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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

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Information on Recommendation Rec(2004)5 of the Committee of Ministers on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights extracted from the national reports on the implementation of the Brighton Declaration[1]

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Informations sur la Recommandation Rec(2004)5 du Comité des Ministres aux Etats membres sur la vérification de la compatibilité des projets de loi, des lois en vigueur et des pratiques administratives avec les normes fixées par la Convention européenne des Droits de l'Homme, extraites des rapports nationaux sur la mise en œuvre de la Déclaration de Brighton[1]

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[1] The information contained in this compilation is extracted from the national reports received that address this question.
Les informations présentées dans la présente compilation sont extraites des rapports nationaux reçus qui abordent cette question.

TABLE OF CONTENTS/TABLE DES MATIERES

ARMENIA/ARMENIA

Development of policies, legislation and practice to give effect to the Convention: introduction of new domestic remedies

The full implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention) at national level is a multilayer and comprehensive process.

Firstly, it requires continuous and dynamic development of state policies, legislation and practice to give effect to the Convention. On the one hand, to properly organise the process the Armenian authorities take into due consideration the Committee of Ministers recommendations, as well as the best practice developed in other European Countries. On the other hand, cooperation with respective European organisations, national government and non-government organisations is an integral part of state policy in respect of implementation of the Convention at national level.

Secondly, full implementation of the Convention, among others, requires effective and timely execution of judgments delivered in respect of a State. Since the ratification of the Convention 49 judgments /46 are final/ have been delivered by the European Court of Human Rights (hereinafter: the Court) in respect of Armenia. Considering the developing case-law and practice of the Court, the need to implement effective domestic remedies, as well as to prevent further violations in the future, certain legislative and practical amendments have been made to bring the domestic legislation and practice in line with the Convention.

The first step in harmonizing the existing legislation and practice with the Convention standards was the 2005 Constitutional Reforms. This process involved consequent large-scale legislative and practical reforms in Armenia.

Prior to addressing the legislative amendments made during the last decade, the following should be highlighted: Whenever there is necessity to amend or adopt new laws aimed at implementation of the Convention, execution of the Court's judgments and the Committee of Ministers recommendations, the RA Government submits detailed justifications to the Parliament. The ultimate goal of this well adopted practice is to provide the legislature with the information on the compatibility of draft legislation with the European standards and best practices.

Administrative Legislation and Administrative Justice Reforms

Based on the European standards and the Court's case-law, in a number of cases[2] even

[2] Galstyan Group: *Galstyan v. Armenia* (no. 26986/03, final on 1S/0212008), *Ashughyan v. Armenia* (no. 33268/03, final on 01/1212008), *Amiryan v. Armenia* (no. 31553/03, final on 13/04/2009), *Gasparyan v. Armenia No. 1* (no. 35944/03, final on 13/04/2009), *Sapeyan v. Armenia* (no. 35738/03, final on 13/04/2009), *Gasparyan v. Armenia No. 2* (no. 22571/05, final on 16109/2009), *Harutyunyan and others v. Armenia* (no. 34320/04, final on 10/0712012); Kirakosyan Croup: *Kirakosyan v. Armenia* (no. 31237/03, final on 04/0S/2009), *Mkhitaryan v. Armenia* (no. 22390/05, final on 04/05/2009), *Tadevosyan*

before the judgments were delivered by the Court, the Armenian authorities amended the RA Code of Administrative Offences. As a result, the statutory article regulating *"Administrative detention"* was recognized incompatible with the Convention standards and was abolished. Apart from administrative detention, the inadequate and confusing legal provision regarding the right to appeal was abolished as well. Furthermore, a new Code of Administrative Procedure (hereinafter: the CAP) was adopted in 2013 which regulates all the legal relations that arise during administrative proceedings.

According to the CAP, the parties of administrative proceedings have fundamental procedural rights that are in line with the Convention. Moreover, current procedural legislation creates full fair trial guarantees. With the view to have the process fully regulated a special Administrative Court of first instance was created in 2008; an Administrative Court of Appeal was established in 2010; and finally, the judicial acts of the Administrative Court of Appeal may be challenged in the Chamber of Civil and Administrative Cases of the Cassation Court. This is to say that a full and effectively operating system of administrative justice has been created in Armenia during the recent decade.

In addition, currently a new draft Code of Administrative Offences is being developed. The General Part of the draft Code has been submitted to the Council of Europe for expertise. As to the Special Part of the draft Code, it is being developed for further expertise.

Criminal legislation and Criminal Justice Reforms

At present, large scale reforms are ongoing in the field of Criminal Legislation and Criminal Justice. New draft Criminal Procedure Code is now on the agenda of the Parliament. In particular it, *inter alia*, stipulates a broad list of alternative preventive measures (e.g. house arrest, administrative supervision, bail, etc.). Special attention is paid to establishing safeguards against any form of ill-treatment and to ensuring further effective investigation thereof. For these purposes, guarantees are provided to protect minimum procedural rights of an arrested person from the very moment of factual deprivation of liberty.[3] It is worth to mention that these amendments fully cover the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: the CPT). One of the primary goals of these legislative reforms is to ensure proper execution of the judgments delivered by the Court in respect of Armenia, as well as to incorporate the European standards into the domestic legal system and practice.

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v. Armenia (no. 4 1698/04, final on 04/0512009); Karapetyan v. Armenia (no. 22387/05, final on 27/011201O); *Stepanyan v. Armenia* (no. 45081/04, final on 27/0112010).

[3] To be informed about minimum rights and obligations stipulated by this Article orally from the moment of becoming *de facto* deprived of liberty and in writing at the time of entry into the administrative building of the Inquiry Body or of a body that has the power to conduct the proceedings; to know the reason for depriving him of liberty; to remain silent; to inform a person of his choosing about his whereabouts; to invite an attorney; and to undergo a medical examination if he so demands.

Moreover, pursuant to the RA President's Decree of 30 June 2012, no. NK-96-A, "On Approving the 2012-20 16 Strategic Programme of Legal and Judicial Reforms in the Republic of Armenia and the List of Measures Deriving from the Programme", a new draft Criminal Code is being developed. It is envisaged to submit the final draft to the Parliament by September 2015. This draft Code intends to introduce rudimentary changes to the field. According to the General Part of the draft Code, the imprisonment is recognised a measure of last resort. New alternative forms of punishment are stipulated by the draft Code (e.g. restriction of public rights, deprivation of parental rights, short term limitation of liberty, etc.).

Simultaneously, legal acts are being developed to establish a Probation Service in Armenia. Execution of some new alternative preventive measures and punishments will be supervised by this Service. Overall, all the above-mentioned will contribute to prison population decrease and will facilitate the solution to the overcrowding issue.

Taking into due consideration the Committee of Ministers' and the CPT's recommendations, as well as European best practice, amendments to the RA Penitentiary Code have been drafted and put under official circulation. Those, inter alia, stipulate that the ultimate objective of the criminal sentence execution is to prepare prisoners for release and to integrate them into the society afterwards. Limitation posed to the life-sentenced and long-term prisoners in respect of the right to visits is abolished. Particular efforts have been made to abolish the segregation on sole ground of the sentence (non-segregation principle) for granting various forms of short-term leaves to life-sentenced and long-term prisoners. The mechanism of conditional release has been reviewed (including for life-sentenced prisoners). This approach is in line with the Committee of Ministers Recommendation Rec(2003)23 on "Management by prison administration of life sentence and other long-term prisoners" and Recommendation Rec(2003)22 on conditional release (parole).

AUSTRIA/AUTRICHE

Austria always aims at fully executing the Strasbourg case-law. In this respect, the Federal Chancellery – Constitutional Service, to which the Austrian Deputy Government Agent belongs, generally gives an opinion on the drafts of legislation and regulations from the perspective of Constitutional law as well as the Convention and the Strasbourg jurisprudence. These opinions are communicated to the Austrian parliament which makes them available to the public on its website.

BOSNIA AND HERZEGOVINA/BOSNIE-HERZÉGOVINE

Parliamentary bodies for the protection of human rights have been established within the Parliament of BiH, the Parliaments of the Entities and similar bodies have been established within cantonal parliaments and municipal councils.

a) The Joint Commission on Human Rights, Rights of the Child, Youth, Immigration, Refugees, Asylum and Ethics of the Parliamentary Assembly of BiH is a permanent working body. The Joint Commission on Human Rights, Rights of the Child, Youth, Immigration, Refugees, Asylum and Ethics considers issues relating to the implementation of human rights and fundamental freedoms, with a view to implementing Annex 6 and 7 of GFPA.

b) The Entity Commissions on Human Rights that operate in the two Houses of Entity Parliaments discuss issues related to violation of rights and freedoms guaranteed by the Constitutions of the Entities.

c) The Committee of Equal Opportunities considers issues within the jurisdiction of the National Assembly of Republika Srpska relating to the equality of men and women; social status of women; work and safety at work; child protection; social welfare; protection of pensioners and elderly people; youth and sports; science, culture and art; education; housing policy; privatization; non-governmental organizations with similar programs of work; gender legislation; violence against women and other areas affecting the equality between the sexes. Among other things, it actively participates in the promotion of the right to equality and the protect ion of citizens and proposes measures to eliminate all forms of discrimination, particularly relating to labour and employment, health and social care, education, electoral legislation, culture and information and protection against domestic violence.

Each of these institutions is open to help the citizens of BiH and they can submit applications for the protection of human rights freely, without limitation.

BULGARIA/BULGARIE

The implementation of practical measures to ensure that national policies and legislation comply fully with the Convention[4]

The above mentioned report *"A mechanism for preliminary examination of draft legislative act and for their compatibility with the Convention, as well as practices of the executive and judicial authorities"* establishes also a system for preventive control on the compatibility of the draft legislation. This project promotes the idea developed in the Brighton Declaration of meaningful analysis of significant ECtHR judgments[5]. The approach suggested in the Report takes due account of the margin of appreciation which the States enjoy while implementing the ECHR and has two aspects – enhancing the well-established mechanism of preventive legal assessment of draft legislation and an *ex-ante* compatibility assessment.

Currently the preliminary legal assessment is conducted mainly by the Administration of the Council of Ministers. With respect to the Electronic Government Project/the E-Government/, the preventive assessment is proposed for public discussions via an internet portal open to all interested human rights stake holders.[6] The specific aspect of the preventive assessment is confided to Procedural Representation of the Republic of Bulgaria to the ECtHR Directorate / "PRRBECtHR" Directorate / within the Ministry of Justice. Upon request, the PRRBECtHR Directorate of the MoJ ensures legal assessment with the Convention by providing legal opinions on draft legislation. The Ombudsman can also contribute to the assessment process through recommendations or by constitutional review request.

The Ombudsman acting also as the NPM contributes further to the assessment of the compatibility of the legislative amendments with the ECHR provisions through his ongoing work on complaints and signals; opinions and recommendations to public bodies; approaching the Constitutional Court; visits to places of detention or deprivation of liberty; preparation annual report and periodical bulletins etc.

Drawing on the existing situation the above referred Report makes a short term solution for enlarging Ombudsman's power and responsibilities for reviewing draft legislation in the Conventions' context for all primary law introduced by the Government to the Parliament. This solution provides an aspect of a priori analysis of the draft legislation, constant coordination with the respective responsible officials dealing with the draft laws at the Parliament, publishing analysis of the practice of national courts and of ECHR, etc.

[4] Brighton declaration, § 9 c) ii)
[5] Brighton declaration, § 9 d) i) and f) ii) and iii)
[6] www.strategy.bg

With regards to the role of the Parliament in the field of human rights, it is important to note that the Minister of Justice presents to the Parliament an Annual report on the execution of the ECtHR's judgments which includes the achievements of the reporting year with regards of the procedural representation, but also a catalogue of issues and proposals for further measures/legislative and practical/ to be taken. The Government of the Republic of Bulgaria has recently submitted to the National Assembly and the National Assembly has approved The Strategy for the continuation of the judicial reform, which states several basic amendments of the structure and the legal framework of the judiciary system that have directly relation to the compliance with the Convention.

Bearing in mind that uniform implementation of the ECHR has never been contemplated neither by the ECtHR, nor by the State Parties to the Convention, several draft laws are in process of preparation in order to enhance the compliance of the national legislation with the ECHR and to create an effective permanent mechanism for preliminary review of draft legislation for the compliance with the Convention. The expected results include a decrease of the number of the individual applications before the ECtHR due to the reduction of the violations of the provisions of the Convention by state organs and institutions and also adoption of effective legislation in compliance with the standards and values of the Convention.

CROATIA/CROATIE

The Convention in the Republic of Croatia is an integral part of the Croatian legal system and all domestic bodies vested with right of legislative initiative are warranted to ensure compliance of all national legislation with the Convention and jurisprudence of the Court.

In order to accomplish an efficient procedure which ensures compliance of Croatian legislation with the Convention, the Office of the Agent has set up a department in whose scope of work falls, among other things, giving opinions on harmonization of laws with the Convention. Each body responsible for drafting the proposal of a bill decides whether to request the Office of the Agent its opinion on compliance with the Convention. This request is not mandatory.

The Office of the Agent has so far given opinions on compliance of laws and bylaws from different branches of law, specific strategic documents and reports with the Convention.

When giving opinion on compliance of specific regulation with the Convention, the Office of the Agent is guided by recent jurisprudence of the Court. In doing so, the Office of the Agent points out the non-compliance of certain provisions with standards arising from the Convention, indicates uncertainties in the application of regulation s and if necessary gives suggestions for improvement, especially when it comes to a legal matter in which the Court has already found a violation of the Convention.

On 20 November 2014, the Croatian Parliament held a thematic session regarding cases brought before the European Court of Human Rights against the Republic of Croatia. The session was organised by the Delegation of the Croatian Parliament to the Parliamentary Assembly of the Council of Europe, Judiciary Committee and Legislation Committee of the Croatian Parliament. Along with members of Parliament, the session was attended by representatives of the executive and judiciary authority as well as by legal experts and lawyers.

CYPRUS/CHYPRE

1) A specific mechanism responsible for implementing the Brighton Declaration operates under the Government Agent, that is, the Attorney-General of the Republic of Cyprus. This is the Human Rights Sector of the office of the Government Agent Attorney-General (hereinafter Sector).

2) The Human Rights Sector was set up in the Attorney-General's Office in 2004 for carrying out the functions and tasks necessary for implementing the 2004 Recommendations of the Committee of Ministers, on *inter alia,* compatibility of administrative practice and legislation with the Convention/Court's case-law (Rec(2004)5), improvement of domestic remedies (Rec(2004)6), and publication and dissemination of the Convention and the Court's case-law (Rec(2004)13).

3) The Sector is now also responsible for carrying out the functions and tasks necessary for implementing the obligations of the Brighton Declaration respecting the domestic level. It consists of lawyers from the Attorney-General's Office familiar with Strasbourg case-law and human rights issues. The same lawyers deal also with individual applications under the Government Agent Attorney-General and are responsible to see to it on his behalf that the Court's judgments and case-law are disseminated and executed.

4) Important to some of the measures necessary for implementing the obligations of the Brighton Declaration is the constitutional function of the Attorney-General as legal adviser of the Republic, and in particular of the Council of Ministers, the President and the Ministers. For the adoption of necessary implementation measures by domestic authorities, the lawyers of the Sector exercise the above function on behalf of the Attorney-General. The Attorney-General's function of legal adviser of the Republic and at the same time Government Agent, and his office's mode of operation in the Government machinery in conjunction with his other constitutional functions respecting court proceedings, enable the Human Rights Sector to operate effectively and act promptly respecting implementation of the Convention and the Court's case-law.

Implementation of the Convention at national level (paras. 9a, 9b, 9c(ii) and 9c(iv))

5) It is the responsibility of the Human Rights Sector to systematically follow the European Court of Human Rights case-law and check on domestic administrative practice/legislation, for tracing and communicating to domestic authorities concerned, judgments in the light of which it is possible that administrative practice/legislation may need to be reviewed. In this respect, judgments/press releases of the European Court of Human Rights constituting established case-law or new case-law developments are communicated by the Sector to Ministries/Government Departments concerned for inquiring as to applicable domestic administrative practice/legislation relevant to the judgment and ascertaining whether this is compatible with the judgment. For this purpose the communication letter gives a short account of the facts and basic reasoning of the judgment.

6) Where the Sector ascertains, on the basis of information obtained from the domestic authorities concerned, that administrative practice/legislation is not compatible with a judgment, it advises on the legislative/administrative measures which must be adopted for aligning with the judgment. If this requires the adoption of legislative measures, by introducing new or amending existing legislation, the relevant bill is drafted by the Sector. It is to be noted that the amendment to the Ombudsman Law referred to in para.14 below expressly reflects by law the constitutional function of the Attorney-General/Government Agent and the entailed responsibilities of the Sector to "advise (national authorities) to introduce legislation and take measures and decisions in the light of the case law of" *inter alia*, the European Court of Human Rights, "and on the compatibility of existing legislation, measures and decisions with the said case law."[7]

7) The Sector is furthermore seized of administrative practice/legislation which may be incompatible with the Court's case-law for acting as above.

i. Through reports which are always transmitted to it by the Ombudsman, following investigation of individual complaints for human rights violations, discrimination and ill-treatment, and through reports which are transmitted by the Ombudsman in the capacity of Commissioner for the Protection of Human Rights

ii. through reports made by human rights committees/bodies of the Council of Europe, the EU and the UN,

iii. through requests for legal advice made by the authorities themselves, respecting administrative measures/action taken or proposed to be taken which has a human rights dimension/aspect.

8) The interaction between the Sector and Ministries/Government Departments referred to in paras. 5-7 above encourages the implementation of "practical measures to ensure that legislation complies fully with the Convention"[8] and "takes full account of the recommendations of the Committee of Ministers on the implementation of the Convention at national level in their development of legislation to give effect to the Convention."[9]

9) The Human Rights Sector communicates to the Supreme Court Registrar for transmission also to all lower courts, paper copies, or relevant press releases, of judgments of the European Court of Human Rights constituting established case-law or new case-law developments. The Sector also communicates to the Supreme Court Registrar all judgments and admissibility decisions adopted by the Court in individual applications brought against Cyprus. The communication letters give an account of the facts and explain the basic reasoning of the judgment. This awareness exercise encourages "national courts and tribunals to take into account the relevant principles of the Convention, having regard to the case law of the Court, in conducting proceedings

[7] Section 5 (5) of the Ombudsman Law (L. 311991) as amended by law 158(1)/2011.
[8] Brighton Declaration, para. 9c(ii).
[9] Brighton Declaration, para. 9b.

and formulating judgments."[10]

10) By way of example, in 2010 following entry into force of legislation prepared by the Sector creating domestic judicial remedies for length of proceedings cases, the Sector prepared and communicated to the Registrar of the Supreme Court for transmission also to all lower courts, a list of all judgments adopted by the Court in length cases against Cyprus which would be of aid to the courts in examining cases under the new law for violation of the reasonable time requirement of the Convention. The communication letter explained also that the above judgments which had already been communicated following their adoption by the Court could also be found at the web-site of the Attorney-General's Office. The above exercise enabled and encouraged "national courts and tribunals to take into account the relevant principles of the Convention, having regard to the case law of the Court."[11]

11) The Human Rights Sector also communicates to the President of the Cyprus Bar Association and the chairpersons of the Parliamentary Committees for Human Rights, Legal Affairs and other Parliamentary Committees which may be concerned (for example in the execution process at a later stage), all judgments and admissibility decisions adopted by the Court in individual applications brought against Cyprus. The communication letters give an account of the facts and explain the basic reasoning of the judgment. The judgments/decisions are also circulated to all other lawyers of the Attorney-General's Office accompanied with a note by the Sector explaining their facts and reasoning. The said lawyers represent and appear for the Republic on behalf of the Attorney-General in all domestic court proceedings (criminal, civil, administrative and constitutional) brought by or against the Republic.

12) Paper copies of judgments and decisions in cases brought against Cyprus are communicated by the Sector to Ministries/Government Departments concerned which are at the same time extensively advised in the communication letter explaining the facts and judgment's reasoning, on the measures (individual and general) which must be adopted concerning execution. The Committee of Minister's supervision procedures and the Government's obligations in this respect, including the need to act promptly, are also explained in the letter.

13) The Human Rights Sector has its own separate section at the web-site of the Attorney-General's Office and all judgments and decisions in cases brought against Cyprus or which constitute case-law developments are inserted there (both in English and in Greek translation). They are also transmitted to the Cyprus Bar Association. The translation into Greek is assigned by the Sector to private translators and the translations are again transmitted to the Cyprus Bar Association and published in the Association's Journal ("Cyprus Law Journal"). The law journal is published four-monthly and has a wide circulation in the legal community of Cyprus. It contains legal articles and important domestic and other judgments with commentaries by practicing lawyers, academics and judges. Sometimes there is also publication by way of article, the communication letter sent by the Sector to the President of the Cyprus Bar Association analysing the judgment which is referred to in para.11 above.

[10] Brighton Declaration, para. 9c(iv).
[11] Brighton Declaration, para. 9c(iv).

CZECH REPUBLIC/REPUBLIQUE TCHEQUE

The Government Legislative Rules, as amended on 14 November 2012, impose an express obligation for all draft legislation to include in the explanatory report an assessment of the draft's compliance with the Convention. The Office of the Government Agent regularly provides consultations to the Government departments involved in legislative drafting and comments on draft legislation.

The Subcommittee on the Public Defender of Rights' Legislative Initiative and on the European Court of Human Rights, established in 2014 within the Constitutional Committee of the Chamber of Deputies, can at any moment request consultations from the Government Agent on matters related to the Convention that the Chamber of Deputies undertakes to discuss.

Further, the Office of the Government Agent publishes, as of April 2013, a quarterly Newsletter with summaries of the Court's important judgments. The Newsletter is distributed electronically to all central authorities including Parliament.

DENMARK/DANEMARK

Denmark continuously aims to secure a high human rights standard in policy and law making. Therefore, all considerations concerning the possible preparation of new legislation are carried out within the framework of Denmark's human rights obligations. Guidelines issued by the Ministry of Justice regarding the examination of legislation prescribe that the international conventions on human rights that Denmark is a party to must be considered during the preparation of legislation. In 2015 the Ministry of Justice has emphasized in its annual official letter concerning legislative matters to all the ministries that if a proposal entails essential considerations regarding the European Convention on Human Rights, the bill must reflect these considerations.

ESTONIA/ESTONIE

There are different institutions in Estonia tasked with ensuring the compliance of legislation with the Constitution and the Convention. Below are a few examples of the activities of the Chancellor of Justice and the Supreme Court in notifying the Riigikogu of any cases of incompatibility.

The Chancellor of Justice played an important role in a significant reduction of state fees in judicial proceedings as of 1 July 2012 and the subsequent decision of the Riigikogu in 2014 to apply the reduced rates retroactively[12]. With regard to the issue of access to justice, including the impact of state fees, the Chancellor also relied on the relevant case-law of the European Court of Human Rights (ECtHR). The Supreme Court Constitutional Review Chamber has also played an important role in the reduction of the fees, as prior to the entry into force of the retroactive effect in 2014, on dozens of occasions in specific cases the Chamber declared incompatible with the Constitution various provisions of the State Fees Act which posed an obstacle to the administration of justice in civil proceedings.

The proposals of the Chancellor of Justice to the body which adopted the legislative act, including the Riigikogu, often include references to the ECtHR case-law as a source for interpretation. The Chancellor's proposals deal with a wide range of different issues. During the reporting period these included, for example:

- notification of a surveillance measure and supervision over it[13];
- sufficient access to education in Estonian[14];
- advance notification of a support strike[15];

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[12] Already in 2011 the Chancellor of Justice approached the Riigikogu with the problem of excessive state fees in judicial proceedings; subsequently in 2012 the Chancellor supported the plan to reduce the fees; in 2014 the Chancellor again raised in the Riigikogu the issue of a continued impact of the state fees valid from 1 January 2009 to 30 June 2012 and supported the Riigikogu's solution to extend the lower fees in effect from 1 July 2012 retroactively to disputes initiated prior to that date; in November 2014 the Chancellor approached the Riigikogu with additional proposals to bring relevant sections of the State Fees Act into conformity with the Constitution. See http://oiguskantsler.ee/et/seisukohad/seisukoht/ettekanne-riigikogule-riigiloivude-suurus; http://oiguskantsler.ee/et/seisukohad/seisukoht/arvamus-eelnoule-riigiloivuseaduse-ja-sellega-seonduvalt-teiste-seaduste; http://oiguskantsler.ee/et/seisukohad/seisukoht/ettekanne-riigikogule-pohiseaduslikkuse-jarelevalve-01012009-30062012-kehtinud; http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_nr_25_riigikogule_kehtetute_korgete_riigiloivude_jatkuva_moju_kohta_kohtumenetluses.pdf; http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_nr_31_riigikogule_korgete_riigiloivude_moju_kohta_tsiviilkohtumenetluses.pdf.

[13] The Chancellor of Justice proposal No 23 of 17 June 2013 to the Riigikogu to bring § 25[1] of the Code of Criminal Procedure Implementation Act into conformity with the Constitution: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_nr_23_riigikogule_krmsrs_ss_25_prim_kooskola_ps-ga.pdf

[14] The Chancellor of Justice proposal No 16 of 2 July 2012 to the Riigikogu to bring § 15(1) of the Private Schools Act into conformity with the Constitution: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_nr_16_riigikogule_eestikeelse_hariduse_piisav_kattesaadavus.pdf

[15] The Chancellor of Justice proposal No 18 of 4 July 2012 to the Riigikogu to bring § 18(3) of the Collective Labour Dispute Resolution Act into conformity with the Constitution:

- freedom of movement of persons remanded in custody and their possibility of communication with other persons in custody16;
- restrictions for minors with regard to termination of pregnancy[17].

Within constitutional review proceedings, with regard to the issue of minimum floor space of a cell or a room for detained persons, the Chancellor has also proposed to the Ministry of Justice to establish 4 m² as the minimum floor space per one detainee in a cell or detention room after the completion of the new Tallinn Prison or at the latest from 1 January 2017[18].

The Supreme Court as the court of constitutional review may, in the course of abstract or specific verification of a legislative act, declare a legislative regulation contrary to the Constitution and invalid. Subsequently, the legislator may have to elaborate new draft acts in order to ensure the constitutionality of a situation, if the circumstances of the case so demand. The Supreme Court, including in constitutional review cases, regularly refers to judgments made by the Court of Human Rights in respect of other states. For example, in 2012–2014 the Supreme Court has declared unconstitutional the following provisions in relation to the application of the Convention on Human Rights, although in some cases the court only referred to the Estonian Constitution which guarantees equivalent protection:

1. by the judgment of 3 July 2012 in case No 3-3-1-44-11[19] the Supreme Court *en banc* declared unconstitutional the provisions of the Aliens Act valid until 1 October 2010, to the extent that they provided for the refusal of a temporary residence permit without the right of discretion. In its judgment the Supreme Court also referred to the ECtHR case-law dealing with the expulsion of long-term residents (e.g. *Slivenko v. Latvia*, Grand Chamber judgment of 9 October 2010, para 94). The Supreme Court noted that the ECtHR has repeatedly underlined that although the Convention does not guarantee the right of an alien to enter or to reside in a particular country, nonetheless the removal of a person from a country where close members of his or her family are living may amount to an infringement of the right to respect for family life (e.g. *Boultif v. Switzerland*, judgment of 2 August 2001, para 39).

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http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_nr_18_riigikogule_toetusstreikidest_ette_teatamine.pdf. On 5 November Chancellor proposed to the Supreme Court to declare § 18(3) of the same act unconstitutional: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_taotlus_nr_15_toetusstreigist_ette_teatamise_tahtaeg.pdf.

[16] The Chancellor of Justice proposal No 24 of 7 January 2014 to the Riigikogu to bring § 90(3), first sentence, and § 90(5) into conformity with the Constitution: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_nr_24_riigikogule_vahistatu_liikumisvabadus_ja_suhtlemisvoimalus_teiste_vahistatutega.pdf

[17] The Chancellor of Justice proposal No 27 of 3 June 2014 to the Riigikogu to bring § 5(2) of the Termination of Pregnancy and Sterilisation Act into conformity with the Constitution: http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_ettepanek_nr_27_alaealisusega_seotud_piirangud_raseduse_katkestamisel.pdf

[18] http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_margukiri_vske_ss_6_lg_6_kooskola_ps-ga_kinnipeetava_kambri_porandapinna_suurus.pdf

[19] http://www.riigikohus.ee/?id=1358

2. by the judgment of 11 December 2012 in case No 3-4-1-20-12[20] the Court declared unconstitutional and invalid § 407 of the Code of Criminal Procedure to the extent that it precluded the right of a minor to file an appeal against a decision by which a court authorises the placement of the minor in a school for pupils in need of special treatment due to behavioural problems.

3. by the judgment of 30 April 2013 in case No 3-1-1-5-13[21] the Court declared unconstitutional and invalid § 385 clause 26 of the Code of Criminal Procedure to the extent that it precluded an appeal against the ruling of a county court judge in charge of the execution of judgments when the judge rules to enforce the imprisonment which had been replaced by community service. The provision is invalid as of 1 July 2014.

4. by the judgment of 23 May 2013 in case No 3-4-1-12-13[22] the Court declared unconstitutional and invalid § 49(9) of the Weapons Act to the extent that it did not allow, in replacing of a weapons permit or permit to carry a weapon, to take into account the personality of a person with a criminal record or the act committed by him or her.

5. by the judgment of 20 March 2014 in case No 3-4-1-42-13[23] the Court declared unconstitutional and invalid § 25^1(2) of the Code of Criminal Procedure Implementation Act to the extent that it did not provide for an effective control system over justification of continued non-notification of a surveillance measure carried out on the basis of a surveillance authorisation expiring before 1 January 2013. A legislative amendment to fill this gap is currently in the process of consultation domestically. The Supreme Court in its judgment referred to the ECtHR cases *Klass v. Germany* (judgment of 6 September 1978, para 56), *Kennedy v. the United Kingdom* (judgment of 18 May 2010, para 167), *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* (judgment of 28 June 2007, para 90-91).

6. in the judgment of 4 February 2014 in case No 3-4-1-29-13[24] the Court dealt with the issue of competence of judicial clerks and declared unconstitutional and invalid § 125^1(2) of the Courts Act and § 174(8) of the Code of Civil Procedure to the extent that they allowed a judicial clerk to determine the procedural expenses in civil proceedings. Inter alia, the Supreme Court referred to the ECtHR judgment of 5 September 2013 in the case *Čepek v. the Czech Republic*, where the Court had found that the proceedings of court expenses held separately from the main proceedings should be seen as a continuation of the main proceedings and, therefore, it amounts to deciding over the civil rights and duties of a person within the meaning of Article 6 § 1 of the Convention on Human Rights.

[20] http://www.nc.ee/?id=11&tekst=RK/3-4-1-20-12
[21] http://www.nc.ee/?id=11&tekst=RK/3-4-1-12-13
[22] http://www.nc.ee/?id=11&tekst=RK/3-4-1-12-13
[23] http://www.riigikohus.ee/?id=1496
[24] http://www.riigikohus.ee/?id=1499

In addition, each year the *Government Agent before the Court of Human Rights* prepares an overview of the previous calendar year for the Government, outlining the judgments and decisions made in respect of Estonia and the various aspects relating to their execution, including the need to amend legislation. The overview is always sent also to the Riigikogu Constitutional Affairs Committee.

FINLAND/FINLANDE

Each ministry is responsible for guaranteeing the implementation of fundamental and human rights in legislative drafting within its own administrative branch. Government Bills for legislation are duly assessed in relation to the Constitution (especially fundamental rights) and human rights treaties, including the Convention, in order to ensure their full compliance.

The function of the Constitutional Law Committee of Parliament is to issue statements on the constitutionality of legislative proposals and other matters brought to its consideration and on their relation to international human rights treaties (Section 74 of the Constitution). The Committee's statements on constitutional and human rights issues are authoritative at the different stages of the readings in Parliament and constitute a central source of reference in assessing the implementation of fundamental and human rights. The statements and the relevant case-law of international courts and human rights treaty monitoring bodies are to be described in the Bills.

FRANCE

Le Gouvernement français renvoie aux observations qu'il avait formulées dans ses précédentes contributions sur le contrôle de compatibilité des normes nationales avec les principes fixés par la Convention européenne des droits de l'homme, ces observations demeurant d'actualité. Le Gouvernement souhaite toutefois apporter les compléments suivants.

1. Sur la mise en compatibilité des textes législatifs avec les normes de la Convention

Devant le Parlement, les projets ou les propositions de loi comportent, depuis l'adoption de la loi organique n° 2009-403 du 15 avril 2009 et conformément à l'article 39 alinéa 2 de la Constitution dans sa rédaction issue de la loi constitutionnelle du 23 juillet 2008, une étude d'impact. Cette étude d'impact contient une partie relative à la compatibilité du projet de loi avec le droit européen en vigueur ou en cours d'élaboration et son impact sur l'ordre juridique interne.

2. La référence directe à la Convention européenne des droits de l'homme et à la jurisprudence de la Cour dans les circulaires et instructions que l'administration adresse à ses agents

Le Gouvernement s'efforce d'assurer la compatibilité de ses pratiques administratives avec les dispositions de la Convention européenne des droits de l'homme et la jurisprudence de la Cour EDH.

Ainsi, trois arrêts importants rendus par la Cour EDH entre 2011 et 2014 ont conduit les ministères concernés à donner des instructions à leurs agents pour modifier leurs pratiques administratives en vigueur.

Dans son arrêt *Popov c. France* du 19 janvier 2012, la Cour a condamné le placement en rétention administrative d'enfants mineurs accompagnant leurs parents. Tirant les conséquences de cette condamnation dans les six mois suivant son prononcé, le ministère de l'Intérieur a pris une circulaire le 6 juillet 2012, aux termes de laquelle il a invité les préfets de police et de région à privilégier, autant que faire se peut, les assignations à résidence de ces mineurs au détriment de leur placement en rétention administrative. Cette circulaire insiste sur la nécessité de *« se conformer à la jurisprudence de la cour européenne des droits de l'homme, qui n'accepte la présence de mineurs en centres de rétention que si celle-ci est limitée dans le temps, se déroule dans des conditions adaptées et si toutes les alternatives ont été à bon droit écartées »* (n° 39472/07).

Par ailleurs, dans son arrêt *J.M c. France* du 2 février 2012, la Cour EDH a condamné le caractère automatique de la mise en œuvre de la procédure accélérée d'examen d'une demande d'asile présentée en rétention *« sans relation ni avec les circonstances de l'espèce, ni avec la teneur de la demande et son fondement* » (n° 9152/09). En réponse, le ministère de l'Intérieur a adopté une note d'information le 5 décembre 2013, aux termes de laquelle il a rappelé la nécessite de « respecter ces jurisprudences et de mettre

fin au caractère automatique de l'examen d'une demande d'asile présentée en rétention selon la procédure accélérée ».

Enfin, dans son arrêt *Kismoun c. France* du 5 décembre 2013 (n° 32265/10), la France a été condamnée pour violation de l'article 8 de la Convention par la Cour EDH, après avoir refusé de faire droit à la demande de changement de nom de famille fondée sur l'article 61 du code civil, sans s'être prononcé sur le motif de l'unicité du nom de famille invoqué par le demandeur. Depuis cet arrêt, le service du Sceau a modifié sa pratique, en admettant des demandes de changement de nom fondées sur le principe de l'unicité du nom de famille.

GERMANY/ALLEMAGNE

The Federal Government's rules of procedure applicable to the joint work of the federal ministries specify that prior to the adoption of a resolution by the Federal Cabinet legislative drafts must be presented to the Federal Ministry of Justice and Consumer Protection for evaluation. In the context of this legal assessment *(Rechtsprüfung)* legislative drafts are analysed, *inter alia,* for compatibility with fundamental rights under the Basic Law and human rights under the ECHR. To the extent relevant, the grounds for a legislative draft will contain information on its compatibility with the Convention. In this way all participants in the proceedings on draft legislation, including the Parliament, are informed on the question of the compatibility of the legislative draft with the Convention. The reports previously mentioned (in 9a) provide additional input for the legislators.

IRELAND/IRLANDE

Since June 2005 proposals for primary legislation and significant Statutory Instruments must be accompanied by a Regulatory Impact Analysis. Among the impacts considered are whether the legislative proposals impinge disproportionately on the rights of citizens. Regulatory Impact Analysis includes consideration of the European Convention on Human Rights and are generally published on the sponsoring Department's website.

All legislation proposed by the Government is examined by the Office of the Attorney General during the course of preparation. The issue of whether the legislation is compatible with the European Convention on Human Rights, as well as the Irish Constitution, is specifically considered by that Office in respect of all legislation.

LIECHTENSTEIN

In Liechtenstein, every report of the Government to the Parliament regarding new draft legislation contains a section devoted to the compatibility with the Constitution, national law and with international obligations. Particular attention is therefore also paid to the compatibility with the Convention.

LITHUANIA/LITHUANIE

It is provided for in the Law on the Fundamentals of Law-Making (Article 9(4)), which was adopted in 2012 and came into force in 2014, that assessment shall be made of the compliance of all legal acts with the ECHR, including the case-law of the ECtHR. This Law supplements the requirement, which was previously provided for in the Statute of the Seimas (Article 135(3) (10)) to assess compliance with the ECHR when drafting laws. Ensuring the compliance of the national legal acts being drafted and effective legal acts with the ECHR and the ECtHR case-law is one of the activity objectives of the European Law Department under the Ministry of Justice of the Republic of Lithuania (paragraph 8.2 of the Regulation on the European Law Department).

LUXEMBOURG

Mesures prises pour mettre en œuvre de la Convention européenne des droits de l'Homme (« la Convention ») au niveau national

[…]

Le rôle de la Commission consultative des droits de l'Homme[25] (CCDH) est à souligner dans la mise en œuvre de la Convention au niveau national. Cette institution indépendante chargée des droits de l'homme a été créée par la loi du 21 novembre 2008. Elle est régulièrement saisie à l'initiative du gouvernement, ce qui témoigne de l'importance croissante acquise par la Commission. Quelques exemples récents :

- en avril 2013 : avis sur le projet de loi portant approbation de la Convention européenne sur la nationalité et modification de la loi du 23 octobre 2008 sur la nationalité luxembourgeoise ;
- en février 2014 : avis sur deux projets de règlements grand-ducaux dans le domaine de la traite des êtres humains ;
- en avril 2014 : avis sur le projet de loi portant approbation du protocole facultatif se rapportant au pacte international relatif aux droits économiques, sociaux et culturels ;
- en juillet 2014 : avis sur le projet de loi relatif à l'interruption volontaire de grossesse.

La CCDH peut également s'autosaisir et donner son avis sur tout projet de loi relatif aux questions ayant trait aux droits de l'homme. Elle entretient un dialogue permanent avec la **Chambre de députés** et fournit à cette dernière une expertise précieuse afin d'évaluer la compatibilité de chaque projet de loi avec la Convention et sa jurisprudence. Les avis de la CCDH sont toujours communiqués à la commission juridique et publiés comme document parlementaire (doc. public) et complètent utilement les informations données par le gouvernement dans son exposé des motifs sur le respect des obligations internationales, y compris des normes du Conseil de l'Europe. De plus, dans le cadre de l'instruction parlementaire du projet de loi afférent, les membres de la commission juridique peuvent demander des précisions et des explications complémentaires à ce sujet.

[25] §9c(i) : envisager d'établir, si elles ne l'ont pas encore fait, une institution nationale indépendante chargée des droits de l'homme.

MALTA/MALTE

Malta's primary aim is to fully implement the Convention and to execute the judgments of the Court. In order to achieve this goal, the Agent who is also responsible for the vetting of legislation, has to ensure that all legislation drafted including amendments to existing legislation reflects the protections afforded by the Convention. Moreover, legal officers working at the Attorney General's Office and tasked with the drafting of the legislation attend Parliamentary sittings (as Government advisors) regularly when draft legislation is being discussed particularly at Committee stage.

Moreover, since 2013, Malta has a Minister responsible for Civil Liberties (Minister for Social Dialogue, Consumer Affairs and Civil Liberties) and part of the portfolio of the Minister is to ensure that all legislation passed in Parliament complies with the protections given by the Convention.

Para. 29 a (iii) – [States] to facilitate the important role of national parliaments in scrutinizing the effectiveness of implementation measures taken

The effectiveness of the implementation measures taken are explained to Parliament through a Memorandum that accompanies every piece of legislation that is drafted. The aim of the Memorandum is essentially to explain the objects and reasons behind the drafting of a particular legislative provision. This exercise enables and indeed facilitates the role of the Parliament in scrutinizing the effectiveness of implementation measures taken.

MONACO

Depuis son adhésion au Conseil de l'Europe, le Gouvernement Princier n'a de cesse de veiller, dans le cadre de la préparation des projets de loi, à s'assurer de la compatibilité des dispositions projetées avec la Convention européenne des droits de l'homme. A l'aune de cette préoccupation constante, certaines modifications structurelles récentes ont été opérées au sein des services du gouvernement Princier, à l'effet d'optimiser la qualité du processus normatif.

A ce titre, il convient de relever que l'Ordonnance Souveraine n° 117 du 19 juillet 2005 a instauré une Direction des Affaires Juridiques, directement placée sous l'autorité du Ministre d'Etat. Lors de sa création, cette Direction comprenait:

- un Service des Affaires Législatives, dont les attributions consistent notamment en la préparation des textes réglementaires, des textes des projets de loi (et le suivi des procédures législatives) et la préparation et toutes études s'y rapportant ;

- un Service des Affaires Contentieuses, chargé de la coordination et du suivi de la représentation de l'Etat, en demande comme en défense, devant toutes les juridictions et toutes études s'y rapportant.

Parallèlement, le Département des Relations Extérieures (Ministère des Affaires étrangères) comportait une *« Cellule des Droits de l'homme »* – placée sous la responsabilité de l'Agent du Gouvernement Princier près la Cour européenne des droits de l'homme – ayant en charge la préparation des mémoires en défense de l'Etat devant la Cour et sa représentation devant cette juridiction. Cette même Cellule contribuait également, en collaboration avec la Direction des Affaires Juridiques précitée, aux différentes études juridiques, entreprises par le Gouvernement Princier et ayant notamment trait la compatibilité avec la Convention des projets de loi de base proposés par le Gouvernement. Exerçant en outre une activité de veille jurisprudentielle, la Cellule attire l'attention des autorités monégasques concernées des lors qu'une jurisprudence européenne peut avoir des incidences en interne.

Poursuivant un objectif d'optimisation constante des études de compatibilité entre la Convention européenne et les projets de loi proposes par le Gouvernement, l'Ordonnance Souveraine n° 4.025 du 9 novembre 2012 a instauré, au sein de la Direction des Affaires Juridiques, un *« Service du Droit International, des Droits de l'Homme et des Libertés Fondamentales »* qui en constitue dorénavant la troisième entité, aux côtés du Service des Affaires Législatives et du Service des Affaires Contentieuses, susmentionnés.

La « *Cellule des Droits de l'Homme* », précitée, est intégrée à cette troisième entité. En outre, ce Service spécialisé est chargé de l'étude, au regard notamment de leur impact sur le droit interne, des traités, conventions et accords internationaux, à caractère bilatéral ou multilatéral, auxquels la Principauté est partie ou envisage de devenir partie.

Désormais, le Service du Droit International, des Droits de l'Homme et des Libertés

Fondamentales est, d'une part, étroitement associe au Service Législatif dans le cadre de la préparation des différents projets, et, d'autre part, entretient une étroite collaboration avec le Service des Affaires Contentieuses, lorsque la représentation de l'Etat, en demande comme en défense, devant les juridictions internes met en lumière des problématiques ayant trait aux droits de l'homme.

NETHERLANDS/PAYS-BAS

In accordance with Article 81of the Constitution, Acts of Parliament are enacted jointly by the Government and the States General, consisting of the House of Representatives and the Senate. Each House has its own permanent Justice Committee and a legal service, both of which place considerable emphasis on compliance with human rights instruments like the Convention when examining draft legislation. However, the Netherlands – like most other Member States of the Council of Europe – does not have a specific parliamentary procedure for the verification of compatibility of draft laws with the Convention.

When drafting legislation, the ministries concerned check the quality of draft legislation and their conformity with the Constitution and relevant provisions of international law. The Convention is of great significance in this process. Drafters assess the legislation in the light of the Convention in the manner laid down in policy on legislative quality and the Instructions on legislation, in particular Instructions 18, 212g and 254. Instruction 18 reads: "During the drafting of legislation, it must be ascertained which rules of higher law have limited the freedom to regulate in relation to the issue concerned." Instruction 212g states that the Explanatory Memorandum should contain a justification of the legislation in question. This will include, in any event, the relationship of the Act being drafted to other legislation and to existing and forthcoming international and EU legislation. One of the checks carried out is an investigation by the Legislation Department at the Ministry of Justice in consultation with the Ministry of Foreign Affairs into whether the draft legislation is compatible with obligations arising from international and European law (see Instruction 254). Although the Ministry of Justice bears primary responsibility for monitoring legislation for compliance with the principles of good governance and the rule of law, this does not detract from the responsibility resting on the other ministries to ensure that the legislation they draft is of the highest quality.

In the drafting phase, new statutory measures are submitted to external parties for consultation, including representatives from the legal profession, the judiciary and the independent supervisory body in the area of data protection. In addition, the Dutch section of the International Commission of Jurists (*Nederlands Juristen Comite Mensenrechten*) frequently renders an opinion on the human rights compatibility of draft legislation. The advice of these individuals and agencies is always dealt with in a substantiated manner in Explanatory Memorandums with legislative proposals. After the Dutch Council of Ministers has given its approval, the proposed regulations are submitted to the Council of State, which advises the Government on legislation and administration. The Council of State applies a policy analysis evaluation, a legal evaluation and a statutory evaluation, and assesses whether a proposed regulation complies with internationally recognised human rights standards. If there is any lack of clarity on this issue, the Council will make a recommendation.

The moment that parliamentary debate starts on a certain draft bill, there is therefore already a substantial amount of information available on the issue of compatibility with Convention standards. Parliament is then able to request additional information from the Government in a more focused manner.

In conclusion, the Instructions on legislation which oblige the legislator to include a paragraph in the explanatory memorandum to a bill explaining why the draft legislation is deemed compatible with the requirements of international human rights standards are an essential tool to promote parliamentary debate on the issue.

NORWAY/NORVÈGE

As mentioned above, the Convention was incorporated in Norwegian law by the adoption of the 1999 Human Rights Act. The Human Rights Act ensures that the Convention is given a strong position within the Norwegian legal system, and public bodies at all levels are obliged to take the Convention into account in their daily work. Interpreting and applying any statutory provision must be done in coherence with the Convention provisions.

Furthermore, the Norwegian "Instructions concerning consequence assessment, submissions and review procedures in connection with official studies, regulations, propositions and reports to the Starting" states the following with regard to the assessment of the compatibility with human tights (including the Convention):

"Those carrying out the assessment shall evaluate and, when relevant, provide an account of whether human rights conventions set out requirements for the authorities in the area in question."

Where the Convention is relevant for draft legislation, considerations concerning the compatibility with the Convention is included in the Government's proposition to the Parliament.

POLAND/POLOGNE

As from October 2012 the Office of the Government Agent analyses on a regular basis draft legislation of the Government (bills and draft ordinances) and draft opinions of the Government on bills proposed by other bodies (e.g. the parliamentarians), from the point of view of their compatibility with the Convention and the Court's case-law. In order to quickly identify draft legal acts requiring a particularly scrutiny, the Government Agent elaborated a thematic list of areas where regulation could potentially affect human rights and fundamental freedoms. By way of illustration, from April to December 2014 the Office analysed more than 380 drafts.

The **Government Legislation Centre** examines draft legal acts from the point of view, among others, of their compatibility with international treaties ratified by Poland upon consent expressed by statute. The Convention constitutes one of the points of reference in this analysis and in several cases its provisions were explicitly referred to in the opinions prepared by the Centre on some drafts submitted by the relevant ministers. The Convention is also taken into account in cases where the Government Legislation Centre itself prepares government bills.

In March 2013 an Undersecretary of State at the Ministry of Foreign Affairs and the President of the Government Legislation Centre took a joint initiative by sending a **letter to undersecretaries of state** of all other ministries, drawing their attention to the need to take into account the provisions of the Convention and its Protocols when drafting new legislation.

ln March 2013, special **training for directors of legal departments** of the ministries was organised jointly by the Government Legislation Centre and the Ministry of Foreign Affairs (Office of the Government Agent) within the framework of the project of *Improving legislative techniques in the offices serving the organs of the public authority.* The training was devoted to the topic: *Law-making process in the light of the case-law of the Supreme Court, Supreme Administrative Court and the Constitutional Court. Preparing opinions on the draft legal acts as regards their compatibility with the Convention for the protection of human rights and fundamental freedoms.*

Subsequently, the Government Legislation Centre developed cooperation with the Helsinki Foundation for Human Rights in Poland consisting of training for **officials drafting government bills**, devoted to the Convention standards and the need to take these standards into account in the law-making process. Within the framework of this cooperation, trainings and legislative workshops were organised by the Government Legislation Centre with the participation of the Helsinki Foundation. By the end of 2014, 210 persons employed in the offices of the public administration or uniformed services as well as 35 participants of the legislative apprenticeship have been trained in this subject (for more details - see reply to para.9.c(v) - training for civil servants and training for uniformed services).

The **Legislative Council**, an advisory organ to the Council of Ministers and the Prime Minister in matters related to the legal system, pays attention to the compatibility of

government draft legal acts with the Constitution, the EU law and the coherence of the legal system. When issuing its opinions, it pays attention to the compatibility of draft legal acts with the standards stemming from well-established case-law of the Court. In its annual reports submitted to the Council of Ministers, it draws attention to issues related *inter alia* to the application of the Convention.

An initiative taken by the Ministry of Culture and National Heritage is also worth a special mention. Directors of all organisational units of the Ministry have been expressly obligated to verify the compatibility with the Convention and the Court's case-law of draft legislation and draft administrative decisions in individual matters drafted by these units. They were also obligated to appoint in each department/bureau of the Ministry a person responsible for following the HUDOC and the Ministry of Justice's databases of the Court's case-law in order to use the relevant rulings when drafting legal acts and individual administrative decisions. A similar initiative is being considered by the Central Board of the Prison Service (appointment of a human rights coordinator who would be tasked with issuing opinions on the compatibility of draft legal acts prepared by the Prison Service from the point of view of their compatibility with the Convention).

PORTUGAL

9 a) et b) – Le Portugal s'est toujours engagé à mettre en œuvre la Convention européenne des droits de l'homme soit sur le plan législatif, soit au niveau judicaire, soit aussi au niveau des pratiques et des procédures administratives.

Au niveau législatif et politique, il faut souligner que la Constitution de la République Portugaise sauvegarde, de manière adéquate, les principes et les droits fondamentaux inscrits dans la Convention et que toute activité publique doit se conformer à ces droits et à ces principes.

Il faut noter que la première commission permanente du Parlement *(Assembleia da Republica)* est précisément la Commission des Affaires Constitutionnelles, Droits, Libertés et Garanties, ayant des compétences législatives, de fiscalisation et de contrôle politiques dans le domaine des droits de l'homme, de l'égalité, de la justice et des affaires pénitentiaires, des enfants et des jeunes en péril, etc., en assurant cette conformité.

De même, les pratiques administratives se conforment aux principes fondamentaux inscrits dans la Constitution, tels que l'égalité, l'équité, l'intérêt public ou la transparence, qui sont consignés dans les codes de procédure (notamment le Code de procédure administrative) que les fonctionnaires doivent respecter.

Dans cette partie, il semble important la divulgation de la *boîte à outils* (dont l'élaboration était prévue au paragraphe 9.f) iii de la Déclaration de Brighton et que le CDDH a déjà achevée); la traduction en Portugais fut terminée récemment et on souhaite la divulguer (en fichier électronique et à travers une brochure) début 2015.

9.c) ii. Voir la réponse ci-dessus au paragraphe **9.a) et b).**

En outre, lorsque l'exécution d'un arrêt de la Cour rendu contre le Portugal exige l'adoption d'une mesure d'ordre législative, une proposition dans ce sens est présentée au Ministère de la Justice et est, par la suite, analysée et envoyée aux organes ayant une compétence législative (le Conseil des Ministres ou le Parlement).

ROMANIA/ROUMANIE

La compatibilité des projets de loi avec les dispositions conventionnelles est assurée de manière générale par deux mécanismes qui concourent afin de fournir aux projets législatifs un examen de conformité avec la Convention européenne des droits de l'homme.

Ainsi, en premier lieu, la règlementation en matière de technique législative exige, dès 2011, la justification des solutions proposées par un projet d'acte normatif par rapport aux dispositions de la Convention et de ses Protocoles et de la jurisprudence de la Cour européenne des droits de l'homme. Les rédacteurs d'un projet d'acte normatif, qu'il soit le Gouvernement pour les projets de loi ou les membres du Parlement pour les initiatives législatives, doivent respecter les règles de technique législative, y compris la référence, s'il y a le cas, aux dispositions conventionnelles et à la jurisprudence les interprétant.

Chaque projet législatif – projet de loi ou initiative législative ou arrêté de Gouvernement – est, avant son adoption par son initiateur, avisé par le Conseil législatif, organe consultatif de spécialité du Parlement, ayant comme mission au maintien de la systématisation, cohérence et unité du système législatif. Le Conseil avise, de surplus, toute modification ou tout amendement apporté au projet après la délivrance de son avis initial.

Le Conseil législatif suit non seulement la conformité des projets d'actes normatifs avec les dispositions constitutionnelles mais aussi avec les traités internationaux ratifiés par l'Etat roumain, donc la Convention européenne des droits de l'homme.

Dans le cadre du contrôle de constitutionnalité, *ex ante* comme *a posteriori,* la Cour Constitutionnelle fait référence aux dispositions de la Convention interprétées à la lumière de la jurisprudence de la Cour.

De plus, en vertu de la nouvelle réglementation, si un arrêt de la Cour européenne conclut sur la contradiction entre un certain acte normatif interne (ou des parties de celui-ci) et les dispositions de la Convention européenne des droits de l'homme, le Gouvernement, dans un délai maximum 3 mois à partir de la date de la communication de l'arrêt, est sous l'obligation de présenter au Parlement un projet de loi portant sur la modification ou l'abrogation de l'acte normatif en cause.

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

Verification of draft law material compliance with Convention runs throughout the whole legislative process in the National Council of the Slovak Republic. A draft law shall include a statement on the draft law's compliance with the Constitution, its relation to other laws and international treaties and on the draft law's compliance with the EU law elaborated by means of a clause on compatibility of the respective draft law with the EU law (compatibility clause). The Legislation and Law Approximation Department of the Office of the National Council performs a legal analysis of law drafts. Its role is to point out, inter alia, to an eventual contradiction with the international treaties which bound the Slovak Republic, thus it has an opportunity to initiate an alternation of the draft law also in the case when such a draft law is not in compliance with the Convention.

In scope of the second reading the draft law shall be deliberated by those committees of the National Council, which it was allotted to in the first reading. The most important role from the aspect of verification of draft law compatibility with the Convention in the National Council is played by the Constitutional Law Committee that deliberates all the draft laws, also from the aspect of their compatibility with international agreements, and the Committee of Human Rights and Minorities that deliberates on the draft laws in view of their compatibility with human rights anchored in the Constitution of the Slovak Republic, and which result from the international obligations of the Slovak Republic.

In the case of government draft laws, before filing a draft law of the National Council, the Legislative Rules of the Government of the Slovak Republic must be adhered to. Those stipulate the rules for making the generally binding legal regulations. In accordance with Article 17 § of the Legislative Rules of the Government the so-called Compatibility Clause aiming to ensure and transparently verify and justify compatibility of the draft legislation with Law of the EU is an integral part of the General Part of the Explanatory Report to the submitted draft regulation/act. The Legislative Council of the Slovak Republic, as an advisory body of the Government of the Slovak Republic, gives its opinions on the draft laws from the view of their compatibility with conventions of the Council of Europe, in the same manner as it gives its opinions on compliance with other international treaties binding for the Slovak Republic, while the Institute for Approximation of Law under the Office of the Government of the Slovak Republic elaborates written opinion on the draft laws also from the viewpoint of' their compliance with the EU law and conventions of the Council of Europe. Should the draft law is not in compliance with the Legislative Rules of the Government, the chairman of the Legislative Council can remand the draft law to its presenter for completing it.

A compliance of the laws in force with the Convention is ensured by means of constitutional conformity review. Article 125 of the Constitution provides that the Constitutional Court shall decide on the conformity of laws with the Constitution, constitutional laws and international treaties to which the National Council has expressed its assent and which have been ratified and promulgated in the manner laid down by law. The Constitutional Court shall open such proceedings on an application

by no less than one fifth of the deputies of the National Council, the President, the Government, a court of law and the Prosecutor General. If the Constitutional Court finds a lack of conformity between legal instruments, the relevant instruments, parts of them or certain of their provisions shall lose their effect. The bodies that issued these legal regulations shall be obliged to harmonise them with the Constitution, with constitutional laws and with international treaties promulgated in the manner laid down by a law, and also, in the case of Instruments, with other laws, and in the case of instruments, with government regulations and with generally binding legal regulations issued by ministries and other central State administrative bodies within six months from the promulgation of the decision of the Constitutional Court. If they fail to do so, these instruments, parts of them or their provisions shall lose their effect six months after the promulgation of the decision.

In the Slovak Republic the domestic bodies are under a constitutional obligation to apply the Convention directly. If the Convention provides for a larger scope of constitutional rights and freedoms it has precedence over national legislation. For this reason, the litigants regularly rely on and the courts of all levels regularly apply the Convention and relevant case-law of the European Court of Human Rights. Moreover, a compliance of the administrative practice with the Convention is ensured by means of the individual constitutional complaint under Article 127 § 1 of the Constitution. If the Constitutional Court finds that the fundamental rights and freedoms have been violated by a final decision, specific measure or other act, it shall quash such decision, measure or act. If the violation that has been found is the result of a failure to act, the Constitutional Court may order the authority which has violated the rights or freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order such authority to refrain from violating the fundamental rights and freedoms or, where appropriate, order those who have violated the rights or freedoms to restore the situation to that existing prior to the violation,. In its decision on a complaint the Constitutional Court may grant appropriate financial compensation to the person whose rights have been violated.

SLOVENIA/SLOVÉNIE

According to the Constitution of the Republic of Slovenia (Article 8) laws and other regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly. Therefore it is inherent to our system that draft primary legislation proposed by the Government is consistent with the Convention. Information on the compatibility of draft primary legislation with international treaties (thus also with the Convention) can be a part of the detailed explanation of the proposed draft legislation.

SPAIN/ESPAGNE

La Constitution espagnole fut approuvée en 1978. Dans sa rédaction, les dispositions de la Convention européenne des droits de l'homme, qui fut ratifiée en 1979, furent prises en compte.

L'article 10 § 2 de la Constitution espagnole oblige à interpréter la totalité de l'ordonnancement juridique conformément aux traités et accords internationaux ratifies par l'Espagne visant la sauvegarde des droits de l'homme, parmi lesquels se trouve, en particulier, la Convention européenne des droits de l'homme.

Récemment, en 2014, a été approuvée, et est entrée en vigueur, la loi portant sur les Traités et Accords internationaux, qui intègre dans l'ordonnancement juridique, avec un rang supérieur aux lois ordinaires, les dispositions des Traités internationaux dont l'Espagne est Partie.

Le contenu de la Convention, avec une étude approfondie de l'interprétation qu'en fait la Cour européenne des droits de l'homme, a été pris en compte par le Tribunal Constitutionnel dans plus de 500 arrêts ou ont été établis les critères interprétatifs des normes constitutionnelles. Cette jurisprudence lie, conformément à la loi, les organes juridictionnels ordinaires.

La rédaction des projets de loi touchant les droits de l'homme reconnus par la Convention, comprend un rapport du Conseil d'Etat ou/et du Conseil General du pouvoir judiciaire ou leur conformité aux dispositions de la Cour est examinée.

Le Gouvernement, au travers du ministère de la Justice, transmet à toutes les autorités compétentes, les décisions de la Cour européenne des droits de l'homme. Elles sont traduites vers l'espagnol et sont publiées dans le Journal officiel du ministère de la Justice. Le ministère de la Justice maintient et développe un site web afin d'informer les citoyens et les avocats du fonctionnement de la Cour, avec la traduction des documents les plus importants. Ce site web contient des liens vers l'information que la Cour fournit, en particulier vers les formulaires pour introduire les requêtes ou demander des mesures provisoires. Les arrêts de la Cour relatifs à l'Espagne sont également publiés avec une brève analyse et systématisés par les articles y afférents de la Convention. Ainsi, les fonctions et travaux de la Cour sont diffusés avec une information accessible en espagnol.

Chaque projet normatif, tant avec force de loi, que réglementaire, engage tant par le Gouvernement de la Nation, que par les Gouvernements autonomes, doit être instruit par des organes consultatifs indépendants et spécialisés (Conseil d'Etat, Conseil général du pouvoir judiciaire) qui comprennent dans leurs rapports, l'angle de la sauvegarde des droits fondamentaux et sa conformité a la Convention.

SWEDEN/SUÈDE

The Instrument of Government, Chapter 2, Section 19 states that no act of law or other provision may be adopted which contravenes Sweden's undertakings under the Convention.

Accordingly, Swedish legislators are bound by constitutional law to ensure that Swedish legislation is in conformity with the Convention. It is thus an obligation incumbent upon all relevant actors within the legislative process to have due regard to the Convention in their work. Such actors are:

1. the inquiry committees, which have the task of studying a certain issue or set of issues and putting forward proposals for new and amended legislation;
2. the Government Offices (Regeringskansliet), which has the task of preparing government decisions inter alia regarding proposals for new and amended legislation;
3. the parliamentary committees, which have the task of preparing parliamentary decisions;
4. the Council on Legislation (*Lagrådet*);
5. the Government; and
6. the Parliament.

With certain exceptions, the Government or a parliamentary committee is required to refer draft legislation to the Council on Legislation. This is a body whose members are former or current justices of the Supreme Court and the Supreme Administrative Court. One of their tasks is to ensure the constitutionality of draft bills, which, as set out above, includes their compatibility with the Convention. Although the Council's pronouncements are not binding, they are usually adhered to.

The government bill submitted to Parliament will, if relevant, include a discussion of the proposed new legislation's compatibility with the Convention, thereby ensuring the Parliament is informed in this respect.

SWITZERLAND/SUISSE

En vertu de l'article 141 al. 2 let a de la loi fédérale sur le Parlement[26], tous les projets de lois et de modification de la Constitution (y compris les initiatives populaires) sont accompagnés d'un message du Conseil fédéral qui contient des développements sur la compatibilité du projet avec les exigences découlant du droit international public. Cet examen incombe à l'Office fédéral de la justice[27] qui fait partie du Département fédéral de justice et police et est composé de diverses divisions et sections, entre autres l'unité « Protection internationale des droits de l'Homme ».

[26] RS 171.10 ; http://www.admin.ch / > Droit fédéral> Recherche > 171.10.
[27] Cf. article 7 al. 3 de l'Ordonnance sur l'organisation du Département fédéral de justice et police (RS 172.213.1; http://www.admin.ch/ > Droit fédéral > Recherche > 172.213.1).

TURKEY/TURQUIE

By the amendment to the Law No. 6253 on the Administrative Organisation of the Presidency of the Turkish Grand National Assembly (TGNA) of 1 December 2011, the paragraph (c) of Article 4 of the Law No. 3686 on the Human Rights Inquiry Committee of 5 December 1990 was changed and, the task of "*debating the draft laws, bills of law and decrees having the force of law referred by the Presidency of the Turkish Grand National Assembly and presenting opinions and suggestions about the issues that are on the agenda of other committees upon request"* was entrusted with the Human Rights Inquiry Committee. With this amendment, the Human Rights Inquiry Committee was granted authorization to review draft laws, bills of law and decrees having the force of law, and thus, it has started to actively engage in the legislative process.

Following this amendment, during the first and the second legislative years, 1 draft law, and 3 draft laws and 20 bills of law were referred to the Committee as a primary committee and a secondary committee, respectively. The Committee reviewed three of these after taking them on its agenda. The Committee discussed as a secondary committee the "Bill of Law on the Amendment of the Law on the Execution of Penalties and Security Measures" (Docket No. 2/241) and the "Draft Law on Foreigners and International Protection" (Docket No. 1/619). The Committee discussed as a primary committee the "Draft Law on the Human Rights Institution of Turkey" (Docket No. 1/589).

During the third legislative year, the Presidency of the TGNA referred 1 bill of law, and 4 draft laws and 28 bills of law to the Human Rights Inquiry Committee as primary committee and secondary committee, respectively. The Committee did not discuss any draft law or bill of law as a primary committee during the third legislative year. As a secondary committee, it discussed and concluded the "Draft Law on the Amendment of the Code of Criminal Procedure and the Law on the Execution of Penalties and Security Measures" (Docket No. 1/708) (bills of law with docket nos. 2/240, 2/370 and 2/956 were discussed by being joined with this draft law) and the "Draft Law on the Amendment of Certain Laws and Decrees Having the Force of Law for Changing Phrases regarding Disabled Individuals in Laws and Decrees Having the Force of Law" (Docket No. 1/745), and the reports drawn up in this regard were submitted to the Presidency of the TGNA.

During the fourth legislative year, no draft law or bill of law was referred by the TGNA to the Human Rights Inquiry Committee as a primary committee; however, 7 draft laws and 32 bills of law were referred to it as a secondary committee. The Committee did not discuss any draft law or bill of law during the fourth legislative year as a primary committee. As a secondary committee, it discussed and concluded the "Draft Law on the Approval of the Ratification of the Additional Optional Protocol to the Convention on the Rights of Disabled Persons" (Docket No. 1/892), and submitted its report drawn up to the Presidency of the TGNA.

UKRAINE

According to Article 19 of the Law on Execution of ECHR Judgments, the Government Agent before the ECHR conducts legal expertise of all draft laws and regulations, covered by the requirements of their State registration, as to their compliance with the provisions of the Convention and Court's case-law. Negative conclusion of the Government Agent bars the registration by the Ministry of Justice of a particular legal regulation.

The Laws and regulations which fall outside the scope of Convention are not the subject to the expertise. However, the question of whether the particular law or regulation is related to the Convention is decided by the Government Agent.
According to the Law on Execution of ECHR Judgments the Government Agent prepares quarterly submissions to the Cabinet of Ministers of Ukraine on the general measures necessary for the execution of the Court's judgments, which became final, in cases against Ukraine. Submissions include, among other things, analysis of the circumstances which led to the violation of the Convention, and proposals on legislative amendments or other measures aimed at preventing similar violations in the future.

In a response to the submissions of the Government Agent the Cabinet of Ministers of Ukraine orders the relevant authorities to take the relevant general measures indicated in the submission.

It should also be noted that together with the submission to the Cabinet of Ministers of Ukraine, the Government Agent prepares similar analytical documents for the Parliament and the Supreme Court of Ukraine. These documents include the analysis of violations found by the Court and proposals on legislative amendments and bringing courts' case-law in line with the Convention respectively.