



Strasbourg, 29 November 2005

DH-PR(2005)017prov.

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

REPORT

58th meeting

Strasbourg, 8-10 November 2005

Introduction

1. The Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) held its 58th meeting in Strasbourg, on 8-10 November 2005. The meeting was chaired by Ms Ingrid SIESS-SCHERZ (Austria). The list of participants appears in Appendix I. The agenda, as adopted, appears in Appendix II.
2. At this meeting, the DH-PR, in particular:
 - i. continued the work begun by its Working Group “A”, notably following adoption of Protocol No. 14 to the Convention, on possible additions/adjustments to the Rules adopted by the Committee of Ministers for the application of Article 46§2 of the Convention;
 - ii. adopted, as the basis for its future work, the draft Rules which appear in Appendix III;
 - iii. asked the CDDH to give it orientation on:
 - the choice of priorities in the control of execution – see the two alternatives presented in proposed Rule 3bis of the Rules;
 - the appropriateness to foresee in the Rules possibilities, at the Committee’s discretion and under its control, for the applicant to also address the issues relating to measures of a general character and for organisations of civil society to address all questions linked to execution;
 - the appropriateness to foresee a provision in the Rules regarding the CDDH’s proposal that the Parliamentary Assembly be more closely associated with the control of execution;
 - iv. forwarded the draft Rules to the CDDH, to the Secretariat of the Parliamentary Assembly and to the Registry of the Court for information and possible comments;
 - v. suggested that the CDDH proceed to the final examination of the draft Rules at its 62nd meeting (4-7 April 2006);
 - vi. examined the work done by its Working Group “B” concerning follow-up to the implementation of the five recommendations referred to in the Committee of Ministers Declaration “*Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels*”;
 - vii. adopted a progress rapport to be submitted to the CDDH for discussion, adoption and forwarding to the Ministers’ Deputies before 31 December 2005. It appears in the Addendum.
 - viii. suggested to the CDDH to re-elect its Chair, Ms Ingrid SIESS-SCHERZ (Austria), for a one-year term of office, not renewable;
 - ix. decided to re-elect Mr. Vit SCHORM (Czech Republic) as Vice-Chair for a one-year term of office, not renewable;
 - x. asked the CDDH to authorize a supplementary meeting for its Working Group “A” and another one for its Working Group “B” in early 2006.

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

3. See introduction.

Item 2: Possible revision of the Rules adopted by the Committee of Ministers for the application of Article 46, §2 of the ECHR following the adoption of Protocol No. 14

4. The Chair of the DH-PR thanked Working Group “A” for its excellent work. The DH-PR decided to examine issues concerning the application of article 46, §2, ECHR following the adoption of Protocol No. 14 and issues regarding the rapid execution of judgments revealing a systemic problem in the light of the proposal for new Rules made by the Working Group (see document GT-DH-PR(2005)004).

5. The experts first considered the proposal regarding the *status of the State concerned in infringement proceedings* – Rule 9. After a lengthy discussion regarding the extent to which the referral decision should be motivated and represent all the views expressed within the Committee of Ministers and in particular those of the State concerned, the experts decided to propose that this decision should reflect only concisely the views of the State concerned, but that it would be for the Committee to decide in each case how far it wanted to go itself in submitting reasons for the referral decision. Most experts did not feel it necessary to deviate from current practices and allow the referral decision to reflect also possible divergent views of other members of the Committee. A number of experts referred, in addition, to the possibility that such States had to ask the Court to be allowed to present their views under Article 36 ECHR. Some experts considered, however, that it would be appropriate to allow such dissenting or concurring opinions to be included already in the referral decision.

6. The experts next considered the proposals regarding the *representation of the Committee of Ministers before the Court*. A difference was noted between the French and English texts of the proposals of Working Group “A”. The French text made it clear that it was the institution of the Chair, not the person, which represented the Committee before the Court, whereas this was not clear in the English version. The latter was therefore amended to reflect this position. Experts pointed out that they expected the Chair to appoint a person to represent it before the Court under his/her authority and that the Secretariat should provide assistance with advice and information on the basis of its unique experience of the execution process. The trouble with the rotation of the Chair was noted as this could cause serious problems and lead to incoherent pleadings and delays before the Court if it also resulted in a change of the actual representative of the Chair before the Court. Also the possible problems of conflicts of interest between the Committee and its Chair were noted, and in particular that which would result if the Chair was the State concerned by the infringement proceedings. Most experts found, however, that the possibility for the Committee to appoint someone else was enough to solve these problems.

7. As regards the *issue of majorities required*, the experts made certain minor clarifications in the text proposed by Working Group “A”. A discussion took place on the appropriateness of proposing that also the interim resolution giving formal notice be adopted with the 2/3 majority provided for in Protocol N° 14 for the referral decision, as this majority was more qualified than that provided for for interim resolutions by the Statute of the Council of Europe, i.e. in Article 20 (d). Some experts considered that in the absence of any reference to the required majority for formal notice in Protocol N° 14, there was no legal basis for the

Rules of Procedure to propose also the 2/3 majority required for the referral decision also for the formal notice resolution. The Committee of Ministers could not in Rules of Procedure amend the Statute of the Council of Europe. Most experts considered, however, that these arguments were not an obstacle to the DH-PR proposing the qualified majority to the Committee also for the formal notice resolution.

8. As regards the *possible involvement of the applicant and the representatives of civil society*, the DH-PR took note of a number of proposals presented by the AIRE Centre, Amnesty International and the European Human Rights Advocacy Centre.

- A lengthy discussion arose as to the *possibility of introducing a rule allowing applicants and their representatives and civil society in general to address the Committee of Ministers also with considerations regarding the issue of general measures*. A number of experts expressed sympathy for this proposal, whilst highlighting that a certain screening process was required. Other experts were doubtful and underlined that the question of general measures was indeed generally best reserved to the Committee's own examination, assisted by the Secretariat. It was noted, however, that even today applicants and civil society did play a certain role in the Committee's examination also of general measures. In the absence of a clear rule on the issue applicants and civil society instead submitted their comments to all delegations and the secretariat individually – a time consuming and burdensome procedure for all involved. In addition, certain governments accepted already under the present situation that the concerns of applicants and civil society, also on general issues, be brought formally before the Committee. The Secretariat indicated that the Department for execution of judgments of the Court regularly communicated relevant comments also on general measures to the Government concerned. Also requests that the information be included in the material presented to the Committee were forwarded to the Government concerned with a view to establishing whether the comments were of such quality and nature so as to be presentable to the Committee. In the light of this situation the experts decided to examine the proposals more in depth and to refer this question to Working Group "A" in order for it to come forward with a proposal taking into account the need to ensure appropriate screening of such comments. Given the political nature of this aspect, the DH-PR however also decided to first ask the CDDH for guidance on the issue.
- The proposals to *associate the applicants more with the interpretation and infringement proceedings* were also examined. It was noted that it was constant practice to communicate all resolutions, whether interim or others to the applicants so that there was no need to introduce a special rule to this same effect in the rules. As regards the need to associate applicants in the process leading up to the requests, it was noted that applicants regularly received copies of government submissions regarding the question of payment of just satisfaction and individual measures and upon request also of submissions concerning general measures as soon as it was clear that such submissions were available to the public. Governments also received copies of all applicant submissions. The results of these exchanges of comments and observations were at the basis of the Department for execution control's presentation of the situation to the Deputies and for its proposals and advise to the Committee. The experts noted this situation and found it unnecessary to go further into these questions in the rules. It was, however, noted that the interest of transparency militated in favour of making more publicly known the practices of handling of execution issues.

9. As regards the *question of priorities in the supervision of judgments revealing systemic problems*, the experts noted the proposal of Working Group “A” to specifically highlight those judgments in which the Court had indicated the existence of a systemic problem pursuant to Resolution (2004)3. Certain experts questioned whether it was not somewhat reductive to highlight only this particular group of judgments revealing systemic problems. It was noted that there were no direct links between these “pilot” judgments and the importance of the systemic problems involved, whether from the perspective of the hardships the systemic problem could represent for the persons concerned or of the number of clone cases involved. In reply other experts indicated that this proposal was aimed at an easily identifiable group of cases which undoubtedly deserved priority. In addition, it was a follow-up to Resolution (2004)3 as it encouraged the Court to respond to that resolution. As a compromise one delegation proposed that the text be amended so as to better reflect all the above concerns. The experts decided to submit to the CDDH both the original Working Group “A” text (Alternative 1) and the compromise text (Alternative 2) suggested as a result of the debate. They thus asked the CDDH to provide it guidance with respect to these alternative texts.

Still missing 2 paragraphs: role of the PA/ execution measures

Item 3: Follow-up to the Recommendations adopted at the 114th Session of the Committee of Ministers (12-13 May 2004) concerning the implementation of the ECHR at national level

10. The Chair of the DH-PR thanked Working Group “B” for its excellent work. The DH-PR decided to examine issues concerning the follow-up to the implementation of the five recommendations¹ along the lines of the draft progress report to be transmitted to the CDDH for discussion, adoption and forwarding to the Ministers’ Deputies.

11. It firstly took note that on 21 September 2005, the Ministers’ Deputies urged Member States to submit information on the implementation of the five recommendations, thus highlighting the importance they attach to the national aspect of the reform. It also took note that, on the same occasion, the Ministers’ Deputies clarified the *terms of reference* assigned to the CDDH in this regard. Requesting the CDDH it to submit another progress report before the end of 2005, the Ministers’ Deputies indeed invited it “*to make every effort (...) to provide clear and concise information on the state of implementation of the recommendations in each member state including any lacunae*”.² In this regard, the DH-PR reiterated that even though lacunae were to be highlighted, follow-up was not to be viewed as a “monitoring”

¹ Committee of Ministers’ Recommendations:

- Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;
- 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;
- Rec(2004)4 on the European Convention on Human Rights in university education and professional training; Rec(2004)5 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;
- Rec(2004)6 on the improvement of domestic remedies.

² See paragraph 4 of the Ministers’ Deputies’ Decision CM(2005)115 Addendum, CM/Notes/936/4.4, GR-H(2005)CB6 (21 September 2005, 938th meeting) which is reproduced in [Appendix I](#).

exercise. Best practices and shortcomings were to be collected with a view to compare national experiences and draw the necessary technical conclusions on the concrete implementation of the recommendations.

12. The DH-PR then observed that, as far as *collection of information* was concerned, progress had been made. Indeed, Member States responded to the Vice-Chair of the CDDH and the Chair of the DH-PR's appeal to provide up-dated information on the various national measures that had been or could be taken to follow-up the implementation of the recommendations.³ During the DH-PR meeting delegations were also in a position to deliver the necessary information. Thus, it was observed that by mid November practically all Member States had provided information concerning the implementation of the two oldest recommendations. The deadline of 25 November 2005 was recalled to encourage States, that had not yet done so, to submit the requisite information concerning the three 2004 recommendations.

13. The DH-PR exchanged views on the need to give a higher profile to the follow-up process of the recommendations. It was suggested that this could notably be done by facilitating access to the "*reform of the Court*" section of the Council of Europe website. This section, which already contains the basic texts concerning the reform (Protocol No 14 to the ECHR and the five recommendations) could be further fleshed out with other documents concerning implementation of the national aspect of the reform. It was agreed that any relevant documents should be put online on the site whenever the DH-PR deemed it appropriate.

14. The DH-PR welcomed the decision of Working Group "B" to appoint, for each recommendation, an expert serving as a main contact person ("*rapporteur*") for the Secretariat and agreed that the *rapporteurs* had the following triple mission:

- to guide and help the Secretariat in collecting information. The *rapporteur* and his/her Secretariat will decide what additional information should be requested from all or some Member States with a view to establishing the most complete overview possible. To this end, in addition to the possible sending of circular letters prepared by the Secretariat, the *rapporteur* may informally contact, directly or through the Secretariat, colleagues from the DH-PR and/or the CDDH;
- to examine the draft text prepared by the Secretariat of the part of the progress report concerning the implementation of the recommendation he/she is responsible for;
- to present to Working Group "B" and the DH-PR, the state of progress of the follow-up of the implementation of the recommendation he/she is responsible for and answer, with his/her Secretariat, to any possible question on this issue.

15. As to the *analysis of the information collected*, the DH-PR agreed that to present an overall picture of the implementation of each recommendation, the bulk of information collected had to be presented in a concise and readable manner. It was thus agreed to prepare a follow-up sheet on the implementation of each recommendation and that this would have three sections: state of the implementation of the recommendation; assessment by the CDDH of the received information; suggestions by the CDDH. It was also considered important that tables be appended to each follow-up sheet to include succinct information (good practices

³ See paragraph 5 and 8 of the Addendum for details and references concerning the documents compiling the information received.

and/or lacunae) on the implementation of the various crucial aspects of each recommendation by each Member State.

16. Given the political weight placed on the implementation of the five recommendations, it was also reiterated that it was essential that each recommendation be disseminated at the national level among the relevant authorities. It was however noted that it was difficult to assess whether the recommendations were effectively disseminated. Difficulties lay particularly in understanding the practical meaning of dissemination. However, it was noted that in the majority of Council of Europe Member States the first step for an effective dissemination was translation of the recommendation in the national language(s). It was therefore highlighted that, where necessary⁴, each recommendation should be translated into Member States' national language(s) to increase their accessibility.⁵

17. As to *progress on follow-up to the implementation of each recommendation*, the DH-PR took note that Working Group "B" had held a general discussion on each of the five recommendations during its 1st meeting (21-23 September 2005, document GT-DH-PR B(2005)008, §§23-49) and had started to particularly focused on the two oldest recommendations (Rec(2000)2 and Rec(2002)13) during its 1st and 2nd meetings (21-23 September and 7 November 2005). It also took note that it planned to complete the examination of these two recommendations at its 3rd meeting (14-16 December 2005). As to the detailed analysis of recommendations Rec(2004)4 and Rec(2004)5 and Rec(2004)6, this would start during the December meeting and would continue during the January one. It was however observed that only two more meetings would probably not be enough to thoroughly undertake such detailed examinations. The DH-PR therefore decided to ask the CDDH to hold an additional meeting (see § 21 below).

18. Details concerning the examination of the various recommendations appear in part II of the Addendum. It was however decided to highlight the following considerations also in this report.

- As to **Recommendation Rec(2000)2** on re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, the progress report contains a provisional table summarising the information collected so far with regard to each Member State.⁶ The DH-PR noted that the fact that some States could not present concrete examples of re-examination, in the absence of relevant Court judgments, did not mean that it would be impossible to re-examine a case if the situation occurred. It was also not excluded to indicate examples of re-examination following positions or decisions taken within other international bodies, for example in the framework of the United Nations. Finally, the Department for the Execution of Judgments offered to assist experts in identifying examples of reopening of judicial proceedings before the 3rd meeting of Working Group B (14-16 December 2005).

⁴ Translation is necessary with regard to those Member States (a majority) where the dissemination of the texts in French or in English would not be sufficient as neither of these two languages would be understood by the targeted professionals.

⁵ A general overview of the status of translations and dissemination of the recommendations appears in Appendix VI of the Addendum.

⁶ See Appendix IV of the Addendum.

- As to **Recommendation Rec(2002)13** on 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, the progress report contains the structure of the follow-up sheet which will be completed for the final activity report. It also contains a provisional table summarising the information collected so far with regard to each Member State.⁷ During discussions on this recommendation by the DH-PR, one delegation highlighted a concrete shortcoming in the understanding and thus implementation of this recommendation and the need, at a later stage, to exchange views on any possible suggestions to solve such a problem. In the State concerned, two official translations of the ECHR coexisted along side three non official ones. This situation inevitably led to problems of interpretation of the ECHR by national courts. It was suggested that such problems should be pointed out when submitting information on this recommendation.
- As to **Recommendation Rec(2004)4** on the European Convention on Human Rights in university education and professional training, on the basis of information received to date, it was noted that most Member States had focused on university education. Since the recommendation concerns both university education and professional training, it was reiterated that it was crucial to have information on both aspects to have a complete overview of the situation in each Member State. Consequently, Member States were invited to indicate good practices in both areas.
- As to **Recommendation Rec(2004)5** 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, it was noted that the main source of information had been replies to a questionnaire concerning the compatibility of draft laws, which had been sent to Member States when the recommendation was being prepared. Subsequently, information was received on the two other aspects of the recommendation, namely the compatibility of existing laws and administrative practice, but such information was incomplete. Consequently, Member States were invited to submit information on all three aspects.
- As to **Recommendation Rec(2004)6** on the improvement of domestic remedies, it was noted that the information available was very unequal: very little information was provided to explain how States ascertain the existence of effective remedies to deal with any arguable complaint of a violation of the ECHR (first operative paragraph); some information described measures adopted to avoid repetitive cases following Court judgments which indicated structural or general deficiencies in their national law or practice (second operative paragraph); most information concerned examples of good practice to ensure the effectiveness of specific remedies with regard to unreasonable length of proceedings (third operative paragraph). Consequently, Member States were invited to submit information on all operative paragraphs of the recommendation.

19. In general, at this stage of the exercise, the DH-PR noted that many States had already engaged in the process of implementing the recommendations as well as the consultation mechanisms at the national level to allow the collection of the requisite information for the follow-up. It nonetheless observed that it was necessary to have a more comprehensive

⁷ See Appendix V of the Addendum.

picture of the situation before engaging in analyses and suggestions. The DH-PR reiterated that Member States should provide information on the five recommendations, whatever the degree already attained of their implementation. This information should present both good practices and any observed lacunae. The DH-PR also noted that the data contained in the various compilations should be of practical guidance to experts who have not yet submitted information on their country.

Item 4: Other business

20. The DH-PR suggested to the CDDH to re-elect its Chair, Ms Ingrid SIESS-SCHERZ (Austria), for a one-year term of office, not renewable. It decided to re-elect Mr. Vit SCHORM (Czech Republic) as Vice-Chair for a one-year term of office, not renewable.

21. Finally, the DH-PR noted the following calendar of meetings, being understood that it asked the CDDH to authorize a supplementary meeting for its Working Group "A" and another one for its Working Group "B" in early 2006:

- 3rd GT-DH-PR "B": 14-16 December 2005
- 4th GT-DH-PR "B": [25-27 January 2006]
- [4th GT-DH-PR "A": 1-3 February 2006]
- [5th GT-DH-PR "B": 22-24 February 2006]
- 59th DH-PR: 7-10 March 2006
- 71st CDDH-BU: 23-24 March 2006
- 62nd CDDH: 18-21 April 2006

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Appendix I

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Interpreters/Interprètes

Mme Katia DI STEFANO
Mme Monique PALMIER
Mr Christopher TYCZKA

Appendix II**Agenda****Item 1: Opening of the meeting and adoption of the agenda**Working documents

- Draft agenda DH-PR(2005)OJ002
- Report of the 70th meeting of the Bureau CDDH (27-28 October 2005) CDDH-BU(2005)002
- Report of the 60th meeting of the CDDH (14-17 June 2005) CDDH(2005)009
- Progress report "Reform of the ECHR" (17 June 2005) CDDH(2005)009Addendum
- Report of the 57th meeting of the DH-PR (26-29 April 2005) DH-PR(2005)010
- Ad hoc terms of reference assigned to the CDDH concerning the reform of the ECHR DH-PR(2005)013

Item 2: Possible revision of the Rules adopted by the Committee of Ministers for the application of Article 46 §2 of the ECHR following the adoption of Protocol No. 14Working documents

- Draft Rules adopted by the Committee of Ministers for the application of Article 46 §2 of the ECHR GT-DH-PR-A(2005)004
- Progress report "Reform of the ECHR" (17 June 2005, §§6 – 37) CDDH(2005)009Addendum
- Report of the 2nd meeting of the GT-DH-PR A (23-25 May 2005, §§3-23) GT-DH-PR(2005)003
- Report of the 57th meeting of the DH-PR (26-29 April 2005, §§4-34) DH-PR(2005)010
- Ad hoc terms of reference assigned to the CDDH concerning the reform of the ECHR (items a. and d.) DH-PR(2005)013

Item 3: Follow-up to the Recommendations adopted at the 114th Session of the Committee of Ministers (12-13 May 2004) concerning the implementation of the ECHR at national levelWorking documents

- Texts of the Recommendations mentioned in the Declaration adopted at the 114th ministerial Session (12 May 2004) and their Explanatory Memoranda or Appendices DH-PR(2005)012
- Status of translations and dissemination of the five Recommendations DH-PR(2005)011rev

- Report of the 70th meeting of the Bureau CDDH (27-28 October 2005) CDDH-BU(2005)002
- Ad hoc terms of reference assigned to the CDDH concerning the reform of the ECHR DH-PR(2005)013

a) *Follow-up to the Recommendations*

(i) Recommendation Rec(2000)2 - Re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights

Working documents

- Information received by the Secretariat as of 12 September 2005 DH-PR(2005)002rev
- Analysis of the information received by Member States GT-DH-PR-B(2005)002
- Information received after 12 September 2005 DH-PR(2005)014
- Report of the 1st meeting of GT-DH-PR-B (21-23 September 2005, §§24-27) GT-DH-PR-B(2005)008

(ii) Recommendation Rec(2002)13 - Publication and dissemination in the Member States of the text of the of the case-law of the European Court of Human Rights

Working documents

- Information received by the Secretariat as of 5 September 2005 DH-PR(2005)003rev
- Analysis of the information received by Member States GT-DH-PR-B(2005)003
- Information received after 5 September 2005 DH-PR(2005)014
- Report of the 1st meeting of GT-DH-PR-B (21-23 September 2005, §§28-35) GT-DH-PR-B(2005)008

(iii) Recommendation Rec(2004)4 - The ECHR in university education and professional training

Information documents

- Information received by the Secretariat as of 5 September 2005 DH-PR(2005)004rev
- Analysis of the information received by Member States GT-DH-PR-B(2005)004
- Information received after 5 September 2005 DH-PR(2005)014
- Report of the 1st meeting of GT-DH-PR-B (21-23 September 2005, §§36-41) GT-DH-PR-B(2005)008

(iv) Recommendation Rec(2004)5 - Verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the ECHR

Information documents

- Information received by the Secretariat as of 2 September 2005 DH-PR(2005)005rev
- Analysis of the information received by Member States GT-DH-PR-B(2005)005
- Information received after 2 September 2005 DH-PR(2005)014
- Report of the 1st meeting of GT-DH-PR-B (21-23 September 2005, §§42-45) GT-DH-PR-B(2005)008

(v) Recommendation Rec(2004)6 - Improvement of domestic remedies

Information documents

- Information received by the Secretariat as of 5 September 2005 DH-PR(2005)006rev
- Analysis of the information received by Member States GT-DH-PR-B(2005)006
- Information received after 5 September 2005 DH-PR(2005)014
- Report of the 1st meeting of GT-DH-PR-B (21-23 September 2005, §§46-49) GT-DH-PR-B(2005)008

b) Adoption of the draft progress report to be submitted to the CDDH

Working document

- Draft progress report prepared by the Secretariat DH-PR(2005)015

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Appendix III**Draft Rules of the Committee of Ministers for the supervision
of the execution of judgments and of the terms of friendly settlements**

(text emerging from the work of the DH-PR at its 58th meeting (8-10 November 2005))

I. GENERAL PROVISIONS*Rule 1*

1. The exercise of the powers of the Committee of Ministers under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the European Convention on Human Rights, is governed by the present Rules.
2. Unless otherwise provided in the present Rules, the general rules of procedure of the meetings of the Committee of Ministers and of the Ministers' Deputies shall apply when exercising these powers.

Rule 2

1. The Committee of Ministers' supervision of the execution of judgments and of the terms of friendly settlements shall in principle take place at special human rights meetings, the agenda of which is public.
2. If the chairmanship of the Committee of Ministers is held by the representative of a High Contracting Party which is a party to a case under examination, that representative shall relinquish the chairmanship during any discussion of that case.

Rule 3

When a judgment or a decision is transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, or Article 39, paragraph 4, of the Convention, the case shall be inscribed on the agenda of the Committee without delay.

[Rule 3 bis

1.

Alternative 1

The Committee of Ministers shall give priority to supervision of the execution of judgments in which the Court has identified what it considers a systemic problem in accordance with Resolution (2004)3 on judgments revealing an underlying systemic problem.

Alternative 2

The Committee of Ministers shall give priority to supervision of the execution of judgments revealing an underlying systemic problem, notably those in which the Court has identified what it considers a systemic problem in accordance with Resolution (2004)3 on judgments revealing an underlying systemic problem.

2. The priority given to cases under the first paragraph of this Rule shall not be to the detriment of the priority to be given to other important cases, notably cases where the violation established has caused grave consequences for the injured party.]

[*Rule 3 ter*

The Committee of Ministers shall adopt an annual report on its activities under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the Convention, which shall be made public and transmitted to the Court and to the Secretary General, the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe.]

II. SUPERVISION OF THE EXECUTION OF JUDGMENTS

Rule 4

Information to the Committee of Ministers on the measures taken in order to abide by the judgment

1. When, in a judgment transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention, the Court has decided that there has been a violation of the Convention or its protocols and/or has awarded just satisfaction to the injured party under Article 41 of the Convention, the Committee shall invite the High Contracting Party concerned to inform it of the measures which the High Contracting Party has taken in consequence of the judgment, having regard to its obligation to abide by it under Article 46, paragraph 1, of the Convention.

2. When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine whether:

- any just satisfaction awarded by the Court has been paid, including as the case may be, default interest;

and, if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether

- individual measures⁸ have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;

- general measures⁹ have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.

⁸ For instance, the striking out of an unjustified criminal conviction from the criminal records, the granting of a residence permit or the re-opening of impugned domestic proceedings (see on this latter point Recommendation No. R (2000) 2 of the Committee of Ministers to the member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19 January 2000 at the 694th meeting of the Ministers' Deputies).

*Rule 5***Control intervals**

1. Until the High Contracting Party concerned has provided information on the payment of the just satisfaction awarded by the Court or concerning possible individual measures, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, unless the Committee decides otherwise.
2. If the High Contracting Party concerned informs the Committee of Ministers that it is not yet in a position to inform the Committee that the general measures necessary to ensure compliance with the judgment have been taken, the case shall be placed again on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise; the same rule shall apply when this period expires and for each subsequent period.

*Rule 6¹⁰***Access to information**

Without prejudice to the confidential nature of the Committee of Ministers' deliberations, in accordance with Article 21 of the Statute of the Council of Europe, information provided by the High Contracting Party to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention and the documents relating thereto shall be accessible to the public, unless the Committee decides otherwise in order to protect legitimate public or private interests. In deciding such matters, the Committee of Ministers shall take into account reasoned requests by a High Contracting Party concerned by the information, made at the time when the information is submitted, as well as the interest of an injured party or a third party not to have their identity disclosed.

*Rule 7***Communications to the Committee of Ministers**

1. The Committee of Ministers shall be entitled to consider any communication from the injured party with regard to the payment of the just satisfaction or the taking of individual measures.
2. The Secretariat shall bring such communications to the attention of the Committee of Ministers.

⁹ For instance, legislative or regulatory amendments, changes of case law or administrative practice or publication of the Court's judgment in the language of the respondent State and its dissemination to the authorities concerned.

¹⁰ Some members of the GT-DH-PR A considered that it might be valuable to make specific reference to the Parliamentary Assembly in this Rule and suggested that this be examined by the DH-PR.

*Rule 8***Referral to the Court for interpretation of a judgment**

1. When, in accordance with Article 46, paragraph 3, of the Convention, the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
2. A referral decision may be taken at any time during the Committee of Ministers' supervision of the execution of the judgments.
3. A referral decision shall take the form of an interim resolution. It shall be reasoned and reflect the different views within the Committee of Ministers, in particular that of the High Contracting Party concerned.
4. If need be, the Committee of Ministers shall be represented before the Court by its Chair, unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

*Rule 9***Infringement Proceedings**

1. When, in accordance with Article 46, paragraph 4, of the Convention, the Committee of Ministers considers that a High Contracting party refuses to abide by a final judgment to which it is party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation.
2. Infringement proceedings should be brought only in exceptional circumstances. They shall not be initiated unless formal notice of the Committee's intention to bring such proceedings has been given to the High Contracting Party concerned. Such formal notice shall be given ultimately six months before the lodging of proceedings, unless the Committee decides otherwise, and shall take the form of an interim resolution. This resolution shall be adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee.
3. The referral decision of the matter to the Court shall take the form of an interim resolution. It shall be reasoned and concisely reflect the views of the High Contracting Party concerned.
4. The Committee of Ministers shall be represented before the Court by its Chair unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

**III. SUPERVISION OF THE EXECUTION
OF THE TERMS OF FRIENDLY SETTLEMENTS***Rule 10***Information to the Committee of Ministers
on the execution of the terms of the friendly settlement**

1. When a decision is transmitted to the Committee of Ministers in accordance with Article 39, paragraph 4, of the Convention, the Committee shall invite the High Contracting Party concerned to inform it on the execution of the terms of the friendly settlement.
2. The Committee of Ministers shall examine whether the terms of the friendly settlement, as set out in the Court's decision, have been executed.

*Rule 11***Control intervals**

Until the High Contracting Party concerned has provided information on the execution of the terms of the friendly settlement as set out in the decision of the Court, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, or, where appropriate,¹¹ on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise.

*Rule 12***Access to information**

Without prejudice to the confidential nature of the Committee of Ministers' deliberations, in accordance with Article 21 of the Statute of the Council of Europe, information provided by the High Contracting Party to the Committee of Ministers in accordance with Article 39, paragraph 4, of the Convention and the documents relating thereto shall be accessible to the public, unless the Committee decides otherwise in order to protect legitimate public or private interests. In deciding such matters, the Committee of Ministers shall take into account reasoned requests by a High Contracting Party concerned by the information, made at the time when the information is submitted, as well as the interest of the applicant or a third party not to have their identity disclosed.

*Rule 13***Communications to the Committee of Ministers**

1. The Committee of Ministers shall be entitled to consider any communication from the applicant with regard to the execution of the terms of the friendly settlement.
2. The Secretariat shall bring such communications to the attention of the Committee of Ministers.

¹¹ In particular where the terms of the friendly settlement include undertakings which, by their nature, cannot be fulfilled within a short time span, such as the adoption of new legislation.

IV. RESOLUTIONS*Rule 14***Interim resolutions**

In the course of its supervision of the execution of a judgment or of the terms of a friendly settlement, the Committee of Ministers may adopt interim resolutions, notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution.

*Rule 15***Final resolution**

After having established that the High Contracting Party concerned has taken all the necessary measures to abide by the judgment or that the terms of the friendly settlement have been executed, the Committee of Ministers shall adopt a resolution concluding that its functions under Article 46, paragraph 2, or Article 39 paragraph 4, of the Convention have been exercised.

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Note : The DH-PR asked the CDDH to give orientation on

- the choice of priorities in the control of execution – see the two alternatives presented in proposed Rule 3bis of the Rules;
- the appropriateness to foresee in the Rules possibilities, at the Committee's discretion and under its control, for the applicant to also address the issues relating to measures of a general character and for organisations of civil society to address all questions linked to execution;
- the appropriateness to foresee a provision in the Rules regarding the CDDH's proposal that the Parliamentary Assembly be more closely associated with the control of execution.