COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 23 May 2012

DH-PS(2012)R4
Addendum I

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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Draft CDDH Final Report

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4th meeting
Strasbourg, 14-16 May 2012

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In summary, the CDDH's key conclusions are as follows:

a. A simplified amendment procedure should be introduced for certain specified provisions of the Convention. Most experts would prefer this procedure to be introduced by way of a Statute of the Court.
b. Certain other matters – namely interim measures under Rule 39 of the Rules of Court, the pilot judgment procedure under Rule 61, and unilateral declarations – should have their normative status enhanced through "upgrading", preferably into a Statute, otherwise directly into the Convention. The essential principles contained in the resulting provisions should not be subject to a simplified amendment procedure.
c. Any Statute should be susceptible to development and further enrichment in future.
d. The CDDH should be given terms of reference to draft an amending protocol introducing a simplified amendment procedure.
e. If a Statute is chosen as the modality for introducing a simplified amendment procedure, many experts consider that the CDDH should in future also be given further terms of reference to consider which additional provisions could be "upgraded" from the Rules of Court or elsewhere.

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Draft CDDH Final Report

I. INTRODUCTION

1. In the context of the CDDH's ad hoc terms of reference to consider relevant parts of the Interlaken Declaration, one of its subordinate bodies, the Committee of experts on a simplified procedure for amendment of certain provisions of the European Convention on Human Rights (DH-PS), has had specific terms of reference, under the authority of the CDDH, to "examine in depth proposals for making it possible to simplify amendment of the Convention's provisions, with such a procedure to be introduced by means of an amending Protocol to the Convention" (for the full terms of reference, see Appendix I). The DH-PS' terms of reference, adopted by the Committee of Ministers on 7 July 2010 and extended on 7 December 2011, expired on 31 May 2012. The present document constitutes the CDDH's final report on its activities regarding this issue.[1]

2. The basis of current discussion of the proposal to introduce a simplified procedure can be found in the report of the Group of Wise Persons to the Committee of Ministers.[2] The Wise Persons had concluded that it was "essential to make the judicial system of the Convention more flexible. This aim could be achieved through an amendment to the Convention authorising the Committee of Ministers to carry out reforms by way of unanimously adopted resolutions without an amendment to the Convention being necessary each time… Such a method could prove effective in the long term as a tool for making the Convention system more flexible and capable of adapting to new circumstances. [T]his method cannot[, however,] apply to the substantive rights set forth in the Convention or to the principles governing the judicial system. Furthermore, any amendment would have to be subject to the Court's approval." The Wise Persons concluded that all provisions of Section II of the Convention could be made subject to a simplified amendment procedure, apart from a list of those 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". Their report exhaustively listed those provisions that should be explicitly excluded from a simplified amendment procedure; such provisions could either remain in the Convention or be transferred to the Statute. The Wise Persons' proposal was considered, prior to the Interlaken Conference, by the former Reflection Group (DH-S-GDR), which welcomed and supported it, recommending that it be examined further.[3]

3. In the course of its work, the CDDH has had the benefit of the constant participation of the Registry of the Court, including an early exchange of views with its Registrar, who presented the Court's document on "Interlaken Follow-up:

[1] See doc. CDDH(2010)002, "Decisions of the Committee of Ministers on the action to be taken following the Interlaken Declaration and Terms of Reference of the CDDH and subordinate bodies involved in follow-up work to the Declaration." These terms of reference have since been amended to bring forward the date of completion of the final report on all issues other than the simplified amendment procedure; see the CDDH Final Report on measures requiring amendment of the ECHR, doc. CDDH(2012)R74 Addendum I, para. 3 and footnote 2.
[2] See doc. CM(2006)203.
[3] See doc. DH-S-GDR(2008)012 App. III.

Simplified Procedure for Amending the Convention (Idea of a Court Statute)",[4] and of the Opinion of the Committee of Legal Advisers on International Law (CAHDI) concerning the introduction of a simplified procedure for amendment of certain provisions of the ECHR.[5] It has also conducted a survey of whether member States' domestic law, notably constitutional provisions, would allow a Statute with the status of an international treaty to be amended by a simplified procedure, in particular one not involving ratification by national parliaments (see further at Section E below).[6]

4. On this basis, the CDDH has:

- Examined which provisions of Section II of the Convention should be subject to a simplified amendment procedure and which not;
- In the context of the possible introduction of a simplified amendment procedure, considered the possible treatment of provisions or matters not found in the Convention, notably interim measures under Rule 39 of the Rules of Court, the pilot judgment procedure as set out in Rule 61 of the Rules of Court and unilateral declarations (which will be the subject of a specific rule of Court due to enter into force on 1 September 2012);
- Considered the possible procedure for simplified amendment, including the respective roles of bodies mentioned in the Convention (the Court, Committee of Ministers, Assembly) and of civil society;
- Considered the modality for introduction of a simplified amendment procedure and elaborated three possible illustrative models;
- Considered the possible legal status of a Statute, should that be the preferred modality for introducing a simplified amendment procedure;
- Examined possible national and/ or international law problems affecting certain possible modalities for the introduction of a simplified amendment procedure;
- Recalling the original arguments in favour of introducing a simplified amendment procedure and in the light notably of the aforementioned possible legal problems and other potential difficulties, taken position on whether and how to continue work on the issue.

These aspects are addressed in detail in Section II below.

II. CONSIDERATIONS RELEVANT TO INTRODUCING A SIMPLIFIED AMENDMENT PROCEDURE

A. Selection of provisions of Section II of the Convention that should be subject to a simplified amendment procedure or not

5. On the basis of an analysis of views expressed by experts, amongst other sources, the CDDH has further elaborated upon the essential criteria for identifying

[4] See doc. #3272054_v.1
[5] See doc. DH-PS(2011)006.
[6] See doc. DH-PS(2011)001, "Compatibility of a possible simplified amendment procedure with domestic law: compilation of information provided by member States".

provisions of Section II of the Convention that could be subject to a simplified amendment procedure, as follows:[7]

a. Only provisions of a purely institutional,[8] procedural or organisational[9] nature should be subject to a simplified amendment procedure.

b. Further to a. above, the following categories of provision should be excluded from the possible scope of a simplified amendment procedure:
   i. Provisions regulating basic principles (including the Court's jurisdiction[10]);
   ii. Provisions whose amendment would amend, restrict or expand Convention rights and freedoms;[11]
   iii. Provisions recognising rights of or imposing fundamental obligations on States Parties;[12]
   iv. Provisions that would create pecuniary obligations for States Parties;
   v. Provisions affecting applicants' or respondent States' legal positions, including in proceedings before the Court.

c. The final choice of provisions that could be subject to a simplified amendment procedure would depend also on the procedure itself (see Section C below).[13]

d. The list of provisions currently found in the Convention that would be made subject to a simplified amendment procedure must be exhaustive.[14]

6. Furthermore, some experts considered that it may be necessary to include detailed specification of possible amendments. In this connection, it was noted that Article 26(2) of the Convention, as amended by Protocol No. 14, sets a precise limit on the scope of possible amendment by the Committee of Ministers of the size of Chambers of the Court.[15] Specifying in advance, for all relevant provisions, the scope of possible amendments that could be made by a simplified procedure would appear an extremely challenging task, given the inherent difficulty in imagining every possible change that might be considered necessary in future. This problem could perhaps be avoided, however, if it were instead in some way specified that no amendment might be adopted under the simplified procedure that would have the effect of changing the nature of the affected provisions. In this case, it could also be stated in the appropriate legal instrument (Convention or Statute) that the provisions

[7] See in particular doc. DH-PS(2011)005, "Limitations on the scope of a possible simplified amendment procedure: extract from information provided by member States concerning the compatibility of a simplified amendment procedure with domestic law".
[8] See doc. DH-PS(2011)005.
[9] The description "organisational" has been used notably in the Interlaken and Izmir Declarations, the DH-PS' terms of reference and the CAHDI Opinion.
[10] See the report of the 72nd CDDH meeting, doc. CDDH(2011)R72, para. 8.
[11] Confirmed by the CAHDI in its Opinion.
[12] Confirmed by the CAHDI in its Opinion.
[13] See the CDDH Interim Activity Report on specific proposals for measures requiring amendment of the Convention, doc. CDDH(2011)R72 Addendum I, para. 27.
[14] Confirmed by the CAHDI in its Opinion.
[15] Article 26(2) reads as follows: "At the request of the Plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce [from seven] to five the number of judges of the Chambers."

subject to a simplified amendment procedure were of a purely institutional, procedural or organisational nature.

7. The CDDH has carefully applied the criteria of paragraph 5 above to the provisions of Section II of the Convention, so as to identify those which should be subject to a simplified amendment procedure and those that should not. It may be noted that the CDDH's position would exclude a larger number of provisions from the scope of a simplified amendment procedure than would the Wise Persons' proposal. This result, including preliminary arguments relating to the various conclusions and other relevant comments, can be found in the table at Appendix III.

B. Possible treatment of provisions or matters not found in the Convention

8. The DH-PS' terms of reference cover not only examination of proposals for making it possible to simplify amendment of the Convention's provisions on organisational issues, but also consideration of the treatment of certain provisions found in the Rules of Court, and other matters.

9. The CDDH considers that Rule 39 of the Rules of Court on interim measures, Rule 61 on the pilot judgment procedure, and unilateral declarations may be suitable for "upgrading" (enhancement of their normative status) to a Statute or the Convention but that further consideration of possible inclusion of additional provisions of the Rules of Court could not feasibly be undertaken at present.[16] Although it would be possible for provisions on interim measures, the pilot judgment procedure and unilateral declarations to be "upgraded" directly into the Convention,[17] most experts would prefer to include such provisions in a Statute. Almost all experts considered that the essential principles relating to these matters should not be subject to a simplified amendment procedure. Only a Statute with some substantive provisions subject to a simplified amendment procedure and others not would respond to these preferences. For further details of the CDDH's discussions, see Appendix IV.

10. Many experts expressed their interest in also considering other Rules of Court under future terms of reference, once any Statute may have been established.[18] For these experts, it would be preferable to have a Statute with some substantive provisions subject to a simplified amendment procedure and others not, should it in future be considered desirable to upgrade additional provisions from the Rules of Court or elsewhere. This would avoid dividing relevant provisions between the Convention and a Statute according to whether or not they would thereafter be subject to a simplified amendment procedure. Instead, all issues relating to the Court would be reflected in the Statute, which would thus remain a comprehensive text, thereby ensuring clarity and accessibility.

C. Possible procedure for simplified amendment

11. The CDDH discussed the possible procedure for simplified amendment of certain provisions of the Convention, coming to the following conclusions:

[16] See the CDDH's Interim Activity Report to the Committee of Ministers, doc. CDDH(2011)R72 Addendum I, para. 29.
[17] See doc. CDDH(2011)R72 Add. I, para. 29.
[18] See also the report of the 2nd DH-PS meeting, doc. DH-PS(2011)R2, para. 17.

a. Proposals to make amendments by the simplified procedure should come from High Contracting Parties or from the Court.

b. The decision to pursue such proposals should be taken by the Committee of Ministers by qualified majority vote in the sense of Article 20(d) of the Statute of the Council of Europe.[19]

c. There should be formal provision for consultation of the Parliamentary Assembly, the Court (on proposals made by High Contracting Parties) and, possibly, the Commissioner for Human Rights.

d. Civil society should be given an opportunity to express its views effectively, without formal provision to that effect.

e. Draft amendments should be adopted by the Committee of Ministers by unanimity in the sense of Article 20(a) of the Statute of the Council of Europe.[20]

12. In addition, the procedure could include a period between adoption and entry into force during which any objection could be raised. This would be primarily intended to provide a solution to any national law problems of certain member States that had otherwise remained insurmountable (see Section F below). It was appreciated that such an approach could delay and complicate the simplified amendment procedure. This may be an inevitable price to pay for reaching compromise. In this context, it was noted that any such period should not be too short, otherwise it might incite the government to refuse to adopt an amendment, for fear that there would be insufficient time to consult the national parliament effectively; a period of nine months was considered sufficient. Alternatively, it might be possible to devise a procedure whereby States be required explicitly to request a period for possible objections, the length of that period being fixed in the procedure for all cases; those States that had requested the objection period could express their definitive position at any time during the period (whilst being encouraged to do so as quickly as possible), with failure to do so by the end of the period amounting to tacit consent. Such a procedure, whilst still a compromise, could prove less costly than the alternative in terms of cumulative delay over time.

D. Possible modality for introduction of a simplified amendment procedure

13. The DH-PS' terms of reference suggest two possible modalities for introducing a simplified amendment procedure: (i) inclusion of relevant issues in a Statute of the Court, with a new provision in the Convention establishing the Statute and its amendment procedure; or (ii) (a) new provision(s) in the Convention allowing certain other provisions of the Convention to be amended by a simplified procedure. The CDDH has also considered two subsidiarity questions which would arise should a Statute be preferred: the disposition of provisions of Section II of the Convention

[19] "[A] two-thirds majority of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee."
[20] "[T]he unanimous vote of the representatives casting a vote, and of a majority of the representatives entitled to sit on the Committee."

between the Statute and the Convention itself; and the choice of legal instrument in which the Statute should be contained (see Section E below).

14. A majority of experts would prefer to introduce a simplified amendment procedure by way of a Statute for the Court. Some experts would prefer to introduce a simplified amendment procedure by way of a provision in the Convention.

15. Should there be a Statute, some experts would prefer that it contain all of Section II of the Convention, in which case not all of its provisions would be subject to the simplified amendment procedure. Other experts would prefer dividing Section II, by selecting provisions appropriate to a simplified amendment procedure and moving them to the Statute, with all other provisions remaining in the Convention.

16. Illustrative models for the different modalities can be found at Appendix V.

17. The CDDH would underline that these illustrative models are intended only to give an impression of how the texts involved in different modalities for introducing a simplified amendment procedure would appear. The three models should not in any way be considered exclusive or final. In particular, there may be a fourth approach, not represented amongst the three models, involving the transfer of most of Section II of the Convention to a Statute, some of whose provisions would be subject to a simplified amendment procedure and others not; certain key issues (e.g. the right of individual application, the binding force and execution of judgments) would remain in the Convention and, potentially, be addressed also in a Statute.

E. Legal status of a Statute as possible modality for introducing a simplified amendment procedure

18. Opinions differed on the question of the appropriate legal status for a Statute, should that be the preferred modality for introducing a simplified amendment procedure. The options considered were either a resolution of the Committee of Ministers or a treaty.

19. Most experts were in favour of a Statute with the status of a treaty. This would allow inclusion in the Statute of either all of Section II of the Convention, including those provisions that concerned, for example, rights and obligations of States and applicants; or only part of Section II, with the rest remaining in the Convention.

20. Some experts were in favour of a Statute contained in an instrument with the legal status of a resolution of the Committee of Ministers;[21] if so, the simplified amendment procedure for its provisions should be laid down in the Convention. Some experts indicated that such an approach could be one way of resolving or avoiding potential difficulties under constitutional law (see Section F below). This approach would only be possible, however, if Section II of the Convention were divided between the Convention and the Statute; a Statute that contained all of Section II of the Convention should have treaty status, since it would contain also provisions imposing obligations on States. Indeed, it was noted that should a Statute contain

[21] The possibility of such a resolution being adopted by a conference of the parties to the Convention was also mentioned.

provisions imposing obligations on States, the domestic law of some member States would oblige them to consider it as having the status of a treaty, regardless of its formal categorisation at international level. Some experts indicated, however, that they could not accept the transfer of provisions from a treaty to a resolution, the latter having lesser legal status and being inappropriate to contain rules legally binding on the Court, and thus could not accept a Statute with the status of a resolution.

F. Possible national and/ or international law problems affecting certain possible modalities for the introduction or application of a simplified amendment procedure

21. As noted in paragraph 3 above, the CDDH has conducted a survey of possible legal problems relating to introduction and application of a simplified amendment procedure and has examined the question repeatedly in detail. During these discussions, several experts had indicated certain potential problems, which can be summarised as follows:

a. As recognised from the outset, a simplified amendment procedure could only be introduced by an amending protocol, whose entry into force would require ratification for most, if not all States. Since this is the standard procedure for amendment of the Convention, it would not pose any legal problems under either national or international law.

b. Many States' national law requires that in general, amendments to treaties (including the Convention) be ratified in the same way as the treaty itself, i.e. following parliamentary approval. For most such States, however, parliamentary approval would in any case not be needed for the type of amendment permitted to provisions of the nature foreseen. Otherwise, the parliamentary bill to ratify the protocol introducing the simplified amendment procedure could contain an enabling clause that would authorise the government to agree, without further parliamentary approval, to future amendments made by that procedure.

c. Certain States' national law would not, however, allow for the above possibility. Two possible solutions were found to this problem. One would be to give the legal status of a resolution of the Committee of Ministers to a future Statute by which a simplified amendment procedure would be introduced. As noted in Section E above, however, various objections have been raised to this approach. The other possible solution, for a Statute with treaty status, would be to allow a period for objection prior between adoption and entry into force of amendments made by a simplified procedure; where necessary, national parliaments' approval could be sought during this period (see Section C above).

d. In certain States, the Convention in its entirety (i.e. including all of its Section II) has constitutional status or has been incorporated into national human rights legislation. This would mean that introduction, at least, of a simplified amendment procedure would require either constitutional or legislative amendment. It was noted that this would also be the case for amendment of the Convention by the usual procedure of ratified protocol. This problem was therefore considered to be surmountable in practice.

e. No problems under international law were identified concerning application of a simplified amendment procedure.

22. It was noted that potential complications under national law could in most cases be overcome if the scope of provisions subject to a simplified amendment procedure were clearly and exhaustively determined in advance and if only those of strictly organisational or procedural nature, not touching upon rights or obligations of States or applicants, were included (see Section A above). A conclusive determination of whether problems might exist under national law could, however, only be made on the basis of final draft text concerning provisions subject to a simplified amendment procedure.

G. Whether and how to continue work on the issue of a simplified amendment procedure

23. The CDDH fully agrees with the Group of Wise Persons' argument that introduction of a simplified amendment procedure for certain provisions of the Convention "could prove effective in the long term as a tool for making the Convention system more flexible and capable of adapting to new circumstances" (see paragraph 2 above). Although the list of provisions from Section II of the Convention that could be made subject to such a procedure, as preliminarily identified by the CDDH, is shorter than that proposed by the Group of Wise Persons (see Section A above), the CDDH still considers that there would be significant value in introducing it.

24. Many experts considered that introducing a simplified amendment procedure by way of a Statute, in particular one with some provisions subject to a simplified amendment procedure and some not, would allow for further potential advantages in future. Subject to the CDDH being given appropriate terms of reference, additional Rules of Court or other matters could have their normative status enhanced through "upgrading" into such a Statute (see further at Section B above), which would thereby develop and be enriched over time; indeed, this should be considered an essential characteristic of any Statute. If so, further consideration should be given to a procedure for introducing into a Statute such additional provisions (whose amendment would thereafter be subject to a simplified procedure), in order to maximise this potential advantage. Since provisions that would be subject to a simplified amendment procedure must be of the nature defined in Section A above, it was suggested that their transfer from the Rules of Court or elsewhere (other than the Convention) to a Statute could itself be by way of a simplified procedure.

25. It is recalled that, although certain national legal problems may exist, none of them are insurmountable (see Section F).

26. On the other hand, some experts have suggested that a simplified amendment procedure might well never be used and have thus questioned its true potential to increase the flexibility of the Convention system. In this connection, reference was made to Article 26(2) of the Convention (concerning possible reduction in the size of Chambers of the Court), which has not been applied since the entry into force of Protocol No. 14.

27. Recalling that the Committee of Ministers' meeting of 23 May 2012 has instructed the CDDH to prepare an amending protocol containing various provisions, for adoption by the Committee of Ministers by the end of 2013, as well as text for a further protocol on advisory opinions by the same date, and that agreement on EU accession to the Convention would also require amendment of the Convention, one expert suggested that further work on a simplified amendment procedure be postponed so that the results of these other reforms could be taken into consideration, in particular to ascertain whether they involved provisions that could be subject to a simplified amendment procedure.

28. In addition, certain experts feared that their national parliaments may be reluctant to ratify a Protocol introducing a simplified amendment procedure that would in future exclude their role in amendment of certain provisions currently found in the Convention. It was recalled, however, that the procedure would be designed in such a way as to minimise this risk.

H. Other considerations

29. As noted above, some experts have shown great interest in "upgrading" into a Statute a number of provisions now contained in the Rules of the Court, such that the Court would no longer have the autonomy to amend these rules itself; instead, all amendments to them would have to be approved by the Committee of Ministers. The CDDH came, however, to the conclusion that it would not be feasible, given the time and budgetary constraints, to undertake such a process satisfactorily under the current terms of reference. It therefore concluded that such work could take place in future in a separate body with appropriate terms of reference.

III. CONCLUSIONS

30. On the basis of the above, the CDDH draws the following conclusions:

a. The Convention system would benefit from the introduction of a simplified amendment procedure for certain provisions of the Convention.

b. Such a procedure should be introduced, despite the various problems and counter-arguments mentioned above.

c. A majority of experts would prefer such a procedure to be introduced by way of a Statute of the Court. Most would prefer that a Statute contain provisions relating to all of the issues found in Section II of the Convention, although the Convention could retain provisions relating to certain key issues currently found in Section II; some of the provisions of such a Statute would be subject to a simplified amendment procedure, others not.

d. Some experts would prefer such a procedure to be introduced by way of a new provision in the Convention. Most of these experts could, however, also accept introduction by way of a Statute, for some on condition that it have the legal status of a treaty.

e. Certain other matters – namely interim measures under Rule 39 of the Rules of Court, the pilot judgment procedure under Rule 61, and unilateral declarations – should have their normative status enhanced by "upgrading" either into the Convention or, preferably, a Statute. Almost all considered that the resulting provisions should not be subject to a simplified amendment procedure.

f. Many experts also see potential future advantage in introducing a Statute that could develop and be enriched through transfer to it of additional provisions currently found in the Rules of Court or elsewhere.

g. There is agreement on the simplified amendment procedure itself.

31. The CDDH therefore proposes that it be given further terms of reference to draft an amending protocol to the Convention along the above lines. Many experts consider that the CDDH should in future also be given further terms of reference to consider which additional provisions of the Rules of Court or other matters should be transferred to a Statute, if that is the modality retained for introduction of a simplified amendment procedure.

Appendix I

Terms of reference of the DH-PS[22]

1. Name of Committee: Committee of Experts on a simplified procedure for amendment of certain provisions of the European Convention on Human Rights (DH-PS)

2. Type of Committee: Committee of Experts

3. Source of terms of reference: The Committee of Ministers on the proposal of the Steering Committee for Human Rights (CDDH)

4. Terms of reference:

Having regard to:

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

- the Declaration and Action Plan adopted at the High-level Conference on the future of the European Court of Human Rights (Interlaken, 18-19 February 2010), as endorsed by the Committee of Ministers at their 120th Session (Strasbourg, 11 May 2010);

- the Declaration and the Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe member states (Warsaw, 16-17 May 2005; CM(2005)80 final, 17 May 2005), in particular chapter I.1. "Ensuring the continued effectiveness of the European Convention on Human Rights";

- the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5) and Protocol No. 14 to the ECHR, amending the control system of the Convention (2004, CETS No. 194).

Under the authority of the Steering Committee for Human Rights (CDDH) and in relation with the implementation of the project 2008/DGHL/1403 "Enhancing the control system of the European Court of Human Rights" of the Programme of Activities, the Committee is instructed to:

i. examine in depth proposals for making it possible to simplify amendment of the Convention's provisions, with such a procedure to be introduced by means of an amending Protocol to the Convention;

ii. consider in particular including the following elements within a possible Statute and/or new Convention provisions:

- certain provisions contained in Section II of the European Convention on Human Rights, with revision where necessary;
- certain provisions found in the Rules of the Court, with modification where necessary;
- other matters, including certain provisions found in other relevant treaties;

iii. consider which bodies should be involved in the procedure, including in particular the possible roles of the Committee of Ministers, the European Court of Human Rights and the Parliamentary Assembly (see also further below);

iv. consider the most appropriate modality for the introduction of such a procedure, whether by (i)

[22] Adopted 09 July 2010 (see doc. CM/Del/Dec(2010)1090/1.10/appendix8E) and extended on 07 December 2011 (see doc. CM/Del/Dec(2011)1129/4.6aE), by the Committee of Ministers.

inclusion of relevant issues in a Statute of the Court, with a new provision in the Convention establishing the Statute and its amendment procedure and/or (ii) (a) new provision(s) in the Convention allowing certain other provisions of the Convention to be amended by a simplified procedure;

v. consider the precise operation of the new procedure, including the questions of:

- which body or bodies should have the right to propose amendments;
- which body or bodies approval should be required to adopt amendments;
- whether any decisions on adoption of amendments in the Committee of Ministers should be by majority, and if so whether simple or qualified, by unanimity or by a "non-opposition" procedure of implied consent;

vi. take into account relevant elements of the Wise Persons' report, as well as of the contributions made on it by the Parliamentary Assembly, the Court, the Secretary General, the Commissioner for Human Rights and civil society, in reply to the invitation given at the 984th meeting of the Ministers' Deputies (17 January 2007);

vii. in addition to the Interlaken Conference, take into account also the results of the Colloquy on the future developments of the European Court of Human Rights in the light of the Wise Persons' report (San Marino, 22-23 March 2007) and the results of other activities and initiatives relating to the reform of the ECHR system, including those undertaken by Sweden, Norway and Poland.

5. Composition of the Committee:

5.A Members

Governments of member states are entitled to appoint representatives with the relevant qualifications concerning procedures in the framework of international human rights protection instruments, in particular the European Convention on Human Rights.

The Council of Europe budget will bear the travel and subsistence expenses of 14 members appointed by the following member states: Iceland (Chair), Armenia, Austria, Bulgaria, Czech Republic, Estonia, Finland, France, Greece, Poland, Russian Federation, Sweden, Switzerland and United Kingdom.

The above-mentioned states may send (an) additional representative(s) to meetings of the Committee at their own expense.

Members appointed by the following states will have their travel and subsistence expenses borne by their national authorities: Belgium, Germany, Netherlands, Norway.

Representatives appointed by other member states may participate in the meetings of the Committee at the expense of these states.

Each member state participating in the meetings of the Committee has the right to vote in procedural matters.

5.B Participants

i. The following committees may each send a representative to meetings of the Committee, without the right to vote and at the expense of the corresponding Council of Europe budgetary article:

- the European Commission for the Efficiency of Justice (CEPEJ);
- the European Commission for Democracy through Law ("Venice Commission").

ii. The Parliamentary Assembly may send (a) representative(s) to meetings of the Committee, without the right to vote and at the expense of its administrative budget.

iii. The Council of Europe Commissioner for Human Rights may send (a) representative(s) to meetings of the Committee, without the right to vote and at the expense of its administrative budget.

iv. The Registry of the European Court of Human Rights may send (a) representative(s) to meetings of the Committee, without the right to vote and at the expense of its administrative budget.

v. The Conference of INGOs of the Council of Europe may send (a) representative(s) to meetings of the Committee, without the right to vote and at the expense of the body that (s)he (they) represent(s).

5.C Other participants

i. The European Commission and the Council of the European Union may send (a) representative(s) to meetings of the Committee, without the right to vote or defrayal of expenses.

ii. States with observer status of the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America) may send (a) representative(s) to meetings of the Committee, without the right to vote or defrayal of expenses.

iii. The following bodies and intergovernmental organisations may send (a) representative(s) to meetings of the Committee, without the right to vote or defrayal of expenses:

- Organisation for Security and Co-operation in Europe (OSCE) / Office for Democratic Institutions and Human Rights (ODIHR);
- Office of the United Nations High Commissioner for Human Rights.

5.D Observers

The following non member state:

- Belarus;

and the following non-governmental organisations and other bodies:

- Amnesty International;
- International Commission of Jurists (ICJ);
- International Federation of Human Rights (FIDH);
- European Roma and Travellers Forum;
- European Group of National Institutions for the Promotion and Protection of Human Rights

may send (a) representative(s) to meetings of the Committee, without the right to vote or defrayal of expenses.

6. Working methods and structures:

In order to fulfil its tasks, the Committee:

- may authorise the participation of other participants and/or observers, without the right to vote or defrayal of expenses;
- is authorised to seek, as appropriate and within its budgetary appropriations, the advice of experts, to have recourse to studies prepared by consultants and to consult relevant non-governmental organisations and other members of civil society.

Bearing in mind the specific nature of this work, it would in the first place be for the Committee of Experts for the improvement of procedures for the protection of human rights (DH-PR) to give appropriate directions to this Committee of experts of restricted composition. The

Committee will report on its activities to the DH-PR. The DH-PR will then report to the CDDH.

It should be noted that the research, negotiation and drafting work on this issue will take a relatively long time.

7. Duration:

These terms of reference will expire on 15 April 2012.

Appendix II

List of documents

Title	Reference
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
Compilation of participants' written contributions to discussions at the first meeting (Document prepared by the Secretariat)	DH-PS(2010)002
Interlaken Follow-up: Simplified Procedure for Amending the Convention (Idea of a Court Statute) (document submitted by the Court)	#3272054_v1
Proposal for a Draft Statute of the European Court of Human Rights, by Professor Helen Keller, Daniela Kühne & Andreas Fischer, University of Zurich (English only)	DH-PS(2010)003
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 (+ REV.1, REV.2 & REV.3)
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
Opinion of the Committee of legal advisers on public international law (CAHDI) concerning the introduction of a simplified amendment procedure for amendment of certain provisions of the ECHR	DH-PS(2011)006
Submission of the European Group of National Human Rights Institutions on Reform of the European Court of Human Rights to the Committee of experts on a simplified procedure for amendment of certain provisions of the European Convention on human rights (English only)	DH-PS(2011)007
Comments of the International Commission of Jurists, Amnesty International, Liberty, JUSTICE, AIRE Centre and Interights (English only)	DH-PS(2011)008

Appendix III

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

PART I

Provisions on which there is provisional consensus that they should be subject to amendment by a simplified procedure[23]

Provision	Content	Position of the Group of Wise Persons [24]	Preliminary arguments in favour of subjection to SAP[25]	Preliminary arguments against subjection to SAP	Other comments
Article 24(2) – 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	This provision is not fundamental to the institution of the Court.		It could also be transferred to the Rules of Court.
Article 26(1)bis – 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		Article 26(1) could be divided into parts, some subject to a SAP, others not (see also under Part II below).

[23] 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.
[24] 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).
[25] "SAP" = simplified amendment procedure.

			formations should be subject to a SAP.		
Article 26(2) & (5) – Single-judge formation, Committees, Chambers and Grand Chamber	2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers. […] 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.	Subject to a SAP	Paragraph (2) already reflects a SAP. 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	1. In respect of an application sub-mitted under Article 34, a Committee may, by a unanimous	Subject to a SAP	This article contains essentially organisational/	Application of the principle of judicial	The principle of judicial decision-making should

Committees	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).		procedural matters.	decision-making should not be subject to a SAP.	not be subject to a SAP; other elements of Article 28 could be subject to it.
Article 29 – Decisions by Chambers on admissibility and merits	***1. If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the 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.***	***Subject to a SAP[26]***	***This article is essentially procedural.***	***The principle of judicial decision-making should not be subject to a SAP; it should be contained in a treaty.***	***The principle of judicial decision-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 –	***Where a case pending before a Chamber raises***	***Subject to***	***This article is essentially***		

[26] [***Opinions differed on whether this provision should be subject to a SAP, with the majority considering that it should.]***

Relinquishment of jurisdiction to the Grand Chamber	***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.***	***a SAP[27]***	***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 46 § 4; and (c) consider requests for advisory opinions submitted under Article 47.	Subject to a SAP	Article 31 relates to Article 30.		
Article 39(2)-(4) – Friendly settlements	2. Proceedings conducted under paragraph 1 shall be confidential. 3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached. 4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.	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 43(2) & (3) – Referral to the Grand	2. A panel of five judges of the Grand Chamber shall decide whether to accept the request	Subject to a SAP	Paragraphs (2) and (3) are organisational/ procedural.		The principal as such should not be subject to a

[27] ***{Opinions differed on whether this provision should be subject to a SAP, with the majority considering that it should.]***

Chamber	3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.		A SAP would be useful were it considered desirable to change the Grand Chamber's jurisdiction or its relations with the Chambers.		SAP, while its modality could.
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 should not be subject to amendment by a simplified procedure[28]

Provision	Content	Position of the Group of Wise Persons	Preliminary arguments against subjection to SAP	Preliminary arguments in favour of subjection to SAP	Other comments
Article 19 – Establishment of the Court	To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.	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.
Article 20 – 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.
Article 21 – Criteria for office	1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence. 2. The judges shall sit on the Court in their individual capacity. 3. During their term of office the judges shall not engage in any activity which is	Not subject to a SAP	This contains a fundamental principle ensuring the quality of judges and the standing of the Court.		There may in future be a need to add to the criteria for office to include e.g. gender balance and linguistic competence.

[28] 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.

	incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.				
Article 22 – Election of judges	The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.	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 required conditions.	Not subject to a SAP	This is a fundamental principle contributing to judicial independence.		
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; […]	Not subject to a SAP			The provisions of Article 25 could be revised but should remain in the Convention.

	(e) elect the Registrar and one or more Deputy Registrars; (f) make any request under Article 26 § 2.				
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, Chambers and Grand Chamber	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 introduction of the single-judge procedure.	There is a need for flexible amendment should in the future the single-judge formation 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.	Not subject to a SAP			

	2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.				
Article 33 – Inter-State cases	Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.	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 hinder in any way the effective exercise of this right.	Not subject to a SAP			
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	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.	

	any individual application submitted under Article 34 if it considers that: (a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal. 4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.				
Article 36 – Third party intervention	1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings. 2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings. 3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in	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.	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.

	hearings.		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.		
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	The Court shall examine the case together with the representatives of the parties and,	Not subject to	This is a fundamental provision for the Court's	Article 38 is not fundamental to the Court	

case	if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.	a SAP	functioning. Its second part is neither organisational nor procedural. The Court has referred to States' non-compliance 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.	as an institution.	
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	Not subject to	The Court's competence to award just satisfaction is		The Court's interpretation of Article 41, in particular the term

	Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.	a SAP	fundamental to its essential role in protecting 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 42 – Judgments of Chambers	Judgments of Chambers shall become final in accordance with the provisions of Article 44 § 2.	Not subject to a SAP			Article 42 serves no apparent purpose in the light of Article 44(2).
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 – Final judgments	1. The judgment of the Grand Chamber shall be final. 2. The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the	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.		

	Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43. 3. The final judgment shall be published.				
Article 45 – Reasons for judgments and decisions	1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible. 2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.	Not subject to a SAP	Paragraph (1) is 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.		The Court does 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 undertake to abide by the final judgment of the Court in any case to which they are parties. 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.	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)	3. If the Committee of Ministers considers	Not	Paragraphs (3) and (4)	Paragraphs (3)-(5) are	If transferred to a Statute,

& (5) – Binding force and execution of judgments	that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee. 4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1. 5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.	subject to a SAP	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 respectively. Discussions on paragraphs (3)-(5) were a very difficult part of the negotiation of Protocol No. 14.	essentially procedural, creating *lex specialis* for paragraphs (1)-(2). They were added relatively recently by Protocol No. 14 and there is little if any experience of their operation in practice; they may need to be adapted in future in the light of experience.	paragraphs (3)-(5) could be accompanied by relevant Committee of Ministers' rules of procedure for the 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	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 advisory opinions, e.g. allowing superior

	relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the Protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.				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.

Appendix IV

Possible treatment of provisions or matters not found in the Convention
Further details of the CDDH's discussions

As regards the three specific issues that may be suitable for "upgrading" (enhancement of their normative status) to a Statute or the Convention, the result of discussions in the CDDH was as follows:

a. **Interim measures.** The great majority agreed that the Statute should contain the essential principle underpinning the Court's competence to indicate interim measures and States' obligation to abide by them and that all aspects of the issue should be addressed in a single, separate article, for clarity and visibility. Such an article should be placed in proximity to a provision on individual applications. Many experts felt that the relevant Statute provision should also clarify the circumstances in which the Court could exercise its competence. It was suggested that the Court's own case-law could provide relevant material, notably the judgment in the case of *Al-Saadoon & Mufdhi v. U.K.*, in which the Court stated that it would make an indication of interim measures under Rule 39 "only if there is an imminent risk of irreparable damage";[29] alternatively, the American Convention on Human Rights could provide inspiration,[30] although some felt that this might be overly restrictive and that the Court's freedom to respond to different situations should not be restricted. It was also suggested that a reasonableness criterion be included, referring notably to situations where action was interdicted when already underway. It was observed that the Court's current practice[31] and revised Practice Direction should already avoid most such situations. Some felt that any attempt at regulating the Court's ability to exercise this competence would run contrary to the aim of increasing its ability to react flexibly.

b. **Pilot judgment procedure.** Again, the great majority agreed that the essential principle underpinning the Court's competence to operate the pilot judgment procedure and deliver a pilot judgment should be "upgraded," either into the Statute (Model III) or the Convention itself (Model I or, because all of its Statute's provisions would be subject to the simplified amendment procedure, Model II). All aspects should be addressed in a single, separate article, for clarity and visibility. Such an article should be placed in proximity to a provision on the binding force and execution of judgments. Many felt that more than just the text of Rule 61(1) was needed, although to include all of Rule 61 would be excessive, unbalanced and inappropriate; paragraphs (2) (in its first sentence), (3) and (4), however, contained important points and could be considered for inclusion. Others observed that the more of Rule 61 were transferred to a Statute, the greater would be the reduction in simplicity and flexibility, notably in the future evolution of the pilot judgment procedure.

[29] App. no. 61498/08, judgment of 02/03/10, para. 160.
[30] Article 63(2) of the ACHR states that "In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration." The suggestion made in the DH-PS would replace the word "and" with "or."
[31] See, for example, the Court's judgment in the case of *Al-Saadoon & Mufdhi v. U.K.*, op. cit., paragraph 161.

c. **Unilateral declarations.** Again, the great majority agreed that the Statute should contain the essential principle underpinning the use of unilateral declarations and that all aspects should be addressed in a single, separate article, for clarity and visibility. Many felt that the relevant article should refer to the need for a prior attempt to resolve the case through a friendly settlement, which should generally be preferred due to the greater involvement of the applicant. It was noted, however, that unilateral declarations were preferable in some situations, such as where a State wished to resolve a large number of similar applications at once. The relevant article could also contain a provision excluding the possibility of the Court partially accepting a State's unilateral declaration and proceeding to give judgment on the issues covered by parts it had not accepted; unilateral declarations should be accepted either in their entirety or not at all. Many felt that reference to the Court's ability to restore a case to its list was unnecessary, since such a competence would already exist under Article 19(2) of the Statute.[32] It was suggested that a Statute provision should address the question of confidentiality, namely the possible reference that could be made in subsequent proceedings to unilateral declarations not accepted by the Court. Most were against unilateral declarations being transmitted to the Committee of Ministers for supervision of execution, since this would further over-load the latter.

[32] I.e. Article 37(2) ECHR.

Appendix V

Modalities for the introduction of a simplified amendment procedure: Possible illustrative models

Introduction

The present document contains three illustrative models for the introduction of a simplified amendment procedure.

Model I would subject certain provisions of Section II of the Convention to a simplified amendment procedure, established by a new Convention provision. The list of provisions set out in the "new Article x" reflects the provisional determination of which provisions should be subject to a simplified amendment procedure and which not, as reflected in the report of the 2nd meeting.[33] The model also includes possible text for new Convention provisions on interim measures, the pilot judgment procedure and unilateral declarations, *i.e.* matters not currently found in the Convention. It leaves open the question of whether or not these new provisions would be subject to the simplified amendment procedure (they are not included in the list of provisions that may be subject to the simplified amendment procedure).

Model II is a Statute-based approach. It includes possible text for new Convention provisions establishing a Statute and defining the procedure for its amendment; in this model, this latter provision is included in the Convention, although it could equally well be included the Statute itself (see Model III), should the latter have the legal status of a treaty. It also includes possible text for the Statute, on the basis that all of its substantive provisions would be subject to the simplified amendment procedure. In addition, it includes text (that used in Model I) in relation to interim measures, the pilot judgment procedure and unilateral declarations as the basis for provisions introducing these matters into the Convention.

For illustrative purposes, Model II is followed in this document by Section II of the Convention, as it would appear with the relevant provisions removed to a Statute.

Model III is also a Statute-based approach. It suggests transferring all of Section II of the Convention to a Statute, along with the possible text for provisions on interim measures, the pilot judgment procedure and unilateral declarations, and finishes with a provision setting out a simplified amendment procedure and specifying those provisions to which this procedure could apply.

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[33] See doc. DH-PS(2011)R2 Appendix III.

Model I

A provision in the Convention concerning provisions relating to organisational matters as well as other issues not currently found in the Convention

New Article x of the European Convention on Human Rights

1. Amendments to the following articles of Section II of this Convention may be proposed to the Committee of Ministers by any High Contracting Party or by the Court:

   - Art. 24(2), concerning [non-judicial] rapporteurs assisting single judges;
   - Art. 26(1), insofar as it concerns the size of non-singular judicial formations, but excluding their type;
   - Art. 26(2), concerning reduction in the size of Chambers;
   - Art. 26(5), concerning the composition of the Grand Chamber;
   - Art. 27, insofar as it concerns the competence of single judges but excluding the principle of judicial decision-making;
   - Art. 28, insofar as it concerns the competence of Committees but excluding the principle of judicial decision-making;
   - [Art. 29, insofar as it concerns decisions by Chambers on admissibility and merits but excluding the principle of judicial decision-making;]
   - [Art. 30 concerning relinquishment of jurisdiction to the Grand Chamber;]
   - Art. 31 concerning powers of the Grand Chamber;
   - Art. 39(2)-(4) concerning friendly settlements but excluding the essential principle;
   - Art 43(2) & (3) concerning referral to the Grand Chamber but excluding the grounds on which the panel of five judges shall accept requests for referral;
   - Art. 47(3) concerning Committee of Ministers' procedure for requesting advisory opinions;
   - Art. 48 concerning the Court's advisory jurisdiction.

2. The Committee of Ministers may decide to pursue a proposal made in accordance with paragraph 1 of this article by the majority provided before in Article 20.d of the Statute of the Council of Europe.

3. After having consulted the Parliamentary Assembly[, the Commissioner for Human Rights] and, in the case of an amendment proposed by a High Contracting Party, after having also consulted the Court, the Committee of Ministers may adopt an amendment proposed in accordance with paragraph 1 of this Article by the majority provided for in Article 20.a of the Statute of the Council of Europe.

4. The Secretary General of the Council of Europe shall communicate any amendments thus adopted to the High Contracting Parties.

5. [Any amendment adopted in accordance with the above paragraph shall enter into force following the expiry of a period of [nine] months after the date on which it has been communicated by the Secretary General to the High Contracting Parties, unless, during that period, any High Contracting Party notifies the Secretary General of its objection to the entry into force of the amendment.]

Interim measures

Article 34bis – Interim measures

1 [Where there is an imminent risk of irreparable damage,] [34] a Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.[35]

2 The High Contracting Parties undertake to abide by any interim measure indicated to them by the Court under paragraph 1.[36]

Pilot judgment procedure

Article 45bis – Pilot judgment procedure

1 The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting State concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications.

2 Before initiating a pilot-judgment procedure, the Court shall first seek the views of the parties on whether the application under examination results from the existence of such a problem or dysfunction in the Contracting State concerned and on the suitability of processing the application in accordance with that procedure.

3 The Court shall in its pilot judgment identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contracting State concerned is required to take at the domestic level by virtue of the operative provisions of the judgment.

4 The Court may direct in the operative provisions of the pilot judgment that the remedial measures referred to in paragraph 3 above be adopted within a

[34] See *Al-Saadoon & Mufdhi v. U.K.*, app. no. 61498/08, judgment of 02/03/10, para. 160. Alternatively, this paragraph could begin with the qualification "In cases of extreme gravity and urgency or when necessary to avoid irreparable damage", inspired by Article 63(2) of the American Convention on Human Rights.
[35] Text taken from Rule 39, para. 1 of the Rules of Court.
[36] Based on Article 46(1) ECHR

specified time, bearing in mind the nature of the measures required and the speed with which the problem which it has identified can be remedied at the domestic level.

Unilateral declarations

Article 39bis – Unilateral declarations

1 [If a friendly settlement under Article 22 cannot be effected,] a High Contracting Party may make a unilateral declaration with a view to resolving the issue raised by the case.[37]

1bis The fact of a High Contracting Party having made a unilateral declaration under paragraph 1 shall be confidential.

2 If the unilateral declaration offers a sufficient basis for the Court to find that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue its examination of the case, the Court shall strike the case out of its list by means of a decision that shall be confined to a brief statement of the facts and of the undertakings given in the unilateral declaration made by the High Contracting Party.

[37] Text partially based on Article 39(1) ECHR.

Model II

A Statute containing provisions relating to organisational matters
and other issues not currently found in the Convention
(interim measures, the pilot judgment procedure and unilateral declarations)

New Article x of the European Convention on Human Rights

There shall be a Statute of the European Court of Human Rights. The Statute shall be laid down in a [Protocol to the Convention] / [Resolution that the Committee of Ministers is hereby empowered to adopt].

New Article (x+1) of the European Convention on Human Rights[38]

1 Proposals for the amendment of the Statute may be made to the Committee of Ministers of the Council of Europe by any High Contracting Party or by the European Court of Human Rights.

2 The Committee of Ministers may decide to pursue a proposal made in accordance with paragraph 1 of this article by the majority provided before in Article 20.d of the Statute of the Council of Europe.

3 After having consulted the Parliamentary Assembly[, the Commissioner for Human Rights] and, and in the case of an amendment proposed by a High Contracting Party, after having also consulted the Court, the Committee of Ministers may adopt an amendment proposed in accordance with paragraph 1 of this Article by the majority provided for in Article 20.a of the Statute of the Council of Europe.

4 The Secretary General of the Council of Europe shall communicate any amendments thus adopted to the High Contracting Parties.

5 [Any amendment adopted in accordance with the above paragraphs shall enter into force following the expiry of a period of [nine] months after the date on which it has been communicated by the Secretary General to the High Contracting Parties, unless, during that period, any High Contracting Party notifies the Secretary General of its objection to the entry into force of the amendment.]

Interim measures

Article 34bis – Interim measures

1 [Where there is an imminent risk of irreparable damage,] [39] a Chamber or, where appropriate, its President may, at the request of a party or of any other

[38] N.b. this is the same procedure as for Model I.

person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.[40]

2 The High Contracting Parties undertake to abide by any interim measure indicated to them by the Court under paragraph 1.[41]

Pilot judgment procedure

Article 45bis – Pilot judgment procedure

1 The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting State concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications.

[2 Before initiating a pilot-judgment procedure, the Court shall first seek the views of the parties on whether the application under examination results from the existence of such a problem or dysfunction in the Contracting State concerned and on the suitability of processing the application in accordance with that procedure.

3 The Court shall in its pilot judgment identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contracting State concerned is required to take at the domestic level by virtue of the operative provisions of the judgment.

4 The Court may direct in the operative provisions of the pilot judgment that the remedial measures referred to in paragraph 3 above be adopted within a specified time, bearing in mind the nature of the measures required and the speed with which the problem which it has identified can be remedied at the domestic level.]

Unilateral declarations

Article 39bis – Unilateral declarations

1 [If a friendly settlement under Article 22 cannot be effected,] a High Contracting Party may make a unilateral declaration with a view to resolving the issue raised by the case.[42]

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[39] See *Al-Saadoon & Mufdhi v. U.K.*, app. no. 61498/08, judgment of 02/03/10, para. 160. Alternatively, this paragraph could begin with the qualification "In cases of extreme gravity and urgency or when necessary to avoid irreparable damage", inspired by Article 63(2) of the American Convention on Human Rights.

[40] Text taken from Rule 39, para. 1 of the Rules of Court.

[41] Based on Article 46(1) ECHR

[42] Text partially based on Article 39(1) ECHR.

1bis The fact of a High Contracting Party having made a unilateral declaration under paragraph 1 shall be confidential.

2 If the unilateral declaration offers a sufficient basis for the Court to find that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue its examination of the case, the Court shall strike the case out of its list by means of a decision that shall be confined to a brief statement of the facts and of the undertakings given in the unilateral declaration made by the High Contracting Party.

Statute of the European Court of Human Rights[43]

Article 1 *(24 ECHR)*[44] – Registry and rapporteurs

1 When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's registry.

Article 2 *(26(1)*[45] *and 26(2) & (5) ECHR)* – Single-judge formation, committees, Chambers and Grand Chamber

1 Committees shall consist of three judges, Chambers of seven judges and the Grand Chamber of seventeen judges.

2 At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.

3 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 12 *(43 ECHR)*, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

Article 3 *(27 ECHR)* – 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 29 of the Convention,[46] where such a decision can be taken without further examination.

2 The decision shall be final.

3 If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

Article 4 *(28 ECHR)* – Competence of committees

1 In respect of an application submitted under Article 29 of the Convention, 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

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[43] This illustrative model Statute comprises the text of Section II of the Convention, including only those provisions provisionally identified by the DH-PS as suitable for a simplified amendment procedure and with the addition of provisions concerning interim measures, the pilot judgment procedure and unilateral declarations.

[44] The numbers in italics between brackets that follow the numbers of articles of the Statute relate to articles of the Convention as it currently reads.

[45] Only the part of Art. 26(1) of the Convention concerning the size of non-singular judicial formations should be subject to a simplified amendment procedure.

[46] For the purposes of this model Statute, the numbering of Convention articles relates to the Convention as it would read if amended by removal of certain provisions to the Statute (see the second part of Model II).

b declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

2 Decisions and judgments under paragraph 1 shall be final.

3 If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.b.

[Article 5 *(29 ECHR)* – Competence of Chambers

1 If no decision is taken under Article 3 or 4 *(27 or 28 ECHR)*, or no judgment rendered under Article 4 *(28 ECHR)*, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 29 of the Convention. 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 28 of the Convention. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.]

[Article 6 *(30 ECHR)* – Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.]

Article 7 *(31 ECHR)* – Powers of the Grand Chamber

The Grand Chamber shall

a determine applications submitted either under Article 28 or Article 29 of the Convention when a Chamber has relinquished jurisdiction under Article 6 *(30 ECHR)* or when the case has been referred to it under Article 11 *(43 ECHR)*;

b decide on issues referred to the Court by the Committee of Ministers in accordance with Article 40, paragraph 4 of the Convention; and

c consider requests for advisory opinions submitted under Article 41 of the Convention.

Article 9 *(39 ECHR)* – Friendly settlements

1 Proceedings conducted under Article 34 of the Convention shall be confidential.

2 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.

3 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.

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Article 12 *(43 ECHR)* – Referral to the Grand Chamber

1 A panel of five judges of the Grand Chamber shall accept a request made under Article 37 paragraph 1 of the Convention 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.

2 If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 15 (*47 ECHR*) - Advisory opinions

Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 16 *(48 ECHR)* – 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 41 of the Convention.

European Convention on Human Rights
Section II

Article 19
Establishment of the Court
To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

Article 20
Number of judges
The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21
Criteria for office
1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
2. The judges shall sit on the Court in their individual capacity.
3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22
Election of judges
The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

Article 23
Terms of office and dismissal
1. The judges shall be elected for a period of nine years. They may not be re-elected.
2. The terms of office of judges shall expire when they reach the age of 70.
3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.
4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

Article 24
Registry and rapporteurs
1. The Court shall have a Registry, the functions and organisation of which shall be laid down in the rules of the Court.

Article 25
Plenary Court
The plenary Court shall
(a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
(b) set up Chambers, constituted for a fixed period of time;
(c) elect the Presidents of the Chambers of the Court; they may be re-elected;
(d) adopt the rules of the Court;
(e) elect the Registrar and one or more Deputy Registrars;
(f) make any request under Article 2 of the Statute of the Court.

Article 26

Single-judge formation, Committees, Chambers and Grand Chamber
1. To consider cases brought before it, the Court shall sit in a single-judge formation, in Committees, in Chambers and in a Grand Chamber. The Court's Chambers shall set up Committees for a fixed period of time.
2. 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.
3. 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.

Article 27
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 28, 29, 40 and 41.
2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 28
Inter-State cases
Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.

Article 29
Individual applications
The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 30
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 29 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 29 if it considers that:
(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or
(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.
4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 31
Third party intervention

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.
3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

Article 32
Striking out applications
1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
(a) the applicant does not intend to pursue his application; or
(b) the matter has been resolved; or
(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.
2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 33
Examination of the case
The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

Article 34
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.

Article 35
Public hearings and access to documents
1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 36
Just satisfaction
If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 37
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.

Article 38
Final judgments
1. The judgment of the Grand Chamber shall be final.

2. The final judgment shall be published.

Article 39
Reasons for judgments and decisions
1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 40
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.
3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of
interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

Article 41
Advisory opinions
1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.
2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the Protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

Article 42
Reasons for advisory opinions
1. Reasons shall be given for advisory opinions of the Court.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 43
Expenditure on the Court
The expenditure on the Court shall be borne by the Council of Europe.

Article 44
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.

Model III

A Statute containing the provisions currently found in Section II of the Convention and other issues not currently found in the Convention (namely interim measures, the pilot judgment procedure and unilateral declarations)

New Article 19 of the European Convention on Human Rights

There shall be a European Court of Human Rights, hereinafter referred to as "the Court". The Statute of the Court shall be laid down in a [Protocol to the Convention] / [Resolution that the Committee of Ministers is hereby empowered to adopt].

Statute of the European Court of Human Rights[47]

Article 1 *(19 ECHR)* – Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto and in this Statute, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court." It shall function on a permanent basis.

Article 2 *(20 ECHR)* – Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 3 *(21 ECHR)* – Criteria for office

1 The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2 The judges shall sit on the Court in their individual capacity.

3 During their term of office the judges shall not engage in any activity which is incompatible with their independence**,** impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 4 *(22 ECHR)* – Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

Article 5 *(23 ECHR)* – Terms of office and dismissal

[47] This illustrative model Statute comprises the text of Section II of the Convention, with the addition (in italics) of the illustrative text concerning interim measures, the pilot judgment procedure and unilateral declarations as set out in Model II. Where new article numbering has been adopted, the numbers in brackets refer to the relevant articles of the Convention.

1 The judges shall be elected for a period of nine years. They may not be re-elected.

2 The terms of office of judges shall expire when they reach the age of 70.

3 The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

4 No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

Article 6 *(24 ECHR)* – Registry and rapporteurs

1 The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court.

2 When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's registry.

Article 7 *(25 ECHR)* – Plenary Court

The plenary Court shall

a elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;

b set up Chambers, constituted for a fixed period of time;

c elect the Presidents of the Chambers of the Court; they may be re-elected;

d adopt the rules of the Court;

e elect the Registrar and one or more Deputy Registrars;

f make any request under Article 8, paragraph 2.

Article 8 *(26 ECHR)* – Single-judge formation, committees, Chambers and Grand Chamber

1 To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2 At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.

3 When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.

4 There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

5 The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 27, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

Article 9 *(27 ECHR)* – 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 16, where such a decision can be taken without further examination.

2 The decision shall be final.

3 If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

Article 10 *(28 ECHR)* – Competence of committees

1 In respect of an application submitted under Article 16, a committee may, by a unanimous vote,

a declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or

b declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

2 Decisions and judgments under paragraph 1 shall be final.

3 If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.b.

Article 11 *(29 ECHR)* – Competence of Chambers

1 If no decision is taken under Article 9 or 10, or no judgment rendered under Article 10, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 16. 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 15. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 12 *(30 ECHR)* – Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment

previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 13 *(31 ECHR)* – Powers of the Grand Chamber

The Grand Chamber shall

a determine applications submitted either under Article 15 or Article 16 when a Chamber has relinquished jurisdiction under Article 12 or when the case has been referred to it under Article 27;

b decide on issues referred to the Court by the Committee of Ministers in accordance with Article 31, paragraph 4; and

c consider requests for advisory opinions submitted under Article 32.

Article 14 *(32 ECHR)* – 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 15, 16, 31 and 32.

2 In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 15 *(33 ECHR)* – Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 16 *(34 ECHR)* – Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 17 – Interim measures

1 [Where there is an imminent risk of irreparable damage,][48] a Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.[49]

[48] See *Al-Saadoon & Mufdhi v. U.K.*, app. no. 61498/08, judgment of 02/03/10, para. 160. Alternatively, this paragraph could begin with the qualification "In cases of extreme gravity and urgency or when necessary to avoid irreparable damage", inspired by Article 63(2) of the American Convention on Human Rights.

[49] Text taken from Rule 39, para. 1 of the Rules of Court.

2 The High Contracting Parties undertake to abide by any interim measure indicated to them by the Court under paragraph 1.[50]

Article 18 *(35 ECHR)* – Admissibility criteria

1 The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

2 The Court shall not deal with any application submitted under Article 16 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 16 if it considers that :

a the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

b the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

4 The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 19 *(36 ECHR)* – Third party intervention

1 In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2 The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

3 In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

Article 20 *(37 ECHR)* – 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

[50] Based on Article 46(1) ECHR

a the applicant does not intend to pursue his application; or

b the matter has been resolved; or

c for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

2 The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 21 *(38 ECHR)* – Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

Article 22 *(39 ECHR)* – Friendly settlements

1 At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.

2 Proceedings conducted under paragraph 1 shall be confidential.

3 If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

4 This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

Article 23 – Unilateral declarations

1 [If a friendly settlement under Article 22 cannot be effected,] a High Contracting Party may make a unilateral declaration with a view to resolving the issue raised by the case.[51]

1bis The fact of a High Contracting Party having made a unilateral declaration under paragraph 1 shall be confidential.

2 If the unilateral declaration offers a sufficient basis for the Court to find that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue its examination of the case, the Court shall strike the case out of its list by means of a decision that shall be confined to a brief statement of the facts and of the undertakings given in the unilateral declaration made by the High Contracting Party.

Article 24 *(40 ECHR)* – Public hearings and access to documents

[51] Text partially based on Article 39(1) ECHR.

1 Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.

2 Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 25 *(41 ECHR)* – Just satisfaction

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 26 *(42 ECHR)* – Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 28, paragraph 2.

Article 27 *(43 ECHR)* – Referral to the Grand Chamber

1 Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

2 A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.

3 If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 28 *(44 ECHR)* – Final judgments

1 The judgment of the Grand Chamber shall be final.

2 The judgment of a Chamber shall become final

a when the parties declare that they will not request that the case be referred to the Grand Chamber; or

b three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or

c when the panel of the Grand Chamber rejects the request to refer under Article 27.

3 The final judgment shall be published.

Article 29 *(45 ECHR)* – Reasons for judgments and decisions

1 Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

2 If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 30 – Pilot judgment procedure

1 The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting State concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications.

2 Before initiating a pilot-judgment procedure, the Court shall first seek the views of the parties on whether the application under examination results from the existence of such a problem or dysfunction in the Contracting State concerned and on the suitability of processing the application in accordance with that procedure.

3 The Court shall in its pilot judgment identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contracting State concerned is required to take at the domestic level by virtue of the operative provisions of the judgment.

4 The Court may direct in the operative provisions of the pilot judgment that the remedial measures referred to in paragraph 3 above be adopted within a specified time, bearing in mind the nature of the measures required and the speed with which the problem which it has identified can be remedied at the domestic level.

Article 31 *(46 ECHR)* – Binding force and execution of judgments

1 The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2 The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3 If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

4 If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

5 If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

Article 32 *(47 ECHR)* – Advisory opinions

1 The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.

2 Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3 Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 33 *(48 ECHR)* – 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 32.

Article 34 *(49 ECHR)* – Reasons for advisory opinions

1 Reasons shall be given for advisory opinions of the Court.

2 If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3 Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 35 *(50 ECHR)* – Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

Article 36 *(51 ECHR)* – 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.

Article 37 – Amendment of the Statute

1 Amendments to the following articles of this Statute may be proposed to the Committee of Ministers by any State Party or by the Court:

- Art. 6(2), concerning [non-judicial] rapporteurs assisting single judges;
- Art. 8(1), insofar as it concerns the size of non-singular judicial formations, but excluding their type;
- Art. 8(2), concerning reduction in the size of Chambers;
- Art. 8(5), concerning the composition of the Grand Chamber;
- Art. 9, insofar as it concerns the competence of single judges but excluding the principle of judicial decision-making;
- Art. 10, insofar as it concerns the competence of Committees but excluding the principle of judicial decision-making;
- [Art. 11, insofar as it concerns decisions by Chambers on admissibility and merits but excluding the principle of judicial decision-making, the competence to initiate a pilot judgment procedure and adopt a pilot judgment, and the competence to indicate interim measures;]
- [Art. 12 concerning relinquishment of jurisdiction to the Grand Chamber;]
- Art. 13 concerning powers of the Grand Chamber;

- Art. 22(2)-(4) concerning friendly settlements but excluding the essential principle;
- [Article 23 concerning unilateral declarations but excluding the essential principle]
- Art 27(2) & (3) concerning referral to the Grand Chamber but excluding the grounds on which the panel of five judges shall accept requests for referral;
- Art. 32(3) concerning Committee of Ministers' procedure for requesting advisory opinions;
- Art. 33 concerning the Court's advisory jurisdiction.

2 The Committee of Ministers may decide to pursue a proposal made in accordance with paragraph 1 of this article by the majority provided before in Article 20.d of the Statute of the Council of Europe.

3 After having consulted the Parliamentary Assembly[, the Commissioner for Human Rights] and, in the case of an amendment proposed by a State Party, after having also consulted the Court, the Committee of Ministers may adopt an amendment proposed in accordance with paragraph 1 of this Article by the majority provided for in Article 20.a of the Statute of the Council of Europe.

4 The Secretary General of the Council of Europe shall communicate any amendments thus adopted to the States Parties.

5 [Any amendment adopted in accordance with the above paragraph shall enter into force following the expiry of a period of [nine] months after the date on which it has been communicated by the Secretary General to the States Parties, unless, during that period, any State Party notifies the Secretary General of its objection to the entry into force of the amendment.]