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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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COMMITTEE OF EXPERTS FOR THE IMPROVEMENT OF PROCEDURES FOR THE PROTECTION OF HUMAN RIGHTS (DH-PR)

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50th meeting, 26-28 September 2001

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REPORT

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Introduction

1. The Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) held its 50th meeting at the Human Rights Building in Strasbourg (Directorate Room), from 26-28 September 2001. The meeting was chaired by Mr Roeland BÖCKER (Netherlands). The list of participants appears in Appendix I. The agenda as adopted appears in Appendix II.

2. During the meeting, the DH-PR, in particular:

(i) completed examination of the questions raised by the Parliamentary Assembly in its Recommendation 1477 (2000) concerning the execution of judgments of the European Court of Human Rights, and prepared a discussion paper on the subject for the attention of the CDDH (Appendix III to the present report);

(ii) continued consideration of the follow up to be given to the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000) (item 3);

(iii) identified, in this context, elements which could be used as a basis for the preparation of a draft recommendation on the publication and dissemination of the case-law and practice of the European Court of Human Rights (Appendix IV);

(iv) adopted the present report as a whole.

Item 1: Opening of the meeting and adoption of the agenda

3. See introduction.

Item 2: Examination of the questions raised in Recommendation 1477 (2000) of the Parliamentary Assembly concerning the execution of judgments of the European Court of Human Rights

4. The DH-PR held an extensive and constructive exchange of views on the different proposals contained in Recommendation 1477 of the Assembly. The positions taken on the different questions raised by this Recommendation are set out in Appendix III to the present meeting report. These positions also take into account the opinions expressed during its 49th meeting (25-27April 2001).

5. The DH-PR considered that with the adoption of the text in Appendix III it had completed its mandate on this question and decided to send the text to the CDDH.

Item 3: Follow-up to the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000)

6. The DH-PR continued the successive examination of the various sub-paragraphs of paragraph 14 of Resolution I adopted by the Ministerial Conference.

14 (i) Improving the implementation of the Convention in law and in practice in member States, including the existence of an effective remedy at national level – "Tour de table"

7. It was noted that Belgium, Iceland, Slovakia and Spain had already submitted written contributions on this topic, reproduced in document DH-PR (2001)6.

8. Several other experts indicated that they would send written contributions to the Secretariat. The experts concerned are those from Albania, Azerbaijan, Bulgaria, Estonia, Italy, Luxembourg, Malta, Russia, Slovenia and the "Former Yugoslav Republic of Macedonia". It was agreed that these experts could submit their texts until 31 December 2001. The Secretariat pointed out the great administrative advantages of receiving the texts via e-mail in computer form.

9. The "tour de table" organised among the remaining delegations to take stock of the national developments on this issue provided the following main information.

10. Some of the experts indicated that in their country there were domestic remedies making it possible to obtain redress. In certain cases these domestic remedies had been considered effective by the European Court of Human Rights.

11. Certain States were currently assessing the necessity of reform in order to create/improve the remedies available in case of unreasonably lengthy judicial proceedings, including, for some of them, the possibility of obtaining monetary damages: Croatia, Finland, Georgia, Germany, Greece, Ireland, Latvia, Lithuania, Norway, Poland, Portugal, Sweden, Switzerland and Turkey

12. On a general level several experts pointed out that redress for unreasonably lengthy proceedings was often provided in criminal cases by special measures such as reductions of sentences or the interruption of prosecution and that such measures had on occasion, but not regularly, led the Court to conclude that the applicant was no longer a victim of a violation of the Convention.

13. In this connection the experts also considered item 4 on the agenda. Having considered document DH-PR (2001)4 they remarked that the title of this item was somewhat misleading as compared to the content of the document, which also dealt with so called "clone cases".

14. It was agreed that the questions relating to the possibilities of obtaining damages or other types of redress for violations of the Convention established by national authorities should be included in the general reflection on the effectiveness of domestic remedies. It was also agreed to postpone the examination of the questions relating to "clone cases" to the next meeting, when the conclusions of the "Evaluation Group" ought to be available.

14 (ii) Systematic screening of the compatibility of draft legislation and regulations, as well as of administrative practice, with the standards fixed by the Convention

15. The experts noted that the replies to the questionnaire demonstrated that all States had some procedure to ensure a systematic screening of draft legislation with the standards of the Convention, but that there were great differences between the procedures chosen. The necessity of an analytical presentation was stressed, as was the interest in having replies from the remaining States. It was agreed that the experts who did not answer yet to the questionnaire would have until 31 December 2001 to submit their replies to the Secretariat, preferably by e-mail,.

16. The experts noted that no country had indicated that it envisaged to change the existing system. In the light of this situation it was considered interesting to entrust the Secretariat with the task of analysing recent cases establishing violations of the Convention in

order to see to what extent the violations related to recently adopted legislation, old legislation or to the interpretation of the law.

17. On the basis of the information gathered the Secretariat would present for the next meeting a document in three sections:

1. an analysis of the different national screening procedures;
2. a survey of recent violations and their origins;
3. a survey of possible areas of interest for the DH-PR's future work.

14 (iii) Publication and dissemination of the Court's judgments

18. Following the decision taken at its previous meeting the DH-PR launched the work on a draft recommendation in this field. It based its work on the outline prepared by the Secretariat (Document DH-PR (2001) 8).

19. The DH-PR first of all noted that the draft recommendation, as decided at the Rome Conference and by the Ministers' Deputies, concentrated on the national situation, although it did mention the Court in the preamble. The DH-PR thought that it would be better for the draft to cover these two categories in the body of the instrument, with separate recommendations for each of them.

20. Broadly speaking, the DH-PR considered that the Secretariat text went beyond what could reasonably be expected of States in terms of publishing and disseminating judgments. It was neither realistic nor necessary to ask Contracting States to provide for such an exercise in respect of all judgments and decisions. The stress should be on those important judgments, knowledge of which was necessary with a view to satisfactory application of the Convention at the national level. This meant that each Contracting State is to make sure that all the main judgments and decisions affecting its own national system (usually necessitating the adoption of general measures) as well as the judgments and decisions that represent significant developments in Strasbourg case-law (at least in summary form) are published and disseminated in its national language. It would notably be for the Court to "sort" the texts and draw appropriate attention to those judgments which it considered should be known at the European level.

21. The DH-PR withdrew its recommendation that these judgments should also be notified on the Court's Internet site.

22. The experts stressed the interference between publication and dissemination. In many cases publication also led to the desired dissemination. In this connection, they noted the Committee of Ministers' current practice in supervising the enforcement of judgments. This practice does not require the respondent state to publish judgements solely highlighting various administrative shortcomings, without providing clarifications on the content of the rights protected by the ECHR. It is therefore often considered sufficient to disseminate such judgments to the authorities concerned in order to guide the necessary administrative reforms. The experts also noted that the states were invariably requested to disseminate judgments to the authorities directly involved in the case.

23. As regards the publication of the Court's case-law, the DH-PR noted that some states had a strong tradition whereby civil society catered for this function, just as it did for the national courts (for instance through specialist private publishing houses, university centres, etc). In other states this was not the case, for a variety of reasons, and the public authorities had to use their own resources to publish and disseminate the case-law (for instance, several

Ministries of Justice ensured the dissemination of Court judgements by means of information bulletins for the courts and authorities, in a number of states the judgments were published in the official gazette and in others the supreme courts published them). The recommendation should take account of these practices.

24. The DH-PR was hesitant about the need to set up national databases which reproduce judgments in one of the official languages of the Council of Europe (Internet sites, etc.) where the HUDOC data base managed by the Council of Europe provides with the essential information. It should be sufficient to simply refer users to this site from the sites commonly used to research national law. Some experts stressed in this context that all judgments should be available in *both* official languages.

25. The experts were unanimous that the important judgments should be made available into the national language(s). However, they agreed that it was often enough to provide a summary of the case in the national language.

26. Moreover, the DH-PR stressed the importance of publications at the national level analysing the Strasbourg decisions (textbooks explaining the Convention and the main judgments, etc) and to ensure their effective dissemination. It was insufficient to simply provide a mass of information; the information had to be sorted and appropriately commentated.

27 In order to complete the information at its disposal, the DH-PR proceeded with an exchange of views with Mr Stanley NAISMITH, Head of the Publication and Information Unit, and Mr James LAWSON, Head of the Information and Publication Support Unit. Mr NAISMITH explained that the Court is aware of the difficulties encountered as regards access to the latest developments of its case law and as regards the classification of its judgments depending on their degree of importance. Measures have been taken to try to remedy these problems. Internet is an efficient tool, but no the only one. The policy is to publish the entirety of the Court's judgments on the Internet site which cannot be done on a paper medium. In addition, an annual report on the Court's activities is envisaged. It will contain an analytical overview of the judgments rendered. As regards translation of the Court's judgments, Mr NAISMITH explained that the Court cannot undertake to translate into the national language of the States Party, even though it recognises that such a measure would permit a larger dissemination.

28. Mr LAWSON indicated for his part that also other material on human rights must be published and disseminated, as a complement to the case law of the Court. He referred to the Yearbook on the European Convention on Human Rights and on the Human Rights Information Bulletin. He indicated that the main instrument for publication was Internet for budgetary reasons. He added that besides the material issued by the Court, the HUDOC system also contained that of the Committee for the Prevention of Torture (CPT), as well as, shortly, that of the Social Charter. The information has also been extended to cover the Framework Convention on for the Protection of National Minorities and reports of the European Commission against Racism and Intolerance (ECRI).

29. Following the discussion the DH-PR asked the Secretariat to make the appropriate amendments to the outline it had proposed. A revised version is reproduced in Appendix IV to this report, to be used as a basis for discussion in the subsequent DH-PR meeting.

14 (iv) Training in human rights

30. The Executive Secretary of the European Committee for the Prevention of Torture (CPT), Mr Trevor STEVENS, described the various aspects of training directed to police and prison officers, nurses, doctors, etc., by the CPT in connection with visits and conferences. He pointed out that the CPT always stressed the importance of adequate professional training of these groups, *inter alia* training in interpersonal communication skills and interview techniques. He explained that this was rather a training aimed at preventing human rights violations, than a training on the Convention as such.

31. Ms Anne-Marie ORLER, Programme Manager of the Police and Human Rights Programme, explained that this activity was now a permanent activity of the Council of Europe aimed at providing training in human rights for policemen by transforming the Convention into practice. The programme depended on the goodwill of member states as it was largely run on voluntary contributions. Two policemen were presently seconded to the Council of Europe to work on the project.

32. The DH-PR held an exchange of views with Mr STEVENS and Ms ORLER on training of policemen and prison officials and on best practices in this respect. The importance of training also for management was underlined, as was the importance of the publication, translation and dissemination of CPT reports or summaries thereof.

14 (v) and (vi) Reservations and ratifications

33. The DH-PR held an exchange of views with the Secretary to the ad hoc Committee of Legal Advisers on Public International Law (CAHDI), Mr Rafael BENITEZ, who explained the activities of the CAHDI. He mentioned that the Committee had three activities that were of relevance for the work of the DH-PR. These related to the role of the depository of international treaties in various international organisations, the expression of consent by a State to be bound by an international treaty and the question of reservations to international treaties.

34. The latter of these activities had led to the adoption by the Committee of Ministers in 1999 of a Recommendation on responses to inadmissible reservations to international treaties (Recommendation N° R (99) 13), which contained model response clauses to inadmissible reservations. These were being used increasingly by States to object against reservations. CAHDI had issued an information document on the formulation of reservations in the context of the negotiation of a new treaty. This and other information on the Committee's work was to be found on its website www.legal.coe.int.

35. The CAHDI had set up a European observatory of reservations to international treaties dealing with reservations to treaties negotiated both within and outside the Council of Europe. In this context it had drawn up a list of outstanding reservations and declarations to international treaties, which it was studying. CAHDI was also active in promoting awareness about the issues concerned and had entered into a dialogue with specific countries concerning reservations. Its priority was human rights treaties.

36. The Secretariat informed that the CDDH was planning yearly evaluations of the reservations made to the European Convention on Human Rights and its Protocols.

37. In view of the request made at the Rome ministerial Conference, the DH-PR indicated its readiness to examine and evaluate regularly the progress made with respect to the withdrawal or limitation of reservations made to the Convention as well as the progress made with respect to the ratification of Protocols to the Convention. This activity will depend on

CDDH approval and will be undertaken only to the extend CAHDI does not perform this work.

Item 4: Possibility for action by the DH-PR to ensure that national legislation allows for compensation for violations found by national authorities thus avoiding the case being referred to Strasbourg

38. See above paragraphs 7 to 14.

Item 5: Possible contribution to the monitoring exercise on the functioning of the judicial system (deadline: end 2002): Examination, notably in the light of the case-law of the European Court of Human Rights, of the situation with regard to:

a. fairness of prosecution proceedings in member States

b. court proceedings before military courts in member States

39. In the light of Secretariat Document DH-PR (2001) 9, the DH-PR considered its potential contribution to the monitoring exercise on the functioning of the judicial system. It first of all noted that the exercise requested remained rather unclear. It seems to be difficult for an intergovernmental committee to have the necessary power to conduct monitoring exercises and examine the situations prevailing in every member state. Consequently, some of the experts questioned the appropriateness of this exercise. The DH-PR nevertheless noted that it had been mandated to conduct this exercise and that it did have to provide the CDDH with at least an outline reply by December 2002.

40. The DH-PR noted that the exercise assigned to it differed considerably as between the two themes: the first was very wide-ranging whereas the second was more practical and specific.

- Where the first theme (the fairness of prosecution proceedings in member states) was concerned, the experts considered that the first task should be to gain a better grasp of the subject in hand. They therefore instructed the Secretariat to prepare a document outlining the state of the case-law of the European Court of Human Rights on the subject and, as far as possible, the action taken on ECHR judgments by the states in question. Depending on findings, the Secretariat was asked to draw up a list of the various relevant situations existing. Account should also be taken of work in hand in the Monitoring Service of the Council of Europe's Directorate of Strategic Planning. This document should consequently be sent to the experts in time for them to prepare ideas for the next DH-PR meeting. Some of the items addressed, regarding more specific questions, might then be debated at the next meeting.

- Where the second theme was concerned, namely court proceedings in military courts in member states, it was decided to ask the DH-PR experts to inform the committee of the situation prevailing in their respective countries, drawing on the Belgian example (see document DH-PR (2001) 9). The experts would thus indicate whether or not their countries had any military courts and if so, detail the prescribed procedures.

Item 6: Other business

a. Exchange of views on the work of the CDDH Reflection Group on Reinforcement of the Human Rights Protection Mechanism (CDDH-GDR) and of the Evaluation group to examine possible means of guaranteeing the effectiveness of the European Court of Human Rights

41. Mr Jeroen SCHOKKENBROEK, Head of the Human Rights Law and Policy Development Division, explained that the CDDH Reflection Group on Reinforcement of the Human Rights Protection Mechanism (CDDH-GDR) had completed its work in June and included a number of proposals for maintaining the effectiveness of the Convention mechanism in an activity report. The report was transmitted to the members of the CDDH for comments. It was later, together with the comments received, sent to the Chair of the Evaluation group set up by the Committee of Ministers to examine possible means of guaranteeing the effectiveness of the European Court of Human Rights. The Evaluation Group which will terminate its work by the end of September 2000, has therefore had the possibility to take the ideas of the CDDH Reflection Group into consideration.

42. The Committee of Ministers will examine the report of the Evaluation Group on 4 October 2001. It is likely to adopt a number of recommendations for the Ministerial session on 8 November 2001.

43. The report of the Reflection Group is on the agenda of the next meeting of the CDDH (6-9 November 2000). The CDDH may charge the DH-PR with the follow-up.

44. Mr SCHOKKENBROEK finally informed the Committee that the Parliamentary Assembly would hold a plenary discussion on the subject on 27 September 2001. Their discussion was based on a report No. 9200, that had recently been adopted without amendment by the Committee on Legal Affairs and Human Rights.

b. « Tour de table » on the implementation of Recommendation n° R (2000) 2 of the Committee of Ministers to member States concerning the re-examination or re-opening of certain cases at the domestic level following judgments of the European Court of Human Rights

45. The DH-PR recalled that it had held a "tour de table" on the implementation of Recommendation N° R (2000) 2 of the Committee of Ministers to member states concerning the re-examination or re-opening of certain cases at the domestic level following judgments of the European Court of Human Rights during its previous meeting (25-27 April 2001). It proceeded with a new "tour de table" which indicated that legislative work, primarily in criminal proceedings, was continuing or was envisaged, notably in Belgium, Cyprus, Georgia, Ireland, Italy, Latvia, Lithuania, the Netherlands, Russia, Switzerland and Turkey. Finally, legislation had been adopted in Norway, extending the existing possibilities of reopening of proceedings in criminal and civil matters.

Item 7: Items to be placed on the agenda of the next meeting

46. The DH-PR decided to place the following items on the agenda of its next meeting:

1. Work to be done further to the recommendations and conclusions of the Evaluation group to examine possible means of guaranteeing the effectiveness of the European Court of Human Rights;

2. Follow-up to the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000):

(i) Systematic screening of the compatibility of draft legislation and regulations, as well as of administrative practice, with the standards fixed by the Convention

(ii) Publication and dissemination of the Court's judgments

3. Possible contribution to the monitoring exercise on the functioning of the judicial system:

(i) fairness of prosecution proceedings in member States
(ii) court proceedings before military courts in member States

Item 8: Dates of the next meetings

47. Subject to the general work-schedule to be established by the CDDH, the DH-PR decided to hold its 51st meeting from Wednesday 20 to Friday 22 March 2002.

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APPENDICES

Appendix I : LIST OF PARTICIPANTS / LISTE DE PARTICIPANTS

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Mr Jeroen SCHOKKENBROEK, Head of the Human Rights Law and Policy Development Division/Chef de la Division du développement du droit et de la politique des droits de l'homme

Mrs Ulrika FLODIN-JANSON, Administrator/Administrateur

M. Mikaël POUTIERS, Administrator/Administrateur

Mrs Katherine ANDERSON-SCHOLL, Administrative Assistant/Assistante administrative

Mme Michèle COGNARD, Administrative Assistant/Assistante administrative

* * *

Mr Trevor STEVENS, Executive Secretary of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT)/Secrétaire exécutif du Comité européen pour la prévention de la torture (CPT)

Ms Ann-Marie ORLER, Programme Manager / Responsable de Programme, *Police and Human Rights Programme Beyond 2000 / Police et droits de l'homme – au-delà de l'an 2000*

Mr James LAWSON, Head of Information and Publication Support Unit / Chef de l'Unité de soutient à l'information et aux publications

Mr Stanley NAISMITH, Head of the Information and Publication Unit / Chef de l'Unité de l'Information et de la Publication

* * *

Interpreters/Interprètes

Mme Martine CARALY
Mr Amath FAYE
Mme Josette YOESLE-BLANC

*** * ***

Appendix II: AGENDA

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Decision n° 9 (see report CDDH (2001) 15): Examination of the items addressed in paragraph 14 of Resolution I adopted by the Conference

14 (i) Improving the implementation of the Convention in law and in practice in member States, including the existence of an effective remedy at national level – "Tour de table"

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14 (ii) Systematic screening of the compatibility of draft legislation and regulations, as well as of administrative practice, with the standards fixed by the Convention

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14 (iii) Publication and dissemination of the Court's judgments

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Secretariat memorandum
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Elements suggested by the Secretariat for a possible Recommendation on the publication and the dissemination of case-law of the Court
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14 (iv) Training in human rights **(a joint meeting DH-PR / representatives of the European Committee for the Prevention of Torture (CPT) and of the "Police and Human Rights" programme is planned)**

14 (v) and (vi) Reservations and ratifications **(an exchange of views with the Secretary of the Committee of Legal Advisers on Public International Law (CAHDI) is planned)**

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Item 4: Possibility for action by the DH-PR to ensure that national legislation allows for compensation for violations found by national authorities thus avoiding the case being referred to Strasbourg

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a. fairness of prosecution proceedings in member States
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Item 6: Other business

a. Exchange of views on the work of the CDDH Reflection Group on Reinforcement of the Human Rights Protection Mechanism (CDDH-GDR) and of the Evaluation group to examine possible means of guaranteeing the effectiveness of the European Court of Human Rights

Activity Report of the Reflection Group on the Reinforcement of the Human Rights Protection Mechanism
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b. « Tour de table » on the implementation of Recommendation n° R (2000) 2 of the Committee of Ministers to member States concerning the re-examination or re-opening of certain cases at the domestic level following judgments of the European Court of Human Rights

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Item 7: Items to be placed on the agenda of the next meeting

Item 8: Dates of the next meetings

* * *

Appendix III: Reflections of the DH-PR

concerning Recommendation 1477 (2000) of the Parliamentary Assembly on the execution of judgments of the European Court of Human Rights

Preliminary remarks

1. The Committee of Ministers gave the CDDH ad hoc terms of reference to give an opinion on Parliamentary Assembly Recommendation 1477 (2000) on the execution of judgments of the European Court of Human Rights. The CDDH decided, during its 51st meeting (27 February-2 March 2001), to transmit only a preliminary opinion to the Committee of Ministers (see Appendix III of the report of the 51st meeting of the CDDH, document CDDH (2001) 15). In this opinion, the CDDH suggested to the Committee of Ministers that the DH-PR examine the issues raised in Recommendation 1477 (2000) of the Parliamentary Assembly. It was agreed that the reflections of the DH-PR would permit the CDDH to adopt a final opinion during its 52nd meeting (6-9 November 2001). The DH-PR consequently studied Recommendation 1477 (2000) of the Parliamentary Assembly during its 49th (25-27 April 2001) and 50th (26-28 September 2001) meetings.

2. The DH-PR shares fully the opinions expressed by the CDDH in its preliminary opinion. The following considerations develop the ideas expressed by the CDDH and reflects the discussion in the DH-PR during its two meetings (April and September 2001).

The Assembly, referring to its Resolution 1226 (2000) on the execution of judgments of the European Court of Human Rights, recommends that the Committee of Ministers:

i. amend the Convention so as to give the Committee of Ministers the power to ask the Court for a clarifying interpretation of its judgments in cases where the execution gives rise to reasonable doubts and serious problems regarding the correct mode of implementation;

3. The DH-PR is not convinced of the necessity of amending the Convention with such aim. It shares the opinion expressed by President Wildhaber in his letter to the Chairman of the Committee of Legal Affairs and Human Rights, that it would be wiser to maintain the present distribution of powers between the Court and the Committee of Ministers. In addition, the kind of problems referred to by the Assembly only rarely occur. The necessity of such a power is finally also diminished as those interpretation problems which do arise are often solved as a result of other subsequent judgments, even concerning other States.

4. In addition, in exceptional cases, there is always the possibility for the respondent Government to seek an interpretation under Rule 79 of the Rules of Court within one year from the judgment. The DH-PR expressed some hesitations, however, with regard to the brief length of this period as the interpretation problems mostly arise outside this time-limit.

ii. amend the Convention to introduce a system of "astreintes" (daily fines for a delay in the performance of a legal obligation) to be imposed on states that persistently fail to execute a Court judgment;

5. Within the framework of the present exercise, the DH-PR underlines the importance of the respect by States of the judgments of the Court. It notes however the existing gaps within the Convention system with regards to the means available to ensure execution of the judgments: there is no intermediate means at the disposal of the Committee of Ministers between, on the one hand, the adoption of an interim resolution and, on the other hand, exclusion from the Organisation under Article 8 of the Statute. In addition, it expresses doubts with regard to the recommendation concerning the introduction of a system of "astreintes". Even if it admits that, within the framework of the draft codification of the rules on State responsibility undertaken by the United Nations' International Law Commission, it has recently been accepted that this responsibility could also include monetary sanctions, and that certain positive experiences in the field of "astreintes" have been made within the European Union, the DH-PR is, however, of the opinion that these experiences could not be adapted to the special system set up under the Convention. In this connection, its special characteristics need to be highlighted, in particular, the discretion enjoyed by the States with regard to the scope of any general measures required and the time limit for its implementation. Thus it was difficult to compare with the EU where the "astreintes" operated in respect of precise pre-negotiated obligations, mostly in the form of Directives with clearly established obligations and time-limits.

6. In this context, the DH-PR highlights the problem of identifying situations that really merit sanctions as compared to other situations of delay in execution (for example in the case of a change of government, new elections, constitutional requirements, the necessity to make comprehensive legislative changes or to co-ordinate legislative activity with the European Union). In the interest of fairness the Court's involvement would be necessary in any such assessment. That would probably entail additional work for the Court, something which does not seem possible to envisage at this juncture.

7. The DH-PR acknowledges, however, the need for the Committee of Ministers to diversify and graduate its means of action in case of resistance to execution. It finds nevertheless that any development of the existing Convention system would have to be made with great care. It notes in this context that the Committee of Ministers is at present engaged in reflection on this general problem.

iii. ask the governments of High Contracting Parties to make more use of their right to intervene in cases before the Court, so as to promote the erga omnes significance of the decisions of the Court;

8. The DH-PR certainly shares this recommendation. It considers, however, that it is not directly related to the question of the execution of judgments as provided for in Article 46 of the Convention.

9. In fact, the DH-PR notes that it is primarily an intervention under Article 36, paragraph. 2 of the Convention, which could be relevant in the present context. It stresses that this provision does not give States a right to intervene, but only a right to the President of the Court to invite a State to intervene. However, so far the President had invited States that have expressed a wish to be invited.

10. The DH-PR recalls that intervening states are not for this reason considered as parties to the procedure before the Court. Instead they play the role of *amicus curiae.* They are therefore not more bound by the judgment of a case in which they have intervened than other

states that have not intervened. Whether they intervene or not is consequently without relevance with respect to Article 46 of the Convention.

11. The DH-PR accepts, however, that such interventions would encourage the Court to deliver judgments of principle, allowing therefore an improvement of the significance *erga omnes* of the judgments of the Court for the Parties to the Convention.

12. The DH-PR nevertheless considers that this significance must not be exaggerated as the solutions upheld by the Court may very often be limited to the case concerned, including to the context of the legal system of the respondent State.

13. The DH-PR also notes that it is becoming increasingly difficult to use the possibilities of intervention, both as a result of the problem of identifying relevant cases with the research means available and the fact that, when identification becomes more easy, i.e. after the decision on admissibility, intervention is often impossible because of the short time left before judgment. In addition, some important issues for intervention are often related to the admissibility. In a number of cases, the possibility of intervention is effective only if a State is made aware of the case before admissibility.

iv. when exercising its function under Article 46 paragraph 2 of the European Convention on Human Rights,

a. be more strict towards member states which fail in their obligation to execute judgments of the Court;

14 The DH-PR certainly shares the objective of the Parliamentary Assembly, ie to guarantee the execution of the Court's judgment by the respondent State. If this is not done, (in other words, if judgments are not executed or are executed in a too slow or unsatisfactory manner), the credibility of the system for the protection of human rights provided for by the Convention is at risk.

15. The DH-PR recalls that from an overall perspective, the cases of unsatisfactory execution are rare and those of non-execution exceptional to the point that it is possible to assert that generally the States concerned show proof of good will and effectiveness for the execution of judgments. When, exceptionally, they do not proceed with the execution as diligently as expected, this is usually due to objective difficulties with satisfying the requirements of the judgment (for example, the length of time needed to implement certain general measures, for example of a legislative or constitutional nature) or to a lack of clarity as to the requirements of a certain judgment (a lack of clarity, which in order to be overcome may require some input from other later judgments of the Court, possibly concerning other States).

16. Of course, manifest refusal to execute the Court's judgments cannot be ruled out. However, rather than to provide for more "strictness" in the execution, it must according to the DH-PR be provided, on the one hand, that the judgments are formulated with a constant concern of clarity (in particular as to the measures giving rise to the breach of the Convention) and, on the other hand, that the Committee of Ministers develop a series of responses in case of slowness or negligence in the execution of the judgments (as was indicated by the Rome Conference) as well as objective criteria for the identification of these cases in order to apply the responses in a coherent manner.

17. The DH-PR recalls on this point the shortcomings it has already noted in the context of item ii. of the Recommendation. This being said, it is noted that the Committee of Ministers appears to have developed a certain number of measures in order to ensure execution besides the regular examination of the cases at its meetings ; in particular :

- Direct contacts (letters, meetings in person) at different levels with the national authorities concerned by the case, including contacts at the highest level between the Chairman of the Committee and the Minister of Foreign affairs of the respondent State ;

- Different types of interim resolutions (for example aimed at (i) informing ; (ii) encouraging ; and/or, if necessary, (iii) declaring the non-execution and calling on joint actions by the member States in order to ensure execution; see the interim resolution in the Loizidou case, DH (2001) 80).

18. The DH-PR notes with interest in this connection that, following the recommendations of the Conference, the Ministers' Deputies decided in January 2001 to examine the question of ways and means to further improve the control of the execution of the judgments. The DH-PR expresses its satisfaction with this.

b. ensure that measures taken constitute effective means to prevent further violations being committed;

19. The DH-PR shares this concern, which notably implies to give to the department for the execution of the Court's judgments the means necessary, within the overall budget of the Council of Europe, to assist the Committee in the realisation of this important task.

c. keep the Assembly informed of progress in the execution of judgments, in particular by the more systematic use of interim resolutions setting a timetable for carrying out the reforms planned;

20. The DH-PR notes with satisfaction the Parliamentary Assembly's increasing interest in respect of the execution of the Court's judgments. It understands the Assembly's concern in being informed notably of the time-tables set for the adoption of general measures. The DH-PR thus finds it necessary to find the means appropriate to ensure that the Assembly receive this information. However, it does not consider that the interim resolutions are conceived, generally, to serve this purpose, considering the specific circumstances in which such resolutions are adopted.

21. The DH-PR recalls that the Committee of Ministers decided in April 2001 to make public its annotated agenda for its human rights meetings. This document contains notably information on the state of progress of the execution of the cases. The DH-PR would suggest that the Committee of Ministers ensure that this general and regular document also contains information with regard to the time-tables announced and is disseminated in an efficient way (for example by being made available on the Committee of Ministers' internet site). The DH-PR also suggests that the Committee of Ministers develop the information contained in this document in the form of a data-base available on the internet and accompanied by an adequate search engine.

d. instruct the Secretary General to reinforce and improve its technical assistance programmes;

22. The DH-PR cannot but share the political objective of reinforcing and improving the assistance programmes of the Council of Europe towards States Parties to the Convention. These programmes can contribute to improve the degree of respect for the Convention at a national level and, further to this, to lighten the workload of the organs of Strasbourg.

23. The DH-PR thinks, however, that this general policy objective does not concern the activities of the Committee of Ministers under Article 46, paragraph 2 of the Convention, which relates to a specific problem with regard to a State. This being said, several assistance programmes have contributed in a significant way to resolving problems linked to execution. This possibility should therefore be taken into consideration and developed in the context of the examination of the various cases referred to the Committee for controlling the execution.

e. ask member states to assist persons or organisations who contribute to the diffusion of information and to the training of judges and lawyers.

24. According to the DH-PR, the same considerations as under d., above, are valid, *mutatis mutandis*, towards this last request from the Assembly.

* * *

Appendix IV[*]: Possible outline for discussions for the elaboration of a draft Recommendation of the Committee of Ministers

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

Variant [on access to the case-law developments of the European Court of Human Rights]

Foreword

1. The European ministerial conference on human rights (Rome, 3-4 November 2000) encouraged member states to «*ensure that the text of the Convention is translated and widely disseminated to national authorities, notably the courts, and that the developments in the case-law of the [European Court of Human Rights] are sufficiently accessible in the language(s) of the country*» (Resolution I, paragraph 14 iii).

2. As part of the follow-up to the Conference, the Ministers' Deputies, at their 736th meeting (10-11 January 2001), instructed the Steering Committee for Human Rights (CDDH) *to examine ways and means of assisting member States with a view to a better implementation of the Convention in their domestic law and practice* […] (Decision N° 9).

3. Bearing in mind the foregoing comments, the DH-PR decided, at its 49th meeting (25-27 April 2001) to elaborate a draft recommendation on the publication and dissemination of the case-law and practice of the European Court of Human Rights in the Contracting States.

4. [At is 50th meeting (26-29 September 2001), the DH-PR considered that the following outline might serve as a basis for discussion for the elaboration of such a draft Recommendation.]

* * *

Outline for the Preamble

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

2. Considering that the aim of the Council of Europe is to achieve a closer unity among its members;

3. Having regard to the Convention on the Safeguard of Human Rights and Fundamental Freedoms (hereafter "the Convention"), particularly Article 44 paragraph 3 ("The final judgment shall be published");

4. Considering Resolution I "Institutional and functional implementation of the protection of human rights at national and European levels"), A ("Improving the implementation of the Convention in member states") of the European ministerial conference on human rights (Rome, 3-4 November 2000), and more particularly paragraph 14 iii, in which member states are encouraged to "*ensure that the text of the Convention is translated and widely disseminated to national authorities, notably the courts, and that the developments*

[*] This document will be discussed during the next meeting of the DH-PR.

in the case-law of the [European Court of Human Rights] are sufficiently accessible in the language(s) of the country";

5. Considering that sufficient knowledge of the Court's case-law will improve the implementation of the Convention at national level and, in particular, will help prevent future violations of the Convention (in view of the direct effect commonly afforded to the judgments of the Court, [prevent] violations similar to those already found);

6. Taking into account the considerable diversity in member States as regards the effective publication and dissemination of the judgments and decisions of the Court;

[…]

Outline for the substantive part

7. INVITE the Court and the Contracting States to take all necessary steps to ensure that the [main] case-law developments of the Court are sufficiently accessible at national level, bearing in mind the principles set out below.

PART I: THE COURT

8. It is important that the Court:

(a) make rapidly accessible on both paper an by electronic means:
- its judgments in both Council of Europe official languages;
- its main decisions on admissibility and information notes on case-law, if possible in both languages;

(b) indicate in an appropriate manner [in particular in its electronic database] the judgments and decisions which it feels constitute case-law developments that should be sufficient accessible at national level.

[…]

PART II - THE CONTRACTING STATES

9. It is important that the Contracting States:

(a) ensure that the main judgments and decisions of the court concerning themselves as respondent states, and the judgments and decisions which, according to the Court, constitute case-law developments that should be sufficient accessible at national level, are available in their national language(s), in their entirety or at least in the form of substantial summaries or excerpts;

(b) take the necessary steps to ensure that translation and publication work is carried out at the State's expense, where they are not defrayed by the private sector;

(c) promote the production of basic works in their national language(s) facilitating knowledge of the Convention system and the main case-law of the Court and ensure that such works are sufficient accessible, in paper and/or electronic form;

(d) publicise the Internet address of the Court's site (http://www.echr.coe.int), notably by introducing links to this site into the national sites commonly used for legal research;

(e) ensure that the courts have at least paper copies of these data and, as far as possible, the necessary computer hardware to access such data through the internet;

(f) ensure effective dissemination of specific ECHR case-law developments to the public body(ies) particularly concerned with the question raised by the specific case, a appropriate by means of an explanatory circular, and also ensure such dissemination to such private bodies as bar associations;

(g) ensure that the public body(ies) directly concerned by a set of proceedings before the Court is informed of the outcome of the latter and receives a copy of the Court's judgment or decision.]

[…]

* * *