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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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COMMITTEE OF EXPERTS ON THE REFORM OF THE COURT
(DH-GDR)

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Draft CDDH report on the longer-term future of the system of the European Convention on Human Rights

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Executive Summary

This report on the longer-term future of the Convention system is the outcome of the work carried out over a two-year period within the Steering Committee for Human Rights (CDDH), the Committee of Experts on the Reform of the Court (DH-GDR) and Drafting Group "F" (GT-GDR-F), mandated to present the opinions and possible proposals of the CDDH in response to paragraphs 35c to 35f of the Brighton Declaration on the future of the European Court of Human Rights (20 April 2012).

Special working methods and an inclusive approach have been employed in view of conducting a comprehensive analysis of potential options for the future role and function of the Court, including analysis of how the Convention system in essentially its current form could be preserved, and consideration of more profound changes, as well as a comprehensive examination of the procedure for the supervision of the execution of judgments and the awarding of just satisfaction, all taking into account the Committee of Ministers' invitation to "think out of the box". An "open call for contributions" was launched, the intergovernmental work was open to seven independent external experts as well as to ad hoc experts who participated in the preparatory work. Work conducted in other instances of the Council of Europe and at the Conference on the long-term future of the Court, organised by the PluriCourts academic network in Oslo in 2014, was taken into account. This report also considers the implementation of and further follow-up to the Brussels Declaration "on the implementation of the European Convention on Human Rights, our shared responsibility" (27 March 2015).

Four overarching areas have been considered important for the long-term effectiveness and viability of the Convention system: national implementation of the Convention; the authority of the Court; the execution of judgments and its supervision; and the place of the Convention mechanism in the European and international legal order. For each of these areas the present and future challenges have been identified. It was considered whether the current system has the ability to respond to those challenges, within the framework of the existing structures to determine whether further reform is needed outside the framework of the existing structures, namely those that presuppose the creation of a new mechanism or a new function carried out by an existing mechanism, or the elimination of an existing mechanism. All the proposed solutions were carefully assessed in terms of their feasibility, sufficiency and relevance.

***The authority of the Convention and its implementation** remain among the main challenges for the Convention system. The report provides proposals for further actions aimed at better national implementation of the Convention, building upon the high-level Declarations adopted in Brighton and Brussels. These measures concern the improvement or the creation of effective domestic remedies, the checking, in a systematic manner and at an early stage of the process, of the compatibility of draft legislation and administrative practice with the Convention and the Government's role in that regard, enhanced awareness-raising activities, targeted professional training addressing questions related to the implementation of the Convention, as well as the establishment, when a mainstreaming model is not sufficient, of contact points within various branches of a State Party, specialised in human rights matters. Taking better into account the general principles found in the Court's judgments in cases against*

other High Contacting Parties remains an essential question in this area and the identification of good practices could have positive effects. Three actors have been identified as being capable of contributing to the better observance of the Convention and the maintenance of its authority: national parliaments with increased human rights expertise, domestic judiciaries and national human rights structures. Reinforcing the capacity and effective involvement of all national actors concerned with the implementation of the Convention is important for its effective implementation. The Council of Europe has a more active role to play in this regard, on the basis of a more effective strategy.

The authority of the Court *requires two challenges to be addressed: its caseload and the authority of its case law. The importance of abiding by the judgments of the Court has been reaffirmed. The importance of the right of individual application has also been reiterated. At the same time, recourse by the Court to more clear general interpretative guidance concerning the understanding of the rights and freedoms protected by the Convention has been proposed, while taking due account of the specific facts and circumstances of the individual case. The importance of the principle of subsidiarity was also noted in this regard, and in particular the important role of national courts in applying the Convention to national circumstances in individual cases.*

Concerning the challenge of the caseload, no further measures appear necessary regarding the clearance of the backlog of clearly inadmissible and repetitive cases. The former has now been cleared and it is expected that the backlog of the latter will be cleared within two or three years. Thus the report focuses on the measures needed to respond to the main remaining challenges: the clearing of the backlog of non-repetitive pending cases, both priority and non-priority ones, the reduction and the handling of the annual influx of cases in general, large-scale violations as well as systemic issues. 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.

In order to respond to the challenge of the authority of the case law, it is essential to ensure that the judges of the Court enjoy the highest authority in national and international law. A comprehensive approach is needed examining the whole selection and election process including all factors that might discourage possible candidates from applying. All the above elements deserve a further in-depth analysis that should be conducted as a follow-up to this report and may result in responses outside the existing structures. In addition, other measures were encouraged to improve the selection of lawyers at all levels of the Registry of the Court, also as to their knowledge of their respective national legal systems and practical experience. Proposals were also made to improve the quality of reasoning in the judgments and to step up dialogue between the Court and national judicial systems.

The authority of the Court's judgments *is examined under two angles: the process of execution of judgments by the member States and its supervision by the Committee of Ministers. As regards the execution, measures have been proposed on specific questions, such as the indications given by the Court concerning sources of the*

violations found in its judgments, the awarding of just satisfaction and the supervision of its payment by the Committee of Ministers as well as the reopening of domestic proceedings following a judgment of the Court. The report underlines the importance of an enhanced authority of all stakeholders in charge of the execution process at national level and their effective co-ordination, a question which will be examined within the framework of the future work of the CDDH on Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.

The supervision of the execution of judgments by the Committee of Ministers is a reflection of the collective enforcement within the Convention system and there was no support to transfer this function to other organs. What is required, at present, is to consider ways and means of supplementing the technical support with a suitable political lever for meeting the challenges of the process, while also ensuring efficient and timely handling of the supervision of all judgments, including those executed without any particular difficulty. Emphasis has been put on the necessary improvement of the procedures related to serious large-scale violations and the necessary reinforcement of the Council of Europe tools and procedures in these circumstances. In light of the relevant parts of the Brussels Declaration, the report also presents avenues for ensuring that the Department for the Execution of Judgments is able to fulfil its primary role of assisting member States in the execution process. The possibility of the extension of Rule 9 of the Committee of Ministers' Rules for supervision of execution of judgments and terms of friendly settlements to include written communications from international organisations or bodies appears useful.

***Concerning the place of the Convention mechanism in the European and international legal order**, it is considered that the credibility of the Convention mechanism could be undermined if the Convention were to be interpreted in a manner inconsistent with States' commitments under other treaties, whether regional or global, or if the interpretation of such treaties were incompatible with the States' commitments under the Convention. The report examines this challenge from four perspectives: the interaction between the Convention and other instruments of the Council of Europe; its interaction with the European Union legal order and other integrated regional entities; its interaction with international human rights instruments to which Council of Europe member States are parties; and the interaction between human rights law and other branches of international law. An in-depth analysis of these issues and the mid- and long-term perspectives should be conducted as a follow-up to this report.*

Introduction

A. Terms of reference for the work on the longer-term future of the system of the European Convention on Human Rights

1. The work on the longer-term future of the Convention system builds on the results of the Interlaken, Izmir and Brighton High-Level Conferences on the Future of the Court. The Interlaken Declaration, adopted in 2010 set the schedule for the reform process: the conference "invite[d] the Committee of Ministers to evaluate, during the years 2012 to 2015, to what extent the implementation of Protocol No. 14 and of the Interlaken Action Plan has improved the situation of the Court. On the basis of this evaluation, the Committee of Ministers should decide, before the end of 2015, on whether there is a need for further action. Before the end of 2019, the Committee of Ministers should decide on whether the measures adopted have proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary".

2. Subsequently, in the 2012 Brighton Declaration, the conference, amongst other things:

> 35. c) Invite[d] the Committee of Ministers, in the context of the fulfilment of its mandate under the Declarations adopted by the Interlaken and Izmir Conferences, to consider the future of the Convention system, this consideration encompassing future challenges to the enjoyment of the rights and freedoms guaranteed by the Convention and the way in which the Court can best fulfil its twin role of acting as a safeguard for individuals whose rights and freedoms are not secured at the national level and authoritatively interpreting the Convention;
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> d) Propose[d] that the Committee of Ministers carry out this task within existing structures, while securing the participation and advice of external experts as appropriate in order to provide a wide range of expertise and to facilitate the fullest possible analysis of the issues and possible solutions;
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> e) Envisage[d] that the Committee of Ministers will, as part of this task, carry out a comprehensive analysis of potential options for the future role and function of the Court, including analysis of how the Convention system in essentially its current form could be preserved, and consideration of more profound changes to how applications are resolved by the Convention system with the aim of reducing the number of cases that have to be addressed by the Court;
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> f) Further invite[d] the States Parties, including through the Committee of Ministers, to initiate comprehensive examination of:

i) the procedure for the supervision of the execution of judgments of the Court, and the role of the Committee of Ministers in this process; and
ii) the affording of just satisfaction to applicants under Article 41 of the Convention, and

g) As a first step, invite[d] the Committee of Ministers to reach an interim view on these issues by the end of 2015.

3. At its 122nd Session, the Committee of Ministers instructed the CDDH to submit a report containing its opinions and possible proposals in response to paragraphs 35.c) to 35.f) of the Brighton Declaration.[1] These instructions formed part of the terms of reference of the Committee of Experts on the reform of the Court (DH-GDR) for the biennium 2014-2015. Drafting Group "F" on the Reform of the Court (GT-GDR-F) was established to conduct preparatory work.[2]

4. The CDDH discussed and subsequently interpreted its mandate as follows: "work would cover the Convention system as a whole, and not focus exclusively on the Court; it should also involve analysis of the effects of the implementation of Protocol No. 14 (as already required by the Committee of Ministers)[3] as well as the procedure for the supervision of the execution of judgments of the Court, and the role of the Committee of Ministers in this process, and the affording of just satisfaction to applicants under Article 41 of the Convention (as envisaged by paragraph 35.f) of the Brighton Declaration). In accordance with paragraph 35, the approach should be as open-minded as possible, allowing for "thinking outside the box"".[4]

B. Working methods

5. In response to paragraph 35.d) of the Brighton Declaration, special working methods were employed during the preparation of the report, notably the following:

- An **"open call for contributions"** was held between November 2013 and January 2014, to which responded 118 interested parties from across Europe;[5]

[1] The initial deadline set by the Committee of Ministers was 15 March 2015. At their 1211th meeting on 12 November 2014, the Ministers' Deputies agreed to extend the deadline until 31 December 2015.
[2] Drafting Group "F" on the Reform of the Court (GT-GDR-F) held 8 meetings (19-21 March 2014, 14-16 May 2014, 24-26 September 2014, 10-12 December 2014, 18-20 February 2015, 15-17 April 2015, 8-10 September 2015, and 14-16 October 2015).
[3] At their 1159th meeting (16 January 2013), the Ministers' Deputies took note of the CDDH Report containing elements to contribute to the evaluation of the effects of Protocol No. 14 and the implementation of the Interlaken and Izmir Declarations on the Court's situation, and invited it "to continue following up this question with a view to reporting again by 15 March 2015" (see doc. CM/Del/Dec(2013)1159/4.3abcd).
[4] See the report of the 78th meeting, doc. CDDH(2013)R78, para. 8.
[5] For the results of the open consultation, see doc. GT-GDR-F(2014)002.

- **Seven independent "external experts"** were appointed permanent members of the GT-GDR-F to contribute to the preparatory work of the report[6]: Sir Nicolas Bratza (former President of the European Court of Human Rights), nominated by the Court; Mr Alvaro Gil-Robles (former Council of Europe Commissioner for Human Rights), nominated by the Secretary General; Professor Christoph Grabenwarter (Judge, Constitutional Court of Austria; Professor, University of Vienna; member of the European Commission for Democracy through Law ("the Venice Commission")), nominated by the Secretary General; Mr Bahadir Kilinç (Judge Rapporteur, Deputy Secretary of the Constitutional Court of Turkey at the time of appointment), nominated by the Secretary General; Mr Alain Lacabarats (Chamber President, Court of Cassation of France), nominated by the Consultative Council of European Judges; Professor Giorgio Malinverni (Honorary Professor, University of Geneva; former Judge of the Court), nominated by the Venice Commission; and Professor Tatiana Neshataeva (Judge, Court of the Eurasian Economic Union; and Professor, Russian State University of Justice), nominated by the Secretary General;
- The CDDH participated in a **Conference on the long-term future of the Court, organised by the PluriCourts academic network** (Oslo, 7-8 April 2014);[7]
- On the basis of the results of the "open call" and the Oslo Conference, further **ad hoc experts** participated in specific meetings, namely Professor Marten Breuer (Konstanz University), Dr Başak Çali (Koç University), Dr Alice Donald (Middlesex University), Professor Kanstantsin Dzehtsiarou (University of Surrey), Professor Elisabeth Lambert-Abdelgawad (Strasbourg University), Professor Russell Miller (Washington & Lee University), Ms Nuala Mole (AIRE Centre) and Professor Geir Ulfstein (University of Oslo).

6. According to a "road-map" establishing working methods and necessary steps,[8] the present report was prepared on the basis of draft texts following each meeting of Drafting Group "F" on thematic issues.[9] It was not expected that a simple consolidation of the draft texts resulting from the first discussion of the various sections would produce an internally coherent report, let alone one which would fully achieve the purpose of the current exercise. The present consolidated report was hence drafted in light of the preparatory documents and discussions, without repeating them in their entirety. A list of reference documents can be found in Appendix.

7. While the proceedings of the Oslo Conference on the long-term future of the European Court of Human Rights and the results of the "open-call for contributions" provided significant impetus to the work of the CDDH, a wide range of sources were

[6] The draft CDDH report on the longer term future of the system of the Convention as prepared by GT-GDR-F and transmitted to the DH-GDR is reproduced in document GT-GDR-F(2015)020.
[7] For the proceedings of the Oslo Conference, see doc. H/Inf(2014)1.
[8] See doc. GT-GDR-F(2014)020: "Road-map: progress towards the draft CDDH final report", as approved by the DH-GDR at its 7th meeting (see doc. DH-GDR(2014)R7, para. 2) and by the CDDH at its 82nd meeting (see doc. CDDH(2014)R82, para. 9).
[9] As identified in the above-mentioned "Road-map" (doc. GT-GDR-F(2014)020), namely the "essential aims of the Convention system", "main features of the current system", "strengths and weaknesses", "expected future challenges", "possibilities for preserving (and reinforcing) the current system", and "possible alternative models".

used for the drafting of the present report. Work conducted in other instances of the Council of Europe, before and in the course of the preparation of the present report, was taken into account. Work of the Parliamentary Assembly of the Council of Europe also provided valuable guidance.[10] The contents of the present report also took into consideration earlier CDDH reports, and the documents and sources cited therein.[11]

C. Methodology

8. On the basis of the "Brighton mandate", the CDDH first sought to identify the **present and future challenges to the longer-term future of the Convention system**. Then, the CDDH sought to identify **possible responses to those challenges**. The CDDH considered the ability of the current system to respond to those challenges, within the framework of the existing structures, as an indicator of whether further reforms are needed outside the framework of the existing structures. For the purposes of the present analysis, the possible responses that are presented outside the framework of the existing structures are the ones that might presuppose the creation of a new mechanism or a new function carried out by an existing mechanism, or the elimination of an existing mechanism.[12]

9. The CDDH noted that the majority of contributions submitted following the open call, emphasised the need for an evidence-based approach, above all to the question of the need for and nature of any further reforms, given the various measures that have come into effect over the recent years and the further reforms expected to enter into force in the coming years.[13] It thus carefully assessed whether proposals were sufficient and relevant to respond to the challenges identified, considering their feasibility. While the CDDH adopted an inclusive approach and sought to present the variety of proposals, it decided that proposals that were not the subject of any substantive discussion, would not find their place in the report.

10. The work conducted in the context of the Brussels High-Level Conference on "the implementation of the European Convention on Human Rights, our shared responsibility", under the Belgian Chairmanship of the Committee of Ministers (Brussels, 26-27 March 2015) was taken into account.[14] Indeed, not only have the reflections from 2014 of Drafting Group GT-GDR-F found their political place in the Brussels Declaration, but the drafting Group was also the first Council of Europe body

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[10] See notably Parliamentary Assembly Resolution 2055(2015) "The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond" adopted on 24 April 2015 (see doc. 13719 and addendum, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Yves Pozzo di Borgo (France, EPP/CD)); See also Recommendation 2070 (2015).

[11] Compiled in: "Reforming the European Convention on Human Rights: Interlaken, Izmir, Brighton and beyond: a compilation of instruments and texts relating to the ongoing reform of the ECHR", Directorate General of Human Rights and Rule of Law, Council of Europe, 2014.

[12] The distinction between proposals requiring or not requiring amendment of the Convention was not relevant for present purposes as certain proposals are not related to the Court's procedures.

[13] See "Thematic overviews of the results of the 'open call for contributions'", doc. GT-GDR-F(2014)003, para. 4.

[14] Doc. H/Inf(2015)1. See also the CDDH contribution to the Brussels High-Level Conference, doc. CM(2014)151add2.

to reflect the decisions made in Brussels. Keeping in mind the CDDH mandate designed to consider the future of the Convention system, this report not only integrates the pertinent parts of the Brussels Declaration but also reflects on their implementation and further follow-up.

11. From the very outset, there is a need to note **underlying factors that affect, among others, the Convention system** and that the latter has to take into account:

- conflicts and other security threats affecting one or more High Contracting Party to the Convention;
- demographic developments such as population fluctuations and migration flows;
- economic developments and possible budgetary constraints as a result thereof;
- public opinion on issues relating to the functioning of the Convention system.

12. Considering these factors, an overarching challenge is to ensure that the Convention system is flexible enough to adapt thereto so as to continue achieving its essential aims and maintain its ability to absorb shocks resulting from emergencies and unforeseen factors.

13. The present report identifies **four overarching areas** that are decisive for the long-term effectiveness and viability of the Convention system: **national implementation of the Convention**, the **authority of the Court**, the **execution and supervision of judgments**; and the **place of the Convention mechanism in the European and international legal order**. One can only make a thorough analysis of the challenges ahead after having looked at the current system and its historical development in some detail. To this end, the four main Chapters are preceded by a brief outline of the system as it stands today.

CHAPTER I - THE SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS IT STANDS TODAY

14. Under the terms of the Preamble to the Convention, the High Contracting Parties reaffirmed their "profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend". They described themselves as being an association of "European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law". And their intent, in adopting the Convention, was "to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration [of Human Rights]".

15. Article 1 of the Convention sets out the primary, legal obligation on the High Contracting Parties to **respect and protect the Convention rights of those within their jurisdiction**. The focus of the Convention is mainly on civil and political rights, though the Court has interpreted certain of these rights as having social and environmental dimensions. Certain of the rights are absolute, allowing no exceptions in their observance; others may be subject to limitations or interferences on grounds specified in the Convention.

16. The Convention system is hence predicated on **State responsibility**. The Convention places the obligation on the States Parties to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention; applications alleging violation of the rights set forth in the Convention may be submitted against States Parties; and it is the States Parties that undertake to abide by the final judgments of the Court. There are two potential sources of human rights violations that were not covered by the protection established by the Convention: on the one hand, horizontal relationships involving private actors, and on the other, actions or failure to act by international organisations, especially the European Union and the United Nations. However, with respect to the former, the Court held that the positive obligations of a State may involve the protection of one individual against the acts or omissions of another. With respect to the latter, the Court held that States may be held responsible under the Convention for implementing decisions or directives of international organisations which are incompatible with Convention obligations. State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides. However, any such presumption can be rebutted, if in the circumstances of a particular case, it is considered that the protection of Convention rights was manifestly deficient.[15]

17. The **principle of subsidiarity** means that each High Contracting Party retains primary responsibility for finding the most appropriate measures to implement the Convention, taking into account national specificities as appropriate. The doctrine of

[15] *"Bosphorus Airways" v. Ireland*, App. No. 45036/98, Grand Chamber, 30 June 2005, paras. 154-156.

the **margin of appreciation** is an important aspect of subsidiarity. The jurisprudence of the Court makes clear that the States Parties enjoy a margin of appreciation in how they apply and implement the Convention, depending on the circumstances of the case and the rights and freedoms engaged. This reflects that the Convention system is subsidiary to the safeguarding of human rights at national level and that national authorities are in principle better placed than an international court to evaluate local needs and conditions. The margin of appreciation goes hand in hand with supervision under the Convention system. In this respect, the role of the Court is to review whether decisions taken by national authorities are compatible with the Convention, having due regard to the State's margin of appreciation.[16]

The Convention's control mechanism

18. The Convention's control mechanism encompasses **individual judicial protection**, a **uniform interpretation of minimum standards**, as set out in the Convention, and **supervision of the execution of Court judgments** by the Committee of Ministers, in which the Court can play a role under Article 46(3) and (4) of the Convention.

19. The **Court** is composed of a number of judges equal to the number of High Contracting Parties.[17] One judge is elected by the Parliamentary Assembly from a list of three candidates proposed by each High Contracting Party.[18] Judges must meet the criteria for office stipulated by Article 21 of the Convention. The criteria require judges to be of high moral character, possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence, sit in their individual capacity, and not to engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office.

20. Under the case law of the Court, the Convention is seen as a living instrument, to be interpreted in the light of present day conditions. Thus the rights guaranteed have been held to apply to situations that were not foreseeable when the Convention was first adopted, such as the use of new information technology or artificial procreation, and to situations that were in fact foreseeable, but where there have been societal developments since the adoption of the Convention, such as in cases relating to sexual orientation. The Court is the **final authority for interpretation and application of the Convention**.[19] The interpretative framework of international law applies as set out in the 1969 Vienna Convention on the Law of Treaties. The Court seeks to ensure consistent interpretation of the Convention by maintaining that its terms are "autonomous concepts", of which the meanings under the Convention do not depend on definitions given under domestic laws. The Grand Chamber of the Court plays an important role in ensuring clear and consistent case law,[20] which is a prerequisite for the effective implementation of the Convention.[21]

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[16] See para. 9 of the Explanatory Report to Protocol No.15.
[17] Article 20 of the Convention.
[18] Article 22 of the Convention.
[19] Articles 32 and 44 of the Convention.
[20] Under Articles 30 and 43 of the Convention.
[21] As noted by Mr Jean-Marc Sauvé, Vice President of the French *Conseil d'Etat*, "It implies […] an effort to provide explanations for and continuity in the interpretation of the Convention. In this respect,

21. The Convention system provides **two procedural avenues through which to gain access to the Court**. The most significant is now the right of individual application.[22] Alleged violations may also be referred to the Court by other High Contracting Parties.[23] All applications that meet the formal requirements are judicially determined. The Court can only deal with cases that satisfy the Convention's admissibility criteria. These require, amongst other things, that applicants have first exhausted domestic remedies and submitted their application within six months of the final domestic decision.[24] Individual applicants may be granted legal aid by the Court.[25] Applicants in both individual and inter-State cases may apply to the Court for an indication of interim measures to be taken in the interests of the parties or the proper conduct of the proceedings.[26] The Court has held such indications to be binding, and may find a violation of Article 34 where the respondent State has not complied with them. The High Contracting Parties are obliged to co-operate with the Court in its examination of a case.[27] The system further makes provision for third parties to intervene in proceedings before the Court: these include the State of which an applicant is a national, or the Commissioner for Human Rights and, with leave, any other High Contracting Party or any other person concerned. There are also rights to submit communications, notably for applicants and representatives of civil society, in the framework of the Committee of Ministers' procedure for the supervision of execution of judgments.[28]

22. The Court also makes use of **other mechanisms to resolve disputes** which are in many cases facilitated by the proposals coming from the Registry. The parties may reach a friendly settlement on the basis of respect for human rights as defined in the Convention,[29] whose execution of the terms is supervised by the Committee of Ministers.[30] The respondent State may also make a unilateral declaration, for instance where an applicant has refused the terms of a friendly settlement offer, acknowledging a

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the national authorities expect the Court to take positions which are stable and coherent and to provide solid case law positions, so that they can rule with certainty on the situations submitted to them without running the risk of subsequent disavowal", at the European Court of Human Rights Seminar to mark the official opening of the 2015 judicial year (30 January 2015), entitled: "*Subsidiarity: a two-sided coin*?".

[22] Article 34 of the Convention. "The right of individual petition, as enshrined in Article 34 of the Convention, gives the right to bring an application before the Court to every person, non-governmental organisation or group of individuals claiming to be a victim of a violation of the Convention, regardless the substantive merits or procedural propriety of that application. The Court has described (in *Mamatkulov and Askarov v. Turkey*, App. Nos. 46827/99 and 46951/99, Grand Chamber judgment of 4 February 2005) the right of individual petition as "a key component of the machinery for protecting the rights" set forth in the Convention […]. The requirement that all decisions be made by a judge is often considered an integral part of the right of individual petition." (see the CDDH Contribution to the Ministerial Conference organised by the United Kingdom Chairmanship of the Committee of Ministers, doc. CDDH(2012)R74 Addendum III, paras. 44-45).

[23] Article 33 of the Convention.

[24] Article 35(1); this time-limit will be reduced to four months when Protocol No. 15 enters into force.

[25] Rule 100 of the Rules of Court.

[26] Rule 39 of the Rules of Court.

[27] Article 38 of the Convention.

[28] Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

[29] Article 39 of the Convention.

[30] Article 46 of the Convention.

violation and undertaking to provide redress and, as appropriate, take necessary remedial measures. The execution of the terms of unilateral declarations is not supervised by the Committee of Ministers[31] but the Court may restore a case to its list of cases if it considers that the circumstances justify such a course.[32]

23. The Convention creates **other mechanisms for its collective enforcement**. This is most apparent in the role of the Committee of Ministers to supervise the execution of judgments. Mention should also be made of the role of the Secretary General of the Council of Europe to conduct inquiries under Article 52 of the Convention.

Effect of Court judgments

24. The High Contracting Parties have undertaken to **abide by final judgments of the Court in cases to which they are parties**.[33] Insofar as judgments of the Court are authoritative statements on the interpretation and application of Convention rights,[34] the High Contracting Parties should also **give consideration to the principles that are developed in the case law as a whole**, including, where appropriate, judgments against other High Contracting Parties, in order to implement fully and effectively the Convention at national level.

25. In order to abide by the final judgments in cases to which they are parties, the High Contracting Parties may need to take various measures, whether individual or general, in response to a finding of a violation. The purpose of these measures is to afford redress to the victim and to prevent the continuation or repetition of the violation.[35] Where the internal law of the respondent State allows only partial reparation to be made to the victim, the Court shall, if necessary, afford them just satisfaction.[36] The Committee of Ministers supervises the payment of just satisfaction and the other measures taken or to be taken by the State and decides to close this supervision when it finds that these measures suffice to provide redress to the victim and prevent the

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[31] As far as general measures in repetitive cases are concerned, their supervision by the Committee of Ministers is often secured in practice in the context of supervision of execution of pilot or leading judgments concerning the same underlying problem.

[32] Article 37 § 2 of the Convention. According to Rule 43 5) of the Rules of Court: "Where an application has been struck out in accordance with Article 37 of the Convention, the Court may restore it to its list if it considers that exceptional circumstances so justify".

[33] Article 46 of the Convention.

[34] Article 32 of the Convention.

[35] See *Scozzari and Giunta v. Italy*, App. Nos. 39221/98 and 41963/98, Grand Chamber judgment of 13 July 2000: "[…] by Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see, *mutatis mutandis*, the *Papamichalopoulos and Others v. Greece* (*Article 50*) judgment of 31 October 1995, Series A No. 330-B, pp. 58-59, § 34). Furthermore, subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment". (para. 249).

[36] Article 41 of the Convention.

repetition of the violation found. In some cases, the Court has indicated certain measures already in its judgments. The pilot judgment procedure, which was developed by the Court, allows it to identify in a judgment both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contacting Party concerned is required to take at the domestic level by virtue of the operative provisions of the judgment.[37] 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, although its practice in this regard is flexible. The Court subsequently determines whether the measures adopted are sufficient, and, if so, it may terminate its examination of the other applications by, for example, declaring them inadmissible for non-exhaustion of new domestic remedies.

Convention in the wider context of the work of the Council of Europe

26. The Convention plays a role in the wider context of the work of the Council of Europe. This is reflected in the standard-setting, monitoring, co-operation and assistance activities, all of which rely upon the Convention and the Court's case law as sources of generally applicable legal standards. The Convention is a **key reference point for all Council of Europe bodies**, including the Parliamentary Assembly, the Commissioner for Human Rights and the various human rights monitoring mechanisms. Equally, it is a **source of inspiration to many other institutions outside the Council of Europe**.

Evolution of the Convention system

27. The Convention system has been subject to **constant and considerable evolution** since its creation. Over time, all High Contracting Parties accepted the optional elements of the supervisory mechanism: the right of individual petition to the Commission[38] and the jurisdiction of the Court under the "original" Article 46[39]. **Protocol No. 11** made the right of individual application[40] to the new Court compulsory for all High Contracting Parties. Protocol No. 11 also in effect merged the Commission and Court, which had both been part-time bodies, into a single full-time Court, dealing with both admissibility and merits under judicial procedures. The possibility was introduced, in certain circumstances, of referral of a case to the Grand Chamber. The

[37] Rule 61 of the Rules of Court.
[38] Article 25 original.
[39] The Convention system included two optional elements. Firstly, High Contracting Parties could accept that individuals had a right of petition to the Commission (original Article 25). Secondly, they could accept that applications might be referred by the Commission or a qualifying High Contracting Party to the European Court of Human Rights for final determination (original Articles 46 and 52).This allowed for the intervention of an organ with competence to interpret and apply the Convention authoritatively. As early as 1965 – only six years after the Court came into existence – it was noted that "the indisputable legal pre-eminence of the Convention is, of course, only effective if the State concerned has recognised both the competence of the Commission to receive individual petitions […] and the jurisdiction of the European Court": "Status of the European Convention in the hierarchy of rules of law", report by Prof. Alfred Verdross, Judge of the European Court of Human Rights, *Human Rights in National and International Law, proceedings of the 2nd International Conference on the ECHR*, Vienna, 18-20 October 1965, Manchester University Press, 1968, p. 52.
[40] See footnote 23.

Committee of Ministers' role was henceforth limited to the supervision of the execution of Court judgments.

28. Alongside the negotiations of Protocol No. 11, other significant developments were taking place: enlargement of the Council of Europe and the resulting increase in the number of High Contracting Parties to the Convention, following the democratic changes in the countries of Central and Eastern Europe from 1989 onwards,[41] as well as the growing awareness of the Convention in general.

29. By the time Protocol No. 11 was adopted in 1994, the problem of case-load had already become a source of concern.[42] The protocol was therefore also intended to meet "[the] need for a supervising machinery that can work efficiently and at acceptable costs even with forty member States and which can maintain the authority and quality of the case law in the future".[43]

30. As soon as Protocol No. 11 came into force, important concerns began to be expressed as to its sufficiency to deal effectively with the explosive growth in the Court's case-load.[44] As a result, the **2000 Rome Ministerial Conference** expressed political support for the Convention system and called for in-depth reflection on the challenges facing it. This ultimately led to **Protocol No. 14**.[45] Protocol No.14 refined the control mechanism established by Protocol No. 11. It established the Single Judge formation, competent to give decisions in inadmissible cases, where such a decision can be taken without further examination; gave three-judge Committees an additional competence to deliver judgments if the underlying question is already the subject of well-established case law of the Court; introduced a new admissibility criterion requiring, with certain conditions, applicants to have suffered a "significant disadvantage"; and allowed the Committee of Ministers at the request of the Court to decrease the size of Chambers from seven to five judges for a fixed period.[46] Protocol

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[41] From 24 members in 1990, the organisation expanded to 32 in 1993, 38 in 1995, 43 in 2001 and to 47, its current membership, in 2007.

[42] As mentioned in the Explanatory Report to Protocol No. 11, "[t]he number of applications registered with the Commission has increased from 404 in 1981 to 2,037 in 1993. […]. The backlog of cases before the Commission is considerable. At the end of the Commission's session in January 1994, the number of pending cases stood at 2,672, more than 1,487 of which had not yet been looked at by the Commission". (see paras. 20-21).

[43] See the Explanatory Report to Protocol No. 11, para. 23.

[44] See the Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights, doc. EG Court(2001)1, 27 September 2001.

[45] It also led to a series of Committee of Ministers' non-binding instruments, many of which were aimed at enhancing the national implementation of the Convention: see Recommendations Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights; 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; Rec(2004)4 on the European Convention on Human Rights in university education and professional training; 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; Rec(2004)6 on the improvement of domestic remedies; and Resolutions Res(2002)59 concerning the practice in respect of friendly settlements and Res(2004)3 on judgments revealing an underlying systemic problem.

[46] It also notably changed the term of office of judges from a renewable six-year term to a non-renewable nine-year term, gave the Council of Europe Commissioner for Human Rights a right to intervene in

No. 14 also gave the Committee of Ministers new possibilities to bring certain execution related questions before the Court (relating to the interpretation of the judgment to be executed and to the question of whether or not a State is refusing to abide by the judgment (Article 46 (3) and (4)).

31. There were early doubts as to the adequacy of Protocol No. 14 to resolve the Court's case-load problems. A **Group of Wise Persons** was therefore set up, following the Third Summit of Council of Europe Heads of State and Government (Warsaw, 16-17 May 2005), "to consider the long-term effectiveness of the ECHR control mechanism, including the initial effects of Protocol No. 14 and other decisions taken in May 2004, [and] to submit … proposals going beyond these measures, while preserving the basic philosophy underlying the Convention". The Group of Wise Persons reported to the Committee of Ministers in November 2006, suggesting, among other proposals, to extend the jurisdiction of the Court to give advisory opinions and to set up a new judicial filtering mechanism.[47] Persistent deterioration of the situation of the Court in 2009 led the Court's President to call for a high-level conference. This resulted in the **2010 Interlaken Conference**. Protocol No. 14 eventually came into force on 1 June 2010.

32. The Interlaken Conference was followed by the **2011 Izmir** and **2012 Brighton Conferences**. Operational decisions following the Brighton Conference eventually led to Protocols No. 15 and 16 (opened for signature on 24 June and 21 October 2013, respectively). **Protocol No. 15** contains provisions relating to the admissibility criteria, the time-limit for submitting individual applications, the procedure for relinquishment of a case from a Chamber to the Grand Chamber and the age-limit for judges, and introduces references in the Preamble to the Convention to the principle of subsidiarity and the doctrine of the margin of appreciation. **Protocol No. 16**, an optional protocol, gives the Court competence to deliver 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 at the request of highest national courts and tribunals. Neither has yet entered into force[48].

33. The **2015 Brussels Conference** focused notably on the implementation of the Convention at national level and the supervision of the execution of judgments of the Court. It reaffirmed the principles of the Interlaken, Izmir and Brighton Declarations and gave political impetus to the reform process to ensure the long-term effectiveness of the Convention system. Many of the operational decisions of the successive Declarations, from Interlaken to Brussels, will be the subject of the present report in order to address the various challenges identified in the following Chapters.

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proceedings as a third-party and established a legal basis for European Union accession to the Convention.

[47] 2006 Report of the Group of Wise persons to the Committee of Ministers (see notably paras. 51-86).

[48] As of […] [numbers of signatures and ratifications].

CHAPTER II - THE AUTHORITY OF THE CONVENTION SYSTEM: NATIONAL IMPLEMENTATION

A. Challenges

34. **Inadequate national implementation** of the Convention remains among the principal challenges or is even the biggest challenge[49] confronting the Convention system. The overall human rights situation in Europe depends primarily on States' actions and the basic respect that they show for Convention requirements. This conclusion was stressed during the high-level ministerial conferences and colloquia organised in the recent years.[50]

35. This challenge reveals an additional and crucial one: effective national implementation may presuppose the **effective involvement of and interaction between a wide range of actors** (members of government, parliamentarians, and the judiciary as well as national human rights institutions, civil society and representatives of the legal professions) to ensure that legislation and other measures and their application in practice, comply fully with the Convention standards.

36. An additional challenge put forward was the **practical difficulties in following the Court's case law**, which is voluminous and subject to constant enrichment, despite the Court's efforts to highlight in the Court's search engine (HUDOC) and its reports the cases it considers of particular general importance. It was also noted that although the Court sometimes sought to give general interpretative guidance in judgments, it was not always clear, in particular to domestic courts, what conclusions were to be drawn from a judgment finding a violation.

B. Possible responses within the framework of the existing structures

Effect of judgments on High Contracting Parties

37. While a judgment of the Court is formally binding only on the respondent State under Article 46 of the Convention (there is no *erga omnes* effect), in order to prevent future violations the High Contracting Parties are encouraged to consider the conclusions to be drawn from a judgment finding a violation of the Convention by another State, where the same problem of principle exists within their own legal system, and to integrate the Strasbourg Court's case law into national law.[51] In this respect,

[49] Conference report "2020 Vision for the European Court of Human Rights", 17-19 November 2011, Wilton Park; see also the summing up of the Director General of Human Rights and Rule of Law, in Proceedings of the Conference on the long-term future of the European Court of Human Rights (Oslo, 7-8 April 2014), p. 192, (doc. H/Inf(2014)1).

[50] For a colloquy dedicated to that specific question, see the Proceedings of the Colloquy organised under the Swedish chairmanship of the Committee of Ministers of the Council of Europe, "Towards stronger implementation of the European Convention on Human Rights at national level", Stockholm, 9-10 June 2008.

[51] See the Interlaken Declaration, Point B. Implementation of the Convention at the national level, para. 4.c).

reference is often made to the principle of *res interpretata* whereby it is argued, based on Articles 1, 19, 32 and 46 of the Convention, that national authorities should take account of the Convention as interpreted by the Court, but also bearing in mind the principle of subsidiarity and the doctrine of the margin of appreciation.[52]

38. In some High Contracting Parties the obligation to take account of the Court's developing case law and draw conclusions from judgments against other States is enshrined in law. In most other High Contracting Parties there is no such legal obligation. However, the practice[53] in those countries to study the Court's case law for principles in judgments against other States that should be applied within the domestic legal order has often resulted in legislative proposals, in parliamentary debate and (subsequent) changes to national law and judicial practice. In this regard, it is worth mentioning and drawing inspiration from the wide range of national measures taken to implement the Interlaken and Izmir Declarations.[54] Many High Contracting Parties indicated that governmental bodies were involved in following the Court's case law, including judgments against other States, for instance by disseminating circulars to all central bodies, the highest courts and the parliament. Most notably, the contribution of the Government Agent should be highlighted here where the Agent is responsible for preparing overviews of the Court's case law and underlining possible problems of compatibility of the domestic legal order with the Convention.

39. The CDDH endorses the abovementioned practices and supports all existing means to draw attention to judgments and decisions that offer general interpretative guidance.

40. In order to achieve this, it is important to identify judgments and decisions that offer such general interpretative guidance. The new publication policy of the Court, which identifies on a quarterly basis the most significant cases decided by the Court, contributes to achieving this aim.

41. At the same time the CDDH notes that there would appear to be scope for High Contracting Parties to take better into account the general principles found in the Court's judgments in cases against other High Contracting Parties, in preventive anticipation of possible violations.[55]

42. To this end, the CDDH underlines the possible positive effects of identifying good practices,[56] concerning the kind of practical measures High Contracting Parties

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[52] See A. Bodnar, "Res Interpretata: Legal effect of the European Court of Human Rights' Judgments for other States than those which were party to the proceedings", in *Human Rights and Civil Liberties in the 21st Century*, Y. Haeck and E.Brems Editors, 2014, pp. 223-262.

[53] See for an overview, the Contribution of the Committee of Legal Affairs and Human Rights of the Parliamentary Assembly to the Conference on the Principle of Subsidiarity, Skopje, 1-2 October 2010, doc. AS/Jur/Inf (2010)04, 25 November 2010.

[54] See the CDDH Report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations (doc. CDDH(2012)R76, Addendum I, notably paras. 71-84).

[55] In this regard, the Contribution of the Court to the Brussels High-Level Conference may be noted: "while a judgment of the Court is formally binding only on the respondent State (or respondent States as the case may be), all States should ensure that their law and administrative practice are in conformity with the principles that are developed in the case law", para. 5.

[56] As it has recently been done within the DH-GDR for other issues.

may adopt to better take into account the general principles found in the Court's judgments.

Awareness-raising/ education

43. The continued efforts made by the Court to develop its information policy are considered an essential element to raise awareness of the Convention and the Court's case law. In particular, improvements have been made to HUDOC, which is now available also in Russian and Turkish. The CDDH considers that the inclusion of other languages should be explored. The Court's case law translation programme, partly financed by some member States and partly by the Human Rights Trust Fund, provided over 12 500 texts in nearly 30 languages other than English and French, now available in HUDOC.

44. Various other proposals were made, essentially suggesting that further progress be made in areas already examined by the CDDH and subject to existing Council of Europe standards and/or activities.[57] These included proposals that greater efforts be made to prepare and distribute on-line high-quality translations of the Court's relevant case law. The importance of including the Convention in university law degree curricula and in professional training, and possibly also in competitive examinations for entry to the judiciary and other legal professions, was recalled. Further development, where appropriate, of the roles of NGOs, national human rights structures[58] and national parliaments in supporting the implementation and raising awareness of the Convention was also underlined.

45. Given that the Council of Europe, in co-operation with the member States, has been and remains active in these areas (with the contribution of the Human Rights Trust Fund), there appears to be little scope for radically new initiatives within the constraints of currently available resources. Member States are, however, encouraged to step up their efforts regarding the translation of (excerpts of) leading judgments of the Court and/or providing summaries of those judgments in the national languages. Those translations should be sent to HUDOC and also be made available in national case law databases. Within this framework, the Brussels Declaration called upon States Parties to maintain and develop the financial resources that have made it possible for the Council of Europe, since 2010, to translate a large number of judgments into national languages (B.2.g)).

46. Along similar lines, the CDDH notes the call made in the Brussels Declaration (see B.1.b) and c)) to increase efforts at national level to raise awareness of the Convention among members of parliament, and to improve the training of judges, prosecutors, lawyers and national officials on the Convention and its implementation, possibly by means of study visits and traineeships at the Court and through seminars and workshops at national level. The CDDH further notes the call in the Brussels Declaration upon the States Parties to establish "contact points", wherever appropriate, for human rights matters within the relevant executive, judicial and legislative

[57] See the CDDH Contribution to the Brussels High-level Conference (doc. CDDH(2014)R82 Addendum II).
[58] See paragraph 58.

authorities, and create networks between them through meetings, information exchange, hearings or the transmission of annual or thematic reports or newsletters. The CDDH notes that the establishment of contact points is not the only existing model concerning human rights expertise within the relevant national authorities and that certain States Parties have opted for a mainstreaming model within the relevant governmental bodies, but that the establishment of contact points can be useful. These contact points could be called upon to advise on Convention matters.

47. The CDDH stresses the crucial role of the training of legal professionals in the implementation of the Convention stemming from 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. In that respect, the HELP programme plays a key role. The work conducted over recent years has led to important developments. These developments, as well as the remaining challenges, will be considered by the CDDH in 2016-2017 in the framework of the work of the Committee of experts on the System of the European Convention on Human Rights (DH-SYSC). The DH-SYSC will submit, where appropriate, proposals to the Committee of Ministers regarding Recommendation Rec(2004)4.

Domestic remedies

48. By contributing to the resolution of allegations of violations of the Convention at domestic level, the right to an effective remedy, as enshrined in Article 13 of the Convention, is one of the embodiments of the principle of subsidiarity.[59]

49. There is still a need to improve domestic remedies. It is clear that further progress ought to be made in this area, taking into account the emphasis already given to it by both the Court and the Committee of Ministers as well as the existing efforts by member States.[60] The CDDH therefore notes the call in the Brussels Declaration to provide effective remedies at domestic level to address alleged violations of the Convention (B.1.e)). The implementation of effective domestic remedies for all arguable complaints of a violation of the Convention should permit a further reduction in the Court's workload. This would be, on the one hand, as a result of the decreasing number of cases reaching it and, on the other, as a result of the fact that the detailed handling of the cases at national level would make their later examination by the Court easier.

50. In addition, the CDDH notes the call, in the Brussels Declaration, in compliance with the domestic legal order, to put in place in timely manner effective remedies at domestic level to address violations of the Convention found by the Court (B.2.b)). The CDDH agrees that new and improved domestic remedies in line with the requirements enumerated in the Court's case law, where they are not already in place, could have a significant impact, especially on repetitive applications.

[59] As highlighted repeatedly by the Court and the Committee of Ministers. For example, see Committee of Ministers Recommendation Rec (2004)6 on the improvement of domestic remedies and Recommendation (2010)3 on effective remedies for excessive length of proceedings.

[60] For example, the Guide to good practice in respect of domestic remedies, adopted by the Committee of Ministers on 18 September 2013.

51. At the same time, it was pointed out that the appropriate protection of rights at domestic level does not always require the creation of new domestic remedies but could also be achieved by the interpretation of existing remedies or domestic procedural law in line with the obligations stemming from Article 13 of the Convention. In order to achieve this, there is a need for more awareness-raising activities which the Council of Europe could also support to explain the importance and practical implementation of remedies in light of Article 13 of the Convention to relevant authorities, in particular the judiciary. It would be useful to look at this idea in the context of the work that will be carried out by the DH-SYSC in 2016-2017 in particular on Recommendation (2010)3 on effective remedies for excessive length of proceedings and its Guide to Good Practice but also in the context of the work regarding Recommendation (2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.

The legislative process and the role of national parliaments

52. Through their adoption of legislation, national parliaments have a key responsibility for protecting human rights in the national context. The only role given formally by the Convention to national parliaments is indirect, through the competence of the Parliamentary Assembly, composed of delegations of national parliamentarians, to elect Court judges. However, national parliaments do have other important roles to play in the system, such as scrutinising the compatibility of all governmental actions with Convention standards and their increased involvement in the execution of Court judgments (this issue is examined under Chapter IV).[61] States Parties should implement practical measures to ensure that policies and legislation comply fully with the Convention including by offering to national parliaments information on the compatibility with the Convention of draft legislation proposed by the Government[62]. Arguments in favour of greater parliamentary involvement, where appropriate, were further set out at the Oslo Conference[63] and reiterated in the Brussels Declaration (B. 2. h)).

53. In order for each parliament to fulfil those tasks, it is essential that sufficient expertise on Convention matters is available to its members. The existence of specialised parliamentary structures (such as (sub-)committees) assessing human rights

[61] Issues recently discussed at the Conference on "Parliaments and the European Court of Human Rights", co-organised by the Middlesex University and the Helsinki Foundation for Human Rights, in Warsaw on 12 May 2015, and at the Conference on "the role of parliaments in the protection and realisation of the Rule of Law and Human Rights", Westminster, 7 September 2015.

[62] According to the Brighton Declaration: "The Conference therefore: […] c) In particular, expresses the determination of the States Parties to ensure effective implementation of the Convention at national level by taking the following specific measures, so far as relevant: […] ii) Implementing practical measures to ensure that policies and legislation comply fully with the Convention, including by offering to national parliaments information on the compatibility with the Convention of draft primary legislation proposed by the Government;" (A. 9. c.ii.).

[63] See the speech of Dr Alice Donald, Middlesex University, on the topic of the role of national parliaments, doc. GT-GDR-F(2014)023.

compliance may be one way of achieving this aim.[64] This could also enable the development of a "human rights institutional memory". The Legal Affairs Committee of the Parliamentary Assembly has urged parliaments to create "dedicated human rights committees or appropriate analogous structures, whose remits shall be clearly defined and enshrined in law". Access to human rights expertise may also be guaranteed when parliamentary bodies are provided with the support of a specialised secretariat and/or access to impartial advice on human rights matters.[65] At the same time, parliaments may be assisted by governments in their task to acquire the necessary knowledge on human rights matters. In this respect, various reporting procedures (such as the submission of annual reports) were noted and encouraged. Lastly, the contribution of the Parliamentary Assembly of the Council of Europe to this field was equally highlighted and supported.[66]

54. Particular emphasis should be placed on the importance of checking the conformity of draft legislation with Convention standards,[67] although the CDDH acknowledges that this is a shared responsibility at the domestic level between governments and parliaments. The governments should systematically check the compatibility of draft legislation with Convention standards at an early stage in the drafting process before a policy is set in stone, including if necessary by means of consultation. The practice of explaining in the explanatory memorandum to draft laws why the draft bill is deemed compatible with the requirements of human rights standards has proved to be very useful for informed debates in parliaments. Proper examination of Convention standards should also be encouraged in the light of the Court's case law in which considerable weight has been given by the Court to the quality of the legislative process and the reasoning of policy choices based on the consideration of the relevant issues from the perspective of Convention principles.[68]

55. Given the increasing use[69] of administrative practice (in the form of *inter alia* regulations, orders and circulars[70]), the CDDH stresses that the above-mentioned compatibility check should also be conducted in case of such administrative practice.

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[64] See "The role of parliaments in implementing ECHR standards: overview of existing structures and mechanisms", Background memorandum prepared by the Parliamentary Project Support Division (Parliamentary Assembly of the Council of Europe), doc. PPSD(2014)22rev, 8 September 2015.

[65] Issues recently discussed at the Conference on "Parliaments and the European Court of Human Rights", co-organised by the Middlesex University and the Helsinki Foundation for Human Rights, in Warsaw on 12 May 2015.

[66] See for a summary of the activities organised, "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), para. 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 and 22 September 2015.

[67] See the Brussels Declaration (B.1.d)) and Committee of Ministers' Recommendation 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.

[68] See *Animal Defenders International v. the United-Kingdom* (App. No. 48876/08), Grand Chamber, 22 April 2013; *S.A.S. v. France* (App. No. 43835/11), Grand Chamber, 1 July 2014; and *Parillo v. Italy* (App. No. 4670/11), Grand Chamber, 27 August 2015.

[69] See Jean-Marc Sauvé, « *La législation déléguée* », conference organised by the « Centre d'études constitutionnelles et politiques », *Conseil d'État*, 6 June 2014.

[70] As provided for in Recommendation (2004)5.

56. The Convention mechanism is in part affected by public opinion. Parliamentary engagement with the Convention mechanism and the enhanced human rights expertise of national parliaments contribute to maintain the authority of the Convention. One means of increasing the involvement of national parliaments in the Convention system might be for the relevant committee of the national parliament to invite representatives of the Court. [71]

57. The Parliamentary Assembly may well be ideally placed to confront this challenge and could thereby intensify its co-operation with national parliaments. For its part, the CDDH is available in case (the secretariat of) national parliaments were to express the wish for an exchange of views on possible ways to improve human rights expertise.

Role of national human rights structures and civil society

58. National human rights structures include both national human rights institutions ("NHRIs"), which comply with the Paris Principles,[72] and other bodies and offices engaged with human rights at national level. National human rights structures include ombudspersons, who may also be NHRIs depending on their powers and functions. The contribution of national human rights structures to the implementation of the Convention was highlighted in the Wise Persons' report[73] and reiterated in the Interlaken Declaration.[74] The CDDH reiterates that they can significantly help meet the challenges relating to national implementation (in particular, by offering expert opinions on the compatibility of draft legislation and administrative practices with Convention standards as well as regarding the execution of Court judgments in reporting on national compliance with the Convention before parliaments, or by providing human rights education for the public and professional groups). In addition, independent national human rights structures can be well placed to provide information on the Court's role and functioning in response to certain (mis)perceptions in the public domain.[75] The CDDH notes in this regard that, during the next biennium, it will conduct a study on the impact of current national legislation, policies and practices on the activities of NHRIs with a view to identifying the best examples thereof. The CDDH notes the call, in the Brussels Declaration, to consider establishing independent NHRIs (B.1.g) and reiterates its own support for the establishment of such institutions. It further encourages the existence of appropriate conditions at domestic level for the fulfilment of their human rights mission. In addition, the CDDH notes the contribution

[71] See Murray Hunt, "Enhancing Parliaments' Role in the Protection and Realisation of Human Rights" in *Parliaments and Human Rights*, edited by Murray Hunt, Hayley J. Hooper and Paul Yowell, Oxford and Portland, Oregon, 2015, pp. 470-475.
[72] Resolution 48/134 of the UN General Assembly on national institutions for the promotion and protection of human rights.
[73] See footnote 47; paras. 109-113.
[74] Part B. 4.a: "The Conference […] calls upon the States Parties to commit themselves to continuing to increase, where appropriate in co-operation with national human rights institutions or other relevant bodies, the awareness of national authorities of the Convention standards and to ensure their application".
[75] See the CDDH contribution organised by the United Kingdom Chairmanship, 10 February 2012 (doc. CDDH(2012)R74 Addendum III, part B. para. 9 iii.

of civil society to the implementation of the Convention and the execution of the Court's judgments as highlighted by the Brussels Declaration.[76]

Role of the Council of Europe

59. The Council of Europe has a key role to play in expanding the range of the domestic actors involved, reinforcing such involvement and enhancing interaction and co-ordination between national stakeholders in order to reinforce this shared responsibility in light of the principle of subsidiarity.[77] The CDDH notes that the approach to a systemic implementation of Convention standards should encompass all relevant aspects. The work that will be carried out by the CDDH and the DH-SYSC during the next biennium regarding Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights as a follow-up to the Brussels Declaration will be relevant in this respect.[78]

60. It was reiterated that the High Contracting Parties and Council of Europe bodies should focus more closely on implementing and spreading best practices and practical measures, using various avenues (for example, the Toolkit to inform public officials about the State's obligations under the European Convention on Human Rights[79] or the Guide to Good Practice to domestic remedies). The "action plan" designed in the Brussels Declaration will guide this work henceforth. The CDDH notes the fact that the Conference encouraged all intergovernmental committees of the Council of Europe to take pertinent aspects of the Convention into consideration in their thematic work (C.3.b)). The CDDH notes that it has already started in the context of its Group of Experts on the Reform of the Court (DH-GDR) to hold open exchanges of views on specific issues related to the implementation of the Convention and the execution of judgments aimed at sharing good practice and considering the obstacles encountered.[80] [This work will continue in the next biennium in the DH-SYSC.] Furthermore, following the Brussels Declaration, the CDDH is called upon, in its draft terms of reference for 2016-2017, to advise other bodies of the Council of Europe to ensure that

[76] See B.2.f) "promote accessibility to the Court's judgments, action plans and reports as well as to the Committee of Ministers' decisions and resolutions, by: – developing their publication and dissemination to the stakeholders concerned (in particular, the executive, parliaments and courts, and also, where appropriate, National Human Rights Institutions and representatives of civil society), so as to involve them further in the judgment execution process;" and B. 2. j): "consider, in conformity with the principle of subsidiarity, the holding of regular debates at national level on the execution of judgments involving executive and judicial authorities as well as members of parliament and associating, where appropriate, representatives of National Human Rights Institutions and civil society".

[77] See Contribution of the Court to the Brussels Conference, para. 3.

[78] The CDDH will take stock of the implementation of Recommendation (2008)2, and make an inventory of the good practices relating to it and, where appropriate, provide for updating the recommendation in the light of practices developed by the States Parties.

[79] The Toolkit to inform public officials about the State's obligations under the European Convention on Human Rights, adopted by the Committee of Ministers, presents in an instructive way all of the rights and obligations arising under the Convention. It also provides practical information intended to guide public officials in various everyday situations with which they may be confronted.

[80] At its 8th meeting (27-29 May 2015), the Committee held an exchange of views on the re-examination or reopening of cases following judgments of the Court, with particular focus on good practices and practical and procedural difficulties encountered, see the Web page dedicated to this question: http://www.coe.int/t/dghl/standardsetting/cddh/reformechr/Reopening-en.asp

their activities concerning human rights duly reflect the requirements of the Convention and the case law of the Court.

61. According to the Brussels Declaration, the Secretary General is encouraged to evaluate Council of Europe co-operation and assistance activities relating to the implementation of the Convention, so as to move towards more targeted and institutionalised co-operation (C.3.c)). The CDDH agrees that this is a key element for the implementation of the Convention and for building bridges between the findings of the monitoring bodies and the national stakeholders. The increased use of and recourse to assistance activities and mechanisms by States Parties should be encouraged.

62. To address the difficulties of national implementation, the level of resources available to the Council of Europe technical assistance programmes, including in relation to the supervision of the execution of the Court's judgments, should be examined in order to maximise the impact of such programmes. Support has been expressed for Council of Europe 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, which continues to develop and expand, and the educational activities of the Court. Increased focus would be needed, in particular for development of more targeted and tailor-made training activities for legal professionals addressing the most frequent and controversial issues raised under the Convention in each member State.

C. Possible responses outside the framework of the existing structures

Effect of judgments on High Contracting Parties other than the respondent Party

63. The CDDH opposes the proposal that there should be a Convention-based legal obligation upon States Parties to abide by final judgments of the Court in cases to which they are not parties.

64. In response to the practical difficulty to identify judgments where the Court gives general interpretative guidance, there was some initial support for the introduction of new means to draw the attention of all States Parties to such judgments by other actors than the Court (e.g. the Committee of Ministers or the Secretary General). However, the CDDH notes that such a role could not be formally established without jeopardising the independence of the Court.

Domestic remedies

65. The proposal to create new domestic remedies provided by a special judicial organ[81] or a special chamber dealing exclusively with Convention matters[82] was

[81] For example, the creation of the Indemnity Commission on Human Rights in Turkey offering redress for complaints related to excessive length of proceedings resulted in decreasing the number of relevant pending cases before the Strasbourg Court, see doc. GT-GDR-F(2015)004, contribution by Dr Bahadir Kilinç.

[82] See doc. GT-GDR-F(2015)004, II.

considered. However, it was concluded that the choice of remedy (or combination of remedies) should be left to the State drawing inspiration from the Court's case law[83] where the importance of preventive remedies, whether judicial or not, is also stressed.

66. Other specific proposals, namely to amend Article 13 of the Convention to stipulate that remedies should be judicial, or to introduce an additional protocol on domestic remedies, were not met with approval. It was argued that the Contracting Parties are afforded a margin of discretion in conforming to their obligations under Article 13.[84] It was furthermore recalled that the scope of Article 13 varies according to the nature of the complaint based on the Convention that is made by the applicant[85].

Role of national parliaments

67. A proposal to create a "proactive Council of Europe Special Rapporteur on increasing the role of parliaments in the Convention system" was not retained. Generally speaking, there was no strong support for the creation of new bodies.

Role of the Council of Europe

68. A suggestion was made to establish a new pre-vetting mechanism that could be tasked with offering the possibility to assess compliance of draft legislation with Convention standards, before submission thereof to a national parliament. The mechanism would be permanent, operating within the framework of the Council of Europe. It could be placed under the Court's auspices or be created as a new entity and would have an advisory function. A variety of State organs would have access to this mechanism, including governments, national parliaments, as well as national human rights structures or even NGOs, among others.

69. The Council of Europe would hence have a more proactive role in protecting human rights by contributing to the anticipation and prevention of human rights violations and the avoidance of new applications. The Council's knowledge and expertise would therefore be used more efficiently.

70. Such a new mechanism would, however, require additional resources. Furthermore, given that it would not be mandatory, recourse to it may be quite limited. In addition, it may be observed that the added value of this mechanism remains to be demonstrated given that advice is already being provided by Council of Europe monitoring and other bodies (in particular the Venice Commission) upon the member States' request as well as in the context of technical assistance activities. It should also be noted that similar mechanisms have already been considered under the auspices of the Council of Europe, notably in the framework of the review of the implementation of 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 Convention. The CDDH decided not to retain this proposal but to

[83] See notably *Scordino v. Italy (No. 1),* App. No. 36813/97, Grand Chamber, judgment of 29 March 2006, paras. 178-207.
[84] See *Budayeva and Others v. Russia*, App. No. 15339/02, judgment of 20 March 2008, paras. 190-191.
[85] See the Guide to good practice in respect of domestic remedies, part III.

stress the importance of enhanced recourse to the existing mechanisms mentioned above and further examination of measures aiming at a more effective prevention of human rights violations.

D. Conclusions

71. Inadequate national implementation of the Convention by the States Parties remains among the principal challenges confronting the Convention system. All the recommended responses to this challenge mentioned below are within the framework of the existing structures:

i) While refusing the existence of a Convention-based legal obligation upon States Parties to abide by final judgments of the Court in cases to which they are not parties, the CDDH notes that there would appear to be scope to better take into account the general principles found in the Court's judgments in cases against other High Contracting Parties, in preventive anticipation of possible violations. To this end, the identification of good practices on the kind of practical measures that may be adopted could have positive effects.

ii) The CDDH considers the professional training on and awareness-raising activities concerning the Convention and the Court's case law to be a high priority in order to fill the implementation gap identified above. While acknowledging the efforts already made by all stakeholders, it stresses the need to:

   a. offer, on a structural basis, more targeted and country-specific training to relevant legal professionals (for example, government officials, as well as judges, prosecutors and lawyers) addressing Convention implementation problems in each High Contracting Party, using to the fullest the potential of the Council of Europe pan-European Programme for Human Rights Education for Legal Professionals (HELP); and

   b. increase efforts regarding the translation of (excerpts of) leading judgments and/or provide summaries of those judgments in national languages notably for education and training purposes.

iii) The establishment, wherever appropriate, of contact points specialised on human rights matters within the relevant executive, judicial and legislative authorities should be encouraged, especially when no mainstreaming model exists within the relevant governmental bodies. These contact points could be called upon to advise on Convention matters.

iv) There is still a need to improve domestic remedies, either by the creation of new domestic remedies (including preventive, whether judicial or not) or by interpreting existing remedies or domestic procedural law in line with the obligations of Article 13 of the Convention. The issue of effective remedies should be 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 (judges, prosecutors, etc.).

v) Governments should fully inform parliaments on issues relating to the interpretation and application of Convention standards, including the compatibility of (draft) legislation with the Convention.

vi) Sufficient expertise on Convention matters should be made available to members of parliament, where appropriate, by the establishment of parliamentary structures assessing human rights and/or by means of the support of a specialised secretariat and/or by means of ensuring access to impartial advice on human rights law, if appropriate in cooperation with the Council of Europe.

vii) There is a need for national authorities to check in a systematic manner the compatibility of draft legislation and administrative practice (including as expressed in regulations, orders and circulars) with the Convention at an early stage in the drafting process and consider, where appropriate, substantiating in the explanatory memorandum to draft laws why the draft bill is deemed compatible with the requirements of human rights provisions.

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

ix) The CDDH reiterates the significant role that national human rights structures can play in the implementation of the Convention. It further reiterates its support for the establishment of independent national human rights institutions and encourages the existence of appropriate conditions at domestic level for the fulfilment of their human rights mission.

72. The CDDH encourages the States Parties to involve all relevant domestic actors in the implementation of the Convention. The CDDH notes that the approach to a systemic implementation of Convention standards should encompass all relevant aspects.

73. It concludes that the Council of Europe has a more active role to play in facilitating the involvement of all relevant domestic actors, depending on the nature of the problem to be tackled. The Council of Europe might need to consider a more effective strategy in this area, building upon its best practices of co-operation with the member States. Various Council of Europe assistance and awareness-raising activities promoting Convention implementation should be better oriented and co-ordinated in order to avoid duplication and maximise impact.

CHAPTER III - THE AUTHORITY OF THE COURT

SECTION I – THE CHALLENGE OF THE CASELOAD

74. As it was noted in Chapter I, improving the Convention system's ability to deal with the increasing number of applications was one of the principal aims of the reform process from its very beginnings. The number of applications pending before the Court had steadily increased to 160 200 on 1 September 2011.[86] At that time, the number of pending applications increased by approximately 1 500 per month. However, the Court's use of the procedural instruments introduced by Protocol No. 14 as well as new working methods developed by the Court, certain amendments in the Rules of Court and the use of secondments to the Registry of the Court, in recent years led to **a significant reduction in its backlog**.

75. On the basis of the information at the disposal of the CDDH, the current situation is as follows:[87]

(i) The number of **pending applications** on 1 November 2015 was 66 500. The number of new applications received in the period 1 January to 1 November 2015 is 34 400. This represents a decrease of 33% compared to the same period in 2014. As noted in the Court's 2015 Interlaken report, "this reduction is unprecedented. It can be explained in part by the application of the revised Rule 47 of the Rules of Court, in force since 1 January 2014, which imposes stricter conditions on applicants before the Court examines an application".[88] However, the introduction of new effective domestic remedies undoubtedly also contributed to fewer incoming applications.[89]

(ii) In order to clarify which pending cases may be described as belonging to the backlog, the Brighton Declaration fixed objectives for the Court to process and adjudicate applications. These are one year from introduction to communication and two years from communication to judgment on the merits (see point 20 (h) of the Declaration). The Court has incorporated these time-limits into its objectives, and cases not meeting these deadlines are said to be in the **"Brighton backlog**". On 1 November 2015, the number of the Brighton backlog cases was 34 100.[90] The Brighton backlog is composed of different categories of cases.

(iii) Since the entry into force of Protocol No. 14 clearly inadmissible cases[91] are disposed of by a **single judge**. At the beginning of September 2011 this category of cases alone numbered over 101 000. The introduction of this mechanism and the creation, by the Court, of a special Filtering Section

[86] The Interlaken process and the Court, First Report, October 2012, p. 2.
[87] All figures regarding the caseload in the present Chapter are as of 20 November 2015.
[88] The Interlaken process and the Court, 2015 Report, 12 October 2015, p. 3.
[89] Such as the individual application to the Constitutional Court of Turkey; see above para. 64 and doc. GT-GDR-F(2015)004, contribution by Dr Bahadir Kilinç.
[90] This is a decrease of 45% since 1 January 2014.
[91] A term used by the CDDH with reference to cases declared inadmissible by a single judge, where such a decision can be taken without further examination.

within its Registry to make full use of that mechanism continue to produce **positive effects.**[92] The Court managed to **maintain its high filtering capacity** in 2014 and 2015. The backlog of clearly inadmissible cases has effectively been eliminated and the Court is now essentially dealing just with incoming cases within a relative short timeframe.[93]

(iv) The Court has also begun to tackle the **backlog of repetitive cases**[94] that accounts for almost half of all pending applications.[95] The Court has put in place since the autumn of 2014 new working methods which enable it to deal with these cases in a simplified and rapid manner (the so-called WECL (well established case law) procedure). This has resulted in a reduction in the Brighton backlog for this category by 16% since the beginning of 2015. The 2015 Report on "the Interlaken Process and the Court" reiterated that the estimate is that **this backlog will be cleared within two to three years** owing to a streamlined procedure backed up by an advanced IT workflow system, with incoming cases being handled on a "one-in, one-out" basis. The CDDH expresses support for further streamlining[96] by the Court of the procedure in order to deal with this backlog while at the same time ensuring appropriate examination of such applications. The CDDH notes that, according to the information provided by the Registry,[97] the examination of these cases remains thorough and all particular elements are taken into consideration on a case by case basis. More importantly, the CDDH notes that sufficient resources should be ensured at domestic level to deal with the communicated cases in a timely fashion. At the same time, it encourages the Court to take into account the legitimate needs of High Contracting Parties to receive realistic time-limits and all necessary information so as to be able to duly examine the communicated cases.

(v) A further category of cases consists of **priority cases**. The priority policy of the Court is being pursued under Rule 41, whereby cases are dealt with having regard to the importance and urgency of the issue raised, rather than in the chronological order in which they reach the Court.[98] **The number of**

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[92] See also the report by Mr Yves Pozzo di Borgo (France, EPP/CD) on "the effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond; see doc. 13719, para. 12.
[93] The Interlaken process and the Court, 2015 Report, 12 October 2015, p. 3.
[94] "'Repetitive applications' are those arising from systemic or structural issues at the national level. The term 'repetitive' implies that the Court has already addressed the underlying issue in a judgment", 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, CDDH(2013)R78 Addendum III, para. 4.
[95] The Interlaken process and the Court, 2015 Report, p. 3.
[96] Including with an enhanced use of the pilot judgment procedure.
[97] See "Replies from the Registry to questions posed by the GT-GDR-F following its 6th meeting", doc. GT-GDR-F (2015)014.
[98] To implement the priority policy, the Court has drawn up a number of different categories:
I. Urgent applications (in particular risk to life or health of the applicant, other circumstances linked to the personal or family situation of the applicant, particularly where the well-being of a child is at issue, application of Rule 39 of the Rules of Court);
II. 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

cases designated as high priority (categories I-III) **continues to rise**, standing at 10 400 on 1 November 2015. Within this group, about 3 590 applications (37%) are part of the Brighton backlog. These cases take precedence over all others and it is the Registry's objective to devote a substantial proportion of its legal resources to preparing them for judicial examination.

(vi) The last category consists of cases that are **neither priority nor repetitive**. There has been a decrease in the Brighton backlog for this category by 2% since the beginning of 2015, with over 14 000 applications in it. The Court's ability to deal with these cases is **one of the main outstanding challenges** of the system. Part of this challenge will also be to ensure that the promptness of the examination of such cases is not achieved at the cost of its quality. The dramatic improvement in the situation of the Court was achieved in large part by devoting greater resources to the resolution of substantively less important cases with a view to clearing the backlog of clearly inadmissible cases. Although it was necessary to start the process of clearing the backlog of cases by focusing on clearly inadmissible cases, the challenge is to avoid a situation in which there would be an accumulation of complex and potentially well-founded cases. This would be to reverse the logic of the protection system in that meritorious applications would encounter delays in their examination.

76. The challenge at stake was well presented by Erik Fribergh, the Court's Registrar:[99] "the double objective – **clearing the backlog and handling the annual influx** – requires different answers since the backlog clearance is of a temporary nature whereas dealing with the annual influx is a permanent requirement".

77. As for the clearance of the backlog, it follows from the above figures that the group of non-priority, non-repetitive cases pending before the Court represents a major burden, in addition to the serious challenge of the high number of priority cases.

78. As for dealing with the annual influx, it should be noted that the expectation of the Court's Registrar is that the Court would be able to deal with the annual influx of cases once resources are no longer devoted to the clearing of the backlog. At the same time, it is important to continue to address the root causes of the high influx of applications, among them, in particular, the insufficient implementation of the Convention and failure to execute judgments. It has been argued that part of the influx of cases is due to the fact that the Court is increasingly perceived by some applicants as

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examined, 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), and inter-State cases;

III. Applications which 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 which have given rise to direct threats to the physical integrity and dignity of human beings;

IV. Potentially well-founded applications based on other Articles;

V. Applications raising issues already dealt with in a pilot/leading judgment ("repetitive cases");

VI. Applications identified as giving rise to a problem of admissibility;

VII. Applications which are manifestly inadmissible.

Cases can change categories in light of developments (for example, creation of a remedy).

[99] See "Presentation to the 3rd meeting by the Registrar of the European Court of Human Rights", doc. GT-GDR-F (2014)021.

a "court of compensation" or "a court of fourth instance" (see also below, para. 147). The challenge concerning the influx of cases is also partly the result of large-scale violations arising out of armed conflicts. The number of such cases before the Court is over 3 000 and many of them are very resource demanding and inevitably have a knock-on effect on the other business of the Court.[100] Equally, the influx of cases is partly the result of a large number of applications resulting from systemic issues.

A. Possible responses within the framework of the existing structures

Clearance of backlog

79. The results of the efforts made by the Court in implementing Protocol No. 14 and the clearance of the backlog of clearly inadmissible cases suggest that no further measures are needed in this regard.[101] As regards the repetitive cases, the estimate is that this backlog will be dealt with within two to three years.

80. The problem concerning the backlog now is, on the one hand that of priority cases, the number of which continues to rise, and on the other, that of Chamber cases, especially non-priority, non-repetitive, potentially admissible and well-founded cases. The CDDH welcomes the statement of the Court's President that their timely examination is now a priority.[102] As indicated by the Court's Registrar in 2014, there will be more resources available when the backlog of Single Judge cases and repetitive cases has gone.[103] One of the avenues currently tested is specialisation at the Registry level (the so-called "project-focused approach"). The lawyers from some of the larger countries have re-organised their working methods by grouping cases together according to their subject matter and assigning Registry lawyers specialising in one area of Convention law to deal with all cases raising issues in that area.[104] The result of the experiment remains to be seen.

81. At the Court's level and as stressed by the Court's Registrar, the possibility to allocate to the Court a temporary extraordinary budget of a total of 30 million euros to be used over a period of eight years needs to be considered, *i.e.* an additional financial contribution of 3.75 million per year over a period of 8 years. This would enable the Court to recruit some extra 40 highly-qualified lawyers. At the end of those eight years, the Court estimates that it would have been able to eradicate the remaining backlog.

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[100] *Ibid*.
[101] See also the Preamble of the Brussels Declaration.
[102] See the President's speech at the Brussels Conference.
[103] See "Presentation to the 3rd meeting by the Registrar of the European Court of Human Rights", doc. GT-GDR-F(2014)021.
[104] See also the presentation to the 3rd meeting by the Registrar of the European Court of Human Rights, doc. GT-GDR-F(2014)021: "The idea of specialist Chambers/Sections has been, and continues to be, discussed over and over again both inside and outside the Court. At the moment, this idea does not find support among the majority of Judges. Some specialisation is operating at the Registry level. […]We already have for instance a dedicated unit for dealing with expulsion cases and requests for interim measures. We have also recently appointed one lawyer to oversee the handling of all applications in the Court which raise issues of conditions of detention. Moreover, I already told you about specialisation on the basis of projects among some of the Registry lawyers".

The annual influx of cases

82. The reduction of the annual influx of cases depends primarily on better implementation of the Convention, including execution of the Court's judgments. The Brussels Declaration also called on State Parties to ensure that potential applicants 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 (B.1.a)). The responsibility of legal representatives for providing the applicants with adequate information on the prospects of success of their applications was also stressed during the discussions of the CDDH. The Council of Europe and the Court could consider new possibilities of co-operation with organisations of legal professions to promote this exchange of information. The Council of Europe co-operation with the national bar associations should thus be enhanced with special attention to be paid to the highest case-count countries. Likewise, the Council of Europe could examine other ways of providing the applicants with reliable and independent information.

83. The considerable impact of the application of Rule 47 (in its amended version)[105] should also be mentioned. According to the Representative of the Registry, the projected number of new cases entering the system by the end of 2015 is 40 000, which would be a drop of almost 30% compared to last year. A very substantial fall in the number of new cases assigned to judicial bodies was already observed during the first months of 2015.

84. The entry into force of Protocol No. 15 is also expected to contribute to this effect as it reduces the time-limit for lodging an application to the Court and widens the scope for application of the significant disadvantage admissibility criterion in order "to give greater effect to the maxim *de minimis non curat praetor*".[106]

85. Finally, the CDDH expresses support for the use of existing measures to deal with clearly inadmissible cases, such as strict application of admissibility criteria and assigning increased decision-making powers to Committees and Single Judges.[107]

Maintaining the ability to revise the working methods to respond to changing circumstances

86. With regard to the challenge of the caseload in general, the CDDH notes the need to react flexibly to changing circumstances and to develop responses to new

[105] Under the amended Rule applicants must comply with strict requirements for their application before the Court to be valid. In brief, they must use the Court's new application form, take care to fill in all fields and append all necessary supporting documents. The applicants also have to make sure that they provide a signed authority if they are represented and that the application form is duly signed by them. If an applicant fails to comply with Rule 47, the application will not be allocated to a Court judicial formation for decision (although there are some limited exceptions). During 2014, 52 758 applications arrived. Out of these, 12 191 (23%) failed to comply with the revised Rule. See the Report of the Filtering Section of the Court on the implementation of the revised rule on the lodging of new applications: http://www.echr.coe.int/Documents/Report_Rule_47_ENG.pdf.

[106] Explanatory report to Protocol No. 15, para. 23.

[107] Prof. Geir Ulfstein, "Rule of law: 'Constitutional Court' or 'guardian of individuals'", *Conference on the long-term future of the European Court of Human Rights*, Proceedings, organised by the PluriCourts academic network (Oslo, 7-8 April 2014), doc. H/Inf(2014)1, p. 99.

problems. The Court can adopt and revise its Rules, allowing the system to react flexibly. However, this has on occasion changed the rights and obligations of the parties before the Court. The CDDH has noted that there has not been a consistent practice of consultation of the High Contracting Parties with regard to the development of the Rules of Court and made proposals on this point.[108] The CDDH notes with interest the information[109] that the Court's Rules Committee is examining the issue and is awaiting the outcome of such considerations.

Large-scale violations

87. Large-scale violations are a challenge in themselves. The CDDH emphasises that the response to this challenge is a responsibility for the Council of Europe as a whole. Further consideration should be given to the means at its disposal to respond to this challenge. This would be a task going beyond the present report. The Court has a pivotal role in this domain and is equipped to examine large-scale abuses of human rights,[110] addressing the legal questions pertaining to the Convention, the political dimension being left to the political authorities. The CDDH notes that the Convention system relies on the collective responsibility of the Council of Europe to address the root causes and consequences of those violations and explore avenues for dialogue including through ad hoc mechanisms. The CDDH stresses the need for the Committee of Ministers to find appropriate political mechanisms for addressing the underlying problems in the members States concerned and review how best to exploit its political power and tools in such situations. It also highlights the potential of the contribution of the Parliamentary Assembly and the Secretary General in designing new means of action.[111] The role played in such situations by the Council of Europe Commissioner for Human Rights offering his/her good offices and acting as a mediator is underlined in that respect.

Systemic issues

88. Further and along the lines with the Brussels Declaration, the CDDH supports a further exploration and use of efficient case-management practices by the Court in particular its prioritisation categories including the pilot judgment procedure[112] as well as the range of procedural tools to solve a large number of applications resulting from systemic issues.[113] In this respect, it was noted with interest that the Court's policy and

[108] CDDH Report containing conclusions and possible proposals for action concerning the procedure for the amendment of the Rules of Court and the possible "upgrading" of the Convention of certain provisions of the Rules of Court (doc. CDDH(2014)R82 Addendum I). See, in particular, paras. 10-14.
[109] The Interlaken process and the Court, 2015 Report, 12 October 2015, p. 7.
[110] As also indicated by the Registrar of the Court, see "Presentation to the 3rd meeting by the Registrar of the European Court of Human Rights", doc. GT-GDR-F(2014)21 and Rule 47.
[111] For example, the establishment, by the Secretary General of the Council of Europe in April 2014, of the International Advisory Panel with the role of overseeing that the investigations of the violent incidents ("the Maidan Investigations") which had taken place in Ukraine from 30 November 2013 onwards met all the requirements of the Convention and the case law of the Court.
[112] The pilot judgment procedure set out in Rule 61 of the Rules of Court has enabled the Court to deal with certain groups of similar cases that derive from the same underlying problem.
[113] Beyond the pilot judgment procedure and its variants: an invitation to the respondent State to settle a list of cases on the basis of the levels of compensation awarded in a previous judgment; the expedited Committee procedure (use of the concept of well-established case law); Grouping of similar applications;

case-management has considerably evolved in the recent years, moving from the traditional case-by-case, oldest-case-first-approach to a problem-oriented approach (or a "project-focused approach", as mentioned above). The representative of the Registry informed the CDDH that the prioritisation and case-management policy at the Court is being reviewed along those lines. The CDDH supports the idea of finding a systemic approach to these problems, which tends increasingly to be reflected in the Court's judicial policy. It considers that there is still potential for a wider use of the existing procedures to that effect, as demonstrated by some successful pilot judgment procedures conducted by the Court in the recent past which combined the imperative of individual judicial protection of numerous applicants with the need to tackle the underlying systemic issue in the respondent State. There may be also more room for using friendly settlements and unilateral declarations, although the procedures related to these instruments should be better foreseeable and should proceed from the principle of procedural economy in order to be more attractive to the parties. The CDDH did not support however further development of alternative ways of resolving disputes (at least, not in terms of new procedures).

B. Possible responses outside the framework of the existing structures

89. Certain commentators proposed a far-reaching shift in the functioning of the current system, generally suggesting that the Court should have more control over its own docket and hence greater discretion to select which cases to adjudicate and when.[114]

90. The common ground for these models is a decreasing focus on judicial adjudication to all applicants, and thus a decreasing focus on the *in concreto* approach currently followed in the Court's judgments.[115] However, a widespread opposition to move in this direction was noted both among the members of the CDDH, and among many of the contributors to the "open call for contributions".[116] The willingness to explore the alternative models was not only weakened by the recent positive results achieved by the Court in addressing its caseload but also by its ability to reconcile the obligation of judicial adjudication with the role of identifying systemic problems in line with the Committee of Ministers Resolution (2004)3 on judgments revealing an underlying systemic problem. Reference was also made to the need to preserve a system based on the equal treatment of applicants and to avoid the risk of a discretionary assessment suggesting a perceived lack of legitimacy, possibly leading to a weakening of trust in the Convention system. In that respect, the effects of the discretionary *certiorari* authority of the US Supreme Court were put forward, the main risk being the

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see CDDH Report "on the advisability and modalities of a 'representative application procedure'", doc. CDDH(2013)R77 Addendum IV, para. 16.

[114] See, for example, de Londras, Dual Functionality and the Persistent Frailty of the European Court of Human Rights (2013) 1 E.H.R.L.R. 38.

[115] The CDDH did not wish to use concepts such as "constitutional (court)/constitutionalisation/constitutionality" as they should be used with utmost caution, if at all. There are various definitions for and characteristics of these terms, based on the approaches taken and national contexts in which they are used.

[116] See "Thematic overview of the results of the 'open call for contributions", doc. GT-GDR-F(2014)003, para. 33.

appearance of a court that is politically motivated in its case selection, raising questions as to the democratic legitimacy of judicial review.[117]

91. Furthermore, the discretion to decide which cases to examine would necessitate a sufficiently high degree of implementation of the Convention within High Contracting Parties, which has not yet been universally achieved. It was argued, *inter alia*, that the insufficiency of domestic remedies would render the proposal premature at this stage.

92. Another set of proposals was advocated focussing on the type of applications the Court should examine. Common to these proposals is that the Court would have no discretion as to certain categories of very important cases (such as: right to life, torture, slavery and long, illegal detention; overruling of precedent; issues vital to the survival of a democracy; pilot judgments, including the periodical control of their execution; and inter-State cases). However, for all other cases, a "leave-to-appeal" system would apply, in which a limited number of cases would be speedily decided.[118] The arguments put forward in favour of these proposals are partly related to the proposition that the Court (like any tribunal) can only provide fully reasoned adjudications for a limited number of cases (see section II below regarding general interpretative guidance), and partly related to the principle that the Court should focus on the most serious human rights violations in Europe.[119] It was argued that this proposal would constitute an extension of the Court's priority policy, taking note of the increasing backlog of Category IV applications. Again, there was widespread opposition to move in this direction. As for the necessity of such proposals, reference was made to the recent positive results achieved by the Court in addressing its caseload. At the same time, doubts were expressed as to the practicality of criteria based on the seriousness of a case. On principle, hesitation was expressed about making a distinction between various Convention rights. It was argued that the consequence would be that some applications would not be examined judicially.

93. The Brussels Conference recently reaffirmed the strong attachment of the States Parties to the right of individual application to the Court. The CDDH considers that the Court has the capacity to adjudicate individual cases and, while doing so, to focus on the interpretation of the Convention providing a more general interpretative guidance that may be applied to other situations than the particular case.

94. The proposal to introduce "class actions" was considered mainly in relation to its potential to deal with systemic violations when determining the applications made by all members of the same group. It was also suggested that this might be an appropriate tool to tackle repetitive applications. This proposal was not retained. It was recalled that the CDDH had considered that the Court has a sufficient range of appropriate

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[117] See Professor Russell A. Miller, "The Jurisdiction of the US Supreme Court: The discretion to decide", doc. GT-GDR-F(2014)027; Presentation to the 4th meeting of GT-GDR-F, doc. GT-GDR-F(2014)033.

[118] See doc. H/Inf (2014) 1, Rule of law: "Constitutional Court" or "guardian of individuals"?, Prof. Luzius Wildhaber.

[119] *Ibid*.

procedural tools to solve a large number of applications resulting from systemic issues, successfully tested in practice in respect of thousands of repetitive cases.[120]

SECTION II – THE CHALLENGE REGARDING THE AUTHORITY OF THE CASE LAW

95. **The authority of the Court is vital for its effectiveness and for the viability of the Convention system as a whole**. These are contingent on the quality, cogency and consistency of the Court's judgments, and the ensuing **acceptance thereof by all actors of the Convention system,**[121] including governments, parliaments, domestic courts, applicants and the general public as a whole.[122] The interpretation of States' obligations under the Convention, especially by reference to the "European consensus", has at times led to criticisms by some of these actors. This reflects a wider debate about the implementation of the principle of subsidiarity and, in particular, the extent of the margin of appreciation that States should be afforded.

96. **The quality of judges and members of the Registry** is essential to maintaining the authority of the Court and therefore also for the future of the Convention mechanism.

97. The CDDH reiterates that States must abide by the final judgment of the Court in any case to which they are parties. It therefore considers various avenues to ensure and strengthen the authority of the Court and its case law in that regard. Emphasis was also put on the need to **strengthen the Court's knowledge and consideration of the specific features of domestic legal systems**.

98. Continued attention by the Court to maintaining the quality, cogency and consistency of its case law as highlighted above, facilitates national implementation of the Convention and the execution of Court judgments. It also helps reducing the caseload of the Court, and is important for meeting the wide range of challenges discussed in the present report. This is also assisted by continued attention by the Court to the preservation of the proper balance in the Convention system between securing human rights at a national level and the supervision by the Convention organs.

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[120] See the CDDH Report on the advisability and modalities of a "representative application procedure" (doc. CDDH(2013)R77 Addendum IV) and 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 (doc. CDDH(2013)R78 Addendum III).

[121] In the solemn hearing for the opening of the judicial year of the European Court of Human Rights, the President of the Court noted: "We face a constant challenge as regards the acceptability of our decisions", opening speech, President Dean Spielmann, 30 January 2015.

[122] CDDH(2013)R79, Addendum II, para. 1.

A. Possible responses within the framework of the existing structures

The quality of judges

99. The importance of the quality of judges has been emphasised on many occasions, in particular in the Declarations adopted at the Interlaken, Izmir, Brighton and Brussels Conferences. The CDDH stressed this importance in its contributions to the above-mentioned conferences and in connection with its work on the Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights[123] and on the functioning of the Advisory Panel of Experts on Candidates for Election as Judge of the European Court of Human Rights.[124]

100. The Court's success, including the acceptance of its authority, depends in part on whether it is composed of judges who themselves enjoy the highest authority in national and international law. The different measures taken in recent years (the 2012 Committee of Ministers Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights,[125] the establishment of the Advisory Panel[126] and the new general Committee on the Election of Judges of the European Court of Human Rights within the Parliamentary Assembly[127]) have all aimed at strengthening the procedure.

101. However, concerns have been expressed regarding the national selection procedures and the ability to attract persons of the highest quality to serve a nine-year term in Strasbourg, and difficulties have been put forward regarding the election procedure. The CDDH is of the view that those parameters cannot be examined separately because they are closely interlinked. Only a comprehensive approach can offer a solid response to this issue. The following elements should be looked at:

i) Procedures for selecting candidates at national level

102. The above-mentioned Guidelines address selection procedures at national level for candidates for the post of judge at the Court, before a High Contracting Party's list of candidates is transmitted to the Advisory Panel and thereafter to the Parliamentary Assembly of the Council of Europe.[128] They deal with the criteria for establishing candidate lists (Part II), the procedure for eliciting applications (Part III), the procedure for drawing up the recommended list of candidates (Part IV), and the finalisation of the list of candidates (Part V). Part VI, on the consultation of the Advisory Panel of Experts on Candidates for Election as Judge of the Court, was added when the guidelines were amended by the Committee of Ministers on 26 November 2014, after the CDDH's 2013 Report on the review of the functioning of the Panel.

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[123] See doc. CM(2012)40, 29 March 2012 .
[124] See doc. CDDH (2013)R79, Addendum II.
[125] As amended on 26 November 2014.
[126] See the Website: http://www.coe.int/en/web/dlapil/advisory-panel.
[127] Procedure for electing judges to the European Court of Human Rights, Information document prepared by the Secretariat of the Committee on the Election of Judges to the European Court of Human Rights, doc. AS/CdH/Inf (2015)02 Rev 7, 10 November 2015.
[128] See Part I, Scope of the Guidelines.

103. The Secretariat of the Parliamentary Assembly Committee on the Election of Judges to the European Court has confirmed its readiness to participate in any review of national selection procedures in co-operation with the CDDH. Consideration could also be given to carrying out such work in co-operation with the Secretariat of the Advisory Panel. The Guidelines now provide that "[t]he High Contracting Parties are requested to submit information about the national selection procedures to the Panel when transmitting the names and curricula vitae of the candidates" (new Part VI).

104. While the importance of all the criteria for office as provided for in Article 21 (para. 19 above) has been acknowledged, there seems to be a growing demand that greater emphasis should be put on practical (judicial) experience in national law and the knowledge of general international law when selecting candidates. A more in-depth analysis – in part based on a study of national selection procedures – may provide useful information.

ii) The election procedure

105. The CDDH's 2013 Report on the review of the functioning of the Advisory Panel[129] notably addressed procedural incidents, the interaction between the various stakeholders involved in the process, the reasons for the Panel's opinions and the confidentiality of the process. Following the submission of the Report, the Committee of Ministers took several decisions thereby amending the Guidelines and adopted Resolution CM/Res(2014)44 amending Resolution CM/Res(2010)26 to take account of some of the recommendations made by the CDDH.[130] However, various questions relating to the Panel's powers and functioning have been raised and should be considered, including that of the overlapping of the actors involved in the process, the duration of the overall process, and the confidentiality of parts of the process.[131] In addition, in light of the establishment of the new general Parliamentary Assembly Committee on the Election of Judges, the effect of the role of the Assembly in the process should be considered.

iii) Factors that might discourage possible candidates

106. The CDDH recalls that these factors have already been addressed within the framework of the above-mentioned 2012 Guidelines.[132] However, it became obvious in the course of the current discussions that it is all the more necessary to carefully look at and further examine the following potentially discouraging factors, in the different parts of the process:[133]

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[129] See footnote 118.
[130] 1213th meeting of the Ministers' Deputies, 26 November 2014, Item 1.5.
[131] See also doc. GT-GDR-F(2014)018.
[132] See in particular paras. 37-47 of the explanatory memorandum to the Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights, CM(2012)40 addendum final, 29 March 2012; see also the report of the 1st meeting of the Ad Hoc Working Group on national practices for the selection of candidates for the post of judge at the European Court of Human Rights, doc. CDDH-SC(2011)R1, 14 September 2011.
[133] Contribution by Mr Christoph Grabenwarter, doc. GT-GDR-F(2014)018.

i) the lack of transparency and/or visibility of the national selection procedure;
ii) the public nature of the selection procedure and/or election by the Parliamentary Assembly, including the risk of harming professional reputations;
iii) the length of the overall process;
iv) the attractiveness of the post, including the conditions of employment;
v) the difficulties of finding suitable re-employment at the end of the term of office.

107. The question has also been raised as to whether a national system consisting of automatically nominating a judge of the Court whose term of office has expired for the next vacant position at the Constitutional Court or one of the highest national courts or tribunals could help increase interest among possible candidates.[134] It was however noted that, in some States, this is constitutionally impossible. Furthermore, the question of recognition of service as a judge is currently being discussed by the Committee of Ministers (CM/Del/Dec(2014)1195.4.3), following the concerns voiced by the President of the Court. The Ministers' Deputies have accordingly called on the States Parties to address in an appropriate way the situation of the Court's judges upon the expiry of their term of office, by seeking to ensure that, to the extent possible under the applicable domestic law, former judges have the opportunity to maintain their career prospects at a level consistent with the office they have held. The Ministers' Deputies invited the member States to provide any relevant information on the follow-up given to this decision and decided to resume consideration of this matter before 31 December 2015, especially in the light of the information contained in the comparative survey provided by the Court[135] and any other information that member States may provide on the issue.[136]

108. The CDDH concludes that all the above considerations and possible measures to be taken deserve a further in-depth analysis that should be conducted as a follow up to this report. In this context a proposal was made, in particular, to examine in more detail the procedures and good practices of selection/election of judges in other international and regional tribunals and in highest national courts.

The quality of the Registry

109. Another issue considered essential was the possibility of improving the selection of lawyers at the Court's Registry on the basis of their knowledge of their respective national legal systems and practical experience, in addition to their knowledge of international law and the Convention itself. It was considered desirable that the legal staff members of the Registry should have appropriate practical experience with the legal order of their respective countries. For the same reason, the importance of secondments to the Registry, which can be of mutual benefit to the Court and the member States, was also reiterated in this regard. It should be noted that the Brussels

[134] *Ibid.*
[135] Comparative survey produced by the Court, doc. DD(2013)1321.
[136] This question has also been dealt with by the Parliamentary Assembly in its work on the "Reinforcement of the independence of the European Court of Human Rights", which led to its Recommendation 2051(2014).

Conference called upon the States Parties to continue to promote temporary secondments to the Registry of the Court (B. 1. f)). At the same time, the importance of appropriate safeguards in ensuring the impartiality and independence of those seconded has also been highlighted by the CDDH.

The quality and consistency of the case law

110. The CDDH was receptive to an observation that the Court should be careful to ensure that its efforts to reduce its caseload do not threaten the quality of its judgments. Insufficient reasoning may result in a lack of authority and transparency (see below, paragraph 147 regarding the just satisfaction awarded by the Court). The quality of reasoning is also essential for the Committee of Ministers when supervising the execution of Court judgments as there is a link between clarity and ease of execution. The CDDH notes the intention of the Court[137] to provide brief reasons for the decisions of a Single Judge as noted also in the Brussels Declaration (A.1.c)). The CDDH further notes the invitation of the Brussels Conference to the Court to consider providing brief reasons for its decisions indicating interim measures and decisions by its Panel of five judges on refusal of referral requests (A.1.d)). The CDDH notes that, in the Conclusions of the Conference presented by the Belgian Chairmanship, it was deemed appropriate to further discuss the issue of interim measures with the States Parties prior to initiating this process. The CDDH supports that call.

111. The CDDH examined a proposal to call on the Court to consider providing brief reasons also for the acceptance of referral requests, the rationale being that it would be easier for the Court to provide reasons for acceptances than for the majority of refused cases. It was however noted that providing reasons for acceptances would be an additional burden on the Court. It was furthermore noted that any acceptance of a referral is precisely for the reasons given in Article 43(2) of the Convention and anything beyond that Article would risk prejudging the Grand Chamber's reconsideration of the whole proceedings. The proposal was therefore not retained. The CDDH also examined a proposal to introduce an adversarial procedure before the Panel of five judges takes its decision. This was not retained as it would also create a burden on the Court, as well as on the Government Agent.

112. At the same time, the CDDH stresses the important role to be played by the Grand Chamber in ensuring the consistency of the Court's case law.[138] It recalled that, for example, Protocol No. 15 removes the parties' right to object to the relinquishment of a case by the Chamber in favour of the Grand Chamber. This measure is intended, *inter alia* to "contribute to consistency in the case law of the Court"[139] and to speed up the proceedings in cases "which raise a serious question affecting the interpretation of the Convention".[140] The CDDH notes that the Court should be more transparent in openly acknowledging and giving clear reasons when it is revising its existing case

[137] The Interlaken process and the Court, 2015 Report, p. 4.
[138] See, for example, K. Dzehtziarou and A. Greene, "Restructuring the European Court of Human Rights: preserving the right of individual petition and promoting constitutionalism" (Public Law: 2013), pp. 710-719, doc. GT-GDR-F(2014)029, pp. 4-5.
[139] Explanatory report to Protocol No. 15, para. 16.
[140] *Ibid*., para. 17.

law.[141] In this respect, it is expected that "the Grand Chamber will in future give more specific indication to the parties of the potential departure from existing case law or serious question of interpretation of the Convention".[142] Finally, the CDDH underlines the need to avoid inconsistency in the case law between Chambers. It considers that the internal existing mechanisms of the Court or the existing tools, such as the Jurisconsult and the Research Division constitute appropriate means to prevent this phenomenon.

General interpretative guidance while maintaining the individual adjudication

113. While strongly reiterating its attachment to the Court's mission in ensuring individual justice in case of human rights violations, the CDDH notes that there could be more recourse by the Court, where appropriate and without prejudice to the margin of appreciation afforded to member States, to providing more clear general interpretative guidance concerning the understanding of the rights and freedoms protected by the Convention, while taking due account of the specific facts and circumstances of the individual case. This could be useful with a view to increasing the understanding on the part of the competent authorities of the State what measures to prevent similar applications would be the most adequate[143]. The CDDH considers that this role would primarily be played by the Grand Chamber and especially where such guidance naturally flows from previous findings in various other similar cases.

The relationship between the Strasbourg Court and national courts

114. The CDDH agreed that there should be increased interaction and dialogue between the Court and its judges, on the one hand, and national judicial systems and judges, on the other. This operates not only through meetings between judges, but especially through the exchange of ideas and principles as expressed in judgments. This could also help with certain Court judgment execution problems, in particular where the judiciary was at the origin of the violation found. The CDDH deemed that the Court should be more responsive to the considered interpretation of the Convention by national courts and that those courts should enter into more active dialogue, since both the Court and national courts have their respective responsibilities in the interpretation and application of the Convention. It was noted that such dialogue already takes places but that it warrants further development so as to involve all interested national judicial systems.

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[141] Proposal on rendering binding value to the precedent cases in the case law of the European Court of Human Rights by Dr. Bahadır Kilinç, GT-GDR-F(2014)030.

[142] Explanatory report to Protocol No. 15, para. 19.

[143] See Parliamentary Assembly (PACE) Resolution 1516 (2006) "Implementation of judgments of the European Court of Human Rights", para. 21: "The Assembly also notes with interest the recent development of the pilot procedure before the Court to address systemic problems. It notes, however, with some concern that this procedure has been conducted in respect of certain complex systemic problems on the basis of a single case which may not reveal the different aspects of the systemic problem involved. Under these circumstances, the pilot procedure may not allow a global assessment of the problem and, since all other related cases are "frozen", the risk emerges that this procedure will delay rather than speed up the full implementation of the ECHR. The Assembly also notes that the efficacy of the pilot procedure can only be safeguarded if the Committee of Ministers diligently exercises its competence to assess the adequacy and sufficiency of the implementation measures taken by respondent states."

115. A case law information network open to supreme courts was created by the Court, under the responsibility of its Jurisconsult, to ensure the exchange of information on the case law of the Convention, as noted also in the Brussels Declaration (A.1.b)). As described by the President of the Court, "the first purpose of the Network is to allow the participating courts to consult directly, and with minimum formality, the Court's Registry. The second purpose is to aid the Strasbourg Court in its work, for we too have concrete needs. Comparative law is an established part of the Court's methodology, in used to gauge the degree of consensus that exists in Europe as regards a particular issue. That is no easy exercise, and our expectation from the Network is that via our partner courts we will have access to the relevant and reliable information we require."[144] Further information appears also in the 2015 Report on "the Interlaken Process and the Court": "The Court's contribution may include the Jurisconsult's case law updates […] and reports on comparative and international law prepared by the Research Division. In turn, the other members of the Network will be able to contribute to comparative studies on specific legal issues under consideration by the Court, and keep the Court informed of contemporary judicial practice in the States concerned. […] In their participation in the Network, all members will respect the principle of judicial independence and the applicable rules on confidentiality. Overall the aim of the Network is to lead to a greater level of knowledge among its members regarding human rights law and practice at the European and domestic levels. It is intended to amplify the effects of the existing dialogue that takes place between the Court and national courts, and to contribute in a very concrete way to greater subsidiarity. In the long term, it may also facilitate more systematic exchanges and contacts on a horizontal level, i.e. among superior courts directly. At a time of continual convergence of domestic legal systems, this would represent a significant added-value from the Network."[145] The CDDH welcomes this development contributing to the domestic and European judicial dialogue. It notes, however, that in the interests of fairness and transparency the parties to a case must always have the opportunity to consider, verify, and where appropriate challenge any information from whatever source that the Court proposes to consider, including surveys of an issue across all States Parties. In addition, the CDDH notes that Protocol No. 16, when in force, will provide an additional valuable channel for judicial dialogue.

B. Possible responses outside the existing structures

The quality of the judges and of the Registry

116. The follow-up that the CDDH proposed regarding the judges may result in responses outside the existing structures, in particular with regard to the following issues:

- The review of the criteria for selecting candidates if it is decided that emphasis on the practical (judicial) experience in national law and the knowledge of general international law should be stipulated more clearly in the Convention;

[144] Dean Spielmann, President of the European Court of Human Rights, "Whither Judicial Dialogue?", Sir Thomas More Lecture Lincoln's Inn, 12 October 2015.
[145] The Interlaken process and the Court, 2015 Report, 12 October 2015, p. 7.

- The review of the election procedure in the interest of efficiency and effectiveness, including the respective responsibilities of the Committee of Ministers and the Parliamentary Assembly in this procedure. The question has been raised as to whether a procedure consisting in preparing a list of three candidates is an optimal solution and to what extent the election procedure fosters quality.[146] An additional proposal[147] was made following the model of the European Union[148] that the decision on the list of candidates to be presented before the Parliamentary Assembly lies with a Commission of 7 members (2 representing the general audience, 2 representing the legal doctrine, 2 representing the judiciary, 1 representing the Council of Europe) that shall decide on the suitability of candidates.

- The consideration of the change of the terms of office.[149]

The CDDH considers that the above explain all the more why an in-depth analysis of all the parameters of the election and selection process is warranted.

117. With a view to enhancing the Court's knowledge of national legal systems, the creation of a position of Senior Specialised Deputy Jurisconsults within the Department of the Jurisconsult was suggested. Their role would be to assist the different formations of the Court and furnish all information regarding the national legal system of the respondent State that might be relevant for the decision of the case, to draft comparative legal studies on a specific legal issue, or *ex officio* act as non-judicial rapporteurs assisting Single Judge formations or even Committees. The candidates would be legal public officials of the High Contracting Parties, with thorough knowledge of the national legal system and with more than 15 years' experience performing those functions. They would obtain those positions through a public open selection procedure which could assess whether they have sufficient knowledge of the working languages of the Court, the Convention system and the relevant case law of the Convention. [150]

118. The CDDH considered that the proposal had merits. It identified practical difficulties for its implementation: how to incorporate it within the current Registry system and which might be the budgetary consequences of such proposal. An objection of principle was also raised, namely that it lies with the parties to proceedings to supply all the information that the Court requires to understand the proceedings before it.

119. An additional proposal to this effect was to create an institution of Advocates General. It was argued that Advocates General could be useful as regards providing the Court with knowledge of the national framework. The proposal attracted some attention but it was noted that it had been discussed throughout the previous reforms of the Court and never retained. Apart from the possible budgetary constraints that such a proposal could entail, it was reiterated that the potential role of such an Advocate General is (at

[146] Contribution by Mr Christoph Grabenwarter, doc. GT-GDR-F(2014)018.
[147] See proposal by Justice Tatiana Neshataeva, GT-GDR-F(2015)016.
[148] Third Activity Report on the Panel Provided for by the Article 255 of the Treaty on the Functioning of the European Union: http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-02/rapport-c-255-en.pdf.
[149] See doc. GT-GDR-F(2014)18.
[150] See contribution by Spain, doc. GT-GDR-F(2015)004, pp. 36-37.

least in part) fulfilled under the existing system by the "national" judge and the role of the Council of Europe Commissioner for Human Rights.[151]

An enhanced interpretative function while maintaining individual adjudication

120. With respect to the Court's interpretative function, the CDDH considered a proposal to locate the adjudicatory function within the Chambers and to further strengthen the interpretative function of the Grand Chamber.[152] These two functions would be clearly separated. The Grand Chamber would deal with three main types of cases. The first type would be cases that deal with "novel issues, never presented before the Court".[153] The second type would be those "of particular significance for the State concerned" including endemic violations which are embedded in a particular legal system and where the Court has to emphasise the importance of the problem and urge the Contracting Party to solve the issue.[154] The third type of cases would be those raising "allegations of serious human rights violations".[155]

121. During the discussions of this proposal, it was pointed out that the Grand Chamber, in fact, already dealt with these types of cases. Furthermore, it was stressed that the proposal might place too much emphasis on the role of the Grand Chamber and underemphasise the role of the Chambers in developing the case law of the Court. The CDDH further identified certain difficulties related to the practical implications of this proposal, namely the limited capacity of the Grand Chamber; complications caused by a strict categorisation of cases between adjudicatory and interpretative cases; and the handling of non-priority Chamber cases raising complex issues, among others. The CDDH did not consider it necessary to devise a new method of treatment by the Court of cases raising novel issues or cases of serious human rights violations. In general, the CDDH expressed reservations as to this proposal.

122. Other proposals were also considered, such as suggesting an enhanced interpretative function on the part of the Court. It was suggested that the Court be given authority to take cases also on its own motion, building on its practice of examining issues not raised by an applicant.[156] It was noted that this would require an amendment of the Convention. It remained unclear how the Court would identify and decide upon the issues which it would take on its own motion. It was stressed that requiring the Court to exercise "political will" in such a way could be dangerous. In fact, Article 52 of the Convention could achieve similar ends, the Secretary General being better placed to exercise such a will.

123. Numerous other proposals were examined but most experts were cautious about them. Those proposals related to: changes in the majority required for the adoption of a

[151] See Explanatory report of Protocol No. 14 paras. 86-89 regarding third-party intervention.
[152] See, for example, Dzehtziarou and Greene, "Restructuring the European Court of Human Rights: preserving the right of individual petition and promoting constitutionalism" (Public Law: 2013), doc. GT-GDR-F(2014)029.
[153] *Ibid*, p. 2.
[154] *Ibid*, pp. 2-3.
[155] *Ibid*, p. 3.
[156] As expressed by Arto Kosonen (Finland) at the Oslo Conference, see doc. H/Inf(2014)1.

Chamber judgment in cases that would overturn specific domestic decisions;[157] the respective fact-finding roles of the Strasbourg and national courts; the reorganisation of the Court into specialised thematic chambers; dissenting opinions; and a suggestion that the Court should give precedential binding value to judgments. Some experts considered that those issues were in part matters related to the internal organisation of the Court and that the resolution by States Parties would be contrary to the independence of the Court. Regarding more particularly the specialisation issue, one should recall that one of the avenues currently being tested is specialisation at the Registry level (see para. 80).

124. It has also been suggested to enhance the interpretative function of the Court by reinforcing national or international mechanisms to assist victims in bringing relevant cases before the Court, notably by increasing the participation of certain institutional actors, such as the Council of Europe Commissioner for Human Rights, in proceedings. The discussions did not indicate any particular need for innovations in this area and there was significant opposition to most of the specific proposals made.

The relationship between the Strasbourg Court and national courts

125. The CDDH also considered a far-reaching proposal focusing on securing greater involvement of the domestic judiciary in the composition of the Court, on the lines of the model in use, before the entry into force of Protocol No. 11, of the part-time Court. According to this proposal, a full-time Court would include a Grand Chamber of 15 part-time judges, drawn from the various highest judicial bodies on a rotational basis, although various modalities could be envisaged.

126. The CDDH notes that such a proposal has the intention of allowing for enhanced interaction between the domestic courts and the Court resulting in a greater understanding of the Strasbourg Court among the domestic judiciaries, and in the creation of a feeling of ownership of the Convention by the latter. It was argued that it would also enhance the Strasbourg Court's understanding of and sensitivity to the effect of its jurisprudence at national level. However, the CDDH did not retain this proposal considering that a Court composed of part-time judges, who are not involved in the implementation of the Convention on a daily basis, undermines the very purpose of a permanent Court. In addition, the CDDH saw practical obstacles in this proposal. It would be difficult in practice to arrange the regular presence of those judges.

127. Another proposal suggested that the Court could have the possibility to issue provisional judgments.[158] National courts would be given the opportunity to express their views on a Strasbourg decision that would significantly develop jurisprudence, and Contracting Parties would intervene in the proceedings involving a new interpretation of a particular right. It was argued that this would reflect the principle of subsidiarity, and help ensure acceptance by national actors of the development of the case law of the

[157] Namely "a two-thirds majority for judgments that *de facto* do away with national courts' judgments and decisions by national parliaments", see the proceedings of the Oslo Conference, doc. H/Inf(2014)1, p. 89.
[158] See "*An English Judge in Europe*", lecture given by the Rt Hon. Lady Justice Arden (doc. GT-GDR-F(2014)006).

Court. The main arguments against this proposal included that it would lengthen proceedings before the Court, imply the creation of two different classes of judgments (the provisional and the final ones), and diminish the authority of the Court. The existing possibility of referral of cases to the Grand Chamber is a more appropriate legal tool in this context. In addition, the practice of the Court when finding no violation, to signal, in light of the developments underway, that this is a matter/area where there might be a change in its future case law that "needs to be kept under review by Contracting States" was considered a serious counter argument.[159]

128. The following proposals were also mentioned: the creation of first instance courts within the Court on thematic issues;[160] the creation of regional courts (or territorial judicial commissions);[161] and the creation of one European fair trial commission. They did not find wider support, as they would be likely to raise a large number of procedural issues and would be costly. Regarding the possible "regionalisation" of the judicial control mechanism, it was also reiterated that it would entail a risk of diverging case law.[162]

SECTION III – CONCLUSIONS

129. With respect to the challenge of the Court's caseload, the CDDH would conclude the following:

i) The challenge concerning the Court's caseload has evolved greatly during the course of the Interlaken process. The CDDH welcomes the efforts made by the Court in implementing Protocol No. 14 and the clearance of the backlog of clearly inadmissible cases. In addition, it takes note of the expectation that the backlog of repetitive cases will be dealt with within two or three years. In light of these developments the CDDH does not discern a need for the adoption of further measures regarding this part of the backlog.

ii) At the same time, the CDDH observes that the handling of non-priority, non-repetitive cases pending before the Court represents a major challenge, in addition to that of the high number of priority cases. It encourages the Court to examine further possibilities of streamlining its working methods. In this respect, the CDDH took note with interest of the Court's intention to

[159] In certain cases, relating notably to home births, immunity to State officials, artificial procreation and gender reassignment, while the Court found no violation, it indicated that, in light of the developments underway, this is a matter which "needs to be kept under review by Contracting States"; See *Dubská and Krejzová v. the Czech Republic,* App. Nos. 28859/11 and 28473/12, 11 December 2014*; Jones and Others v. the United Kingdom*, App. Nos. 34356/06 and 40528/06, 14 January 2014; *S.H. and Others v. Austria*, App. No. 57813/00, Grand Chamber judgment of 3 November 2011; and *Sheffield and Horsham v. the United Kingdom*, App. Nos. 31-32/1997/815-816/1018-1019, Grand Chamber judgment of 30 July 1998.

[160] See proposals from Justice Tatiana Neshataeva (doc. GT-GDR-F(2014)007). According to these proposals, the Court could refer some cases that do not have a significant character to a first instance court dealing with a particular issue; such courts would also have the power to refer cases to domestic courts.

[161] *Ibid*; see also contribution of Stefan Trechsel in the "open call for contributions".

[162] See also para. 34 of the Explanatory Report to Protocol No. 14.

explore the so-called "project-focused approach" relying on more specialisation at the Registry level. Furthermore, the CDDH underlines the importance of ensuring the appropriate quality of examination of all applications also when clearing this backlog.

iii) In this respect, the CDDH recalls that the Committee of Ministers needs to examine the possibility of allocating a temporary extraordinary budget of a total of 30 million euros to be used over a period of eight years to eradicate the remaining backlog.

iv) Concerning the reduction and handling of the annual influx of cases, the CDDH notes that this is primarily dependent on better implementation of the Convention and better execution of the Court's judgments. It also stresses the need of awareness-raising activities addressed to the applicants and lawyers concerning the scope and limits of the Convention's protection and admissibility criteria, and invites the Council of Europe to consider developing co-operation with legal professions in this respect. The CDDH welcomes the considerable impact of the application of Rule 47 as amended, and calls upon States Parties to ratify Protocol No. 15 which could contribute to this effect. Finally, it expresses support for the Court's strict application of its admissibility criteria.

v) Concerning large-scale violations, the CDDH stresses the need for the Committee of Ministers to find appropriate political mechanisms for addressing the underlying problems in the member States concerned and review how best to exploit its political power and tools in such situations.

vi) Concerning systemic issues, the CDDH supports wider use by the Court of efficient judicial policy and case-management, allowing effective adjudication of large numbers of applications and inducing the respondent States through pilot judgments or other existing procedures to resolve the underlying systemic problems under the supervision of the Committee of Ministers.

vii) With regard to the challenge of the caseload in general, the Court can adopt and revise its Rules, allowing the system to react flexibly. The CDDH recalls its proposals regarding the procedure for the amendment of the Rules of Court and is awaiting the outcome of the considerations of the Court's Rules Committee on this issue.

130. With respect to the challenge of the authority of the case law, the CDDH reiterates that States must abide by the final judgment of the Court in any case to which they are parties. It concludes the following:

i) The CDDH is of the view that a central challenge for the long-term effectiveness of the system is to ensure that the judges of the Court enjoy the highest authority in national and international law. A comprehensive approach examining all parameters regarding the selection and election

process including all factors that might discourage possible candidates from applying is needed. The CDDH concludes that all the above considerations and possible measures to be taken deserve a further in-depth analysis that should be conducted as a follow-up to this report. The CDDH notes that this follow-up may result in responses outside the existing structures, in particular regarding the criteria for selecting candidates, the election procedure and the terms of office.

ii) The CDDH encourages the improvement of the selection of lawyers at all levels of the Court's Registry, in addition to their knowledge of international law and the Convention itself, on the basis of their knowledge of their respective national legal systems and practical experience.

iii) The quality of reasoning is essential for the authority of the case law and for the Committee of Ministers when supervising the execution of Court judgments. The CDDH notes the various measures considered to that effect following the Brussels Declaration (providing brief reasons for single judge decisions, for decisions indicating interim measures, and for decisions by the panel of five judges on refusal of referral requests), while stressing the important role played by the Grand Chamber in ensuring consistency of the Court's case law.

iv) While strongly reiterating its attachment to the Court's mission in ensuring individual justice, the CDDH notes that there could be more recourse by the Court, where appropriate and without prejudice to the margin of appreciation afforded to member States, to providing more clear general interpretative guidance concerning the understanding of the rights and freedoms protected by the Convention, while taking due account of the specific facts and circumstances of the individual case. This could be useful with a view to increasing the understanding on the part of the competent authorities of the State what measures to prevent similar applications would be the most adequate. Such a role would primarily be played by the Grand Chamber and especially where such guidance naturally flows from previous findings in various other similar cases.

v) The CDDH agrees that there should be increased interaction and dialogue between the Court and its judges, on the one hand, and national judicial systems and judges, on the other. The creation of the Network of superior courts launched by the Court on 5 October 2015 is an important step in this direction. The entry into force of Protocol No. 16 may equally contribute to this end. Additional measures to foster such dialogue with all interested national judicial systems should be considered by the Court and the Council of Europe in the context of its cooperation activities with the member States.

CHAPTER IV - THE AUTHORITY OF THE COURT'S JUDGMENTS: EXECUTION OF JUDGMENTS AND ITS SUPERVISION

A. Challenges

131. **Significant efforts have been made over the last few years in several countries, including those with large numbers of applications, to improve the domestic response to the Court's judgments**, whether through better incorporation of the Convention, guidance from superior courts or new Convention-oriented remedies. The implementation of pilot judgments has been particularly positive and fruitful. In the majority of such cases, the domestic responses following the execution process have been considered adequate by the Court.[163] The current system has managed to inspire many important human rights reforms introduced at the domestic level of many High Contracting Parties, including in response to judgments revealing problems of a systemic character. Even if it may be true that some of these reforms take time, especially due to their complex nature or the financial burden involved, the authority of the Court's judgments is not an issue. However, the authority and the efficiency of the human rights protection system based on the Convention could be seriously undermined if national authorities chose not to fully comply with judgments of the Court.

132. Despite the above-mentioned positive results in the execution process, **areas of concern remain that require long-term action**.[164] In this regard, two main challenges concerning the execution of judgments are identified:

133. **The implementation of some judgments is problematic for reasons of a more political nature**. These are the cases related to serious large scale violations committed in the context of complex problems such as armed conflicts or territorial disputes, as well as cases related to sensitive problems where there is a lack of political will for their implementation.

134. **The implementation of some other judgments is problematic for reasons of a more technical nature due notably to the complexity of the execution measures or because of the financial implications of the judgment**. This is particularly true for cases revealing important systemic problems. As was noted above, this does not necessarily call into question the authority of the Court's judgments as such. However, it does pose a challenge to the Convention mechanism as a whole, since these judgments are still numerous and remain therefore a considerable burden.[165]

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[163] For example, see the Introduction by the Chairs of the Human Rights Meetings, Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, 8th Annual Report of the Committee of Ministers 2014, p. 9.

[164] See Presentation to the 3rd meeting by the Director of Human Rights, doc. GT-GDR-F (2014)22; see the Introduction by the Chairs of the Human Rights Meetings, Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, 8th Annual Report of the Committee of Ministers 2014.

[165] *Ibid.,* p. 9.

135. At the same time, there is also the constant challenge of supervising in a timely and efficient manner the execution of the Court's judgments which are executed without any particular difficulty and which represent the overwhelming majority of cases.[166] To this end, it should be ensured that the bodies dealing with the supervision of judgments (e.g. the Committee of Ministers assisted by its Secretariat and the Department for the Execution of Judgments of the European Court of Human Rights) have sufficient capacity to process effectively the high number of cases decided by the Court. At the same time, it is crucial that actions plans and reports submitted by the Governments are assessed rapidly by the Department for the Execution of Judgments through simplified procedures with a view to the rapid closure of cases without delay. The rapid treatment of action reports would facilitate the efforts deployed at national level and boost the execution process.

136. The CDDH recalls its previous contributions regarding both the execution and the supervision process (Committee of Ministers' working methods, interaction and synergies with other Council of Europe instances),[167] as well as its Contribution to the Brussels Conference. The tools put forward by the CDDH found a political echo in the recent Brussels Declaration and the subsequent decisions of the Committee of Ministers. The CDDH examined afresh the questions pertaining both to the execution and supervision of judgments in light of the above.

B. Possible responses within the framework of the existing structures

Execution of judgments

137. In its contribution to the Brussels Conference the CDDH reaffirmed that full and prompt execution of Court judgments, in accordance with the obligation set out in Article 46 of the Convention, was essential for the effective functioning of the Convention system. The CDDH re-emphasises that significant further progress in this field is both possible and necessary.

138. The CDDH notes the importance of the detailed road-map,[168] presented in the Brussels Declaration and in particular the invitation to the High Contracting Parties to: increase their efforts to submit, within the stipulated deadlines, comprehensive action plans and reports to the Committee of Ministers; deploy sufficient resources at national level for a full execution of all judgments; attach particular importance to ensuring full, effective and prompt follow-up to those judgments raising structural problems; afford

[166] In this regard it should be recalled that 77% of cases was supervised under the standard procedure in 2013 as noted by the Director for Human Rights.
[167] See Presentation to the 3rd meeting by the Director of Human Rights, doc. GT-GDR-F (2014)22; see the Introduction by the Chairs of the Human Rights Meetings, Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, 8th Annual Report of the Committee of Ministers, 2014; In the context of its work leading to its 2008 report on practical proposals for the supervision of the execution of judgments of the Court in situations of slow execution, (see doc. CDDH(2008)014 Addendum II) and to its 2013 report on whether more effective measures are needed in respect of States that fail to implement Court's judgments in a timely manner, see doc. CDDH (2013)R79 Addendum I.
[168] See Part B. 2. a) to j).

authority to the Government Agents and officials responsible for the co-ordination of the execution process; and foster the exchange of information and best practice with other States Parties. The Guide for the drafting of action plans and reports for the execution of judgments of the European Court that was prepared by the Department for the Execution of Judgments[169] is a valuable tool to this effect.

139. Regarding the enhanced authority of all stakeholders in charge of the execution process at national level, the CDDH recalls the decision by the Committee of Ministers at its Ministerial Session of 19 May 2015, in accordance with the Brussels Declaration, to take stock of the implementation of, and make an inventory of good practices relating to Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights and, if appropriate, ensure the updating of the Recommendation in the light of practices developed by the States Parties. This work will be undertaken by the CDDH and its subordinate Committee, the DH-SYSC, in the upcoming biennium. The enhanced involvement of national parliaments,[170] the establishment of contact persons for human rights matters as well as the holding of regular debates at national level on the execution of judgments, as foreseen in the Brussels Declaration, should be considered in the framework of this work.

140. Regarding the invitation to attach particular importance to ensuring full, effective and prompt follow-up to judgments raising structural problems, the CDDH stressed that the resolution of those problems is key to alleviating the Court's burden and preventing future similar violations. The obligation to abide by a judgment of the Court and thus to remedy a general problem revealed may well require, as also stressed by the Court in many pilot judgments and other judgments dealing with Article 46, making the fundamental changes required at national level to address the roots of the violations.[171]

141. In addition, the following specific issues were considered by the CDDH:

- Indications in the Court's judgments relating to the execution stage

142. As reflected in the constant practice of the Committee of Ministers and underlined by the Court, the respondent State remains free, subject to the supervision of the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgments. Whilst taking into account the Committee of Ministers' long-standing relevant practices for the execution of judgments, including encouragements, criticism and suggestions to the State Party

[169] Guide for the drafting of action plans and reports for the execution of judgments of the European Court prepared by the Department for the Execution of Judgments; See also the Conclusions of the Round Table dedicated to action plans and reports for the execution of the European Court's judgments, organised by this Department (12-13 October 2014, Strasbourg).

[170] See for examples at domestic level: "The role of parliaments in implementing ECHR standards: overview of existing structures and mechanisms", Background memorandum prepared by the Parliamentary Project Support Division (Parliamentary Assembly of the Council of Europe), doc. PPSD(2014)22rev, 8 September 2015.

[171] See for example, *Ramadhi and Others v. Albania*, App. No. 38222/02, 13 November 2007, para. 94.

concerned,[172] the CDDH concentrated its examination on the recent developments of the Court's contribution to the execution process.

143. In order to improve execution, the Committee of Ministers had notably invited the Court in 2004 to identify, as far as possible, "in its judgments finding a violation of the Convention, what it considers to be an underlying problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist [S]tates in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments".[173] The CDDH considers that the execution process could be facilitated in this way. The Court could indicate more clearly in its judgments which elements were actually problematic and constituted the direct sources of the finding of the violation.

144. Regarding the possibility of the Court giving specific indications "as to the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist",[174] the CDDH reaffirmed its previous conclusions in that respect.[175] The CDDH does not support a regular recourse to this practice, beyond these

[172] See notably Rule 16 of the Rules adopted by the Committee of Ministers for its supervision of the execution of judgments and the terms of friendly settlements.
[173] Resolution Res (2004)3 on judgments revealing an underlining systemic problem.
[174] See *Suso Musa v. Malta*, App. No. 42337/12; § 120. Such indications were sporadically given in the past; over the last 10 years, the Court has given those more regularly (see 8th Annual Report of the Committee of Ministers cited above, p. 83).
[175] See the CDDH 2013 report on whether more effective measures are needed in respect of States that fail to implement Court's judgments in a timely manner (doc. CDDH (2013)R79 Addendum I), paras 12 and 13: "12. *The Court being more directive in its judgments on the measures needed*. It should first of all be noted that the Court has stated that "exceptionally, with a view to helping the respondent State to fulfil its obligations under Article 46, [it] will seek to indicate the type of measure that might be taken in order to put an end to a violation it has found to exist. In such circumstances, it may propose various options and leave the choice of measure and its implementation to the discretion of the State concerned. In certain cases, the nature of the violation found may be such as to leave no real choice as to the measures required to remedy it and the Court may decide to indicate only one such measure".[175] An example of the former is the pilot judgment in the case of *Broniowski v. Poland*, concerning the need for a domestic remedy providing compensation for property lost as a result of border changes following the Second World War.[175] As to the latter type of case, in *Oleksandr Volkov v. Ukraine*, the Court directed the respondent State to ensure that the applicant be restored to his judicial post.[175] 13. It was noted that the Court has, in exceptional cases, already developed its practice in this sense. Some welcomed this as helpful in providing greater clarity as to what Convention standards required, thereby assisting States in executing judgments. Others opposed it on the basis that it exceeds the Court's role under the Convention, arguing that it fundamentally alters the relationship between the Court and the States Parties. The essential role of the Court is to determine whether or not protected rights and freedoms have been violated and, where necessary, to decide on just satisfaction. States are then free to choose the means by which to give effect to the Court's judgments, subject to the supervision of the Committee of Ministers, in accordance with the principle of subsidiarity. Questions were also raised as to the extent to which directives on specific measures required for execution would be binding, including where circumstances change and the measures directed are no longer appropriate/ adequate. It has been suggested that problems in determining the measures necessary fully to execute a judgment are due not to a lack of precision in the judgment but to the fact that the judgment is based upon a specific case and may be open to different readings, depending on one's perspective. Also, where there is uncertainty concerning the consequences of a judgment that depends on its interpretation, the CDDH recalls that article 46(3) of the Convention allows the Committee of Ministers to refer the matter to the Court for a ruling on the question of interpretation. In any case, the Committee of Ministers' expectations of a satisfactory outcome to the

exceptional cases, where the nature of the violation found may be such as to leave no real choice as to the measure(s), in particular individual ones, required to remedy it.

- Just satisfaction

145. It is recalled that the Declaration adopted at the 2012 Brighton Conference invited the States Parties, including through the Committee of Ministers, to also initiate comprehensive examination of the affording of just satisfaction to applicants under Article 41 of the Convention. As the award of just satisfaction is among the individual measures for the execution of a judgment, the CDDH addresses this question in this Chapter.

146. Article 41 states that, having found a violation, "if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party". In practice, however, the Court often awards just satisfaction without having explored the question of whether or not the relevant national law allows for only partial reparation.

147. As noted, however, in Chapter III, it has been argued that part of the influx of cases is due to the fact that the Court is increasingly perceived by some applicants as a "court of compensation" or "a court of fourth instance". This perception may – at least in part – be the result of a lack of clarity as to how damages are calculated in the Court's case law.[176] There is a risk that this may result in applicants being induced to lodge applications for financial rather than for substantive reasons, especially if the levels of just satisfaction are significantly higher than those usually granted by domestic courts in situations of similar gravity. The CDDH stresses that it is necessary that the criteria applied by the Court when applying Article 41 of the Convention become more transparent and take into account national economic circumstances. In addition, some experts felt that there should be a return to strict interpretation of Article 41 and that the Court should as often as possible consider the finding of a violation to be in itself sufficient just satisfaction to compensate the non-pecuniary damage suffered by the applicant, with just satisfaction awarded only in exceptional circumstances. Others were reluctant to go too far in this direction noting the importance of just satisfaction for individual justice and redress.

148. A number of questions have been considered regarding the award of just satisfaction in case of joint communication of repetitive cases. According to information given by the Court's Registry,[177] the just satisfaction awards in those cases follow the case-law in similar cases. Regarding groups of cases[178] where the Court decided that the finding of violation constituted sufficient just satisfaction and that there was no reason to award any legal fees or other costs, the Court proceeded on the basis

process of implementation of a particular judgment must remain consistent with the judgment itself and preferably should be clear from the outset."

[176] See the contribution by Mr Marten Breuer, "Taking Human Rights seriously: Attributing Supremacy to the European Convention on Human Rights", doc. GT-GDR-F (2014)008, p. 20.

[177] See doc. GT-GDR-F(2015)014.

[178] For example, *Firth and Others v. the United-Kingdom*, App. No. 47784/09, 12 August 2014.

of a straightforward application of its standard Article 41 case law.[179] The CDDH notes that the affording of just satisfaction in cases of repetitive applications, such as those regarding unreasonable duration of judicial proceedings, could result in some applicants submitting applications merely for financial reasons.

149. The connection between *restitutio in integrum* (in particular through reopening of domestic proceedings) and the need to award just satisfaction was highlighted (if the former is achieved, the latter should not be necessary). In addition, the CDDH notes the possibility for national authorities to award compensation at national level through the reopening of domestic proceedings, subject to certain procedural requirements. This is not unprecedented[180] but in order for this to comply with the general principles developed so far under Articles 41 and 13, the CDDH considers that remedial action for violations, including payment of compensation at national level, should be swift.

150. As far as the execution stage is concerned, problems relating to the payment of just satisfaction ordered in the Court's judgment are rare, even if practical difficulties sometimes could occur. The CDDH reiterates[181] that it could be useful to consider updating or even upgrading the memorandum on "monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice" (document CM/Inf/DH(2008)7 final, 15 January 2009).

- The possibility of re-opening of domestic proceedings following a judgment of the European Court

151. Regarding *restitutio in integrum*, in addition to the above considerations concerning the link between it and just satisfaction the CDDH recalls that in view of problems encountered in remedying the situations of applicants, the Committee of Ministers invited in Recommendation (2000)2 "the Contracting Parties to ensure that there exist at national level adequate possibilities to achieve, as far as possible, *restitutio in integrum*".[182] The question of the reopening was the subject of an exchange of views at the 8th meeting of DH-GDR[183] where it was extensively discussed and of a

[179] See doc. GT-GDR-F(2015)014.

[180] *Clooth v. Belgium* (Article 50), App. No. 12718/87, 5 March 1998: In the principal judgment, the Court indicated that it wished to take into account the compensation that the applicant might obtain under domestic law (p. 17, § 52). It took note of the two court decisions communicated to it by the parties (the judgment of the Brussels *tribunal de première instance* of 20 January 1995 and the Brussels Court of Appeal judgment of 7 November 1997). The Court noted that making its assessment on an equitable basis, the Brussels Court of Appeal awarded the applicant BEF 125,000 in compensation for non-pecuniary damage and BEF 500,000 by way of reimbursement of his defense costs in the domestic courts (BEF 200,000) and before the Convention institutions (BEF 300,000) and dismissed the claim for compensation for pecuniary damage as having not been made out. Having regard to all the aspects of the case, the Court held that the Brussels Court of Appeal's judgment of 7 November 1997 made just reparation for the consequences of the violation found in the principal judgment and dismissed the applicant's claim.

[181] See the CDDH Contribution to the High-Level Conference on "The implementation of the Convention, our shared responsibility"; CDDH(2014)R82 Addendum II, para. 9a.

[182] See explanatory memorandum to the Recommendation; para. 4.

[183] See doc. DH-GDR (2015)R8, paras. 10-11.

Round Table organised by the Department for the Execution of Judgments.[184] While the relevance of the criteria adopted in Recommendation (2002)2 for assessing the necessity of re-opening was noted, it was also stressed that re-opening is only one of the means to secure to the applicant *restitutio in integrum*. During the exchange of views in the DH-GDR, it was noted that most High Contracting Parties already allowed for the reopening of criminal cases. Other solutions in criminal cases (e.g. amnesty) have also been introduced by States Parties. Reopening of civil proceedings following a violation found by the Court is allowed in some countries, some others have established it in a more *ad hoc* manner and some others rely on means other than reopening to address the consequences of violations.[185] In this connection, the acknowledged impediments were reiterated, in particular, preserving legal certainty and the consequences of reopening for parties who had acted in good faith in proceedings marred by Article 6 or other violations. These possible impediments were evidently most frequently present in "ordinary" civil proceedings with *res judicata* effect. When reopening of civil proceedings is not in any event possible, the award of pecuniary damage for loss of opportunity constitutes a form of appropriate compensation. Other alternative solutions[186] have also been put in place. The CDDH welcomes the creation of a specialised webpage following the exchange of views in the DH-GDR as well as the further follow up work that will be carried out[187] regarding the domestic practices and through which States Parties may draw inspiration, where possible, from the experience and solutions found in many States Parties.[188]

Supervision of execution of the Court's judgments

152. The Brussels Conference underlined the importance of the efficient supervision of the execution of judgments in order to ensure the long-term sustainability and credibility of the Convention system and, for this purpose, the Committee of Ministers was encouraged to take a number of measures to enhance the supervision process. These include use and development of all tools at its disposal, enhanced efficiency of the Human Rights debates and increased transparency of the process. The rapid implementation of those measures, echoing earlier reflections of the CDDH, will be crucial. The CDDH notes that this part of the Brussels Declaration[189] will be examined directly by the Committee of Ministers. The following considerations aim at providing input to this work as well as to the reflections of the other instances responsible for the implementation of the Brussels Declaration.[190]

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[184] "Reopening of proceedings following a judgment of the European Court of Human Rights", 5-6 October 2015 (Strasbourg); See in particular the Conclusions of the Round Table.
[185] See the Conclusions of the Round Table referred to in footnote 185.
[186] Such as as suing the State for tort (unlawful dispensation of justice); see contribution by the Netherlands.
[187] Information concerning the implementation of the Convention and execution of the Court's judgments: re-examination or reopening of cases following judgments of the Court http://www.coe.int/t/dghl/standardsetting/cddh/reformechr/Reopening-en.asp
[188] An overview, on the basis of the issues and challenges identified during the exchange of views as well as of the written contributions and the synthesis prepared by the Secretariat will be elaborated in 2015. A Vademecum on the execution will be drafted as a follow up to the Round Table organised by the Department for the Execution of Judgments.
[189] Points C. 1. a), b), d), and f).
[190] See "Roadmap on the work for the reform of the European Court of Human Rights, following the Brussels Declaration", doc. SG/Inf (2015)29.

153. The CDDH recalled that the current system today works well for the overwhelming majority of Court judgments which are executed without any particular difficulty under the Committee of Ministers' supervision. However, the resolution of the execution problems encountered in certain cases often requires particular political will in the respondent State and co-operation between the authorities concerned, and calls for a specific response.[191]

154. In instances where the current system has proved insufficient it appears more sensible to look for solutions/tools appropriate to these exceptional situations. What is required is to consider ways and means of supplementing the technical support with a suitable political lever for meeting the challenges of the process.[192] Furthermore, the CDDH has previously noted the importance, where appropriate, of working closely with other international actors.[193]

155. At the same time it is necessary to ensure that the Department for the Execution of Judgments is able to fulfil its primary role and assist member States in the execution process. The CDDH takes note of the relevant parts in the Brussels Declaration (points C.2. and C.1.j)). For its part, the CDDH would underline the significance of the following (interrelated) aspects:

- to ensure that the Department for the Execution of Judgments has sufficient capacity, including resources, to process effectively the high number of cases decided by the Court and to conduct the enhanced dialogue through bilateral consultations between the national authorities and the Department for Execution regarding cases revealing structural or complex issues. As for the issue of staffing, the CDDH would note the desirability of having one or more lawyers from all States Parties active in the Department for the Execution of Judgments. Their knowledge of the national legal system could greatly facilitate a better understanding of the Action Plans and Reports submitted by States Parties;

- there is a need for the Department for the Execution of Judgments to consider further streamlining and adjusting its working methods to ensure that sufficient time is allocated for the early assessment of all action plans and reports. When States Parties have satisfactorily demonstrated in their action reports that all measures necessary in response to a judgment have been taken, those cases must be closed without delay.

156. The CDDH also stresses the importance of enlarging the process to include all the relevant actors and activities. For the CDDH, the following measures of the Brussels Declaration are important to this effect:

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[191] See the CDDH Contribution to the High-Level Conference on "The implementation of the Convention, our shared responsibility"; CDDH(2014)R82 Addendum II, para. 5.

[192] See Presentation at the 3rd meeting of GT-GDR-F by the Director of Human Rights, doc. GT-GDR-F(2014)022.

[193] See the CDDH Contribution to the High-Level Conference on "The implementation of the Convention, our shared responsibility"; CDDH(2014)R82 Addendum II, para. 13. This is particularly relevant when judgments of the Court concern structural/systemic problems with budgetary implications involving international actors, such as the International Monetary Fund or the World Bank.

157. Firstly, the CDDH notes the call of the Brussels Declaration for enhanced synergies between all Council of Europe actors regarding the execution of judgments. For instance, the Commissioner for Human Rights[194] is one of the key actors to build on the findings of the Court and the conclusions of the Committee of Ministers when addressing the national authorities. The same applies to relevant monitoring bodies confronted with issues put forward by the judgments of the Court.[195] The Parliamentary Assembly already contributes to this process, although to a limited extent, by preparing reports on the state of execution of some judgments.[196]

158. It may also be noted that in its Contribution to the Brussels Conference, the Court[197] stressed that it saw scope for aiding the supervision of execution by developing its relations with the Department for the Execution of Judgments. In addition to the regular contacts between members of the Registry and their counterparts in the Department, there has been a new development in 2014. This took the form of inviting representatives of the Department to meet with some of the Sections of the Court in order to discuss with judges a number of current general issues concerning the execution of judgments. The CDDH welcomes the prospect of holding such meetings on a periodic basis. They could, *inter alia*, allow the Department to deal with pending execution cases taking into account the latest developments of the Court's decisions on inadmissibility or striking out subsequent pending cases.

159. The CDDH supports the extension of Rule 9 of the Committee of Ministers' Rules for supervision of execution of judgments and terms of friendly settlements to include written communications from international organisations or bodies. It recalls its support for such an amendment of Rule 9 already in its 2013 Report on whether more effective measures are needed in respect of States that fail to implement Court's judgments in a timely manner.[198] It was argued that the extension of Rule 9 to international organisations could prolong unreasonably the supervision procedure. The CDDH notes that the supervision procedure would, by no means, be paused until certain actors submit communications under Rule 9. Rule 9 offers a possibility to the actors concerned to communicate with the Committee of Ministers if they decide to make use of that Rule. The practical modalities of the use of Rule 9 could be further looked at in future work.

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[194] See the contribution by Mr Alvaro-Gil Robles (doc. GT-GDR-F (2015)009). See also the Report by Mr Klaas de Vries (Netherlands, Socialist Group) "Implementation of judgments of the European Court of Human Rights: 8th report", adopted on 23 June 2015 by the Committee on Legal Affairs and Human Rights, Parliamentary Assembly, prov.

[195] For example, see the final resolution, Resolution CM/Res(2011)210 adopted by the Committee of Ministers in the case *Siliadin v. France* (App. No. 73316/01; as well as the final resolution, Resolution CM/ResDH(2014)209, and the accompanying action report in the cases of *Ghavtadze and four other cases v. Georgia (*App. 23204/07).

[196] See also the report by Mr Klaas de Vries (Netherlands, Socialist Group) "Implementation of judgments of the European Court of Human Rights: 8th report", adopted on 23 June 2015 by the Committee on Legal Affairs and Human Rights, Parliamentary Assembly, prov.

[197] Cf. para. 19.

[198] See doc. CDDH (2013)R79 Addendum I, para. 47.

160. Secondly, as regards the invitation of the Brussels Declaration to all intergovernmental committees to take aspects of the Convention into consideration in their thematic work, the CDDH stresses that the exchange of views on thematic issues related to the implementation of the Convention and the execution of the Court's judgments, already included in the mandate of the DH-GDR, will be pursued in the next biennium.

161. Finally, the Brussels Declaration encourages the Secretary General to pursue targeted cooperation activities relating to the implementation of judgments. The development of better synergies between the domestic and European actors is a precondition to this effect, as is better coordination between the execution process and the cooperation activities. As it was argued at the Oslo Conference "strengthening the 'domestic ownership' [of the Convention] will help further strengthen the legitimacy and authority of the whole Convention system".[199] The CDDH notes with interest the fact that the Directorate of internal oversight initiated an evaluation of the Council of Europe's technical assistance activities regarding the execution of the Court's judgments and the implementation of the Convention.[200] The CDDH stresses the importance of adequate capacity in the field of co-operation and assistance activities to contribute to prompt solution of structural and systemic problems revealed by violations found by the Court.

C. Possible responses outside the framework of the existing structures

Execution of Court judgments

- Measures indicated in Court judgments regarding execution

162. The CDDH does not retain the proposal to formally introduce a practice whereby the Court would indicate general measures in its judgments in order to assist execution and the Committee of Minister's supervision thereof. In this respect, it refers to the arguments set out in paragraph 144.

163. Another proposal aimed at bringing greater clarity to the execution stage of proceedings entailed the Court, in appropriate cases and following an appropriate procedure involving parties concerned, expressly indicating in the judgment that, apart from the payment of any just satisfaction awarded, no other measure, individual or general, appears required. The CDDH does not retain this proposal. This practice would considerably prolong the proceedings before the Court as this would require an assessment of the situation *ex nunc*. Furthermore, it is evident that the applicants would not be in favour of such a restrictive practice.

- The possibility of re-opening of domestic proceedings following a judgment of the European Court

[199] See the speech of Kristine Lice (Latvia) on the topic of "Subsidiarity: Dialogue between the Court and national courts", Session II, at the Oslo Conference, see doc. H/Inf(2014)1.
[200] See doc. SG/Inf (2015)29 on part C.3.c) of the Brussels Declaration, p. 9.

164. The CDDH considered several proposals relating to this issue: the creation of a general obligation for States Parties in their national laws to provide for the reopening of a case following a Court judgment finding a violation of the Convention, and the creation of a domestic procedure to review cases that appear incompatible with settled Court case law. Whilst there was understanding for the principles underlying those proposals, the CDDH stresses the legal and practical impediments involved and therefore does not retain them.

Supervision of execution of Court judgments

165. The most significant proposals that were examined concerning this issue involved the transfer of some or all of the Committee of Ministers' current supervisory functions to other organs, notably the Secretariat and/or the Court. It was recalled that the Committee of Ministers' supervision was an important reflection of collective enforcement within the Convention system and would be lost were responsibility transferred elsewhere. It was also noted that there would not necessarily be any saving in terms of resources, given that all other things being equal there would be the same number of judgments and decisions whose execution would need supervising. In addition, it was noted that the Committee of Ministers was by definition better placed to influence political entities and ensure adequate coordination with other Council of Europe instances and activities and, where necessary, the creation of different expert organs. Making another body responsible for supervision of execution would not in itself address any existing problems with regard to execution. In addition, transferring responsibility for supervision could only, if at all, be envisaged as part of a fundamental restructuring of the Convention system.

166. The CDDH also discussed a proposal to extend the Committee of Ministers' supervisory role to include the implementation of unilateral declarations and decided that further consideration should be given to the supervision of unilateral declarations containing specific undertakings, which go beyond the payment of just satisfaction and do not constitute repetitive cases.[201] This would require amending the Convention. Considering that the possibility that the Court may restore a case to its list of cases if it considers that the circumstances justify such a course[202] provides sufficient safeguards to the applicant, the CDDH does not retain the proposal. However, it noted that adding specific undertakings in unilateral declarations (as well as in friendly settlements) could in some cases cause problems in practice.

167. Three proposals concerned the powers available to the Committee of Ministers: setting deadlines for implementation; making technical assistance in implementing certain judgments compulsory; and imposing financial penalties for non-implementation. Experts noted that the Committee of Ministers' procedure already involved deadlines for a respondent State's submission of its initial action plan and/or report; beyond that, there were practical objections to a generalised approach to

[201] See the presentation by Elisabeth Lambert-Abdelgawad, "The role of the Committee of Ministers" in Session III at the Oslo Conference, see doc. H/Inf(2014)1.

[202] Article 37 § 2 of the Convention. According to Rule 43 5) of the Rules of Court: "Where an application has been struck out in accordance with Article 37 of the Convention, the Court may restore it to its list if it considers that exceptional circumstances so justify".

deadlines. Despite some support, strong objections were raised to the idea of financial sanctions for non-implementation, for the same reasons as in the past.[203] Finally, the CDDH notes that compulsory technical assistance would not fit well with the rationale of assistance activities based on requests by member States.

D. Conclusions

168. As regards the execution of judgments, the CDDH concludes the following:

i) The CDDH recalls that the overwhelming majority of Court judgments are executed without any particular difficulty. However, the execution of some cases is problematic for reasons of a more political nature, while the execution of some other cases is problematic for reasons of a more technical nature due notably to the complexity of the execution measures or the financial implications of the judgment. The CDDH stresses that the execution of Court judgments raising structural or systemic problems is key to alleviating the Court's burden and to preventing future similar violations.

ii) The CDDH recalls its previous work in this field and notes the importance of the detailed road-map in the Brussels Declaration on the timely execution of Court judgments, while reiterating that there could be no exceptions to the obligation under Article 46 of the Convention to abide by judgments of the Court.

iii) The CDDH supports the need for an enhanced authority of all stakeholders in charge of the execution process at national level. It highlights that, in the next biennium, it will focus on this question in the framework of its work on the Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.

iv) The CDDH considers that the Court could indicate more clearly in its judgments which elements were actually problematic and constituted the direct sources of the finding of the violation. Regarding the possibility of the Court giving specific indications "as to the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist", the CDDH reaffirms its previous conclusions in that respect. The CDDH does not support a regular recourse to this practice, beyond these exceptional cases, where the nature of the violation found may be such as to leave no real choice as to the measure(s), in particular individual ones, required to remedy it.

v) Regarding the issue of just satisfaction awarded by the Court, the CDDH considers that the criteria applied by the Court need to be more transparent and take appropriately into account national economic circumstances. This could prevent applicants from lodging applications for financial rather than

[203] Doc. CDDH(2013)R79 Addendum I.

substantive reasons, a situation with repercussions on the Court's docket. Regarding the supervision of the execution of the payment of just satisfaction, the CDDH reiterates that it could be useful to consider updating or even upgrading the memorandum on "monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice" (document CM/Inf/DH(2008)7 final, 15 January 2009).

vi) Regarding the issue of the reopening of proceedings following a judgment by the European Court, the CDDH notes that this is only one of the means to secure to the applicant *restitutio in integrum* also on the basis of the criteria adopted in Recommendation (2000)2. In light of the exchange of views at the 8th meeting of the DH-GDR regarding the issue of reopening of civil and criminal proceedings as well as the Round Table organised by the Department for the Execution of Judgments and their follow-up, States Parties may draw inspiration, where possible, from their respective experience and solutions found.

169. As regards the supervision of execution, the CDDH concludes the following:

i) There was no support to transfer some or all of the Committee of Ministers' current supervisory functions to other organs. The CDDH highlights that what is required is to consider ways and means of supplementing the technical support with a suitable political lever for meeting the challenges of the process.

ii) Furthermore, the CDDH considers that it is necessary to further examine enhancing procedures for the implementation of judgments related to serious large-scale violations committed in the context of difficult complex problems such as armed conflicts or territorial disputes. The CDDH stresses the need to reinforce the Council of Europe political tools and procedures in these special cases.

iii) At the same time it is necessary to ensure that the Department for the Execution of Judgments is able to fulfil its primary role and assist member States in the execution process. The CDDH takes note of the relevant parts in the Brussels Declaration (points C.2. and C.1.j)). For its part, the CDDH would underline the significance of the following (interrelated) aspects:

- to ensure that the Department for the Execution of Judgments has sufficient capacity, including resources, to process effectively the high number of cases decided by the Court and to conduct the enhanced dialogue through bilateral consultations between the national authorities and the Department regarding cases revealing structural or complex issues. As for the issue of staffing, the CDDH would note the desirability of having one or more lawyers from all States Parties active in the Department. Their knowledge of the national legal system could facilitate a better understanding of the action plans and reports submitted by States Parties;

- there is a need for the Department for the Execution of Judgments to consider further streamlining and adjusting its working methods to ensure that sufficient time is allocated for the early assessment of all action plans and reports. When States Parties have satisfactorily demonstrated in their action reports that all measures necessary in response to a judgment have been taken, those cases must be closed without delay.

iv) The CDDH does not retain a proposal to extend the Committee of Ministers' supervisory role to include the implementation of unilateral declarations containing specific undertakings, which go beyond the payment of just satisfaction and do not constitute repetitive cases.

v) The CDDH reiterates its support for the extension of Rule 9 of the Committee of Ministers' Rules for supervision of execution of judgments and terms of friendly settlements to include written communications from international organisations or bodies.

vi) The CDDH stresses the importance of adequate capacity in the field of co-operation and assistance activities to contribute to the prompt solution of structural and systemic problems revealed by violations found by the Court. In this respect, it welcomes the call of the Brussels Declaration for enhanced synergies between all Council of Europe actors regarding the execution of judgments.

CHAPTER V - THE PLACE OF THE CONVENTION MECHANISM IN THE EUROPEAN AND INTERNATIONAL LEGAL ORDER

170. The Court has held on numerous occasions that "the principles underlying the Convention cannot be interpreted and applied in a vacuum".[204] This Chapter examines the position of the Convention mechanism in the wider legal space (*espace juridique*) in which it operates.

A. Challenges

171. There is an ever increasing institutional framework of international mechanisms operating in the field of (specific parts of) international human rights law. The existence of numerous European and international treaties relevant to the protection of human rights standards is not in itself a challenge to the longer-term future of the Convention mechanism, however **such diversity of mechanisms increases the risk of diverging interpretations of one and the same or interrelated (human rights) norm(s)**.[205] This in turn may lead to conflicting obligations for States under various mechanisms of international law. It could undermine the credibility of the Convention mechanism if the Convention were to be interpreted in a manner inconsistent with States' commitments under other treaties. This challenge will be examined from four perspectives:

- the interaction between the Convention and other instruments of the Council of Europe;
- the interaction between the Convention and the European Union legal order;
- the interaction between the Convention and other international human rights instruments to which Council of Europe member States are parties; and
- the interaction between human rights law and other branches of international law.

The interaction between the Convention and other instruments of the Council of Europe

172. Over the last six decades, a comprehensive array of instruments, such as legally binding Conventions and recommendations has been established within the Council of Europe to complement the provisions of the Convention (for example, prevention of torture, the fight against discrimination and the protection of social and economic rights). Some of the Council of Europe mechanisms established are relevant to and/or build on the case law of the Court, such as the Venice Commission and the Human Rights Commissioner, without creating themselves a treaty obligation for a State. However, other Council of Europe treaties create separate treaty obligations applicable to those member States who have ratified the relevant Convention. Under numerous Council of Europe Conventions, a body has been established to monitor observance

[204] For example, see *Loizidou v. Turkey* (merits; Grand Chamber) App. No 15318/89, 18 December 1996, para. 43. See also in that respect Article 53 of the Convention.

[205] See also the speech by Dame Rosalyn Higgins, President of the International Court of Justice, on the occasion of the opening of the judicial year of the European Court, 30 January 2009: "The plethora of judicial and quasi-judicial bodies operating in the field of human rights does pose the risk of divergent jurisprudence".

with treaty obligations and to interpret treaty provisions, such as the European Committee of Social Rights (ECSR) and the European Committee for the Prevention of Torture (CPT). In those instances, the above-mentioned challenge may surface if various Council of Europe mechanisms resulting in diverging conclusions and/or recommendations for States.[206]

173. In its case law the Court demonstrates a great sense of awareness of the existence of other Council of Europe mechanisms. In a number of judgments, the Court has used, for the purpose of interpreting the Convention, intrinsically non-binding instruments of Council of Europe organs, in particular recommendations and resolutions of the Committee of Ministers and the Parliamentary Assembly.[207] In order to interpret the exact scope of the rights and freedoms guaranteed by the Convention, the Court has, for example, taken into account the work (thematic and country specific) of many of the above-mentioned mechanisms, not least the Venice Commission[208] and of that of the European Commission against Racism and Intolerance (ECRI).[209]

174. Similarly, the Court has referred to CPT standards and/or reports in approximately 100 judgments when interpreting and applying Article 3 of the Convention as a source of inspiration[210] and referred to the European Social Charter when interpreting Article 11 of the Convention.[211]

175. Generally speaking the interpretation given to these distinct norms does not create conflicting obligations for States though vigilance must be maintained with regard to the obligations that each State has and has not accepted. Hence, the CDDH does not consider that this aspect currently poses a challenge to the longer-term future of the Convention mechanism. However, all Council of Europe mechanisms should remain vigilant that norms in the Convention and other texts are harmoniously interpreted.

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[206] This issue should be distinguished from the situation in which a particular convention imposes new, more specific or more far-reaching obligations than the Convention. Likewise, a monitoring body under such a convention could address specific issues that are under its remit resulting in more specific or more far-reaching obligations than the Convention.

[207] *Öneryıldız v. Turkey* [GC], App. No. 48939/99, paras. 59, 71, 90 and 93.

[208] *Russian Conservative Party of Entrepreneurs and Others v. Russia*, App. Nos. 55066/00 and 55638/00, paras. 70-73; *Basque Nationalist Party – Iparralde Regional Organisation v. France*, App. No. 71251/01, paras. 45-52; and *Çiloğlu and Others v. Turkey*, App. No. 73333/01, para. 17.

[209] *Bekos and Koutropoulos v. Greece*, App. No. 15250/02, paras. 33-36; *Ivanova v. Bulgaria*, App. No. 52435/99, paras. 65-66; *Cobzaru v. Romania*, App. No. 48254/99, paras. 49-50; and *D.H. and Others v. the Czech Republic* [GC], App. No. 57325/00, paras. 59-65, 184, 192, 200 and 205.

[210] See the contribution of the Court's Vice-President, Mr Josep Casadevall, to the Conference "The CPT at 25: taking stock and moving forward" held in Strasbourg on 2 March 2015, to be found on: http://www.cpt.coe.int/en/conferences/cpt25-discours-Casadevall.pdf. "Le consensus émergeant des instruments internationaux spécialisés et de la pratique des Etats contractants constitue un élément pertinent lorsque la Cour interprète les dispositions de la Convention dans des cas spécifiques. Dans ce système général de « vases communicants », les rapports du CPT sont des sources « de premier niveau » pour la Cour […]" (available only in French).

[211] The European Social Charter in comparison to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is signed by all member States and ratified by 43 member States. *Sigurður A. Sigurjónsson v. Iceland*, App. No 16130/90 para. 35 and *Sørensen and Rasmussen v. Denmark* [GC], App. Nos. 52562/99 and 52620/99, paras. 72-75.

The interaction between the Convention and other European regional organisations

176. Ever since the Court of Justice of the European Union (CJEU) acknowledged that fundamental rights form an integral part of the general principles of Community law and sought inspiration looking at "international treaties for the protection of human rights on which the member States have collaborated or of which they are signatories",[212] there has been a special relationship between the Convention mechanism and the legal order of the European Union. This relationship was subsequently formalised in the 1992 Maastricht Treaty, stating that the Union "shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms […]". In addition to the development of internal mechanisms to safeguard human rights standards in the EU's legal order, Article 6 TEU introduced the legal obligation that the European Union shall accede to the Convention. Negotiations commenced in July 2010 between the European Commission and the CDDH-UE, an informal working group composed of seven experts from EU member States and seven from non-EU member States.[213] In October 2011, the informal working group was able to present a draft agreement to the Committee of Ministers. However, the draft agreement met with some resistance when being discussed within the CDDH and in separate discussions between the then 27 member States of the European Union, and had to be renegotiated. Negotiations were then conducted between the European Commission and all member States of the Council of Europe (the "47+1" ad hoc group). Negotiators were able to finalise the draft accession agreement in April 2013.[214] In July 2013, the CJEU was asked by the European Commission to give its opinion on the compatibility of the draft Accession Agreement with the EU Treaties. On 18 December 2014, the CJEU delivered its opinion. It held that the draft Accession Agreement does not sufficiently take into account the autonomy of EU law, the position of the CJEU itself and certain specific features of Union law as they currently exist. Following Opinion 2/13 of the CJEU of 18 December 2014, it is at this time of the adoption of this report uncertain when, how and even whether the EU will accede.

177. It has been argued that accession of the European Union could pose a challenge to the Convention mechanism given the influx of new applications. This prospect does not appear to be alarming: "[...] the additional workload for the Strasbourg Court in the event of accession should be rather limited as the additional cases brought before the Strasbourg Court as a result of accession are expected to mainly concern the cases which have been brought before the CJEU by way of direct actions. [...]. There should not, therefore, be an avalanche of EU cases going to the Strasbourg Court once accession has taken place".[215] It has however been argued that the nature of the cases

[212] See for example Case 36/75, Rutili, [1975] ECR 1219; Case 149/77, *Defrenne v. Sabena*, [1978] ECR 1365; Case 44/79, *Hauer v. Land Rheinland-Pfalz*, [1979] ECR 3727 and Case 155/79, A.M. & S., [1982] ECR 1575.

[213] It may be recalled that the CCDH had drafted a Report on some of the technical issues that should be dealt with in relation to the accession of the EU in 2002; see CDDH (2002) 010 Addendum 2).

[214] http://www.coe.int/t/dghl/standardsetting/hrpolicy/Accession/Meeting_reports/47_1(2013)008rev2_EN.pdf.

[215] Accession by the European Union to the European Convention on Human Rights - Answers to frequently asked questions, Directorate General of Human Rights and Rule of Law (DGI), 1 June 2010,

against the EU would be more complex and place greater demands on the Court's time, including in view of the potential commercial interests engaged. The CDDH for its part notes that it does not consider this to be a separate challenge to the one that was previously discussed ("The challenge of the caseload"). More specifically, this refers to the need to react flexibly to changing circumstances and develop responses to new problems (see paragraph 12).

178. The reasons for accession have not disappeared since the drafting of Article 6 TEU which imposes a legal obligation. One of those reasons was ensuring a coherent system for the protection of fundamental rights across Europe. In case of non-accession, there is a real risk of the two main European legal systems drifting apart.[216] Given the growing importance of the Charter when interpreting fundamental rights issues (to the detriment of the Convention) and recent developments in the case law of the CJEU,[217] this prospect does not merely seem theoretical. Such a discrepancy may in the long term cause serious damage to the credibility, authority and long-term future of the Convention mechanism.

179. Further delaying the accession of the EU also runs the danger of leading to an undesirable "accountability gap". The President of the European Court of Human Rights, Mr Dean Spielmann, referred to this issue during the Solemn hearing for the opening of the judicial year in January 2015: "For my part, the important thing is to ensure that there is no legal vacuum in human rights protection on the Convention's territory, whether the violation can be imputed to a State or to a supranational institution".

180. While the diverging interpretations of fundamental rights by the CJEU and the ECtHR create already a real risk of undermining the coherence of the European legal space[218], similar problems may also arise in the future on account of the activities of the Eurasian Economic Union (EEU) and the emerging case law of the Court of Justice of the EEU which binds some of the Council of Europe member States. The CDDH thus concludes that the risk of fragmentation of the European legal space in the field of

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http://www.echr.coe.int/Documents/UE_FAQ_ENG.pdf; See also the Presentation to the 3rd meeting by the Registrar of the European Court of Human Rights, doc. GT-GDR-F(2014)021, p. 6.

[216] See notably Parliamentary Assembly Resolution 2055(2015), "The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond" adopted on 24 April 2015 (see doc. 13719 and in particular Addendum (item 2), Report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Yves Pozzo di Borgo (France, EPP/CD)); See also Recommendation 2070 (2015) and the Report prepared by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly "European Institutions and Human Rights" (rapporteur Mr Michael McNamara; AS/Jur(2015)02), paras. 38 and 67 of the explanatory report.

[217] The Åkerberg case law (C-617/10, 7 May 2013) promoting a broad scope of application of the Charter in conjunction with the Melloni case law (C-399/11, 26 February 2013) foreseeing a level of human rights protection dictated by EU law.

[218] For example, see C-17/98, *Emesa Sugar (Free Zone) v. Aruba*; see also R. A. Lawson, 'Confusion and conflict? Diverging interpretation of the European Convention on Human Rights in Strasbourg and Luxembourg, in R. A. Lawson & M. de Blois (eds), The Dynamics of the Protection of Human Rights in Europe, Martinus Nijhoff Publishers 1994, pp. 219-252.

human rights protection may become a major challenge to the Convention system in the longer term.[219]

The interaction between the Convention and other international human rights instruments to which Council of Europe member States are parties

181. Under various United Nations human rights treaties, the monitoring body may be empowered to examine individual complaints in addition to its competence to issue general comments and concluding observations. Since numerous Council of Europe member States are Parties to these UN treaties, there is a risk that a comparable human rights standard is interpreted differently in Geneva compared to Strasbourg. This could in turn result in conflicting obligations. This situation could be problematic. The CDDH notes with interest that the Court and/or its Registry has had, and still maintains, working contacts with the UN treaty bodies.[220] At the time of Sir Nicolas Bratza's presidency (2012), a joint meeting took place between representative of the UN Human Rights Committee and a delegation of the Court's judges. Since then, on either side there is a focal point (2 experienced lawyers on the Registry), to serve as the reference person for exchanging information and organising internships at the Registry each year. In October 2015, the Court has hosted a meeting, convened by the Office of the UN High Commissioner for Human Rights, of regional human rights courts/mechanisms, intended to allow dialogue and exchange between different international and regional human rights bodies.

182. The CDDH expresses support for this practice. However, within the framework of the current report, the CDDH was unable to conduct an in-depth analysis of this interaction and the manner in which the Court uses different international (human rights) treaties when interpreting the Convention. It is therefore not in a position to determine whether this aspect currently poses a challenge to the longer term of the Convention mechanism.

183. The view of the Human Rights Committee in the Achabal case exemplifies another issue. This case, which had previously been declared inadmissible by means of an unreasoned decision of the Committee of three judges[221] by the Court, was declared well-founded by the UN Human Rights Committee.[222] In its findings regarding the admissibility of the communication, the Human Rights Committee held that "in the particular circumstances of this case, the limited reasoning contained in the succinct

[219] It is noted that the General Affairs Council met in Luxembourg on 23 June 2015. In its conclusions, the Council said it "agrees with the Commission that accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms remains of paramount importance and will strengthen fundamental values, improve the effectiveness of EU law and enhance the coherence of fundamental rights protection in Europe". The Council reaffirmed "its strong commitment to the accession to the ECHR as required by the Treaties and invites the Commission as the EU negotiator to bring forward its analysis on the ways to address Opinion 2/13 of the Court of Justice of the European Union." However, no time frame was indicated.

[220] It is also relevant to recall that some members of the Court have previously served on other international human rights bodies; see doc. GT-GDR-F(2015)013.

[221] Application introduced in 2008, before the entry into force of Protocol No. 14.

[222] *María Cruz Achabal Puertas v. Spain* (1945/2010), CCPR/C/107/D/1945/2010 (2013); 20 IHRR 1013 (2013). See also J. Gerards, "Inadmissibility Decisions of the European Court of Human Rights: A Critique of the Lack of Reasoning", in: *Human Rights Law Review* 2014.

terms of the Court's letter does not allow the Committee to assume that the examination included sufficient consideration of the merits […]". An individual opinion of two members of the Human Rights Committee was couched in critical terms as to whether the Court examined the case. After this case, several other cases that were found inadmissible by the Court, have been admitted and dealt with by the Human Rights Committee. Such situations may seriously undermine the credibility and the authority of the Court.

The interaction between human rights law and other branches of international law

184. The Court pronounced in its Banković decision:[223]

> "The Court must [...] take into account any relevant rules of international law when examining questions concerning its jurisdiction and, consequently, determine State responsibility in conformity with the governing principles of international law, although it must remain mindful of the Convention's special character as a human rights treaty [...]. The Convention should be interpreted as far as possible in harmony with other principles of international law of which it forms part."

185. Concerns have however been raised as to the question whether the Court always achieves an interpretation of the Convention which is in harmony with other provisions of international law. Those concerns have been expressed by certain member States,[224] by some members of the Court in separate opinions,[225] and in academia.[226] While acknowledging that the interpretation of the Convention is a prerogative of the Court itself, the CDDH noted that an interpretation of the Convention which is at odds with other instruments of public international law (such as international humanitarian law) could have a detrimental effect on the authority of the Court's case law and the effectiveness of the Convention system as a whole.

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[223] *Banković and Others v. Belgium and Others* [GC], App. No. 52207/99, para. 57, 12 December 2001. See also: *Al-Adsani v. the United Kingdom* [GC], App. No. 35763, para. 60; *Demir and Baykara v. Turkey* [GC], App. No. 34503/97, paras. 60-86; and *Marta Andreasen v. the United Kingdom and 26 other member States of the European Union*, App. No. 28827/11, 31 March 2015.

[224] The Russian Federation expressed deep concerns as to the quality of some Court judgments where "the Court departs from the existing system of international case law which, in turn, could lead to the fragmentation of public international law" (p. 99 of the Proceedings of the 2015 Brussels Conference).

[225] See for example the separate opinion of Judge Spielmann, joined by Judge Raimondi, in the case of *Jaloud v. the Netherlands* (Grand Chamber judgment of 20 November 2014, App. No. 47708/08) in which certain parts of the judgment are described as "ambiguous, subsidiary and incomprehensible". See also the separate opinion of Judge Motoc in the same case: "[...] questions concerning the relationship between general international law and the human rights provided for in Article 1 have still to be clarified, as do the various conflicts of norms which may arise in the course of that Article's application". And Judge Kovler in the case of *Catan and Others v. Moldova and Russia* [GC], App. Nos. 43370/04, 8252/05 and 18454/06, 19 October 2012.

[226] See, for example James Crawford, "The structure of State responsibility under the European Convention of Human Rights" at the Conference *The European Convention on Human Rights and General International Law*, organised by the Court and the European Society of International Law (ESIL) on 5 June 2015. Mr Crawford identified various areas in which there is potential divergence from the rules on State responsibility; See also Sir Daniel Bethlehem, "When is an act of war lawful?" Report delivered at the seminar organised by the Court in honour of the Deputy Registrar of the European Court of Human Rights Michael O'Boyle, 13 February 2015.

186. In conclusion with regard to the four challenges identified the CDDH considers that:

i) Interaction between the Convention mechanism and other instruments of the Council of Europe is seen as unproblematic.

ii) A delayed accession of the European Union to the Convention could entail the risk of the two main European legal systems drifting apart which could be detrimental to the long-term future of the Convention mechanism.

iii) With regard to the interaction between the Convention mechanism and the UN treaty bodies, a further study would be required as a follow-up to the present report.

iv) Such a study would also focus on the question whether the Court always achieves an interpretation of the Convention which is in harmony with the general principles of international law. This issue would require an in depth consideration as the credibility of the Convention mechanism could be weakened if the Convention were to be interpreted in a manner inconsistent with States' responsibility and commitments under other treaties or international customary law.

B. Possible responses within the framework of the existing structures

The interaction between the Convention mechanism and the UN treaty bodies

187. As concerns the challenge of the cases admitted and dealt with by the UN Human Rights Committee while an inadmissibility decision had been rendered previously by the Court, the CDDH notes that the future practice of the Court's inadmissibility decisions of a single judge containing a succinct indication of the grounds on which the case was rejected,[227] may assist in addressing this challenge. In light of the bearing of this challenge on the credibility of the Court, the CDDH considers that it should remain under review within the framework of its above mentioned study.

Ensuring consistency with States' commitments under other treaties and international customary law

188. As for the issue concerning conflicting obligations for States under various mechanisms of international law, the CDDH stresses the importance of judicial dialogue among international courts. Such a judicial dialogue primarily takes place by means of reasoning in judicial decisions. However, regular encounters may equally contribute to the mutual transfer of knowledge concerning relevant jurisprudence and may thereby foster greater understanding for the other institutions' approach to certain common problems. This would keep the channels of communication open, also to

[227] The Interlaken process and the Court, 2015 Report, p. 4.

express concerns in a more informal manner. The Court itself has sought to hold regular meetings with the other regional Courts, notably the Inter-American Court of Human Rights, with periodic meetings between judges and exchanges of legal staff. Reference should also be made to the visit of the International Court of Justice to the Court in June 2015. The Court's President stated recently: "This Court is [...] a willing participant in the dialogue among international courts".[228] The CDDH considers such dialogue to be a useful tool for avoiding the fragmentation of international law and encourages the Court to pursue this dialogue including between staff members.

Ensuring coherency with the EU legal order

189. The CDDH encourages the Committee of Ministers to reiterate its political support for the accession of the European Union to the Convention and to take such action as may be appropriate to avoid any unnecessary delay in achieving this important objective having due regard to Opinion 2/13.[229] A statement was also included in the Brussels Declaration reaffirming the importance of the accession and encouraging the finalisation of the process "at the earliest opportunity". Likewise, the Committee of Ministers is encouraged to engage in a more general debate on the framework for human rights protection in Europe.

190. During the open call for contributions, a proposal was made to invite the EU to make third-party interventions on a more regular basis. The CDDH considers that a third-party intervention by the EU is already possible and can be useful. It is primarily for the EU in accordance with its internal legal order to decide whether it wishes to ask to make use of this possibility.[230]

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[228] President Spielmann's opening speech during the Conference "The European Convention on Human Rights and General International Law", organised by the Court and the European Society of International Law (ESIL) on 5 June 2015; see the Webcast at http://www.echr.coe.int/Pages/home.aspx?p=court/events/ev_ar (http://www.echr.coe.int/Documents/20150605_Conference_ESIL_Speech_ENG.pdf). A similar statement was made by the President of the International Court of Justice, Dame Rosalyn Higgins, on the occasion of the Opening of the Judicial Year in 2009 (http://www.echr.coe.int/Documents/Dialogue_2009_ENG.pdf#page=76).

[229] The Steering Committee for Human Rights (CDDH), in its comments to Parliamentary Assembly Recommendation 2060(2015), "The implementation of the Memorandum of Understanding between the Council of Europe and the European Union" (CDDH(2015)005_Bilingual, 14 April 2015) transmitted to the Committee of Ministers. See also: draft resolution and recommendation adopted on 27 January 2015 by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, "European Institutions and Human Rights" and the Explanatory Report by Mr Michael McNamara (Ireland, SOC), doc. AS/Jur (2015)02 (provisional version).

[230] The European Commission did recently intervene in the Grand Chamber case of *Avotiņš v. Latvia* (App. No. 17502/07).

C. Possible responses outside the framework of the existing structures

Ensuring consistency with States' commitments under other treaties and international customary law

191. The Convention is part of international law. Some of its provisions refer explicitly to international law (Articles 7, 15 and 35). In a similar vein, the general principle that the Convention as a whole should be interpreted in harmony with other principles of international law could be codified in the (preamble of the) Convention in order to highlight this intrinsic characteristic of the Convention system and strengthen the role of international law in the interpretation of the Convention by the Court. However, the CDDH was hesitant to advise such an amendment of the Convention. Amendment of the Convention would be a time-consuming exercise and the added value of such an amendment may be limited in so far as the principle is already acknowledged in the Court's case law.

D. Conclusions

192. The CDDH concludes the following:

i) The CDDH proposes that a more in-depth analysis of the issues raised in this Chapter be conducted.

ii) The CDDH stresses the importance of judicial dialogue among international courts and encourages the Court to pursue regular meetings with representatives of relevant judicial and quasi-judicial bodies.

iii) The Committee of Ministers is encouraged to engage in a more general debate on the framework for human rights protection in Europe, in particular in view of the importance of the accession of the European Union to the Convention.

CHAPTER VI – CONCLUSIONS

193. The backdrop against which this report is written is in some respects fundamentally different from that of when the so-called "Interlaken process" started in 2010. This is most notably true with regard to the backlog of cases pending before the Court.

194. The CDDH examined various and divergent challenges. There was consensus on the following challenges:

i) **Inadequate national implementation of the Convention** remains among the principal challenges or is even the biggest challenge confronting the Convention system. It reveals an additional and crucial one: effective national implementation may presuppose the effective involvement of and interaction between a wide range of actors (members of government, parliamentarians and the judiciary as well as national human rights structures, civil society and representatives of the legal professions). An additional challenge put forward was the practical difficulties in following the Court's case law.

ii) Regarding the functioning of the Court, two main challenges were identified: **the caseload of the Court** and **maintaining the authority of the case law**. The caseload represented a double challenge: that of clearing the backlog and of handling the annual influx. While the clearing of the backlog is now under control (the backlog of clearly inadmissible cases is cleared and the backlog of repetitive cases is expected to be dealt with within two or three years), efforts should now concentrate on the clearance of non-priority/non-repetitive cases and the high number of priority cases pending before the Court, while ensuring appropriate examination of all applications. The authority of the Court is vital for its effectiveness and for the viability of the Convention system as a whole. These are contingent on the quality, cogency and consistency of the Court's judgments, and the ensuing acceptance thereof by all actors of the Convention system, including governments, parliaments, domestic courts, applicants and the general public as a whole. The quality of judges and members of the Registry is also essential to maintaining the authority of the Court and therefore the future of the Convention mechanism. Emphasis was also put on the need to strengthen the Court's knowledge and consideration of the specific features of domestic legal systems and on the importance of the application of the principle of subsidiarity and the doctrine of the margin of appreciation.

iii) Regarding **the authority of the Court's judgments**, the CDDH notes that areas of concern remain that require long-term action. The implementation of some judgments is problematic for reasons of a more political nature. The implementation of some other judgments is problematic for reasons of a more technical nature due notably to the complexity of the execution measures or the financial implications of the judgments. It does pose a challenge to the Convention mechanism as a whole, since these cases are still numerous and are therefore a burden to the system. At the same time, there is also the

constant challenge of supervising in a timely and efficient manner the execution of Court judgments which are executed without any particular difficulty and which represent the overwhelming majority of cases.

iv) As for **the Convention mechanism in the European and international legal order**, the CDDH notes that the credibility of the Convention mechanism could be weakened if the Convention were to be interpreted in a manner inconsistent with States' commitments under other treaties. In addition, a delayed accession of the European Union to the Convention could entail the risk of the two main European legal systems drifting apart which could be detrimental to the long-term future of the Convention mechanism.

195. In general, the CDDH is of the opinion that the above challenges currently **do not warrant responses outside the framework of the existing structures**, with the exception of the in-depth analysis of all parameters regarding the selection and election of judges proposed as a follow-up to this report. This work may result in responses outside the existing structures (in particular with regard to the review of the criteria for selecting candidates, the review of the election procedure and the consideration of the change of the terms of office).

196. Regarding the **national implementation of the Convention**, the CDDH agrees that **further action** is needed, all recommended responses below being **within the framework of the existing structures**:

i) While refusing the existence of a Convention-based legal obligation upon States Parties to abide by final judgments of the Court in cases to which they are not parties, the CDDH notes that there would appear to be scope to better take into account the general principles found in the Court's judgments in cases against other High Contracting Parties, in preventive anticipation of possible violations. To this end, the identification of good practices on the kind of practical measures that may be adopted could have positive effects.

ii) The CDDH considers the professional training on and awareness-raising activities concerning the Convention and the Court's case law to be a high priority in order to fill the implementation gap. While acknowledging the efforts already made by all stakeholders, it stresses the need to:

- offer, on a structural basis, more targeted, and country specific trainings to relevant legal professionals (for example, governmental officials, as well as judges, prosecutors and lawyers,) addressing Convention implementation problems in each High Contracting Party, using to the fullest the potential of the Council of Europe pan-European Programme for Human Rights Education for Legal Professionals (HELP); and
- increase efforts regarding the translation of (excerpts of) leading judgments and/or provide summaries of those judgments in national languages notably for education and training purposes.

iii) The establishment, wherever appropriate, of contact points specialised on human rights matters within the relevant executive, judicial and legislative authorities should be encouraged, especially when no mainstreaming model exists within the relevant governmental bodies. These contact points could be called upon to advise on Convention matters.

iv) There is still a need to improve domestic remedies, either by the creation of new domestic remedies (including preventive, whether judicial or not) or by interpreting existing remedies or domestic procedural law in line with the obligations of Article 13 of the Convention. The issue of effective remedies should be 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 (judges, prosecutors, etc.).

v) Governments should fully inform parliaments on issues relating to the interpretation and application of Convention standards, including the compatibility of (draft) legislation with the Convention.

vi) Sufficient expertise on Convention matters should be made available to members of parliament, where appropriate, by the establishment, where appropriate, of parliamentary structures assessing human rights and/or by means of the support of a specialised secretariat and/or by means of ensuring access to impartial advice on human rights law, if appropriate in cooperation with the Council of Europe.

vii) There is a need for national authorities to check in a systematic manner the compatibility of draft legislation and administrative practice (including as expressed in regulations, orders and circulars) with the Convention at an early stage in the drafting process and consider, where appropriate, substantiating in the explanatory memorandum to draft laws why the draft bill is deemed compatible with the requirements of human rights provisions.

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

ix) The CDDH reiterates the significant role that national human rights structures can play in the implementation of the Convention. It further reiterates its support for the establishment of independent national human rights institutions and encourages the existence of appropriate conditions at domestic level for the fulfilment of their human rights mission.

x) The Council of Europe has a more active role to play in facilitating the involvement of all relevant domestic actors, depending on the nature of the problem to be tackled. The Council of Europe might need to consider a more

effective strategy in this area, building upon its best practices of co-operation with the member States.

197. Regarding the **authority of the Court**, in particular the **challenge of the caseload**, the CDDH notes the following and agreed that **further action** is needed, all recommended responses below being **within the framework of the existing structures**:

i) The challenge concerning the Court's caseload has evolved during the course of the Interlaken process. The CDDH welcomes the efforts made by the Court in implementing Protocol No. 14 and the clearance of the backlog of clearly inadmissible cases. In addition, it takes note of the expectation that the backlog of repetitive cases will be dealt with within two or three years. In light of these developments the CDDH does not discern a need for the adoption of further measures regarding this part of the backlog.

ii) At the same time, the CDDH observes that the handling of non-priority, non-repetitive cases pending before the Court is a major challenge, in addition to that of the high number of priority cases. It encourages the Court to examine further possibilities of streamlining its working methods. In this respect, the CDDH took note with interest of the Court's intention to explore the so-called "project-focused approach" relying on more specialization at the Registry level. Furthermore, the CDDH underlines the importance of ensuring the appropriate quality of examination of all applications also when clearing this backlog.

iii) Concerning the reduction and handling of the annual influx of cases, the CDDH notes that this is primarily dependent on better implementation of the Convention and better execution of the Court's judgments. It also stresses the need of awareness-raising activities addressed to the applicants and lawyers concerning the scope and limits of the Convention's protection and admissibility criteria, and invites the Council of Europe to consider developing co-operation with legal professions in this respect. The CDDH welcomes the considerable impact of the application of Rule 47, as amended, and calls upon States Parties to ratify Protocol No. 15 which could contribute to this effect. Finally, it expresses support for the Court's strict application of its admissibility criteria.

iv) Concerning large-scale violations, the CDDH stresses the need for the Committee of Ministers to find appropriate political mechanisms for addressing the underlying problems in the member States concerned and review how best to exploit its political power and tools in such situations.

v) Concerning systemic issues, the CDDH supports wider use by the Court of efficient judicial policy and case-management, allowing effective adjudication of large numbers of applications and inducing the respondent States through pilot judgments or other existing procedures to resolve the

underlying systemic problems under the supervision of the Committee of Ministers.

vi) With regard to the challenge of the caseload in general, the Court can adopt and revise its Rules, allowing the system to react flexibly. The CDDH recalls its proposals regarding the procedure for the amendment of the Rules of Court and is awaiting the outcome of the considerations of the Court's Rules Committee on this issue.

198. With respect to the challenge of **the authority of the case law**, the CDDH reiterates that States must abide by the final judgment of the Court in any case to which they are parties. It agrees that **further action** is needed, all recommended responses below being **within the framework of the existing structures**:

i) The CDDH encourages the improvement of the selection of lawyers at all levels of the Court's Registry, in addition to their knowledge of international law and the Convention itself, on the basis of their knowledge of their respective national legal systems and practical experience.

ii) The quality of reasoning is essential for the authority of the case law and for the Committee of Ministers when supervising the execution of Court judgments. The CDDH notes the various measures considered to that effect following the Brussels Declaration (providing brief reasons for single judge decisions, for decisions indicating interim measures, and for decisions by the panel of five judges on refusal of referral requests), while stressing the important role played by the Grand Chamber in ensuring consistency of the Court's case law.

iii) While strongly reiterating its attachment to the Court's mission in ensuring individual justice, the CDDH notes that there could be more recourse by the Court, where appropriate and without prejudice to the margin of appreciation afforded to member States, to providing more clear general interpretative guidance concerning the understanding of the rights and freedoms protected by the Convention, while taking due account of the specific facts and circumstances of the individual case. This could be useful with a view to increasing the understanding on the part of the competent authorities of the State what measures to prevent similar applications would be the most adequate. Such a role would primarily be played by the Grand Chamber and especially where such guidance naturally flows from previous findings in various other similar cases.

iv) The CDDH agrees that there should be increased interaction and dialogue, between the Court and its judges, on the one hand, and national judicial systems and judges, on the other. The creation of the Network of superior courts launched by the Court on 5 October 2015 is an important step in this direction. The entry into force of Protocol No. 16 may equally contribute to this end. Additional measures to foster such dialogue with all interested

national judicial systems should be considered by the Court and the Council of Europe in the context of its cooperation activities with the member States.

199. Regarding the **authority of the Court's judgments**, the CDDH agrees that **further action** is needed concerning the **execution of the Court's judgments**:

i) The CDDH recalls its previous work in this field and notes the importance of the detailed road-map in the Brussels Declaration on the timely execution of Court judgments, while reiterating that there could be no exceptions to the obligation under Article 46 of the Convention to abide by judgments of the Court.

ii) The CDDH supports the need for an enhanced authority of all stakeholders in charge of the execution process at national level. It highlights that, in the next biennium, it will focus on this question in the framework of its work on the Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.

iii) The CDDH considers that the Court could indicate more clearly in its judgments which elements were actually problematic and constituted the direct sources of the finding of the violation. Regarding the possibility of the Court giving specific indications "as to the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist", the CDDH reaffirms its previous conclusions in that respect. The CDDH does not support a regular recourse to this practice, beyond these exceptional cases, where the nature of the violation found may be such as to leave no real choice as to the measure(s), in particular individual ones, required to remedy it.

iv) Regarding the issue of just satisfaction awarded by the Court, the CDDH considers that the criteria applied by the Court need to be more transparent and take appropriately into account national economic circumstances. This could prevent applicants from lodging applications for financial rather than substantive reasons, a situation with repercussions on the Court's docket. Regarding the supervision of the execution of the payment of just satisfaction, the CDDH reiterates that it could be useful to consider updating or even upgrading the memorandum on "monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice" (document CM/Inf/DH(2008)7 final, 15 January 2009).

v) Regarding the issue of the reopening of proceedings following a judgment by the European Court, the CDDH notes that this is only one of the means to secure to the applicant *restitutio in integrum* also on the basis of the criteria adopted in Recommendation (2000)2. In light of the exchange of views at the 8th meeting of the DH-GDR regarding the issue of reopening of civil and criminal proceedings as well as the Round Table organised by the Department for the Execution of Judgments and their follow-up, States

Parties may draw inspiration, where possible, from their respective experience and solutions found.

200. As regards the **supervision of execution**, there was no support to transfer some or all of the Committee of Ministers' current supervisory functions to other organs. The CDDH highlights that what is required is to consider ways and means of supplementing the technical support with a suitable political lever for meeting the challenges of the process. The CDDH does not retain a proposal to extend the Committee of Ministers' supervisory role to include the implementation of unilateral declarations containing specific undertakings, which go beyond the payment of just satisfaction and do not constitute repetitive cases. The CDDH agrees that **further action** is needed **within the framework of the existing structures**:

i) At the same time it is necessary to ensure that the Department for the Execution of Judgments is able to fulfill its primary role and assist member States in the execution process. The CDDH takes note of the relevant parts in the Brussels Declaration (points C.2. and C.1.j). For its part, the CDDH would underline the significance of the following (interrelated) aspects:

- to ensure that the Department for the Execution of Judgments has sufficient capacity, including resources, to process effectively the high number of cases decided by the Court and to conduct the enhanced dialogue through bilateral consultations between the national authorities and the Department regarding cases revealing structural or complex issues. As for the issue of staffing, the CDDH would note the desirability of having one or more lawyers from all States Parties active in the Department. Their knowledge of the national legal system could facilitate a better understanding of the action plans and reports submitted by States Parties;

- there is a need for the Department for the Execution of Judgments to consider further streamlining and adjusting its working methods to ensure that sufficient time is allocated for the early assessment of all action plans and reports. When States Parties have satisfactorily demonstrated in their action reports that all measures necessary in response to a judgment have been taken, those cases must be closed without delay.

ii) The CDDH reiterates its support for the extension of Rule 9 of the Committee of Ministers' Rules for supervision of execution of judgments and terms of friendly settlements to include written communications from international organisations or bodies. The practical modalities of the use of Rule 9 could be further looked at in future work.

iii) The CDDH stresses the importance of adequate capacity in the field of co-operation and assistance activities to contribute to the prompt solution of structural and systemic problems revealed by violations found by the Court. In this respect, the CDDH welcomes the call of the Brussels Declaration for

enhanced synergies between all Council of Europe actors regarding the execution of judgments.

201. Regarding the **place of the Convention mechanism in the European and international legal order**:

i) The CDDH stresses the importance of judicial dialogue among international courts and encourages the Court to pursue regular meetings with representatives of relevant judicial and quasi-judicial bodies.

ii) The Committee of Ministers is encouraged to engage in a more general debate on the framework for human rights protection in Europe, in particular in view of the importance of the accession of the European Union to the Convention.

202. The CDDH concludes that **follow-up work** needs to be conducted in the following areas:

i) A central challenge for the long-term effectiveness of the system is to ensure that the judges of the Court enjoy the highest authority in national and international law. A comprehensive approach examining all parameters regarding the selection and election process including all factors that might discourage possible candidates from applying is needed. The CDDH concludes that all the above considerations and possible measures to be taken deserve a further in-depth analysis that should be conducted as a follow-up to this report. As noted above, this follow-up may result in responses outside the existing structures.

ii) The CDDH notes that follow-up work needs to be conducted to further examine enhancing procedures for the implementation of judgments related to serious large-scale violations committed in the context of difficult complex problems such as armed conflicts or territorial disputes. Furthermore, it stresses the need to reinforce the Council of Europe political tools and procedures in these special cases.

iii) The CDDH also agrees that an in-depth analysis needs to be conducted on all issues raised regarding the place of the Convention mechanism in the European and international legal order.

203. The issue of resources is key in responding to many of the challenges above and pursuing/implementing the areas of action identified. In order to maximise the effect of the resources available to the Convention system as a whole, it is necessary to evaluate the most effective overall balance of allocation based on a marginal cost-benefit analysis. In this regard, the CDDH welcomes the voluntary contributions made by Contracting Parties to the human rights programmes of the Council of Europe or the Human Rights Trust Fund. It 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. In this respect, the CDDH recalls that the Committee of Ministers needs to examine the possibility of allocating a temporary extraordinary budget of a total of 30 million euros to be used over a period of eight years, which would, according to the Registrar of the Court, suffice to eradicate the remaining backlog. Whilst it seems apparent from discussions that there is scope for addressing some of the identified challenges through the provision of additional resources, the CDDH is nevertheless aware of the continuing financial difficulties and budgetary constraints faced by many member States. The CDDH likewise recalls the earlier calls for the enhancement of the resources available to the Department for the Execution of Judgments, to process effectively the high number of cases decided by the Court. The issue of resources should not be examined only in relation to the Convention organs, but also in relation to human rights protection in Europe generally, given that the Convention system is intended to be subsidiary to national mechanisms. Therefore, investments in national implementation and in establishing domestic remedies should be regarded as part of a wider picture of resources made available to the Convention system as a whole.

APPENDIX
List of reference documents[231]

I. Contributions submitted to the Drafting Group "F" on the reform of the Court (GT-GDR-F)

Contribution by Mr Alvaro Gil-Robles	GT-GDR-F Inf.(2015)001
Contribution by Professor Christoph Grabenwarter	GT-GDR-F Inf.(2015)002
Contribution by Mr Bahadir Kilinç	GT-GDR-F Inf.(2015)003
Contribution by Mr Alain Lacabarats	GT-GDR-F Inf.(2015)004
Contribution by Professor Tatiana Neshataeva	GT-GDR-F Inf.(2015)005
Contribution by Professor Marten Breuer, "Taking Human Rights seriously: Attributing Supremacy to the European Convention on Human Rights"	GT-GDR-F Inf.(2015)006
Contribution by Dr Başak Çali	GT-GDR-F Inf.(2015)007
Contribution by Dr Alice Donald, "Strengthening the role of national parliaments in the implementation of Convention standards and European Court of Human Rights judgments"	GT-GDR-F Inf.(2015)008
Contribution by Professor Kanstantsin Dzehtsiarou - Dzehtziarou and Greene, "Restructuring the European Court of Human Rights: preserving the right of individual petition and promoting constitutionalism" (Public Law: 2013)	GT-GDR-F Inf.(2015)009
Contribution by Professor Elisabeth Lambert-Abdelgawad	GT-GDR-F Inf.(2015)010
Contribution by Professor Russell Miller, "The Jurisdiction of the US Supreme Court: The discretion to decide"	GT-GDR-F Inf.(2015)011
Contribution by Ms Nuala Mole	GT-GDR-F Inf.(2015)012
Contribution by Professor Geir Ulfstein	GT-GDR-F Inf.(2015)013
Presentation to the 3rd GT-GDR-F meeting by the Director of Human Rights, Directorate General Human Rights and Rule of Law of the Council of Europe	GT-GDR-F (2014)022
Presentation to the 3rd GT-GDR-F meeting by Erik Fribergh, Registrar of the European Court of Human Rights	GT-GDR-F Inf.(2015)014

II. Contributions presented in the framework of the open call for contributions on the longer-term future of the system of the European Convention on Human Rights

Results of the open consultation	GT-GDR-F(2014)002
Thematic overviews of the results of the 'open call for	GT-GDR-F(2014)003

[231] This list does not contain references to specific drafting proposals submitted by the experts, as well as NGOs and the European Network of National Human Rights Institutions (ENNHRI) with observer status within the Committee of Experts on the Reform of the Court (DH-GDR) and the Drafting Group "F" on the reform of the Court (GT-GDR-F), that were examined and addressed in the course of the preparatory work of the GT-GDR-F. These documents as well as relevant meeting reports can be consulted at: http://www.coe.int/t/DGHL/STANDARDSETTING/CDDH/REFORMECHR/GT-GDR-F_en.asp

contributions’	

III. Preparatory documents by rapporteurs of the Drafting Group “F” on the reform of the Court (GT-GDR-F)

Draft text resulting from discussions at the 1st GT-GDR-F meeting, prepared by the Rapporteur, Ms Kristine Lice (Latvia)	GT-GDR-F(2014)011
Draft text resulting from discussions at the 2nd GT-GDR-F meeting, prepared by the Rapporteur, Ms Katja Behr (Germany)	GT-GDR-F(2014)019
Draft text on preserving and reinforcing the current system, prepared by the Secretariat	GT-GDR-F(2015)002
Draft text on possible alternative models, prepared by the Rapporteur, Mr Ota HLINOMAZ (Czech Republic)	GT-GDR-F(2015)003

IV. Relevant work of Council of Europe bodies

A. Documents of the Committee of Ministers

Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, 8th Annual Report of the Committee of Ministers 2014	
Guide to good practice in respect of domestic remedies, adopted by the Committee of Ministers on 18 September 2013	
Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights, adopted by the Committee of Ministers on 28 March 2012	CM(2012)40final
Recommendation (2010)3 on effective remedies for excessive length of proceedings	
Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights	
Recommendation (2004)6 on the improvement of domestic remedies	
Recommendation (2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights	
Recommendation (2004)4 on the European Convention on Human Rights in university education and professional training	
Resolution Res (2004)3 on judgments revealing an underlining systemic problem	
Resolution (2002)59 concerning the practice in respect of friendly settlements	
Recommendation (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	
Recommendation (2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights	

Recommendation No. R (97) 14 on the establishment of independent national institutions for the promotion and protection of human rights	

B. Documents of the Parliamentary Assembly of the Council of Europe

Resolution 2075(2015) "Implementation of judgments of the European Court of Human Rights"; Recommendation 2079(2015) (see doc. 13864 and addendum, report of the Committee on Legal Affairs and Human Rights)	
Resolution 2055(2015) "The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond"; Recommendation 2070(2015) (see doc. 13719 and addendum, report of the Committee on Legal Affairs and Human Rights)	
Resolution 2041(2015) "European Union institutions and Human rights in Europe"; Recommendation 2065(2015) (see doc. 13714 and addendum, report of the Committee on Legal Affairs and Human Rights)	AS/Jur(2015)02
Resolution 2009(2014) "Reinforcement of the independence of the European Court of Human Rights"; Recommendation 2051(2014) (see doc. 13524 and addendum, report of the Committee on Legal Affairs and Human Rights)	
Resolution 1516 (2006) "Implementation of judgments of the European Court of Human Rights"	
Procedure for electing judges to the European Court of Human Rights, Information document prepared by the Secretariat of the Committee on the Election of Judges to the European Court of Human Rights	AS/CdH/Inf (2015)02 Rev 7
"The role of parliaments in implementing ECHR standards: overview of existing structures and mechanisms", Background memorandum prepared by the Parliamentary Project Support Division	PPSD(2014)22rev
Contribution of the Committee of Legal Affairs and Human Rights of the Parliamentary Assembly to the Conference on the Principle of Subsidiarity, Skopje, 1-2 October 2010	AS/Jur/Inf (2010)04

C. Documents of the European Court of Human Rights, of the Registry of the European Court of Human Rights and speeches

HUDOC database: http://hudoc.echr.coe.int	
The Interlaken process and the Court, 2015 report	
Contribution of the Court to the Brussels Conference	
The Interlaken process and the Court, 2014 report	
The Interlaken process and the Court, First Report, October 2012	
Report of the Filtering Section of the Court on the implementation of the revised rule on the lodging of new applications	
Comparative survey on the recognition of service as a Judge of the European Court of Human Rights	#4540067

Whither Judicial Dialogue?: Speech of Dean Spielmann, former President of the European Court of Human Rights at the Sir Thomas More Lecture, organised by Lincoln's Inn (12 October 2015)	
Dean Spielmann's opening speech during the Conference "The European Convention on Human Rights and General International Law", organised by the Court and the European Society of International Law (ESIL) on 5 June 2015; see http://www.echr.coe.int/Documents/20150605_Conference_ESIL_Speech_ENG.pdf	
Contribution of the Court's Vice-President, Mr Josep Casadevall, to the Conference "The CPT at 25: taking stock and moving forward" held in Strasbourg on 2 March 2015	

D. CDDH Reports and other documents

Reforming the European Convention on Human Rights: Interlaken, Izmir, Brighton and beyond: a compilation of instruments and texts relating to the ongoing reform of the ECHR", Directorate General of Human Rights and Rule of Law, Council of Europe, 2014	
CDDH Comments to Parliamentary Assembly Recommendation 2060(2015), "The implementation of the Memorandum of Understanding between the Council of Europe and the European Union"	CDDH(2015)005_Bilingual
CDDH Contribution to the High-level Conference on "The implementation of the Convention, our shared responsibility", organised by the Belgian Chairmanship of the Committee of Ministers (Brussels, 26-27 March 2015)	CDDH(2014)R82 Addendum II
CDDH Report containing conclusions and possible proposals for action concerning the procedure for the amendment of the Rules of Court and the possible "upgrading" of the Convention of certain provisions of the Rules of Court	CDDH(2014)R82 Addendum I
CDDH Report containing elements to contribute to the evaluation of the effects of Protocol No. 14 and the implementation of the Interlaken and Izmir Declarations on the Court's situation)	CDDH(2012)R76 Addendum II
CDDH report on whether more effective measures are needed in respect of States that fail to implement Court judgments in a timely manner	CDDH (2013)R79 Addendum I
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	CDDH(2013)R78 Addendum III
CDDH Report on the advisability and modalities of a "representative application procedure"	CDDH(2013)R77 Addendum IV
CDDH Report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations	CDDH(2012)R76 Addendum I
CDDH Contribution to the Ministerial Conference organised by the United Kingdom Chairmanship of the Committee of Ministers	CDDH(2012)R74 Addendum III
Report of the 1st meeting of the Ad Hoc Working group on national	CDDH-SC(2011)R1

practices for the selection of candidates for the post of judge at the European Court of Human Rights	
Practical proposals for the supervision of the execution of judgments of the Court in situations of slow execution	CDDH(2008)014 Addendum II
Technical and legal issues of a possible EC/EU accession to the European Convention on Human Rights	CDDH(2002)010 Addendum 2
Information concerning the implementation of the Convention and execution of the Court's judgments: re-examination or reopening of cases following judgments of the Court http://www.coe.int/t/dghl/standardsetting/cddh/reformechr/Reopening-en.asp	

E. Documents elaborated by other bodies

Roadmap on the work for the reform of the European Court of Human Rights, following the Brussels Declaration	SG/Inf (2015)29
Report of the Group of Wise persons to the Committee of Ministers	CM(2006)203
Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights	EG Court(2001)1
Guide for the drafting of action plans and reports for the execution of judgments of the European Court prepared by the Department for the Execution of the European Court's judgments	Series « Vade-mecum » n° 1

V. Relevant documents of European Union bodies or representatives

Court of Justice of the European Union (CJEU) database: http://curia.europa.eu/jcms/jcms/j_6/	
Third Activity Report on the Panel Provided for by the Article 255 of the Treaty on the Functioning of the European Union	
Opinion 2/13 of the CJEU of 18 December 2014	
Address by Mr Frans Timmermans, Vice-President of the European Commission during the Brussels High-Level Conference on "the Implementation of the European Convention on Human Rights, our shared responsibility"	H/Inf (2015) 1, p. 28

VI. Relevant work of United Nations bodies

"Paris Principles" - Resolution 48/134 of the UN General Assembly on national institutions for the promotion and protection of human rights	

VII. Relevant Conferences/Colloquies/Round Tables/Seminars quoted in the report

Proceedings of the Brussels High-level Conference on "the Implementation of the European Convention on Human Rights, our shared responsibility"	H/Inf(2015)1
Proceedings of the Oslo Conference on the long-term future of the European Court of Human Rights	H/Inf(2014)1
Proceedings of the Brighton High level Conference on the future of the European Court of Human Rights	H/Inf(2012)3
Proceedings of the Izmir High level Conference on the future of the European Court of Human Rights	H/Inf(2011)6
Proceedings of the Interlaken High level Conference on the future of the European Court of Human Rights	H/Inf(2010)5
Conference report "2020 Vision for the European Court of Human Rights", 17-19 November 2011, Wilton Park	
Proceedings of the Colloquy organised under the Swedish chairmanship of the Committee of Ministers of the Council of Europe, "Towards stronger implementation of the European Convention on Human Rights at national level", Stockholm, 9-10 June 2008	H/Inf(2008)11
Round Table on "Reopening of proceedings following a judgment of the European Court of Human Rights", organised by the Department for the Execution of the European Court's judgments (5-6 October 2015, Strasbourg)	
Round Table dedicated to action plans and reports for the execution of the European Court's judgments, organised by the Department for the Execution of the European Court's judgments (12-13 October 2014, Strasbourg)	
Conference on "the role of Parliaments in the protection and realisation of the Rule of Law and Human Rights", Westminster, 7 September 2015	
Conference on "Parliaments and the European Court of Human Rights", co-organised by the Middlesex University and the Helsinki Foundation for Human Rights, in Warsaw on 12 May 2015	
European Court of Human Rights Seminar to mark the official opening of the 2015 judicial year (30 January 2015), entitled: "*Subsidiarity: a two-sided coin*?"	

VIII. Other sources quoted in the report

Lady Justice Arden, "*An English Judge in Europe*", based on the Neill Lecture given in Oxford at the invitation of All Souls College, Oxford, on 28 February 2014 in celebration of the past Wardenship of Lord Neill of Bladen	GT-GDR-F(2014)006
A. Bodnar, "Res Interpretata: Legal effect of the European Court of Human Rights' Judgments for other States than those which were party to the proceedings", in *Human Rights and Civil Liberties in the 21st Century*, Y. Haeck and E.Brems Editors, 2014, p. 223-262	
Dame Rosalyn Higgins, President of the International Court of Justice "The plethora of judicial and quasi-judicial bodies operating in the field of human rights does pose the risk of divergent jurisprudence", on the occasion of the opening of the judicial year of the European Court, 30 January 2009	
M. Hunt, "Enhancing Parliaments' Role in the Protection and Realisation of Human Rights" in *Parliaments and Human Rights*, edited by Murray Hunt, Hayley J. Hooper and Paul Yowell, Oxford and Portland, Oregon, 2015	
R. A. Lawson, 'Confusion and conflict? Diverging interpretation of the European Convention on Human Rights in Strasbourg and Luxembourg, in R. A. Lawson & M. de Blois (eds), The Dynamics of the Protection of Human Rights in Europe, Martinus Nijhoff Publishers 1994, pp. 219-252	
F. de Londras, Dual Functionality and the Persistent Frailty of the European Court of Human Rights (2013) 1 E.H.R.L.R. 38	
J.-M. Sauvé, « *La législation déléguée* », Conference organised by the « Centre d'études constitutionnelles et politiques », *Conseil d'État*, 6 June 2014	
A. Verdross, Judge of the European Court of Human Rights, Human Rights in National and International Law, proceedings of the 2nd International Conference on the ECHR, Vienna, 18-20 October 1965, Manchester University Press, 1968, p. 52	

IX. Events and sources brought to the attention of the GT-GDR-F by experts

Seminar on "Shifting the Convention System: Counter-dynamics at the National Level", University of Antwerp/ University of Leuven, Antwerp, Belgium, 30-31 October 2014	
Meeting of Parliamentarians and Experts on "The European Court of Human Rights: Anti-democratic or Guardian of Fundamental Values", Royal Institute of International Affairs/ Parliamentarians for Global Action, London, U.K., 13 October 2014	

Seminar on "the interplay between the European Court of Human Rights and National Courts", organized by the Swedish Ministry for Foreign Affairs in collaboration with the Supreme Court and the Administrative Supreme Court, Stockholm, 19 May 2014	
Lord Hoffmann, "The Universality of Human Rights", 19 March 2009	
Lady Justice Arden, "Peaceful or Problematic? The Relationship Between National Supreme Courts and Supranational Courts in Europe", 10 November 2009	
Lady Justice Arden, "Is the Convention Ours?" (Intervention at the Seminar to Mark the Opening of the Judicial Year of the European Court of Human Rights), 29 January 2010	
Lord Carnwath, "The subsidiary role of the European Court of Human Rights in the UK judicial system", 20 September 2013 (also available in Italian)	
Lord Sumption, "The Limits of Law", 20 November 2013	
Lord Justice Laws, "The Common Law and Europe" (Hamlyn Lecture III), 27 November 2013	
Lady Hale, "What's the point of human rights?", 28 November 2013	
Lord Judge, "Constitutional Change: Unfinished Business", 4 December 2013	
Lord Mance, "Destruction or Metamorphosis of the Legal Order?", 14 December 2013	
Lord Dyson, "The Extraterritorial Application of the European Convention on Human Rights: now on a firmer footing, but is it a sound one?", 30 January 2014	
Lord Neuberger, "The British and Europe", 12 February 2014	
Lord Dyson, "Are the judges too powerful?", 12 March 2014	