COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 26 February 2004
DH-PR(2004)003

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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55th meeting, 18-20 February 2004

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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 55th meeting at Strasbourg, on 18-20 February 2004. 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 completed 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:

- The preliminary draft *Declaration of the Committee of Ministers "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels"* (Appendix III);

- The draft Recommendation of the Committee of Ministers to Member States on the improvement of domestic remedies with its draft appendix (Appendix IV);

- The draft Recommendation of the Committee of Ministers to Member States on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights with its draft appendix (Appendix V);

- The draft Recommendation of the Committee of Ministers to Member States on the European Convention on Human Rights in university education and professional training with its draft appendix (Appendix VI);

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

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Items 1 to 4: Opening of the meeting and adoption of the agenda / Elaboration of the above-mentioned texts

3. The DH-PR congratulated its Working Group GT-DH-PR, presided by its Vice-Chair, Mr. Jiří MALENOVSKY (Czech Republic), for the draft texts prepared during its two meetings (11-12 December 2003, 20-21 January 2004, GT-DH-PR(2004)001). The texts at issue are the draft appendices to the two draft Recommendations prepared by the DH-PR in September 2003 and dealing with (i) the improvement of domestic remedies and (ii) the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights.

4. As regards the preliminary draft Declaration which will underline the interdependence of the different texts and give the general framework within which they lie, the DH-PR examined a draft elaborated by the Secretariat in the light of the

instructions given by the Bureau of the CDDH at its last meeting (5-6 February 2004). The DH-PR noted that the Declaration which the Ministers could adopt in May 2004 should be the reply to the Declaration adopted at the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000, reproduced in DH-PR(2004)002), which marked the 50th anniversary of the Convention. It was thus envisaged that the Declaration cover the three sections of the reform (national measures, reform of the Court, execution of judgments).

5. After having carried out its examination, the DH-PR adopted the preliminary draft Declaration "*Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels"* as reproduced in Appendix III. It noted that the Drafting group of the CDDH may propose any addition / changes to the text it may find appropriate and that it will be for the CDDH to decide at its meeting on 5-8 April 2004. By transmitting to the CDDH this text as well as those mentioned in paragraph 2, the DH-PR considered that it had completed the terms of reference received from the Steering Committee.

6. The DH-PR took note of a series of suggestions put forward by Amnesty International, in a letter dated 17 February 2004, which was given to all members, on the various texts prepared by the DH-PR and its Working Group. The DH-PR considered that the representative of Amnesty should present these suggestions at the next meeting of the CDDH (5-8 April 2004).

Item 5: Exchange of views on draft Protocol No. 14

7. The Chair of the DH-PR gave a brief overview of the state of the work of the CDDH-GDR on this issue.

Item 6: *Tour de table*

8. A brief exchange of views was held on the implementation of Recommendation Rec (2000)2 concerning the re-examination and re-opening of certain cases at the domestic level following judgments of the Court. The experts of Croatia and the Czech Republic informed that re-examination and re-opening will henceforth be possible in their legal systems for criminal proceedings.

9. As a result of lack of time, the DH-PR decided to postpone to its next meeting the other exchanges of views foreseen under this Item of its Agenda.

Item 7: Future work

10. The Secretariat was asked to prepare a document on future work in the light of the suggestions contained in the Agenda of this meeting and the discussions held during the last meeting of the Bureau of the CDDH (5-6 February 2004). This document will be sent to the members of the Committee for comments. It will then be submitted to the CDDH meeting in June 2004.

Item 8: Date of the next meeting

11. The 56th meeting of the DH-PR will be in Strasbourg on 8-10 September 2004.

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Appendix I

LIST OF PARTICIPANTS

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Appendix II

Agenda

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

Working documents

- Draft agenda — DH-PR(2004)OJ001
- Report of the 56th meeting of CDDH (18-21 November 2003) — CDDH(2003)026 (extracts)
- Report of the 54th meeting of DH-PR (10-12 September 2003) — DH-PR(2003)009

Item 2: Implementation of a number of proposals of Sections A and C of the final report of the CDDH "Preventing violations at national level and improving domestic remedies"

(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

- Interim Activity Report of the CDDH (21 November 2003) — CDDH(2003)026 Addendum
- 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
- Final Report containing proposals of the CDDH "Guaranteeing the long-term effectiveness of the European Court of Human Rights" — CDDH(2003)006

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

Working document

- Draft Recommendation prepared by the DH-PR and Draft Appendix prepared by its Working Group — GT-DH-PR(2004)001 Appendix II

(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

Working document

- Draft Recommendation prepared by the DH-PR and Draft Appendix prepared by its Working Group	GT-DH-PR(2004)001 Appendix III

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

Working document

- Draft Resolution prepared by the DH-PR	GT-DH-PR(2004)001 Appendix V

Item 3: The European Convention on Human Rights in professional training and university education

Working document

- Draft Recommendation and Appendix prepared by the DH-PR	GT-DH-PR(2004)001 Appendix IV

Item 4: Preparation of a Draft Declaration of the Committee of Ministers underlining the importance and the interdependence of the various texts (see above, items 2-3) and proving the general framework in which they lie

Working document

- Preliminary draft Declaration prepared by the Secretariat	DH-PR(2004)001

Item 5: [If time is available] : Exchange of views on draft Protocol No. 14

Working documents

- Report of the 3rd meeting of the CDDH-GDR (17-19 December 2003)	CDDH-GDR(2003)039
- Interim Activity Report of the CDDH (21 November 2003)	CDDH(2003)026 Addendum

Item 6: ***Tour de Table*** on the Implementation of Recommendation Rec(2002)13 on the publication and dissemination of the case-law of the European Court of Human Rights and of Resolution Res(2002)59 concerning the practice in respect of friendly settlements (texts reproduced in DH-PR(2003)003)

Working documents

- Texts of Recommendation Rec(2002)13 and of Resolution Rec(2002)59 DH-PR(2003)003

Item 7: **Future work** – Exchange of views on the possible follow-up to be given to the items still not dealt with after the 52nd meeting (11-13 September 2002):

(1) Issues relating to the election of judges of 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 judgments of the European Court of Human Rights; (ii) the replies of the Committee of Ministers to Parliamentary Assembly Recommendations 1477 (2000) and 1546 (2001) (execution of 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 the judgments of the Court).

Working document

Report of the 52nd meeting of the DH-PR (11-13 September 2002) DH-PR(2002)011, § 39

Item 8: **Date of the next meeting**

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Appendix III

Preliminary Draft Declaration of the Committee of Ministers

Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels

(elaborated by the DH-PR at its 55th meeting, 18-20 February 2004)

The Committee of Ministers,

[1.] Referring to the Declaration *The European Convention on Human Rights at 50 : what future for the protection of human rights in Europe ?* adopted by the European Ministerial Conference on Human Rights, held in Rome to commemorate the 50th anniversary of the Convention on 4 November 2000;

[2.] Reaffirming the central role that the Convention must continue to play as a constitutional instrument of European public order on which the democratic stability of the Continent depends;

[3.] Recalling that the Ministerial Conference Declaration emphasized that it falls in the first place to the Member States to ensure that human rights are respected, in full implementation of their international commitments;

[4.] Considering that it is indispensable that any reform of the Convention aimed at guaranteeing the long-term effectiveness of the European Court of Human Rights be accompanied by effective national measures by the legislature, the executive and the judiciary to ensure protection of Convention rights at the domestic level, in full conformity with the principle of subsidiarity and the obligations of Member States under Article 1 of the Convention;

[5.] Recalling that, according to Article 46, paragraph 1 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";

[6.] Recalling the various Recommendations it adopted to help Member States to fulfil their obligations:

- Recommendation Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights ;
- 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 ;
- Recommendation Rec(2004) … on the improvement of domestic remedies ;

- Recommendation Rec(2004) … on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights ;
- Recommendation Rec(2004) … on the European Convention on Human Rights in university education and professional training ;

[7.] Recalling that the following Resolutions were brought to the attention of the Court:

- Resolution Res(2002)58 on the publication and dissemination of the case-law of the European Court of Human Rights ;
- Resolution Res(2002)59 concerning the practice in respect of friendly settlements ;
- Resolution Res(2004) … on judgments revealing an underlying systemic problem ;

[8] Recalling that, in 2001, it adopted new Rules for the supervision of the execution of the Court's judgments under Article 46, paragraph 2 of the Convention, following the instructions given at the Ministerial Conference ;

[9.] Considering that the Ministerial Conference Declaration was the starting point for a determined initiative of Member States aimed at guaranteeing the long-term effectiveness of the Court so as to enable it to continue to protect human rights in Europe;

[10.] Welcoming the fact that the work which began immediately after the Conference has made it possible for the Committee of Ministers, at its 114th Session on 12-13 May 2004, to open for signature amending Protocol No. 14 to the Convention;

[11.] Considering that the reform introduced by the Protocol will preserve fully the principle of the right of individual application not as a theoretical or illusory right, but as a concrete and effective one, even in the context of steadily growing numbers of applications;

[12.] Considering, in particular, that the Protocol addresses the two main problems with which the Court is confronted, namely the filtering of the very numerous individual applications which reach it and the problem of the so-called repetitive cases;

[13.] Considering that [a new provision has been introduced by the Protocol to ensure respect for the Court's judgments and that] the Ministers' Deputies are developing their practices under Article 46, paragraph 2 of the Convention with a view to helping Member States to improve and accelerate the execution of the judgments, notably those revealing an underlying systemic problem;

[14.] Considering that these texts**,** measures and provisions are interdependent and that their implementation is indispensable for ensuring the effectiveness of the implementation of the Convention at national and European levels;

[15.] Paying tribute to the significant contribution to this work made by the Court, the Parliamentary Assembly and Commissioner for Human Rights, as well as by

representatives of national courts, national institutions for the promotion and protection of human rights and non-governmental organisations;

I. URGES Member States to:

- take all possible steps to sign and ratify Protocol No 14 as speedily as possible, with a view to its entry into force within two years of its opening for signature;

- to implement speedily and effectively the above-mentioned Recommendations;

II. ASKS the Ministers' Deputies to:

- pursue their efforts to improve and accelerate the execution of the Court's judgments, notably those revealing an underlying systemic problem;

- undertake a review, on a yearly basis, of the implementation of the above-mentioned Recommendations;

III. INVITES the Secretary General of the Council of Europe and the States concerned to take the necessary steps to disseminate appropriately, in the national language(s), this Declaration and the various instruments mentioned in it.

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Appendix IV

Draft Recommendation Rec(2004)…
of the Committee of Ministers to Member States
on the improvement of domestic remedies

(elaborated by the DH-PR at its 55th meeting, 18-20 February 2004)

[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.] Emphasizing 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 the obligation of ascertaining the existence of such effective remedies in the light of the case law of the European Court of Human Rights ("the Court"), States have the general obligation to solve the problems underlying violations found;

[8.] Emphasizing that it is for Member States to ensure that domestic remedies are effective in law and in practice, and that they can result in a decision on the merits of a complaint and adequate redress for any violation found;

[9.] Noting that the nature and the number of applications lodged with the Court and the judgments it delivers show that more than ever it is necessary, for the Member States, to ascertain efficiently and regularly that such remedies do exist

in all circumstances, in particular in cases of unreasonable length of judicial proceedings;

[10.] Considering that the availability of effective domestic remedies for all arguable claims of violation of the Convention should permit a reduction in 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 examination by the Court easier;

[11.] Emphasizing that the improvement of remedies at the national level, particularly in respect of repetitive cases, should also contribute to reducing the workload of the Court;

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

I. ascertain, through constant review, in the light of 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 can result in a decision on the merits of the complaint and adequate redress for any violation found;

II. review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies~~,~~ 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.

* * *

Draft Appendix

Introduction

1. The Ministerial Conference[1] held in Rome on 3-4 November 2000 to commemorate the 50th anniversary of the European Convention on Human Rights ("the Convention") emphasised that it is States who are primarily responsible for ensuring that the rights and freedoms laid down in the Convention are observed and that they must provide the legal instruments needed to prevent violations and, where necessary, to redress them. This necessitates, in particular, the setting-up of effective domestic remedies for all violations of the Convention, in accordance with its Article 13 [2]. The case-law of the European Court of Human Rights ("the Court")[3] has clarified the scope of this obligation which is incumbent on the Member States by indicating notably that:

- Article 13 guarantees the availability in domestic law of a remedy to secure the rights and freedoms as set forth by the Convention.

- This Article has the effect of requiring a remedy to deal with the substance of any "arguable claim" under the Convention and to grant appropriate redress. The scope of this obligation varies depending on the nature of the complaint. However, the remedy required must be "effective" in law as well as in practice.

- This notably requires that it be able to prevent the execution of measures which are contrary to the Convention and whose effects are potentially irreversible.

- The "authority" referred to in Article 13 does not necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy it provides is indeed effective.

- The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant; but it implies a certain minimum requirement of speediness.

2. In the recent past, the importance of having such remedies with regard to unreasonably long proceedings has been particularly emphasised[4], as this problem is at the origin of a great number of applications before the Court, though it is not the only problem.

3. The Court is confronted with an ever-increasing number of applications. This situation jeopardises the long-term effectiveness of the system and therefore calls for a

[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").
[2] Article 13 provides: *"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority"*. It is noted that this Appendix does not contain particular reference to the procedural guarantees resulting from substantive rights, such as Articles 2 and 3.
[3] See for instance, *Conka v. Belgium* judgment of 5 February 2002 (§§ 64 et seq.).
[4] *Kudla v. Poland* judgment of 26 October 2000.

strong reaction from Contracting Parties[5]. It is precisely within this context that the availability of effective domestic remedies becomes particularly important. The improvement of available domestic remedies will most probably have quantitative and qualitative effects on the workload of the Court:

- On the one hand, the volume of applications to be examined ought to be reduced: fewer applicants would feel compelled to come to Strasbourg if the examination of their complaints before the domestic authorities was sufficiently thorough.

- On the other hand, the examination of applications by the Court will be facilitated if an examination of the merits of cases has been carried out beforehand by a domestic authority, thanks to the improvement of domestic remedies.

4. This Recommendation therefore encourages States to examine their respective legal systems in the light of the case-law of the Court and to take, if need be, the necessary and appropriate measures to ensure, through legislation or case-law, effective remedies as secured by Article 13. The examination may take place regularly or following a judgment by the Court.

5. The governments of Member States might, initially, request that experts carry out a study of the effectiveness of existing domestic remedies in specific areas with a view to proposing improvements. National institutions for the promotion and protection of human rights, as well as non-governmental organisations, might also usefully participate in this work. The availability and effectiveness of domestic remedies should be kept under constant review, and in particular should be examined when drafting 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 laws, existing laws and administrative practice with the standards laid down in the Convention.

6. Within this framework, the considerations below might be taken into account.

The Convention as an integral part of the domestic legal order

7. A primary requirement for an effective remedy to exist is that the Convention rights be secured within the national legal system. In this context, it is a welcome development that the Convention has now become an integral part of the domestic legal orders of all State Parties. This development has improved the availability of effective remedies. It is further assisted by the fact that courts and executive authorities increasingly respect the case-law of the Court in the application of domestic law, and are conscious of their obligation to abide by judgments of the Court in cases directly concerning their State (cf Article 46 of the Convention). This tendency has been reinforced by the improvement, in accordance with Recommendation (2000)2[6], of the

[5] 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*".

[6] Recommendation Rec(2000)2 of the Committee of Ministers to Member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Right, adopted on 19 January 2000, at the 694th meeting of the Ministers' Deputies.

possibilities of having competent domestic authorities re-examine or reopen certain proceedings which have been the basis of violations established by the Court.

8. The improvement of domestic remedies also requires that additional action be taken so that, when applying national law, national authorities may take into account the requirements of the Convention and particularly those resulting from judgments of the Court concerning their State. This notably means improving the publication and dissemination of the Court's case-law (where necessary by translating it into the national language(s) of the State concerned) and the training, with regard to these requirements, of judges and other state officials. Thus, the present Recommendation is also closely linked to the two other Recommendations adopted by the Committee of Ministers in these areas[7].

Specific remedies and general remedy

9. Most domestic remedies for violations of the Convention have been set up with a targeted scope of application. If properly construed and implemented, experience shows that such systems of "specific remedies" can be very efficient and limit both the number of complaints to the Court and the number of cases requiring a time consuming examination.

10. Some states have also introduced a general remedy (for example before the Constitutional Court) which can be used to deal with complaints which cannot be dealt with through the specific remedies available. In some Member States, this general remedy may also be exercised before other legal remedies are exhausted. Some Member States add the requirement that the measure being challenged would grossly infringe constitutional rights and that a refusal to deal with the appeal would have serious and irreparable consequences for the appellant. It should be pointed out that States which have such a general remedy tend to have fewer cases before the Court.

11. This being said, it is for Member States to decide which system is most suited to ensuring the necessary protection of Convention rights, taking into consideration their constitutional traditions and particular circumstances.

12. Whatever the choice, present experience testifies that there are still shortcomings in many Member States concerning the availability and / or effectiveness of domestic remedies, and that consequently there is an increasing workload for the Court.

Remedies following a "pilot" judgment

13. When a judgment which points to structural or general deficiencies in national law or practice ("pilot case") has been delivered and a large number of applications to the Court concerning the same problem ("repetitive cases") are pending or likely to be

[7] Recommendation Rec(2002)13 of the Committee of Ministers to Member States 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 (adopted by on 18 December 2002 at the 822nd meeting of the Ministers' Deputies), as well as [the draft] Recommendation Rec(…)… of the Committee of Ministers on the European Convention on Human Rights in university education and professional training (adopted…).

lodged, the respondent State should ensure that potential applicants have, where appropriate, an effective remedy allowing them to apply to a competent national authority, which may also apply to current applicants. Such a rapid and effective remedy would enable them to obtain redress at national level, in line with the principle of subsidiarity of the Convention system.

14. The introduction of such a domestic remedy could also significantly reduce the Court's workload. While prompt execution of the pilot judgment remains essential for solving the structural problem and thus for preventing future applications on the same matter, there may exist a category of people who have already been affected by this problem prior to its resolution. The existence of a remedy aimed at providing redress at national level for this category of people might allow the Court to invite them to have recourse to the new remedy and, if appropriate, declare their applications inadmissible.

15. Several options with this objective are possible, depending, among other things, on the nature of the structural problem in question and on whether the person affected by this problem has applied to the Court or not.

16. In particular, further to a pilot judgment in which a specific structural problem has been found, one alternative might be to adopt an *ad hoc* approach, whereby the State concerned would assess the appropriateness of introducing a specific remedy or widening an existing remedy by legislation or by judicial interpretation.

17. Within the framework of this case-by-case examination, States might envisage, if this is deemed advisable, the possibility of reopening proceedings similar to those of a pilot case which has established a violation of the Convention, with a view to saving the Court from dealing with these cases and where appropriate to providing speedier redress for the person concerned. The criteria laid out in Recommendation (2000)2 of the Committee of Ministers might serve as a source of inspiration in this regard.

18. When specific remedies are set up following a pilot case, governments should speedily inform the Court so that it can take them into account in its treatment of subsequent repetitive cases.

19. However, it would not be necessary or appropriate to create new remedies, or give existing remedies a certain retroactive effect, following every case in which a Court judgment has identified a structural problem. In certain circumstances, it may be preferable to leave the cases to the examination of the Court, particularly to avoid compelling the applicant to bear the further burden of having once again to exhaust domestic remedies, which, moreover, would not be in place until the adoption of legislative changes.

<u>Remedies in case of an arguable claim of unreasonable length of proceedings</u>

20. The question of effective remedies is particularly topical in cases involving allegations of unreasonable length of proceedings, which account for a large number of applications to the Court. Thus the Court has emphasised in the Kudla v. Poland judgment of 26 October 2000 that it is important to make sure there is an effective remedy in such cases, as required by Article 13 of the Convention. Following the impetus given by the Court in this judgment, several solutions have been put forward by

Member States in order to provide effective remedies allowing violations to be found and adequate redress to be provided in this field.

- *Reasonable length of proceedings*

21. In their national law, many Member States provide, by various means (maximum lengths, possibility of asking for proceedings to be speeded up) that proceedings remain of reasonable length. In certain Member States, a maximum length is specified for each stage in criminal, civil and administrative proceedings. The integration of the Convention into the domestic legal systems of Member States, particularly the requirement of trial within a reasonable time, as provided for in Article 6, has reinforced and completed these national law requirements.

- *Preventing delays, accelerating proceedings*

22. If time limits in judicial proceedings – particularly in criminal proceedings– are not respected or if the length of proceedings is considered unreasonable, the national law of many Member States provides that the person concerned may file a request to accelerate the procedure. If this request is accepted, it may result in a decision fixing a time limit within which the court – or the prosecutor, depending on the case, has to take specific procedural measures, such as closing the investigation or setting a date for the trial. In some Member States, courts may decide that the procedure has to be finished before a certain date. Where a general remedy exists before a constitutional court, the complaint may be submitted**,** under certain circumstances, even before the exhaustion of other domestic remedies.

- *Different forms of redress*

23. In most Member States, there are procedures providing for redress for unreasonable delays in proceedings, whether ongoing or concluded. A form of redress which is commonly used, especially in cases already concluded, is that of financial compensation. In certain cases, the failure by the responsible authority to issue a decision within the specified time-limit means that the application shall be deemed to have been granted. Where the criminal proceedings have exceeded a reasonable time, this may result in a more lenient sentence being imposed.

<u>Possible assistance for the setting up effective remedies</u>

24. 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 might take the form, for instance, of surveys carried out by expert consultants on available domestic remedies.

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Appendix V

Draft Recommendation Rec(2004)…
of the Committee of Ministers to Member States
on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights

(elaborated by the DH-PR at its 55th meeting, 18-20 February 2004)

[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 and noting in this respect the important role played by national courts;

[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 be made by Member States to give full effect to the Convention, in particular through a continuous adaptation of national standards in accordance with those of the Convention, in the light of the case-law of the Court;

[8.] Convinced that verifying the compatibility of draft laws, existing laws and administrative practice with the Convention is necessary to contribute to prevent human-rights violations and to limit 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 and non-governmental organisations;

[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 laws and administrative practice, including as expressed in regulations, orders and circulars;

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

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.

Draft Appendix

Introduction

1. Notwithstanding the reform, 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 European Court of Human Rights ("the Court") is increasing steadily, giving rise to considerable delays in the processing of cases.

2. This development reflects a greater ease of access to the European Court, as well as the constantly improving human rights protection in Europe, but it should not be forgotten that it is the Parties to the Convention, which, in accordance with the principle of subsidiarity, remain the prime guarantors of the rights laid down in the Convention. 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 guaranteed in the Convention should be ensured. This requirement concerns all State authorities, in particular the courts, the administration and the legislature.

3. The prerequisite for the Convention to protect human rights in Europe effectively is that States give effect to the Convention in their legal orders, in the light of the case-law of the Court. This implies, notably, that they should ensure that laws and administrative practice conform to it.

4. The Recommendation encourages States to set up mechanisms allowing for the verification of compatibility with the Convention of both draft laws and existing legislation, as well as administrative practice. Examples of good practice are set out below. The implementation of the Recommendation should contribute to the prevention of human rights violations in the Member States, and consequently help to restrain the influx of cases reaching the Court.

Verification of the compatibility of draft laws

5. It is recommended that Member States establish systematic verification of the compatibility with the Convention of draft laws, especially those which may affect the rights and freedoms protected by it. It is a crucial point: by adopting a law verified as being in conformity with the Convention, the State reduces the risk that a violation of the Convention has its origin in that law and that the Court will find such a violation**.** Moreover, the State thus imposes on its administration a framework in line with the Convention for the actions it undertakes vis-à-vis everyone within its jurisdiction.

6. Council of Europe assistance in carrying out this verification may be envisaged in certain cases. Such assistance is already available, particularly in respect of draft laws on freedom of religion, conscientious objection, freedom of information, freedom of association, etc. It is nonetheless for each State to decide whether or not to take into account the conclusions reached within this framework.

Verification of compatibility of laws in force

7. Verification of compatibility should also be carried out, where appropriate, with respect to laws in force. The evolving case-law of the Court may indeed have repercussions for a law which was initially compatible with the Convention or which had not been the subject of a compatibility check prior to adoption.

8. Such verification proves particularly important in respect of laws touching upon areas where experience shows that there is a particular risk of human rights violations, such as police activities, criminal proceedings, conditions of detention, rights of aliens, etc.

Verification of the compatibility of administrative practice

9. This Recommendation also covers, wherever necessary, the compatibility with the Convention of regulations issued by the administration, and therefore aims at ensuring that it respects human rights in its daily practice. It is indeed essential that bodies, notably those with powers enabling them to restrict the exercise of human rights**,** have all the necessary resources to ensure that their activity is compatible with the Convention.

10. It has to be made clear that the Recommendation also covers administrative practice which is not attached to the text of a regulation. It is of utmost importance that States ensure verification of their compatibility with the Convention.

Procedures allowing follow-up of the verification undertaken

11. 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 resulting from this kind of verification.

12. The Recommendation emphasises the need for Member States to act to achieve the objectives it sets down. Thus, after verification, Member States should, when necessary, promptly take the steps required to modify their laws and administrative practice in order to make them compatible with the Convention. In order to do so, and where this proves necessary, they should improve or set up appropriate revision mechanisms which should systematically and promptly be used when a national provision is found to be incompatible. However, it should be pointed out that often it is enough to proceed to changes in case law and practice in order to ensure this compatibility. In certain Member States compatibility may be ensured through the non-application of the offending legislative measures.

13. This capacity for adaptation should be facilitated and encouraged, particularly through the rapid and efficient dissemination of the judgments of the Court to all the authorities concerned with the violation in question, and appropriate training of the decision-takers. The Committee of Ministers has devoted two specific Recommendations to these important aspects: one on the publication and the dissemination in the Member States of text of the Convention and the case-law of the Court (Rec (2002)13) and the other on the Convention in university education and professional training (Rec(2004)…).

14. When a court finds that it does not have the power to ensure the necessary adaptation because of the wording of the law at stake, certain States provide for an accelerated legislative procedure.

15. Within the framework of all that precedes, the considerations below could be taken into account.

Examples of good practice

16. Each Member State is invited to give information as to its practice and its evolution, notably by informing the General Secretariat of the Council of Europe. The latter will, in turn, periodically inform all Member States of existing good practice.

I. Publication, translation, dissemination and training on the human rights protection system

17. As a preliminary remark, one should recall that effective verification demands first appropriate publication and dissemination at the national level, in particular

through electronic means**,** in the language(s) of the Country, of the Convention and the relevant case-law of the Court, and the development of university education and professional training programmes in human rights.

II. Verification of draft laws

18. Systematic supervision of draft laws is generally carried out both at the executive and at the parliamentary level, and independent bodies are also consulted.

- *By the executive*

19. In general, verification of conformity with the Convention and its Protocols starts within the Ministry which initiated the draft law. In addition, in some Member States special responsibility is entrusted to certain ministries or departments, for example, the Chancellery, the Ministry of Justice and/or the Ministry of Foreign Affairs, to verify such conformity. Some Member States entrust the Agent of the Government to the Court in Strasbourg, among other functions, with seeking to ensure that national laws are compatible with the provisions of the Convention. The Agent is therefore empowered, on this basis, to submit proposals for the amendment of existing laws or of any new legislation which is envisaged.

20. The national law of numerous Member States provides that when a draft text is forwarded to Parliament, it should be accompanied by an extensive explanatory memorandum, which must also indicate and set out possible questions under the Constitution and/or the Convention. In some Member States, it should be accompanied by a formal statement of compatibility with the Convention. In one Member State, the Minister responsible for the draft text has to certify that, in his or her view, 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 statement, but that he or she nevertheless wishes parliament to proceed with the bill.

- *By the Parliament*

21. In addition to verification by the executive, examination is also undertaken by the legal services of Parliament and/or its different parliamentary committees.

- *Other consultations*

22. Other consultations to ensure compatibility with human rights standards can be envisaged at various stages of the legislative process. In some cases, consultation is optional. In others, notably if the draft law is likely to affect fundamental rights, consultation of a specific institution, for example the *Conseil d'Etat* in some Member States, is compulsory as established by law. If the Government has not consulted when it should have, the text will be tainted by procedural irregularity. If after having consulted it decides not to follow the opinion received, it assumes the political and legal consequences that may result from such a decision.

23. Optional or compulsory consultation of non-judicial bodies competent in the field of human rights is also often foreseen**.** These may in particular be independent

national institutions for the promotion and protection of human rights, the Ombudsmen, or local or international non-governmental organisations, or the Bar, etc.

24. Council of Europe experts or bodies, notably the European Commission for Democracy through Law ("the Venice Commission"), may be asked to give an opinion on the compatibility with the Convention of draft laws relating to human rights**.** This request for an opinion does not replace an internal examination of compatibility with the Convention.

III. Verification of existing laws and administrative practice

25. While Member States cannot be asked to verify systematically all their existing laws, regulations and administrative practice, it may be necessary to engage in such an exercise, for example as a result of national experience in applying a law or regulation or following a new judgment by the Court against another Member State. In a case of a judgment that concerns it directly, by virtue of Article 46, the State is under the obligation to take the measures necessary to abide by it.

- *By the executive*

26. In some Member States, the ministry that initiates legislation is also responsible for verifying existing regulations and practices, which implies knowledge of the latest developments in the case-law of the Court. In other Member States**,** governmental agencies draw the attention of independent bodies, and particularly courts, to certain developments in the case-law**.** This aspect highlights the importance of initial education and continuous training with regard to the Convention system. The competent organs of the State have to ensure that those responsible in the local and central authorities take into account the Convention and the case-law of the Court to avoid violations**.**

- *By the Parliament*

27. Requests for verification of compatibility may be made within the framework of parliamentary debates.

- *By judicial institutions*

28. Verification may also take place within the framework of court proceedings brought by individuals with legal standing to act or even by state organs, persons or bodies not directly affected (for example before constitutional courts).

- *By independent non-judicial institutions*

29. In addition to their other roles when seized by the government or the Parliament, independent non-judicial institutions, and particularly national institutions for the promotion and protection of human rights and Ombudsmen, play an important role in the verification of how laws are applied (and, notably, the Convention which is part of national law). In some countries, these institutions may also**,** under certain conditions**,** consider individual complaints and initiate inquiries on their own accord. They strive to ensure that deficiencies in existing legislation are corrected, and may for this purpose send formal communications to the government or the Parliament.

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Appendix VI

Draft Recommendation Rec(2004)…
of the Committee of Ministers to Member States
on the European Convention on Human Rights
in university education and professional training

(elaborated by the DH-PR at its 55th meeting, 18-20 February 2004)

[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 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;

- 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.

Draft Appendix

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*".[8]

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.[9] The Committee of Ministers has already adopted Resolutions and Recommendations dealing with different aspects of this issue[10] 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

[8] European Ministerial Conference on Human Rights, H-Conf(2001)001, Resolution II, § 40.
[9] See Article 1 of the Convention.
[10] 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.

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 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.

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.

- *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, 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 shorter 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.

- *Professional training*

9. Professional training should facilitate a better incorporation of Convention standards and the Court's case-law in the reasoning adopted by domestic courts in 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, training for lawyers on the rules of procedure of the Court and the practice of litigations, as well as the execution of judgments. In certain countries, the Ministry of Justice has the task of raising awareness and participating in the training of judges on the case-law of the European Court: judges in post may take advantage of sessions of one or two days organised in their jurisdiction and of a traineeship of one week every year; "justice auditors" (student judges) are provided with training organised within the judges' national school ("école nationale de magistrature") Workshops are also organised on a regular basis in the framework of the initial and continuous training of judges.

11. Moreover, seminars and colloquies on the Convention could be regularly organised for judges, lawyers and prosecutors.

12. In addition, a journal on the case-law of the Court could be published regularly for judges and lawyers. In some Member States, the Ministry of Justice publishes a supplement containing references to the case law of the Court and issues relating to the Convention. This publication 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 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.

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.

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 VII

Draft Resolution Res(2004)…
of the Committee of Ministers
on judgments revealing an underlying systemic problem

(elaborated by the DH-PR at its 55th meeting, 18-20 February 2004)

[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 that the final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution;

[7.] Emphasizing 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 of the existence of a systemic problem and of 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 of the Council of Europe and to the Commissioner for Human Rights, and to highlight such judgments in an appropriate manner in the data-base of the Court.