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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

APPLICATION OF THE CONVENTION

**- Summary of Case files and complaints -
Reminder on the processing of complaints
and new on-line form**

*Secretariat memorandum
prepared by
the Directorate of Culture and Cultural and Natural Heritage*

I. INTRODUCTION

In its 25 years of existence (1982-2007), the *case-file system* has proven to be an excellent tool to achieve the aims of the Bern Convention through co-operation at international level. From the first cases, dating back to 1982, when the Standing Committee limited its action to very general Recommendations, to the current cases dealt with great detail and attention, the practice has created a set of steps that guide the procedure for the case-file system.

The success of these procedural steps derives from the fact that the Standing Committee remains free to decide the solution in each case, without being constraint by strict obligations that may be a burden for the smooth co-operation among Contracting Parties. This is a clear reflection of the commitment embodied in Article 18(1): “The Standing Committee shall use its best endeavours to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise”. In fact, the purpose behind the rules currently applied has been to guide the procedure itself, not to influence the flexibility that Contracting Parties have when addressing a particular situation at the Standing Committee. This institution has always been a forum to express opinions and to propose solutions, and very strict rules could compromise such freedom.

The current set of rules, adopted in 1993, and included in Annex III, has been since applied provisionally. Practice has shown that the success or the failure of a case-file procedure does not depend on the procedural rules themselves, but on the will of the Parties to co-operate. Nevertheless, new tools could contribute to a quicker outcome and, above all, to improve the results achieved by the case-files system through addressing certain practical problems encountered.

In 2007, the Secretariat presented to the Standing Committee an analysis of the rules of procedure for the case-file system (See document T-PVS (2007) 6), which was based in two elements: a review of the procedural steps used for the opening and closing of files, based on the experience gained in 25 years of practice, and an up-to-date table containing all basic information on each of the 96 cases assessed by the Standing Committee until the year 2007. At its 27th meeting, the Standing Committee asked the Secretariat to prepare a proposal based on this report, and submit it to its 28th meeting, in November 2008.

II. SUMMARY OF THE CASE-FILE PROCEDURE

1. Complaint

The Secretariat examines all letters sent to the Standing Committee of the Convention itself, or to its Chairman or Secretariat, by a Contracting Party, individual, nongovernmental organisation or group of private persons containing a complaint about the failure of one or more Contracting Parties to comply with one or more provisions of the Convention.

The majority of complainants have been local or national NGOs, or local associations directly concerned with the matter, including civil society, political groups or even individuals. International NGOs do also actively participate in the procedure, sometimes supporting complaints from local NGOs and contributing to their efforts. As the rules envisage, sometimes Contracting Parties also draw the attention of the Secretariat to specific situations. It is important to stress that, even if the rules do not contemplate certain options, practice has evolved and the Secretariat itself or the different Groups of Experts under the Convention have alerted about possible cases that have later been reviewed by the Standing Committee.

The majority of complaints that reach the Secretariat are based on specific plans or projects that affect a natural protected area and whose potential effects may be negative to the habitats of species protected by the Convention. These type of projects are mostly related to economic development, such as road constructions or projects to build dams or wind farms, which makes it a subject of great importance for the concerned country. Tourism development has also been a serious concern, especially for the conservation of marine turtles in the Mediterranean Sea.

2. Screening by the Secretariat

After receiving the complaint, the case goes through a first screening by the Secretariat. On the basis of the information available to it, and if necessary requesting further information from the complainant, it decides whether to take it forward or not. There are no written criteria but rather a number of points that are taken into consideration. To begin with, it is assessed whether the focus of the complaint is covered by the Bern Convention. The Secretariat ensures in particular that the complaint is not anonymous and examines, taking account of any procedures that may be pending at national and/or international level, whether the complaint is sufficiently serious to warrant examination at international level, bearing in mind the European importance of the habitat, species or population concerned.

There are no records on the decisions taken by the Secretariat in this respect, neither there is a *numerus clausus* list of issues considered as important for this first screening. Nevertheless, at its 20th meeting the Standing Committee stated that monitoring of the Convention should be given the highest priority in future programmes of activities. The Secretariat was requested to submit regular reports of the complaints received and their progress. Information needed to be public or available on request. Since that moment, the Secretariat provides the Bureau and the Standing Committee with a summary of case files.

It would be advisable to create a “registration system” to number the old files and the new incoming ones. This would provide quicker access to the information related to them. A proposal of a numeration system is included in this document, based on the proposal included in document T-PVS (2007) 6.

This first stage of the procedure may create some difficulties for the Secretariat when assessing the complaints received, since many letters only provide a general overview of the issue in question and do not necessarily specify species, potential damages, geographical areas, or other elements that would be helpful and even necessary for the Secretariat to assess the merits of the complaint. This document contains a proposal for the creation of an on-line form to fill in these gaps as a means to improve the quantity and quality of the information provided by complainants. The aim of the new form is to facilitate the task of the Secretariat and should by no means be considered compulsory.

3. Request for information to the Contracting Parties

The Contracting Party concerned has a period of about four months to reply to the request for information from the Secretariat. While waiting for the information to reach the Secretariat, these cases are in “stand by”, and the Bureau is informed about them.

Due to problems with delays in responses received by the Secretariat, in 1987, it raised this issue triggering the 1993 rules. As the issue of late reply or lack of responses persisted, the Bureau agreed that, after a period of four months without reply, the Bureau would treat the unanswered complaints as “possible files”.

The Secretariat requests that all information to be submitted by the Contracting Parties be sent electronically and in Word format, if possible, and in one of the two official languages of the Council of Europe.

4. Role of the Bureau

The Bureau takes administrative and organisational decisions in between meetings of the Standing Committee. It remains as flexible as the Standing Committee to decide on complaints received, and their reasons may vary from case to case. The Bureau may propose that an on-the-spot appraisal be carried out if the circumstances of the case so requires. The reports of Bureau meetings are made available to Parties and observers.

At its meeting in April 2007, the Bureau decided to fix strict deadlines for the consideration of documents, given the significant increase in the number of reports arriving just before the meetings, too late to be transmitted and studied by Bureau members. This deadline, which is set approximately two weeks before the meeting, is determined each time by the Secretariat. The Secretariat also encourages

Parties to submit their information in electronic Word format (as paper faxes and PDF files cannot be formatted in order to create official T-PVS/Files documents).

5. On-the-spot appraisal

On-the-spot appraisals are carried out with the agreement of the Party concerned. These visits were not included in the provisions of the Convention, but it was considered that Article 14 could be interpreted in such a way so as to allow for on-the-spot appraisals, and the rules of procedure of the Standing Committee meeting were amended accordingly. There have been 23 on-the-spot visits to date. Normally they are requested when information on the case is either lacking or unclear. They are of extreme importance, and therefore the report of the independent expert resulting from the visit is analysed by the Standing Committee with the utmost attention. These visits are crucial for the Standing Committee to decide on further steps on the case. The measures or draft recommendations proposed by the expert are discussed by the Standing Committee, providing the basis for Standing Committee Recommendations.

6. Treatment by the Standing Committee

a. Decisions on case-files

This stage is the most important of the procedure. The Standing Committee assesses the case-files and takes decisions on the measures to be adopted and on the status of the file. In case of vote, decisions would need to be taken by a two-thirds majority of the votes cast. It is important to stress the freedom of the Committee when deciding on a case. The Bern Convention is an instrument of co-operation among equal Parties, and the Standing Committee plays the role of a forum to discuss and help resolve problems, rather than that of a watchdog. Therefore, the procedure governing the case-files system is flexible, allowing for rapid decision making, and for freedom of choice in terms of the solutions proposed concerning the case files.

The Standing Committee may decide to take different measures: It may request for further information and reports to be presented; it may propose an on-the-spot appraisal; or adopt a specific Recommendation on the matter, whose implementation will be followed-up afterwards.

b. Status of case-files

The Standing Committee decides on the status of the case. In this respect, there are different status:

- “Possible new files” are those complaints being assessed by the Committee and which have not been formally opened. These cases are placed in the agenda of the Standing Committee after proposal from the Bureau, and await a decision on whether to open a case file or not.
- “Open files” are files which deserve a special attention from the Standing Committee. In general, the reasons to open a file are mainly the breach of the Convention provisions due to the great European importance of the site/species concerned, the scope of the threat, and the urgency with which measures are needed.
- There are also cases which, despite being discussed by the Standing Committee, are dropped when the Committee considers that there are not enough grounds. This happens, for instance, when the cause of the complaint is withdrawn, like potentially harmful projects that are later altered or abandoned. It may also occur because the measures taken by the Party concerned are considered satisfactory, or because a Recommendation has been issued and the Party concerned is responsible for implementing it.

This does not automatically entail that the file is closed. On the contrary, in accordance with the decisions of the Standing Committee, the case could be subject to a follow-up since cases are followed-up regularly. Monitoring can continue until the Committee decides to close it, or it could even be put in on hold, until the Standing Committee decides to re-activate it asking for further information, reports, etc.

c. Closing of files

Generally, the decision to close a file is taken when the difficulties to implement the Convention have been solved. This decision may also be temporary. The Standing Committee has the power to re-open “old files” and start the procedure all over again, if there are concerns. On the other hand, some cases are closed not because the threat has completely disappeared, but because the Party has shown good progress and the Standing Committee may decide to monitor such progress as an information point rather than as an opened case-file.

d. Follow-up of Recommendations

In the basis of Article 14(1)(4), and in accordance with the practice that has developed in recent years, the Standing Committee can adopt two types of recommendation: General, referred to all Parties or addressing a broad issue, or Specific recommendations: targeting specific country or a specific subject. Follow-up of Standing Committee Recommendations can be done at Standing Committee meetings, but also through reports, meetings and reviews by the Group of Experts. Depending on the issue and its nature, some cases are reviewed only by one of these instruments, others by a combination of them.

At its 16th meeting, the Standing Committee decided to follow-up some recommendations on a more detailed basis. Nowadays, the Bureau decides which Recommendations require a follow-up by the Standing Committee and proposes them when preparing the draft agenda of the Standing Committee meeting.

III. PROPOSALS

1. From 2009, the Secretariat will register all case files to identify them more easily. This would provide a quicker access to information and it would simplify references to them. The reference number will include two elements: the year when the complaint was filed with the Secretariat, and a number, indicating the chronological order of filing. A list with the numbering of existing cases can be found in Annex II.
2. An information notice and an on-line complaint form will be uploaded on the website of the Bern Convention to be available in the two official languages, English and French, and indicating the information needed to process the complaint. The information notice and the on-line form are included in Annex I.

ANNEX I

CASE FILES NUMBERED

NAME	NUMBER
1. Gran Sasso, Italy	1982/1
2. Hunting in Valle Furlana, Italy	1982/2
3. Wadensea, The Netherlands	1983/1
4. Hainburg Alluvial Forest, Austria¹	1983/2
5. Management of wetlands in Ravenna, Italy	1984/1
6. Inch Level Wetland Area, Ireland	1984/2
7. Halvergate Marshes And Benone Region, Northern Ireland	1984/3
8. Spring shooting, Greece	1984/4
9. Markemeer, The Netherlands	1984/5
10. Hunting migratory Birds, Cyprus	1984/6
11. St Petersberg Limestone Galleries The Netherlands	1984/7
12. Duich Peat Mos, UK	1985/1
13. Sorgenti del Fiume Pescara, Italy	1986/1
14. Lake Akrotiri, Cyprus	1986/2
15. Hares Doen and Knowst on Moores, UK	1986/3
16. Alluvial Forest of Rastatt, Germany	1986/4
17. Grencher Witi, Switzerland	1986/5
18. Vikos-Aaos Natural Park, Greece	1986/6
19. <i>Caretta Caretta</i> in Dalyan Beach, Turkey	1986/7
20. <i>Caretta Caretta</i> in Laganas Bay, Greece	1986/8
21. Jersey and Channel Islands, UK	1987/1
22. Chafarinas Islands, Spain	1987/2
23. Santoña Marshes, Spain	1987/3
24. Cabrespine Cave, France	1987/4
25. <i>Vipera Kaznakovi</i> in Hopa, Turkey	1988/1
26. Gulf of Orosei, Italy	1989/1
27. Dorset Heathlands, UK	1989/2
28. <i>Podarcis Muralis</i>, The Netherlands	1989/3
29. <i>Bufo Calamitas</i> in Castlegregory, Ireland	1989/4
30. <i>Vipera Lebetina schweizerei</i> in Milos, Greece	1989/5
31. Bottlenosed dolphins in Moray Firth, UK	1989/6
32. Poisoned Baits, Greece	1989/7
33. Dam of Vidrieros/ <i>Ursus arctus</i> in Cantabria, Spain	1989/8
34. <i>Vipera Ursini Rakosiensis</i> , Hungary	1990/1
35. <i>Hyla Arborea</i>, Sweden	1990/2
36. <i>Bufo Calamita</i>, Austria	1990/3
37. <i>Bufo Viridis</i> and <i>Eptesicus Serotinus</i> in Leimen, Germany	1990/4
38. <i>Vipera Wagner I.</i> , Switzerland, Germany, Netherlands, Sweden	1990/5
39. La Loire, France	1991/1
40. <i>Testude Hermannii</i> in Maures, France (P)²	1992/1
41. <i>Ursus Arctus</i> in the Pyrenees, France	1992/2
42. Totes Moores, Germany	1992/3
43. Missolonghi Wetlands, Greece	1992/4

¹ Case-files which have been formally opened by the Standing Committee are marked in bold, 30 in total.

² (P): Possible file, Standing Committee meeting 2008

44. Dam Project in Salamanca, Spain	1992/5
45. <i>Caretta Caretta</i> In Patara, Turkey	1993/1
46. <i>Phoca Vitulina</i> in the Bay of Somme, France	1993/2
47. Wind Farm in Tarifa, Spain	1993/3
48. Trade of <i>Caretta Caretta</i> , Senegal	1993/4
49. Itoiz Dam Project, Spain	1993/5
50. <i>Testudo Marginata</i> , Greece	1994/1
51. <i>Tryonix Triunguis</i> , Turkey	1994/2
52. <i>Rana Holzi</i> , Turkey	1994/3
53. Gallocanta Marshes, Spain	1994/4
54. Grünwald Forest, Luxembourg	1995/1
55. Porto (Island Of Tinos), Greece	1995/2
56. Burdur Lake, Turkey	1995/3
57. Biltzheim Forest, France	1995/4
58. Introduction of exotic bees, Portugal	1995/5
59. Akamas Peninsula, Cyprus (O) ³	1995/6
60. <i>Caretta Caretta</i> In Kaminia, Greece	1995/7
61. <i>Lacerta Agis</i> , The Netherlands	1996/1
62. <i>Triturus Cristatus</i> Orton Brick Pits, UK	1996/2
63. <i>Oxyura Leucocephala</i> (White Headed duck), UK & others	1997/1
64. Rhine-Rhone Grand Canal Project, France	1997/2
65. Lake Vistonis and Lafralafrouda Lagoon, Greece	1997/3
66. Bialowiesa Project, Poland	1998/1
67. <i>Caretta Caretta</i> in Belek, Turkey	1998/2
68. <i>Cricetus Cricetus</i> in Alsace, France (O)	1998/3
69. <i>Meles Meles</i>, UK	1998/4
70. Doñana National Park, Spain	1998/5
71. <i>Sciurus Vulgaris</i> , Italy	1998/6
72. El Regajal Nature Reserve, Spain	1999/1
73. <i>Ursus Arctos</i> , Greece	1999/2
74. <i>Canis Lupus</i> , Norway	1999/3
75. <i>Meles Meles</i> , Ireland	1999/4
76. <i>Cricetus Cricetus</i>, The Netherlands	1999/5
77. Exploitation and trade of <i>Lithophaga lithophaga</i> , Spain	1999/6
78. Green turtle in Kazanli, Turkey (P)	2000/1
79. Olympic Rowing Centre In Marathon, Greece	2001/1
80. Wind farms in Smola Archipelago, Norway (P)	2001/2
81. Dam construction in Vistula River, Poland	2001/3
82. Motorway construction Kresna Gorge, Bulgaria (O)	2001/4
83. Exotic Forest plantations, Iceland	2001/5
84. Military antenna in the Sovereign Base Area of Cyprus	2001/6
85. Tourist Development in Souss Massa Nat. Park, Morocco	2001/7
86. Odelouca Dam, Portugal	2002/1
87. Caves in the Thrace Region, Turkey	2002/2
88. Wolf control, Switzerland	2002/3
89. Motorway project Via Baltica, Poland	2002/4
90. Hydroelectric Damsat Kárahnjúkar And Nordlingaalda, Iceland	2003/1
91. Bystroe Estuary Canal, Ukraine (O)	2004/1
92. Wind Farm Via Pontica, Bulgaria (O)	2004/2
93. Lesser White fronted goose, Sweden	2005/1

³ (O) : Open file, Standing Committee meeting 2008

94. Green toad (<i>Bufo Viridis</i>) in Alsace, France (P)	2006/1
95. Wind Farm Project, Slovenia	2006/2
96. Motorway across Drava Marshlands/hydropower river Dobra, Croatia	2006/3
97. Planned capture of bottlenose dolphins, Turkey (P)	2006/4

ANNEX II

Extract from document T-PVS (93) 22

IMPLEMENTATION OF THE BERN CONVENTION
Opening and closing of files and follow-up to recommendations

1. OPENING AND CLOSING OF FILES

The purpose of the "files" is to find a satisfactory solution to problems encountered in implementing the Convention and to monitor as effectively as possible the means chosen to resolve them.

A. OPENING OF FILES

1. The Secretariat examines all letters sent to the Standing Committee of the Bern Convention ("the Convention") itself or to its Chairman or Secretariat by a Contracting Party, individual, non-governmental organisation or group of private persons containing a complaint about one or more Contracting Parties' failure to comply with one or more provisions of the Convention.

2. The Secretariat, on the basis of the information available to it, and if necessary requesting further information from the complainant, decides whether to act on the complaint. It ensures in particular that the complaint is not anonymous and examines, taking account of any procedures that may be pending at national and/or international level, whether the complaint is sufficiently serious to warrant examination at international level.

3. Where it decides on such action, the Secretariat forwards the complaint to the Contracting Party or Parties concerned, seeking their opinion and, if necessary, further information. It informs the Bureau of the action taken.

4. The Contracting Parties must respond to the Secretariat's request within a period of about three months.

5. In the light of the reply received, the Secretariat decides, in agreement with the Bureau, whether there are grounds for placing the complaint as a "file" on the agenda for the next meeting of the Standing Committee. The Contracting Party or Parties concerned are informed of this at least two months before the date of the meeting.

6. In cases of urgency and in order to expedite the possible settlement of a difficulty between two meetings of the Standing Committee, the Bureau may decide, with the agreement of the Contracting Party concerned, to organise an on-site assessment.

7. At the meeting of the Standing Committee, the Secretariat or - with the consent of the Chairman or a Contracting Party - an observer concerned in the matter explains the complaint and, depending on the circumstances, proposes that further information be awaited or requested, that a specific recommendation be adopted (see II below) or that an on-the-spot enquiry be conducted for the purpose of a more thorough examination in accordance with Rule 11 of the Rules of Procedure.

In accordance with Rule 9 c. of the Rules of Procedure, proposals made by observers may be put to the vote if sponsored by a delegation.

8. The Standing Committee then studies the complaint submitted and proposals formulated and decides by consensus, or in the absence of consensus by a simple majority, whether it is appropriate to open a file.

If such is the case, the Standing Committee, also by consensus, or in the absence of consensus by a simple majority, decides whether it is preferable to adopt a specific recommendation or to conduct an on-the-spot enquiry first.

9. The recommendations adopted are communicated to the Contracting Parties for implementation and are public.

B. CLOSING OF FILES

10. If, after it has examined the report made by an expert following an on-the-spot enquiry or the report forwarded by the Contracting Party concerned as part of the follow-up to a specific recommendation (see paragraph 15 below), the Standing Committee finds that the difficulties relating to implementation of the Convention have been resolved, it decides by consensus, or in the absence of consensus by a simple majority, to close the file.

II. FOLLOW-UP TO RECOMMENDATIONS

Article 14, paragraph 1, of the Convention states that:

"1. The Standing Committee shall be responsible for following the application of this Convention. It may in particular:

(...)

- make recommendations to the Contracting Parties concerning measures to be taken for the purposes of this Convention;

(...)."

In accordance with the practice that has developed in recent years, the Standing Committee adopts two types of recommendation:

- general recommendations pursuant to its general programme of action (recommendations arising in particular from meetings of groups of experts, the work of consultants or seminars);

- specific recommendations following its examination of a file which it has decided to consider. Specifically addressed to one or more Contracting Parties, these recommendations concern situations in which the implementation of the Convention raises, in a particular case, problems over the conservation of flora, fauna, or a natural habitat (for example, unsatisfactory protection of a species of fauna in a specified location).

The recommendations constitute essential means of giving substance to the provisions of the Convention and may even constitute, in time, international customary law. The monitoring of their follow-up is therefore fundamental.

The Standing Committee also adopts guidelines. Though more detailed than general recommendations, they nevertheless have comparable standing. They offer guidance to the Contracting Parties on the action to be taken.

A. GENERAL RECOMMENDATIONS AND GUIDELINES

At its 12th meeting, the Standing Committee decided that a general report on the application of the Convention would henceforth be submitted by Contracting Parties every four years, the first report to be added to the biennial report for 1993-1994. The Netherlands delegate offered to prepare draft guidelines for the contents of such a report, (see T-PVS (92) 84 of 17 December 1992, item 6.1). The draft guidelines, (see T-PVS(93) 25 of 27 September 1993), should contain a section on follow-up to general recommendations and guidelines addressed to all or certain Contracting Parties.

11. The follow-up to general recommendations or guidelines takes place mainly through general four-yearly reports in which the Contracting Parties concerned are invited to describe the legal and/or other measures taken to comply with the policies they propose.

12. With the agreement of the Bureau, the Secretariat prepares a "Summary of General Recommendations/Guidelines" containing, for each of them:

- the text of the general recommendation/guideline;
- the information provided by the Contracting Party or Parties concerned and any expert's report that may have been prepared; and
- a proposal that also takes account of any other available information.

13. It is the responsibility of the Standing Committee, in the light of this information and after discussion, to decide - by consensus or in the absence of the consensus, by a simple majority - on any measures which ought to be taken in respect of each general recommendation/guideline (plan or programme of action, strategy, training courses, technical or financial assistance, expert report, etc.).

Where the follow-up to a general recommendation/guideline proves to be no longer necessary, the Standing Committee may decide - by consensus, or in the absence of consensus by a simple majority - to consider that implementation is satisfactory.

B. SPECIFIC RECOMMENDATIONS

At its 12th meeting, the Standing Committee agreed to the Secretariat's proposal that certain recommendations should be followed up on an experimental basis, (see T-PVS (92) 84 of 17 December 1992, item 6.2). It could proceed in this way for all specific recommendations.

14. For the purpose of following up specific recommendations, the Secretariat writes to the Contracting Parties concerned asking them to submit a report summarising the legal and/or other measure or measures adopted to comply with the policies laid down in those recommendations.

15. After receiving the reports, within a period of about three months, the Secretariat prepares, with the agreement of the Bureau, a "Summary of Specific Recommendations" containing, for each of them:

- the text of the recommendation;
- the report submitted by the Contracting Party or Parties concerned, any excessively bulky appendices or documentation included with the report being kept available for consultation at the Secretariat; and
- a proposal that also takes account of any other available information.

16. The Standing Committee is then invited, in the light of this document and after discussion, to rule as to whether, in the case of each recommendation, the measure or measures adopted by the Contracting Party or Parties concerned are sufficient or not and decides by consensus, or in the absence of consensus by a simple majority:

- a. if they are sufficient, to consider that the implementation of the specific recommendation is satisfactory and to close the file (see paragraph 10 above);
- b. if they are insufficient, to maintain the specific recommendation - as it stands or amended - and to re-examine its follow-up under the same procedure at its next meeting.

17. The list of specific recommendations which have not led to the adoption of adequate measures for their implementation is forwarded to the Ministers of Foreign Affairs of the Contracting Parties concerned.

18. The problem then arises as to the attitude to be taken by the Standing Committee in cases where, despite the maintenance of a specific recommendation (see paragraph 16.b above), the State to which it is addressed continues not to implement it. In this connection it is appropriate to refer to Article 18, paragraph 2 of the Convention, which provides for the possibility of recourse to arbitration for any dispute over the interpretation or application of the Convention. The Standing Committee might look into this possibility and, in certain cases of particular gravity, invite one or more Contracting Parties to set in motion, on behalf of the Standing Committee, the procedure laid down in Article 18 of the Convention.