COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 12 October 2011

DH-PS(2011)R2 REV.

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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COMMITTEE OF EXPERTS ON A SIMPLIFIED PROCEDURE FOR AMENDMENT OF CERTAIN PROVISIONS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS
(DH-PS)

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Meeting Report (revised)

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2nd meeting
9 – 11 March 2011
Strasbourg

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Summary

The Committee, at its 2nd meeting, in particular:

- provisionally determined which provisions of Section II of the Convention should be subject to a simplified amendment procedure and which not;
- examined illustrative models for different possible modalities for the introduction of a simplified amendment procedure;
- continued its consideration of what other issues, currently found outside the Convention, should be placed into either the Convention or a possible Statute;
- began considering possible modalities for the simplified amendment procedure itself;
- adopted draft elements relevant to its work for the CDDH Interim Activity Report on measures requiring amendment of the Convention;
- organised its future work and took note of its calendar of meetings;
- elected its Vice-chairperson.

Item 1: Opening of the meeting, adoption of the agenda and order of business

1. The Committee of experts on a simplified procedure for amendment of certain provisions of the European Convention of Human Rights (DH-PS) held its second meeting in Strasbourg from 9-11 March 2011 with Mrs Björg THORARENSEN (Iceland) in the chair. The list of participants appears at Appendix I. The agenda, as adopted, appears at Appendix II.

Item 2: Election of a Vice-chairperson

2. The Committee unanimously elected Ms Isabelle NIEDLISPACHER (Belgium) as its Vice-chairperson.[1]

Item 3: Identification of provisions of Section II of the Convention which should be subject to a simplified amendment procedure

3. The Committee completed its examination of the provisions of Section II of the Convention, with a view to completing its provisional determination of which provisions should be subject to a simplified amendment procedure and which not. In doing so, it took into account the criteria expressed by certain States in their responses to the questions on compatibility of a possible simplified amendment procedure with domestic law.[2] It recalled that final determination of this question would also depend on the exact nature of the procedure for simplified amendment, in particular whether it would involve decision by consensus or by qualified majority.

4. The outcome of these discussions is reflected in the table that appears at Appendix III. Members were invited to communicate their comments on these tables to the Secretariat (petr.hnatik@coe.int) by Wednesday 16 March 2011.

Item 4: The modality for the introduction of a simplified amendment procedure

5. The Committee examined illustrative models for different possible modalities for the introduction of a simplified amendment procedure, it being understood that each of these modalities would require an amending protocol for their implementation.[3]

6. It noted that several States in their responses to the questions on compatibility of a possible simplified amendment procedure with domestic law had indicated that

[1] See Committee of Ministers' Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods.
[2] See docs. DH-PS(2011)001 & DH-PS(2011)005.
[3] See doc. DH-PS(2011)002.

such a procedure may be problematic because it would apply to provisions of an international treaty (a protocol containing a Statute) that had been subject to parliamentary ratification. It considered that these problems might potentially be resolved by a simplified amendment procedure involving a six-month period for objection between adoption of amendments by the Committee of Ministers and their entry into force. A further model was suggested that might also avoid these problems, involving a Statute not having the status of a treaty, adopted (and subsequently amended through a simplified procedure) by the Committee of Ministers under powers conferred upon it by an amending protocol. Some experts expressed reservations towards this model, on account of possible incompatibility with national and/ or international law; it was suggested that the CDDH consider requesting the opinion of the CAHDI[4] on this issue.

7. It was argued by some that the aim of a Statute was not only to introduce a simplified amendment procedure but to ensure the balance of law-making powers between the Convention organs, changing the normative level of certain matters and redefining the procedure for their possible future amendment. Some felt that for this reason, a three-tier approach, involving the Convention, a Statute and the Rules of Court, was preferable.

8. It was however recalled on the other hand that the Committee's essential task was to propose a simplified amendment procedure. A Statute was one way of doing so, more complicated than the alternative of a new provision in the Convention. A Statute might have other benefits, but those mentioned fell outside the Committee's current terms of reference.

9. The following arguments were expressed in favour of introducing a new simplified amendment procedure in a new Convention provision (Models I and II):

- relative speed and simplicity (especially Model I);
- greater accessibility and comprehensibility of a system involving two texts, rather than three;
- greater transparency of the scope of possible future amendments;
- greatest feasibility within the Committee's deadlines (especially Model I);
- greater acceptability to national parliaments when requested to ratify the initial amending protocol.

10. The following arguments were expressed against that approach:

- Model I did not include "upgrading" of provisions from the Rules of Court (but Model II did, to a certain extent).

11. The following arguments were expressed in favour of introducing a new simplified amendment procedure via a Statute (Model III):

- greater clarity by separating fundamental provisions from organisational ones;
- upgrading of interim measures, the pilot judgment procedure and unilateral declarations, as well as other issues currently outside the text of the Convention, without their inclusion in the Convention itself;
- feasibility within the Committee's deadlines;
- the Interlaken Declaration mentioned the Statute first.

[4] Committee of Legal Advisers on Public International Law.

12. The following arguments were expressed against that approach:
- organisational provisions should not be eliminated from the Convention to a Statute;
- drafting a Statute could be a very complex, time-consuming process;
- interim measures, the pilot judgment procedure and unilateral declarations should not be subject to a simplified amendment procedure;
- upgrading matters/ issues from outside the Convention was not the main aim and, by itself, would complicate the procedure for revising them, rather than simplifying it.

13. There was no support expressed for Model IV.

14. Mr John DARCY of the Registry informed the Committee that the Court was willing to develop a proposal for States to consider, taking the simple route suggested in the Interlaken Declaration, along the lines of Model I.

15. In the light of the discussion, the Committee decided to resume consideration of this item of its agenda at its next meeting. The Committee also decided to seek further clarification regarding the acceptability of different approaches under national law (see para. 6 above) from the States concerned, in particular whether such problems might be resolved by a simplified amendment procedure involving a period for objection between adoption of amendments by the Committee of Ministers and their entry into force.

Item 5: Identification of provisions or matters not found in the Convention which should be subject to a simplified amendment procedure

16. The Committee considered that inclusion into the Convention or a Statue, should that be the preferred option, of Rule 39 of Rules of Court concerning interim measures, provisions on unilateral declarations and those on pilot judgment procedure would clarify the legal basis of the Court's competence in those areas. While views remained divided on whether or not provisions on the pilot judgment procedure and unilateral declarations should be subject to a simplified amendment procedure, many experts considered that the principle of interim measures and their binding effect should not, on account of their connection to Article 34 of the Convention.

17. The Committee concluded that although adopting a wider approach by also considering additional provisions of the Rules of Court does not necessarily fall outside the scope of the Committee's current mandate, successful accomplishment of this task would not be feasible given the time and budgetary constraints. Some experts considered that at least some rules would deserve examination within the context of the current work.[5] It was proposed that further, detailed examination of whether other provisions from the Rules of Court may be suitable for "upgrading" could take place in future in a separate body with appropriate terms of reference.

[5] E.g. Rules 29, 60, 80 and 81 were mentioned in this connection.

18. Finally, Mr John DARCY of the Registry of the Court recalled that the Court was finalising its drafting of rules on the pilot judgment procedure. It was expected that in April, these would be notified to governments and added to the Rules of Court.

19. In conclusion, the Committee provisionally envisaged three possible combinations of approaches:

1) The Convention way
    a. A new provision added to the ECHR providing for the possibility that Section II of the Convention can be amended by simplified procedure, with the exception of certain specific provisions.
    b. New issues added into the Convention (e.g. Rule 39, pilot judgment and unilateral declarations). They can either be (all three or some of them) subject to SAP or not.

2) The Convention/Statute way
    a. New issues added to the Convention not subject to SAP
    b. Selected provisions from Section II of the Convention are put in a new Statute of the Court. A final provision in the Statute stipulates that all the provisions of the Statute are subject to SAP.

3) The Statute way
    a. Selected provisions from Section II of the Convention are put in a new Statute of the Court. A final provision in the Statute provide that all the provisions of the Statute are subject to SAP.
    b. Also added into the new statute are the new issues, all subject to the SAP.

Item 6: Modalities for the simplified amendment procedure itself

20. The Committee held a first exchange of views on the possible modalities for a simplified amendment procedure itself, with the following outcome:

(i) Who should have the right to propose amendments under the simplified procedure? High Contracting Parties and the Court.

(ii) Who should decide on whether to pursue the proposal? The Committee of Ministers, probably by the qualified majority vote as described in Article 20(d) of the Statute of the Council of Europe.[6]

(iii) Who should be consulted in the course of that procedure? The plenary Court and, for many experts, the Parliamentary Assembly; the Commissioner for Human Rights and civil society were also suggested. Some experts felt that effective consultation of the Parliamentary Assembly could be important, including from

[6] The relevant part of Article 20(d) of the Statute of the Council of Europe reads as follows: "*… a two-thirds majority of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee.*"

the point of view of checks and balances, and might reassure national parliaments when ratifying the protocol to implement a simplified amendment procedure.

(iv) Whose approval should be required for adoption of an amendment through that procedure? The Committee of Ministers. A Conference of the Parties to the Convention was suggested as a possible alternative.

(v) What majority should be required for adoption? Unanimity, within the meaning of Article 20(a) of the Statute of the Council of Europe.[7] Several experts indicated that their constitutions would make it difficult to accept an amendment adopted otherwise.

(vi) How should an amendment adopted by such a procedure come into force? A possible opportunity for objection following the adoption of an amendment but prior to its entry into force would allow member States to consult their national parliaments, if required by national law.[8]

21. The issue of provisional application of amendments adopted through a simplified procedure, which would primarily concern provisions on organisational issues, was also discussed. Many were of the opinion, however, that it could complicate the Court's organisation of its work and thus not contribute to enhancement of its case-processing capacity.

Item 7: Contribution of the DH-PS to the CDDH Interim Activity Report

22. The Committee adopted draft elements relevant to its work for the CDDH Interim Activity Report on measures requiring amendment of the Convention. This text – which will be presented to the CDDH at its next meeting, with a view to finalisation and presentation to the Committee of Ministers by 15 April 2011, in accordance with the CDDH's ad hoc terms of reference – can be found at Addendum I.

Item 8: Organisation of future work and calendar of meetings

23. The Committee agreed to address the following matters at its next meeting, subject to any intervening decisions concerning its terms of reference:

(i) possible national and/ or international legal problems affecting the feasibility of certain possible modalities for the introduction of a simplified amendment procedure;

(ii) it will seek to conclude the discussion on treatment of matters not currently found in the Convention, namely interim measures, the pilot judgment procedure and unilateral declarations: whether they should be included in the

[7] The relevant part of Article 20(a) of the Statute of the Council of Europe reads as follows: "… *the unanimous vote of the representatives casting a vote, and of a majority of the representatives entitled to sit on the Committee.*"

[8] See document DH-PS(2011)001.

Convention or a possible Statute and whether or not they should be subject to a simplified amendment procedure;

(iii) the procedure for simplified amendment;

(iv) the modality for the introduction of a simplified amendment procedure.

24. Finally, the Committee noted that it was foreseen to meet two more times before expiry of its terms of reference on 15 April 2012. The next meeting was scheduled for 7-9 December 2011. The Committee expressed its wish that its next meeting take place before the autumn meeting of the CDDH, scheduled for 22-25 November 2011.

Item 9: Other business

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Appendix I

List of participants / liste de participants

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* * *

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EUROPEAN UNION / UNION EUROPEENNE

* * *

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Appendix II

Agenda (as adopted)

Item 1: Opening of the meeting, adoption of the agenda and order of business

Background documents

- Draft Annotated Agenda of the 2nd meeting of the DH-PS (9-11 March 2011) DH-PS(2011)OJ001
- Report of the 71st meeting of the CDDH (2-5 November 2010) CDDH(2010)013
- Report of the 1st meeting of DH-PS (6-8 October 2010) DH-PS(2010)003
- Comments of the International Commission of Jurists, Amnesty International, Liberty, JUSTICE, the AIRE Centre and Interights (March 2011)
- Submission of the European Group of National Human Rights Institutions on Reform of the European Court of Human Rights to the DH-PS (4 March 2011)

Item 2: Election of a Vice-chairperson

Background document

- Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods Resolution Res(2005)47

Item 3: Identification of provisions of Section II of the Convention which should be subject to a simplified amendment procedure

Background documents

- Compilation of documents relevant to the discussion of a simplified procedure for amendment of certain provisions of the Convention (Document prepared by the Secretariat) DH-PS(2010)001
- Court's document: Interlaken Follow-up: Simplified Procedure for Amending the Convention (Idea of a Court Statute)

Item 4: The modality for the introduction of a simplified amendment procedure

Background documents

- Compatibility of a possible simplified amendment procedure with domestic law: Compilation of information provided by member States (document prepared by the Secretariat) DH-PS(2011)001

- Modalities for the introduction of a simplified amendment procedure: Possible illustrative models (document prepared by the Secretariat) DH-PS(2011)002
- Internal Council of Europe procedure for preparation and adoption of international treaties (document prepared by the Secretariat) DH-PS(2011)003
- Compatibility of a possible simplified amendment procedure with domestic law: Limitations of the scope of a possible simplified amendment procedure – Extract from the information provided by member States (prepared by the Secretariat) DH-PS(2011)005

Item 5: Identification of provisions or matters not found in the Convention which should be subject to a simplified amendment procedure

Background document

- Report of the 1st meeting of DH-PS (6-8 October 2010) DH-PS(2010)003

Item 6: Modalities for the simplified amendment procedure itself

Background document

- Report of the 1st meeting of DH-PS (6-8 October 2010) DH-PS(2010)003
- Modalities for the simplified amendment procedure itself – document submitted by Estonia

Item 7: Contribution of the DH-PS to the CDDH Interim Activity Report

Working document

- Draft elements for the CDDH Interim Activity Report (prepared by the Secretariat) DH-PS(2011)004

Item 8: Organisation of future work and calendar of meetings

Item 9: Other business

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Appendix III

The scope of provisions that could be subject to a simplified amendment procedure – outcome of the Committee's discussions

Introduction

The following tables reflect the outcome of the Committee's preliminary discussions on the scope of provisions that should be subject to a simplified amendment procedure during the 1st and 2nd meetings. They may be subject to revisions following further consideration of other aspects.

The tables should be read and understood subject to the following provisos:

- They are intended as (i) a schematic presentation of preliminary points made at the first and second meetings and (ii) an aide memoire for reference at future meetings;
- They do not seek to express arguments for or against or other comments in full but instead only to record their essence;
- They do not record who made each argument/ comment.

PART I

Provisions on which there is provisional consensus that they <u>should</u> be subject to amendment by a simplified procedure[9]

Provision	Content	Position of the Group of Wise Persons [10]	Preliminary arguments in favour of subjection to SAP[11]	Preliminary arguments <u>against</u> subjection to SAP	Other comments
<u>Article 24(2)</u> – Registry and rapporteurs	2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry.	Subject to a SAP [12]	This provision is not fundamental to the institution of the Court.		It could also be transferred to the Rules of Court.
<u>Article 26(1)bis</u> – Single-judge formation, Committees, Chambers and Grand Chamber	1.bis Committees shall consist of three judges, Chambers of seven judges and the Grand Chamber of seventeen judges	Subject to a SAP	Flexible reform of the judicial formations would facilitate future enhancement of the Court's productivity. The size of certain judicial formations should be subject to a SAP.		Article 26(1) could be divided into parts, some subject to a SAP, others not (see also under Part II below).
<u>Article 26(2) & (5)</u> – Single-	2. At the request of the plenary Court, the Committee of Ministers	Subject to a SAP	Paragraph (2) already reflects a SAP.		

[9] Any re-drafting of provisions on this table is for illustrative purposes only and is not intended as a proposal for amendment of those provisions.
[10] The criterion governing the Group of Wise Persons' approach was "the removal from the "simplified" amendment procedure of provisions defining key institutional, structural and organisational elements of the judicial system of the Convention, namely the establishment of the Court, its jurisdiction and the status of its judges" (see doc. CM(2006)203, "Report of the Group of Wise Persons to the Committee of Ministers," 15 November 2006).
[11] "SAP" = <u>s</u>implified <u>a</u>mendment <u>p</u>rocedure.
[12] "SAP" = <u>s</u>implified <u>a</u>mendment <u>p</u>rocedure.

judge formation, Committees, Chambers and Grand Chamber	may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers. […] 5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.		Paragraph (5) is not fundamental to the institution of the Court		
Article 27 – Competence of single judges	1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination. 2. The decision shall be final. 3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a Committee or to a Chamber for further examination.	Subject to a SAP	This article contains essentially organisational/ procedural matters.	Application of the principle of judicial decision-making should not be subject to a SAP.	The principle of judicial decision-making should not be subject to a SAP; other elements of Article 27 could be subject to it. The DH-GDR is discussing the possibility of giving non-judicial officials (e.g. senior registry staff) the authority to

					exercise powers currently exercised by single judges
Article 28 – Competence of Committees	1. In respect of an application submitted under Article 34, a Committee may, by a unanimous vote, (a) declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or (b) declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court. 2. Decisions and judgments under paragraph 1 shall be final. 3. If the judge elected in respect of the High Contracting Party concerned is not a member of the Committee, the Committee may at any stage of the proceedings invite that judge to take the place of one of the members of the Committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1 (b).	Subject to a SAP	This article contains essentially organisational/ procedural matters.	Application of the principle of judicial decision-making should not be subject to a SAP.	The principle of judicial decision-making should not be subject to a SAP; other elements of Article 28 could be subject to it.
Article 29 – Decisions by	1. If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a	Subject to a SAP	This article is essentially procedural.	The principle of judicial decision-making should	The principle of judicial decision-

Chambers on admissibility and merits	Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately. 2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.			not be subject to a SAP; it should be contained in a treaty.	making should not be subject to a SAP; other elements of Article 29 could be subject to it. A Statute could provide a treaty basis for the principle.
Article 30 – Relinquishment of jurisdiction to the Grand Chamber	Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.	Subject to a SAP	This article is essentially procedural.		
Article 31 – Powers of the Grand Chamber	The Grand Chamber shall (a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; (b) decide on issues referred to the Court by the Committee of Ministers in accordance with Article	Subject to a SAP	Article 31 relates to Article 30.		

	46 § 4; and (c) consider requests for advisory opinions submitted under Article 47.				
Article 39(2)-(4) – Friendly settlements	2. Proceedings conducted under para-graph 1 shall be confidential. 3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached. 4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.	Subject to a SAP	Friendly settlements are an important tool (the principal as such (Article 39(1)) should therefore not be subject to a SAP) but could be developed and more widely used.		
Article 42 – Judgments of Chambers	Judgments of Chambers shall become final in accordance with the provisions of Article 44 § 2.	Subject to a SAP			Article 42 serves no apparent purpose in the light of Article 44(2).
Article 43(2) & (3) – Referral to the Grand Chamber	2. A panel of five judges of the Grand Chamber shall decide whether to accept the request 3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.	Subject to a SAP	Paragraphs (2) and (3) are organisational/ procedural. A SAP would be useful were it considered desirable to change the Grand Chamber's jurisdiction or its relations with the Chambers.		The principal as such should not be subject to a SAP, while its modality could.
Article 44(2) – Final judgments	2. The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or	Subject to a SAP	The role of the Grand Chamber could in future be changed by a SAP (see under Article 43 above).		

	(b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43.		Article 44(2) contains procedural provisions.		
Article 47(3) – Advisory opinions	3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.	Subject to a SAP	Paragraph (3) is essentially procedural.		This provision concerns Committee of Ministers' procedures, not those of the Court.
Article 48 – Advisory jurisdiction of the Court	The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.	Subject to a SAP	This article contains procedural elaboration of Article 47.		

PART II

Provisions on which there is provisional consensus that they <u>should not</u> be subject to amendment by a simplified procedure[13]

Provision	Content	Position of the Group of Wise Persons	Preliminary arguments <u>against</u> subjection to SAP	Preliminary arguments <u>in favour</u> of subjection to SAP	Other comments
<u>Article 19</u> – Establishment of the Court	To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.	Not subject to a SAP	This is a fundamental provision which establishes the very existence of the Court.		The Court's essential role should be clarified.
<u>Article 20</u> – Number of judges	The Court shall consist of a number of judges equal to that of the High Contracting Parties.	Not subject to a SAP	This contains the fundamental principle that a judge is elected in respect of each High Contracting Party (see also Article 22).		This provision may be reconsidered depending on the outcome of DH-GDR consideration of the suggestion that a new filtering mechanism be composed of ad hoc judges.
<u>Article 21</u> –	1. The judges shall be of high moral	Not subject	This contains a		There may in

[13] Any re-drafting of provisions on this table is for illustrative purposes only and is not intended as a proposal for amendment of those provisions.

Criteria for office	character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence. 2. The judges shall sit on the Court in their individual capacity. 3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.	to a SAP	fundamental principle ensuring the quality of judges and the standing of the Court.		future be a need to add to the criteria for office to include e.g. gender balance and linguistic competence.
Article 22 – Election of judges	The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.	Not subject to a SAP	This is a fundamental provision contributing to judicial independence.		
Article 23 – Terms of office and dismissal	1. The judges shall be elected for a period of nine years. They may not be re-elected. 2. The terms of office of judges shall expire when they reach the age of 70. 3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration. 4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the	Not subject to a SAP	This is a fundamental principle contributing to judicial independence.		

	required conditions.				
Article 24(1) – Registry and rapporteurs	1. The Court shall have a Registry, the functions and organisation of which shall be laid down in the rules of the Court.	Not subject to a SAP			
Article 25 (a)-(c) & (e)-(f) – Plenary Court	The plenary Court shall (a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected; (b) set up Chambers, constituted for a fixed period of time; (c) elect the Presidents of the Chambers of the Court; they may be re-elected; […] (e) elect the Registrar and one or more Deputy Registrars; (f) make any request under Article 26 § 2.	Not subject to a SAP			The provisions of Article 25 could be revised but should remain in the Convention.
Article 25(d) – Plenary Court	The plenary Court shall […] (d) adopt the rules of the Court;	Not subject to a SAP	The Court's power to adopt its own Rule of Court is fundamental to its operational independence.		
Article 26(1) – Single-judge formation, Committees, Chambers and Grand Chamber	1. To consider cases brought before it, the Court shall sit in a single-judge formation, in Committees, in Chambers and in a Grand Chamber. The Court's Chambers shall set up Committees for a fixed period of time.	Not subject to a SAP	The various judicial formations define the Court's functioning.		Article 26(1) could be divided into parts, some subject to a SAP, others not (see also under Part I above).
Article 26(3) – Single-judge formation, Committees,	When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.	Not subject to a SAP	This reflects the important consideration of actual and apparent impartiality underlying the	There is a need for flexible amendment should in the future the single-judge formation	

Chambers and Grand Chamber			introduction of the single-judge procedure.	be considered no longer necessary.	
Article 26(4) – Single-judge formation, Committees, Chambers and Grand Chamber	4. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.	Not subject to a SAP	The presence of the "national judge" is important to the judicial functioning of the Court.	Underlying related provisions may be subject to a SAP.	
Article 32 – Jurisdiction of the Court	1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47. 2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.	Not subject to a SAP			
Article 33 – Inter-State cases	Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.	Not subject to a SAP			
Article 34 – Individual applications	The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to	Not subject to a SAP			

	hinder in any way the effective exercise of this right.				
Article 35 – Admissibility criteria	1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of inter-national law, and within a period of six months from the date on which the final decision was taken. 2. The Court shall not deal with any application submitted under Article 34 that (a) is anonymous; or (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information. 3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that: (a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of	Not subject to a SAP	The Court does not apply any hierarchy to the admissibility criteria; all are fundamental to the right of individual petition. The admissibility criteria are very sensitive issues; to make them subject to a SAP would greatly complicate later discussions on modalities of adoption and the simplified procedure itself.	Paragraphs (2) & (3) are less fundamental than (1) and could be subject to a SAP, allowing greater flexibility in future.	

	the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal. 4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.				
Article 36 – Third party intervention	1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings. 2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings. 3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.	Not subject to a SAP	This is not a provision concerning organisation and is not a purely procedural provision. Paragraph (1) contains a right; paragraph (2) contains a prerogative. Third party interventions play an important role in the Court's proceedings. Certain conceivable amendments could have significant effects. There is no obvious need to increase the flexibility of the current provision; the Rules of Court and the Court's practice allow for all reasonable requirements.	Third party interventions are not fundamental to the Court as an institution. Any possible amendment would not be so radical as to exclude a SAP.	Some situations are not adequately covered by existing provisions, e.g. third party interventions by non-States parties.

Article 37 – Striking out applications	1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that (a) the applicant does not intend to pursue his application; or (b) the matter has been resolved; or (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application. However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires. 2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.	Not subject to a SAP	Striking out is an important part of the Court's exercise of judicial authority; it is linked to Article 19. Power to strike out is of crucial significance to the right of individual petition, it is linked to Articles 34 & 35. The "respect for human rights" and restoration clauses are necessary to preserving the Court's essential role and protecting the situation of applicants. Article 37 already allows the Court sufficient flexibility.		Article 37 is not clear, e.g. the term "for any other reason" gives the Court too much interpretative margin. The Court should give clearer reasons for strike-out decisions.
Article 38 – Examination of the case	The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.	Not subject to a SAP	This is a fundamental provision for the Court's functioning. Its second part is neither organisational nor procedural. The Court has referred to States' non-compliance	Article 38 is not fundamental to the Court as an institution.	

			with Article 38 in its judgments; amendment by ratified protocol would therefore be preferable to that by the Committee of Ministers. It already allows for all necessary flexibility.		
Article 39(1) – Friendly settlements	1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto. […]	Not subject to a SAP	Friendly settlements are an important tool; the principal as such should therefore not be subject to a SAP.		
Article 40 – Public hearings and access to documents	1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise. 2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.	Not subject to a SAP	Open justice is a fundamental principle. There is no conceivable need for change and no need for greater flexibility.		This is related to Article 45 (reasons for decisions and judgments). The Rules of Court do not fully reflect the principle of public access to documents.
Article 41 – Just satisfaction	If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial	Not subject to a SAP	The Court's competence to award just satisfaction is fundamental to its essential role in protecting		The Court's interpretation of Article 41, in particular the term

	reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.		human rights. Article 41 is not an operational or procedural provision. Article 41 already allows the Court all necessary flexibility.		"if necessary," is too wide. The Court's practice of awarding just satisfaction lacks transparency and contributes to unrealistic expectations on the part of applicants.
Article 43(1) – Referral to the Grand Chamber	1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.	Not subject to a SAP	Article 43(1) has connections to the right of individual petition.	The existence of the Grand Chamber is a vestige of the pre-Protocol No. 11 system and is not fundamental to the Court's functioning.	
Article 43(2) bis – Referral to the Grand Chamber	2.bis The panel shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.	Not subject to a SAP	This provision defines the jurisdiction of a panel to refer cases to the Grand Chamber.		
Article 44(1) & (3) – Final judgments	1. The judgment of the Grand Chamber shall be final. […] 3. The final judgment shall be published.	Not subject to a SAP	Paragraph (1) reflects the principle of legal certainty (finality of judgments). Paragraph (3) is fundamental to the principle of open justice.		
Article 45 –	1. Reasons shall be given for	Not subject	Paragraph (1) is		The Court does

Reasons for judgments and decisions	judgments as well as for decisions declaring applications admissible or inadmissible. 2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.	to a SAP	fundamental to open justice. Paragraph (2) contributes to the development of the case-law and understanding of the Convention and is very highly valued by the Court as providing for judicial freedom of expression.		not in practice give reasons for decisions that are accessible to applicants, paragraph (1) should therefore be clarified.
Article 46(1) & (2) – Binding force and execution of judgments	1. The High Contracting Parties under-take to abide by the final judgment of the Court in any case to which they are parties. 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.	Not subject to a SAP	Paragraphs (1) and (2) contain fundamental principles governing the status of the Court and the institutional role of the Committee of Ministers. They have existed since the inception of the Convention system and there has never been any need to increase their flexibility or otherwise amend them.		
Article 46(3), (4) & (5) – Binding force and execution of judgments	3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision	Not subject to a SAP	Paragraphs (3) and (4) were added recently in order to create flexibility in ascertaining the correct interpretation of judgments and responding to refusal to abide by a final judgment	Paragraphs (3)-(5) are essentially procedural, creating *lex specialis* for paragraphs (1)-(2). They were added relatively recently by Protocol No. 14 and	If transferred to a Statute, paragraphs (3)-(5) could be accompanied by relevant Committee of Ministers' rules of procedure for the

	shall require a majority vote of two thirds of the representatives entitled to sit on the Committee. 4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1. 5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.		respectively. Discussions on paragraphs (3)-(5) were a very difficult part of the negotiation of Protocol No. 14.	there is little if any experience of their operation in practice; they may need to be adapted in future in the light of experience.	supervision of the execution of judgments, since both the Committee if Ministers and the Court now play certain roles with respect to execution and its supervision.
Article 47(1) – Advisory opinions	1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.	Not subject to a SAP	Paragraph (1) is an important part of the definition of the Court's jurisdiction.		
Article 47(2) – Advisory opinions	2. Such opinions [on legal questions concerning the interpretation of the Convention and the Protocols thereto – para. (1)] shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the	Not subject to a SAP	Paragraph (2) is closely related to paragraph (1) and contributes to defining the Court's jurisdiction.		Paragraph (2) may need to be amended in response to developments concerning

	Convention and the Protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.				advisory opinions, e.g. allowing superior national courts to request them.
Article 49 – Reasons for advisory opinions	1. Reasons shall be given for advisory opinions of the Court. 2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion. 3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.	Not subject to a SAP	Article 49 is the equivalent for advisory opinions of Article 45 for judgments and decisions.	This article contains procedural elaboration of Article 47.	
Article 50 – Expenditure on the Court	The expenditure on the Court shall be borne by the Council of Europe.	Not subject to a SAP	The Court's budget is a very important and politically sensitive matter.	This is not a key, fundamental provision. It could be subject to a SAP involving unanimity on the part of the Committee of Ministers.	It should be recalled that the forthcoming accession of the EU (not a CE member State) to the ECHR and the possible introduction of fees for applicants may be relevant considerations in future.
Article 51 – Privileges and immunities of judges	The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.	Not subject to a SAP	The privileges and immunities of international functionaries are a core principle of international law.		This provision could also be included in a possible Statute.