COUNCIL OF EUROPE CONSEIL DE L'EUROPE

.
Strasbourg, 13 March 1997
DH-PR(1997)001

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

_____

COMMITTEE OF EXPERTS FOR THE IMPROVEMENT OF PROCEDURES FOR THE PROTECTION OF HUMAN RIGHTS (DH-PR)

_____

41th meeting, 10-13 March 1997

_____

REPORT

_____

Item 1 of the agenda: Opening of the meeting

1. The Committee of Experts for the improvement of procedures for the protection of Human Rights (DH-PR) held its 41st meeting from 10-13 March 1997 at the Human Rights Building in Strasbourg, with Mr Martin EATON (United Kingdom) in the Chair. The list of participants appears in Appendix I.

Item 2 of the agenda: Adoption of the agenda and order of business

2. The agenda as adopted appears in Appendix II.

Item 3 of the agenda: Election of the vice-President

3. The DH-PR elected by acclamation Mr Krzysztof DRZEWICKI (Poland) as Vice-Chairman of the DH-PR.

Item 4 of the agenda: State of ratification of Protocol No.11.

4. In the context of its exchange of views with the informal working party, the DH-PR made a survey of the state of ratifications of Protocol No. 11, which revealed that the following countries could ratify this Protocol by summer 1997: Italy, Poland, Portugal. In Turkey a Governement Bill had been prepared which was going to be sent to Parliament as soon as it had received the required assent of all members of the Government. No date of ratification could yet be ascertained. In the discusisons reffered to under item 5 below, the Deputy Secretary General of the Council of Europe, Mr LEUPRECHT, stated that it would be a cause of considerable embarrassment and disappointment if all contracting States had not ratified Protocol No. 11 in time for the Second Summit in October 1997. The details of the information provided are contained in Appendix III.

Item 5 of the agenda: Exchange of views with the informal working party on Protocol no. 11 to the European Convention on Human Rights

5. In accordance with the wish expressed by the Steering Committee for Human Rights (CDDH (96) 21, item 18 of the agenda) and as a follow up to the DH-PR´s 40th meeting in September 1996, the Chairman of the DH-PR had again invited the Informal Working Party to participate at its meeting in order to pursue the exchange of views on the implementation of Protocol No. 11 to the European Convention on Human Rights.

6. At the meeting the Informal Working Party was represented by Mr P. LEUPRECHT, H.-C. KRÜGER, Mr P.J. MAHONEY and Mr A. DRZEMCZEWSKI. Mr LEUPRECHT gave a short speech on the work completed to date by this Working Party (to appear in Appendix V). Thereafter followed an interesting and fruitful exchange of views between the members of the Committee and the members of the working party (to appear in Appendix V).

Item 6 of the agenda: Continued discussion on the implementation of Protocol No.11 to the European Convention on Human Rights

7. In accordance with the mandate given by the Steering Committee for Human Rights (CDDH (96) 21, item 18 of the agenda), the DH-PR also continued its discussion of the various problems associated with the implementation of Protocol No 11. In this context the experts decided to add a point on just satisfaction to the list of issues presented at their 40th meeting (see

Appendix II). The experts went on to discuss issues 16 to 21 on this list. They decided to adopt immediately a summary of all the discussions (see Appendix IV) and to allow the Secretariat until 15 April 1997 to furnish a fuller record of the results of the discussions (to appear as Appendix V). It was again noted that the main purpose of their discussions was to enable the judges of the new Court to take into consideration, as far as deemed useful, the experience and views of the government experts.

Item 7 of the agenda: Other business

8. The experts noted that the informal working party planned to issue model rules of procedure for the new Court in the near future and decided to devote their next meeting to the study of these model rules. The experts also decided to resume their examination of the possibilities to have domestic proceedings reopened following a judgment by the Court, inter alia on the basis of the earlier survey (DH-PR(91)14 also published in "13 Human Rights Law Journal, 71-78 (1992) and in) and a fresh survey to be prepared by the Secretariat. They also decided to consider the question of the dissemination nationally of the Strasbourg jurisprudence in the light of a memorandum to be prepared by the Secretariat.

Item 8 of the agenda: Date of the next meeting

9. It was decided to hold the next meeting from 16 to 19 September 1997.

* * *

A P P E N D I X I / A N N E X E I

LIST OF PARTICIPANTS
LISTE DES PARTICIPANTS

ALBANIA/ALBANIE
M. Viktor HEBIBASI, Spécialiste des droits de l'homme, Département des droits de l'homme, Ministry of Foreign Affairs, Department of Multilateral Cooperation and International Organisations, Boulevard "Marsel Kashen", TIRANA,

ANDORRA/ANDORRE

AUSTRIA / AUTRICHE
Mrs Elisabeth BERTAGNOLI, Counsellor, Federal Ministry of Foreign Affairs, International Law Department, Ballhausplatz 1, 1014 WIEN

Mrs Ingrid SIESS-SCHERZ, Counsellor, Federal Chancellery, Constitutional Service, Ballhausplatz 2, 1014 WIEN

BELGIUM / BELGIQUE
Mme G. JANSSEN, Président Emérite à la Cour d'Appel de Bruxelles, Ancien membre de la Commission européenne des Droits de l'Homme, 9 Avenue de Mercure, Boîte 11, B-1180 BRUXELLES

Mr Jan LATHOUWERS, Conseiller juridique adjoint, Chef du service Droits de l'Homme, Ministère de la Justice, Administration de la législation pénale et des droits de l'homme, Boulevard de Waterloo 115, B - 1000 BRUXELLES

BULGARIA/BULGARIE
Mrs Ilina TANEVA-NIKOLOVA, Ministry of Foreign Affairs, Head of Council of Europe Division, Human Rights Directorate, 2 Alexandre Zhendov str, SOFIA - 1113

CROATIA/CROATIE
Mr Branko SOCANAC, Head of Department for Human Rights, Ministry of Foreign Affairs, Trg N.S. Zrinskog 7-8, 1000 ZAGREB,

CYPRUS / CHYPRE
Mr Demetrios STYLIANIDES, Former President of the Supreme Court, NICOSIA

CZECH REPUBLIC / REPUBLIQUE TCHEQUE
Mr Martin BOUCEK, Legal Adviser, International Law Department, Ministry of Foreign Affairs, Loretanske Namesti 5, 118 00 PRAGUE

DENMARK / DANEMARK
Mr Jens-Christian BÜLOW, Head of Section, Ministry of Justice, Slotsholmsgade 10, DK-1216 COPENHAGEN K

ESTONIA / ESTONIE
Mr Marten KOKK, Head of Human Rights Division, Legal Department, Ministry of Foreign Affairs, Rävala pst 9, EE0100 TALLINN, Republic of Estonia

FINLAND / FINLANDE
Mr Arto KOSONEN, Head of Unit, Co-Agent for the Government, Ministry for Foreign Affairs, P.O. Box 176, SF-00161 HELSINKI

FRANCE
M. Ronny ABRAHAM, Maître des Requêtes au Conseil d'Etat, 1 Place du Palais Royal, 75001 PARIS

M. Yves CHARPENTIER, Sous-Directeur des Droits de l'Homme, Direction des affaires juridiques, Ministère des affaires étrangères, 37 Quai d'Orsay, 75007 PARIS

GERMANY / ALLEMAGNE
Mr Edgar RADZIWILL, Regierungsrat z.A., Bundesministerium der Justiz, 53175 BONN

GREECE / GRECE
Mr Linos-Alexander SICILIANOS, Conseiller spécial auprès du Ministère des affaires étrangères, Ministère des affaires étrangères, (Conseil scientifique), av. Vassilissis Sofias 1, ATHENES

HUNGARY / HONGRIE
Mr Lipot HÖLTZL, Deputy Director, Ministry of Justice, Szalay u. 16, H-1055 BUDAPEST, Pf. 455

ICELAND / ISLANDE
Ms Ragnheiour HAROARDÓTTIR, Head of Section, Ministry of Justice, Arnarhvoli, 150 REYKJAVIK

IRELAND / IRLANDE
Ms Emer KILCULLEN, Legal Adviser to the Council of Europe and Human Rights Sections, Department of Foreign Affairs, 80 St Stephen's Green, IRL-DUBLIN 2

ITALY / ITALIE
Mr Luigi SCARANO, Magistrate, Ministry of Justice, Via Arenula 70, 00100 ROMA

M. Guido RAIMONDI, Attaché juridique, Représentation permanente de l'Italie auprès du Conseil de l'Europe, 3, rue Schubert, F-67000 Strasbourg, Fax: (33) 3 88 60 65 64, Tel: (33) 3 88 60 20 88

REPUBLIC OF LATVIA / REPUBLIQUE DE LETTONIE
Mr Ieva BILMANE, Lawer Senior Desk Officer of International Law Division of Ministry of Foreign Affairs, Brivibas Bvld 36, RIGA Lv-1395, Tel: (371) 72 84 836 Fax: (371) 783 00 75

LIECHTENSTEIN
apologised/excusé

LITHUANIA / LITUANIE
Mr Darius JURGELIVICIUS, Director, Legal Department, Ministry of Foreign Affairs, J. Tumo-Vaizganto Nr 2, VILNIUS, 2036

LUXEMBOURG
Mme Andrée CLEMANG, Conseiller de Direction Adjoint, Ministère de la Justice, 16 boulevard Royal, L -2934 LUXEMBOURG

MALTA / MALTE
Dr Patrick VELLA, Magistrate, Ministry of Justice, Law Courts, Republic Street, VALLETTA

REPUBLIC OF MOLDOVA/REPUBLIQUE DE MOLDAVIE
Mme Eugenia CHISTRUGA, Chef de la direction droit international et traités, Ministère des Affaires étrangères, 1, Piala Mari Adunaci Nationale, CHISINAU

NETHERLANDS / PAYS-BAS
Mr Roeland BÖCKER, Ministry of Foreign Affairs, Dept. DJZ/IR P.O. Box 20061 - 2500 EB THE HAGUE

NORWAY / NORVEGE
Mr Tolle STABELL, Supreme Court Attorney, The Attorney General, Civil Cases, Postbox 8012 Dep, N-0030 OSLO

POLAND / POLOGNE
Mr Krzysztof DRZEWICKI, Agent of the Government, Ministry of Foreign Affairs, Aleja Szucha 23, 00 580 WARSAW

Mr Slawomir PYL, Legal Adviser, Permanent Representation of Poland to the Council of Europe, 2 rue Geiler, F-67000 Strasbourg,

PORTUGAL
Mr Antonio HENRIQUES GASPAR, Procurador-Geral Adjunto, Procuradoria Geral da Republica, 140, rua da Escola Politecnica, P - 140 LISBOA CODEX

ROMANIA / ROUMANIE
M. Ionel OLTEANU, Directeur des Droits de l'Homme, Ministère des Affaires étrangères, Str Modrogan NR 14, SEC1, BUCURESTI

RUSSIAN FEDERATION / FEDERATION DE RUSSIE
M. Andrei POPYKINE, Chef de la Division européenne de la Direction de la coopération humanitaire internationale et des droits de l'homme, Ministère des Affaires étrangères, 9, Vozdvizhenka, 121019 MOSCOU

SAN MARINO / SAINT MARIN

SLOVAKIA / SLOVAQUIE
Mrs Ema JEXOVÁ, Responsible for the Co-operation of the Slovak Republic with the Council of Europe, Ministry of Foreign Affairs of the Slovak Republik, Department of Human Rights, Stromová 1, 833 36 BRATISLAVA

SLOVENIA/SLOVENIE
Mrs Marija KRISPER KRAMBERGER, Juge à la Cour Suprême, Tavcarjeva 9, 1000 LJUBLJANA

SPAIN / ESPAGNE
M. Francisco Javier BORREGO BORREGO, Avocat de l'Etat, Chef du Service Juridique auprès de la Commission et la Cour européennes des Droits de l'Homme, Ministère espagnol de la Justice, Calle Ayala 5, ES - 28001 MADRID

SWEDEN / SUEDE

Mr Carl Henrik EHRENKRONA, Director, Ministry of Foreign Affairs, P.O. Box 16121, S-10323 STOCKHOLM

SWITZERLAND / SUISSE
M. Frank SCHÜRMANN, Chef de Section, Section des droits de l'homme et du Conseil de l'Europe, Office fédéral de la justice, Département fédéral de Justice et Police, Bundesrain 20, CH - 3003 BERNE

"The former Yugoslav Republic of Macedonia"/"L'Ex-République yougoslave de Macédoine"
Mrs Biljana STEFANOVSKA, Head of the Council of Europe Department, Dame Gruer 6, 91000 SKOPJE

TURKEY / TURQUIE
M. Aydin SEZGIN, , Directeur, Direction Générale du Conseil de l'Europe, de l'OSCE et des Droits de l'Homme, Ministère des Affaires étrangères, Daire Baskani v. , AKGY, Balgat-ANKARA

UKRAINE
Mr Oleg SEMENENKO, Third Secretary, Department of European Regional Co-operation, Ministry of Foreign Affairs, 1, Mykhaylivska sq., KYIV, 252018

UNITED KINGDOM / ROYAUME-UNI
Mr Martin EATON, Chairman/Président, Deputy Legal Adviser, Foreign and Commonwealth Office, Room K164, King Charles Street, GB - LONDON SW1A 2AH

* * *

EUROPEAN COMMISSION/COMMISSION EUROPEENNE
M. Aristotelis GAVRILIADIS, Direction Générale Relations extérieures: Europe et nouveaux Etats indépendants, Direction Relations multilatérales, Unité Droits de l'Homme et démocratisation, MO34-6/13, Rue de la Loi, 200 B-1049 BRUXELLES

* * *

OBSERVERS/OBSERVATEURS

CANADA
Apologised/excusé

HOLY SEE/SAINT-SIEGE
Apologised/excusé

JAPAN
Apologised/excusé

UNITED STATES OF AMERICA/ETATS-UNIS D'AMERIQUE
Apologised/excusé

* * *

Directorate of Human Rights/Direction des Droits de l'Homme

SECRETARIAT:

Ms J. DINSDALE, Deputy Director of Human Rights/Directrice Adjointe des Droits de l'Homme,

Mr F. SUNDBERG, Principal Administrator, Administrateur Principal

Informal working party/Groupe informel de travail

Mr P. LEUPRECHT, Deputy Secretary General /Secrétaire Général Adjoint

Mr H.C. KRÜGER, Secretary to the European Commission of Human Rights/Secrétaire de la Commission européenne des Droits de l'Homme

Mr Paul MAHONEY, Deputy Registrar of the European Court of Human Rights/Greffier Adjoint de la Cour européenne des Droits de l'Homme

Mr A. DRZEMCZEWSKI, Head of Secretary General's Monitoring Unit/Responsable de l'Unité de "monitoring" du Secrétaire Général

Interpreters/Interprètes

- Mme Danielle HEYSCH
- Mr Philippe QUAINE
- M. Robert VAN MICHEL

* * *

A P P E N D I X II

AGENDA

1. Opening of the meeting

2. Adoption of the agenda and of the order of business

3. Election of the vice-President

4. State of ratification of Protocol No 11

5. Invitation of the informal working party

6. Discussion on the implementation of Protocol No 11 to the European Convention on Human Rights (ECHR) - continued

Working documents

- Report of the 40th meeting of DH-PR (16-18 September 1996) [DH-PR (96) 1 prov.]

- Mr Semenenko's comments (Ukraine)

- Extracts from the report of the Parliamentary Assembly's on 28 January 1997 (procedure for election of judges and execution of the Court's judgments) [AS (1997) CR 3 prov.]

- The new text of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (inclusive of changes envisaged when Protocol N° 11 will come into force) [DH-PR (94) 10]

- Protocol No. 11 to the European Convention on Human Rights and explanatory report

- Proposals by the United Kingdom for the improvement of the mechanism of the ECHR

- "Non-paper" on work undertaken by the informal working party on Protocol No. 11 to the European Convention on Human Rights

- Rules of Procedure of the European Commission of Human Rights (as in force on 28 June 1993)

- Rules of Procedure A and B of the European Court of Human Rights

6. Discussion on the implementation of Protocol No. 11 to the European Convention on Human Rights

Working documents

- the new text of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (inclusive of changes envisaged when Protocol No. 11 will come into force)
  [DH-PR (94) 10]

- Protocol No.11 to the European Convention on Human Rights and explanatory report

- Proposals by the United Kingdom for the improvement of the mechanism of the ECHR

- "Non-paper" on work undertaken by the informal working party on Protocol No.11 to the European Convention on Human Rights

- Rules of Procedure of the European Commission of Human Rights (as in force on 28 June 1993)

- Rules of Court A (as in force at 1 February 1994) and Rules of Court B (not yet in force)

- Resolution 1082 (1996) of the Parliamentary Assembly on the procedure for examining candidatures for the election of judges to the European Court of Human Rights

- Recommendation 1295 (1996) of the Parliamentary Assembly on the procedure for examining candidatures for the election of judges to the European Court of Human Rights

Issues for discussion

1. **Role of the Registry**
   Protocol No 11: Article 25
   Commission rules 12-14
   Court rules 11-14

2. **Legal secretaries**
   Protocol No 11: Article 25

3. **Language problems**
   Protocol No 11: no provision
   Commission rule 30
   Court rule A27/B28

4. **Role of the Judge Rapporteur**
   Protocol No 11: no provision
   Commission rules 20/21, 47-49, 51 and 54

5. **Committee questions**
   Protocol No 11: Articles 27 and 28
   Commission rules 7(3), 10, 20-22, 27-29 and 47(2c)

6. **Election of judges**
   Protocol No. 11: Articles 21 and 22
   Paper of the United Kingdom (CDDH-BU(96) 2)

7. **Legal aid**

Protocol No 11: no provision
Commission rules: Addendum to the Rules of Procedure (Legal Aid)
Court rules: Addendum (Rules on legal aid to applicants)

8. **Admissibility of applications**
Protocol No 11: Article 35
Commission rules 45-52
Court rule A48/B50

9. **Chamber questions**
Protocol No 11: Articles 27, 29 and 41
Commission rules 1-11, 24-26 and 49
Court rules 21-25 and A35/B37

10. **Fact finding**
Protocol No 11: Article 38
Commission rules 15(2), 45-47, 53(2) and 54(2)
Court rules 15 and A41/B43

11. **Procedure of friendly settlement**
Protocol No 11: Articles 38 and 39
Commission rules 53(1b), 57(1c) an 58

12. **(Public) hearings**
Protocol No 11: Article 40(1)
Commission rules 37-42 and 53(3)
Court rules 18, A38-40-/B40-42 and A45-47/B47-49

13. **Access to documents**
Protocol No 11: Article 40(2)
Court rule A56/B58

14. **Relinquishment**
Protocol No 11: Articles 30 and 31
Court rule A51/B53

15. **Decisions and judgments**
Protocols No 11: Articles 42 and 44-46
Commission rules 57-62
Court rules A52-58/B54-60

16. **Panel questions**
Protocol No 11: Article 43
Court rule B26

17. **Grand Chamber questions**
Protocol No 11: Articles 27, 30,31, 43 and 44
Court rules B35(2) and (3)

18. **Third party intervention**
Protocol No 11: Article 36
Court rule A37(2)/B39(2)

19. **Inter-State cases**
Protocol No 11: Article 33

20. **Provisional measures**
Commission rule 46

21. **Just satisfaction**
Protocol No 11: Article 41
Rule 50 of the Rules of Court (A);
Rule 52 of the Rules of Court (B)

7. Other business

8. Date of the next meeting

* * *

A P P E N D I X III

State of ratification of Protocol No 11

States:	Date of Signature:	Information:
Albania	13.7.95	Ratification on 2.10.96
Andorra	10.11.94	Ratification on 22.1.96
Austria	11.5.94	Ratification on 3.8.95
Belgium	11.5.94	Ratification on 10.1.97.
Bulgaria	11.5.94	Ratification on 3.11.94
Croatia	06.11.96	The question of ratification of protocol No 11 is presently studied by the working group examining the general question of the compatibility of Croatian law with the ECHR. It is expected that ratification will intervenue before the end of 1997.
Cyprus	11.5.94	Ratification on 28.6.95
Czech Republic	11.5.94	Ratification on 28.4.95
Denmark	11.5.94	Ratification on 18.7.96
Estonia	11.5.94	Ratification on 16.4.96
Finland	11.5.94	Ratification on 12.1.96
France	11.5.94	Ratification on 3.4.96
Germany	11.5.94	Ratification on 2.10.95
Greece	11.5.94	Ratification on 9.1.97
Hungary	11.5.94	Ratification on 26.4.95
Iceland	11.5.94	Ratification on 29.6.95
Ireland	11.5.94	Ratification on 16.12.96
Italy *	21.12.94	The ratification bill has been approved by the Chamber of Deputies and is presently before the Senate. Ratification is expected by summer 1997.

Latvia	10.2.95	The ratification bill has been accepted by the Government and ratification could intervene by July 1997.
Liechtenstein	11.5.94	Ratification on 14.11.95
Lithuania	11.5.94	Ratification on 20.6.95
Luxembourg	11.5.94	Ratification on 10.9.96
Malta	11.5.94	Ratification on 11.5.95
Moldova	13.7.95	A governmental committee is examining the harmonisation of the national legislation with the Convention and its Protocols, including the question of the ratification of Protocol No. 11. This work is expected to be finished by July 1997. Parliament may ratify soon thereafter.
Netherlands	11.5.94	Ratification on 21.1.97
Norway	11.5.94	Ratification on 24.7.95
Poland *	11.5.94	The ratification bill has been adopted by Parliament and published in the "Journal of Laws". Signature by the President is envisaged soon.
Portugal *	11.5.94	The national ratification process is finished except for the signature of the President znd the ratification instrument will be deposited within very shortly.
Romania	11.5.94	Ratification on 11.8.95
Russia	28.2.96	The question of ratification of the Convention and its Protocols, including Protocol No. 11 has been examined by an interministerial working group. The Parliamentary examination of the question is expected to start in the spring of 1997. Ratification is expected by the end of 1997.
San Marino	11.5.94	Ratification on 5.12.96
Slovakia	11.5.94	Ratification on 28.9.94

Slovenia	11.5.94	Ratification on 28.6.94
Spain	11.5.94	Ratification on 16.12.96
Sweden	11.5.94	Ratification on 21.4.95
Switzerland	11.5.94	Ratification on 13.7.95
"the former Yugoslav Republic of Macedonia"	9.11.95	The ratification bill has been adopted by Parliament, but has not yet been published. Ratification is expected in the near future.
Turkey *	11.5.94	The ratification bill is being signed by the members of the Government
Ukraine	9.11.95	The question of ratification of the Convention as well as its Protocols, including Protocol No. 11, has been examined by a special working group set up by the Ministry of Justice. A bill will be submitted to Parliament in the near furure and ratification could take place in the summer 1997.
United Kingdom	11.5.94	Ratification on 9.12.94

_____

* Country whose ratification is necessary for the entry into force of the Protocol No. 11.

* * *

APPENDIX IV

SUMMARY OF DISCUSSIONS

Introduction

The experts wish to emphasise that the comments below are a summary of a "brainstorming" exercise conducted over two meetings, the first in September 1996 and the second in March 1997. The aim of the exercise has been to provide thoughts and ideas, drawing from the considerable experience of Strasbourg proceedings among the committee's members (be it as experts or government agents), which could be of assistance to the new Court when drafting its rules of procedure. A fuller record of the discussions is reproduced in the Committee's meeting reports (DH-PR (96) 1 and DH-PR (97)1 to be issued).

1. Role of the registry

The experts took the view that the new Court´s registry could to a large extent be modelled on the Commission´s secretariat. The existing practice of opening provisional files and of having the secretariat explain the admissibility questions/problems to applicants was commended. The experts also stressed the value of the Commission´s practice of highlighting the issues to be dealt with in written observations (or in oral pleadings). Various practical suggestions were made for improving the handling of applications, particularly in the early stages (see paragrah 3 of DH-PR(96)1) .

2. Legal Secretaries

Many experts stressed the importance of having legal secretaries from all contracting States. Advantages were seen in having both permanent and temporary legal secretaries to assist the Court. The methods of recruitment and appointment were discussed but no single method met with the support of all experts. Stress was laid on the importance of ensuring up to date expertise on the national laws of the contracting States in the new registry and better facilities for research, especially on national and comparative law, than are available to the present Court.

3. Language problems

The experts pointed out the many problems arising from the fact that more than 30 languages were spoken in the Member States but only two were permitted to be used before the new Court. Various practical suggestions were made (see paragraph 20 of DH-PR(96)1), but it was recognised that all would be expensive.

4. Judge rapporteur

The experts agreed that a system of judge rapporteurs was a necessity in the new Court, at least up to and including the Chambers stage. Different opinions were expressed as to the necessity or desirability of appointing the national judge as judge rapporteur and of making public the name of judge rapporteur.

5. Questions relating to Committees

The experts considered that the Committee system under Protocol No 11 could be modelled on the existing Committee system set up by the Commission. The benefits of the present

Commission system whereby all members of the Commission are able to ask for a “committee case“ to be referred to a Chamber were underlined. The experts also examined the issue of publication of Committee decisions and the desirability of setting out, however briefly, the reasons for those decisions.

6. Election of judges

It was agreed that the quality of the new Court would be crucial. The experts, whilst stressing the importance of not having too many scrutiny procedures, found that a practice of exchanging informally within the Committee of Ministers the names of possible candidates could be valuable, notably to try to achieve a certain balance especially with regard to the professional background and experience of the candidates. A number of practical problems with the proposed Parliamentary Assembly hearings of the candidates were discussed and possible solutions proposed (See paragraphs 44 and 45 of DH-PR (96) 1). The need for each state to nominate three highly qualified candidates was emphasised. For that purpose it was essential that the terms and conditions the judges would be offered were established soon.

7. Legal aid

The experts noted the problems encountered by applicants in finding a lawyer in certain cases and suggested that the new Court´s registry in collaboration with the authorities of the contracting States draw up and maintain up to date lists of lawyers or other qualified persons prepared to assist applicants.The experts also discussed the problems related to the present practice of not differentiating legal aid tariffs according to the country concerned and the absence of legal aid for drawing up and submitting applications under the Convention.

8. Admissibility of applications

The experts looked at the necessity of a rule of procedure inciting governments to specify any ground of inadmissibility at the initial stage of the procedure. They also discussed the possibility of allowing decisions by a Chamber declaring an application inadmissible to be referred to the Grand Chamber.

9. Issues relating to Chambers

The experts were not in favour of specialised Chambers dealing with particular articles or legal issues and stressed the importance of ensuring that their composition be such as to guarantee the unity and coherence of its case-law. There was also a consensus in favour of retaining a balanced regional composition of each chamber along the lines established by the present Rules of Court. Most experts considered a fixed period of 3 years appropriate for the Chambers. The necessity of having an adequate number of substitute judges was stressed.

The experts observed that it was not an easy task to devise a viable system to comply with the requirement in Protocol No 11 that the "national judge" should sit on the Chambers hearing cases concerning the country in respect of which he or she had been elected and with the present practice that the same judge should hear a case from beginning to end. Several solutions were proposed (see paragraph 67 of DH-PR (96) 1).

10. Establishment of the facts

The experts noted that it was clear that the new Court would have to take over the present Commission's duty of establishing the facts (including undertaking fact finding missions in specific cases). Doubts were expressed as to the sufficiency of existing resources and emphasis

was laid on the duty of the parties to assist the new Court to establish the facts and on the responsibilities of the national authorities in the context of the domestic proceedings.

11. Friendly settlements

The experts noted that one of the basic ideas behind Protocol No 11 was that the new Court, like the present Commission, should play an active role in facilitating the conclusion of friendly settlements. It was noted that the possibility of reaching a settlement required inter alia confidential negotiations and a provisional indication by the new Court as to its views on the merits. There were some discussions as to whether or not the new Court could, on account of its judicial nature, take over the Commission's practice of providing the parties with a provisional opinion on the merits in all cases.

The experts noted that after the entry into force of Protocol No 11 there was a risk that there would no longer be the same control of the proper execution of friendly settlements by the Committee of Ministers as before. Concerns were expressed as to the problems which this could cause to the extent settlements contained undertakings to take measures of a general character (legislative or others).

12. Public hearings

The experts noted that the new system appeared to imply a considerable increase of public hearings, which was only right given the shift to a binding judicial procedure. It was noted that the question of holding such hearings could be raised in all cases communicated to governments for observations (in 1996 the present Commission had communicated 852 cases). The necessity of holding public hearings in communicated cases had to be examined carefully in close consultation with the parties, in order to avoid overloading the Court while not disappointing public expectations. Various solutions were proposed (DH-PR(96)1 paragraph 94).

13. Access to documents

The experts noted that the automatic confidentiality which today governs all documents deposited with the Commission will no longer prevail under the new system and that it will be necessary for the President of the new Court to be very careful when deciding which documents should not be accessible to the public and which should remain confidential., especially in criminal and immigration cases. The question of abuse of the publicity principle enshrined in Protocol No 11 was also addressed.

14. Relinquishment

The experts noted that the provisions in Protocol No 11 relating to relinquishment formed part of the difficult compromise reached between the proposal for a single court and that for a two tier system, and raised several problems. The experts examined the possibility of having the parties indicate, immediately after the decision on the admissibility, whether they would object to relinquishment. Some experts considered that would not be consistent with the compromise.

15. Decisions and judgments

The experts considered that it would be a positive development if judgments were given not only in the official languages of the Council of Europe, but also in the language of the respondent State.

As regards the present practice of reading out the Court's judgments in open Court, it was suggested that reading out the operative provisions would suffice. Other questions concerned whether Chamber judgments should be read out before they became final and whether the parties should be entitled to advance copies.

It was also noted that it had been the understanding of the drafters that only judgments and admissibility decisions were subjected to the reasoning requirement in Article 45.

16. Panel questions

As regards the composition of the panel it was noted that nothing was said in Protocol 11 as to the participation of the "national judge". A number of experts considered such participation useful, notably in order to help assess whether a case raises a "serious issue of general importance". Although panel decisions need not be reasoned, some experts saw an advantage in them being so. The link between the composition of panels and the choice of a fixed or ad hoc Grand Chamber was pointed out.

17. Grand Chamber questions

The experts discussed the question of the composition of the Grand Chamber and the necessity of ensuring a balanced regional composition of the Court, reflecting also, to the extent possible, the various legal systems of the contracting States. The question was raised whether the exclusion of most of the judges of the original Chamber from the Grand Chamber in cases of referrals under Article 43, notwithstanding the wording of Article 27 (3), could apply in practice also in cases of ordinary relinquishments of jurisdiction under Article 30. Many experts felt that the presence of the Chamber judges was desirable in the latter case.

Whereas most experts thought that an ad hoc Grand Chamber would best correspond to the ideas of the founding fathers, it was accepted that a fixed Chamber, with a number of subsitute judges who could be called upon for the Grand Chamber in order to enable it to maintain a balanced composition in specific cases, had certain advantages. There was general agreement that a fixed compositions appeared most appropriate during the first years of functioning of the new Court as all pending cases from the present Court would be transferred to the Grand Chamber under the transitional provisions.

18. Third party intervention

The experts recognised that third party interventions could in appropriate cases be of valuable assistance to the new Court but considered that requests for such interventions should be carefully weighed, as was done by the present Court (requiring in particular that interveners have a legitimate interest and can contribute with relevant information and expertise).

19. Inter-state cases

The experts noted that the Protocol provides for such complaints without introducing any changes to the present situation. Procedures will also be almost identical to those under present Convention. It was pointed out that the inter-state complaints had certain advantages over individual complaints, notably in dealing speedily and directly with situations of great concern. Nevertheless, the prevailing opinion was that it should continue to be a procedure of last resort.

20. Interim measures

It was observed that interim measures had not been included in Protocol No. 11 and would continue to be a matter for the rules of procedure. The experts in principle found the present practice in the area satisfactory. Concerns were expressed about the duration of interim measures under the present practice, in particular in expulsion cases and the hope was expressed that in such cases the new Court might agree to expedite the proceedings. The experts also noted the problems caused when the measure requested was outside the government´s competence.

21. Just satisfaction

The experts noted that it would be desirable to continue the present practice of having the question of just satisfaction dealt with already in the judgment on the merits except in those exceptional cases where this was not possible, e.g. where it was necessary to await complicated evaluations of losses suffered or the reopening of the national proceedings. Several experts considered that the registry of the new Court could, of course, be asked by the Court to assist in its determination of the issue of just satisfaction, in particular when this issue was technically complicated, or when it related to the applicants'costs and expenses.