DH-SYSC(2019)R5 Addendum 2
18/10/2019

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

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

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Draft Contribution of the CDDH

to the evaluation provided for by the Interlaken Declaration

as adopted by the DH-SYSC in its 5th meeting (15–18 October 2019)

Note:

It is recalled that the Interlaken Declaration (2010) invited the Committee of Ministers to decide, before the end of 2019, whether the measures adopted in the course of the process of reform of the system of the European Convention on Human Rights had proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes would be necessary.[1] The CDDH was charged with drafting a Contribution to this evaluation provided for by the Interlaken Declaration. It adopted a preliminary draft table of contents and gave guidance to its Secretariat for the preparation of its Contribution.[2]

The present draft CDDH Contribution to the evaluation provided for by the Interlaken Declaration has been adopted by the DH-SYSC at its 5th meeting in October 2019.[3] It is now to be discussed, with a view to its possible adoption, at the 92th CDDH meeting (26–29 November 2019).

The participants both in the DH-SYSC and in the CDDH meetings had been invited to send comments, if any, on the draft Contribution in the form of drafting proposals to the Secretariat prior to the DH-SYSC meeting. Following the adoption of the present draft Contribution by the DH-SYSC, the participants in the CDDH meetings are invited to send further comments, if any, on the text as adopted by the DH-SYSC in the form of drafting proposals to the Secretariat (DGI-CDDH@coe.int) by **Monday 18 November 2019**.[4]

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[1] See the Interlaken Declaration of 19 February 2010 of the High Level Conference on the Future of the European Court of Human Rights, Implementation of the Action Plan, point 6.
[2] See document CDDH(2018)R90, § 24 (i) and Appendix VII.
[3] The Secretariat proposes a few updates, highlighted in green.
[4] See for the procedure also document CDDH(2019)R91, §§ 19-21.

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EXECUTIVE SUMMARY

1. The extraordinary contribution of the Convention system to the protection and promotion of human rights and the rule of law in Europe and the central role it plays in maintaining democratic security and improving good governance across the continent have been repeatedly stressed during the Interlaken process.

2. Against the background of a continuing rise in the caseload of the European Court of Human Rights (the Court), the States Parties to the European Convention on Human Rights (the Convention) started a process of further reform of the Convention system at a high-level Conference held in Interlaken in 2010. The Interlaken Declaration adopted at that conference invited the Committee of Ministers to decide, before the end of 2019, whether the measures taken in the course of the reform process towards long-term effectiveness of the Convention system have proven to be sufficient to assure a sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary.

3. The Steering Committee for Human Rights (CDDH) was charged by the Committee of Ministers of the Council of Europe with a mid-term assessment of the Interlaken reform process which is contained in its 2015 report on “The longer-term future of the system of the European Convention on Human Rights”. It was subsequently asked to draft the present Contribution to the above-mentioned evaluation provided for by the Interlaken Declaration. It examines this question in three chapters. It first addresses the measures taken to secure an effective implementation of the Convention at the national level, in the phase before applications are lodged with the Court (A.). It then covers the measures taken regarding the applications pending before the Court (B.). It finally assesses the measures to secure an efficient execution of the judgments of the Court (C.). Subsequently, conclusions are drawn.

4. The **implementation of the Convention at the national level** has been improved by general measures which raise awareness of the Convention standards among all stakeholders in the member States and provide training on these standards. During the Interlaken process, the accessibility of the Convention standards in the member States has been improved by increased translations of significant judgments of the Court, summaries thereof and other information documents into the national languages. Furthermore, training on the Convention standards is increasingly provided by many different actors in the Convention system and became more and more targeted to the needs of different legal professionals and law enforcement officials.

5. The national implementation of the Convention can ~~must~~ be further improved by concrete measures to prevent specific breaches of the Convention or to provide an effective remedy at the national level if such breaches have occurred. Mechanisms are now in place in most member States to verify the compatibility of draft legislation with the Convention standards but more consideration should still be given to the general principles developed by the Court in the case-law concerning other States. Domestic courts increasingly take account of the Court’s developing case-law and apply the Convention directly. Protocol No. 16 to the Convention, which was elaborated in the course of the reform process and entered into force in August

2018, permits national courts of the members States which have ratified it to request the Court to give an advisory opinion on a Convention-related question under certain preconditions.

6. A key factor for a successful national implementation of the Convention is the existence of effective domestic remedies which are capable of providing adequate redress already at the national level for a violation of a Convention right and thereby make it unnecessary for applicants to bring their case before the Strasbourg Court. However, despite the successful creation of domestic remedies in many States, there is still a need to either put in place or further improve them in a number of States. Given that the continuously high numbers of repetitive applications impair the efficient functioning of the Court, the national implementation of the Convention in this regard still remains one of the principal challenges facing the Convention system. The national implementation of the Convention, in accordance with the principle of subsidiarity, should also be furthered by the ratification, by the two States which have not yet done so, of Protocol No. 15 to the Convention. This amending protocol, equally elaborated during the Interlaken process, will introduce some changes to the procedure before the Court in order to accelerate and facilitate it, and to the admissibility criteria.

7. Independent National Human Rights Institutions (NHRIs), civil society and other relevant actors, as well as the Council of Europe's cooperation activities should further assist in the national implementation of the Convention. In general, these actors, notably NHRIs, should be provided with appropriate conditions to play their role independently and without undue obstacles.

8. As regards the measures taken regarding the **applications pending before the Court**, the Court has managed to reduce their number considerably despite a continuously high number of new applications. It made full use of the possibilities provided by Protocol No. 14 to the Convention, which allowed for the assignment of applications to smaller judicial formations, and continuously kept streamlining the procedures before it.

9. The Court's remaining caseload still discloses two major challenges: the reduction of the continuously high number of repetitive applications and the reduction of the high number of non-repetitive, potentially well-founded applications.

10. As regards the backlog of repetitive cases, further efforts are necessary by all actors in the Convention system. The States should put in place effective domestic remedies as soon as possible notably where systemic problems arise which lead to a large number of similar applications. A speedy execution of the Court's judgments should be ensured, if appropriate by targeted assistance, notably by the Department for the Execution of Judgments. The Court, the Committee of Ministers and the States should continue striving to optimise their interaction in order to efficiently handle this group of cases. As for the backlog of non-repetitive, potentially well-founded cases, which often raise new questions regarding the interpretation of the Convention, the necessary resources need to be made available to the Court so that, backed by further measures to streamline its procedures, it will be able to properly deal with this backlog.

11. As regards inter-State applications, their increasing number and the breadth of the questions they raise cause specific difficulties, in particular concerning certain procedural aspects or concerning the way in which the facts are established. However, these questions require a more in-depth examination before conclusions can be drawn.

12. It is to be recalled in this context that during the reform process, the CDDH analysed a number of proposals for far-reaching changes to the procedure before the Court, but did not retain any of them. The finding it has made in its mid-term report in 2015 – an assessment which is shared by the Court – that the challenges the system is faced with are best addressed

within its current framework are thus still valid. The system has further demonstrated its capacity to adapt and considerably improve its efficiency within that framework.

13. In order to strengthen the authority of the Court by safeguarding its independence and by attracting persons of the highest calibre to serve as judge on its bench, the CDDH suggests that the Committee of Ministers adopt a Declaration underlining both the importance of preventing disguised reprisals against former judges at the end of their mandate and of former judges being able to find again an adequate post in their country, respecting, at the same time, the diversity of the constitutional systems in the member States. It is further of the utmost importance to ensure that the independence of the Court and the binding nature of its judgments are respected by all the actors of the Convention system.

14. The CDDH further encourages the Committee of Ministers to reiterate its political support for the accession of the European Union to the Convention which is important for the coherence of human rights protection in Europe.

15. Different measures taken in the course of the Interlaken process regarding the **execution of the Court's judgments** have allowed for real progress in ensuring both the full, effective and rapid execution of the Court's judgments at the domestic level and also a more effective and transparent supervision thereof by the Committee of Ministers.

16. Domestic capacities for the rapid execution of judgments have been improved allowing a quicker submission of comprehensive action plans indicating the measures planned and/or taken to execute a judgment. State mechanisms for the coordination of the different measures necessary to ensure execution have also improved, notably by the nomination of coordinators responsible for the necessary concertations in the execution process, but their authority and resources should be reinforced. An improved information flow after the receipt of action plans would increase the efficiency of the execution process. As regards, in particular, the setting up of effective domestic remedies in the course of the execution of a judgment in order to prevent further similar breaches of the Convention, many important reforms have been adopted, but there is, as shown above, still a need to improve domestic remedies. The increasing role of national parliaments in supporting the execution process is to be welcomed and encouraged.

17. The process of supervision of the execution of judgments by the Committee of Ministers has been improved following the entry into force of new working methods in 2011. The introduction of a prioritisation system for cases in the execution process (enhanced and standard supervision) allowed the Committee of Ministers to concentrate on more complex cases. The speedier publication of relevant documents has increased the transparency of the process; its accessibility should be further increased, for instance by the rapid translation and dissemination of relevant Committee decisions. The Committee of Ministers further engaged in a more intensive dialogue with respondent States including guidance through its decisions and resolutions; these efforts should be continued and further developed. As regards, in particular, measures taken to ensure a speedy execution in relation to repetitive applications, the Committee has encouraged the effectiveness of domestic remedies, notably in response to pilot-judgment procedures, and managed to refer numerous repetitive applications to newly created domestic remedies, but there are exceptions.

18. A good information exchange with other stakeholders, including the Court, the Parliamentary Assembly and the Commissioner for Human Rights can considerably support the execution process. The further development of cooperation programmes and activities, providing technical assistance to State Parties for the execution of judgments, is essential and requires the necessary funding.

19. Continuing challenges in the supervision of the execution of the Court's judgments comprise, in particular, the absence of political will to execute a judgment and technical reasons linked to the complexity or scope of execution measures required or their financial implications. In many of these cases, it is necessary to find ways and means of supplementing the technical support offered with suitable political levers.

20. It is, finally, an overarching positive feature of the Interlaken process that the **dialogue** between all the different actors in the Convention system has considerably intensified.

21. It is **concluded** that the Interlaken reform process, backed by the effects of Protocol No. 14 and the contributions of all stakeholders, was crucial for the system and has led to significant advances, which also bode well for the system's capacity to meet new challenges and to consolidate and further develop the progress made. The necessity of a new major revision of the system is therefore not apparent. What appears important is rather to allow the Convention system as it has emerged from the Interlaken process and Protocol No. 14, provided with sufficient resources which the States Parties have committed themselves to provide, to demonstrate fully its potential. The dialogue between all the different actors in the Convention system should continue and create the necessary synergies enabling all actors in the system to play their respective roles in their shared responsibility to implement the Convention. Securing the long-term effectiveness of the Convention system is an ongoing work that requires the full commitment and continued efforts of all parties concerned.

INTRODUCTION

22. The evaluation of the reform process towards long-term effectiveness of the system of the European Convention on Human Rights (the Convention), to be carried out according to the Interlaken Declaration, is one further step in the broader context of the reform of the Convention system. Since the European Court of Human Rights (the Court) took up its work in 1959, the member States of the Council of Europe have adopted several protocols to the Convention with the aim of improving and strengthening its supervisory mechanism. In 1998 in particular, Protocol No. 11 to the Convention entered into force which provided for a wholly judicial system of determination of applications, replacing the original two-tier structure comprising the Court and the Commission by a permanent Court. The continuing rise in the Court's caseload was further addressed by Protocol No. 14, which entered into force in 2010 and notably provided for smaller judicial formations to deal with clearly inadmissible cases and well-founded repetitive cases.[1]

23. In 2010 a first intergovernmental conference on the future of the Court in Interlaken marked the beginning of the so-called Interlaken process of further reform. The Interlaken Declaration sought to establish a roadmap for the reform process towards long-term effectiveness of the Convention system.[2] It notably invited the Committee of Ministers to decide, before the end of 2019, whether the measures adopted in the course of the reform process, in particular the measures to implement Protocol No. 14 and the Interlaken Action Plan, have proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary.[3]

24. Since the Interlaken conference, the measures proposed to guarantee the long-term effectiveness of the Convention system have been further developed in the Declarations adopted at four further high-level conferences in Izmir (2011)[4], Brighton (2012)[5], Brussels (2015)[6] and Copenhagen (2018)[7].

25. According to its terms of reference for the 2018-2019 biennium, the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC), under the supervision of the CDDH, is to:

> *"contribute to the evaluation set out by the Interlaken Declaration, before the end of 2019, with a view to formulating proposals to the Committee of Ministers as to whether the measures adopted so far have proven to be sufficient to ensure sustainable functioning of the system of the Convention or whether more profound changes are necessary (deadline: 31 December 2019)."*[8]

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[1] See for the text of, and further information on these Protocols the website of the Council of Europe's Treaty Office.
[2] See the Interlaken Declaration of 19 February 2010 of the High Level Conference on the Future of the European Court of Human Rights, PP 10.
[3] See the Interlaken Declaration, Implementation of the Action Plan, point 6.
[4] See the Izmir Declaration of 26/27 April 2011 of the High Level Conference on the Future of the European Court of Human Rights.
[5] See the Brighton Declaration of 19/20 April 2012 of the High Level Conference on the Future of the European Court of Human Rights.
[6] See the Brussels Declaration of 27 March 2015 of the High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility".
[7] See the Copenhagen Declaration of 12/13 April 2018 of the High-Level Conference on "Continued Reform of the European Court of Human Rights Convention System – Better balance, improved Protection".
[8] See the terms of reference given by the Committee of Ministers to the DH-SYSC as adopted by the Committee of Ministers at its 1300th meeting, 21-23 November 2017, document CM(2017)131-addfinal. This work is carried out in the light of the results achieved in the framework of the further ongoing activities of the DH-SYSC, that is, the

26. Following the High-Level Conference regarding the reform of the Convention system in Copenhagen on 12–13 April 2018, the Ministers' Deputies, at their 1317th meeting on 30 May 2018, further invited the CDDH to consider several additional topics in the present report, relating to the Court's backlog of cases, the facilitation of friendly settlements or unilateral declarations, inter-State disputes and the situation of judges of the Court after the end of their mandate.[9]

27. Emphasis was laid in the Interlaken process, in particular, on the shared responsibility notably of the Court and the States Parties for the implementation of the Convention. The present report shall accordingly conduct the assessment of the sufficiency of the measures to ensure sustainable functioning of the Convention system adopted in the course of the Interlaken reform process in three chapters. It reflects the different levels at which an effective implementation of the Convention needs to be secured. It addresses first the implementation of the Convention at the national level and means to prevent and remedy breaches of the Convention before applications are lodged with the Court (A.). It then covers the stage of applications pending before the Court (B.). and finally addresses the execution of the judgments of the Court (C.). Subsequently, some conclusions are drawn.[10]

28. In its different sections, the report has regard to the specific measures which successive high-level conferences considered important to arrive at the aim of the reform process to secure the long-term effectiveness of the Convention system. It describes the follow-up which has been given by the different actors in the Convention system to the measures called for and the results obtained thereby. It will further provide an assessment of whether the measures adopted so far in the reform process have proved sufficient to ensure a sustainable functioning of the Convention system or whether further changes are needed, while having regard to the fact, which has been stressed by the CDDH,[11] that this question has already been partially answered in previous CDDH reports.

29. The present report accordingly takes as an important basis the mid-term assessment of the reform process contained in the CDDH's 2015 report on "The longer-term future of the system of the European Convention on Human Rights".[12] It further has regard to subsequent developments as they result notably from the member States' reports on the national implementation of the Convention, the Court's reports on further measures taken in the reform process as well as the Committee of Ministers' Annual Reports on its supervision of the execution of judgments.[13]

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preparation of a draft report concerning the place of the European Convention on Human Rights in the European and international legal order and the follow-up to the decisions that may be taken by the Committee of Ministers further to the submission, in December 2017, of the CDDH report on the process of selection and election of the judges at the European Court of Human Rights.

[9] See in more detail CDDH(2019)R91, § 25.

[10] The CDDH adopted the draft table of contents for the present report at its 90th meeting (27-30 November 2018), see CDDH(2018)R90, § 24 (i) and Appendix VII.

[11] See CDDH(2018)R90, § 24 ii).

[12] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", adopted on 11 December 2015 (see also document CM(2015)176-add1final).

[13] See for the instructions of the CDDH in this respect CDDH(2018)R90, §§ 22-24 and CDDH(2019)R91, §§ 19-21.

A. THE IMPLEMENTATION OF THE CONVENTION AT THE NATIONAL LEVEL – PREVENTING AND REMEDYING BREACHES OF THE CONVENTION

30. The implementation of the Convention at the national level can be improved, on the one hand, by general measures which raise awareness of the Convention standards and provide training on them. On the other hand, more concrete measures can be taken at the national level by member States to prevent specific breaches of the Convention or to provide remedies already at the national level if such breaches have occurred. In addition, the Council of Europe can play an important role in assisting and encouraging member States in this task.

I. Raising awareness of, and providing training for national authorities and other actors in the Convention system on the Convention standards

1. The accessibility of the Convention standards

31. National authorities and other actors in the Convention system will be better aware of the Convention standards if the latter are more easily accessible to them. This is particularly true where information is available in these actors' own national language. Consequently, the **translation of significant judgments and decisions of the Court or their summaries into national languages** has been encouraged on multiple occasions during the reform process as an important means to support a better implementation of the Convention at the national level.[14]

32. Most member States translate systematically the Court's judgments, or summaries thereof, in their national languages.[15] They often disseminate these translations, as well as information on the Convention, the Court and its case-law via national databases.[16] Furthermore, the Court developed a case-law translation programme, financed by the Human Rights Trust Fund and by some member States. Under that programme, 3,500 translations were commissioned with project funds and another 14,000 translations were provided by partners such as Governments, Bar associations, judicial training centres, and civil society organisations in over thirty languages other than English and French.[17] The Court's HUDOC database now contains not only the Court's case-law in the official languages English and/or French, but

[14] See the Brussels Declaration of 27 March 2015 of the High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility", part 2. f) and g) and also part B.1.a); the Brighton Declaration, § 9 d) i) and ii) and § 9 h); the Izmir Declaration of 26/27 April 2011 of the High Level Conference on the Future of the European Court of Human Rights, part B.1.d); and the Copenhagen Declaration of 12/13 April 2018 of the High-Level Conference on "Continued Reform of the European Court of Human Rights Convention System – Better balance, improved Protection", § 16 d); and also the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, §§ 43, 45 and 72 ii) b. See previously already the Committee of Ministers' Recommendation Rec(2002)13 on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights of 18 December 2002.

[15] Following discussions within the CDDH, the use of automatic translations of the Court's case-law was not encouraged at this stage, see document DH-SYSC-III(2019)02 (including the member States' comments regarding Appendix I, § 8) and document CDDH(2019)R91Addendum1, Appendix I, § 8 / document CM/Rec(2019)5, adopted by the Committee of Ministers at the 1357th meeting of the Ministers' Deputies.

[16] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, §§ 17-22 and 75-76.

[17] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, § 84; The Interlaken process and the Court, 2016 Report of 1 September 2016, §§ 32-35; and the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, § 43.

equally provides the said non-official translations thereof.[18] The creation of freely accessible national data-bases, the publication and free dissemination of summaries of the Court's case-law and the translation also of judgments and decisions concerning other member States into national languages, as well as the provision of links to the Court's HUDOC database on official national websites are good practices to be encouraged and followed.[19]

33. The Court has further issued a series of some 80 **thematic factsheets** giving an overview over the relevant case-law concerning various topics. A number of these factsheets have been translated into non-official languages with the support of the respective national Governments; they are all available on the Court's website.[20] The Court has further published a number of case-law Guides on different Articles of the Convention in a number of languages[21] as well as several information documents concerning the criteria for the admissibility of an application[22].

34. During the reform process, repeated calls have been made to increase **cooperation with National Human Rights Institutions and other relevant bodies** with a view to better national implementation of the Convention.[23] In some member States, **National Human Rights Institutions** have an important role in providing information on the Convention which is published essentially through their websites.[24]

2. Training on the Convention standards

35. The key role of the **training of legal professionals and law-enforcement officials** in the implementation of the Convention has been continuously underlined in the reform process. States Parties have notably stressed that efforts should be increased at national level to raise awareness among members of parliament and improve the training of judges, prosecutors, lawyers and national officials on the Convention and its implementation, including as regards the execution of judgments, by ensuring that it constitutes an integral part of their vocational and in-service training, where relevant, including by having recourse to the Human Rights Education for Legal Professionals (HELP) programme of the Council of Europe, as well as to the training programmes of the Court and to its publications.[25]

36. In line with this call, and having regard to the important developments in university education and professional training in human rights in the 47 member States of the Council of Europe, the CDDH was charged with updating an important Recommendation in that field, Recommendation Rec(2004)4 of the Committee of Ministers to member States on the European

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[18] See: https://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC&c=.

[19] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, § 83.

[20] See https://www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c= . See also "The Interlaken process and the Court, 2014 Report", document DD(2015)74, point 6.

[21] See the Court's website for links to the different case-law Guides.

[22] See also chapter B.I.2.(a) below.

[23] See the Interlaken Declaration, cited above, part B.4.a); the Brighton Declaration, cited above, § 4; the Brussels Declaration, cited above, preamble, point 7, and part B.2.a), f) and j); and the Copenhagen Declaration, cited above, § 14.

[24] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, §§ 14 and 18.

[25] See the Brussels Declaration, cited above, part B.1.b) – c); See also the Brighton Declaration, cited above, § 9.v) – vi); the Izmir Declaration, cited above, part B.1.c); and the Copenhagen Declaration, cited above, § 16 c). The Court has also expressed its agreement with this idea, see the Comment from the Court on the report of the CDDH on the longer-term future of the Convention system of February 2016.

Convention on Human Rights in university education and professional training[26]. In June 2019 it adopted a new draft Recommendation on the topic for transmission to the Committee of Ministers, accompanied by a selection of good national practices.[27] On 16 October 2019 the Committee of Ministers adopted Recommendation CM/Rec(2019)5 of the Committee of Ministers to member States on the system of the European Convention on Human Rights in university education and professional training.[28]

37. Furthermore, the Council of Europe's HELP Programme notably provides an increasing number of online training courses on the Convention over its E-learning platform which aim at providing up-to-date and tailor-made training on Convention issues in the legal professionals' respective fields. The HELP network of national training institutions for judges, prosecutors and lawyers in the 47 Council of Europe member States further promotes training of legal professionals on Convention issues and shares best practices in this respect.[29] HELP's activities are closely **coordinated with other** existing training-related **activities of the Council of Europe**,[30] *inter alia*, with the CDDH's above-mentioned work on the update of Recommendation Rec(2004)4 or with the establishment of an interactive online platform on business and human rights in cooperation with the CDDH which had drafted a Recommendation on that topic.[31]

38. The Court provides regular training sessions and study visits for judges and lawyers.[32] Moreover, **secondments** of national judges, prosecutors and other highly qualified legal experts **to the Court's Registry** provide a good opportunity for these legal professionals to acquire the knowledge and skills to work on Convention-related cases. Successive high-level conferences have called upon the States Parties to continue promoting such temporary secondments,[33] which started in early 2009 and are highly appreciated by the Court[34]. In the past years, some 30 persons were seconded each year to the Court's Registry, in addition to around ten national judges in training which were sent to the Court via the European Judicial Training Network.[35]

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[26] See document CM(2017)131-addfinal; see also the Committee of Ministers' Reply to Recommendation 2039 (2014) on "the European Convention on Human Rights: the need to reinforce the training of legal professionals", adopted at the 1204th meeting of the Ministers' Deputies, 2-3 July 2014, § 3.

[27] See the Draft CM/Rec(2019)… of the Committee of Ministers to member States on the system of the European Convention on Human Rights in university education and professional training, CDDH(2019R91 Addendum 1; and document CDDH(2019)R91, §§ 17-18.

[28] See document CM/Rec(2019)5, adopted by the Committee of Ministers at the 1357th meeting of the Ministers' Deputies.

[29] See the website of the HELP Programme, available at: https://www.coe.int/en/web/help/about-help. See for calls for a more targeted professional training already the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 44 and 197 ii); and the CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document CM(2012)167 (= CDDH(2012)R76 Addendum I), §§ 38 and 41.

[30] See for a call for improving the coordination of other existing mechanisms, activities and programmes of the Council of Europe the Interlaken Declaration, cited above, part B.5.

[31] See the Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business, adopted on 2 March 2016. The interactive online platform on Business and Human Rights is available at: http://help.elearning.ext.coe.int/course/index.php?categoryid=228.

[32] See for further details, for instance, "The Interlaken process and the Court, 2014 Report", document DD(2015)74, point 8.

[33] See the Brighton Declaration, cited above, § 20 b); the Brussels Declaration, cited above, Action Plan, B.1.f); and the Copenhagen Declaration, cited above, § 53.

[34] See, for instance, the Opening address of the former President of the Court, Guido Raimondi, in: Dialogue between judges 2016, p. 37.

[35] See for more details on the secondment scheme, *inter alia*, The Interlaken process and the Court, 2016 Report, cited above, § 30; "The Interlaken process and the Court, 2015 Report", document DD(2015)1045E, point 5; and "The Interlaken process and the Court, 2014 Report", document DD(2015)74, point 3.

These legal professionals also contribute to diminishing the Court's backlog.[36] Because of the nature of the work at the Court, it appears preferable that such secondments last at least two years.[37]

39. In the member States, a number of professional training measures on the Convention standards for legal professionals are organised, for instance, by the Government Agents' Office, the Ministry of Justice and highest courts, but also national judicial institutions and bar associations as well as in cooperation with National Human Rights Institutions.[38]

II. Concrete measures to prevent and remedy breaches of the Convention at the national level

1. Measures taken at the legislative, executive or judicial level

(a) Creation of effective domestic remedies

40. The subsidiary character of the Convention system is articulated in Article 13 of the Convention. State Parties must provide an effective domestic remedy before a national authority to deal with the substance of an arguable complaint under the Convention; that remedy must be exhausted by the applicant before lodging his application with the Court (Article 35 § 1 of the Convention).[39] Successive high-level Conferences have stressed the particular importance of creating or further improving existing domestic remedies for alleged Convention violations, especially in situations of serious systemic or structural problems.[40]

41. As will be further set out below, an effective domestic remedy has a substantial impact on the number of applications pending before the Court as it prevents large numbers of further similar (repetitive) applications being lodged with the Court.[41] For the same reason, particular importance is attached during the process of the execution of judgments disclosing systemic or structural problems to the establishment of effective domestic remedies, as equally set out below.[42]

42. In the course of the Interlaken process, States have introduced numerous domestic remedies addressing different alleged breaches of the Convention, notably compensatory remedies for excessive length of judicial proceedings or of pre-trial detention, for inappropriate conditions of detention or for the non-enforcement of domestic court decisions, and have also interpreted existing domestic remedies so as to prevent a breach of the Convention.[43]

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[36] See chapter B.I.5. below.

[37] See also for the relevant experiences in the Department for the Execution of Judgments chapter C.II.2.(g) below.

[38] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, §§ 22-32.

[39] See *Kudła v. Poland* [GC], no. 30210/96, § 152, 26 October 2000; and *Sürmeli v. Germany* [GC], no. 75529/01, § 98, 8 June 2006 with further references.

[40] See the Interlaken Declaration, cited above, Action Plan, point B.4.d) and Point F.11.; the Izmir Declaration, cited above, part B.1.a.; the Brighton Declaration, cited above, § 4; the Brussels Declaration, cited above, point B.1. e); and the Copenhagen Declaration, cited above, §§ 13 and 16 a).

[41] See chapter B.I.5.(c) below.

[42] See chapter C.II.3. below.

[43] See for numerous examples in this respect the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, §§ 44-48 and 59-60; the Draft additional elements resulting from the Copenhagen Declaration that should be reflected in CDDH's future Interlaken follow-up report, document CDDH-BU(2019)R101 Addendum of 12 June 2019, §§ 18-21, provisionally adopted by the CDDH at its 91st meeting (18-21 June 2019), see CDDH(2019)R91, §§ 25-28.; and for further concrete examples chapter C.I.2. below.

43. Nevertheless, it has repeatedly been found that there is still a need to further improve domestic remedies.[44] The issue of effective remedies should therefore stay at the heart of any activity supporting the national implementation of the Convention and in the thematic work of the relevant committees of the Council of Europe, especially those involving representatives of domestic justice systems.[45]

(b) Compatibility of (draft) legislation with the Convention

44. Breaches of the Convention can further be effectively prevented by a verification of the compatibility of draft and existing laws with the Convention, the importance of which has been highlighted in the reform process.[46]

45. An important non-binding instrument of the Committee of Ministers in this field is Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights.[47]

46. The States' reports on the measures they have taken in this respect during the reform process showed that the practice of verifying the compatibility of draft laws with the Convention is well-established in many States. The compatibility of draft legislation with the Convention and the Court's case-law is often subject to multi-layered national verification mechanisms.[48] Systematic supervision of draft laws is generally carried out at the executive and then at the parliamentary level and even with the involvement of the Constitutional Court. National human rights structures are also consulted, including, where appropriate, National Human Rights Institutions. In some States, National Human Rights Institutions have a mandate to advise on the compatibility of draft legislation with the Convention.[49] In a number of States, "Compatibility

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[44] See already the CDDH Final Report on measures requiring amendment of the European Convention on Human Rights, 15 February 2012, CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), in particular § 8; the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 48-51 and 72; and also the Court, see the Comment from the Court on the report of the CDDH on the longer-term future of the Convention system of February 2016, § 3.

[45] See already the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 72.

[46] See the Interlaken Declaration, cited above, part B.4; the Brighton Declaration, cited above, 9.c).ii); the Brussels Declaration, cited above, B.1.d); and the Copenhagen Declaration, cited above, § 16.b). See for detailed proposals in this regard equally the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 197; and also the Comment from the Court on the report of the CDDH on the longer-term future of the Convention system of February 2016, § 3.

[47] Some other recommendations on various measures to improve the national implementation of the Convention, prepared by the CDDH and adopted by the CM are: Recommendation No. R(2000)2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights; Recommendation Rec(2002)13 of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights; Recommendation Rec(2004)4 of the Committee of Ministers to member states on the European Convention on Human Rights in university education and professional training; Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies; Recommendation CM/Rec(2008)2 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights; Recommendation CM/Rec(2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings. The CDDH and DH-GDR have also prepared a Guide to good practice in respect of domestic remedies, which was adopted by the Committee of Ministers on 18 September 2013, available at: https://rm.coe.int/guide-to-good-practice-in-respect-of-domestic-remedies/1680695a9f.

[48] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, § 38; see also the Overview of the exchange of views held by the DH-SYSC at its 1st meeting (25-27 April 2016) on the verification of the compatibility of legislation with the Convention (arrangements, advantages, obstacles), document DH-SYSC(2016)013Rev, §§ 8-9.

[49] Overview of the exchange of views held by the DH-SYSC at its 1st meeting (25-27 April 2016) on the verification of the compatibility of legislation with the Convention (arrangements, advantages, obstacles), document DH-

Guidelines" intended for government officials within national ministries and members of Parliament (notably, Parliamentary Committees) have been introduced. These Guidelines may be used for assessing the compatibility with the Convention during the process of drafting or amending of a law or when assessing the compatibility of administrative practices.[50] To the extent that the Convention is, in one way or another, an integral part of the internal legal order in all of the States Parties to the Convention, ensuring compliance with the Convention is inherent in the legislative process.

47. The examination of the compatibility of existing laws and administrative practices with the Convention usually lies with the Supreme Courts and/or the Constitutional Courts, which are habilitated to declare them invalid for non-compliance with the Convention or, at least, provide Convention-based guidance with a view to changing them.[51]

48. In a majority of member States, no special mechanisms have been put in place for assessing the appropriateness and effectiveness of compatibility verification mechanisms. However, a kind of evaluation does take place in the framework of the execution process.[52]

49. The Parliamentary Assembly of the Council of Europe (PACE) has equally taken initiatives to strengthen the role of parliaments in the implementation of the Convention on national level.[53]

50. The CDDH has welcomed the well-established practice in member States of a verification of the compatibility of draft laws with the Convention. It has however pointed out that means for ensuring a better and earlier identification of existing laws and administrative practices which are in breach of the Convention should be developed.[54]

SYSC(2016)013Rev, §§ 8-9; see also the Compilation of written contributions concerning mechanisms for ensuring the compatibility of laws with the Convention (arrangements, advantages, obstacles), document DH-SYSC(2016)006REV; and the Information on Recommendation Rec(2004)5 of the Committee of Ministers on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights extracted from the national reports on the implementation of the Brighton Declaration, document DH-SYSC(2016)002REV. See also the Paris Principles 3 (b): A national institution shall, inter alia, have the following responsibilities: … [t]o promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation.

[50] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, § 42.

[51] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, §§ 43-48 and 98-101; See also the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 42; and the Overview of the exchange of views held by the DH-SYSC at its 1st meeting (25-27 April 2016) on the verification of the compatibility of legislation with the Convention (arrangements, advantages, obstacles), document DH-SYSC(2016)013Rev, § 30.

[52] See the Overview of the exchange of views held by the DH-SYSC at its 1st meeting (25-27 April 2016) on the verification of the compatibility of legislation with the Convention (arrangements, advantages, obstacles), document DH-SYSC(2016)013Rev, § 59. The question of compatibility of legislation with the Convention is also related to the measures taken by member States to enhance the domestic capacity for the execution of the Court's judgments in the light of Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, see Guide to good practice on the implementation of that Recommendation, document CM(2017)92-add3final (= CDDH(2017)R87 Addendum I).

[53] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, footnote 67. For a summary of the activities organised, see "The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond", doc. 13719, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Yves Pozzo di Borgo (France, EPP/CD), § 41. The first regional seminar on the role of national parliaments in implementing the standards of the European Convention on Human Rights took place in Tbilisi (Georgia) on 21-22 September 2015.

[54] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, § 92.

51. The CDDH has further considered that States should also give consideration to the general principles which are developed in the case-law as a whole, including, where appropriate, judgments against other States, in order to implement fully and effectively the Convention at national level.[55] In many States, judgments and decisions regarding other States are increasingly taken into account, and in some States, the obligation to take into account the Court's developing case-law and draw conclusions from judgments and decisions regarding other States is even enshrined in law.[56]

(c) Domestic courts' direct application of the Convention

52. The domestic courts' direct application of the Convention or direct reference made to the Court's case-law is one of the States' effective means to implement and prevent breaches of the Convention which has been repeatedly referred to in the reform process.[57]

53. States have reported that the Convention has been incorporated into their domestic law and consequently can be directly relied on by the litigants and applied by the national courts.[58] Where appropriate, national courts may take account of the Court's developing case-law and draw conclusions also from judgments against other States.[59] Through direct references in judgments, in some States, the higher courts are raising awareness of the lower domestic courts and promote the harmonisation of national judicial practices with the Court's case-law and the Convention's requirements, which helps to prevent similar violations.[60] Such references have been facilitated by the translation and dissemination of the relevant judgments of the Court and relevant publications described above.[61] Translation and dissemination are very often implemented at the initiative of the Government Agent.[62]

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[55] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, §§ 24, 71 i); See also the CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document CM(2012)167 (= CDDH(2012)R76 Addendum I); the Contribution of the Court to the Brussels High-Level Conference, 26 January 2015, § 5; the Preliminary opinion of the Court, in preparation for the Brighton Conference, adopted by the Plenary Court on 20 February 2012, document DD(2012)205E, § 26; and the CDDH Final Report on measures that result from the Interlaken Declaration that do not require amendment of the Convention, document CDDH(2012)R74 Addendum II, § 8v, 4th point.

[56] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 38; See also, the CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document CM(2012)167 (= CDDH(2012)R76 Addendum I), §§ 71-84 and 91.

[57] See the Interlaken Declaration, cited above, Action Plan, part B.4.c); the Brussels Declaration, cited above, preamble, point 10 and part B.; and the Brighton Declaration, cited above, part A.7 and 9.c.iv); and also the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, § 93.

[58] See the CDDH Report on measures taken by the member States to implement relevant parts of the Brighton Declaration, document CM(2016)104-add1 (= CDDH(2016)R85 Addendum I), § 22.

[59] See the CDDH Report on the measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document CM(2012)167 (= CDDH(2012)R76 Addendum I), §§ 72, 75. For the importance of this element to prevent repetitive applications see also chapter C.I.1. below.

[60] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, §§ 43-46. See for a proposal that superior national courts shall adopt a practice of summarising in one part of their judgment the human rights arguments made before them and the reasons for their rejection, which could then be more easily be endorsed by the Court the CCBE Proposals for reform of the ECHR machinery of 28 June 2019 submitted to the CDDH, Recommendation A.1.

[61] See chapter A.I.1. above.

[62] See the CDDH Report on measures taken by the member States to implement relevant parts of the Brighton Declaration, document CM(2016)104-add1 (= CDDH(2016)R85 Addendum I), § 23.

(d) Requests for an advisory opinion by the Court

54. Receiving an advisory opinion from the Court on a Convention-related issue raised in a case before the national courts can equally serve to prevent breaches of the Convention already at the national level.

55. The question of extending the jurisdiction of the Court to give advisory opinions to national courts has been discussed since 2005. Following the elaboration, by the CDDH, of specific proposals in this regard after the Izmir Conference,[63] the latter was instructed after the Brighton Conference to draft an optional protocol to the Convention to this end.[64] Protocol No. 16 to the Convention and its Explanatory Report were finally adopted by the Ministers' Deputies in July 2013.[65]

56. On 1 August 2018 Protocol No. 16 to the Convention entered into force in the ten member States which signed and ratified it until then.[66] According to its Article 1, this Protocol allows the highest courts and tribunals of member States, as specified by the latter, to request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto. So far, the Court has given one such advisory opinion[67] and a second request for an advisory opinion has been accepted by the Court.

57. It is possible that the entry into force of Protocol No. 16 may increase the Court's workload in the short term, even though the Court may, if necessary, refuse requests for advisory opinions (see Article 2 of Protocol No. 16). The aim of the Protocol in the longer term is that the Protocol will lead to more cases being dealt with rapidly at national level without the need to engage the Convention mechanism.[68]

(e) Exchange of information and experiences on the Convention's implementation

58. Finally, fostering the exchange of information and best practices concerning the implementation of the Convention at the national level can improve the implementation of the Convention. In this context, national "contact points" for human rights matters within the relevant executive, judicial and legislative authorities, as suggested at the Brussels Conference, are of relevance. The States had also called for networks to be created between such "contact points" through meetings, information exchanges, hearings and the transmission of annual or thematic reports or newsletters.[69] Since then, networks of contact persons or inter-ministerial committees

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[63] See the Izmir Declaration, cited above, Follow-up plan, point D.1. and 2; and the CDDH's proposals in its Final Report on measures requiring amendment of the European Convention on Human Rights, 15 February 2012, document CM(2012)39-add1 (= CDDH(2012)R74 Addendum I).

[64] See the Brighton Declaration, cited above, § 12.d); and document CDDH(2012)R77 Addendum I and Addendum II. The Court was invited to give its Opinion on Draft Protocol No. 16, adopted on 6 May 2013.

[65] 1176th meeting of the Ministers' Deputies, 10 July 2013.

[66] See the website of the Council of Europe Treaty Office for the text of, and further information on Protocol No. 16 to the Convention, CETS No. 214. On 15 September 2019, 13 member States had ratified that Protocol (Albania, Andorra, Armenia, Estonia, Finland, France, Georgia, Greece, Lithuania, Netherlands, San Marino, Slovenia and Ukraine).

[67] Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother [GC], requested by the French Court of Cassation (Request no. P16-2018-001), 10 April 2019.

[68] See document CDDH(2019)25, § 15.

[69] See the Brussels Declaration, cited above, part B.2.i).

and/or working groups have been established in several States. The Government Agent often plays an important role within those networks.[70]

59. On an intergovernmental level, the Brussels Conference called upon States Parties to foster the exchange of information and best practices with other States, particularly for the implementation of general measures.[71] The CDDH, as well as the Government Agents' network, exchange information concerning the implementation of the Convention and execution of the Court's judgments on a regular basis. This assists member States in developing their domestic capacities and facilitates their access to relevant information.[72] As shown below, exchanges of information between domestic supreme courts further take place within the Superior Courts Network.[73] As equally set out below, information is also exchanged between member States in the course of thematic debates in the Committee of Ministers.[74]

2. Measures taken to strengthen the role of civil society and National Human Rights Institutions

60. The importance of the participation of National Human Rights Institutions (NHRI) and civil society in effective national implementation of the Convention has been continuously highlighted by various actors in the reform process.[75]

61. States have been called upon, in particular, to consider the establishment of an **independent National Human Rights Institution** in accordance with the Paris Principles of the United Nations where there is no such institution.[76] It appears from the evaluation of the measures taken by the member States to implement relevant parts of the Brussels Declaration that independent National Human Rights Institutions have now been established in the majority of the States. These National Human Rights Institutions are fully or partially complying with the Paris Principles.[77]

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[70] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, § 78.
[71] See the Brussels Declaration, cited above, part B.2.e).
[72] See for example the latest terms of reference of the DH-SYSC for the 2018-2019 biennium, as adopted by the Committee of Ministers at its 1300th meeting, 21-23 November 2017, document CM(2017)131-addfinal and document DH-SYSC(2018)01; See also the Overview of the exchange of views held by the DH-SYSC at its 1st meeting (25-27 April 2016) on the verification of the compatibility of legislation with the Convention (arrangements, advantages, obstacles), document DH-SYSC(2016)013Rev. For more information on these exchanges of views held by the DG-GDR and the DH-SYSC, see the specific web page, available at: https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/echr-system/implementation-and-execution-judgments.
[73] See chapter B.III.1. below.
[74] See chapter C.II.2.(h) below.
[75] See the Interlaken Declaration, part B.4.a); the Brighton Declaration, cited above, § 4; the Brussels Declaration, cited above, preamble, point 7, and part B.2.a), f) and j); and the Copenhagen Declaration, cited above, §§ 14, 18. See also the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, §§ 58 and 195 i); and the CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document CM(2012)167 (= CDDH(2012)R76 Addendum I), § 153; The contribution of national human rights structures to the implementation of the Convention was already highlighted in the Report of the Group of Wise Persons to the Committee of Ministers in 2006, see document CM(2006)203.
[76] See the Brighton Declaration, cited above, part 9.c).i); the Brussels Declaration, cited above, part B.1.g); and the Copenhagen Declaration, cited above, § 18; and also the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 197 ix). The United Nations Paris Principles are available at: https://www.un.org/ruleoflaw/files/PRINCI~5.PDF.
[77] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, §§ 52-53, 99; See also, the CDDH report on measures taken by the member States to implement relevant parts of the Brighton Declaration, document CM(2016)104-add1 (= CDDH(2016)R85 Addendum I), §§ 14-17.

62. The CDDH concluded that the States should strive to ensure appropriate conditions for NHRIs to carry out their activities and play their role independently and without undue obstacles. Furthermore, States which have indicated that given the size of the country or given the limited number of violations of the Convention, it did not seem indispensable to establish such an institution, could envisage reconsidering their approach to the issue and possibly identify such an institution among the already existing bodies.[78] The CDDH is currently preparing a revision of Recommendation No. R(97)14 of the Committee of Ministers to member States on the establishment of independent national institutions for promotion and protection of human rights.[79]

63. Effective national implementation requires the engagement of and interaction between a wide range of actors to ensure that legislation, and other measures and their application in practice comply fully with the Convention. These include, in particular, members of government, public officials, parliamentarians, judges and prosecutors, as well as national human rights institutions, civil society, universities, training institutions and representatives of legal professions.[80]

3. Measures taken by the Council of Europe

64. The Council of Europe can play an important role in assisting and encouraging national implementation of the Convention by providing technical assistance upon request to States Parties. It has been highlighted in the reform process that such technical assistance disseminates good practice and raises the standards of human rights observance in Europe.[81]

65. The Committee of Ministers has adopted and launched online in May 2014 a Toolkit to inform public officials about the State's obligations under the European Convention on Human Rights, prepared by the CDDH.[82] This Toolkit provides practical information intended to guide public officials in various everyday situations with which they may be confronted. Specifically, its target group is public officials working in the judicial system and those responsible for maintaining public order and administration of deprivation of liberty, but also any official in contact with the public whose actions may raise issues relating to the rights guaranteed by the Convention.

66. Co-operation activities through country-specific and/or thematic action plans have been implemented in a number of member States.[83] Regarding the resources available to the technical assistance programmes, the CDDH has concluded that support has been expressed for activities facilitating the implementation of the Convention in all member States through technical assistance activities strategically targeted to the execution of Court judgments, the HELP programme and the educational activities of the Court.[84]

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[78] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, § 99.
[79] See document CDDH(2019)R91, § 38.
[80] See also the Copenhagen Declaration, cited above, § 14; and Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe, adopted by the Committee of Ministers on 28 November 2018 at the 1330th meeting of the Ministers' Deputies.
[81] See the Brighton Declaration, cited above, part A.8, 9.e) and 9.f), g) and i).
[82] Available at: https://www.coe.int/en/web/echr-toolkit.
[83] See the website of the Office of the Directorate General of Programmes of the Council of Europe, available at: https://www.coe.int/en/web/programmes/action-plans1.
[84] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 63.

67. The CDDH further found that in order to maximise impact and avoid duplication, better orientation and co-ordination of various Council of Europe assistance activities promoting implementation of the Convention to be needed.[85]

68. The importance of co-operation between the Council of Europe and the European Union has also been highlighted in the reform process, in particular to ensure the effective implementation of joint programmes and coherence between their respective priorities.[86] In this context, the HELP Programme has a joint programme called “HELP in the EU”, funded by both the EU and the Council of Europe, which aims to contribute to an increased protection of fundamental rights in the EU member States in a variety of specific areas through activities as well as training and training-of-trainers.[87] The handbooks published jointly by the Court and the European Union Agency for Fundamental Rights (FRA) on European human rights law-related topics are a further example of a fruitful cooperation in this respect.[88]

[85] See the CDDH Report on “The longer-term future of the system of the European Convention on Human Rights”, cited above, §§ 60, 74; see also the Contribution of the Court to the Brussels High-Level Conference, 26 January 2015, § 3.

[86] See the Brighton Declaration, cited above, part A.9.i). For more information, see also the website of the Office of the Directorate General of Programmes of the Council of Europe for EU co-operation, available at: https://www.coe.int/en/web/programmes/eu-cooperation; and the online portal for the Council of Europe and EU joint programmes, available at: https://pjp-eu.coe.int/en/web/portal/home.

[87] See more information and a project summary on the webpage of the “HELP in the EU” joint programme, available at: www.coe.int/en/web/help/help-in-the-eu.

[88] Handbooks have been published on European non-discrimination law, on European law relating to asylum, borders and immigration, on European data protection law, on European law relating to the rights of the child and on European law relating to access to justice, see the Court’s website for links to these Handbooks.

B. APPLICATIONS BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

I. Measures for dealing with the high case-load

1. Background

69. The concern about the high number of applications brought before the Court and the growing deficit between applications introduced and applications disposed of has been the central focus of the process of the reform of the Convention system from the outset. That situation was considered to cause damage to the effectiveness and credibility of the Convention and its supervisory mechanism. According to the Interlaken Declaration, additional measures were indispensable and urgently required in order to enable the Court to reduce the backlog of cases and to adjudicate new cases within a reasonable time.[89]

70. Prior to the start of the Interlaken process in 2010, on 31 December 2009 119,300 **applications** were **pending** before the Court. The number of pending cases had reached 151,600 on 31 December 2011 before decreasing significantly to 59,700 on 30 September 2019.[90] As for the judicial formations before which applications were pending, while on 31 December 2009 44,400 applications were pending before a Chamber and 74,900 before a Committee or Single Judge as likely to be declared inadmissible,[91] on 30 September 2019 19,600 applications were pending before a Chamber (or Grand Chamber), 34,700 before a Committee and 5,400 before a Single Judge.[92]

71. Between end of 2009 and end of 2018, the number of **incoming applications** which have been allocated to a judicial formation every year has ranged from 40,500 (in 2015) to 65,800 (in 2013.)[93] While there is no clear trend, the number of applications allocated to a judicial formation has, as a general rule, decreased since 2014 compared to the previous years.[94] A significant number of the applications allocated to a judicial formation each year is identified as clearly inadmissible (between 51% in 2016 and 78 % in 2017).[95]

2. Access to the Court and a sound administration of justice

72. It was repeatedly stressed by the States Parties in the course of the Interlaken process that it is necessary to examine the conditions of the applicants' access to the Court and ensure a sound administration of justice in order to tackle the Court's high case-load.[96]

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[89] See the Interlaken Declaration adopted at the High Level Conference on the Future of the European Court of Human Rights on 19 February 2010, points PP 7-9.

[90] See the Court Registry's document on "*The development of the Court's case-load over ten years – Statistical data for the CDDH*" of 27 February 2019, document CDDH(2019)08, point II.

[91] See the European Court of Human Rights' Analysis of Statistics 2009, p. 6.

[92] See the European Court of Human Rights' Analysis of Statistics 2018, p. 6; and for a more detailed analysis of the Court's backlog chapter B.I.5.(a) below.

[93] See document CDDH(2019)08, p. 4.

[94] It has to be borne in mind, however, that the lower number of incoming cases allocated to a judicial formation is partly the result of a new approach to Rule 47 of the Rules of Court, which determines what applicants are required to do for their application to be allocated for judicial decision (see ECHR Analysis of Statistics 2014, p. 4).

[95] See document CDDH(2019)08, point I.

[96] See, *inter alia*, the Brussels Declaration, part B.1.a).

(a) Information on the scope of the Convention's protection and the application procedure

73. It is not only in the Court's, but also in potential applicants' interest that the latter do not bring applications before the Court which do not have any prospects of success. The States Parties therefore stressed in the reform process that potential applicants should "have access to information on the Convention and the Court, particularly about the scope and limits of the Convention's protection, the jurisdiction of the Court and the admissibility criteria".[97]

74. In the course of the reform process, the Court updated and considerably expanded the information addressed notably to applicants and their representatives in these respects. On the web pages dedicated to "Applicants" on its website,[98] it provides information on lodging an application, on how to make a valid application to the Court, including the formal requirements relating to the application form and the revised Rule 47 of the Rules of Court. It further provides basic information on the scope and limits of the protection the Court can provide, including questions of just satisfaction. As regards the admissibility criteria, the web pages provide an interactive "admissibility checklist" designed to allow potential applicants to check whether they satisfy the main admissibility criteria for lodging an application with the Court. Shortly after the Interlaken Conference, the Court further prepared, and subsequently updated, a "Practical Guide on Admissibility Criteria" intended mainly for lawyers who wish to bring a case before the Court[99] and whose responsibility for providing the applicants with adequate information on the prospects of success of their applications has already been stressed by the CDDH.[100] Furthermore, two videos on the admissibility conditions have been made available. This information is complemented by information on the procedure by which the Court examines an application, including a new State of Proceedings (SOP) search engine allowing anyone to find out what stage has been reached in the proceedings concerning an application.[101]

75. It is noteworthy that the applicants' pages on the Court's website containing all the information necessary to submit a valid application are available in at least one official language of each member State since 2014.[102] In particular, key documents, such as the "Practical Guide on Admissibility Criteria" could be translated into other languages with the assistance of Governments and various other partners.[103]

76. Likewise, the member States made considerable efforts over the last decade in order to ensure that information on the scope of the Convention's protection and the application procedure is accessible to potential applicants. Most States Parties provide for information in the national languages and for links to the relevant pages on the Court's and also the Council of Europe's[104] general websites on the websites of their Ministries of Justice or of Foreign Affairs. In a number of States, information on the Convention and the Court is presented in the national

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97 See for this summary the Brussels Declaration, part B.1.a).

98 See https://www.echr.coe.int/Pages/home.aspx?p=applicants&c=.

99 See The Interlaken process and the Court, 2012 Report, document DD(2012)959E, point 6. See for a Guide entitled "European Court of Human Rights – Questions and answers for lawyers" prepared by the Council of Bars and Law Societies of Europe (CCBE) in cooperation with the Court also chapter B.III.3. below.

100 See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, § 83.

101 See on this search engine also "The Interlaken process and the Court, 2016 Report of 1 September 2016, § 22.

102 See "The Interlaken process and the Court, 2014 Report", document DD(2015)74, points 5 and 6.

103 See "The Interlaken process and the Court, 2014 Report", document DD(2015)74, point 6.

104 See https://www.coe.int/en/web/human-rights-convention/ .

languages on several further national websites, including that of the Government Agent's Office, national Bar Associations and/or National Human Rights Institutions.[105]

(b) Change of procedural rules and practices

77. At the very outset of the reform process, the Interlaken Conference called upon the Committee of Ministers "to consider any additional measure which might contribute to a sound administration of justice and to examine in particular under what conditions new procedural rules or practices could be envisaged, without deterring well-founded applications".[106] In the course of the reform process, the Committee of Ministers, with the help of the CDDH, examined in detail a large number of measures to that effect; proposals accepted resulted, in particular, in the elaboration of Protocol No. 15 to the Convention. The Court, for its part, equally examined and adopted measures allowing it to better handle the incoming applications.

(i) The contents of an individual application (revised Rule 47 of the Rules of Court)

78. In order to better manage the influx of incoming applications, the Plenary Court amended the rules on the necessary contents of an individual application. The revised version of Rule 47 of the Rules of Court, which entered into force on 1 January 2014, was to facilitate the filtering and subsequent processing of applications by taking a stricter approach in interpreting what is a valid application. In brief, applicants have to fill in all fields of the Court's new application form and append all documents necessary for the examination of the application.[107] If an applicant fails to comply with Rule 47, the application will not be allocated to a Court formation for decision (save for limited exceptions, see Rule 47 § 5).[108] Furthermore, under the revised Rule 47 § 6, the six-month time-limit under Article 35 § 1 of the Convention for lodging an application following the final national decision is only the date of dispatch of the complete application satisfying the requirements of Rule 47 (previously, the dispatch of a letter setting out the substance of the application had been sufficient to comply with the six-month period).[109]

79. The review of the impact of the revised Rule 47 showed that the procedure lightened the Court's workload and facilitated the speedy processing of applications. Less of the incoming applications have been allocated to a judicial formation[110] and the better organised incoming applications on properly completed application forms, in which applicants have to present their

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[105] See in more detail the Report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, §§ 11-21 and 81-83, and for the Compilation of national reports on the implementation of the Brussels Declaration documents CDDH(2018)23 and CDDH(2019)21.

[106] See the Interlaken Declaration of 19 February 2010 of the High Level Conference on the Future of the European Court of Human Rights, Action Plan, A.3.

[107] See The Interlaken process and the Court, 2013 Report, document DD(2013)906E, point 14; The Interlaken process and the Court, 2014 Report, document DD(2015)74, point 12; and the Report on the implementation of the revised rule on the lodging of new applications (Report on Rule 47) drawn up by the Court's Registry (February 2015), part I.

[108] See on these exceptions in more detail the Report on the implementation of the revised rule on the lodging of new applications (Report on Rule 47) drawn up by the Court's Registry (February 2015), part II.B.

[109] See The Interlaken process and the Court, 2014 Report, document DD(2015)74, point 12; and the Report on the implementation of the revised rule on the lodging of new applications (Report on Rule 47) drawn up by the Court's Registry (February 2015), part II.C.

[110] See on this development in more detail the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, §§ 76 and 84. In 2014, some 23 % of the new incoming applications failed to comply with the revised Rule 47 (see The Interlaken process and the Court, 2014 Report, document DD(2015)74, point 12).

case in a succinct manner, are easier to analyse and process[111]. The reform ultimately enabled the Court to decide on communication of applications to respondent Governments without the need to prepare a full-fledged statement of facts.[112]

(ii) Procedural changes laid down in Protocol No. 15 to the Convention

80. In order to give effect to certain provisions of the Brighton Declaration[113] aimed at maintaining the effectiveness of the Convention system notably by changes in the procedure before the Court, the CDDH, on the instruction of the Committee of Ministers, elaborated a draft amending protocol to the Convention, future Protocol No. 15.[114]

81. That Protocol provides, in particular, for the following changes to the Convention regarding access to Court and a sound administration of justice: It shortens the time-limit under Article 35 § 1 of the Convention within which an application must be lodged with the Court after the final national decision. It further facilitates the rejection of an individual application as inadmissible where the applicant has not suffered a significant disadvantage (Article 35 § 3 (b) of the Convention) by removing the current second condition for such a rejection, namely that the case must have been duly considered by a domestic tribunal.[115] Moreover, Article 30 of the Convention is amended so as to remove the right of the parties to object to the relinquishment of a case by a Chamber in favour of the Grand Chamber. This aims at accelerating the proceedings before the Court in cases which raise a serious question affecting the interpretation of the Convention or a potential departure from existing case-law and therefore ultimately need to be decided by the Grand Chamber.[116]

82. The effects of this Protocol on the efficient functioning of the Convention system cannot be assessed yet as this Protocol, opened for signature on 24 June 2013, still has not yet entered into force.[117]

(iii) Further envisaged procedural changes which were not retained

83. The CDDH, on the request of the Committee of Ministers, examined a large number of further possible measures with the effect of regulating access to the Court and ensuring a sound administration of justice, in particular with the aim of addressing the problem of the very large

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[111] See the Report on the implementation of the revised rule on the lodging of new applications (Report on Rule 47) drawn up by the Court's Registry (February 2015), part II.D.

[112] See paragraph 115 below.

[113] See in particular paragraphs 15.a), 15.c) and 25.d) of the Brighton Declaration.

[114] See for the works of the CDDH, of its Committee of experts on the reform of the Court (DH-GDR) and its Drafting Group B (GT-GDR-B) on the future Protocol No. 15, *inter alia*, the Explanatory Report to Protocol No. 15, Introduction, §§ 1-4, and the report of the 76th CDDH meeting, document CDDH(2012)R76, §§ 3-6, 9 and 12 with further references, Addendum III and Addendum IV. See for the expected effects of Protocol No. 15, *inter alia*, the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, § 85.

[115] See for this proposal the CDDH Final Report on measures requiring amendment of the European Convention on Human Rights, 15 February 2012, CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), §§ 24-27 and Appendix III, Section 4; and for further proposals regarding the application of the *de minimis non curat praetor* ("the court is not concerned with trivial matters") rule also CDDH(2012)R74 Addendum II, § 8 iv.

[116] See the website of the Council of Europe Treaty Office for the text of Protocol No. 15 and the Explanatory Report to Protocol No. 15.

[117] See the website of the Council of Europe Treaty Office for the chart of signatures and ratifications of Treaty 213. On 30 August 2019, two of the forty-seven Contracting Parties to the Convention (Bosnia and Herzegovina and Italy) had not yet ratified Protocol No. 15.

number of clearly inadmissible applications lodged with the Court.[118] Following a thorough examination of these measures, they were finally not retained.

84. The Izmir Declaration had invited the Committee of Ministers, in particular, to continue to examine the issue of charging **fees** to applicants for lodging an application with the Court.[119] The CDDH elaborated a report examining the practicality and utility of different models of a system of fees. While noting that fees could discourage applicants from lodging clearly inadmissible applications, the analysis disclosed administrative and budgetary consequences of such a system as well as a risk of inequity between applicants and of a discriminatory deterrence of well-founded applications.[120] The Court itself had declared its opposition to fees on both principled and practical grounds.[121]

85. The CDDH further examined whether **making representation by a lawyer compulsory** from the outset of the proceedings before the Court could dissuade clearly inadmissible applications and increase their quality. The CDDH concluded, however, that it was not proved that such measure would produce the desired effect, and found that without provision of legal aid for persons of insufficient means, it would impact the right of individual application. There would also be substantial budgetary implications for the member States which do not currently provide legal aid to applicants for lodging an application with the Court.[122] The Court had equally explained being opposed to introducing compulsory legal representation on principled and practical grounds.[123]

86. Moreover, the CDDH examined the proposal to impose a **pecuniary sanction in "futile" cases** where an applicant repeatedly submitted applications which are clearly inadmissible. However, the CDDH noted that such a sanction would cause additional work to the Court and its payment could not be directly enforced by it. Moreover, it was not established that such applications, which were dealt with quickly, were very numerous.[124]

87. As for the proposal to confer on the **Court** a **discretion to decide which cases to consider** in order to make its workload more manageable and to allow it to focus on highest priority cases, the CDDH noted that this would significantly restrict the right of individual application and presupposed a high level of national implementation of the Convention which was not so far universally realised.[125]

88. The CDDH also examined proposals to introduce **new admissibility criteria** for applications before the Court, and notably the introduction of a **criterion relating to cases**

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[118] See, *inter alia*, the CDDH Final Report on measures requiring amendment of the European Convention on Human Rights, 15 February 2012, CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), in particular §§ 7 ss.

[119] See the Izmir Declaration of 26/27 April 2011 of the High Level Conference on the Future of the European Court of Human Rights, Follow-up plan, A.2. and Implementation, 2.a.

[120] See CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, §§ 8-14 and Appendix III, Section 1.

[121] See the Preliminary opinion of the Court, in preparation for the Brighton Conference, adopted by the Plenary Court on 20 February 2012, document DD(2012)205E, § 30.

[122] See CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, §§ 15-18 and Appendix III, Section 2.

[123] See the Preliminary opinion of the Court, in preparation for the Brighton Conference, cited above, document DD(2012)205E, § 30.

[124] See in more detail the CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, §§ 19-23 and Appendix III, Section 3.

[125] See in more detail the CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, §§ 47-50 and Appendix IV, Section 3; and for the Court's preference of adopting, if it were necessary, a test under which, where there is well-established case-law, the Court would only take up an application for a full Chamber decision on its merits if respect for human rights within the meaning of Article 37 of the Convention required it to do so, the Preliminary opinion of the Court, in preparation for the Brighton Conference, cited above, document DD(2012)205E, § 34.

properly considered by national courts. An application would be inadmissible if it were substantially the same as a matter that had already been examined by a domestic tribunal applying Convention rights, unless that tribunal had manifestly erred in its interpretation or application of the Convention rights or the application raised a serious question affecting interpretation or application of the Convention. The CDDH considered that his emphasised the subsidiary nature of the judicial control conducted by the Court. However, this criterion would considerably restrict the applicant's access to the Court without decreasing the Court's workload.[126]

89. The CDDH finally considered the proposal of a so-called **"sunset clause"** under which applications which were not communicated to the respondent Government for observations before expiry of a fixed period could be automatically struck off the Court's list of cases. The CDDH noted that this may free resources to deal with the more serious cases. However, it was stressed both within the CDDH and by the Court that such an automatic strike-out of cases without any judicial examination would be incompatible with the principle of access to justice and the right to individual petition.[127] The further proposal to introduce a so-called **"representative application procedure"** before the Court is addressed below.[128]

(c) Protection from reprisals

90. Access to the Court and a sound administration of justice warrant that applicants and their representatives who lodge applications with the Court are granted protection from reprisals if necessary. The Secretary General has put in place a specific procedure on Human Rights Defenders interacting with the Council of Europe under his direct oversight in May 2017. The mechanism shall assist human rights defenders who allegedly have been subject to reprisals for their interaction with the Council of Europe.[129] Protection may further be accorded by the Court in the context of a specific application pending before it, notably by granting a request for interim measures.[130]

91. The protection of human rights defenders in general further lies at the heart of the mandate of the Council of Europe Commissioner for Human Rights and plays a role, in particular, in the Commissioner's country monitoring.[131] Likewise, the Parliamentary Assembly has notably adopted several Resolutions and Recommendations aimed at protecting human rights defenders in Council of Europe member States, including applicants and lawyers lodging applications with the Court.[132]

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[126] See in more detail the CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, §§ 28-32 and Appendix III, Section 5. The Court equally expressed doubts that such an, or any further admissibility criterion would ease its workload, see the Preliminary opinion of the Court, in preparation for the Brighton Conference, cited above, document DD(2012)205E, §§ 31-32.

[127] See in more detail the CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, §§ 43-46 and Appendix IV, Section 2; and the Preliminary opinion of the Court, in preparation for the Brighton Conference, cited above, document DD(2012)205E, § 33.

[128] See chapter B.I.5.(c) below.

[129] See for more details the webpages of the Secretary General on the Privat Office Procedure on Human Rights defenders and on its revision in August 2019; as well as the Report by the Secretary General for the Ministerial Session in Helsinki, 16-17 May 2019, *Ready for future challenges – reinforcing the Council of Europe*, p. 17.

[130] See for the scope of interim measures under Rule 39 of the Rules of Court and examples of cases in which such measures have been applied the Factsheet on Interim Measures of January 2019 prepared by the Court Registry's Press Unit.

[131] See for more details the dedicated webpages on Human Rights Defenders on the website of the Commissioner for Human Rights.

[132] See, in particular, Parliamentary Assembly Resolution 2225(2018) and Recommendation 2133(2018), both entitled Protecting human rights defenders in Council of Europe member States, adopted on 26 June 2018, with further references to related work.

3. Filtering of applications

92. "**Filtering**" is the expression used to mean the process of identifying and issuing decisions on clearly inadmissible applications. Under Protocol No. 14, this is done by Single Judges, assisted by experienced members of the Registry known as non-judicial rapporteurs.[133] Proposals aimed at improving filtering are intended to address the problem of the backlog of applications pending before Single Judges, and to allow the Court's judges to devote all, or at least most of their working time to more important cases.[134]

93. The Interlaken and Izmir Conferences, on the one hand, invited the Court to put in place, in the short term, a mechanism within the existing bench likely to ensure effective filtering. On the other hand, they invited the Committee of Ministers to examine, as a long-term measure, the setting up of a more efficient filtering mechanism within the Court which would, if necessary, require amendments to the Convention.[135]

94. The **Court** thereupon set up a **new filtering mechanism** in 2011, namely a Filtering Section, which centralises the handling of the incoming cases from several of the highest case-count countries. It carries out an immediate sifting of applications in order to direct them to the appropriate judicial formation, that is to a Single Judge, Committee or Chamber. Moreover, the Filtering Section deals immediately with almost all cases identified for treatment by a Single Judge. By this centralisation of resources and streamlining of working methods, the Court managed to speed up considerably the processing of cases and to reduce the backlog of unexamined cases.[136] The streamlined working methods were subsequently extended to all Sections within the Court. As a consequence, while at the beginning of September 2011 more than 101,000 applications had been pending at the Single-Judge level,[137] the backlog of this category of cases, as envisaged by the Court, was cleared by 2015 and the Court has from then on dealt only with new incoming Single-Judge cases on a "one in/one out basis" within a few months.[138]

95. The CDDH, on request of the **Committee of Ministers**, further proposed three options for a **new filtering mechanism**, all of which would **require an amendment of the Convention**, in its Final Report on measures requiring amendment of the European Convention on Human Rights of 15 February 2012. First, experienced Registry lawyers could be authorised to take final decisions on clearly inadmissible applications. Second, filtering could be entrusted to a new category of judge. Third, the two options could be combined, with specific members of the Registry being given the competence to deal with applications which have been provisionally identified as clearly inadmissible for purely procedural reasons under Article 35 §§ 1 and 2 of the Convention and a new category of filtering judge created to deal with cases provisionally identified as inadmissible under Article 35 § 3.[139]

96. The CDDH, however, did not only note the budgetary consequences which the involvement of additional judges would have. It considered that it was unlikely that any new filtering mechanism, which would require the entry into force of an amending Protocol to the

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[133] See Article 27 of the Convention and Rule 18A of the Rules of Court.
[134] See CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, § 39.
[135] See the Interlaken Declaration, point 6, Action Plan, point C.6.c), and Implementation of the Action Plan, point 5; and the Izmir Declaration of 26/27 April 2011 of the High Level Conference on the Future of the European Court of Human Rights, Follow-up plan, point C.1-3, and Implementation, points 2.a. and 3.
[136] See in more detail the Filtering Section progress report (2011) drawn up by the Court's Registry.
[137] See CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, § 34; and "The Interlaken process and the Court, 2014 Report", document DD(2015)74, point 10.iv).
[138] See The Interlaken process and the Court, 2015 Report, document DD(2015)1045E, points 1 and 2.
[139] See CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, §§ 40 and 42 and Appendix IV, Section 1.

Convention, could come into effect or, at least, still have any substantive impact by the envisaged date of 2015 for clearance by the Court of its backlog of Single-Judge cases.[140] No such filtering mechanism had been set up subsequently.

4. The order of dealing with applications – priority policy

97. Already prior to the start of the Interlaken process the Court adopted a priority policy in June 2009 for determining the order in which incoming cases are to be dealt with. In accordance with Rule 41 of the Rules of Court, as amended, the Court, at least in principle, moved away from the oldest-case-first-approach and treats the most important and urgent cases in the first place. The Court established seven categories of cases, ranging from urgent cases concerning vulnerable applicants (Category I) to clearly inadmissible cases dealt with by a Single Judge (Category VII). Following a review of the priority policy, the Court made some amendments to the priority categories in May 2017.[141]

98. The States Parties repeatedly welcomed the pursuit of the priority policy, which had helped the Court to better manage its case-load by devoting a substantial proportion of its legal resources to the most important and serious cases.[142] The CDDH supported, in particular, the considerable evolvement of the Court's policy and case-management in the recent years and the move towards a more systemic, problem-oriented approach.[143] Nevertheless at a later stage the Court was encouraged, in co-operation and dialogue with the States Parties, to continue to explore all avenues to manage its caseload, following a clear policy of priority.[144]

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[140] See CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, §§ 35-37 and 41.

[141] See on the Court's priority policy "Securing the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights: the Court's action in 2018-2019", document CDDH(2019)25, § 26; and the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, § 76 v). An explanation of the Court's (revised) priority policy can be found on the Court's internet site (http://www.echr.coe.int/Documents/Priority_policy_ENG.pdf). Cases in priority category I are urgent applications covering in particular risks to life or health of the applicant, cases where the applicant is deprived of his/her liberty as a direct consequence of the alleged violation of his/her Convention rights, other circumstances linked to the personal or family situation of the applicant, particularly where the well-being of a child is at issue, and cases in which interim measures under Rule 39 of the Rules of Court have been ordered. Cases in category II cover applications raising questions capable of having an impact on the effectiveness of the Convention system (in particular a structural or endemic situation that the Court has not yet examined, notably cases subject to the pilot-judgment procedure) or applications raising an important question of general interest (in particular a serious question capable of having major implications for domestic legal systems or for the European system). Category III applications on their face raise as main complaints issues under Articles 2, 3, 4 or 5 § 1 of the Convention ("core rights"), irrespective of whether they are repetitive, and cases which have given rise to direct threats to the physical integrity and dignity of human beings. Category IV comprises potentially well-founded applications based on other Articles. Applications in category V raise issues already dealt with in a pilot/leading judgment ("well-established case-law cases"). Category VI applications are cases identified as giving rise to a problem of admissibility. Category VII finally covers applications which are manifestly inadmissible.

[142] See the Izmir Declaration of 26/27 April 2011 of the High Level Conference on the Future of the European Court of Human Rights, point 2; the Brighton Declaration of 19/20 April 2012 of the High Level Conference on the Future of the European Court of Human Rights, § 20 a) i); and the Copenhagen Declaration of 12/13 April 2018 of the High-Level Conference on "Continued Reform of the European Court of Human Rights Convention System – Better balance, improved Protection", § 50.

[143] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, § 89.

[144] See the Copenhagen Declaration, cited above, § 50.

5. Measures for dealing efficiently with specific categories of cases

(a) General analysis of the Court's backlog of cases

99. Following up to the Copenhagen Declaration,[145] the Committee of Ministers invited the CDDH to include in its present report "a comprehensive analysis of the Court's backlog of cases, identifying and examining the causes of the influx of cases from the States parties in order to identify the most appropriate solutions at the level of the Court and the States parties".[146] This shall serve as a basis for analysing the prospects of the Court obtaining a balanced case-load.[147] The CDDH has conducted preparatory work in this respect[148] on the basis, in particular, of statistical data provided by the Court's Registry specifically for the purposes of the present analysis,[149] as well as the extensive statistical information provided by the Court on its internet site[150].

100. The number of pending cases has been set out above.[151]

101. As regards the development of the Court's **case-load in respect of the different member States**, the statistics show that the case-load is not evenly distributed between them. On 31 December 2009, 61.7 % of the total number of applications pending before the Court was lodged against 5 of the 47 member States.[152] That situation had not substantially changed subsequently. On 31 December 2018 68.7 % of the pending applications were lodged against the same 5 of the 47 member States.[153]

102. As for the Court's **total case-load by priority category**,[154] on 31 December 2018 1.5% of the total of 56,350 applications pending were in priority category I, 0.4% in category II, 34.8% in category III, 30.9% in category IV, 23.8% in category V and 8.5% in categories VI-VII.[155] As a consequence, the challenge of reducing the backlog of non-repetitive Chamber cases (category IV) and "priority cases" falling in the top three categories (notably category III) remains.[156]

103. An analysis of the **main subject-matters of the applications pending** before the Court discloses that on 1 January 2019 five subject-matters alone accounted for 54% of all

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[145] See the Copenhagen Declaration, cited above, § 54 a).

[146] See the 1317th meeting of the Deputies, decisions following the 128th Session of the Committee of Ministers held in Helsingør (Denmark) on 17–18 May 2018. Reference documents: CM/PV(2018)128-prov, CM/PV(2018)128-add, CM(2018)OJ-prov5, SG(2018)1, CM/Inf(2018)10, CM/Inf(2018)11, CM(2018)18-add1.

[147] See the Copenhagen Declaration, cited above, § 54 a).

[148] See the Draft additional elements resulting from the Copenhagen Declaration that should be reflected in CDDH's future Interlaken follow-up report, document CDDH-BU(2019)R101 Addendum of 12 June 2019, §§ 4-45, provisionally adopted by the CDDH at its 91st meeting (18-21 June 2019), see CDDH(2019)R91, §§ 25-28.

[149] See "The development of the Court's case-load over ten years – Statistical data for the CDDH", February 2019, document CDDH(2019)08.

[150] See https://www.echr.coe.int/Pages/home.aspx?p=reports&c= and, in particular, the yearly *Analysis of statistics* (most recently the European Court of Human Rights' Analysis of statistics 2018) containing an overview of the statistics of the respective year and both general and country-specific information on the development of the Court's case-load.

[151] See paragraphs 70 and 71.

[152] The majority of pending cases were against the Russian Federation (28.1 %), Turkey (11.0 %), Ukraine (8.4 %), Romania (8.2 %) and Italy (6.0 %), see the European Court of Human Rights' Analysis of Statistics 2009, p. 8.

[153] The majority of pending cases were against the Russian Federation (20.9 %), Romania (15.1 %), Ukraine (12.9 %), Turkey (12.6 %) and Italy (7.2 %), see the European Court of Human Rights' Analysis of Statistics 2018, p. 8; and the Press Release on the annual press conference of the Court of 24 January 2019.

[154] See on the Court's priority policy and the different priority categories chapter B. I.4. above.

[155] See the European Court of Human Rights' Analysis of Statistics 2018, p. 9.

[156] See the European Court of Human Rights' Analysis of Statistics 2018, p. 5; see also France's contribution in the Compilation of the contributions received from the member States, document CDDH(2019)12.

applications pending before a judicial formation.[157] These subject-matters comprise, on the one hand, systemic problems in a small number of member States, namely conditions of detention, non-enforcement of domestic courts' judgments and length of proceedings before the domestic courts. On the other hand, they cover specific events which had resulted in a large number of applications lodged with the Court, namely issues linked to situations of conflict between member States and the Turkish events of July 2016. On 1 January 2009 these subject-matters (in so far as the events underlying the applications had already occurred) already represented 45% of the applications pending before a judicial formation.[158] While the number of applications concerning the length of judicial proceedings or the non-execution of domestic courts' judgments have initially risen and then decreased in the period from 2009 until 2018, the number of applications concerning conditions of detention and that of applications arising from situations of conflict between States has considerably risen in the same period and the events in Turkey in July 2016 have led to a new category of main subject-matters of pending applications.[159]

104. These figures show that while the solution of some wide-spread problems could be achieved during that period, other **systemic problems** emerged. Moreover, it is evident from the statistics that the number of applications regarding such problems decreased substantially once an effective domestic remedy addressing the issue had been put in place in the State concerned.[160] Furthermore, **exceptional events** such as those in Turkey in July 2016 – which, on 31 December 2018, represented 6% of the total number of applications pending before a judicial formation – can rapidly have a substantive impact on the Court's case-load.

105. As regards the Court's **backlog** of cases pending before the different **judicial formations**, the above statistics show that the large category of incoming clearly inadmissible Single-Judge-cases lodged with the Court, which are processed as they come in, now accounts for less than 10 % of the applications pending before a judicial formation. As for the proportion of more than 50 % of the total number of pending cases which have been allocated to a Committee, the statistics show that a substantive part of these applications result from systemic problems related to very few subject-matters (currently notably conditions of detention potentially in breach of Article 3 of the Convention) generating a larger number of applications against a relatively small number of member States. As for the proportion of some 40 % of the total number of cases which are pending before a Chamber (or Grand Chamber), these cover potentially well-founded applications which are not covered by well-established case-law. This percentage depends, however, on the qualification of cases. Respondent Governments may indeed consider a higher number of applications as not being covered by well-established case-law (WECL) than the Court, especially in case the so-called broader WECL is applied.[161] On that basis, the latter group of applications may be even larger. They are, as a rule, not suitable for grouped or more summary treatment and therefore necessitate considerably more resources.

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[157] In this part, the pending applications (51,600) do not take into account the applications pending before a Single Judge (4,750).
[158] See document CDDH(2019)08, p. 5.
[159] See document CDDH(2019)08, p. 5.
[160] In particular, the number of applications concerning conditions of detention has substantially decreased in respect of Italy and Hungary once effective domestic remedies addressing this issue had been put in place. As for pending applications concerning non-execution of domestic courts' judgments, there has been a significant decrease in the applications pending against the Russian Federation following the introduction of a domestic remedy. Likewise, States including Bulgaria, Greece, the Russian Federation and Turkey have seen the number of applications concerning the length of judicial proceedings drop once a domestic remedy was put in place, see document CDDH(2019)08, pp. 6-9.
[161] See paragraph 111 below.

(b) Measures regarding clearly inadmissible (Single Judge) cases

106. As shown above, despite the significant number of incoming applications which are identified as clearly inadmissible Single Judge cases, the stock of these applications has been substantially decreased, from 74,900 (2009) and to over 100,000 (2011) to 4,750 (2018). This has been made possible by the use of the potential of the Single-Judge procedure introduced by Protocol No. 14, by the setting up of the Filtering Section and by a streamlining of the working methods within the Court in respect of this category of cases, including a highly automated workflow system developed by the Registry's IT Department.[162] The CDDH's finding end of 2015 that concerning the initial challenge of the backlog of clearly inadmissible cases,[163] no further measures appear necessary, can thus be confirmed.

(c) Measures regarding repetitive (Committee) cases

107. Since the entry into force of Protocol No. 14 to the Convention, three-judge Committees may not only take strike-out and inadmissibility decisions, but may also render judgments on the merits if the underlying question in the case is already the subject of well-established case-law of the Court (see Article 28 § 1 of the Convention). As regards the backlog of such repetitive cases, the CDDH had expected in its 2015 report on the longer-term future of the Convention system that this backlog would be cleared until 2018.[164] However, as shown above, at the end of 2018 more than 50 % of the pending cases were allocated to a Committee. A substantive part of these (priority and non-priority) applications result from systemic problems related to very few subject-matters. While the number cases disclosing systemic problems relating to length of judicial proceedings and non-execution of domestic courts' judgments which existed at the outset of the Interlaken process indeed decreased considerably, the number of cases relating to new systemic problems (notably conditions of detention), to repetitive applications concerning situations of conflict between States or to the exceptional events in Turkey in July 2016 increased.

108. The Court has taken several measures to tackle the backlog of repetitive cases. Encouraged by the Committee of Ministers' Resolution Res(2004)3 on judgments revealing an underlying systemic problem,[165] the Court developed, in its case-law, a **pilot-judgment procedure** which, following a call to that effect in the Interlaken declaration,[166] was codified in Rule 61 of the Rules of Court in 2011. This procedure allows the Court to identify in a judgment both the nature of a structural or systemic problem which has given or may give rise to similar applications as well as the type of remedial measures which the Contracting Party concerned is required to take at the domestic level by virtue of the operative provisions of the judgment. While the Contracting Party is in the process of taking the necessary steps, the Court may decide to adjourn its consideration of other applications stemming from the same cause. If the remedial measures adopted are sufficient, the Court may terminate its examination of the (usually numerous) other applications by, for example, declaring them inadmissible for non-exhaustion of new domestic remedies or striking out the related applications under Article 37 of the Convention.[167]

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[162] See in more detail, including on the functioning of the Court's workflow system, document CDDH(2019)25, §§ 22 and 33-36; and The Interlaken process and the Court, 2016 Report, cited above, § 7.

[163] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 76 iii) and 130 i).

[164] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 80 and 130 i).

[165] Resolution Res(2004)3 was adopted by the Committee of Ministers on 12 May 2004 at its 114th session.

[166] See the Interlaken Declaration, Action Plan, point 7.b).

[167] See for a description of the procedure the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 25; the Court's Reply to the Committee of Ministers request

109. It is noteworthy in this context that on one exceptional occasion the Court, faced with the ineffective execution of a pilot judgment decided, however, no longer to continue the examination of pending follow-up cases (which at the time accounted to almost one third of all the repetitive applications pending before the Court). Given that such follow-up cases involved problems of a financial and political nature which could only be adequately addressed between the State concerned and the Committee of Ministers, the Court found that it was for the Committee of Ministers to ensure that the pilot judgment was fully implemented by general measures and appropriate relief to individual applicants.[168]

110. In accordance with the Brighton Declaration,[169] the CDDH further examined whether a so-called **"representative application procedure"**, by which the Court could determine a small number of representative applications from a group of applications in which the same Convention violation is alleged against the same respondent State was advisable. It considered that this was not the case. It found that very numerous similar applications were a problem for the Court, but in terms of resources rather than the availability of procedural responses, notably the pilot judgment procedure.[170]

111. Furthermore, in autumn 2014 the Court put in place the so-called **WECL** (well-established case-law) procedure, backed up by an advanced IT workflow system, which enables it to deal with these applications in a simplified and rapid manner. A **fast-track** version of the WECL procedure was developed in 2015 which speeded up the processing of groups of applications by using increased automation of the drafting process. Cases are communicated without asking for observations but generally with a friendly settlement proposal; in case of its rejection, the Government can propose a unilateral declaration acknowledging a violation of the Convention and undertaking to provide redress.[171] Moreover, in June 2017 the Plenary Court took a policy decision aimed at increasing its capacity by defining more broadly which applications can be considered as covered by "well-established case-law" and thus falling within the competence of Committees instead of Chambers (so-called "**broader WECL**" cases; see Articles 28 and 29 of the Convention).[172] The notion of "well-established case-law" thus refers not only to case-law in which the particular issue has been addressed, in relation to the State concerned, by a Grand Chamber judgment, or – at Chamber level – by a pilot judgment or a leading judgment or a recent final Chamber judgment concerning the specific issue in the State in question. Under the new interpretation, there can also be well-established case-law where there are at least three recent and relevant judgments concerning different States.[173] All WECL procedures led to repetitive applications being processed more speedily.[174] However, when

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for comments in the CDDH Report on Execution of 9 May 2014, § 15; and the CDDH report on the advisability and modalities of a "representative application procedure" of 1 February 2013, document CM(2013)33 (= CDDH(2013)R77 Addendum IV), §§ 3 and 8.

[168] See *Burmych and Others v. Ukraine* (striking out) [GC], nos. 46852/13 and Others, 12 October 2017, concerning the non-execution of the pilot judgment in the case of *Yuriy Nikolayevich Ivanov v. Ukraine* (no. 40450/04, 15 October 2009) regarding a systemic problem of non-enforcement or delayed enforcement of domestic court decisions, combined with the absence of effective domestic remedies in this respect. See also document CDDH(2019)25, §§ 7-8.

[169] See the Brighton Declaration, cited above, § 20.d).

[170] See for more details the CDDH report on the advisability and modalities of a "representative application procedure", cited above, document CM(2013)33 (= CDDH(2013)R77 Addendum IV), in particular §§ 22 and 32.

[171] See for this procedure, *inter alia*, document CDDH(2019)25, § 30.

[172] See on the broader WECL cases and procedure in more detail document CDDH(2019)25, §§ 31-32.

[173] See the document entitled "Follow-up to the CDDH Report on the Longer-Term Future of the system of the European convention on Human Rights – Information from the Court, document DD(2018)60, §§ 10-15.

[174] See on these procedures and their effect on the number of cases examined, *inter alia*, the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 76 iv); document CDDH(2019)25, §§ 28-30; The Interlaken process and the Court, 2016 Report, cited above, § 8; and the Response of

combining the broader WECL with IMSI[175], the need for reclassification of a case as non-WECL could appear after the Court has received full information on facts. In addition, in introducing these procedures, practical difficulties have arisen for member States and are being addressed within the regular meetings between the Court and the Government Agents.

112. The States Parties, under the supervision and with the assistance of the Committee of Ministers, for their part, successfully put in place a number of **effective domestic remedies** to address systemic problems at the national level, in line with Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies.[176] The above statistics demonstrate that whenever this occurred, the number of repetitive applications in this respect decreased substantially. In this connection it was important that the Court upheld its practice of adjourning pending follow-up cases and referring the applicants to a newly created effective domestic remedy once it was put in place.[177] They further show that the introduction of a domestic compensatory remedy, in order to be effective, must be accompanied by the necessary reforms to prevent the Convention violation in question and must be accompanied by sufficient budgetary funding.[178] Moreover, wherever there was an increase in the adoption of **friendly settlements and unilateral declarations**, this helped decreasing the Court's backlog.[179] Practical problems have arisen due to the number of cases communicated at the same time which can be addressed at the regular meetings between the Government Agents and the Court.

113. It results from the foregoing that the backlog of repetitive applications pending before a Committee remains an issue and must be addressed by all the actors in the Convention system. It has to be welcomed in general that the Court continuously took a number of initiatives during the past years aimed at optimising the procedures before it, which led to a substantial reduction of the backlog. The Court should, in close dialogue and cooperation notably with the Government Agents, continue **striving to optimise its working methods** in order to handle this group of cases. It is important to guarantee, at the same time, that the parties' rights in the proceedings are not curtailed by the simplified procedures and that the quality of the Court's judgments and decisions is maintained. The same, regarding optimising the working methods, holds true for the Department for the Execution of Judgments of the Court. Subject to the necessary resources, the latter should carry out further **targeted assistance programmes** aimed at helping States Parties to implement Court judgments disclosing systemic or large-scale problems. The States Parties, in particular, should ensure a better implementation of the Convention at the national level, including by a **speedy execution** of the Court's judgments. They should notably ensure that **effective domestic remedies** are created as soon as possible where **systemic problems** arise as the latter often generate large numbers of repetitive cases clogging up the system which constitute a **main challenge** to the Convention system.[180]

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the Court to the "CDDH report containing conclusions and possible proposals for action on ways to resolve the large number of applications arising from systemic issues identified by the Court", cited above, § 10.

[175] See paragraph 115 below.

[176] The Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies was adopted by the Committee of Ministers at its 114th session on 12 May 2004.

[177] See document CDDH-BU(2019)R101 Addendum of 12 June 2019.

[178] See document CDDH(2019)08, p. 8.

[179] See, for instance, the situation in respect of Italy, where cases concerning the non-execution of judgments granting compensation for excessive length of proceedings – a domestic remedy introduced by the so-called Pinto law – first accumulated and now decrease as a result of friendly settlements concluded by the parties in a high number of applications, see document CDDH(2019)08, p 8.

[180] See already the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 130 iv); document CDDH(2012)R74 Addendum II, § 8; and also the Preliminary opinion of the Court, in preparation for the Brighton Conference, cited above, document DD(2012)205E, § 35; and the Comment

(c) Measures regarding non-repetitive (Chamber and Grand Chamber) cases

114. As for the proportion of some 40 % of the total number of pending cases which are pending before a seven-judge Chamber (or the seventeen-judge Grand Chamber), these cover potentially well-founded (priority and non-priority) applications which are not covered by well-established case-law.

115. The Court, in order to speed up the communication stage of Chamber applications, introduced a so-called **immediate simplified (IMSI) communication procedure** in March 2016. Instead of communicating applications to the respondent Government with a detailed statement of facts, the Court gives only an indication of the subject-matter of the case and puts questions to the parties; it further forwards the application form and necessary documents. In addition to sending their observations, Governments are requested to present the facts of the case; applicants are invited to reply to both the Government's observation and their statement of facts. The increased involvement of the parties in the judicial preparation of cases is viewed as an aspect of the notion of shared responsibility which underlies the Convention system[181]. It seems that this procedure, which may also have the effect of encouraging the parties to conclude a friendly settlement, led to Chamber cases being completed by a judgment or decision more speedily.[182] It subsequently also covered "broader WECL" cases.[183] Due to changes in the drawing up of the statement of facts, practical difficulties that have arisen and are being dealt with in dialogue between the Government Agents and the Court, include the risk that cases are communicated that would not have been communicated under the normal procedure and that there is a need to re-classify them at a later stage.

116. It is further recalled that following the Copenhagen Declaration[184] the Ministers' Deputies had invited the CDDH to cover, in the present report, also proposals on how to facilitate the prompt and efficient handling of cases which the parties were prepared to settle by means of a **friendly settlement or unilateral declaration**.[185]

117. The CDDH notes in this context that from January 2019, the Court introduced a **dedicated, non-contentious phase of the proceedings** in order to facilitate friendly settlements and unilateral declarations. In the non-contentious phase, a concrete friendly settlement proposal will, where appropriate, be made on communication of the application to the respondent Governments in every case unless a case raises novel issues or for any specific reason it may be inappropriate to propose a friendly settlement. If no friendly settlement is concluded or the case not struck off the list following a unilateral declaration by the Government,

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from the Court on the report of the CDDH on the longer-term future of the Convention system of February 2016, §§ 3-4.

[181] Compare in this respect the Explanatory Report to Protocol No. 15 to the Convention, §§ 7-9, available on the website of the Council of Europe's Treaty Office.

[182] Cases communicated under the IMSI procedure were terminated by a judgment or decision in 16 months on average, compared to 28 months under the standard communication procedure (over the period from 2016 to June 2019), see document CDDH(2019)25, § 5.

[183] See in detail The Interlaken process and the Court, 2016 Report, cited above, §§ 9-11; and document CDDH(2019)25, §§ 3-5.

[184] See the Copenhagen Declaration, cited above, § 54 b).

[185] See the 1317th meeting of the Deputies, decisions following the 128th Session of the Committee of Ministers held in Helsingør (Denmark) on 17-18 May 2018, cited above. See for the CDDH's preparatory work in this respect the Draft additional elements resulting from the Copenhagen Declaration that should be reflected in CDDH's future Interlaken follow-up report, document CDDH-BU(2019)R101 Addendum of 12 June 2019, §§ 46-60, provisionally adopted by the CDDH at its 91st meeting (18-21 June 2019), see CDDH(2019)R91, §§ 25-28. See on this issue already document CDDH(2012)R74 Addendum II, § 8 iv) and v).

the parties are invited to exchange observations in a second, contentious phase.[186] This separation of the two phases of the proceedings makes the conclusion of friendly settlements more attractive as Governments no longer have to start drafting observations and (in the IMSI procedure) a statement of facts at the same time as conducting friendly settlement negotiations. The CDDH considers that dispute resolution by friendly settlements is an important part of every judicial system and is waiting with great interest for an analysis of the functioning of the procedure and its impact on the number of friendly settlements concluded after its one-year test period.[187]

118. Furthermore, a so-called **"project-focused approach"** has been developed within the Registry, entailing a greater specialisation of Registry lawyers in different areas of Convention law in order to process cases more efficiently.[188]

119. It follows from the foregoing that the backlog of Chamber cases which are particularly important for the development of the Convention system as they often raise new issues regarding the interpretation and application of the Convention, must be considered as **one of the principal challenges** the Convention system is currently facing. These are, as a rule, not suitable for grouped or more summary treatment and therefore necessitate considerably more resources if the quality of the judgments and decisions delivered in this group of cases is to be ensured.[189]

(d) Measures regarding cases arising from situations of conflict between States

120. It is recalled that following the Copenhagen Declaration,[190] the Ministers' Deputies had invited the CDDH to include in the present report also "proposals on how to handle more effectively cases related to inter-State disputes, as well as individual applications arising from situations of conflict between States, without thereby limiting the jurisdiction of the Court, taking into account the specific features of these categories of cases, *inter alia* regarding the establishment of facts".[191]

121. As shown above, the number of inter-State and also individual applications resulting from situations of conflict between member States has been rising in recent years. On 1 January 2019, more than 8,500 individual applications, representing 17 % of the total number of applications pending before the Court, were individual applications arising out of situations of inter-State conflict.[192] As acknowledged in the Copenhagen Declaration, situations of conflict and crisis in Europe pose challenges to the Convention system.[193]

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[186] See in detail on this procedure the Court Registry's document on *"Encouraging resolution of the Court's proceedings through a dedicated non-contentious phase of the proceedings*", submitted to the CDDH for the purposes of the present report (document CDDH(2018)R90, § 27), document CDDH(2019)09.

[187] See already document CDDH-BU(2019)R101 Addendum, cited above, §§ 59-60.

[188] See for more details the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 81 and 89; and The Interlaken process and the Court, 2016 Report, cited above, § 12.

[189] See already CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, §§ 35-36; and the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, Executive summary and §§ 76 vi), 81-82 and 130 ii) and iii); this assessment is shared by the Court, see, for instance, The Interlaken process and the Court, 2016 Report, cited above, § 13.

[190] See the Copenhagen Declaration, cited above, § 54 c).

[191] See the 1317th meeting of the Deputies, decisions following the 128th Session of the Committee of Ministers held in Helsingør (Denmark) on 17-18 May 2018, cited above.

[192] See document CDDH(2019)08, p. 7.

[193] See the Copenhagen Declaration, cited above, § 45.

122. It is the Court's present practice, where an inter-State case is pending, that individual applications raising the same issues or deriving from the same underlying circumstances are, in principle and in so far as practicable, not decided before the overarching issues stemming from the inter-State proceedings have been determined in the inter-State case.[194]

123. The CDDH, at its 91st meeting (18-21 June 2019), had an in-depth exchange of views on the topic[195] on the basis of a document prepared by its Bureau,[196] contributions made by the member States prior to this meeting[197] and a report by the Plenary Court on "*Proposals for a more efficient processing of inter-State cases*" submitted to the CDDH[198]. The CDDH did not yet adopt a text in this regard.[199] It takes the view that these issues require a more in-depth examination. It therefore considers it useful that the CDDH / DH-SYSC conduct work facilitating proposals to ensure the effective processing and resolution of cases relating to inter-State disputes as well as individual applications arising from situations of conflict between States, without thereby limiting the jurisdiction of the Court, taking into account the specific features of these categories of cases, *inter alia* regarding the establishment of facts in the next biennium.

6. The organisational structure of the Court

(a) Examined measures changing the Court's organisational structure

124. Notably in the first years of the Interlaken process, a number of measures which would amend the organisational structure of the Court were analysed closely. Following a call by successive high-level Conferences,[200] the CDDH was charged by the Committee of Ministers with examining whether a **simplified procedure for amending provisions of the Convention relating to organisational matters** could be introduced with the aim of making the Convention system more flexible, possibly by setting up a Statute for the Court or a new provision in the Convention. The CDDH concluded that it would not be opportune to elaborate a draft Protocol introducing a simplified amendment procedure, notably in the light of constitutional difficulties with which some member States would be faced in applying such a procedure.[201]

125. The CDDH further examined the **procedure for the amendment of the Rules of Court** and the possible "upgrading" to the Convention of certain provisions thereof, notably regarding interim measures, the pilot judgment procedure and unilateral declarations. As regards the procedure for amendment of the Rules of Court, which under Article 25 d) of the Convention falls within the competence of the Plenary Court, several proposals were made to allow for a better consultation of the States Parties regarding such amendments.[202] In reply, in November

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194 See the Copenhagen Declaration, cited above, § 45.
195 See CDDH(2019)R91, §§ 25-28.
196 See document CDDH-BU(2019)R101 Addendum of 12 June 2019, §§ 61-91 and Appendices I and II.
197 See document CDDH(2019)12.
198 See for the redacted version of the report adopted by the Plenary of the Court on 18 June 2018 document CDDH(2019)22.
199 In particular, §§ 61-91 of document CDDH-BU(2019)R101 Addendum have not been provisionally adopted, see document CDDH(2019)R91, §§ 25-28.
200 See the Interlaken Declaration, Action Plan, point 12; the Izmir Declaration, cited above, Implementation, point 2.c); and the Brighton Declaration, cited above, § 37.
201 See the CDDH Final Report on a simplified procedure for amendment of certain provisions of the Convention of 22 June 2012, document CM(2012)105-add (= CDDH(2012)R75 Addendum I), in particular § 33; and also the CDDH Report containing conclusions and possible proposals for action concerning the procedure for the amendment of the Rules of Court and the possible 'upgrading' to the Convention of certain provisions of the Rules of Court of 21 November 2014, document CM(2014)151-Add 1 (= CDDH(2014)R82 Addendum I), § 2.
202 See the CDDH Report containing conclusions and possible proposals for action concerning the procedure for the amendment of the Rules of Court and the possible 'upgrading' to the Convention of certain provisions of the Rules of Court of 21 November 2014, document CM(2014)151-Add 1 (= CDDH(2014)R82 Addendum I), §§ 1-20; and also the

2016 the Court incorporated the principle of consultation into the Rules of Court. Rule 116 (former Rule 111) since then provides that the Contracting Parties, but also organisations with experience in representing applicants and relevant Bar associations will be consulted on any proposal to amend Rules that directly concern the conduct of proceedings.[203] It cannot yet be assessed how the consultation process foreseen in Rule 116 will take place in the future and to what extent the comments received are taken into account. As regards the 'upgrading' to the Convention of certain provisions of the Rules of Court, the CDDH was divided on the interest in doing so.[204]

126. The CDDH also repeatedly examined the question of whether the **appointment of additional judges to the Court** should be made possible (by an amendment to the Convention).[205] There was no consensus on this issue, neither on the necessity of appointing additional judges nor on the competences such judges should exercise, that is, whether they should deal with filtering, repetitive or possibly also Chamber cases. It was notably argued that in view of the considerable structural and budgetary consequences of such a measure, other approaches should be exhausted first.[206]

(b) The Court's resources

127. Successive high-level Conferences have welcomed the changes made to the working methods within the Registry of the Court which have allowed better management of budgetary and human resources,[207] and have acknowledged the importance of retaining a sufficient budget for the Court to solve present and future challenges[208].

128. The Court received highly appreciated additional support in the form of temporary **secondments** of national judges, prosecutors and other highly qualified legal experts to its Registry. In addition to a professional training dimension, described above,[209] these secondments have helped the Court in dealing with its backlog of cases.[210]

129. Furthermore, a special account was created for the Court and the funds provided by donor Governments have permitted the temporary recruitment notably of some additional Registry lawyers dealing with Chamber cases.[211]

130. The Court repeatedly confirmed that it was continuously innovating and adapting its working methods in order to improve its case-processing, but would ultimately need additional

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CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 87.

[203] See also European Court of Human Rights, Annual Report 2016, pp. 10-11.

[204] See document CM(2014)151-Add 1 (= CDDH(2014)R82 Addendum I), §§ 21-26.

[205] See for calls to examine this issue the Interlaken Declaration, Action Plan, point 7.c); and the Brighton Declaration, cited above, § 20.e).

[206] See, in particular, the CDDH report on the question of whether or not to amend the Convention to enable the appointment of additional judges to the Court of 29 November 2013, document CM(2013)176 (= CDDH(2013)R79 Addendum III), in particular §§ 15-16 and with a summary of the previous work on the topic in §§ 1-14. See for further, more far-reaching proposals regarding the organisational structure of the Court which were not retained by the CDDH also the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 126-129.

[207] See the Izmir Declaration, cited above, point F.3., following up to the Interlaken Declaration, Action Plan, point 10.

[208] See the Copenhagen Declaration, cited above, § 52.

[209] See chapter A.I.2. above.

[210] See, *inter alia*, CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, § 38; the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 75; and The Interlaken process and the Court, 2016 Report, cited above, § 29.

[211] See The Interlaken process and the Court, 2016 Report, cited above, § 31.

human resources in order to come to grips with the backlog of cases.[212] The CDDH has already concluded in 2015 that "the issue of resources is key in responding to many of the challenges above and pursuing/implementing the areas of action identified"[213]. It further stated that "[i]t is up to the member States to ensure that the Organisation has sufficient resources to perform its tasks, including the efficient functioning of the Court, and that there is proper alignment between the Organisation's desired functions and the resources allocated to it"[214]. It stressed that "in view of the positive results of the Court's reforms so far, the challenge of clearing the backlog of non-repetitive priority and non-priority cases may entail allocating additional resources and more efficient working methods rather than introducing a major reform" and pointed to the importance of ensuring the appropriate quality of examination of all applications also when clearing this backlog.[215] Having regard to the development, in particular, of the backlog of (priority and non-priority) Chamber cases, the issue of resources remains pertinent.

II. Measures to guarantee the authority of the Court and of its case-law

1. The selection and election of judges of the Court

131. Successive high-level conferences[216] as well as the Court itself[217] have underlined the importance for the authority of the Court of ensuring that it is composed of judges of the highest calibre. As regards the procedure for the selection of judges, the Committee of Ministers adopted Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights in 2012, which it updated in 2014.[218] It also established an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights end of 2010,[219] the functioning of which the CDDH reviewed in 2013.[220] Moreover, as to the election procedure, the Parliamentary Assembly set up a new general Committee on the Election of Judges to the European Court of Human Rights in order to strengthen the procedure.[221]

132. In a follow-up to the CDDH Report on the longer-term future of the Convention system,[222] the CDDH adopted, in 2017, a Report on the selection and election of judges of the

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[212] See The Interlaken process and the Court, 2016 Report, cited above, § 29; and also document CDDH(2019)25, §§ 44-45.

[213] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 204; see also CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), § 38.

[214] *Ibid*.

[215] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, Executive summary.

[216] See the Interlaken Declaration, cited above, Action Plan, point E.8.a); the Izmir Declaration, cited above, point 7; the Brighton Declaration, cited above, §§ 21-22 and 25; and the Copenhagen Declaration, cited above, §§ 55-62.

[217] See the Preliminary opinion of the Court, in preparation for the Brighton Conference, cited above, document DD(2012)205E, § 29; the Comment from the Court on the report of the CDDH on the longer-term future of the Convention system, cited above, § 5; the Court's Opinion on the CDDH report on the Advisory Panel of 15 April 2014, in particular § 4; and also document CDDH(2019)25, §§ 39-40.

[218] See the Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights of 29 March 2012, as updated on 26 November 2014; and also the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 103.

[219] See the Committee of Ministers' Resolution CM/Res(2010)26 on the establishment of an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights of 10 November 2010; and for further information on the functioning of the Panel https://www.coe.int/en/web/dlapil/advisory-panel .

[220] See the CDDH Report on the review of the functioning of the Advisory Panel of experts on candidates for election as judge to the European Court of Human Rights, document CDDH(2013)R79 Addendum II; see also the Court's Opinion on the CDDH report on the Advisory Panel of 15 April 2014.

[221] See for further information the relevant PACE webpages.

[222] See for the CDDH's previous findings the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 97, 100-109, 117 and 131 i).

European Court of Human Rights. It examined in detail the selection procedure and the election process of judges at the Court as well as the conditions for their employment and working conditions at the Court and the question of *ad hoc* judges, and concluded that there was room for improvement regarding all four themes.[223]

133. As part of the follow-up to the Copenhagen Declaration, the Committee of Ministers' considered, in co-operation with the Parliamentary Assembly, and on the basis of the said 2017 CDDH report, the entire process of selecting and electing judges to the Court and adopted in January 2019 decisions aiming at ensuring that the most qualified and competent candidates are elected.[224] In addition, the CDDH was charged with examining "*questions relating to the situation of judges of the European Court of Human Rights after the end of their mandate, mentioned in paragraphs 154 and 159 of the 2017 CDDH Report on the process of selection and election of judges of the European Court of Human Rights".*[225] The CDDH stresses the importance to safeguard the Court's independence by preventing disguised reprisals against former judges of the Court after the end of their mandate. It considers that a Declaration of the Committee of Ministers underlining the importance of preventing such reprisals would be desirable to address this risk. The CDDH further stresses that the recognition of service as a judge of the Court after the end of the mandate was equally important in order to guarantee both the attractiveness of the Court for highly qualified candidates and the independence of the Court, which may be affected if a judge had to fear not finding an adequate post in his country following the expiry of his or her term of office. The CDDH therefore considers it desirable to equally reflect this issue in the above-mentioned Declaration of the Committee of Ministers, respecting, at the same time, the diversity of the constitutional systems in the Member States.[226] Mention could be made of the good practices in respect of the recognition of service of judges at the Court as they emanate from the comprehensive research report on the "*Recognition of service in international courts in national legislation*" [227] provided by the Court's Registry.[228]

134. Finally, by the entry into force of Protocol No. 15 a new paragraph 2 will be inserted in Article 21 of the Convention which is to modify the conditions of service of the post of judge. Candidates must be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly. This modification aims at enabling highly qualified judges to serve their full nine-year term of office and thereby to reinforce the consistency of the membership of the Court.

2. The clarity and consistency of the Court's case-law

135. Clear and consistent case-law is a prerequisite for an effective national implementation of the Convention, facilitates the execution of the Court's judgments and helps reducing the

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[223] See document CM(2018)18-add1, in particular § 35.
[224] See for a description of the follow-up work document CDDH(2018)R90, §§ 32-33.
[225] See the 1317th meeting of the Deputies, decisions following the 128th Session of the Committee of Ministers held in Helsingør (Denmark) on 17–18 May 2018, cited above.
[226] See document CDDH-BU(2019)R101 Addendum of 12 June 2019, § 122, provisionally adopted in this respect by the CDDH at its 91st meeting (18-21 June 2019), see CDDH(2019)R91, §§ 25-28.
[227] See document CDDH(2019)07 of 8 February 2019.
[228] See the Draft additional elements resulting from the Copenhagen Declaration that should be reflected in CDDH's future Interlaken follow-up report, document CDDH-BU(2019)R101 Addendum of 12 June 2019, §§ 92-122, provisionally adopted by the CDDH at its 91st meeting (18-21 June 2019), see CDDH(2019)R91, §§ 25-28; and already document CM(2018)18-add1, §§ 31-32.

Court's case-load.[229] High-level conferences accordingly were unanimous in stressing the importance thereof.[230]

136. On a general level, emphasis was laid throughout the Interlaken process on the importance of an interpretation of the Convention reflecting the respective roles of the Court and the national authorities in the Convention system and their shared responsibility in securing the Convention rights. On the one hand, it was stressed that, under the Court's case-law, the States Parties, in accordance with the **principle of subsidiarity**, have the primary responsibility to secure the Convention rights. In doing so, they further enjoy a **margin of appreciation**, subject to the supervisory jurisdiction of the Court.[231] On its entry into force, Protocol No. 15 to the Convention will add a reference to the principle of subsidiarity and the doctrine of the margin of appreciation to the Preamble of the Convention. On the other hand, it was noted that the Court could have more recourse to providing clearer general interpretative guidance concerning the understanding of the Convention rights and clearer indications of which elements constituted the direct sources of the finding of a violation.[232]

137. Moreover, **inconsistencies in the Court's case-law** notably between (seven-judge) Chambers had to be prevented. The (seventeen-judge) Grand Chamber had an important role to play in this respect. In order to reinforce that role, Protocol No. 15 to the Convention shall remove the right of the parties to a case to object to relinquishment of jurisdiction over it by a Chamber in favour of the Grand Chamber (see Article 30 of the Convention).[233] The work of the Jurisconsult (see Rule 18B of the Rules of Court) and of the Registry's Research and Library Division under his supervision were considered as further appropriate means to address this issue.[234]

138. The efforts to reduce the Court's case-load may further threaten the clarity and **quality of the reasoning** in judgments and decisions.[235] The Court has recently decided to address this issue by means of a new Manual on the drafting of judgments and decisions.[236] Moreover, following the Brussels Declaration that the Court, in the interest of clarity of its case-law, provide

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[229] See, in particular, the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, Executive summary and §§ 20, 99, 111 and 131 iii).

[230] See the Interlaken Declaration, cited above, preamble; the Izmir Declaration, cited above, point 5 and Follow-up plan, point F.2.; the Brighton Declaration, cited above, §§ 12, 14-15, 23 and 25; the Brussels Declaration, cited above, Action Plan, point A.1.; and the Copenhagen Declaration, cited above, §§ 27 and 29-32.

[231] See, in particular, the Brighton Declaration, cited above, § 12.a) and b); and the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 17 (including definitions), 96 and 99.

[232] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 114, 131 iv) and 169.iv); and the Comment from the Court on the report of the CDDH on the longer-term future of the Convention system, cited above, § 7.

[233] See the Brighton Declaration, cited above, § 25.d); and the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 20, 113 and 131 iii), for further not-retained proposals in this regard see *ibid.*, §§ 121-125. See equally the Preliminary opinion of the Court, in preparation for the Brighton Conference, cited above, document DD(2012)205E, §§ 13-16 and the change in Rule 72 of the Rules of Court, as of 6 February 2013, stipulating that the Chamber shall relinquish jurisdiction in favour of the Grand Chamber where the resolution of a question raised in a case before the Chamber might have a result inconsistent with the Court's case-law.

[234] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 113; for the Court's view see Comment from the Court on the report of the CDDH on the longer-term future of the Convention system, cited above, § 8. See for the creation, within the Registry, of an internal Knowledge Sharing Platform under the supervision of the Jurisconsult document CDDH(2019)25, § 18.

[235] See the Interlaken Declaration, cited above, preamble; and the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 111; for further not-retained responses outside the existing structures in this respect, notably the institution of an Advocate General, see *ibid.*, §§ 118-120.

[236] See for further information document CDDH(2019)25, § 11.

brief reasons also **for the inadmissibility decisions of a Single Judge**,[237] the Court changed its practice. As of June 2017, applicants, instead of a decision letter, receive a decision of the Court in one of its official languages and signed by a single judge, accompanied by a letter in the applicant's national language. The decision includes, in many cases, reference to specific grounds of inadmissibility.[238] IT tools have been developed within the Court's Registry in order to limit the impact of this change on the Court's case-processing capacity.[239] This measure taken by the Court also contributes to reinforcing the overall coherence of the international system of human rights protection by reducing the risk that the same case is subsequently examined by another international body.

3. The Convention in the European and international legal order

139. In its 2015 report on "The longer-term future of the system of the European Convention on Human Rights", the CDDH had identified the **place of the Convention in the European and international legal order** as one of the areas which were decisive for the longer-term effectiveness and viability of the Convention system.[240] It is currently elaborating a report on this topic, covering the challenge of the interaction between the Convention and other branches of international law, including international customary law, the challenge of the interaction between the Convention and other international human rights instruments to which the Council of Europe member States are parties and the challenge of the interaction between the Convention and the legal order of the EU and other regional organisations. The aim of this work is the preservation of the efficiency of the Convention system against risks of fragmentation of the European and international legal space in the field of human rights protection, stemming from diverging interpretations.[241]

140. An important element for the place of the Convention in the European legal order and the coherence of human rights protection in Europe is the question of the **accession of the European Union to the Convention**. Article 6 § 2 of the Treaty on European Union, as amended by the Lisbon Treaty, provides that the EU shall accede to the ECHR. Along with that, the provision on the EU's accessions to the ECHR is envisaged in Article 59 paragraph 2 of the Convention, as amended by Protocol No. 14. Successive high-level Conferences unanimously stressed the importance of a speedy EU accession to the Convention.[242] The CDDH, in co-operation with the European Commission, elaborated a draft Accession Agreement setting out the modalities of the EU's participation in the ECHR system. In December 2014 the Court of Justice of the European Union (CJEU), in its Opinion 2/13, found, however, that this draft Accession Agreement was not compatible with EU law. Possible solutions to the various

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[237] See the Brussels Declaration, cited above, Action Plan, point A.1.c); and also the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, §§ 111 and 131 iii). See for the grounds given by the Court not to give reasons for decisions indicating interim measures and for refusals of requests for referral of a case to the Grand Chamber (see the Brussels Declaration, cited above, Action Plan, point A.1.d)) The Interlaken process and the Court, 2016 Report, cited above, §§ 16-21 and Appendix II.

[238] See "Securing the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights: the Court's action in 2018-2019", document CDDH(2019)25, § 12 (see also document DD(2019)343-rev). The Court may still issue global rejections in some cases, for example, where applications contain numerous complaints.

[239] See The Interlaken process and the Court, 2015 Report, document DD(2015)1045E, point 3; and The Interlaken process and the Court, 2016 Report of 1 September 2016, § 15.

[240] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 181 and 189.

[241] See DH-SYSC-II(2017)R1, §§ 9 and 13; DH-SYSC-II(2017)R2, § 15(iii); and the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 13 and 203 iii). (*Note by the Secretariat (to be deleted): update the text on adoption of the report*)

[242] See the Interlaken Declaration, cited above, preamble; the Izmir Declaration, cited above, Follow-up plan, point I.; the Brighton Declaration, cited above, § 36; the Brussels Declaration, cited above, point 15; and the Copenhagen Declaration, cited above, § 63.

objections raised by the CJEU in its Opinion are currently being examined by the EU institutions.[243] This is a pressing matter. If accession does not happen soon, there is a risk that two separate bodies of case law will develop with regard to human rights – one in the European Court of Justice and one in the European Court of Human Rights. This would create a new and detrimental dividing line in Europe.[244] The CDDH encourages the Committee of Ministers to reiterate its political support for the accession and to take such action as may be appropriate to avoid any further delay in achieving this important objective.[245]

III. Dialogue of the Court with the actors in the Convention system

141. The Interlaken process as such did not only entail a substantive reinforcement of the exchanges between the Court and the State Parties. Successive high-level Conferences stressed that an increased constructive and continuous dialogue of the Court with the actors in the Convention system was indispensable to enable all to take their respective parts in their shared responsibility in the implementation of the Convention.[246]

1. Dialogue with the national courts and with other international courts and bodies

142. The Court conducts, first and foremost, a judicial **dialogue with the national courts**. Such dialogue takes place, in particular, through the Court's judgments, which may expressly respond to the interpretation of the Convention by the domestic courts in their judgments;[247] the CDDH considered that this dialogue could be further developed.[248] The Court further pursues a dialogue with the national supreme and/or constitutional courts in regular working visits.[249] Moreover, the Court's President meets systematically with senior members of the judiciary during his official visits to States.[250] The Court's judges deliver training sessions notably to national judges in their home States.[251] The Court also continues to receive many groups of judges each year in the context of professional training programmes.[252]

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[243] See for more details on the accession negotiations as well as the risks of a delayed EU accession of the Convention, *inter alia*, the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 177-181, 187 ii) and 193. (*Note by the Secretariat (to be deleted): add a reference to chapter III of the CDDH report on* The place of the European Convention on Human Rights in the European and international legal order *after its adoption*)

[244] See Report by the Secretary General for the Ministerial Session in Helsinki, 16-17 May 2019.

[245] See already the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 190.

[246] See the Brighton Declaration of 19/20 April 2012 of the High Level Conference on the Future of the European Court of Human Rights, point B. 12.c); the Brussels Declaration of 27 March 2015 of the High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility", Action Plan, A.1.; and the Copenhagen Declaration adopted at the High Level Conference in Copenhagen on 12 and 13 April 2018, §§ 33-41.

[247] See Comment from the Court on the report of the CDDH on the longer-term future of the Convention system of February 2016, § 7, in which the cases of *Lambert and Others v. France* [GC], no. 46043/14, ECHR 2015; *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, ECHR 2013; *Kronfeldner v. Germany*, no. 21906/09, 19 January 2012; and *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, ECHR 2011 were cited as examples. See also Preliminary opinion of the Court, in preparation for the Brighton Conference, adopted by the Plenary Court on 20 February 2012, document DD(2012)205E, § 27.

[248] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, § 115.

[249] See for examples of such working visits in the recent years "The Interlaken process and the Court, 2016 Report of 1 September 2016, § 25; and "Securing the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights: the Court's action in 2018-2019", document CDDH(2019)25, § 17.

[250] See "The Interlaken process and the Court, 2014 Report", document DD(2015)74, point 9.

[251] See "The Interlaken process and the Court, 2016 Report of 1 September 2016, § 25.

[252] See document CDDH(2019)25, § 17.

143. In order to reinforce the dialogue with national courts, the Court in October 2015 further launched a Superior Courts Network ("SCN") under the responsibility of its Jurisconsult. The SCN, the creation of which had been welcomed by successive Conferences[253] as well as by the CDDH,[254] developed significantly and in October 2019 numbered 81 superior courts from 38 States. It serves to exchange information on Convention case-law and related matters. The Court, on a dedicated website (the SCN Intranet), provides member superior courts with access to material not in the public domain such as the Jurisconsult's analytical notes on new decisions and judgments as well as research reports on a range of Convention subjects and allows them to ask the Jurisconsult specific questions on Convention case-law. The SCN member courts, for their part, contribute to the Court's comparative law studies as a valued source of knowledge about domestic law and practice.[255]

144. A further additional channel for an increased dialogue with the national superior courts was provided by the entry into force of Protocol No. 16 to the Convention on 1 August 2018, which has also been called "the Protocol of dialogue"[256]. This Protocol allows the highest courts of those Contracting Parties which ratified the Protocol to request the Court to give **advisory opinions on questions of principle** relating to the interpretation or application of the rights laid down in the Convention or its Protocols. It thereby does not only serve to prevent breaches of the Convention at the national level, as shown above,[257] but also to foster the dialogue between the Convention mechanism and the domestic legal orders in the context of concrete cases pending before the respective national courts.[258]

145. In addition to its ongoing dialogue with the national courts, the Court resumed its dialogue in regular meetings with **other international courts and bodies**, which the CDDH had deemed being important,[259] in particular with the Court of Justice of the European Union, the Inter-American Court of Human Rights and the Human Rights Committee of the United Nations.[260]

2. Dialogue with the member States' representatives

146. Throughout the Interlaken process, dialogue between the Court and notably its President and Registrar, and the States Parties was held at the different **high-level conferences** organised since 2010 in Interlaken, Izmir, Brighton, Brussels and most recently Copenhagen, to which the Plenary Court contributed by written Opinions, as well as further high-level expert conferences and seminars on the Convention system.[261]

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[253] See the Brussels Declaration, cited above, Action Plan, A.1.b); and the Copenhagen Declaration, cited above, § 37.b).

[254] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, § 116.

[255] See for further details the Court's webpages on the Superior Courts Network; document CDDH(2019)25, § 16; The Interlaken process and the Court, 2016 Report of 1 September 2016, §§ 23-24; and the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 116 and 131 v).

[256] See the speech of the then President of the Court, Dean Spielmann, at the solemn hearing of the Court on the occasion of the opening of the judicial year, Strasbourg, 30 January 2015, in: "Dialogue between judges, European Court of Human Rights, Council of Europe, 2015", p. 44; and document CDDH(2019)25, § 13.

[257] See chapter A.II.1.(d) above.

[258] See for further details document CDDH(2019)25, §§ 13-16; and the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, §§ 116 and 131 v).

[259] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 193.

[260] See The Interlaken process and the Court, 2016 Report of 1 September 2016, §§ 27-28; and "The Interlaken process and the Court, 2014 Report", document DD(2015)74, point 9.

[261] See on the Court's contributions to and participation in the different high-level conferences in detail the Court's webpages on the Reform of the Court; and on the participation in further conferences, including the Seminar on the

147. As for dialogue regarding proceedings before the Court, the Copenhagen Conference, in particular, identified **third-party interventions** in these proceedings (see Article 36 §§ 1 and 2 of the Convention and Rule 44 of the Rules of Court) as an important way for the States Parties to engage in a dialogue with the Court.[262] The submission of observations by States Parties other than the respondent State in cases before the Court which have been identified as likely to lead to a judgment that may have implications for these States Parties permits a wider legal debate and helps the Court to form a broader understanding of the context of a case and the human rights issues at stake.[263] State interventions may foster a wider implementation of the Court's judgments at national level and in some instances, prompt the Court to clarify its own case-law regarding legal issues of importance to Contracting States. State Parties were encouraged to make more use of third-party interventions and to increase their coordination on them; the Court, for its part, was invited to encourage third-party interventions by providing appropriate information on the status and content of cases which could raise questions of principle.[264] Practical problems stemming in particular from the use of the IMSI procedure may hinder third-party interventions and are being discussed on a regular basis.

148. Successive high-level conferences have also stressed the importance of an ongoing dialogue between the Court and the **Government Agents** who represent the States in the proceedings before the Court.[265] Meetings between the judges of the Court and members of its Registry and the Government Agents have become more frequent during the Interlaken process and currently take place twice a year. In the light of recently evolving working methods of the Court which put in practice the shared responsibility for the Convention system in the procedure before the Court (see, *inter alia*, the immediate simplified communication (IMSI) procedure and the non-contentious phase of the proceedings), it is indeed essential that exchanges on the experiences regarding those new working methods and procedures take place regularly and that the Government Agents are consulted when new working methods are considered.[266] Furthermore, members of the Court's Registry have met with the Government Agent and other relevant interlocutors in the context of specific pilot judgment procedures to discuss ways to achieve compliance with the Convention in relation to a systemic problem.[267]

149. The Court and the **Committee of Ministers** further engage in a dialogue regarding the supervision of the execution of the Court's judgments where the Court in its judgments, often by reference to Article 46 of the Convention, gives indications of relevance for the execution process. The Committee of Ministers, for its part, gives an account of the progress made or of problems encountered in the execution process in its decisions and interim resolutions, which

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occasion of the 20th anniversary of the New Court organised by the Finnish Presidency of the Committee of Ministers on 26 November 2018, document CDDH(2019)25, § 21 and CDDH(2018)R90, §§ 34-35.

[262] See the Copenhagen Declaration, cited above, §§ 34 and 39-40.

[263] See document CDDH(2019)25, § 21; and the keynote speech by the then President of the Court, Guido Raimondi, at the 2017 High-Level Expert Conference in Kokkedal, Denmark, on "2019 and Beyond: Taking Stock and Moving Forward from the Interlaken Process", 22-24 November 2017.

[264] See already the CDDH Final Report on measures that result from the Interlaken Declaration that do not require amendment of the Convention, document CDDH(2012)R74 Addendum II, § 8 v); the Copenhagen Declaration, cited above, §§ 39-40; and also the findings of the Breakout session on increasing third-party interventions by member States at the 2017 High-Level Expert Conference in Kokkedal, Denmark, cited above.

[265] See, in particular, the Brighton Declaration, cited above, point B. 12.c) iii); and the Copenhagen Declaration, cited above, §§ 37.c).

[266] See on these exchanges and the project to set up, in a further step, a working party of Government Agents and the Registry on cooperation in procedural matters, document CDDH(2019)25, § 19.

[267] See the Response of the Court to the "CDDH report containing conclusions and possible proposals for action on ways to resolve the large number of applications arising from systemic issues identified by the Court" of 20 October 2014, § 14; and The Interlaken process and the Court, 2014 Report, document DD(2015)74, point 9.

allows the Court to react to developments.[268] The Committee of Ministers further regularly invites the President of the Court for an exchange of views, for which the Court prepares a report regarding the reforms it has implemented or is giving consideration to as part of the Interlaken process.[269] The Court has been represented in the meetings of the CDDH and its drafting groups, mandated by the Committee of Ministers, in which numerous issues regarding the reform of the Convention system have been examined, by a member of its Registry, contributed to them by written submissions and has regularly issued a view on the final CDDH reports at the invitation of the Committee of Ministers.[270]

3. Dialogue with applicants' representatives and civil society and National Human Rights Institutions

150. All high-level conferences have stressed the importance of consulting notably with civil society and National Human Rights Institutions in the process of the reform of the Convention system in particular in order to ensure an effective national implementation of the Convention.[271] The Court meets on a regular basis with those who represent applicants in the proceedings before it, that is the Council of Bars and Law Societies of Europe (CCBE) and civil society organisations.[272] In line with the CDDH's call to the Court to consider possibilities of cooperation with organisations of legal professions in order to improve the information the latter provide to potential applicants on the prospects of success of an application,[273] the Court also cooperates with the CCBE in the publication and regular updating of a practical guide for lawyers.[274]

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[268] See for further exchanges via different channels, between the Court's Sections and the Department for the Execution of Judgments, for instance the Response of the Court to the "CDDH report containing conclusions and possible proposals for action on ways to resolve the large number of applications arising from systemic issues identified by the Court" of 20 October 2014, § 13.

[269] See, *inter alia*, The Interlaken process and the Court, 2016 Report, cited above; and The Interlaken process and the Court, 2015 Report, document DD(2015)1045E.

[270] See, *inter alia*, the Comment from the Court on the report of the CDDH on the longer-term future of the Convention system of February 2016, in particular § 1; and the Response of the Court to the "CDDH report containing conclusions and possible proposals for action on ways to resolve the large number of applications arising from systemic issues identified by the Court", cited above, *ibid*.

[271] See the Interlaken Declaration, Implementation, point 2; the Izmir Declaration, cited above, Implementation, point 6; the Brighton Declaration, cited above, §§ 4 and 20.g); the Brussels Declaration, cited above, preamble and Action Plan, B.2.a), f) and j); and the Copenhagen Declaration, cited above, §§ 14, 18 and 33.

[272] See, for instance, the Response of the Court to the "CDDH report containing conclusions and possible proposals for action on ways to resolve the large number of applications arising from systemic issues identified by the Court", cited above, § 14; and The Interlaken process and the Court, 2014 Report, document DD(2015)74, point 9. See for proposals made by applicants' representatives, in particular, the CCBE Proposals for reform of the ECHR machinery of 28 June 2019 submitted to the CDDH. Moreover, the Court now consults organisations with experience in representing applicants regarding a proposal to amend its Rules which directly concern the conduct of proceedings (Article 116 of the Rules of Court, see paragraph 125 above).

[273] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 83.

[274] See the applicants' webpages on the Court's internet site for the Guide entitled "European Court of Human Rights – Questions and answers for lawyers". See for more details on the provision of information on the Convention system to applicants already chapter B.I.2.a) above.

C. THE EXECUTION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

151. The Interlaken Declaration stressed that full, effective and rapid execution of the final judgments of the Court is an indispensable element of the Convention system.[275] In view of the critical situation at the time, with notably an increase of the number of pending cases by some 1,000 cases a year since 2005, the Interlaken Declaration expressed the clear conviction that additional measures were indispensable and urgently required in order to ensure full and rapid execution and the effectiveness of its supervision by the Committee of Ministers.[276] This crucial aspect of the Convention system has since been an important part of the Interlaken process.

I. Ensuring domestic capacities for the rapid execution of judgments

1. General developments

152. The achievements of the Interlaken process must be seen in the light of the situation as it stood at the beginning of the process. A major achievement of the pre-Interlaken process was the **development of an efficient framework** for the integration of the Convention and for the judgments of the Court, in particular those directed against the State itself, in national legal systems. Much was also done to improve the situation, notably in the 1990s and 2000s with the incorporation of the Convention into domestic law also in all dualist states, with the result that the Committee of Ministers could note at the Rome Conference in 2000 that the Convention had direct effect in almost all member States[277] and in the series of Recommendations to member States adopted in 2004 that the Convention was now part of domestic law in all member States[278].

153. As regards the judgments of the Court against the State concerned, efforts were deployed both at national and Council of Europe level to ensure the **direct effect of** these **judgments** in national legal practice so that they could be used directly by national courts, prosecutors and other decision-makers in order to speedily adapt their practices to the Convention requirements. References to these efforts also became frequent in the Committee of Ministers' final resolutions and simplified the supervision process. Dissemination and publication of the relevant Court judgments could thus, if the problem revealed by the violation found only related to domestic practices, be the only execution measures deemed necessary. A report from the Committee of experts for the improvement of procedures for the protection of human rights set up by the Council of Europe (DH-PR) to the Rome Conference in 2000 confirmed that the development of the direct effect of the Court's judgments greatly helped to speed up execution.[279] In this vein, efforts were subsequently engaged also to improve the publication and dissemination of the Court's judgments[280] – notably through the Recommendation of the Committee of Ministers CM/Rec(2002)13 to member states on the

[275] See the Interlaken Declaration, point 7.
[276] See the Interlaken Declaration, cited above, PP 9.
[277] See the Report of the Secretary General, European Ministerial Conference on Human Rights (Rome, 3-4 November 2000), document CM(2000)172 (Part. I), part A, § 12.
[278] See a list of the recommendations in the 2017 Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights (Annual Report on execution of judgments), footnote 2.
[279] See document (H-Conf(2000)7).
[280] This has also been regularly highlighted in the Annual Reports, see, for instance, the 2017 Annual Report, Appendix 6, § 13.

publication and dissemination in the member states of the text of the European Convention on Human Rights and the case-law of the European Court of Human Rights.[281]

154. Developments in the course of the Interlaken process have built on these achievements and have notably aimed at reinforcing the status of the Convention, improving domestic remedies and improving further the domestic capacity for the rapid execution of the Court's judgments.[282]

155. The Committee of Ministers' supervision of judgments continues, however, to demonstrate, as do the findings of the Court, that violations established still frequently relate to matters covered by an already existing **well-established case-law** from the Court, although **developed against other States**, which, if it had been taken into account in due time by the national judge, prosecutor or police, could have avoided many violations.[283] The necessity of ensuring that the general principles established in the Court's relevant case-law are taken into account to prevent unnecessary applications is urgent. The Interlaken process has also continuously stressed the necessity of training of law officials in this regard. This consideration appears also to underlie the increasing trend by the Court to consider as WECL (well-established case-law) cases also cases where the well-established case-law has been developed against another State (so-called broader WECL cases, see above)[284].

2. Recommendation (2008)2

156. In order to support the on-going developments, the Committee of Ministers adopted in 2008 Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.[285]

157. In the course of the Interlaken process the implementation of this recommendation has been given considerable attention. A very first general stocktaking of practices was carried out in Tirana in December 2011.[286] The recommendation quickly became an important source of inspiration and the CDDH engaged a new follow-up leading to the conclusion that there was at that stage no need for additional recommendations but rather for a continued implementation of those already made and to that end the CDDH published a guide of good practices in 2017.[287]

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[281] Recommendation CM/Rec(2002)13 to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and the case-law of the European Court of Human Rights, adopted by the Committee of Ministers on 18 December 2002 at its 822nd Session.

[282] The introduction of a right of individual petition to the Turkish Constitutional Court in 2012 to ensure an effective remedy capable of breaking the ever increasing trend of applications to Strasbourg (see the 2013 Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, p. 176) is one example, the interpretation by the Italian Constitutional Court in 2011 introducing a right to the reopening of criminal proceedings in order to give effect to the judgments of the Court (see the Italian Constitutional Court's judgment no. 113 of 04/04/2011) is another.

[283] See e.g. the 2010 Annual Report of the Committee of Ministers on the supervision of the execution of judgments of the European Court of Human Rights, Remarks by the Director General of Human Rights and Legal Affairs, § 8.

[284] See chapter B.I.2.(c) above.

[285] Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies.

[286] See more information about the Round Table on "Efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights" in Tirana, 15-16 December 2011, at: https://www.coe.int/en/web/execution/tirana-domestic-capacity-for-rapid-execution.

[287] See the CDDH Guide to good practice on the implementation of Recommendation (2008)2 of the Committee of Ministers on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, adopted by the Ministers' Deputies at their 1293rd meeting, 13 September 2017, document CM(2017)92-add3final.

158. **Key responses** to the calls made in the recommendation, most developed during the Interlaken process, have been the acceptance of the necessity of rapidly establishing action plans for the execution process, the connected necessity of a national coordinator, improvements in the publication and dissemination of the Court's case-law and also of relevant Committee of Minsters decisions, the development of the information channels with the Committee of Ministers and improved parliamentary involvement.

159. As regards the obligation to **rapidly submit action plans**, to the extent possible with a time-table, it was accepted by the States in 2010 as part of the Committee of Ministers' new working methods.[288] This requirement has been crucial, especially as under the new working methods action plans should be presented as soon as possible and in any event not later than six months after the Court's judgment.

160. Action plans have in general been timely submitted, even if in a number of cases with some delay.[289] The responses foreseen in such situations, mainly reminder letters and increased contacts, have in almost all cases proven sufficient to ensure the presentation of the action plans required. The percentage of action plans delivered any one year only after the sending of a reminder letter has largely remained the same throughout the whole Interlaken process, i.e. between 20-25% without any major trend emerging.[290]

161. The quality of the action plans has globally improved in the course of the Interlaken process. Even if the level of progress is difficult to measure, the presentation of the action plans has been harmonised and efforts have increased to include all relevant data, including wherever possible a tentative time-line.

162. Among the reasons for this progress figure the putting in place of improved coordination structures among State authorities capable of rapidly gathering relevant domestic decision-makers and the improved communication with the Council of Europe Secretariat, notably the DEJ. Most countries have today nominated a **coordinator**, most frequently the Agent of the Government before the Court, responsible for obtaining necessary information and engage necessary concertations / negotiations. A number of training activities have also been organised via the DEJ[291] together with the presentation of a general guide (as part of the vade-mecum mentioned in Recommendation (2008)2 to assist execution).[292]

163. Moreover, in reply to calls made by successive high-level Conferences to consult with civil society on effective means to implement their action plans,[293] several States Parties engaged in a dialogue with the National Human Rights Institutions (NHRIs) already during the preparation of action plans and reports. It recalled that NHRIs can also make submissions to the Committee of Ministers under Rule 9.2 of the Rules of the Committee of Ministers for the

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[288] See the decisions taken during 1100th CM-DH meeting, 2 December 2010, Item e) on "Measures to improve the execution of the judgments of the European Court of Human Rights, Proposals for the implementation of the Interlaken Declaration and Action Plan.

[289] See the Annual Reports of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, available at: https://www.coe.int/en/web/execution/annual-reports; and the the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, §§ 100-102.

[290] See the Annual Reports of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, available at: https://www.coe.int/en/web/execution/annual-reports, notably the summary in the 2018 Annual Report, p. 67.

[291] See, for example, the Round table on "Action plans and reports in the twin-track supervision procedure", Strasbourg, 13-14 October 2014 – press statement available on the DEJ website – "Newsroom".

[292] Also available on the DEJ website, notably via the above page.

[293] See the Interlaken Declaration, cited above, Action Plan, Implementation, point 2; the Izmir Declaration, cited above, Implementation, § 6; and the Brussels Declaration, cited above, Implementation of the Action Plan, point 5.

supervision of the execution of judgments and of the terms of friendly settlements.[294] States have further reported to hold meetings or to establish, where appropriate, permanent bodies to discuss the execution of judgments involving executive and judicial authorities as well as members of parliament and associating, where appropriate, representatives of NHRIs and civil society.[295] Some members States have also informed about measures taken to speed up the submission of action plans, interim information and action reports and to increase the clarity as to the respective roles and obligations of the relevant stakeholders in the execution process.

164. The importance of **guides as to State and Committee of Ministers practice** in execution matters is evident in the preparation of action plans. The Guide to good practice on the implementation of Recommendation (2008)2 has appeared also in other contexts, notably to help overcome the many problems which may arise when paying just satisfaction. The corresponding memorandum on "Monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice"[296] is presently being updated. This will allow to consider the possibility of its upgrading as suggested by the CDDH in the above-mentioned Guide.

165. The very positive experiences as regards the usefulness of this memorandum, and also of the different guides to good practices developed by the CDDH itself, underline the urgency of producing a more comprehensive vade-mecum on the execution process as suggested in Recommendation (2008)2.

166. As regards the **follow-up to the action plans**, including the effectiveness of subsequent dialogue and transmission of information on the implementation of action plans adopted, payment of just satisfaction or other measures to ensure individual redress, a number of problems have emerged.

167. An examination of Committee of Ministers decisions reveals, for example, that the Committee of Ministers is not infrequently in a situation where it has to use its meeting time simply to invite States to furnish information which could easily have been submitted *ex officio* well before the meetings. This would allow the meetings to concentrate on assessments, possible recommendations and guidance.

168. The above problems of information flow are also illustrated by the important growth during the Interlaken process of pending leading cases older than 5 years under standard supervision. These cases are not supposed to relate to more important structural or complex problems and are thus not expected to remain under supervision for longer periods of time. The number of such cases was 168 in 2011, and rapidly grew to 549 in 2016. Since then, the special efforts called for in 2015 in the Brussels Declaration to enhance the cooperation between the DEJ and the national authorities and to ensure an increased information exchange led to a rapid increase of the closure of this type of cases and a first decline in the number of pending cases in 2017 and a decrease to 483 in 2018.[297]

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[294] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, § 57; See also, the Rules of the Committee of Ministers adopted by the Committee of Ministers on 10 May 2006 at its 964th Session, as amended on 18 January 2017 at its 1275th meeting.
[295] See the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, § 80.
[296] Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL), "Monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice", 15 January 2009, document CM/Inf/DH(2008)7-final.
[297] See the 2018 Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, p. 17.

169. National co-ordinators, permanent representations and the DEJ should therefore further develop their communication practices in order to facilitate, to the extent possible, direct information exchanges between the DEJ, the coordinator and relevant national authorities.

170. The Brussels Declaration stressed the importance of affording appropriate means and authority to the Government Agents or other officials responsible for co-ordinating the execution of judgments.[298] The Copenhagen Declaration called upon States Parties to develop and deploy sufficient resources at the national level with a view to the full and effective execution of all judgments.[299] These calls require urgent follow-up. The resource situation of the DEJ, also addressed during the Interlaken process, should also be revisited, as set out below.

171. As regards **effective domestic remedies**, significant achievements have been made during the Interlaken process, in particular in the context of the execution of the Court's judgments. Many applications have thus been resolved or stopped from coming to Strasbourg as a result of the creation of such remedies following judgments of the Court. These were not infrequently pilot judgments, related to major structural problems such as poor detention conditions, excessive length of proceedings and the non-execution of domestic judicial decisions. A number of on-going reforms are also close to completion. Some States have set up or improved general remedies before Constitutional Courts to ensure their effectiveness for Convention purposes during the Interlaken process.[300] In order to assist national authorities in their efforts to improve the effectiveness of remedies, the CDDH prepared a Guide to good practice in respect of domestic remedies, summarising the Convention requirements and good State practice, which was adopted by the Committee of Ministers in 2013.[301]

172. As shown above, the continuously high number of repetitive applications lodged with the Court shows that there is still a need to further improve domestic remedies. This issue should therefore continue to be at the heart of any activity supporting the national implementation of the Convention.[302]

173. The developments as regards other related structures and procedures necessary for the efficient national implementation of the Convention in general, and thus also for the execution of judgments of the Court, are covered by other Committee of Ministers recommendations. These recommendations notably relate to the speedy and efficient publication of both Court judgments against the State itself and of relevant jurisprudence regarding other states, good and independent procedures for assessing the Convention conformity of draft legislation, efficient professional training in the Court's well-established case-law based on an efficient publication practice and the regular examination, after each violation found by the Court, of the effectiveness of available remedies in the area concerned.[303] These issues have already been addressed above.[304]

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[298] See the Brussels Declaration, cited above, Action Plan, point B.2.c).
[299] See the Copenhagen Declaration, cited above,, cited above, § 23.
[300] See for example in Hungary, Lithuania, Serbia and Montenegro and Ukraine; discussions about the introduction of an individual right of petition to the Bulgarian Constitutional Court are on-going.
[301] See the Guide to good practice in respect of domestic remedies, adopted by the Committee of Ministers on 18 September 2013.
[302] See chapter A.II.1.(a) above.
[303] See the list of recommendations in the 2018 Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, p. 20.
[304] See chapter A. above.

3. Development of the role of national parliaments

174. The development of the role of national parliaments in the execution process – over and above their evident role in adopting new legislation wherever necessary – has gained considerable interest during the Interlaken process and a number of recommendations to this effect have been adopted and also followed up.

175. The development of **special parliamentary mechanisms to follow and support execution** in all States was strongly recommended notably in the Resolutions adopted by the Parliamentary Assembly of the Council of Europe in 2015 and 2017 following the 8th and 9th reports of its Committee on Legal Affairs and Human Rights.[305] It is also a major theme in the discussions around the 10th report, presently under preparation. In response, over 20 states, most recently Georgia in 2016, are reported to have set up such a mechanism. Reflections in a number of other countries are continuing. This development should be further supported.

176. PACE has for example called upon the national parliaments of the member States to establish structures guaranteeing follow-up to and monitoring of international obligations in the human rights field, and in particular of the obligations stemming from the Convention. In this context PACE has also recommended that parliaments question governments on progress made in the implementation of Court judgments and demand that they present annual reports on the subject. PACE has also recommended that parliaments devote parliamentary debates to this issue and that they encourage political groups to concert their efforts to ensure execution.[306]

177. One set of further measures organised by the PACE Secretariat in this respect has been to ensure better training of parliamentary legal staff in the requirements of the Convention in general, and those of related to the execution of judgments in particular. So far training sessions have been held with legal staff of some 38 member States (2019).[307]

II. Ensuring an efficient and transparent process of supervision of the execution of judgments by the Committee of Ministers

1. General developments

178. The Interlaken process has provided an **important impetus to improve and adjust the** Committee of Ministers' **supervision process** both to the general trend in Council of Europe activities of increased dialogue and transparency and efficient interaction between monitoring and cooperation activities, and to the special needs of speedier and more efficient execution.

179. Among the very first steps in the process was the adoption of new working methods in 2010, in force as of 2011.[308] The main aim of these was to improve efficiency and transparency, two highly interrelated concepts.

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[305] See, for example, Resolution 2075(2015) of the Parliamentary Assembly on "The implementation of judgments of the European Court of Human Rights", adopted on 30 September 2015; and Resolution 2178(2017) of the Parliamentary Assembly on "The implementation of judgments of the European Court of Human Rights", adopted on 29 June 2017, with further references.

[306] See Resolution 2178(2017) of the Parliamentary Assembly, cited above, point 10.

[307] Project led by the Secretariat of the PACE - Parliamentary Project Support Division (PPSD).

[308] See the decisions taken during 1100th CM-DH meeting, 2 December 2010, Item e) on "Measures to improve the execution of the judgments of the European Court of Human Rights, Proposals for the implementation of the Interlaken Declaration and Action Plan.

2. The new working methods

(a) Efficiency

180. With the new working methods in 2010, the Committee of Ministers introduced a new simple and transparent **prioritisation system** – enhanced and standard supervision. The enhanced supervision, implying detailed examination of progress made whenever necessary, was mainly reserved for inter-State cases, cases revealing important structural or otherwise important complex problems and cases requiring urgent individual measures. Pilot judgments are brought automatically under enhanced supervision. Other cases are dealt with under the standard system with minimum Committee of Ministers intervention. The standard procedure built on the advances made in the national incorporation of the Convention and of the direct effect generally given to Court judgments. These developments made it possible to expect that many cases would not require much guidance or other Committee of Ministers attention to move forward; the DEJ would be able to assist with advice and other assistance.[309]

(b) Transparency

181. Under previous practice, information submitted to the Committee of Ministers was made available to the public only after the relevant Committee of Ministers' Human Rights meeting. As a result, observers of the execution process would only be informed of relevant positions and submissions after the meeting and the adoption of the Committee of Ministers' decisions. With the new working methods, anyone making a submission to the Committee of Ministers is required to indicate at the outset if confidentiality is requested, and if no request is attached to the submission, **publication of submissions** would henceforth be immediate. As a result, it is easy today, notably for national parliaments, State authorities concerned and civil society, to follow the procedures before the Committee.

182. The Committee of Ministers' decisions are published very shortly after the end of each human rights meeting. They are accompanied by press releases and tweets. The further dissemination and, where necessary translations, of these decisions needs, however to be enhanced.

183. Thanks to the new Committee of Ministers' website and the HUDOC Exec publication system, **relevant case documents** are also immediately accessible to the public (even through RSS feeds) as soon as the time-limits foreseen in the Rules of the Committee of Ministers have expired.[310] A not infrequent problem remains, however: the continued absence of generalised good translation of the Committee's decisions and interim resolutions as foreseen in Recommendation (2008)2.[311] It would be helpful to analyse whether the decisions and interim resolutions translated into national languages by member States could be shared by them and published in the HUDOC Exec database.

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[309] After a one-year test period the Committee expressed satisfaction with the new working methods (see decision taken at their 1128th meeting – 2 December 2011) and decided to continue to use them for the future. They have subsequently undergone a number of minor changes, notably to increase transparency by publishing the cases proposed for examination well in advance of relevant meetings. Their present functioning is described in more detail notably in the 2017 Annual Report.

[310] See the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies and amended on 18 January 2017 at the 1275th meeting of the Ministers' Deputies.

[311] See the CDDH Guide to good practice on the implementation of Recommendation (2008)2 of the Committee of Ministers on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, § 7; and the CDDH report on measures taken by the member States to implement relevant parts of the Brussels Declaration, document CM(2019)149, §§ 74 and 112.

184. In view of the interest demonstrated by civil society in execution as a result of the above changes, notably manifested by the creation of the "umbrella organisation" European Implementation Network (EIN), the DEJ has organised a number of trainings for NGOs with a view to enhance the quality of their submissions.[312]

185. The participation in the procedure before the Committee of Ministers is, however, not subject to the same **guarantees** as participation in that before the Court, notably when it comes to guarantees for the confidentiality of correspondence with the Committee and for the safety of applicants, their lawyers or intervening NGOs. This is particularly worrisome in the light of the situation in Europe today, as evidenced notably by judgments of the Court or the execution thereof or through the visits of the Commissioner for Human Rights. The situation led the CDDH to be instructed to carry out a study on the impact of current national legislation, policies and practices on the activities of civil society organisations, human rights defenders and national institutions for the promotion and protection of human rights,[313] leading the Committee of Ministers to adopt a specific Recommendation, CM/Rec(2018)11 to member States on the need to strengthen the protection and promotion of civil society space in Europe.[314] In parallel, the European Committee on Legal Co-operation (CDCJ) has been instructed to examine the need for a European Convention on the profession of lawyer.

186. The question whether applicants should equally be allowed to submit communications on general measures, just as NGOs and as is the case of applicants in the proceedings before the Court, was examined in 2015, but the CDDH did not at the time consider such an extension to be required. The present situation is, however, still a source of concern expressed by the CCBE. A number of governments accept applicants' submission on general measures already today.

(c) Dialogue

187. A further major point is the increase of visible and transparent **dialogue** of the Committee of Ministers **with respondent States**, including notably guidance through decisions and resolutions. Such guidance is given not only as a result of an increase in the number of decisions adopted every year, but also as a result of the quality of the decisions, based on a more transparent and open procedure and providing more detailed and substantiated assessments, recommendations, advice and warnings of different kinds. In 2011, 97 more detailed examinations of cases were made during the Committee's meetings, and in 2018, 122 (with a peak of 157 in 2017).[315] Decisions have also stressed more than before the support offered to member States through the Council of Europe's cooperation programmes and the expertise developed by monitoring bodies and through intergovernmental co-operation programmes. In the cases under enhanced supervision this dialogue needs to be vigorously pursued and further developed, notably in those revealing major structural problems so as to effectively limit the number of repetitive applications to the Court by ensuring the speedy putting in place of effective domestic remedies.

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[312] See, for example: http://www.einnetwork.org/blog-five/2018/10/19/ein-delivers-first-thematic-training-for-ngos-on-ecthr-judgment-execution.

[313] This work was conducted by the Drafting Group on civil society and national human rights institutions (CDDH-INST) during the biennium 2017-2018. See notably the CDDH Analysis on the impact of current national legislation, policies and practices on the activities of civil society organisations, human rights defenders and national institutions for the promotion and protection of human rights, document CM(2017)92-add5final (= CDDH(2017)87 Addendum IV).

[314] Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe was adopted by the Committee of Ministers at the 1330th meeting of the Ministers' Deputies, on 28 November 2018.

[315] See the 2018 Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, E.1., p. 67.

188. As part of its efforts to improve its dialogue with the States, the Committee of Ministers decided on 16 January 2013 to better highlight positive national developments. As a consequence, it has improved the presentation of such developments in the annual reports as from 2014 and adopted a systematic approach of so-called "**partial closures**"[316]. These allow the Committee to close groups of cases related to a common problem to highlight progress made (to the extent the problems at issue are at the heart of the cases closed and that remaining issues can continue to be examined in the context of the remaining cases in the group). Earlier practices kept all cases relating to a certain general problem on the agenda until the problem was solved, thus preventing speedy and visible positive feedback as reforms progressed. The partial closure practice was further developed in 2017 and 2018 to encompass also all repetitive cases where individual measures had been adopted so as to allow also positive feedback in this respect.[317] Even if the new practices initially lead to certain "traceability problems" (successive changes of the names of groups), the general reception of this effort to provide speedier and more nuanced feedback has been very positive.

189. The dialogue engaged by the Committee is followed up and supplemented by the DEJ (especially in cases under standard supervision which only rarely come before the Committee). In the context of this dialogue, the DEJ may offer different forms of assistance to States, notably to allow **sharing good practices** between them. Numerous conferences have thus been held during the Interlaken process to allow States to share experiences as regards the drafting of action plans, the reopening of judicial proceedings, the handling of big structural problems such as non-execution of domestic judgments, poor conditions of detention, unreasonably lengthy trials or prevention of abuses by security forces. The different comparative studies carried out by the CDDH over the last years have notably been important tools and so has the special CDDH website dedicated to the reopening of proceedings.[318]

(d) Synergies

190. The increased dialogue and transparency in the Committee of Ministers' procedures must be seen in the light of an increasing awareness that execution is a **shared responsibility** between many – well highlighted at the Brussels Conference.[319]

191. For synergies to be developed, the positions of the Committee of Ministers, the body responsible for execution supervision under the Convention, must be disseminated in such a way as to be rapidly known by the other stakeholders and sufficiently clear and precise to provide the necessary guidance. This has rightly been considered as essential in Recommendation (2008)2.

192. Measures to promote synergies between the different stakeholders at the Council of Europe level were equally taken, such as the debate held in June 2017 in the Committee of Ministers on the Annual Report 2016 with participation of all Council of Europe departments concerned.[320]

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316 See e.g. the Remarks by the Director General of Human Rights and Rule of Law in the 2017 Annual Report.
317 See the 2017 Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, pp. 14, 55.
318 See the website at: https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/echr-system/implementation-and-execution-judgments/reopening-cases.
319 See the Brussels Declaration, cited above.
320 See the 2017 Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, p. 12.

(e) Subsidiarity

193. The Interlaken process has laid great weight on the **principle of subsidiarity**. The importance of this principle also for the execution process was stressed from the outset, notably in the context of the States' freedom of choice as to the means to be employed to ensure execution of the Court's judgments and decisions. In the light of the positive results obtained, the Brussels Conference welcomed the new 2010 working methods of the Committee of Ministers for the supervision of the execution of the Court's judgments as these had, strengthened the principle of subsidiarity.[321] As shown above, they expressed considerable trust in the national decision-making procedures both through the action plan system and the twin-track procedure, allowing large state autonomy in handling ordinary cases.

(f) Tools

194. To allow it to live up to the expectations in the best possible way, the Committee of Ministers, in the course of the Interlaken process, has looked closely also into the **"toolbox" of means to ensure timely execution** in 2013, building on the two earlier exercises before the Committee itself in 2003-2004 and before the CDDH in 2008. The first results of this examination were published in the Annual Report 2013.[322] Taking into account further comments by the CDDH and the Court, the issue and necessary responses eventually became part of the Brussels Declaration and the ensuing follow-up to that declaration.

195. Among key tools figure the role which the Committee of Ministers can play in providing political impetus trough evaluations, criticisms and suggestions, whilst at the same time offering different forms of support, usually in the form of expert advice or cooperation activities or programmes offering training and legal expertise. The Council of Europe Development Bank may also assist in ensuring financing of deserving projects, example the replacement of old and dilapidated prisons with new ones.

196. The period of the Interlaken reform process has also seen a first use of the infringement procedure.[323] The consequences of this procedure remain to be further elucidated. A first test will be the effect given by the respondent state to the first "infringement judgment".[324] One may note, however, that the Committee has stressed on several occasions that respect for the binding nature of the judgments of the Court is a condition for membership in the organisation[325] and/or that non-respect of the judgments is in flagrant conflict with the State's international obligations, both as a High Contracting Party to the Convention and as a member State of the Council of Europe[326]. During the discussions on the longer-term effectiveness of the Convention

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321 See the Brussels Declaration, cited above, point 6.

322 See the 2013 Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, pp. 12 and 170-176.

323 See *Ilgar Mammadov v. Azerbaijan (infringement proceedings)* [GC], no. 15172/13, 29 mai 2019.

324 The Committee of Ministers, at their 1355th meeting (23-25 September 2019) (DH), took note of the updated action plan submitted by the respondent Government in respect of the case in question and of the concrete individual and general measures envisaged therein, see document CM/Del/Dec(2019)1355/H46-2.

325 See the Interim Resolution CM/ResDH(2007)106 concerning the judgment of the European Court of Human Rights of 8 July 2004 [GC] in the case of Ilaşcu and others against Moldova and the Russian Federation, adopted by the Committee of Ministers on 12 July 2007 at the 1002nd meeting of the Ministers' Deputies, document CM/ResDH(2007)106.

326 See e.g. the Interim resolution CM/ResDH(2014)185, Execution of the judgments of the European Court of Human Rights in the cases Varnava, Xenides-Arestis and 32 other cases against Turkey, adopted by the Committee of Ministers on 25 September 2014 at the 1208th meeting of the Ministers' Deputies, document CM/ResDH(2014)185.

system, strong objections were raised to the idea of financial sanctions for non-implementation of the Court's judgments by the Respondent State.[327]

(g) Resources

197. The **reinforcement of the DEJ** requested at the Brussels Conference was rapidly obtained and echos so far are that this has been very helpful in developing good communication and dialogue with relevant domestic authorities, in particular with the coordinator offices. However, in view of the necessity of a further improved execution the needs of the DEJ appear to require a renewed assessment. That being said, the experience of reinforcement in the form of secondment of experienced lawyers/judges to the DEJ is positive, and the number of seconded persons has also increased during the reform process. Experience suggests that such secondments should preferably last two years or more because of the nature of the work in the DEJ.

3. Challenges

198. The CDDH's report on the longer-term future of the Convention system of 2015 indicated that the main problems encountered in the execution of the Court's judgments and requiring long-term action were the absence of political will and technical reasons linked to the complexity of execution measures required or their financial implications.[328]

199. The CDDH thus concluded that there was a necessity of finding ways and means of supplementing the technical support offered with a suitable political lever and that there was a need to further enhancing the procedures for the implementation of judgments related to large-scale violations committed in the context of complex problems that call for political solutions and peaceful settlement.[329]

200. These conclusions have been largely endorsed and further developed in the Committee of Ministers' subsequent Annual Reports. Challenges identified in the reports included also a slow or blocked execution because of disagreement between national institutions, or amongst political parties, as regards the substance of reforms required and/or the procedure to be followed. Moreover, problems arose in case of absence of a common understanding as to the scope of execution measures required following developments of the Court's case law, e.g. as regards the scope of obligations in situations where a state exercises jurisdiction without territorial control as compared to situations where such control is exercised. Finally, the refusal to adopt individual measures required or to pay just satisfaction awarded can often be an indicator of fundamental disagreements with the conclusions of the Court in the judgments at issue.

201. As indicated in subsequent Annual Reports, considerable efforts have been made in the context of the supervision process to increase the synergies with the Council of Europe's co-operation activities and available expertise, especially in response to major structural or otherwise complex problems. The exchange of experiences through the organisation of thematic debates (in 2018 on detention conditions and in 2019 on effective investigations into actions of law enforcement authorities) can be highlighted here.

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[327] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights" adopted on 11 December 2015, § 168.
[328] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, notably § 195 iii).
[329] See ibid., § 203.

202. As regards more political issues, considerable efforts to engage necessary dialogues have also been made.[330] The Chairs of the 2018 Human Rights meetings also underlined that these situations require intensive discussions and consultations, including at the highest levels, or the involvement of actors from outside the Council of Europe. They noted that it was to be welcomed that in no case the dialogue broke off, so that efforts to find solutions continue. However, these situations also require significant political and material investment, and may call for confidence-building and cooperation activities. They added that problems related to Europe's "grey zones" or "unresolved conflict zones" continue to require the greatest attention, including questions linked with Council of Europe access to such zones.[331]

4. Measures to deal with repetitive cases

203. The **handling of repetitive cases** has been an important concern during the Interlaken process. As shown above, a number of proposals have been examined by the CDDH. One concerned the interest of introducing a representative application procedure before the Court in the event of numerous complaints alleging the same violation against the same State.[332] Another concerned possible new means to resolve large numbers of applications resulting from systemic problems.[333] On this issue the CDDH underlined the importance of respondent States ensuring full, prompt and effective execution, in full co-operation with the Committee of Ministers. It stressed in this connection that, besides the new possibilities offered by Protocol No. 14, recent experience showed the powerful impact of carefully designed domestic remedies to handle such situations as these allowed the settlement of repetitive applications at the national level. Ensuring the effectiveness of domestic remedies has also been the main avenue pursued by the Committee of Ministers in the context of its supervision of execution.

204. The potential of well-designed **pilot judgment procedures** to handle the problem of repetitive cases was also noted in the Committee of Ministers' Annual Reports as confirmed in the context of the execution of many pilot judgments which managed to settle tens of thousands of applications with the help of newly created domestic remedies.[334] To secure these results, the Committee has consistently put pilot judgments immediately on the agenda to ensure that necessary action plans are developed – and also before the expiry of deadlines set – in order to ensure that necessary results have been achieved. The main exception so far has been the *Yuriy Nikolayevich Ivanov v. Ukraine* pilot judgment (in a group of cases today frequently referred to as the *Burmych* group following the Court's decision in 2017 to send some 12,000 cases back to the Committee of Ministers to ensure a Convention- compliant solution). The current situation in this regard is regularly supervised by the Committee. The development and the consequences of this novel approach to the ineffective execution of pilot judgments should be monitored.[335]

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[330] See e.g. the Annual Report 2017, p. 10 (Introduction by the Chairs of the HR meetings) and pp. 13 and 15 (Remarks by the Director General of Human Rights and Rule of Law).

[331] See the 2018 Annual Report of the Committee of Ministers, cited above, pp. 7-9.

[332] See the CDDH report on the advisability and modalities of a "representative application procedure", document CM(2013)33 (= CDDH(2013)R77 Addendum IV); and chapter B.I.5.(c) above.

[333] See the CDDH report containing conclusions and possible proposals for action on ways to resolve the large numbers of applications arising from systemic issues identified by the Court, document CM(2013)93 add6 (= CDDH(2013)R78 Addendum III). See also the specific website dedicated to this work: https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/work-completed/states-obligations-and-domestic-remedie#{%2230157570%22:[0]}.

[334] See the Annual Reports of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, available at: https://www.coe.int/en/web/execution/annual-reports.

[335] In its latest decisions, the Committee of Ministers (DH) regretted the lack of further tangible action in adopting the relevant institutional, legislative and other practical measures for the execution of *Yuriy Nikolayevich Ivanov*, *Zhovner* group and *Burmych and Others v. Ukraine* (applications nos. 40450/04, 56848/00 and 46852/13) and reiterated that

205. It is noted, however, that the number of "Article 46 judgments" (i.e. judgments containing recommendations as to different execution issues) delivered by the Court, and especially of pilot judgments, has decreased considerably in the last few years. 2018 saw for example only 9 "Article 46 judgments" and no pilot judgment notwithstanding continuously high numbers of execution processes under enhanced supervision because of the important structural or complex problems revealed. The question whether there is any link between this trend and the new non-contentious procedure before the Court to settle certain types of repetitive cases merits further attention.

206. The *Ivanov* pilot judgment procedure illustrates an important side-effect of the handling of repetitive cases in a more and more simplified manner. The traditional fact-finding made also in repetitive cases has frequently been important in identifying the root causes of major long-standing systemic problems.[336] A further issue relates to the possibility of ensuring adequate individual redress. A number of findings of violations require a presentation of the relevant facts and of the legal reasoning to allow domestic authorities to provide, at the execution stage, relevant redress, for instance in cases of unfair civil or criminal trials.

III. Developing interaction with other stakeholders

207. The interaction with other stakeholders is largely built on efficient information exchanges and a strong commitment on the part of all to contribute, each stakeholder within its competences, to successful execution – a shared responsibility as the matter was put in Brussels in 2015.

1. The Court

208. The interaction between the Committee of Ministers and the DEJ and the Court and its Registry is complex and sensitive because of the necessary separation of powers between the judiciary and the executive. The main avenue has therefore been to improve information exchange to allow each entity to perform its tasks in full knowledge of the relevant facts.

209. The Committee of Ministers' general efforts to increase transparency in the course of the Interlaken process has thus made it easier for the Court and the Registry to follow progress made in the execution of individual cases/groups of cases and was also supplemented by more regular contacts between the DEJ and Sections of the Court and the Registry. The improved information flow was also used in many pilot judgments and so-called "Article 46 judgments", allowing timely Court interventions in a number of ongoing execution processes.

210. The adoption of new working methods by the Court also involves certain execution-related aspects which are currently being discussed between the DEJ and the Registry.

2. The Parliamentary Assembly

211. The Parliamentary Assembly has taken a keen interest in the execution of the Court's judgments since 2000 and is presently (September 2019) preparing its 10th report on the implementation of judgments of the Court. The work of the Assembly has always been fully synchronised with the Committee of Ministers' requirements as these have appeared in

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the delay in the full implementation of general measures raises serious concern in view of the deadline set by the Court of 12 October 2019, see the Committee of Ministers' decisions adopted at the 1355th meeting, 23-25 September 2019 (DH), CM/Del/Dec(2019)1355/H46-28, § 7.

[336] The limited amount of such information in the *Burmych* group led the DEJ to establish a special cooperation programme with the Human Rights Trust Fund's support, engaging outside experts, to investigate the root causes of the massive problem of non-execution of domestic court judgments at issue in the group.

decisions and interim resolutions and has also profited from the improved information as regards the Committee of Ministers' supervision of execution.

212. The Assembly makes an important contribution to execution and has unique tools as it reaches out directly to the parliaments in the member States. It can thus add an important dimension of support for execution.

213. The main additional contributions in the course of the Interlaken process, which have been shown above but are clearly inspired by the Assembly, have been of a different nature. There is first a major effort to ensure that parliaments get more involved, where appropriate, in the domestic control of the progress of in the execution of judgments, for example by requiring that governments regularly report on progress made in the execution processes, by setting up special committees or by parliamentary questions. Secondly, increased training is provided to improve the knowledge of the legal advisers of the parliaments in Convention matters, including as regards the execution of the Court's judgments and the requirements of Article 46. Both these additional efforts are welcome and supplement well the regular reporting on the progress of execution in individual cases. They ought therefore to be pursued.

3. The Commissioner for Human Rights

214. The office of the Human Rights Commissioner has over the years become more and more interested in execution and in assisting execution. This trend has been very visible during the Interlaken process and many country visits and reports have been used to support and assist execution. The findings of the Commissioner have at the same time been valuable contributions to the Committee of Ministers' supervision process and numerous decisions attest to the weight which the Committee attaches to these findings. The Commissioner's prestige and freedom of action are major assets for the system and in 2017 the Commissioner was also formally recognised the right to intervene directly before the Committee of Ministers in specific execution processes. So far the Commissioner has no used this right.

4. Co-operation activities

215. The importance of co-operation activities has been consistently stressed and the Brighton Conference notably encouraged all States Parties to make full use of technical assistance, and to give and receive upon request bilateral technical assistance in a spirit of open co-operation. In this spirit, a number of initiatives have been taken.

216. There has notably been a major effort within the Council of Europe Secretariat to ensure better communication between DEJ and those responsible for cooperation programmes in order to ensure that synergies are fully exploited. Results have been evident in the design and implementation both of major country action plans and other more targeted cooperation programmes. The management of programmes directly linked with human rights, the rule of law and the Convention has also been cared for directly by the Directorate General of Human Rights and Rule of law, which has further facilitated speedy interaction to allow full use of synergies. The contribution of the Human Rights Trust Fund has also been an important support through its speedy capacity to set up programmes in reaction to urgent needs. In the same vein there has also been an increase in the DEJ's capacity to provide speedy assistance.

217. These developments have been strongly supported during the Interlaken process, notably by the Secretary General. In this vein, the Committee of Ministers has itself started to invite, more frequently, States to avail themselves of the assistance available within the Council of Europe, be it expert advice, training or even funding though the Council of Europe Development Bank.

218. This being said, the Copenhagen Declaration called on the States Parties to take further measures when necessary to strengthen the capacity for effective and rapid execution of judgments at the national level, including through the use of inter-State co-operation. It further invited the Committee of Ministers to consider the need to further strengthen the capacity for offering rapid and flexible technical assistance to States Parties facing the challenge of implementing Court judgments, in particular pilot judgments.[337]

[337] See the Copenhagen Declaration, cited above, §§ 23 and 25.

GENERAL CONCLUSIONS

219. As the Interlaken process approaches its end there is general agreement about the Convention system's continued vital importance for Europe. In 2018, the Copenhagen Declaration stressed the extraordinary contribution the Convention system has made to the protection and promotion of human rights and the rule of law in Europe since its establishment and the central role it plays today in maintaining democratic security and improving good governance across the continent.[338] It also reaffirmed the strong attachment of State Parties to the right of individual application to the Court as a cornerstone of the system for protecting the rights and freedoms set forth in the Convention.[339]

220. The Interlaken reform process, backed by the effects of Protocol No. 14 which entered into force at the same time the process was launched, has been crucial for the system and has led to significant advances, which also bode well for the system's capacity to meet new challenges and to consolidate and further develop the progress made.[340] The necessity of a new major revision of the system is therefore not apparent. In the light of subsequent developments, the CDDH sees no reason to depart from its assessment made in 2015 that the current challenges the Convention system is facing can be met within the existing framework.[341] What appears important is rather to allow the Convention system as it has emerged from the Interlaken process and Protocol No. 14, provided with sufficient resources which the States Parties have committed themselves to provide,[342] to demonstrate fully its potential. Further reform has led to the adoption of Protocol No. 15 which has not yet been adopted by all member States,[343] as well as Protocol No. 16. It should be noted that securing the long-term effectiveness of the Convention system is an ongoing work that requires the full commitment and continued efforts of all parties concerned.

Implementation of the Convention at the national level

221. During the Interlaken process, notable progress was made in a number of areas relevant for improving the national implementation of the Convention. The accessibility of the Convention standards in the member States has been improved by increased translations of significant judgments of the Court, summaries thereof and other information documents into the national languages. Furthermore, training on the Convention standards is increasingly provided by many different actors in the Convention system and becomes more and more targeted to the needs of different legal professionals and law enforcement officials. These measures should continue to be taken and enhanced by member States.

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[338] See the Copenhagen Declaration, cited above, § 2. See equally the Decisions adopted on 17 May 2019 at the 129th Session of the Committee of Ministers in Helsinki on "Securing the long-term effectiveness of the system of the European Convention on Human Rights, document CM/Del/Dec(2019)129/3, point 1.

[339] See, *inter alia*, the Copenhagen Declaration, cited above, §§ 1 and 48.

[340] See also the Committee of Ministers' Report on securing the long-term effectiveness of the system of the European Convention on Human Rights for its 129th Session in Helsinki (16-17 May 2019), document CM(2019)70-final, § 42; the Copenhagen Declaration, cited above, § 4, and the Introduction by the Chairs of the Committee of Ministers' Human Rights meetings in the Committee of Ministers' 12th Annual Report on the Supervision of the Execution of Judgments and decisions of the European Court of Human Rights 2018, p. 7..

[341] See the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, Executive summary and § ; this assessment was and is shared by the Court, see the Comment from the Court on the report of the CDDH on the longer-term future of the Convention system of February 2016, § 4 and document CDDH(2019)25, § 44.

[342] See for the States Parties' commitment to taking all necessary steps to ensure the Convention system's effective functioning, including by ensuring adequate funding, the Copenhagen Declaration, cited above, § 4.

[343] See paragraph 82 above.

222. Regarding concrete measures to be taken by the national authorities to comply with the Convention, measures are now in place in a number of member States to verify the compatibility of draft legislation with the Convention standards. As a follow-up to the work already done the CDDH/DH-SYSC could gather information on best practices including on "compatibility guidelines" for legislators already developed by some States. More consideration should still be given to the general principles developed by the Court in the case-law concerning other States. Domestic courts increasingly take account of the Court's developing case-law and apply the Convention directly. National courts of the member States which have ratified Protocol No. 16 to the Convention can engage in a direct dialogue with the Court by requesting it to give an advisory opinion on a Convention-related question. The effects of this Protocol, which entered into force in August 2018, on the effective national implementation of the Convention, the relationship between national courts and the Strasbourg Court and the latter's workload remain to be evaluated.

223. However, despite considerable efforts undertaken by member States in order to improve the implementation of the Convention at the national level, and despite the above-mentioned progress made, the national implementation of the Convention still remains one of the principal challenges facing the Convention system.[344] In particular, notwithstanding the successful creation of domestic remedies in a number of States and the ensuing reduction in the Court's workload, there is still a need to further improve their functioning. The creation of effective remedies and improvement of existing remedies in line with the Convention standards should therefore remain at the heart of activities supporting the national implementation of the Convention.[345] Furthermore, although independent National Human Rights Institutions have been established in a majority of member States, appropriate conditions should be ensured for them to carry out their activities and play their role independently and without undue obstacles.

224. The national implementation of the Convention, in accordance with the principle of subsidiarity and the margin of appreciation subject to the supervisory control of the Court, would also be further strengthened by the ratification, by the two States which have not yet done so,[346] of Protocol No. 15 to the Convention,[347] as well as by the Council of Europe's cooperation activities.

The Court's situation

225. As regards the situation of the **Court** at the end of the Interlaken process and in particular the number of applications pending before it, it was acknowledged in the Copenhagen Declaration that since the beginning of the Interlaken process, the Court has managed to reduce the number of applications pending before it considerably despite a continuously high number of new applications.[348]

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[344] See for this assessment already the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 34; and also the Comment from the Court on the report of the CDDH on the longer-term future of the Convention system of February 2016, § 3; and recently the Copenhagen Declaration, cited above, § 12.

[345] See chapter A.II.1.(a) above for further references.

[346] See the Website of the Treaty Office for the chart of signatures and ratifications of Protocol No. 15. On 18 October 2019, Bosnia and Herzegovina and Italy had both signed, but not yet ratified that Protocol.

[347] See the Decisions adopted on 17 May 2019 at the 129th Session of the Committee of Ministers in Helsinki on "Securing the long-term effectiveness of the system of the European Convention on Human Rights, document CM/Del/Dec(2019)129/3, point 5; and document CDDH-BU(2019)R101 Addendum of 12 June 2019, § 25.

[348] See the Copenhagen Declaration, cited above, §§ 43-44 and 49; and also document CDDH-BU(2019)R101 Addendum of 12 June 2019, § 23.

226. It is to be welcomed that the Court successfully streamlined the procedures before it. Having cleared the backlog of Single-Judge cases, it continuously filters out clearly inadmissible applications, ensures that applications raising issues which are the subject of well-established case-law of the Court take less judicial time and started to apply a number of new procedural tools allowing to deal more efficiently also with non-repetitive cases.[349] It is of utmost importance to regularly assess the functioning of new working methods.

227. While some further procedural changes regarding access to Court and a sound administration of justice were laid down in Protocol No. 15 to the Convention (see above), it is to be noted that during the reform process, a large number of possible, partly far-reaching changes to the procedure before the Court were analysed by the CDDH, but not retained in the end. This reflects its assessment that the challenges the system is faced with are best addressed within its current framework.

228. The Interlaken process further saw a considerable expansion of the information made available to applicants on the scope of the protection provided by the Convention, also in national languages, in order to further facilitate an informed decision on whether to submit an application or not.

229. Despite this, and as evidenced in the above analysis of the Court's backlog, the Court's caseload still gives some cause for concern[350], also in view of its impact on the length of proceedings. It discloses two major remaining challenges: the reduction of the continuously high number of repetitive applications and the reduction of the high number of (priority or non-priority) non-repetitive, potentially well-founded Chamber cases.

230. As regards the backlog of repetitive cases, further efforts are necessary by all actors in the Convention system. While recognising the important efforts and progress made by a number of States Parties, they should ensure a better implementation of the Convention at the national level, including by a speedy execution of the Court's judgments. They should notably ensure that effective domestic remedies are created as soon as possible where systemic problems arise. Just as the Court, in cooperation with the Government Agents, the Department for the Execution of Judgments of the Court should continue striving to optimise its working methods in order to handle this group of cases. Subject to the necessary resources, the latter should carry out further targeted assistance programmes aimed at helping States Parties to implement Court judgments disclosing systemic or large-scale problems.[351]

231. As for the backlog of non-repetitive, potentially well-founded cases which are particularly important for the development of the Convention system as they often raise new issues regarding the interpretation and application of the Convention, the Court should be encouraged to continue its efforts to streamline its procedures in cooperation with the Government Agents. However, it must be taken into account that this group of cases is, as a rule, not suitable for a grouped or more summary treatment. As has repeatedly been stated during the Interlaken process, the necessary resources need to be made available to the Court to deal with the

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[349] See document CDDH(2019)12 (Estonia, United Kingdom). For some concerns regarding the new procedures adopted by the Court see chapter B below.

[350] See the Copenhagen Declaration, cited above, §§ 43-44 and 49; and document CDDH-BU(2019)R101 Addendum of 12 June 2019, § 23.

[351] See already the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 130 iv); document CDDH(2012)R74 Addendum II, § 8; document CDDH-BU(2019)R101 Addendum, § 24; and also the Preliminary opinion of the Court, in preparation for the Brighton Conference, cited above, document DD(2012)205E, § 35; and the Comment from the Court on the report of the CDDH on the longer-term future of the Convention system of February 2016, §§ 3-4.

backlog of this group of cases while ensuring the quality of the judgments and decisions delivered.[352]

232. The above holds particularly true for inter-State applications as a result of their particular complexity. The CDDH takes the view that the issue of more efficient processing of such applications requires a more in-depth examination. It therefore considers it useful that the CDDH / DH-SYSC conduct work facilitating proposals to ensure the effective processing and resolution of cases relating to inter-State disputes as well as individual applications arising from situations of conflict between States, without thereby limiting the jurisdiction of the Court, taking into account the specific features of these categories of cases, *inter alia* regarding the establishment of facts, in the next biennium.

233. The backlog situation of the Court in the above areas and the effectiveness of the measures taken should be evaluated by the Court in cooperation with member States.

234. In order to strengthen the authority of the Court by safeguarding its independence and by attracting persons of the highest calibre, the CDDH suggests that the Committee of Ministers adopt a Declaration underlining both the importance of preventing disguised reprisals against former judges at the end of their mandate and of former judges being able to find again an adequate post in their country and to have their service at the Court appropriately recognised, respecting at the same time the diversity of the constitutional systems in the member States.

235. It is further of the utmost importance to ensure that the independence of the Court and the binding nature of its judgments are respected by all the actors of the Convention system.[353]

236. The reform process finally showed the importance of granting applicants and their representatives who lodge applications with the Court protection from reprisals where necessary.

237. The CDDH further encourages the Committee of Ministers to reiterate its political support for the accession of the European Union to the Convention.

Execution of the Court's judgments

238. As regards the **execution of the Court's judgments**, the overview of measures adopted in the course of the Interlaken process above has pointed to considerable progress in ensuring both the full, effective and rapid execution of the Court's judgments at the domestic level and also more effective and transparent supervision thereof by the Committee of Ministers. The supervision process demonstrates the system's capacity to help member States in overcoming problems of many different kinds in a Convention-compliant manner and to maintain the mutual trust necessary for good inter-State cooperation.[354]

239. The assistance provided by the Council of Europe – whether in the form of peer advice and pressure in the Committee of Ministers, as supplemented by the activities of the Department for the Execution of Judgments and the possibilities of further support through

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[352] See already CM(2012)39-add1 (= CDDH(2012)R74 Addendum I), cited above, §§ 35-36; the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, Executive summary and §§ 76 vi), 81-82 and 130 ii) and iii); and CDDH-BU(2019)R101 Addendum, § 30; this assessment is shared by the Court, see, for instance, The Interlaken process and the Court, 2016 Report, cited above, § 13.

[353] This has recently been stressed by the Committee of Ministers in its Report on securing the long-term effectiveness of the system of the European Convention on Human Rights for its 129th Session in Helsinki (16-17 May 2019), document CM(2019)70-final, § 43.

[354] See the Committee of Ministers' 12th Annual Report on the Supervision of the Execution of Judgments and decisions of the European Court of Human Rights 2018, p. 7.

cooperation programs or advice from expert bodies, to solve many important structural and complex issues revealed by the judgments of the Court – has been crucial for the improvements made in the context of the Interlaken process. The further development of such programs and activities, including those of the Department, well synchronised with the domestic needs, as these become revealed by the Court's judgments and the Committee of Ministers' supervision of their execution, is greatly needed. The same is true for a further development of joint programmes between the Council of Europe and the European Union, in order to contribute to an increased protection of human rights, rule of law and respect for basic principles of democracy, including in the member States of the European Union.

240. That being said, the Committee of Ministers' Annual Reports on the supervision of the execution of the Court's judgments have also hinted at a number of continuing challenges. These correspond largely with those identified by the CDDH[355] in its 2017 Guide to good practice on the implementation of Recommendation CM/Rec(2008)2 of the Committee of Ministers on efficient domestic capacity for rapid execution of judgments of the Court. It is accordingly necessary to reinforce the support and authority of the national co-ordinator for the execution of judgments and of his/her actions and ensure their follow-up. Furthermore, new coordinated strategies of action at high level should be developed and more generally the synergies between all those involved should be enhanced so as to ensure the timely submission of comprehensive action plans and their implementation. Likewise, there is a need for clarity and awareness of the relevant national actors regarding their respective roles and responsibilities in the execution process. The difficulties in interpreting certain judgments for the purposes of identifying the measures required, or possible practical obstacles regarding the payment of just satisfaction have to be overcome. In addition, the CDDH's conclusion in 2015, that it was necessary to reinforce the search for ways and means to supplement the technical support available with suitable political levers, where appropriate by working closely with other international actors, appears despite efforts made, not to have lost any of its relevance.[356]

241. Moreover, the reticence on the part of the judiciary has to be alleviated and the interest of members of Parliament in the execution of the Court's judgment be increased. Furthermore, the transparency and accessibility of the work of the Committee of Ministers should be increased (for example by the translation and the dissemination of relevant decisions, including by means of the HUDOC Exec database). Finally, there was a need for an appropriate political lever underpinning technical solutions.[357] A number of activities are currently ongoing in all the areas mentioned above, as the case may be by the Committee of Ministers, the Secretary General, the Court, and the relevant services of the Council of Europe's Secretariat in order to improve the situation. The recent session of the Committee of Ministers in Helsinki in expressed the clear political will of all States to continue the efforts under way.[358]

242. Furthermore, as regards the supervision of the execution of judgments there is a need to continuously develop working methods, cooperation and information exchange between the national authorities and the Department for the Execution of Judgments. Finally, the resource situation of the Department for the Execution of Judgments should also be kept under review.

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[355] See the "Guide to good practice on the implementation of Recommendation CM/Rec(2008)2 of the Committee of Ministers on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights", document CM(2017)92-add3final (= CDDH(2017)R87 Addendum I), § 7.

[356] See document CM(2017)92-add3final (= CDDH(2017)R87 Addendum I), cited above, §§ 7-8; and also the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 155.

[357] See document CM(2017)92-add3final (= CDDH(2017)R87 Addendum I), cited above, §§ 7-8; and also the CDDH Report on "The longer-term future of the system of the European Convention on Human Rights", cited above, § 155.

[358] See the Committee of Ministers' decisions on Securing the long-term effectiveness of the system of the European Convention on Human Rights at its 129th Session in Helsinki, 17 May 2019, document CM/Del/Dec(2019)129/3.

Ongoing dialogue

243. It is, finally, an overarching feature of the Interlaken process that the **dialogue** between all the different actors in the Convention system has considerably intensified. While allowing the Convention system to settle, that dialogue should continue and create the necessary synergies enabling all actors in the system to play their respective roles in the shared responsibility to implement the Convention. As regards, in particular, more complex situations, including situations of absence of political will, such dialogue must be the main avenue to move forward.