COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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Strasbourg, 22 September 2003
DH-PR(2003)009

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

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REPORT

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54th meeting, 10-12 September 2003

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Introduction

1. The Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) held its 54th meeting at Strasbourg, on 10-12 September 2003. The meeting was chaired by Mr Linos-Alexander SICILIANOS (Greece). The list of participants appears in Appendix I. The agenda, as adopted, appears in Appendix II.

2. During the meeting, the DH-PR undertook the work assigned to it by the CDDH in June 2003 (CDDH(2003)018, §§ 4 to 10) as part of the follow-up to the Declaration "Guaranteeing the long-term effectiveness of the European Court of Human Rights", adopted on 14-15 May 2003 at the 112th Ministerial Session (CDDH(2003)018, Appendix III). In particular, the DH-PR elaborated:

- A draft Recommendation of the Committee of Ministers to member States on improving domestic remedies (Appendix III) ;

- A draft Recommendation of the Committee of Ministers to member States on the verification of the compatibility of draft laws, existing legislation and administrative practices with the standards laid down in the European Convention on Human Rights (Appendix IV);

- A draft Recommendation of the Committee of Ministers to member States on the European Convention on Human Rights in university education and professional training (Appendix V);

- A draft Resolution of the Committee of Ministers on judgments revealing an underlying systemic problem (Appendix VI).

3. The three draft Recommendations will include appendices containing explanations and examples of good practice.

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Item 1: Opening of the meeting and adoption of the agenda

4. See Introduction.

5. Having been informed of the tragic death of the Swedish Foreign Minister, Mrs Anna LINDH, the Chair of the DH-PR expressed, on behalf of the Committee, its sincerest condolences and deepest sympathies to the family of the victim and the Swedish authorities. The Swedish expert, Mrs. Eva JAGANDER, warmly thanked the Committee on behalf of her authorities.

Item 2: Follow-up to be given to the final report of the CDDH "Guaranteeing the long-term effectiveness of the European Court of Human Rights"

General discussion

Context of the DH-PR's work

6. The Chair recalled that the CDDH envisaged to adopt at its next meeting (18-21 November 2003) an interim report for the Committee of Ministers (which would also be sent to the Parliamentary Assembly, the Court, the Commissioner for Human Rights and various non-governmental organisations), presenting the state of progress of its work and, if possible, a preliminary draft text for an amending Protocol. The work undertaken by the DH-PR during this meeting will be reflected in the interim report.

Tasks assigned to the DH-PR

7. The Chair recalled that at its present meeting, the DH-PR was required to elaborate three draft Recommendations and a draft Resolution concerning some of the proposals of the final report of the CDDH(2003)006final.

Working Methods

8. The DH-PR noted that the CDDH had invited it to establish small working groups, if need be, for specific questions, a method that has proven effective in the past. With a view to the elaboration of the appendices that will go with the three draft Recommendations, the DH-PR decided to establish a Working Group (GT-DH-PR) composed of the following six experts: Mr Andrey TEHOV (Bulgaria), Mr Jiří MALENOVSKY (Czech Republic, Vice-chairman of the DH-PR, Chair of the GT-DH-PR), Mr Arto KOSONEN (Finland), Mrs Laurence DELAHAYE (France), Mrs Eva JAGANDER (Sweden) et Mr Adrian SCHEIDEGGER (Switzerland). Subject to the approval of the CDDH, it was decided that the Group would hold two meetings (11-12 December 2003; 20-21 January 2004) before the next plenary (18-20 February 2004).

9. With a view to the 1st meeting of the Working Group, the experts of the DH-PR were invited to send examples of good national practices to the Secretariat (Mrs Gioia SCAPPUCCI) by 15 November. On this basis, the Working Group will be able to succinctly present the trends emerging from the experiences of different States which are likely to interest other States.

10. The DH-PR requested the GT-DH-PR to do all that was necessary to have the most illustrative texts as possible. It acknowledged that the experts had now been asked to send further national information, but the aim was that the GT-DH-PR achieve in summarising and that the final texts be as succinct as possible.

(i) Implementation of Proposal A.1. : Elaboration by the DH-PR of a draft Recommendation on improving domestic remedies

11. According to the terms of reference given by the Committee of Ministers, the CDDH submitted on 4 April 2003 a set of proposals to guarantee the long-term effectiveness of the control system of the European Convention on Human Rights (CDDH(2003)006 final). As regards the proposals intended to prevent violations at national level, and to improve domestic remedies (Proposals A), it was decided, inter alia, to draw up a Recommendation on improving domestic remedies (Proposal A.1.).

12. The Committee of Experts examined document DH-PR(2003)007, elaborated by the Secretariat, containing a preliminary draft Recommendation and a preliminary draft appendix setting out this Recommendation's general context and providing examples of good practice. After its examination, the DH-PR adopted the draft Recommendation as it appears in

Appendix III and entrusted its Working Group to elaborate the draft appendix to go with it on the basis of the text prepared by the Secretariat (reproduced below in Appendix III).

(ii) Implementation of Proposal A.2.: Elaboration by the DH-PR of a draft Recommendation on the verification of the compatibility of draft laws, existing legislation and administrative practices with the standards laid down in the European Convention on Human Rights

13. In the framework mentioned above, it was also decided to draw up a Recommendation corresponding to Proposal A.2.

14. The Committee of Experts examined document DH-PR(2003)006, prepared by the Secretariat and containing a preliminary draft Recommendation and a preliminary draft appendix setting out this Recommendation's general context and providing examples of good practice. After its examination, the DH-PR adopted the draft Recommendation as it appears in Appendix IV and entrusted its Working Group to elaborate the draft appendix to go with it on the basis of the text prepared by the Secretariat (reproduced below in Appendix IV).

(iii) Implementation of Proposal A.3.: Elaboration by the DH-PR of a draft Recommendation on the European Convention on Human Rights in university education and professional training

15. In the same framework, it was decided to draw up a draft Recommendation corresponding to Proposal A.3.

16. The Committee of Experts examined document DH-PR (2003)005, containing a draft Recommendation and a preliminary draft appendix, elaborated by the Secretariat, setting out this Recommendation's general context and providing examples of good practice. After its examination, the DH-PR adopted the draft Recommendation as it appears in Appendix V and entrusted its Working Group to elaborate the draft appendix to go with it on the basis of the text prepared by the Secretariat (reproduced below in Appendix V).

(iv) Implementation of Proposal C.1.: Elaboration by the DH-PR of a draft Resolution concerning judgments which reveal an underlying systemic problem

17. With regard to the proposals to improve and accelerate the execution of judgments of the Court (Proposals C), it was decided, *inter alia*, to draw up a Committee of Ministers Resolution inviting the Court to identify in its judgments what it considers to be an underlying systemic problem, and the source of this problem, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments (Proposal C.1.).

18. The Committee of Experts examined document DH-PR(2003)008, containing a preliminary draft Resolution. After its examination, the DH-PR adopted the draft Resolution as it appears in Appendix VI.

Item 3: Items to be placed on the agenda of the next meeting and dates of such meeting

19. At its 55th meeting (18-20 February 2004), the DH-PR will :

- examine and adopt the draft appendices that its Working Group will have prepared for the three draft Recommendations ;

- examine draft texts which will have been proposed by the CDDH-GDR at that time;

- elaborate a draft Declaration by the Committee of Ministers to accompany the compilation of the different Recommendations and Resolutions (see Proposal A.4. of the report CDDH(2003)006final).

20. As regards the items left open at its 52d meeting (11-13 September 2002; see report DH-PR(2002)011), § 39), the DH-PR considered that it should examine the follow up to be given to them at its meeting in September 2004:

(1) Issues related to the election of judges to the Court;

(2) Certain matters of procedure;

(3) Exchanges of views / "tours de table" on (i) the implementation of Recommendation n° R (2000) 2 of the Committee of Ministers to member States concerning the re-examination or re-opening of certain cases at the domestic level following judgements of the European Court of Human Rights; (ii) the replies of the Committee of Ministers to Parliamentary Assembly Recommendations 1477 (2000) et 1546 (2001) (execution of Court judgments); (iii) recent developments concerning the application of the revised Rules (January 2001) of the Committee of Ministers for the supervision of the execution of judgments of the Court.

21. In addition, it also decided to examine, at its meeting in September 2004, the implementation of Resolution Res(2002)58 and of Recommendation Rec(2002)13 on the publication and dissemination of the case-law of the European Court of Human Rights, as well as that of Resolution Res(2002)59 concerning the practice in respect of friendly settlements (texts reproduced in DH-PR(2003)003).

22. The DH-PR agreed on the following dates:

1st GT-DH-PR	11-12 December 2003
2nd GT-DH-PR	20-21 January 2004
55th DH-PR	18-20 February 2004

23. The calendar of the future meetings of the CDDH, as well as those of the bodies answerable to it, appears in Appendix VII for information.

Item 4: Other business

Recommendation No. R (2000) 2: National information

24. With regard to the exchange of views in 2004 on the issue of the implementation of Recommendation No. R (2000) 2 of the Committee of Ministers to member States concerning the re-examination or re-opening of certain cases at the domestic level following judgments of the Court, (see above, § 20 (3)(i)), the DH-PR took note of the up-dating done by the Secretariat of document DH-PR (99)10rev2 ("Re-opening of proceedings before domestic courts following findings of violations by the European Court of Human Rights – Draft survey of existing legislation and case law – Secretariat evaluation of situation"). The experts

were invited to check the information concerning them and to send any complementary remarks / information to the Secretariat (Mrs Gioia SCAPPUCCI) by 15 November 2003.

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Appendix I

List of participants / Liste de participants

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* * *

Interpreters/Interprètes
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Mr Robert VAN MICHEL

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Appendix II

Agenda

Item 1: Opening of the meeting and adoption of the agenda

Working documents

- Draft agenda — DH-PR(2003)OJ002rev
- Report of the 55th meeting of CDDH (17-20 June 2003) — CDDH(2003)018 (extracts)
- Report of the 53rd meeting of DH-PR (5-7 March 2003) — DH-PR(2003)004

Item 2: Follow-up to be given to the final report of the CDDH "Guaranteeing the long-term effectiveness of the European Court of Human Rights"

(contribution of the DH-PR to the follow-up to be given by the CDDH to the Declaration "Guaranteeing the long-term effectiveness of the European Court of Human Rights" adopted at the 112th Ministerial Session (14-15 May 2003))

Working documents

- Final Report containing proposals of the CDDH "Guaranteeing the long-term effectiveness of the European Court of Human Rights" — CDDH(2003)006
- Addendum to the final report (long version) — CDDH(2003)006 Addendum
- Text of the Declaration of 14-15 May 2003 and ad hoc terms of reference given by the Committee of Ministers to the CDDH on 5 June 2003 — CDDH(2003)018 Appendix III
- Report of the 55th meeting of CDDH (17-20 June 2003) — CDDH(2003)018
- Report of the 53rd meeting of DH-PR (5-7 March 2003) — DH-PR(2003)004
- Draft Recommendation of the Committee of Ministers to member States on the European Convention on Human Rights in university education and professional training and preliminary draft Appendix prepared by the Secretariat — DH-PR(2003)005
- Preliminary draft Recommendation of the Committee of Ministers to member States on the verification of — DH-PR(2003)006

the compatibility of draft laws, existing legislation and administrative practices with the standards laid down in the European Convention on Human Rights and Appendix prepared by the Secretariat

- Preliminary draft Recommendation of the Committee of Ministers to member States on improving domestic remedies and Appendix prepared by the Secretariat — DH-PR(2003)007

- Preliminary draft Resolution of the Committee of Ministers on judgments revealing an underlying systemic problem prepared by the Secretariat — DH-PR(2003)008

(i) Implementation of Proposal A.1. : Elaboration by the DH-PR of a draft Recommendation on improving domestic remedies

(ii) Implementation of Proposal A.2.: Elaboration by the DH-PR of a draft Recommendation on the systematic verification of the compatibility of draft laws, existing legislation and administrative practice with the standards set up by the European Convention on Human Rights

(iii) Implementation of Proposal A.3.: Elaboration by the DH-PR of a draft Recommendation on the European Convention on Human Rights in university education and professional training

(iv) Implementation of Proposal C.1.: Elaboration by the DH-PR of a draft Resolution concerning judgments which reveal an underlying systemic problem

Item 3: Items to be eventually placed on the agenda of the next meeting and dates of such meeting

Item 4: Other business

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Appendix III

Draft Recommendation
of the Committee of Ministers to member States
on improving domestic remedies

[1.] The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

[2.] Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

[3.] Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") must remain the essential reference point for the protection of human rights in Europe and recalling its commitment to take measures in order to guarantee the long term effectiveness of the control system instituted by the Convention;

[4.] Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

[5.] Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all State Parties;

[6.] Underlining that, as required by Article 13 of the Convention, member States undertake to ensure that any individual who has an arguable complaint concerning the violation of his rights and freedoms as set forth in the Convention has an effective remedy before a national authority ;

[7.] Recalling that in addition to ascertaining the existence of such remedies, States have the general obligation to solve the problems underlying violations found;

[8.] Underlining that it is for member States to guarantee that these remedies allow for a decision to be made on the merits of a complaint and for adequate redress ;

[9.] Noting that the applications now lodged with the European Court of Human Rights ("the Court") and the judgments it delivers show that it is necessary, for the member States, to ascertain efficiently and regularly that such remedies do exist in all circumstances and in particular in cases of unreasonable length of proceedings;

[10.] Considering that the existence of effective domestic remedies should already in the medium term reduce the Court's workload as a result, on the one hand, of the decreasing quantity of the cases reaching it and, on the other hand, of the fact that the detailed treatment of the cases at national level would make their later treatment by the Court easier;

[11.] Underlining the importance of having remedies available at national level to reduce the workload of the Court, particularly in respect of repetitive cases ;

RECOMMENDS that member States, taking into account the examples of good practice appearing in the appendix:

I. take practical steps to check regularly and to ascertain, in the light of relevant case-law of the Court, that domestic remedies exist for anyone with an arguable complaint of a violation of the Convention and that these remedies are effective, in that they allow for a decision on the merits of the complaint and for adequate redress;

II. review the effectiveness of the existing domestic remedies and, where necessary, to set up effective remedies following Court judgments which point to structural or general deficiencies in national law or practice, in order to avoid repetitive cases coming before the Court;

III. pay particular attention, in respect of aforementioned items I and II, to the existence of effective remedies in case of an arguable complaint concerning the excessive length of judicial proceedings ;

INSTRUCTS the Secretary General of the Council of Europe to ensure that the necessary resources are made available for proper assistance to member States which request help in the implementation of this Recommendation.

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DRAFT APPENDIX

To be examined by the Working Group of the DH-PR
(GT-DH-PR) at its meetings on 11-12 December 2003 and 20-21 January 2004.
The basis for such work is the text below,
prepared by the Secretariat:

Introduction

1. The Ministerial Conference held in Rome on 3-4 November 2000 to commemorate the 50th anniversary of the European Convention on Human Rights ("the Convention") has strongly emphasised that it is primarily States that are responsible for ensuring that the rights and freedoms encompassed in the Convention are observed in order to prevent violations and, where needed, to redress them. This calls, in particular, for the setting-up of effective domestic remedies for all violations of the Convention. In accordance with Article 13 of the Convention, any individual, whose rights and freedoms as recognised in the Convention have been breached, is indeed entitled to an effective remedy before a domestic authority[1]. The

[1] European Ministerial Conference on Human Rights, see § 14 (i) of Resolution no. 1 ("Institutional and functional arrangements for the protection of human rights at national and European levels"), section A ("Improving the implementation of the Convention in member States").

European Court of Human rights ("the Court"), *inter alia,* in its *Kudla v. Poland* judgment of 26 October 2000, has also underlined the importance of having such remedies.

2. Furthermore, the member States of the Council of Europe are concerned about the ever-increasing number of individual applications lodged with the Court. This situation could jeopardise the long-term effectiveness of the system and thus calls for strong reaction from them.[2] Conscious that the Convention supervisory system is unique, they are considering a whole set of measures that should improve the effectiveness of the Court in handling applications but, at the same time, they recognise that it is necessary to act at national level: improving effective domestic remedies should allow to reduce the workload of the Court in terms of the quantity of the cases reaching it, as more individuals should obtain redress from domestic courts, and of the quality of these cases, since improvement of domestic remedies should entail better examination of the merits by domestic courts which will facilitate greatly the Court's handling of cases.

3. The objective of the Recommendation is not to develop the content of Article 13 of the Convention but to have States Parties review their legal systems in the light of the Court's case-law so as to ensure (through legislation or case-law) that anybody having an arguable claim of a violation of the Convention has effective remedies as secured by this Article.

4. The examples mentioned below which are from the practice of certain States Parties illustrate what can be achieved at national level.

5. In the first instance, governments of member States might consider whether it would be advisable to launch a study of the effectiveness of existing remedies by national experts familiar with the Court's case-law. National institutions for the promotion and protection of human rights could play a useful part in this respect. Non-governmental human rights organisations competent in the field could also usefully be asked to participate in this work.

6. In the longer term, scrutiny of the availability and effectiveness of domestic remedies should be built into scrutiny of any draft legislation affecting Convention rights and freedoms. There is an obvious connection between this Recommendation and the Recommendation on the verification of the compatibility of draft legislation, law and administrative practice with the standards laid down in the Convention.

7. In addition, repetitive cases represent an important problem in terms of quantity for the Court. One efficient way of reducing the number of repetitive cases would be to introduce at national level a specific remedy when a "pilot" judgment has been delivered by the Court (a judgment which points to a structural or general deficiency in the law of practice of a State risking to entail numerous new applications before the Court); for instance as regards unreasonable length of judicial proceedings.

Existence of a general effective remedy

8. It is possible to introduce a general domestic remedy, available to individuals and capable of dealing with any complaint of an alleged violation of Convention rights or equivalent rights (it might consist, for example, in giving a constitutional court or supreme court general jurisdiction in the matter). Such a mechanism can be a good way of dealing with complaints not covered by specific remedies available elsewhere in the national legal system.

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[2] See Declaration of the Committee of Ministers of the Council of Europe of 14 May 2003 "Guaranteeing the long term effectiveness of the European Court of Human Rights".

9. It has been found that States which have an individual right of appeal to a constitutional court or equivalent higher court with general jurisdiction in matters of fundamental rights / human rights tend to have fewer Strasbourg cases because potential violations of the Convention can be identified and remedied by these national courts. For example, the Croatian Constitutional Court is able to determine any application lodged with it [3] before other legal remedies are exhausted if the measure being challenged grossly infringes constitutional rights and if a refusal to deal with the appeal would have serious and irreparable consequences for the appellant.

Existence of effective remedies following a "pilot" judgment

10. Repetitive cases represent an important part of the workload for the Court which needs to be reduced. These cases follow a first case which has led to a "pilot" judgment (see § 7 above). Such a judgment identifies the legal point which poses a Convention problem and gives sufficient guidance for the merits of subsequent complaints raising the same legal issue to be determined. "Repetitive cases" would thus be cases in which the identical defect in the national situation results in further violations of the Convention. However, it is accepted that cases involving grave violations of human rights should not be treated as repetitive cases.

11. When a judgment identifying a structural problem has been delivered and a large number of applications to the Court concerning the same problem are pending or likely to be lodged, the respondent State should ensure that current or potential applicants have an effective remedy allowing them to apply to a competent national authority.

12. Introducing such remedies for persons concerned by the same structural problem identified in a pilot judgment could have advantages: these persons would be able to obtain redress at national level, in line with the principle of subsidiarity of the Convention system. The States Parties having introduced such a remedy would benefit from an additional means of remedying violations of the Convention in their domestic legal system.

13. A domestic remedy available to persons affected by a structural problem which the Court has identified in a pilot case could significantly reduce the Court's workload. While prompt execution of the judgment remains essential to deal with any such structural problem and avert future applications on the same matter, the problem will have affected others before it has been remedied. If domestic redress were available to such persons the Court could refer them to the domestic system and if appropriate declare their applications inadmissible on the ground of non-exhaustion of domestic remedies [4]. This implies that the domestic remedy is effective which is for the Court to check.

14. There are several possible approaches to ensure it, depending, among other things, on the nature of the structural problem and on whether the person affected has applied to the Court.

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[3] It would be advisable to ask for further information from the Croat expert concerning notably the way to appeal to the Constitutional Court and those who are entitled to appeal.

[4] It is also noted that, in accordance with Article 37 § 1 of the Convention, the Court may strike repetitive case out of its list of cases if a State has taken general measures that remedy the situation, has acknowledged the violation of the Convention and has also either introduced adequate mechanisms of redress, or offered the applicant just satisfaction considered as appropriate by the Court (including, if need be, reparation for material or moral damage or only reimbursement of court costs).

15. One option would be to introduce a single remedy, or a single set of remedies, covering all (future) situations in which a judgment of the Court in a pilot case identified a structural problem affecting a large group of people in the same way as the applicant in whose favour the Court had found.

16. Whilst respecting the requirement of Article 13 of the Convention, an alternative might be to adopt an *ad hoc* approach, whereby no single remedy would be created. Instead, whenever a pilot judgment of the Court identified a structural problem, there would be an assessment, case by case, to see if a specific remedy could be introduced (or an existing remedy widened, by legislation or by judicial interpretation of the domestic provision governing availability of the remedy).

17. In order to maximise the advantages mentioned in § 12, it would be preferable that the remedy be also available to potential applicants.

18. When remedies are introduced, governments should speedily inform the Court so that it can take them into account in its later judgments. It is important that the domestic remedy be genuinely effective, otherwise the Court's workload would not be reduced.

19. [However it will not be necessary or appropriate in every case in which a Court judgment has identified a structural problem to introduce new remedies or give existing remedies retroactive effect. It is recognised that, despite the general obligation to make sure at all times that there are effective domestic remedies, it may be more appropriate, after a judgment in a pilot case, to leave cases to the Court. Similarly, if the problem is liable to persist it might be appropriate to introduce new domestic remedies applying solely to future cases and leave it to victims in older cases to seek redress before the Court.]

20. In countries where proceedings can be reopened under ordinary law, the reopening procedure could also be applied to pending cases (see Andersson case in Sweden). However that is not generally provided for in the special legislation which many countries have adopted to give effect to the Court's judgments. It is currently under consideration in Belgium.

21. To implement this part of the Recommendation, member States could draw inspiration from the following practices:

- In France the new line under Article 781-L, allowing financial compensation for undue length of proceedings, has not had retroactive effect;

- In Slovakia, if the European Court of Human Rights declares an application alleging infringement of Convention rights admissible, the government must immediately refer the application to the Constitutional Court, which must then initiate proceedings to determine the application. If it decides that it is admissible, it delivers a finding that the decision or interference infringed fundamental rights or freedoms, and it sets it aside. If the infringement is the result of some omission, it may order the authority responsible to take appropriate action: refer the case back for new proceedings, order removal of the infringement, or order reinstatement, as far as possible, of the status quo ante.

Existence of effective remedies in case of an arguable claim of unreasonable length of proceedings

22. It is also possible to ensure that an effective domestic remedy exists through the direct implementation of the rights guaranteed by the Convention or the implementation of equivalent national rights by the different courts and competent authorities. The question of effective remedies has taken on particular significance in cases involving allegations of unreasonable length of proceedings, which account for a large number of the applications to the Court. It is important to make sure there is an effective remedy in such cases, as required by Article 13 of the Convention (see the Kudla v. Poland judgment of 26 October 2000); see below. Following the impetus given by the Court in this case, several good practices refer more particularly to the question of remedies in the event of undue length of proceedings. Contracting Parties could be inspired by the practices described below.

23. Firstly, many countries ensure by different means (such as setting a maximum length or providing for applications to have proceedings speeded up) that proceedings remain of reasonable length:

- Portuguese law, for example, lays down a maximum length for each stage in criminal proceedings. If the length is exceeded, an application can be made to have the proceedings speeded up. If the application is granted, one possible outcome is a decision setting a time-limit for the court or prosecutor to take a specified procedural measure, such as closing the investigation or setting a date for the trial.

- Similarly, Austrian law provides, in administrative procedure, that the competent authority, unless otherwise provided, must determine within six months any request made to it. If the time-limit is exceeded, the party concerned may apply to the Administrative Court for an order that the authority deliver a decision within three months, that time-limit being extendable only once (see ECHR, 30 January 2001, Basic v. Austria, Application No.29800/96, and Pallanich v. Austria, Application No.30160/96, in which the European Court held that such an application was an effective remedy for undue length of proceedings).

- Spain has a comparable system. An application may be made to the Constitutional Court, even before other domestic remedies have been exhausted, if a court fails to deliver its decision within a reasonable time.

- The Croatian Constitutional Court is empowered to set a time-limit for the lower court's determination of the facts in civil or criminal proceedings judged to be of excessive length. It may also grant fair compensation to the injured party.

- In Bulgaria a complaint of undue delay may be lodged at any stage in the proceedings by any of the parties. The superior court's decision, from which there is no appeal, is immediately communicated to the lower court which delivered the challenged decision. The disciplinary chamber of the Judicial Service Commission may also impose a penalty.

- In Norway and Slovenia there are time-limits for certain procedural decisions. In Norway, for example, if the accused is aged under 18 or is being held on remand, the hearing must, if possible, be held within six weeks from the case's being referred to the court, and any hearing before the appeal court must take place within eight weeks.

24. Some countries provide for possible financial compensation if reasonable time is exceeded. Others, in criminal cases, provide for reduction of the penalty to compensate for undue length of proceedings (Switzerland and Norway for instance). Some also have

provision for making adequate redress to the injured party (for example, France, Bulgaria, Italy, Norway).

25. In addition, some countries have taken steps to hold judges responsible for excessive length of proceedings. In the case of Norwegian judges, for instance, responsibility for excessive length of proceedings is clearly spelt out, and supervision of the system is performed by the presidents of courts.

Possible activities of assistance for the setting-up of effective remedies

26. The Recommendation instructs the Secretary General of the Council of Europe to ensure that the necessary resources are made available for proper assistance to member States which request help in setting up the effective remedies required by the Convention. It could be for instance assistance in conducting surveys by expert consultants on available domestic remedies.

* * *

Appendix IV

Draft Recommendation
of the Committee of Ministers to member States
on the verification of the compatibility of draft laws,
existing legislation and administrative practices
with the standards laid down
in the European Convention on Human Rights

[1.] The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

[2.] Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

[3.] Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") must remain the essential reference point for the protection of human rights in Europe and recalling its commitment to take measures in order to guarantee the long term effectiveness of the control system instituted by the Convention;

[4.] Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

[5.] Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all State Parties;

[6.] Recalling that, according to Article 46, paragraph 1, of the Convention, the High Contracting Parties undertake to abide by the final judgments of the European Court of Human Rights ("the Court") in any case to which they are parties;

[7.] Considering however, that further efforts should still be made by member States to give full effect to the Convention, in particular through a continuous adaptation of national standards with those, in the light of the case-law of the Court;

[8.] Convinced that verifying the compatibility of draft laws, existing legislation and administrative practices with the Convention is necessary to contribute to prevent human-rights violations and to reduce the number of applications to the Court;

[9.] Stressing the importance of consulting different competent and independent bodies, including national institutions for the promotion and protection of human rights;

[10.] Taking into account the diversity of practices in the member States as regards the verification of compatibility;

RECOMMENDS that member States, taking into account the examples of good practice appearing in the appendix:

I. ensure that there are appropriate and effective mechanisms for systematically verifying the compatibility of draft laws with the Convention in the light of the case-law of the Court;

II. ensure that there are such mechanisms for verifying whenever necessary the compatibility of existing legislation and administrative practices, including as expressed in regulations, orders and circulars;

III. ensure the adaptation, as quickly as possible, of legislation or administrative practices in order to prevent violations of the Convention.

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DRAFT APPENDIX

To be examined by the Working Group of the DH-PR (GT-DH-PR)
at its meetings on 10-11 December 2003 and 20-21 January 2004.
The basis for such work is the text below, prepared by the Secretariat:

Introduction

1. Notwithstanding the restructuring, resulting from Protocol No. 11, of the control system established under the European Convention on Human Rights ("the Convention"), the number of applications submitted to the registry of the European Court of Human Rights ("the Court") is increasing steadily, giving rise to considerable delays in the processing of cases.

2. While the Council of Europe may, to a certain extent, welcome this development, which bears witness to greater ease of access to the European Court, as well as to constantly improving human rights protection in Europe, it should not be forgotten that it is the member States of the Council of Europe, the Contracting Parties to the Convention, which, in accordance with the principle of subsidiarity, remain the prime guarantors of the rights laid down in the Convention. Indeed, according to Article 1 of the Convention, "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". It is thus at national level that the most effective and direct protection of the rights and freedoms encompassed in the Convention should be ensured. This requirement concerns all State authorities, not only the courts but also the administrations and the legislator.

3. Thus, the Committee of Ministers deemed it necessary to intervene prior to the judicial phase before the Court, which must remain subsidiary in the implementation of the protection of individuals. This Recommendation thus focuses on the measures to be taken in order to avoid incompatibilities between national legislation and administrative practices with the standards set by the Convention. This appendix provides examples of good practice which

member States might use for inspiration, thus enabling them to achieve the goal set by the Council of Europe, while retaining their freedom of action.

4. It is expected that the implementation of this Recommendation will contribute to prevent human rights violations, and consequently help, in the long term, to restrain the influx of cases reaching the Court.

Setting up of systems of verification

5. The prerequisite for the Convention to fully become a reference standard in the domestic legal system of every member State, and hence to constitute an effective guarantee for human rights in Europe, is that States give effect to the law of the Convention in their legal orders, notably by ensuring that laws and administrative practices conform to it.[5]

6. It is important that the supervisory mechanisms referred to in the Recommendation have a specific and acknowledged place in the domestic institutional system of each member State, so as to fully guarantee the protection of human rights at the national level. States should therefore ensure tat such systems exist and that they allow verification of both draft laws and the law [6] in force, as well as of administrative practices.

7. With regard to draft laws and in order to achieve the goals set by the Recommendation, it is advisable to include in the legislative process several compulsory mechanisms to supervise their compatibility with the Convention.

8. In this Recommendation, the term “draft laws” refers to all the texts discussed with a view to the adoption of a national law, whether of governmental, presidential or parliamentary origin or ensuing from a people’s initiative or any other process.

9. The Recommendation calls for systematic supervision of the compatibility with the Convention of all draft laws capable of interfering with the rights and freedoms protected by it. The mandatory and automatic nature of this verification is crucial in order to guarantee a better protection of human rights by member States’ public authorities. By adopting a law verified as being in conformity with the Convention, the State greatly reduces the risk of violating the Convention and of subsequently being condemned by the Court, and imposes on its administration a framework in line with the Convention for its actions vis-à-vis citizens.

10. Although it is for every State Party to conduct this verification of draft laws, Council of Europe assistance may nevertheless be envisaged. Assistance of this kind is already available, particularly in respect of draft laws on freedom of religion, conscientious objection, freedom of information, freedom of association, etc. However, it is not possible to systematically resort to such consultation. Any public authority of a Council of Europe member State may make such a request within the framework of an assistance programme. The assessment is a highly technical one, drawn up by independent experts appointed by the Council of Europe, who only comment on the text of the draft law submitted and do not put forward alternative proposals. It is then for each State to decide whether or not to take into

[5] National courts (ordinary /constitutional judges), of course play an important role in respect of the supervision of conformity of legislation and administrative practices with the Convention. This Recommendation does not cover this aspect of the issue.

[6] For the purposes of this Recommendation, the term “law” denotes here normative texts whether from Parliament, the Government or the President.

account the experts' conclusions. The idea is to enable the development of an exchange between the Council of Europe and the requesting State in a reasonably flexible framework.

11. Verification of compatibility with the Convention must also be extended to legislation which is in force, i.e. those texts which have been adopted in accordance with the legislative procedure laid down in the Constitution, thus account can be taken not only of the Convention itself, but also of the evolving case-law of the Court, which may have repercussions when a law which was initially compatible with the Convention or which had not been the subject of a compatibility check prior to adoption. The effectiveness of the regular supervision, on a case by case basis, can then fully contribute to the protection of human rights in Europe.

12. Such verification proves particularly important in respect of laws concerning fields where an objective possibility and an increased risk of human rights violations exists (e.g. policing, criminal proceedings, the situation of detainees, the rights of aliens).

13. This Recommendation also covers the compatibility with the Convention of all decisions of the administration, and therefore aims at ensuring that it respects human rights in its daily practice. It is indeed essential that bodies with powers enabling them to restrict the exercise of human rights have special staff or specific resources to ensure that their activity is compatible with the Convention.

14. It has to be made clear that, while the Recommendation covers more specifically administrative practices as manifested in written documents, such as regulations, decrees and circulars, it is not intended to be restricted to this field. It is indeed easier to verify a written document, which has a clearly identified procedure for its adoption and a specifically named person or body responsible for the draft. This is not necessarily the case for practices lacking any textual basis which are current within public administrations. States are invited, also in respect of these, to ensure that appropriate and effective mechanisms exist for verifying their compatibility with the Convention.

15. Finally, with regard to draft laws as well as legislation already in force and administrative practices are concerned, it seems clear that, should a State not possess such supervisory mechanisms, or should its mechanisms prove to be inadequate, it would have to set them up or improve them as speedily as possible.

Setting-up of a procedure allowing rapid modification of standards or national practices after verification

16. In order for verification to have practical effects and not merely lead to the finding that the provision concerned is incompatible with the Convention, it is vital that member States draw consequences from the conclusions resulting from this kind of supervision. This appears to be an an automatic consequence of findings reached in the law making process.

17. As regards legislation in force, such findings should to the greatest extent possible suspend application of the provision at issue so as not to give rise to further human rights violations.

18. Member States must then promptly take the necessary steps to amend their laws and administrative practices in order to make them compatible with the Convention. In order to do so, and where this proves necessary, they will have to improve or set-up appropriate revision mechanisms which will have to be systematically and promptly used when a national provision is found to be incompatible with the Convention. The Recommendation therefore

emphasises the need for member States to react as rapidly as possible to achieve the objectives set down in this Recommendation.

19. To this end, the good practices mentioned below are of interest to member States. In fact, while retaining great flexibility as to the means to do so, States may draw inspiration from these concrete examples of how to verify the compatibility with the Convention of draft legislation, legislation in force and administrative practices. A framework for reflection is thus provided to States.

Examples of good practices

20. First of all, reference may be made to the importance for each member State to ensure an appropriate publication and dissemination at the national level of the Convention and the relevant case-law of the Court and to develop university education and professional training programmes in human rights. Indeed, for an effective verification to take place, those responsible for this supervision must be particularly familiar with human rights protection issues. This concerns not only civil servants who may be involved during the drafting of legislation, but also practitioners at parliament and judicial levels. With an appropriate training on the standards of the Convention and being familiar with the importance of the issue, they will be in a better position to contribute to a proper implementation of the Convention at national level, whether through the drafting of new legislation and regulations or through the application of existing legislation.

21. In this regard, reference should be made to the measures advocated by the Committee of Ministers in its Recommendation Rec(2002)13 on *the publication and dissemination in the member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights* [7] and in [its draft] [its] Recommendation [(2003)…] on *the European Convention on Human Rights in university education and professional training*.[8]

(i) Systematic a priori supervision of draft laws

22. It is worthwhile verifying both systematically and explicitly the compatibility of draft laws with the Convention (and with its evolving interpretation by the Court), throughout the various stages of the legislative process.

23. Reference can be made to the example of Greece where there are four mechanisms which constitute consecutive filters to ascertain the quality of draft legislation and its compatibility with the Constitution and with the country's international commitments. The first of such filters is a special procedure operating at the stage of preliminary draft legislation. It is the Greek National Human Rights Commission's responsibility to examine and comment on any preliminary draft legislation affecting the exercise of human rights. The other three filters intervene during the general process of examination of draft legislation. They are the responsibility of the Central Commission for the Preparation of Legislation, the Prime Minister's Legal Office and the Scientific Council of the Greek Parliament. Each of these bodies intervenes successively, to ascertain that legislation is properly drafted and is compatible with both the Constitution and Greece's international commitments.

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[7] Adopted on 18 December 2002 at the 822nd meeting of the Ministers' Deputies.

[8] Document DH-PR (2003)005.

24. It is thus important that, during the usual legislative process, the examination of compatibility with the Convention takes place specifically and frequently at the various stages of legislation preparation.[9]

* *At governmental level*

25. This objective may be achieved (as in Ireland) through an examination of conformity by the Ministry which initiated the draft, which thus carries out the supervision within its services.

26. Reference could also be made to the situation in the United Kingdom where the Human Rights Act 1988 provides for the Minister responsible for any bill to be submitted for a second reading in parliament to certify that, in his or her opinion, the provisions of the bill are compatible with the Convention, or to state that he or she is not in a position to make such a declaration, but that he or she nevertheless wishes parliament to consider the bill. Proper information on draft laws may also be guaranteed through an explanatory memorandum accompanying it and, *inter alia*, assessing its compatibility with the Convention (as is done in Lithuania). Draft laws may also be accompanied by an explanatory letter giving members of Parliament some initial idea about the compatibility of the draft with the Convention (as is the case in Estonia, where one part of the explanatory letter, headed "Content and comparative analysis of the draft laws", deals with the conformity of draft laws with the Constitution and with the legal texts of the international organisations of which Estonia is a member, of which it holds associate membership or which it wishes to join). The international treaties to which a State is a Party should also be added.

27. In difficult cases, verification of draft laws may be entrusted to a specific Ministry (usually, as in Norway, it is the Ministry of Justice), which is then responsible for centralising the scrutiny of the text against various standards. [In several countries (such as Iceland, Estonia and Denmark), the Convention explicitly forms part of the reference standards applied when any draft law is scrutinised.] This second stage ensures that the general examination has been completed.

28. It should be noted that this verification by a specific Ministry may also apply to draft decrees before they are submitted to the government (as is the case in Hungary).

29. Supervision by this Ministry may be vital in order to highlight, from the outset, any text which may have significant effects in terms of human rights. This makes it possible to draw the attention of each successive participant in the legislative process (as in Hungary).

* *At parliamentary level*

30. More detailed examination may take place in the national parliament itself, through its legal services and permanent, or as the case may be, *ad hoc*, parliamentary committees, which are then responsible for specific supervision with regard to the Convention (as is the case in Germany, Italy and Poland).

[9] This appendix does not deal with laws following a people's initiative or another mechanism. It will be for States having such possibilities to also provide for a mechanism verifying these laws' compatibility with the Convention.

31. This stage proves particularly important for the texts which, having been tabled directly by a member of Parliament, have not been subjected to the preliminary procedure. In this context, human rights training for parliamentarians and their staff would be particularly appropriate.

* *Consultations*

32. Prior to the final adoption of legislation, it could be useful to include, at an advanced stage of the legislative process, a mechanism for the consultation of human rights experts. These may be independent national institutions for the promotion and protection of human rights, and similar bodies, including ombudsmen's offices, such as the National Human Rights Consultative Commission in France. It may also be public institutions which provide opinions to the government (such as the *Conseil d'Etat* in Belgium and France, or the Law Council in Sweden, where laws and certain decrees are concerned, and the equivalent body in Greece with regard to presidential decrees) or with experts independent from any government authority and belonging to local or international non-governmental organisations (such as the Human Rights Office, Amnesty International and the Red Cross in Iceland) or the Bar (as in the Netherlands).

33. Depending on the field dealt with in the text to be adopted and the body to be consulted, consultation of these experts may be either optional or compulsory.[10] In this respect, it seems appropriate to penalise any failure to comply with these consultation arrangements, particularly where certain legal instruments of the executive are concerned (as in Belgium, where regulations on which a preliminary opinion of the legislation section of the *Conseil d'Etat* has not been sought are consequently declared void).

34. Finally, the Council of Europe may be asked to give an opinion on the compatibility of draft laws relating to human rights and concerning a particularly controversial field (as Bulgaria provides for). [11]

35. This request of opinion does not replace an internal examination of compatibility with the Convention, as the request of an opinion does not exempt States from proceeding themselves with such an examination of compatibility. Systematic use of this kind of consultation cannot therefore be envisaged. Any public authority in a Council of Europe member State may put forward such a request, especially if it comes within the framework of an assistance programme. The opinion issued is drawn up by independent experts appointed by the Council of Europe, who only comment on the text submitted in the light of the standards of the Convention. It is then only for States to decide whether or not to take into account the experts' conclusions, for which the Council of Europe, in principle, does not envisage any follow-up action. Finally, it has to be clarified that the Council of Europe opinion cannot be binding on the Court, which remains independent and sovereign in its interpretation of the Convention.

(ii) A posteriori supervision of legislation and administrative practice

[10] Each State ought to specify those fields in which consultation is compulsory, and, in particular, the impact of the opinion issued by the institution consulted (while the government may not be bound by it, this opinion frequently enjoys great authority in the legal world).

[11] In this context, it may be interesting to get inspiration from the practice followed in certain Council of Europe services, especially within its Directorate General II - Human Rights.

36. While member States cannot be asked to systematically verify all their existing legislation, regulations and administrative practices, it is appropriate to provide for arrangements for the verification of the compatibility with the Convention of the law in force and of administrative practices, whenever such an examination is called for (for example as a result of a new national experience in the application of the law or a new judgment by the Court against another member State [12]). This control can take many different forms depending notably on the constitutional system of the state at issue: verification in the context of court proceedings, verification by parliamentary or governmental committees, verifications in the context of the action of the ombudsmen, verification by specialised institutions specially set up for this purpose, such as the independent national institutions for the promotion and protection of human rights, etc.

37. In this context, the competent State bodies must verify that the officials of local and central authorities dispose of the means necessary to take Convention and the case-law of the Court into account so as to prevent violations. This makes it all the more necessary to ensure that adequate human rights' training courses for civil servants exist (see §§ 20-21 above).

(iii) Amendments following verification of compatibility with the Convention

38. Generally speaking, it is for the State to act appropriately if one of its laws or administrative practices is found to be incompatible with the standards of the Convention by initiating the process of amendment of the provisions concerned as speedily as possible.

39. (…) [13]

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[12] If the judgment in question concerns the state itself, the authorities have the obligation under Artcile 46 of the Convention to take the necessary measures to abide by the judgment.
[13] The DH-PR experts are invited to give national examples on this issue.

Appendix V

Draft Recommendation
of the Committee of Ministers to member States
on the European Convention on Human Rights
in university education and professional training

[1.] The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

[2.] Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

[3.] Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") must remain the essential reference point for the protection of human rights in Europe and recalling its commitment to take measures in order to guarantee the long term effectiveness of the control system instituted by the Convention;

[4.] Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

[5.] Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all State Parties;

[6.] Stressing the preventive role played by education in the principles inspiring the Convention, the standards that it contains and the case-law deriving from them;

[**7**.] Recalling that, while measures to facilitate a wide publication and dissemination in the member States of the text of the Convention and of the case-law of the European Court of Human Rights ("the Court") are important in order to ensure the implementation of the Convention at the national level, as it has been indicated in Recommendation (2002)13, it is crucial that these measures be supplemented by others in the field of education and training, in order to achieve their aim;

[8.] Stressing the particular importance of appropriate university education and professional training programmes in order to ensure that the Convention is efficiently applied, in the light of the case-law of the Court, notably in all sectors responsible for law enforcement;

[9.] Recalling the Resolutions and Recommendations it has already taken on different aspects of the issue of human rights education**,** in particular: Resolution Res(78)41 on the teaching of human rights and Resolution Res(78)40 instituting Council of Europe fellowships for studies and research in the field of human rights; Recommendation Rec(79)16 on the promotion of human rights research in the member States of the Council of Europe; Recommendation Rec(85)7 on teaching and learning about human rights in schools as well as its Appendix containing suggestions for teaching and learning about human rights in schools;

[10.] Recalling the role that may be played by the national institutions for the promotion and protection of human rights and by non-governmental organizations particularly in the field of training of personnel responsible for law enforcement, and welcoming the initiatives already undertaken in this area;

[11.] Taking into account the diversity of traditions and practice in the member States as regards university education, professional training and awareness-raising regarding the Convention system;

RECOMMENDS that member States:

I. ascertain that adequate university education and professional training concerning the Convention and the case-law of the Court exist at national level and that such education and training are included in particular

- as a component of the common-core curriculum of law and, as appropriate, political and administrative science degrees, and that they are offered as optional disciplines to those who wish to specialise themselves;

- as a component of the preparation programmes of national or local examinations for access to the various legal professions and of the initial and continuous training provided to judges, prosecutors and lawyers;

- in the initial and continuous professional training offered to personnel in other sectors responsible for law enforcement and/or to personnel dealing with persons deprived of their liberty (for example, members of the police and the security forces, the personnel of penitentiary institutions and that of hospitals), as well as to personnel of immigration services, in a manner that takes account of their specific needs;

II. enhance the effectiveness of university education and professional training in this field, in particular by:

- providing for education and training to be incorporated into stable structures -public and private- and be given by persons with a good knowledge of the Convention concepts and the case-law of the Court as well an adequate knowledge of professional training techniques;

- supporting initiatives aimed at the training of specialised teachers and trainers in this field;

III. encourage non-state initiatives for the promotion of awareness and knowledge of the Convention system, such as the establishment of special structures for teaching and research in human rights law, moot court competitions, awareness raising campaigns.

INSTRUCTS the Secretary General of the Council of Europe to transmit this Recommendation to the governments of those States Parties to the European Cultural Convention which are not members of the Council of Europe.

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DRAFT APPENDIX

To be examined by the Working Group of the DH-PR
(GT-DH-PR) at its meetings on 11-12 December 2003 and 20-21 January 2004.
The basis for such work is the text below,
prepared by the Secretariat:

Introduction

1. The Ministerial Conference held in Rome on 3-4 November 2000 to commemorate the 50th anniversary of the European Convention on Human Rights ("the Convention"), invited the member States of the Council of Europe to "*take all appropriate measures with a view to developing and promoting education and awareness of human rights in all sectors of society, in particular with regard to the legal profession*".[14]

2. This effort that national authorities are requested to make is only a consequence of the subsidiary character of the supervision mechanism set up by the Convention, which implies that the rights guaranteed by the Convention be fully protected in the first place at national level and applied by national authorities.[15] The Committee of Ministers has already adopted Resolutions and Recommendations dealing with different aspects of this issue [16] and encouraging initiatives that may be undertaken notably by independent national human rights institutions and NGOs, with a view to promoting greater understanding and awareness of the Convention and the case-law of the European Court of Human Rights ("the Court").

3. Guaranteeing the long-term effectiveness of the Convention system is among the current priorities of the Council of Europe and, in this context, the need for a better implementation of the Convention at the national level has been found to be vital. Thus, it appears necessary that all member States ensure that adequate education on the Convention is provided, in particular concerning legal and law enforcement professions. This might contribute to reducing, on the one hand, the number of violations of rights guaranteed by the Convention resulting from insufficient knowledge of the Convention and, on the other hand, the lodging of applications which manifestly do not meet admissibility requirements.

4. This Recommendation refers to three complementary types of action, namely (i) the incorporation of appropriate education and training on the Convention and the case-law of the Court, notably in the framework of university law and political science studies, as well as professional training of legal and law enforcement professions; (ii) guaranteeing the effectiveness of the education and training, which implies in particular a proper training for

[14] European Ministerial Conference on Human Rights, H-Conf(2001)001, Resolution II, § 40.

[15] See Article 1 of the Convention.

[16] In particular: Resolution Res(78)41 on the teaching of human rights and Resolution Res(78)40 instituting Council of Europe fellowships for studies and research in the field of human rights; Recommendation Rec(79)16 on the promotion of human rights research in the member States of the Council of Europe; Recommendation Rec(85)7 on teaching and learning about human rights in schools as well as its Appendix containing suggestions for teaching and learning about human rights in schools.

teachers and trainers; and (iii) the encouragement of initiatives for the promotion of knowledge and/or awareness of the Convention system.

5. Bearing in mind the diversity of traditions and practice in the member States in respect of university education, professional training and awareness-raising regarding the Convention, it is the member States' responsibility to shape their own education programmes according to their respective national situations, in accordance with the principle of subsidiarity, while ensuring that the standards of the Convention are fully presented.

I. University education and professional training

6. Member States are invited to ensure that appropriate education on the Convention and the case-law of the Court, is included in the curricula of university law degrees and Bar examinations as well as in the continuous training of judges, prosecutors and lawyers.

(i) University education

7. It is essential that education on the Convention be fully incorporated in the faculties of law programmes, not only as an independent subject (e.g. as in Moldova) but also horizontally in each legal discipline (criminal law, civil law, etc.) so that law students, whatever their specialisation is, are aware of the implications of the Convention in their field when they graduate.

8. The creation of post-graduate studies specialised in the Convention, such as certain national master degrees or the "*European Master in Human Rights and Democratisation*" (E.MA) which involves 27 universities over 15 European States, as well as more punctual university programmes such as the summer courses of the *Institut international des droits de l'homme René Cassin* (Strasbourg) or those of the *European University Institute* (Florence), should be encouraged.

(ii) Professional training

9. Professional training should facilitate a better incorporation of standards of the Convention and the Court's case-law in the reasoning of domestic jurisdictions leading to their judgments. Moreover, legal advice which would be given to potential applicants by lawyers having an adequate knowledge of the Convention could prevent applications that manifestly do not meet the admissibility requirements. In addition, a better knowledge of the Convention by legal professionals should contribute to reducing the number of applications reaching the Court.

10. Specific training on the Convention and its standards should be incorporated in the programmes of law schools and schools for judges and prosecutors. This could entail the organisation of workshops as part of the professional training course for lawyers, judges and prosecutors. Insofar as lawyers are concerned, such workshops could be organised at the initiative of Bar Associations, for instance. Reference may be made to a current project within the International Bar Association to set up, with the assistance of the Court, a training for lawyers on the rules of procedure of the Court and the practice of litigations, as well as the execution of judgments. At the national level, workshops are organised on a regular basis in the framework of the initial and continuous training of judges, in the Slovak Republic for instance.

11. Moreover, seminars and colloquies on the Convention could be regularly organised for judges, lawyers and prosecutors, as is the case, for example, in Croatia and France.

12. In addition, a journal on the case-law of the Court could be published regularly for judges, prosecutors and lawyers. In the Slovak Republic, for example, the Ministry of Justice publishes a supplement dedicated to issues relating to the Convention since January 2003 with the Judicial Journal which is distributed to all courts.

13. It is recommended that member States ensure that the standards of the Convention be covered by the initial and continuous professional training of other professions dealing with law enforcement and detention such as security forces, police officers and prison staff but also immigration services, hospitals, etc. Continuous training on the Convention standards is particularly important given the evolving nature of the interpretation and application of these standards in the Court's case-law. Staff of the authorities dealing with persons deprived of their liberty should be fully aware of these persons' rights as guaranteed by the Convention and as interpreted by the Court in order to prevent any violation, in particular of Articles 3, 5 and 8. It is therefore of paramount importance that in each member State there is adequate training within these professions.

14. A specific training course on the Convention and its standards and, in particular, aspects relating to rights of persons deprived of their liberty should be incorporated in the programmes of police schools, as in Belgium for example, as well as schools for prison warders. Workshops could also be organised as part of continuous training of members of the police forces, warders and other authorities concerned.

II. Effectiveness of university education and professional training

15. For this purpose, member States are recommended to ensure that university education and professional training in this field is carried out within permanent structures (state and private) by well-qualified teachers and trainers.

16. In this respect, *training teachers and trainers* is a priority. The aim is to ensure that their level of knowledge corresponds with the evolution of the case-law of the Court and meets the specific needs of each professional sector. Member States are invited to support initiatives (research in fields covered by the Convention, teaching techniques, etc.) aimed at guaranteeing a quality training of specialised teachers and trainers in this sensitive and evolving field.

III. Promotion of knowledge and/or awareness of the Convention system

17. Member States are finally recommended to encourage initiatives for the promotion of knowledge and/or awareness of the Convention system. Such initiatives, which can take various forms, have proved very positive in the past where they have been launched and should therefore be encouraged by member States.

18. One example could be the setting-up of moot court competitions on the Convention and the Court's case-law for law students involving at the same time students, university professors and legal professionals (judges, prosecutors, lawyers), e.g. the *Sporrong and Lönnroth Competition* organised in the Supreme Courts of the Nordic countries, and the pan-European French-speaking *René Cassin* Competition, organised by the association Juris Ludi in the premises of the Council of Europe.

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Appendix VI

Draft Resolution of the Committee of Ministers on judgments revealing an underlying systemic problem

[1.] The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

[2.] Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

[3.] Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") must remain the essential reference point for the protection of human rights in Europe and recalling its commitment to take measures in order to guarantee the long term effectiveness of the control system instituted by the Convention;

[4.] Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

[5.] Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all State Parties;

[6.] Recalling that, according to Article 46 of the Convention, the High Contracting Parties undertake to abide by the final judgments of the Court in any case to which they are parties and the final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution;

[7.] Emphasising the interest in helping the State concerned to identify the underlying problems and the necessary execution measures;

[8.] Considering that the execution of judgments would be facilitated if the existence of a systemic problem is already identified in the judgment of the Court;

[9.] Bearing in mind the Court's own submission on this matter to the Committee of Ministers session on 7 November 2002;

INVITES the Court to:

- as far as possible, identify in its judgments finding a violation of the Convention what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist States

in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments;

- specially notify any judgment containing indications on the existence of a systemic problem and on the source of this problem not only to the State concerned and to the Committee of Ministers, but also to the Parliamentary Assembly, to the Secretary General and to the Commissioner for Human Rights, and to highlight such judgments in an appropriate manner in the data-base of the Court.

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Appendix VII

Calendar of meetings of the CDDH and bodies answerable to it

As adopted by the CDDH at its 55th meeting
(17-20 June 2003, CDDH(2003)018, Appendix VIII)

The precise dates of the meetings of the DH-PR
and its Working Group
as clarified by the DH-PR
at its current meeting appear in bold

- 54th DH-PR	10 - 12 September 2003
- 10th DH-S-AC	17 - 19 September 2003
- 64th CDDH-BU (Paris)	25 - 26 September 2003
- 1st CDDH-GDR	6 - 8 October 2003
- 1st GT-DH-SOC	16 - 17 October 2003
- 31st DH-DEV	29 - 31 October 2003
113th Session of the Committee of Ministers (Chisinau – Moldova)	*5-6 November 2003*
- 2nd CDDH-GDR	5 - 7 November 2003
- 56th CDDH	18 - 21 November 2003
- [**GT-DH-PR**	~~10 11 December 2003~~ **11 - 12 December 2003]**
- ~~DH-S-TER~~ (2nd semester 2004)	~~10 - 12 December 2003~~
- 3rd CDDH-GDR	17 - 19 December 2003
- [**GT-DH-PR**	**20 - 21 January 2004]**
- [GT-GDR]	[22 - 23 January 2004]
- 65th CDDH-BU (Paris)	5 - 6 February 2004
- 55th DH-PR	~~11 - 13 February 2004~~ **18 – 21 February 2004**
- NGO Consultation meeting	25 February 2004
- 4th CDDH-GDR	25 - 27 February 2004

- [GT-GDR]	[4 - 5 March 2004]
- 66th CDDH-BU (Paris)	11 - 12 March 2004
- 5th CDDH-GDR	24 - 26 March 2004
- 57th CDDH	5 - 8 April 2004
[114th Session of the Committee of Ministers]	*[May 2004]*
67th CDDH-BU (Paris)	5 - 6 May 2004
58th CDDH	15 - 18 June 2004

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