by the state.
Slovakia	- Incompatibility of the provision of Article 250f of the Code of Civil Procedure with the Article 6 § 1 of the Convention; - Incompatibility of Part I Article 23 § 1, the third, the fourth and the fifth sentences, and Article 23 § 3 of the Act 187/1998 Coll. whereby amended was the Act 80/1990 Coll. on Election to the Slovak National Council, as amended, with Article 10 of the Convention; - Incompatibility of the provision of Article 83 § 1 of the Misdemeanour Act 372/1990 Coll. with Article 6 § 1 of the Convention. It concerns the issue of a potential judicial examination of the decision made by the administrative authorities in cases with the imposed fine of less than SKK 2,000 - Incompatibility of Article 200i § 4 of the Act No. 99/1963 Coll., or Code of Civil Procedure, as amended, with Article 6 § 1 of the first sentence of the Convention; - Incompatibility of Article 80k of the Health Care Act No. 277/1994 Coll., as amended, with Article 1 of the Protocol to the Convention, in connection with Article 14 of the Convention.
Sweden	On 1 July 2006, a new Act on Judicial Review of Certain Governmental Decisions and some amendments in the Administrative Procedure Act came into force. The main purpose of the measures taken is to give Article 6.1 of the Convention a clearer and more efficient impact on the application of Swedish law. Thus, the new and amended acts include a direct reference to the notion of civil rights and obligations in the meaning of article 6.1 of the Convention.
Switzerland	- the Federal Court allowed access to a court, based on Article 6 of the ECHR, by removing the rule contrary to domestic law (ATF [judgment of the Swiss Federal Court] 125 II 417ss; cf. also the decision of 1 March 2005 of the ECtHR declaring inadmissible application no. 14015/02, *Haliti v. Switzerland*); - following the ECtHR judgment of 22 February 1994 in the case of *Burghartz v. Switzerland* (series A no. 280-B), e.g. the Order on Civil Status was modified in order to put spouses on an equal footing in the matter of names; - also modified were the federal laws on direct federal taxes and on the harmonisation of direct taxes of cantons and communes, following the two ECtHR judgments of 29 August 1997 in the cases of *E.L., R.L. and J O.-L. v.*

	Switzerland and *A.P., M.P. and T.P. v. Switzerland* (see the final resolutions of the Committee of Ministers ResDH[2005]3 and ResDH[2005] *[...]*), even though the Federal Court in a judgment of 24 August 1998 given on a request for revision had explicitly stated that "the norm contrary to the ECHR must no longer be applied, even if the Court did not consider the individual concrete act to be contrary to the Convention in applying this norm" (ATF 124 II 480 ss, cons 3).
Turkey	The set of principle texts concerning areas likely to engage the ECHR over recent years have been subject to major modifications following examinations of compatibility undertaken at different levels.
United Kingdom	In *R (on the application of H) v Mental Health Review Tribunal for the North and East London Region & The Secretary of State for Health* [2001] EWCA Civ 415, for example, the court made a declaration of incompatibility of the Mental Health Act 1983 with Article 5(1) and 5(4) in as much as they did not require a Mental Health Review Tribunal to discharge a patient where it could not be shown that he was suffering from a mental disorder that warranted detention. The legislation was subsequently amended under section 10 of the Human Rights Act by means of a remedial order, that is, the Mental Health Act 1983 (Remedial) Order 2001 (SI 2001 No.3712) which came into force on 26 November 2001.

III. Modification of an administrative practice :

Cyprus	The monitoring of telephone calls of prisoners, of installing cameras in prison cells, of registering changes in birth certificates and other public documents following sex-change operations, of the right of adopted children to information concerning their natural parents, the right to a lawyer of persons arrested, and the right of societies to be registered under relevant legislation.
Lithuania	As regards the lengthy proceedings, the relevant court's practice redressing for the length of the proceedings using relevant provisions of the Civil Code has been developed (in Lithuanian Civil Code there is no particular provision concerning the right to redress in case of lengthy proceedings); the right to redress for the lengthy proceedings has been especially emphasized in the decision of the Supreme Court of 6 February 2007, in which the Supreme Court stated that the Lithuanian legal system comprises not only domestic but also international legal acts, thus, as in relevant provision of the Civil Code (Article 6.272) the civil liability is established for the violations of the rights of an individual, which are similar to those provided for in Article 6 § 1 of the Convention, the analogy of law shall be applicable while investigating the issue of the redress for damage caused by the said violations.
Switzerland	The prohibition on political advertising on television has been considerably limited following the ECtHR judgment of 28 June 2001 in the case of *VgT v. Switzerland*.
United Kingdom	Various high-profile decisions (such as *Lindsay v Customs and Excise Commissioners* [2002] 1 WLR 1766 and *H & S Handel and Transport GMBH v Customs and Excise Commissions, VAT and Duties Tribunal*, 16 April 2004) have led to Her Majesty's Revenue & Customs (HMRC) adjusting its policies on when to agree to restoration of smuggled good and vehicles used to facilitate smuggling.

APPENDIX III. SELECTION OF RELEVANT TEXTS

1. Parliamentary Assembly of the Council of Europe (Committee on Legal Affairs and Human Rights)

- Impact of the European Convention on Human Rights in States Parties: selected examples (doc. AS/Jur/Inf (2016)04)
- The role of parliaments in implementing ECHR standards: overview of existing structures and mechanisms (PPSD(2014)22 rev)
- Contribution to the Conference on the Principle of Subsidiarity, Skopje, 1-2 October 20101 : "Strengthening Subsidiarity: Integrating the Strasbourg Court's Case law into National Law and Judicial Practice" (AS/Jur/Inf (2010)04)

2. Relevant conference

- "Parliaments and the European Court of Human Rights", Conference co-organised by the Middlesex University and the Helsinki Foundation for Human Rights, in Warsaw on 12 May 2015

3. Books and Articles

- Hunt, Murray; Hayley, J. Hooper and Yowell, Paul, *Parliaments and Human Rights* (eds.), édité par Oxford and Portland, Oregon, 2015
  See in particular:
  - Part I: Legislative Review for Human Rights Compatibility
  - Part II: Legislative Human Rights Review in the UK Parliament
  - Part IV: Legislative Human Rights Review in Other National Parliaments
    - Legislative Review for Human Rights Compatibility: A view from Sweden (Thomas Bull and Iain Cameron)
    - Guaranteeing International Human Rights Standards in the Netherlands: The Parliamentary Dimension (Martin Kuijer)
  - Part V: International Initiatives to Increase the Role of Parliaments in Relation to Human Rights
    - The Work of the Parliamentary Assembly of the Council of Europe (Andrew Drzemczewski and Julia Lowis)

- Donald Alice and Leach Philip, *Parliaments and the European Court of Human Rights* (Oxford: Oxford University Press, 2016, forthcoming)

- Andenas, Mads and Bjorge, Eirik, "National Implementation of ECHR Rights", in *Constituting Europe – The European Court of Human Rights in a National, European and Global Context*, eds. Andreas Føllesdal, Birgit Peters and Geir Ulfstein (Cambridge University Press, 2013)

- Andrew Drzemczewski, "Ensuring compatibility of domestic law with the European Convention on Human Rights prior to ratifications: The Hungarian model/Introduction to a reference document", in *Human Rights Law Journal (HRLJ)*, vol. 16 No. 7-9, p. 241-260 (1995)