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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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CDDH report containing elements to contribute to the evaluation of the effects of Protocol No. 14 to the Convention and the implementation of the Interlaken and Izmir Declarations on the Court's situation

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I. INTRODUCTION

1. The CDDH's terms of reference for the biennium 2012-2013 require it, through its subordinate body the Committee of experts on the reform of the Court (DH-GDR), *inter alia* to prepare a report for the Committee of Ministers "containing elements to contribute to the evaluation of the effects of Protocol No. 14 to the Convention and the implementation of the Interlaken and Izmir Declarations on the Court's situation". The DH-GDR in turn conferred the initial preparation of the draft report on its drafting group A (GT-GDR-A). The present document constitutes the report required under the CDDH's terms of reference.

2. Protocol No. 14 was opened for signature on 13 May 2004; it received its final ratification on 18 February 2010 and entered into force on 1 June 2010. During the intervening period, in view of the continuing rapid growth in the Court's case-load and its inability to meet this challenge within the prevailing Convention framework, the States Parties on 12 May 2009 adopted Protocol No. 14 bis and the Madrid Agreement on the provisional application of certain provisions of Protocol No. 14 pending its entry into force. Both of these instruments allowed individual States Parties to accept provisional application of the single judge and three-judge committee formations, as defined in Protocol No. 14, with respect to applications brought against them. By the time of entry into force of Protocol No. 14 – at which point Protocol No. 14 bis and the Madrid Agreement ceased to have effect – the former was in force or applied on a provisional basis with respect to nine States Parties and the latter in effect with respect to ten. Thus certain of the provisions of Protocol No. 14 – namely those introducing the single judge and committee formations – had come into effect for certain States Parties at various points in time before Protocol No. 14 itself came into force.

3. The Court's experience of operating the single judge and committee formations thus extends back as far as 1 June 2009, initially with respect to only two member States, although that number increased to sixteen by the end of that year, with three more in 2010. It can be noted, however, that these new formations did not apply to cases against any of the long-standing five highest case-count countries (which between them account for almost two thirds of the pending applications allocated to a judicial formation) until Protocol No. 14 itself came into force on 1 June 2010. Equally, the most important internal structural reforms introduced by the Court to maximise the impact of the entry into force of Protocol No. 14 occurred after its general entry into force. Roughly speaking, therefore, the time frame for assessing the effects of Protocol No. 14 on the Court's situation can be taken as starting on 1 June 2010 up to the date of the present report. It should also be noted that only since 1 June 2012 have Single Judges been able to apply the new admissibility criterion of manifest disadvantage (see under "Article 12" below).

4. The CDDH has relied upon information from other sources, in particular the Court itself, as well as the report of the *Cour des comptes* on the Court.[1] It considers that

[1] See *Conseil de l'Europe – CEDH: Relevé des observations définitives sur la Cour européenne des droits de l'homme*, Cour des comptes (in French only).

the present report represents significant added value in bringing together, for the first time, information on the overall effects of the substantive changes wrought by Protocol No. 14 on the Convention system. This synthesis or summary of the available information constitutes essential elements contributing to the final evaluation of the effects of Protocol No.14 on the Court's situation.

5. As regards the effects of the Interlaken and Izmir Declarations on the Court's situation, the CDDH does not at present dispose of information that may contribute to an objective evaluation of effects identifiably due to the Declarations. Indeed, an examination of the provisions of Section E ("The Court") of the Interlaken Declaration and Section F ("The Court") of the Izmir Declaration shows that the political declarations contained therein could not be expected to generate isolatable, quantifiable results; in many cases, they consist of encouragement to the Court to persevere with existing actions. The CDDH notes, however, that the Court provided information directly to the Ministers' Deputies at their meeting on 24 October 2012.[2] It also recalls that the Interlaken Conference invited the Committee of Ministers to evaluate, during the years 2012 to 2015, to what extent the implementation of Protocol No. 14 and of the Interlaken Action Plan had improved the situation of the Court, and that the present report is thus a contribution to an on-going process.

II. EFFECTS OF PROTOCOL NO. 14 ON THE COURT'S SITUATION

6. This section shall address each substantive provision of Protocol No. 14 in turn.

Article 1 amending Article 22 ("Election of judges") of the Convention

7. Article 1 of Protocol No. 14 deleted former paragraph 2 of Article 22 of the Convention on the election of judges. According to the Explanatory Report for Protocol No. 14, this was because paragraph 2 "no longer served any useful purpose in view of the changes made to Article 23". It is thus not necessary to evaluate the effects of this provision.

Article 2 amending Article 23 ("Terms of office") of the Convention

8. Article 2 extended the judges' terms of office to nine years whilst making them non-renewable. It is not necessary to evaluate the effects of this provision.[3]

[2] See "The Interlaken Process and the Court", doc. 4038635, 16 October 2012.
[3] It can be recalled that since the entry into force of Protocol No. 14, the Committee of Ministers has adopted Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights.

Article 3 amending Article 24 ("Dismissal") of the Convention

9. Article 3 deleted former Article 24 of the Convention. Since the provision it contained was inserted into a new paragraph 4 of Article 23 of the Convention, it is not necessary to evaluate the effects of this provision of the protocol.

Article 4 creating new Article 24 ("Registry and rapporteurs") of the Convention

10. Article 4 of the Protocol made two changes: it deleted reference to "legal secretaries", who had in practice never existed, and it introduced the function of rapporteur to assist the new single judges. These rapporteurs are generally referred to as "non-judicial rapporteurs" (NJR), so as to distinguish the function from that of Judge Rapporteur.

11. According to information given by the Court, 66 experienced permanent members of the Registry were initially appointed as NJR in May 2010, with further new appointments or renewals made in May 2011 and May 2012. A special Filtering Section of the Registry was created in early 2011 to deal with cases from the five highest case-count States, namely Poland, Romania, the Russian Federation, Turkey and Ukraine; to these "first-tier" countries has since been added France. The Filtering Section currently contains 80 lawyers, including secondments. New working methods were developed in the Filtering Section and are progressively being applied to applications made against other States (see further below). Other methods are also being tested, such as the immediate communication of incoming repetitive applications.

Article 5 amending Article 26 ("Plenary Court") of the Convention

12. Article 5 gave a new competence to the plenary Court, in order to give effect to the new Article 26 paragraph 2 (the possibility of reducing the size of Chambers: see under Article 6 below). It will be addressed along with Article 6 below.

Article 6 concerning new Article 26 (judicial formations) of the Convention

13. Article 6 changed the Court's judicial formations by introducing the new single judge formation, along with certain consequential changes. It also created a new system for the appointment of *ad hoc* judges and allowed for some flexibility in the size of the Court's Chambers, which may for a fixed period be reduced from seven to five judges by the Committee of Ministers at the Court's request.

14. The effects of the new single judge formation will be examined under Article 7 below.

15. As regards the new system of appointment of *ad hoc* judges, the Court has set out new procedural rules in the Rules of Court (Rule 29). Following discussions with Government Agents, the Court is considering their revision. 38 Contracting States have provided the Court with their list of potential *ad hoc* judges, and these were published on

the Court's website in February 2011. Since June 2010, *ad hoc* judges have been appointed in 121 cases, which is unusually high, on account of a specific situation concerning one judge.

16. As regards the possibility of reducing the size of Chambers, the Court initially chose not to deal with this issue as a matter of priority, in view of the number of organisational measures that were already necessary following the entry into force of Protocol No. 14. It was felt that the assessment as to whether moving to five judge Chambers would be advantageous to the Court could only be made when the other measures deriving from the Protocol had been put in place: in particular, it was necessary to set up and evaluate the new three-judge Committees. In addition, the Sections were re-composed with effect from 1 February 2011. Subsequently the Court examined the issue in depth, considering the advantages and disadvantages of such a change, including balancing a possible gain in productivity against the risk of inconsistency in case-law, leading to potential overburdening of the Grand Chamber, and the difficulty of maintaining an appropriate balance in the composition of Chambers. An additional problem identified by the Court was insufficient flexibility, since even if for some cases a five-member Chamber might be appropriate, there were always likely to be cases with which the Court would wish to deal in a larger formation, but which did not warrant relinquishment to the Grand Chamber. Moving to five-judge Chambers would moreover entail restructuring the Section system. In the light of these different factors the Court has come to the conclusion that, for the time being at least, the arguments in favour of making a request to the Committee of Ministers are not sufficiently persuasive.

Article 7 concerning new Article 27 ("Competence of single judges") of the Convention

17. Article 7 defines the competence of the new Single Judge (SJ) formation concerning decisions in clearly inadmissible cases. The President of the Court appointed 20 judges, including both experienced and newly arrived judges, respecting the principle of equality between colleagues, to act as SJ as of 1 June 2010 until 31 May 2011. These judges were drawn evenly from the Court's five sections. The States for which each would be responsible were (flexibly) determined. For most States, one single judge was sufficient; the exceptions are Russia (5 single judges), Turkey (4), Romania (3), Ukraine (3) and Poland (2). On 1 June 2011, a replacement group of 20 SJ was appointed. In June 2012, the system was revised, with all judges (except the President and Section Presidents[4]) acting as SJ.

18. Case-processing statistics from the Court show a constant and significant increase in the number of cases rejected at the filtering stage. In 2009, when filtering was done mainly by three-judge committees, they rejected 31,500 applications. The single-judge formation entered into force for all States Parties in mid-2010, and by the end of that year the number of cases rejected at the filtering stage increased by 11% to just over 35,000. The Court's output rose even further in 2011, when nearly 47,000 applications were dealt with by single judges, an increase of 31%. This upward trend has continued in 2012, with 66,907 single judge decisions taken up to the end of October 2012.

[4] The seat of the judge elected in respect of Bosnia and Herzegovina is currently vacant.

19. The number of cases pending before Single Judges has evolved over the period July-August 2011[5] to October 2012[6] as follows:

	No. of strike out/ inadmissibility decisions	No. of cases pending	Change in the no. of cases pending
July-August 2011	-	101,800	-
September 2011	9,047	96,700	- 5,100
October 2011	6,010	95,900	- 800
November 2011	5,306	94,000	- 1,900
December 2011	4,833	92,050	- 1,950
January 2012	3,638	91,900	- 150
February 2012	5,040	91,050	- 850
March 2012	7,767	87,550	- 3,500
April 2012	4,090	87,150	- 400
May 2012	10,658	80,250	- 6,900
June 2012	5,585	79,200	- 1,050
July-August 2012	7,568	80,550	*+ 1,350*
September 2012	12,568	72,800	*- 7,750*
October 2012	9,993	67,900	*- 4,900*
TOTAL			***- 33,900 (- 33%)***

20. The report of the *Cour des comptes* notes that whilst the number of Registry lawyers increased from 218 in 2008 to 260 in 2011, or 19%, the number of applications resolved by a decision or judgment increased by 81% over the same period. The *Cour des comptes* attributes this in particular to the filtering mechanisms introduced in 2010, which is when Protocol No. 14 came into full effect. The report also notes that the productivity of Registry lawyers increased from 141 cases (not including those subject to administrative termination) treated per lawyer in 2007 to 213 in 2011, an increase of 51%. Within the filtering section, consisting of the equivalent of 55 full-time staff, productivity stood at 581 applications treated per person per year.

21. These results had made it possible for the Court, as early as autumn 2011, to envisage a situation in which, as far as filtering is concerned, there would, by the end of 2015, be both a balance between the “input” of new cases and the “output” of decided cases, and elimination of the current backlog of clearly inadmissible applications. The Court also indicated, however, that this would require certain additional resources for the Registry, which could take the form of temporary secondments from Contracting States. Further steps are being taken, including *inter alia* extension of working methods developed under this procedure within the Filtering Section to the rest of the Registry and for all countries: on 1 January 2012, for example, the Registry’s filtering section extended its activities to applications against also “second-tier” states Bulgaria, Italy, Moldova, Serbia and the United Kingdom. In March 2012, new guidelines on filtering were introduced in order to ensure use of standardized, simple forms and procedures for filtering across the Court. The Court is also evaluating the effects of taking a more

[5] The Court produces statistics for the months of July and August together.
[6] The latest month for which statistics are available.

rigorous approach to the question of what constitutes an application, although this initiative is not strictly speaking a result of the entry into force of Protocol No. 14.

22. On the basis of its own findings, the *Cour des comptes* agrees, concluding that "It is undeniable that the new mechanisms for filtering applications are producing effects and that it is becoming possible to reach an equilibrium between new cases and treated cases, along with a gradual elimination of the backlog of cases. That will depend, in particular, on obtaining supplementary resources for the Registry, for example in the form of temporary secondments of officials of States Parties… Thanks to the Single Judge formation and on the basis of the output levels observed in 2011, 95% of pending cases could be closed within as little as two and a half years." It is understood that the period of two and a half years refers to the total time required to eliminate the current backlog and not to the average time that will be required to resolve newly arrived clearly inadmissible applications.

Article 8 concerning new Article 28 ("Competence of Committees") of the Convention

23. Article 8 defines the new competence of three-judge committees concerning judgment in cases whose underlying question is already the subject of well-established case-law (WECL) of the Court (repetitive cases). The Court has regular recourse to this procedure (see further below). Implementation of the Court's priority policy, however, requires that resources be allocated to priority cases rather than the repetitive cases which are typically the subject of Committee judgments, which has limited the increase in the number of such judgments. These only represent part of the work done by Committees, however, which also dispose of applications by other means, e.g. striking out following a friendly settlement or acceptance of a unilateral declaration (see further below). In its Preliminary Opinion in preparation for the Brighton Conference, the Court signalled that it envisaged a broader interpretation of the notion of well-established case-law within the meaning of Article 28(1)(b) (see paragraph 23 of the Preliminary Opinion).

24. The number of cases pending before a Committee has evolved over the period July-August 2011[7] to October 2012[8] as follows:

	No. of cases pending	**Change in the no. of cases pending**
July-August 2011	11,150	-
September 2011	11,800	650
October 2011	12,450	650
November 2011	13,150	700
December 2011	13,700	550
January 2012	14,550	850
February 2012	15,050	500
March 2012	16,550	1,500
April 2012	17,300	750
May 2012	18,250	950
June 2012	18,400	150

[7] The Court produces statistics for the months of July and August together.
[8] The latest month for which statistics are available.

July-August 2012	19,350	*950*
September 2012	19,650	*300*
October 2012	20,000	*350*
TOTAL		***8,850 (+ 79%)***

25. In 2011, a total of 380 applications were disposed of by Committee judgments made under Article 28(1)(b) of the Convention, with a further 330 by 31 October 2012. 2,703 repetitive applications were struck out or declared inadmissible by Committees between 1 January and 31 October 2012, which is almost twice the number during the same period in 2011. Much of the increase in the number of cases pending before Committees, in particular that during 2011, was due to their transfer from Chambers to Committees following identification as WECL cases. In total, the Court currently considers some 40,000 of the cases pending before it to be repetitive, of which some 20,000 are still allocated to Chambers.

Article 9 amending Article 29 ("Decisions by Chambers on admissibility and merits") of the Convention

26. Article 9 makes the practice of the Court's deciding on admissibility and merits together the rule rather than, as previously, the exception. This amendment reinforced a tendency that had already been apparent. It is not necessary to evaluate the effects of this provision.

Article 10 amending Article 31 ("Powers of the Grand Chamber") of the Convention

27. Article 10 gives the Grand Chamber jurisdiction to give ruling on matters referred to the Court by the Committee of Ministers under Article 46(4) of the Convention. The Committee of Ministers has to date not yet made any such referral (see under "Article 16" below). The Grand Chamber has thus not yet exercised its jurisdiction in this respect.

Article 11 amending Article 32 ("Jurisdiction of the Court") of the Convention

28. Article 11 also gives further effect to the amendment made by Article 16 (see below). It is not necessary to evaluate the effects of this provision.

Article 12 amending Article 35(3) ("Admissibility criteria") of the Convention

29. Article 12 introduced the new "manifest disadvantage" admissibility criteria into Article 35(3)(b) of the Convention. The Court's Chambers have so far applied the new criterion to dismiss at least the following 29 cases:
- *Ionesco v. Romania* (App. No. 36659/04; 01/06/10))
- *Korolev v. Russia* (App. No. 25551/05; 01/07/10)
- *Vasilchenko v. Russia* (App. No. 34784/02; 23/09/10)
- *Rinck v. France* (App. No. 18774/09; 19/10/10)
- *Holub v. Czech Republic* (App. No. 24880/05; 14/12/10)
- *Bratři Zátkové v. Czech Republic* (App. No. 20862/06; 08/02/11)
- *Gaftoniuc v. Romania* (App. No. 30934/05; 22/02/11)

- *Matoušek v. Czech Republic* (App. No. 9965/08; 29/03/11)
- *Čavajda v. Czech Republic* (App. No. 17696/07; 29/03/11)
- *Ştefănescu v. Romania* (App. No. 11774/04; 12/04/11)
- *Fedotov v. Moldova* (App. No. 51838/07; 24/05/11)
- *Burov v. Moldova* (App. No. 38875/03; 14/06/11)
- *Ladygin v. Russia* (App. No. 35365/03; 30/08/11)
- *Kiousi v. Greece* (App. No. 52036/09; 20/09/11)
- *Havelka (II) v. Czech Republic* (App. No. 7332/10; 20/09/11)
- *Jancev v. the former Yugoslav Republic of Macedonia* (App. No. 18716/09; 04/10/11)
- *Savu v. Romania* (App. No. 29218/05; 11/10/11)
- *Fernandez v. France* (App. No. 65421/10; 17/01/12)
- *Gururyan v Armenia* (App. No. 11456/05; 24/01/12)
- *Munier v. France* (App. No. 38908/08; 14/02/12)
- *Gagliano Giorgi v. Italy* (Ap. No. 23563/07; 14/02/12)
- *Sumbera v. Czech Republic* (App. No. 48228/08; 21/02/12)
- *Shefer v. Russia* (App. No. 45175/04; 13/03/12)
- *Bazelyuk v. Ukraine* (App. No. 49275/08; 27/03/12)
- *Liga Portugesa de Futebol Professional v. Portugal* (App. No. 49639/09 ; 03/04/12)
- *Jirsak v. Czech Republic* (App. No. 8968/08; 12/04/12)
- *Heather Moor & Edgecomb Ltd v. United Kingdom* (App. No. 30802/11; 11/07/2012)
- *Bjelajac v. Serbia* (App. No. 6282/06; 28/08/2012)
- *Zwinkels v. The Netherlands* (App. No. 16593/10; 09/10/2012)

30. Chambers have also considered but rejected use of the provision in at least the following 19 cases:

- *Dudek (VIII) v. Allemagne* (Apps No. 12977/09 et al; 23/11/10)
- *Gaglione a.o. v. Italy* (App. No. 45867/07 a.o; 21/12/10)
- *Sancho Cruz a.o. v. Portugal* (App. No. 8851/07 a.o ; 18/01/11)
- *3A.CZ S.R.O. v. Czech Republic* (App. No. 21835/06; 10/02/11)
- *Benet Praha, Spol.S.R.O. v. Czech Republic* (App. No. 33908/04; 24/02/11)
- *Finger v. Bulgaria* (App. No. 37346/05; 10/05/11)
- *Durić v. Serbia* (App. No. 48155/06; 07/06/11)
- *Luchaninova v. Ukraine* (App. No. 16347/02; 09/06/2011)
- *Giuran v. Romania* (App. No. 24360/04; 21/06/2011)
- *Van Velden v. The Netherlands* (App. No. 30666/08; 19/07/2011)
- *Živić v. Serbia* (App. No. 37204/08; 13/09/2011)
- *Flisar v. Slovenia* (App. No. 3127/09; 29/09/2011)
- *Fomin v Moldova* (App. No. 36755/06; 11/10/2011)
- *Giusti v. Italy* (App. No. 13175/03; 18/10/2011)
- *Nicola Gheorghe v. Romania* (App. No. 23470/05; 03/04/12)
- *De Iesco v. Italy* (App. No. 34383/02; 24/04/12)
- *Berladir and Others v. Russia* (App. No. *34202/06*; 10/07/2012)
- *Zborovský v. Slovakia* (App. No. 14325/08; 23/10/2012)
- *Joos v. Switzerland* (App. No. 42345/07; 15/11/2012)

31. Although these cases may not be very numerous, the two year period following the entry into force of Protocol No. 14 has allowed Chambers to develop legal principles for the application of the new admissibility criterion. These principles will now be followed also by Single Judges, whose sole task is to issue inadmissibility decisions. (It should be recalled that, under Protocol no. 14, only Chambers were competent to apply the new criterion for the first two years of the protocol being in force; Single Judges began to apply it only after 1 June 2012.) The President of the Court has also observed that the great majority of cases which might fall to be dealt with under this provision are declared inadmissible more rapidly and more easily under other criteria. The Court nevertheless also considers that there is a certain group of cases which, although otherwise admissible, have no serious issue at stake.[9]

Article 13 amending Article 36 ("Third party intervention") of the Convention

32. Article 13 gives the Commissioner for Human Rights the right to intervene in cases before Chambers and the Grand Chamber. On 14 October 2011, the Commissioner made his first and so far only third party intervention before the Court under his own initiative, as permitted by Article 36(3) (as amended by Protocol No. 14), in the case of *The Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania,* App. No. 47848/08.

Article 14 amending Article 38 ("Examination of the case") of the Convention

33. Article 14 refines the provisions on examination of the case to take account of the new practice introduced under Article 9. It is not necessary to evaluate the effects of this provision.

Article 15 amending Article 39 ("Friendly settlements") of the Convention

34. Article 15 was intended to facilitate the friendly settlement procedure and mandates the Committee of Ministers to supervise their execution. It can be noted that the Court, also in response to recommendations made at the Interlaken and Izmir Conferences, has further developed its practice with regard to friendly settlements (as well as unilateral declarations), with the result that the number of applications disposed of in this way has increased substantially. 2010 saw a 94% rise in these decisions and 2011 a further 25%. The first ten months of 2012 have already produced the same results as the whole of 2011.

Article 16 amending Article 46 ("Binding force and execution of judgments") of the Convention

[9] In the case of *Dudek v. Germany* (apps no. 12977/09 et al, decision of 23/11/10), the Court itself, referring to the explanatory report to Protocol No. 14 dealing with this provision, stated that "The High Contracting Parties clearly wished that the Court devote more time to cases which warrant consideration on the merits, whether seen from the perspective of the legal interest of the individual applicant or considered from the broader perspective of the law of the Convention and the European public order to which it contributes".

35. Article 16 introduces new paragraphs 3, 4 and 5 into Article 46 of the Convention.

36. New paragraph 3 allows the Committee of Ministers, if it considers that the supervision of the execution of a final Court judgment is hindered by a problem of interpretation of the judgment, to refer the matter to the Court for a ruling on the question of interpretation. The Committee of Ministers has to date not yet made any such referral.

37. New paragraphs 4 and 5 concern the new procedure whereby the Committee of Ministers, if it considers that a High Contracting Party refuses to execute a final judgment of the Court, may refer to the Court the question of whether that Party has failed to fulfil its obligation under paragraph 1. The Committee of Ministers has to date not yet made any such referral. The CDDH recalls that this provision was intended to give the Committee of Ministers, in exceptional circumstances, a wider range of means of pressure to secure execution of judgments.[10]

Article 17 amending Article 59 of the Convention

38. Article 17 allows for future accession of the European Union to the Convention. Following its Extraordinary Meeting of 12-14 October 2011, the CDDH transmitted a report on the state of discussions, with the draft legal instruments on accession of the EU to the Convention attached, to the Committee of Ministers for consideration and further guidance. The CDDH resumed its work on the issue with a series of meetings in the autumn of 2012.

Final remarks

39. In reviewing the effects of Protocol No. 14 on the Court's situation, the CDDH is reminded of the attention that it gave prior to the Brighton Conference to the issue of the backlog of cases pending before Chambers of the Court,[11] an issue also analysed and addressed in the Court's Preliminary Opinion in preparation for the Brighton Conference. In this connection, it observes that, with the exception of the provision in Article 6 concerning the size of Chambers, Protocol No. 14 did not contain measures aimed at relieving the Court's backlog of cases before Chambers. The CDDH considers that it may be necessary to address this situation further in future.

40. Finally, the CDDH recalls that the present report is presented at an early stage in the process of evaluation of the effects of Protocol No. 14 on the Court's situation; furthermore, implementation of all provisions of this protocol has only recently been completed and the potential of some of its provisions has thus not yet been fully realised.

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[10] See the Explanatory Report to Protocol No. 14, paragraph 100.
[11] See in particular the CDDH Final Report on measures requiring amendment of the ECHR, doc. CDDH(2012)R74 Addendum I.