Strasbourg, 18 March 2008

DH-PR(2008)001 Addendum

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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DRAFT ACTIVITY REPORT: Sustained action to ensure the effectiveness of the implementation of the ECHR at national and European levels

(as prepared by the DH-PR at its 63rd meeting (5-7 March 2008) for transmission to the CDDH)

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Introduction

1. In June 2006, following the Committee of Ministers' Declaration on "*Sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels*"[1] and the reports on which it was based,[2] the Ministers' Deputies assigned[3] new ad hoc terms of reference to the Steering Committee for Human Rights (CDDH) to continue work to ensure such effectiveness, by:

- drafting a Recommendation on efficient domestic capacity for rapid execution of the Court's judgments;
- developing practical proposals for the supervision of execution of judgments in situations of slow and negligent execution;
- following closely the Court's developing pilot judgment practice;
- continuing and deepening the review of the implementation of the five recommendations mentioned in the May 2004 Declaration.[4]

2. This report outlines progress achieved with regard to these four tasks as well as the possible next steps forward. In this regard, a time-table of meetings held and planned with a view to fulfilling the terms of reference has been included as well as a list of the main documents produced and/or used.[5]

3. As with previous similar terms of reference, the CDDH entrusted relevant work to its Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR). Work within the DH-PR was distributed as follows:

- execution matters to a newly established Working Group A;[6]
- discussions concerning pilot judgments to the DH-PR plenary;
- continued review of the implementation of the recommendations to former Working Group B.[7]

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[1] Declaration adopted by the Committee of Ministers on 19 May 2006 at its 116th Session (see document Dec-19.05.2006E).

[2] Reports by the CDDH and the Ministers' Deputies related to the implementation of the reform measures adopted by the Committee of Ministers at its 114th Session in May 2004 (see document CM(2006)39 and its Addendum).

[3] See Decision No. CM/867/14062006, adopted on 14 June 2006, reproduced in Appendix I to this report for ease of reference.

[4] *"Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels"*, Declaration adopted by the Committee of Ministers on 12 May 2004 at its 114th Session.

[5] See respectively, Appendices II and III to this report.

[6] Working Group A is composed of experts from Czech Republic, Finland, France (Chair), Italy, Latvia, Romania, the Russian Federation (Vice-Chair), Serbia and Spain. In addition experts from Belgium, Georgia, the Netherlands and Sweden also participated in all or some of the meetings. Moreover, as established by the terms of reference, this Group benefits from the participation of the following nine experts of supervision of the execution of judgments, appointed by the Ministers' Deputies on 25 October 2006 at their 978th meeting: Ms Suela Meneri (Albania), Ms Annette Weerth (Germany), Mr Ronan Gargan (Ireland), Mr Francesco Crisafulli (Italy), Ms Ragna Fidjestol (Norway), Mr Jakub Wołąsiewicz (Poland), Mr Måns Molander (Sweden), Ms Deniz Akçay (Turkey) and Ms Helen Mulvein (United Kingdom).

1. Recommendation on efficient domestic capacity for rapid execution of the Court's judgments

4. With a view to providing Group A with "food for thought", the DH-PR members were asked to send the Secretariat a short information note on the execution of judgments of the European Court of Human Rights at the national level, placing special emphasis on:

- how the execution process is monitored at the national level;
- the existence or not of a Department/official with central coordinating responsibility with regard to the execution of judgments of the European Court of Human Rights;
- the ways and means, if any, used to accelerate execution where necessary;
- any measures/organisational arrangements to be possibly referred to in the draft recommendation.

5. In total, 38 member states sent the requested information notes. These notes, which were compiled into a single document,[8] as well as avenues for reflection proposed by the Department for the Execution of Judgments,[9] were the starting point for in-depth discussions within Group A which resulted in the drafting of elements[10] that subsequently formed the basis for adoption of a draft recommendation.[11] This draft recommendation[12] was revised by the DH-PR in March 2007 and submitted to the CDDH in April 2007. According to the guidance given by the latter in October 2007, Group A finalised a draft recommendation, taking into account, by way of an additional preambular paragraph, the concerns expressed by the Parliamentary Assembly as regards the role of national parliaments. The revised text was adopted by the CDDH in November 2007 and subsequently submitted to the Ministers' Deputies who, at their 1017th meeting (6 February 2008), adopted Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of the Court's judgments.

2. Practical proposals for the supervision of execution of judgments in situations of slow and negligent execution

6. Group A began its examination of this issue, which was not new to the CDDH, whose Activity Report of April 2006 had already contained practical suggestions to the Ministers' Deputies to address situations of slow or negligent execution of judgments of the Court.[13] Discussions at the time had focused on the possible reasons for delays and

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[7] Working Group B is composed of experts from Cyprus, the Czech Republic (Chair), France, Germany, Latvia (Vice-Chair), Poland, Sweden, Switzerland and the United Kingdom. In addition experts from Finland and the Netherlands also participated in some of the meetings

[8] See document DH-PR(2006)007 rev Bil.

[9] See document GT-DH-PR A(2006)003.

[10] See document GT-DH-PR A(2007)002.

[11] See Appendix III, document GT-DH-PR A(2007)003.

[12] See Appendix III, document DH-PR(2007) 003.

[13] See Appendix IV, document CDDH(2006)008. The state of play with regard to the implementation of two of the practical proposals contained in this Appendix, i.e. the execution database and the vademecum on the execution process, was regularly presented to the DH-PR by the Department for the Execution of Judgments.

had therefore primarily addressed their prevention. The Group has thus subsequently concentrated on situations when prevention has failed and execution is slow or negligent.

7. The exchanges of views have resulted in identifying the following non-exhaustive list of areas for further work:

- identification of cases of slow or negligent execution of judgments, considering the use of a set of indicators to be further examined;
- access to information concerning the practice and standards of the Committee of Ministers concerning supervision of execution;
- consideration of ways in which different Council of Europe actors could assist the Committee of Ministers in helping member states to find solutions for speeding up the execution of judgments;
- early identification of measures to be taken to execute the judgments of the Court;
- optimisation of the Committee of Ministers Human Rights Meetings.

8. At its meeting in October 2007, Group A considered what could be possible indicators for identifying cases of slow or negligent execution. It concluded that it was first necessary to identify objective indicators to alert the Committee of Ministers to possible problems concerning the slow or negligent execution of a given judgment and that it would also be useful to have an inventory of tools already at the disposal of the Committee of Ministers to react to situations of slow or negligent execution. In this context, it welcomed the offer made by the Department for the Execution of Judgments to prepare two separate documents on these topics for Group A's next meeting in February 2008. It transpired, however, that due to an excessive workload and personnel shortages, the execution department was unable to produce these documents. These documents are now expected in June and September 2008; in which case, and assuming that the mandate of Group A is extended until the end of 2008, the DH-PR will resume its consideration of the issue.

3. Follow-up of the practice of the Court and the Committee of Ministers on so-called pilot judgments

9. During its meetings in November 2006 and October 2007, the DH-PR highlighted the following issues for future in-depth reflection:

- the need to have a clearer definition of pilot judgments;
- the need for a sharper characterisation of cases that lend themselves to being considered for pilot judgment procedure (possible role of the State in this regard);
- the need to reflect on the procedure of pilot judgments revealing a systemic problem (idea of prolonging time of proceedings before the Court, because of their complexity) and its effects on the execution of the case (i.e. freezing of similar cases reduces possibility of having a wider picture of the situation and hence of the measures required) and generally its impact on the State (retroactive effect: better to pay for the past or invest in the future?);
- the advantages/inconveniences of a possible solid legal framework for the pilot judgment procedure;

- the need to reflect on possible guidelines for the execution of pilot judgments at the Committee of Ministers level and/or suggestion envisaging a Committee of Ministers recommendation to member states setting out the criteria for implementation at the national level of pilot judgments.

10. [The CDDH shares the view of] the DH-PR [is of the view] that time is not ripe for considering the development of guidelines for member states on domestic remedies following pilot judgments. It feels that the on-going developments within the Court and the Committee of Ministers' practices should be further examined and thus decides to keep the item on its agenda.

4. Continued and deepened review of the implementation of the five recommendations

11. In its Declaration of May 2006, the Committee of Ministers requested that this review should focus on:[14]

- filling outstanding information gaps, particularly in three priority areas: improvement of domestic remedies, re-examination or reopening of cases following judgments of the Court, and verification of compatibility of draft laws, existing laws and administrative practice with the Convention;
- verification of the effectiveness of implementation measures, and
- obtaining a better assessment of the actual impact of implementation measures on the long term effectiveness of the Convention.

12. The DH-PR conferred this task on its Group B, which proceeded to request information from member states concerning the implementation of the recommendations. All member States had replied. Group B devoted its first three meetings to an analysis of this information, putting the emphasis on the identification of good practices likely to enable states to improve their implementation of the recommendations.

13. In order to obtain additional relevant information, all CDDH documents relating to the review were published on the Internet[15] and were also sent to national human rights institutions (NHRIs) and non-governmental organisations[16], as well as other Council of Europe bodies[17].

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[14] See the Declaration on sustained action to ensure the effectiveness of the implementation of the ECHR at national and European level, paragraphs X.(e)-(g) (adopted on by the Committee of Ministers on 19 May 2006 at its 116th Session).

[15] See http://www.coe.int/t/F/Droits_de_l%27Homme/ECHRReform_followup.asp#TopOfPage.

[16] Members of the DH-PR were invited to send to the Secretariat the contact details of any relevant national actor.

[17] Specific reference was made to: the Parliamentary Assembly, the Court and the Commissioner for Human Rights, the European Commission for the Efficiency of Justice (CEPEJ) and the European Commission for Democracy through Law ("Venice Commission").

14. The NHRIs and NGOs were invited to review the information provided by the State in which they were active and to share comments and views in this respect.[18] The quality of the contributions submitted was impressive, although they were very few in number.[19]

15. The DH-PR therefore put forward the idea that the Office of the Council of Europe Commissioner for Human Rights might procure further information via its network of contact persons in national human rights structures, established during 2007. This resulted in an extensive document that proved of great value to the work of DH-PR.

16. The involvement of other Council of Europe bodies has included the following:

- identification of tools which might help States to improve the implementation of the recommendations or their assessment: to this end, one could mention the report and attached tables prepared by the Venice Commission on the effectiveness of national remedies in respect of excessive length of proceedings;[20] the indicators established by CEPEJ to have concrete knowledge of judicial timeframes;[21] and the Parliamentary Assembly's working document on the effectiveness of the ECHR at national level;[22]
- examination of the impact of measures taken by States on the long-term effectiveness of the Convention: in this respect, the Registry of the Court has already pointed out that experience with countries where domestic remedies have been introduced or general legislative measures have been adopted demonstrates that these have indeed produced a positive impact on the workload of the Court, notwithstanding the increase in applications lodged with the Court in 2006. Unfortunately, such an impact may not be demonstrated[23] with exact figures due to deficiencies in the Court's statistical system, improvement of which is under consideration;
- assistance in promoting the recommendations and encouragement to implement them fully: in particular, the Commissioner for Human Rights has stressed his commitment to act to this effect during his country visits once the assessments by the CDDH are

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[18] The Secretariat sent a request by email during the summer 2006 (which is reproduced in the introduction of document DH-PR(2006)005Bil.) and the Chairperson of the DH-PR addressed a letter requesting comments by civil society in November 2006 (see Appendix III, DH-PR 60th meeting report, document DH-PR(2006)008). The requests were addressed to approximately 170 relevant actors.

[19] A total of 10 contributions were received from: Human Rights Defender of the Republic of Armenia; Danish Institute for Human Rights; Commission Nationale Consultative des Droits de l'Homme (France); Northern Ireland Human Rights Commission; Albanian Helsinki Committee; Kurdish Human Rights project; Legal Education Society (Azerbaijan); Czech Bar association; Unione Forense per la Tutela dei Diritti dell' Uomo (Italy); Bulgarian Lawyers for Human Rights. See document DH-PR(2006)005rev which is available on Internet at the webpage indicated above.

[20] All documents related to this report (Study 316/2004 22 Dec. 2006, document CDL-AD(2006)036) are available at http://www.venice.coe.int/docs/2006/CDL(2006)026-e.asp.

[21] See www.coe.int/CEPEJ.

[22] See doc. AS/Jur (2007) 35 rev 2, 26/7/07, Rapporteur Mrs Marie-Louise BEMELMANS-VIDEC.

[23] See the 7th meeting report of Group B for concrete examples (para 20, document GT-DH-PR B(2007)003).

completed (April 2008)[24] and through his enhanced co-operation with national human rights structures (ombudsmen and national human rights institutions)[25].

17. At the conclusion of its work, Group B prepared a "**review**" in respect of each priority recommendation, according to the following structure:

- a short introduction on the state of play of available information;
- an analysis on the assessment of the implementation of the recommendations, including a non-exhaustive list of examples of good practice;
- a conclusion on the impact of the measures taken on the long term effectiveness of the Convention.

18. The three rapporteurs presented their draft reviews to the Group B meeting held on 6-8 February 2008. The DH-PR examined them at its meeting on 5-7 March 2008 and subsequently transmitted to the CDDH with a view to their adoption at its meeting on 25-28 March 2008. They appear at Appendices IV, V and VI.

19. In submitting the adopted reviews to the CDDH, the DH-PR considered that it had discharged its mandate in this respect.

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[24] For more details, see Appendix IV of the 7th meeting report of Group B, document GT-DH-PR B(2007)003.

[25] See Background paper: Effective Protection of Human Rights in Europe: Enhanced Co-operation between Ombudsmen, National Human Rights Institutions and the Council of Europe Commissioner for Human Rights (doc. CommDH/Omb-NHRI(2007)1 Rev 1).

Appendix I

Decision No. CM/867/14062006

Ad hoc terms of reference of the Steering Committee for Human Rights (CDDH)

(adopted by the Ministers' Deputies at their 967th meeting on 14 June 2006)

1. Name of Committee: Steering Committee for Human Rights (CDDH)

2. Source: Committee of Ministers

3. Duration: These terms of reference shall expire on 30 April 2008. An interim report shall be submitted to the Deputies by 30 April 2007.

4. Terms of reference:

a. To draw up a draft recommendation to member states on efficient domestic capacity for rapid execution of the Court's judgments, in accordance with the guidance provided in the Deputies' report to the 116th Session of the Committee of Ministers (CM(2006)39 final).

b. To develop further practical proposals for the supervision of execution of judgments in situations of slow or negligent execution, for consideration by the Deputies in the context of their ongoing work on this issue.

c. To follow closely the developing practice of the Court and of the Ministers' Deputies on so-called pilot judgments and, as and when appropriate, consider developing proposals for guidelines for member states on domestic remedies following such judgments.

d. To continue the review of the implementation of the five recommendations mentioned in the May 2004 Declaration, in accordance with the Declaration adopted at the 116th Session and the guidance provided in the Deputies' report (CM(2006)39 final), with a view to obtaining a better assessment of the actual impact of implementation measures on the long-term effectiveness of the Convention.

e. To deepen this review by focusing henceforth on verification of the effectiveness of implementation measures and filling outstanding information gaps, particularly in three priority areas: improvement of domestic remedies, re-examination or reopening of cases following judgments of the Court, and verification of compatibility of draft laws, existing laws and administrative practice with the Convention.

5. Other bodies which may be involved in the work of the CDDH:

As to item a): Representatives of the Parliamentary Assembly shall be invited to be associated with this work.

As to item b): Up to 10 experts with practical experience of the Deputies' supervision of execution of judgments, to be designated at a forthcoming Human Rights meeting, shall be associated with this work.

As to item d): Other Council of Europe bodies, such as the Parliamentary Assembly, the Court and the Commissioner for Human Rights, the European Commission for the Efficiency of Justice (CEPEJ) and the European Commission for Democracy through Law ("Venice Commission") as well as non-governmental organisations and national human rights institutions shall be invited to be involved in the review process.

Appendix II

Timetable of meetings (held and planned)

2006

24-27 October:	*CDDH plenary*
9-10 November:	Group B
22-24 November:	DH-PR plenary
14-15 December:	Group A

2007

20-21 February:	Group B
7-9 March:	Group A
27 March:	Group B
28-30 March:	DH-PR plenary
10-13 April:	*CDDH plenary*
3-5 September:	Group A
6-7 September:	Group B
3-5 October:	DH-PR plenary
6-9 November:	*CDDH plenary*

2008

4-6 February:	Group A *(postponed)*
6-8 February:	Group B
5-7 March:	DH-PR plenary
25-28 March:	*CDDH plenary*
26-27 June:	Group A *(subject to mandate)*
25-26 September	Group A *(subject to mandate)*

Appendix II

Main working documents

Meeting reports:

Document	Reference
- **Group A** 1st , 2nd & 3rd meetings (14-15 Dec. 2006 & 7-9 March & 3-5 Sept. 2007)	GT-DH-PR A(2006)004, (2007)003 & 004
- **Group B** 6th, 7th, 8th, 9th & 10th meetings (9-10 Nov. 2006, 20-21 Feb, 27 March & 6-7 Sept. 2007 & 6-8 February 2008)	GT-DH-PR B(2006)008, (2007)003, 006 & 007 & (2008)005
- **DH-PR** 60th, 61st, 62nd & 63rd meetings (22-24 Nov. 2006, 28-30 March & 3-5 Oct. 2007 & 5-7 March 2008)	DH-PR(2006)008, (2007)003 & 004 & (2008)001
- Pilot judgments detailed discussion (during DH-PR 60th meeting)	DH-PR(2007)002
- **CDDH** 63rd, 64th & 65th meetings (24-27 Oct. 2006 & 10-13 April & 6-9 Nov. 2007 & 25-28 March 2008)	CDDH(2006)026, §§ 7-9, (2007)011, §§ 10-12 & 023, §§ 6-8 & (2008) …, §§ …

1) Concerning work carried out by GROUP A

a) for the draft recommendation on effective means at domestic level for the rapid execution of the Court's judgments

Document	Reference
- Draft recommendation on efficient domestic capacity for rapid execution of the Court's judgments adopted by Group A at its 2nd meeting, 7-9 March 2007	GT-DH-PR A(2007)003, Appendix III
- Elements prepared by the Secretariat for possible inclusion in the draft recommendation	GT-DH-PR A(2007)002
- Proposals for the draft recommendation submitted by some members/participants of Group A	GT-DH-PR A(2007)001 Bil
- Collection of information submitted by member states on the execution of judgments at national level	DH-PR(2006)007Bil rev
- Avenues for reflection on the effective means at domestic level for the rapid execution of the Court's judgments: Note from the Department for the Execution of Judgments of the Court	GT-DH-PR A(2006)003
- Parliamentary Assembly Resolution 1516(2006) and Recommendation 1764(2006) on "Implementation of judgments of the European Court of Human Rights" and the Jurgens' report, of 18 Sept. 2006, doc 11020	PACE Res 1516(2006) and Rec 1764(2006)
- Report by the Ministers' Deputies to the 116th Session of the CM (12 May 2006)	CM(2006)39 final

b) for the development of further practical proposals for the supervision of execution of judgments in situations of slow or negligent execution

Document	Reference
- Areas for further work identified by Group A at its 2nd meeting, 7-9 March 2007	GT-DH-PR A(2007)003, item 3, §§ 5-12
- Conclusions and reports of the Athens Round Table on "Implementing human rights and the rule of law in Europe: the co-operation between Ombudsmen, National Human Rights Institutions and the Council of Europe Commissioner for Human Rights", 12-13 April 2007	CM/AS(2007)Rec 1764

http://www.coe.int/t/commissioner/Activities/event_files/070412NHRIroundtable_en.asp

- Working methods for supervision of the execution of the European Court of Human Rights' judgments	CM/Inf/DH(2006)9 rev 3
- Report by the Ministers' Deputies to the 116th Session of the CM	CM(2006)39 final
- Practical suggestions from the CDDH to the Ministers' Deputies to address situations of slow or negligent execution of judgments of the European Court of Human Rights	CDDH(2006)008, Appendix IV
- Responses in the event of slow or negligent execution or non-execution of judgments of the European Court of Human Rights: Information document prepared by Directorate General II – Human Rights	CM(2003)37 rev 6

2) Concerning work on the developing practice of the Court and of the Ministers' Deputies on PILOT JUDGMENTS

- Information note prepared by the Registry of the Court

3) Concerning work carried out by GROUP B

a) With regard to all recommendations

- Replies to the new questionnaire received by the Secretariat	DH-PR(2006)004 rev Bil
- Comments/supplementary information received by the Secretariat	DH-PR(2006)005Bil
- Background paper: Effective Protection of Human Rights in Europe: Enhanced Co-operation between Ombudsmen, National Human Rights Institutions and the Council of Europe Commissioner for Human Rights	CommDH/Omb-NHRI(2007)1 Rev 3
- Information note on contributions expected from other Council of Europe bodies	DH-PR(2006)006
- Questionnaire on the implementation of the five recommendations follow-up (27 July 2006)	DH-PR(2006)002
- Report by the Ministers' Deputies to the 116th Session of the CM (12 May 2006)	CM(2006)39 final
- Working document: The effectiveness of the ECHR at national level (Rapporteur: Mrs Marie-Louise Bemelmans-Videc), 21 June 2007	AS/Jur (2007) 35 rev 2
- CDDH Activity report (7 April 2006)	CDDH(2006)008 + Addenda I - III

b) With specific regard to Recommendation Rec(2004)6 on improvement of domestic remedies

- Preliminary analysis of replies concerning Rec(2004)6	GT-DH-PR(2007)001 Bil
- Draft review of the implementation of Recommendation Rec(2004)6	GT-DH-PRB(2008)001rev
- Compendium of information contained in document CDDH(2006)008 Addenda II and III, replies to the Questionnaire of 27 July 2006 (document DH-PR(2006)002), additional replies by the states to questions posed by the Rapporteur in March 2007, as well as replies to the Questionnaire on execution of judgments of the European Court of Human Rights at the national level (Document DH-PR(2006)007rev Bil)	GT-DH-PR B(2008)004
- Study 316/2004 on the effectiveness of national measures in respect of excessive length of proceedings (22 Dec. 2006)	CDL-AD(2006)036
- Replies to the Questionnaire on excessive length of proceedings (15 Feb. 2007)	CDL(2006)026
- Report on length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights (8 Dec. 2006)	CEPEJ(2006)15

c) With specific regard to Recommendation Rec(2004)5 on verification of compatibility

- Preliminary analysis of replies concerning Rec(2004)5	GT-DH-PR(2007)002 Bil

-	Draft review of the implementation of Recommendation Rec(2004)5	GT-DH-PR B(2008)005 Annex III

d) With specific regard to Recommendation Rec(2000)2 on the re-examination or reopening of certain cases

-	Preliminary analysis of replies concerning Rec(2000)2	GT-DH-PR(2007)005Bil
-	Suggested revision of the summary table concerning Rec(2000)2 (document prepared by the Department for the Execution of Judgments of the Court)	GT-DH-PR B(2006)007
-	Draft review of the implementation of Recommendation Rec(2000)2	GT-DH-PR B(2008)005 Annex IV

Appendix IV

Draft review of the implementation of Recommendation (2004) 6 of the Committee of Ministers to the Member States on the improvement of domestic remedies

Rapporteur: Ms Inga Reine (Latvia)
Member of the Secretariat: Mr David Milner

I. INTRODUCTION ON THE STATE OF PLAY OF AVAILABLE INFORMATION

Member states have provided widely differing amounts of information concerning the state of implementation of the present Recommendation. While some chose to reply only on the original request to update information on the state of implementation of the recommendations (see DH-PR(2004)008), others took the opportunity also to respond to the follow-up questionnaire on the implementation of the five recommendations of 27 July 2006 (DH-PR(2006)002), whilst others have, in response to the requests by the Rapporteur and the Secretariat sent on 23 April 2007, also kindly sent additional information to clarify that submitted earlier. Other sources of information, such as that provided by member states concerning implementation of other recommendations examined by the DH-PR, as well as reports prepared by other Council of Europe bodies, have also been used as sources of inspiration, as well as to facilitate the understanding of information provided by member states during the present exercise.

In evaluating the state of implementation by the Council of Europe member states of the Recommendation Rec(2004)6, the DH-PR used information contained in documents from a variety of sources, including the Parliamentary Assembly, Venice Commission and the European Commission for the Efficiency of Justice (CEPEJ).

Despite several requests, the DH-PR has received only very limited information from non-governmental organisations concerning the state of implementation of the Recommendation in member states. As regards independent institutions (national human rights institutions, Ombudsperson-type institutions), a huge volume of information was submitted by many such bodies at the end of the review process through the Council of Europe Commissioner for Human Rights' network of contact persons. The Rapporteur wishes to record her gratitude to the Commissioner and his Office for their role and her appreciation of the considerable efforts made by the numerous independent institutions that contributed.

As of 5 February 2008, at least some information pertaining to implementation of Recommendation Rec(2004)6 was available with respect to all member states. Notwithstanding this fact, information with respect to a number of member states remains very limited, which leaves a negative impact on the quality of assessment of the respective national situation.

The DH-PR decided not to use a state-by-state approach in its analysis and conclusions, but rather to base its analysis and conclusions on the general trends apparent in the states' replies, highlighting some concrete examples of good practice.

Finally, it is important to note here that the DH-PR decided to structure its present analysis of the state of implementation of Recommendation Rec(2004)6 not on the basis of the questions posed in the previous questionnaires, but on that of the operative paragraphs of the recommendation itself.

II. EVALUATION OF THE IMPLEMENTATION OF THE RECOMMENDATION

Building on the experience and results of the first phase of the follow-up exercise, it was decided to seek information from member states that would allow the second phase review to analyse the situation in greater detail. As regards the existence and effectiveness of domestic remedies, this was above all done in relation to the institutional aspect of the situation in member States.

> *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;*

A large number of member states in their replies indicated that there are already mechanisms in place that have amongst their functions the task of verifying the existence and/or effectiveness of domestic remedies. Only one state (Greece) indicated that, following the adoption of Recommendation Rec(2004)6, it had set up a specific mechanism tasked with reviewing the existing law and practice to ensure that it provides for an effective domestic remedy. Other states in their replies either have clearly indicated that they do not foresee setting up a specific review mechanism, or did not touch upon this issue at all.

Analysis of the information received during the second phase confirms the tendency already identified in April 2006 (see CDDH(2006)008 Addendum I), namely that ascertaining whether domestic remedies exist for anyone with an arguable complaint of a violation of the Convention, as well as ascertaining that the existing remedies are effective, is generally performed during the legislative drafting process. Many states have highlighted the role of the constitutional and administrative review, as well as domestic individual complaints procedures. The responsibility for verifying whether domestic remedies exist and whether the existing remedies are effective is often shared between the Government, the Parliament, the judiciary, non-governmental organizations and independent institutions (national human rights institutions or Ombudsperson-type institutions). There is therefore a close link between the mechanism responsible for

verification of the existence and/or effectiveness of domestic remedies and the mechanism responsible for ensuring compatibility of domestic laws and practices with the standards laid down by the Convention.[26]

Undoubtedly, law-making is a complex process often involving many state and non-state actors. While keeping in mind the work done in analyzing the national practices in implementing Recommendation Rec(2004)5, the purpose of the present exercise has been more narrow, namely, to compile and analyse national practices for constant verifying whether the national law provides for a remedy in cases of possible violation of the Convention rights, as well as whether these remedies are effective within the meaning of Article 13 of the Convention. The latter exercise seems to be more difficult, as it requires a constant review of the Court's case-law with the aim of revising the legal regulation or the practice of existing national remedies. The DH-PR therefore checked how member states approach these issues. Do they establish a single institution that would have the task of following up the Court's case-law and analysing whether national laws provide for a remedy and whether the remedy is effective, and where exactly the mechanism is located within the national institutional structure (e.g., the legislator, the executive, other)? Finally, given the specific role of the national judiciary, civil society and independent institutions (national human rights institutions and Ombudsperson-type institutions) in promoting human rights standards, monitoring the situation and developing the national practice, the DH-PR gathered and analyzed information on the contribution they may, or in fact do, give to verifying the existence and effectiveness of domestic remedies.

Mechanisms within the legislator

In a majority of states, the national legislator did not have an exclusive role of constantly verifying the compatibility of domestic law and/or practice with the requirements of the Convention, including (or perhaps with regard only to) the existence and/or effectiveness of domestic remedies. Most, if not all member states, however, were able to contribute in some way to ensuring such compatibility, notably by putting oral or written questions to the executive, for instance concerning the execution of judgments of the Court.

A noteworthy example is the Parliamentary Joint Committee on Human Rights, in the United Kingdom, that has a broad task of considering human rights issues. This Committee is not exclusively charged with constant verification of existence and effectiveness of domestic remedies. However, having a much wider mandate, it may take a proactive approach, including by addressing particular issues or cases. In particular, this Committee plays an especially active role in following the execution of the Court's judgments. Similarly, in Italy, the Committee for the examination of the judgments of the European Court of Human Rights,[27] created in July 2006, collects data on specific requirements of the Convention, as interpreted through the Court's case-law, for the use

[26] See Recommendation Rec(2004)5 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

[27] Hereafter "the Court."

of Parliament during the legislative process, and makes detailed suggestions on legislative developments necessary to satisfy these requirements.

At the same time, a number of member states do in fact have mechanisms that perform a regular verification, during the legislative drafting process, of the existence and/or effectiveness of domestic remedies (i.e. to take into account the Court's case-law on Article 13 of the Convention when amending existing legislation or drafting a new one).

A number of states indicated that verification of the existence of domestic remedies for alleged violations of Convention rights is performed every time a law touching upon human rights is drafted, since the Convention is a part of national law and/or given the fact that there is a general right to an effective remedy under national law (most frequently in the Constitution), and that this is seen as an obligation on the part of the state.[28]

There are still states, however, that do not perform a regular check of the compatibility of national laws and practices (including the existence and effectiveness of domestic remedies) with Convention standards.

If there is a parliamentary mechanism charged with verifying whether domestic remedies exist for violations of Convention rights and/or whether existing remedies are effective, national practices divide between giving such tasks to a specialized (human rights, constitutional law or international law) committee[29] and leaving the issue in the hands of the committee responsible for the relevant draft law[30], or even both[31] (which ensures a more thorough scrutiny).

A number of member states mentioned the existence of professional legal services within national parliaments (or permanent advisory bodies specifically available for this purpose) that ensure objective non-political checks of the draft laws. However, these mechanisms normally would not be able to raise the issue of ineffectiveness of the existing remedies.[32]

Moreover, some states have indicated that verification of the existence and/or effectiveness of domestic remedies may take place even before adoption of the law,[33] or immediately after, at its promulgation stage.[34]

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[28] Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Norway, Portugal, Slovakia, Sweden and the United Kingdom.

[29] Belgium, Bosnia and Herzegovina, Finland, Georgia, Germany, Hungary, Italy, the Netherlands, Portugal, Romania and Serbia.

[30] Andorra, Luxembourg, Norway, Poland and Sweden.

[31] Austria, Bulgaria, Croatia, Cyprus, Estonia, Latvia, Lithuania, Slovakia, Turkey and the United Kingdom.

[32] Azerbaijan, Czech Republic, Denmark, Greece, Latvia, the Netherlands, Poland, Slovakia and Sweden.

[33] Germany, Ireland, Romania.

[34] Estonia, Finland, Hungary, Latvia, Poland, Portugal and Slovakia.

Still, the replies provided indicate that member states perform a more thorough verification of the existence as opposed to the effectiveness of domestic remedies. The latter exercise is usually initiated "when doubts arise as to the effectiveness of the existing remedies", although it is not always clear who would be in a position effectively to voice such doubts.

Mechanisms within the executive

As in the case of the legislator, in a majority of states the national executive did not have an exclusive role in constantly verifying the compatibility of domestic law and/or practice with the requirements of the Convention, including (or perhaps with regard only to) the existence and/or effectiveness of domestic remedies.

The great majority of member states indicated that verification of the existence and/or effectiveness of domestic remedies is performed when drafting a law, monitoring an actual situation, during proceedings before the Court, or when executing the Court's judgments. Interesting examples are Albania, Bosnia and Herzegovina and Serbia, which have set up separate government structures with the specific task of ensuring compliance of national law and/or practice with Convention standards.

The only country to have established a specific mechanism following adoption of Recommendation Rec(2004)6 is Greece, which in early 2005 set up a special commission, as an advisory body under the Ministry of Justice, composed of high magistrates and university professors, tasked with systematically analysing the Court's case-law with a view to proposing necessary legislative amendments.

Some member states indicated that there is a general right to a remedy under national law (most frequently the Constitution) and that the existence of such a remedy is therefore verified every time a law is drafted.[35]

A few of these member states indicated that not only the existence but also the effectiveness of existing remedies is checked when drafting a law. Otherwise, the effectiveness of remedies is normally checked only "if some concerns arise." Unfortunately, the replies received did not give sufficient detail as to who could voice such doubts in such a way as to ensure that possible concerns as to the effectiveness of existing remedies are met in a timely fashion.

A particularly noteworthy practice in a number of member states is the existence of an obligation under their national law to check whether the draft law is in compliance with Convention standards, including by explicitly addressing the issue in an explanatory note or statement attached to the draft law.[36]

[35] Germany, Latvia, Poland, Slovakia and Sweden.
[36] Bosnia and Herzegovina, Cyprus, Czech Republic, Denmark (where relevant), Estonia, Latvia, Lithuania, the Netherlands, Portugal, Slovenia, Switzerland and the United Kingdom.

There are several interesting practices whereby states have established a specific permanent institution (structure) having the task of advising the Government on issues of compatibility of draft laws with the Constitution and/or Convention and/or international law standards and with the competence to verify the existence and/or effectiveness of domestic remedies.[37]

Speaking of verification of the existence and/or effectiveness of domestic remedies at the stage of proceedings before the Court or execution of the Court's judgments, a majority of member states referred to the role of the Government Agent and/or the authority responsible for the execution of the Court's judgments (if different from the Agent). A noteworthy practice in some member states is that the Agent has the power to alert national authorities to possible problems at the national level (including those relating to the existence or effectiveness of domestic remedies) at any stage of proceedings, thus allowing the situation to be remedied even before the Court's judgment in the case, as well as to analyse the Court's case law with respect not only to his/her own state but also other states. Such an approach allows the state to take preventive measures on the basis of the Court's case law concerning other states. At the same time, the Agent or other authority concerned would not normally take the action themselves, but would rather alert the responsible national authorities to take the necessary action. Still, not all member states have an institution/authority responsible for coordinating the execution of the Court's judgments.

Mechanisms within the judiciary

The role of the judiciary in the exercise of verifying the existence or effectiveness of domestic remedies is twofold.

On the one hand, a number of national courts (whether Constitutional Courts, or Supreme Courts or other courts of general jurisdiction) have the power to rule on the compliance of national laws with Convention standards, thus ensuring quality control at the national level. From the perspective of Convention rights, an important factor to be noted in this respect is that individuals (in some countries also NGOs and/or independent institutions, i.e. national human rights institutions and Ombudsperson-type institutions) have the right to challenge the provisions of domestic law (including the absence of a legal provision, *inter alia* a domestic remedy). In Estonia, Poland and Portugal, the President may challenge the constitutionality of a law even before it has been promulgated. Finally, in Romania, draft laws may be challenged before Constitutional Courts.

On the other hand, a number of member states indicated that national courts, when interpreting domestic law (including by analyzing the absence of a legal provision), may adjust the operation of existing domestic remedies to the Court's case law, as well as creating a remedy (either temporary or a permanent one) through its case law.[38] This

[37] Austria, Belgium, Croatia, Czech Republic, France, Greece, the Netherlands, Poland, Slovakia, Sweden, the Former Yugoslav Republic of Macedonia and the United Kingdom.

[38] Austria, Bosnia and Herzegovina, Croatia, Estonia, Germany, Ireland, Latvia, Lithuania, Norway, Slovakia, Sweden, the United Kingdom.

capacity of national courts is noteworthy, since it allows the national system to adapt itself quickly and flexibly to developments in the Court's case law.

Moreover, all those member states that provided information on these practices confirmed that such decisions/judgments of national superior courts have the status of a precedent under national law.[39] It can therefore be concluded that such courts often act to verify the existence and/or effectiveness of other remedies.

Finally, a number of member states consult judges (including by involving representatives of the judiciary in legislative drafting working groups) when drafting laws, thus allowing the drafters to have more detailed discussions on the questions of existence and/or effectiveness of domestic remedies.[40]

The role of civil society and independent institutions

Many member states indicated the role that non-governmental organizations and independent institutions (national human rights institutions, Ombudsperson-type institutions) have to play in bringing national law and practice into compliance with Convention standards. Some states indicated that NGOs and independent institutions provide comments concerning draft laws, including by drawing attention to the issues of existence and/or effectiveness of domestic remedies.[41] A number of member states highlighted the powers given to independent institutions to issue reports on these issues.[42]

A number of member states indicated that NGOs and independent institutions have the right to apply to courts of general jurisdiction and/or Constitutional Courts to raise issues of non-existence and/or non-effectiveness of domestic remedies,[43] adding to the effectiveness of the judicial verification mechanism described above.

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 being brought before the Court;

[39] Austria, Bosnia and Herzegovina, Croatia, Czech Republic, Estonia, Germany, Hungary, Iceland, Ireland, Latvia, Norway, Portugal, Slovakia, Switzerland, the United Kingdom.
[40] Austria, Czech Republic, Denmark, Estonia, Germany, Hungary, Iceland, Latvia, the Netherlands, Norway, Slovakia.
[41] Austria, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Slovakia, Sweden, Turkey, the United Kingdom.
[42] Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Norway, Serbia, Slovakia, Spain, Sweden, Ukraine, the United Kingdom.
[43] Bosnia and Herzegovina, Czech Republic, Estonia, Hungary, Latvia, Moldova, Portugal, Slovakia.

No new information has been provided by the member states since April 2006 concerning execution of pilot judgments;[44] furthermore, there have been no major developments of the Court's case-law in this regard.

Concerning the pilot judgment in the case of *Broniowski v. Poland*, the Ministers' Deputies, at the 1020th DH (human rights) meeting (4 March 2008), decided to close their supervision of execution of the case and prepare a final resolution for adoption at the next DH meeting in June. The Deputies were guided by the Court's decisions of 4 December 2007 to strike the cases of *Wolkenberg & otrs v. Poland* and *Witkowska-Tobola v. Poland* out of its list, on the basis of its assessment that the general measures taken at domestic level, namely the 2005 law on compensation, met the requirements of the Grand Chambers judgment in the *Broniowski* case. On 11 December 2007, the Court had for the same reason struck out a further forty cases brought by Bug River claimants.

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

Only Ireland and Sweden have provided new information since April 2006 with respect to domestic remedies in cases of an arguable complaint concerning excessive length of proceedings.[45]

III. CONCLUSIONS ON THE IMPACT OF THE MEASURES TAKEN ON THE LONG-TERM EFFECTIVENESS OF THE CONVENTION

> *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;*

When providing information concerning implementation of the present Recommendation, a majority of member states indicated that they saw no need to set up further specific verification mechanisms, as they already have mechanisms in place that have the power to verify the existence and/or effectiveness of domestic remedies.

After analyzing the information provided and bearing in mind that, as mentioned above, the member states have provided differing amounts of information, the following general conclusions may be drawn.

Given the importance of effective official review of the compatibility of draft laws with Convention standards, as well as of verification of the existence and/or effectiveness of

[44] See doc. CDDH(2006)008 Addendum I.
[45] Ibid. for the information available in April 2006. The more recent Swedish information concerns a Supreme Court decision confirming the effectiveness of the remedy established under NJA 2005 s.462.

domestic remedies for compliance with the states' obligations under Article 1 of the Convention[46] and subsequently on the workload of the Court, member states are encouraged to take all necessary steps to ensure that mechanisms exist for this purpose and that such mechanisms deliver concrete and significant results of the review and/or verification of not only the existence, but also of effectiveness of domestic remedies.

It should be noted that member states that recognize under their national law (Constitution) the right to an effective remedy verify its existence and/or effectiveness every time a material provision touching upon a human right is being drafted. Moreover, the right to an effective remedy under national law (Constitution) allows individuals to directly invoke this provision before the court when challenging either the legal provision or a decision (act or omission) by domestic authorities. Such a practice undoubtedly contributes to the effectiveness of the domestic verification process.

Member states are encouraged to avoid fragmented verification (i.e., verifying whether domestic remedies exist or are effective only "if some concerns arise"). In any event, member states should make sure that if verification is performed only "if some concerns arise", an efficient channel should exist whereby the mechanism in charge of verification can be informed of such "concerns".

Member states that have not yet done so are encouraged to set up a contact point (coordinating body) in charge of coordinating the execution of the Court's judgments against that member state, as the absence of such a body may slow down or otherwise impede the effectiveness of verification of whether domestic remedies exist or are effective. Moreover, member states are invited to pay attention to the fact that the national authorities should act promptly when informed of the non-existence and/or non-effectiveness of domestic remedies following developments in the Court's case-law, whether concerning their own state or others. Full and prompt implementation by member States of the recent Committee of Ministers' Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights should help in this respect.

Member states that indicated the existence of a general remedy (the role of such remedy being performed by the Constitutional Court, Supreme Courts, other courts) at the national level, in most cases linked the operation of that remedy to the individual right to have a remedy in cases of alleged violations of human rights recognised under national law (Constitution). An important factor in any such generic remedy is its ability to fill the gap in domestic legal provision by creating a remedy through case-law or to rule on the absence of a legal provision.

Member states should therefore take due note of the experience of member states, where a judicial mechanism (Constitutional Court, Supreme Court, or other) exists, able to give a binding ruling as to the compatibility of domestic law with the Convention standards and with the power to abrogate the provision in question, including the power to create a remedy through its case-law and/or to rule on the absence of a legal provision (e.g.,

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[46] To "secure to everyone within their jurisdiction the rights and freedoms defined" in the Convention.

provision providing for a remedy). In states whose legal and constitutional orders allow it, this may be an important factor in ensuring compliance with the requirements of Articles 35 §1 and 13 of the Convention.

Likewise, a noteworthy practice is the ability of the Constitutional (or Supreme) Court to give its opinion on a law's compatibility with the Convention before its promulgation.

An important factor highlighted by a number of member states that significantly contributed to the process of verification of the existence and/or effectiveness of domestic remedies is the involvement of legal practitioners (members of the judiciary or bar), NGOs and, where consistent with their mandates, independent institutions (national human rights institutions, Ombudsperson-type institutions) in providing comments on draft laws. The right of individuals, NGOs and, where consistent with their mandates, independent institutions (national human rights institutions, Ombudsperson-type institutions) to apply for judicial review may also be effective.

Member states are therefore encouraged to involve the expertise of such "on the ground" actors when verifying the existence and/or effectiveness of domestic remedies through checking the compatibility of draft/existing laws with the Convention standards. This should involve ensuring that there is a channel through which NGOs and/or independent institutions may effectively express their concerns to the national authorities, as well as expanding the range of persons with the right to apply for judicial review, to include where possible individuals, NGOs and independent institutions (national human rights institutions, Ombudsperson-type institutions).

Member states that do not currently have them may therefore consider incorporating into their national orders the following examples of good practice, bearing in mind their significant potential to contribute to the effectiveness of the national verification process:
- ensure the existence of mechanisms charged with verifying the existence and/or effectiveness of domestic remedies; and
- ensure that existing verification mechanisms have the power to verify not only the existence of domestic remedies but also their effectiveness.

Finally, given the present state of play, the conclusions drawn in April 2006 remain valid.[47]

> *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 being brought before the Court;*

It is difficult at this point to add anything new to the previous analysis of the state of implementation of the present recommendation,[48] as the pilot judgment practice is still at the development stage.

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[47] See CDDH(2006)008 Addendum I.
[48] Ibid.

Member states are therefore invited to:

- follow developments within the Court, including *inter alia* discussions concerning the need to have guidelines for pilot judgments, as well as the need to give priority to the execution of such judgments;[49] and
- follow the 2004 Working Methods of the Committee of Ministers concerning execution of the Court's judgments[50], as well as keeping abreast and making full use of the new execution of judgments database[51].

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

Given the present state of play, the conclusions drawn in April 2006 remain valid.[52] In particular,

> "3. The adoption of preventive measures to keep length of proceedings reasonable and/or to avoid repetitive cases, should be encouraged. It might be helpful to identify those measures that have an impact on both the short term full protection of the individuals concerned and on the long term relief of the increasing workload of the domestic judiciary and of the Court. Member states could be invited to share their experiences in this regard, either directly or within the framework of the Council of Europe."

Moreover, when setting up new domestic remedies in cases of an arguable complaint concerning the excessive length of proceedings or when evaluating the effectiveness of existing remedies dealing with complaints concerning the excessive length of proceedings, member states are encouraged to use the Venice Commission's Study on the

[49] Member states are also invited to make use of the proceedings of the high-level seminar *reform of the European human rights system*, Oslo, 18 October 2004; report by the Right Honourable Lord Woolf *Review of the Working Methods of the European Court of Human Rights*, December 2005; proceedings of the seminar *the European Court of Human Rights, Agenda for the 21st century*, Warsaw, 23-24 June 2006; Report of the Group of Wise Persons to the Committee of Ministers, CM(2006)203, 15 November 2006; proceedings of the colloquy organized by the San Marino Chairmanship of the Committee of Ministers of the Council of Europe *Future developments of the European Court of Human Rights in the light of the Wise Persons' Report*, San Marino, 22-23 March 2007; Report of the meeting between the Court and Government Agents, Strasbourg, 5 November 2007; Recommendation CM/Rec(2008)2 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, adopted on 6 February 2008 at the 1017th meeting of the Ministers' Deputies.

[50] Human rights working methods - Improved effectiveness of the Committee of Ministers' supervision of execution of judgments, CM/Inf(2004)8 Final 7 April 2004; Working methods for supervision of the execution of the European Court of Human Rights' judgments, CM/Inf/DH(2006)9 revised 3 24 November 2006.

[51] Available at http://www.coe.int/T/E/Human_Rights/execution/.

[52] See CDDH(2006)008 Addendum I.

effectiveness of national remedies in respect of excessive length of proceedings[53], as this includes a thorough analysis of the various remedies already existing in member states and of the Court's case-law on this subject.

[53] Study 316/2004 on the effectiveness of national measures in respect of excessive length of proceedings, 22 December 2006, CDL-AD(2006)036; Replies to the Questionnaire on excessive length of proceedings, 15 February 2007, CDL(2006)026.

Appendix V

Draft review of the implementation of Recommendation (2000) 2 of the Committee of Ministers to the Member States on re-examination and reopening of certain cases at domestic level following judgments of the European Court of Human Rights

Rapporteur : Mr. Adrian SCHEIDEGGER (Switzerland)
Member of the Secretariat : Mrs Virginie FLORES

I. INTRODUCTION ON THE STATE OF PLAY OF AVAILABLE INFORMATION :

In its Recommendation (2000)2 on re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, the Committee of Ministers :

"I. Invites […] the Contracting Parties to ensure that there exist at national level adequate possibilities to achieve, as far as possible, restitutio in integrum;

II. Encourages the Contracting Parties, in particular, to examine their national legal systems with a view to ensuring that there exist adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention, especially where:

(i) the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and

(ii) the judgment of the Court leads to the conclusion that

(a) the impugned domestic decision is on the merits contrary to the Convention, or

(b) the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of."

All the member states have now provided information on the implementation of this Recommendation and all of the replies have been compiled into a single document for each member state. The contributions of other sectors of the Council of Europe, in particular the Parliamentary Assembly[54] and the Department for the Execution of Judgments of the Court, were also taken into account.

[54] Working Document AS/Jur (2007) 35 rev.

As regards this Recommendation in particular, it was decided to put greater emphasis on the specific issues raised during the second phase of the review. This approach differed from that used for the two other recommendations. It was preferred on account of the first phase of the exercise having already permitted a global picture of the possibilities of reopening and since it was now expedient to clarify certain issues without going back on what had already given rise to conclusions.[55]

II. EVALUATION OF THE IMPLEMENTATION OF THE RECOMMENDATION

1) Means other than the reopening of proceedings by which judicial systems ensure the existence of adequate possibilities to achieve, insofar as possible, *restitutio in integrum*:

Few methods were described other than those already mentioned by member States during the first stage of follow-up. Thus other than re-examination, the following also appear:, tort liability, amnesty, grace, rehabilitation, un-conditional release, restoration of rights, procedural acceleration, abstention from execution of certain decisions or the correction of information in the public records such as removal from the judicial record, public excuse or pardon.

<u>*Concerning re-examination in particular*</u>

It is worth recalling that, in the context of the first review, it had been considered necessary to define the word “re-examination” as meaning a re-assessment, normally by the same decision-making body, of the situation that had given rise to a violation of the Convention, this being capable also of leading to the award of that which had been requested during the original procedure.

Re-examination is most often cited as the solution for obtaining, so far as possible, *restitutio in integrum* in above all the specific fields of civil law, for example family rights or those concerning a person’s situation. Equally, many states submitted information indicating that re-examination would be possible in the specific fields of administrative law, such as authorisation to engage in an economic activity, law concerning the building and construction sector or the rights of foreigners and refugees.

2) Whether the possibility of reopening differs according to whether the proceedings at issue were unfair or whether it was their outcome that violated the Convention:

With the exception of a few (Finland, Moldova, Norway), the majority of member States make no distinction between the two situations.

[55] For further information on first phase of the follow-up exercise, the first review can be found in document CDDH(2006)008 Appendix I.

3) Procedural rules applicable to the reopening of criminal proceedings:

In the majority of member States, the reopening of criminal proceedings is possible, either at the request of the applicant or at that of either the public prosecutor or some other public authority (Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Romania, the Russian Federation, San Marino, Slovakia, Slovenia, Spain, Switzerland, the "former Yugoslav Republic of Macedonia," Turkey and the United Kingdom), and legislative reforms to this end are underway in certain other states. Nevertheless, it has already been shown, in the context of the first follow-up sheets, that member States have implemented the Recommendation in different ways, for example as regards the competent bodies or the time-limits within which reopening is possible.

If the great majority of States have responded to the following questions, few have specified whether it is the normal rules of criminal procedure or rules specific to the reopening of proceedings that apply. One can certainly deduce that in the majority of States, the normal rules apply.

a) Concerning the costs of the procedure:

In most States, the legal costs can, under certain conditions, be at the State's expense (Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Finland, Germany, Hungary, Iceland, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Sweden, Switzerland, Turkey and the United Kingdom). These conditions can include the admissibility of the request for reopening, the acquittal of the defendant or the fact that the person making the request has succeeded in obtaining the reopening of proceedings.

b) Concerning legal aid for the request to reopen:

A large number of States allow for the possibility of granting legal aid (Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Finland, France, Germany, Georgia, Hungary, Iceland, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Switzerland, Turkey and the United Kingdom).

c) Concerning the existence of a rule forbidding *reformatio in pejus*:

Reformatio in pejus is prohibited in many member States (Austria, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Finland, Germany, Luxembourg, Moldova, the Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Sweden, Turkey and the United Kingdom).

d) The rules governing the detention of the convicted person/ defendant once the application for reopening has been allowed:

Whilst States enjoy a margin of appreciation as regards the consequences of the decision to reopen a procedure, they still have to guarantee application of the principle of the presumption of innocence and the principles concerning provisional detention, in conformity with Committee of Ministers' Resolution DH(2004)31 in the case of Sadak, Zana, Dogan and Dicle v. Turkey, as seems to be the case upon reading the replies received. This reasoning is all the more clear when the main criterion for reopening is that a serious doubt subsists concerning the outcome of the first procedure or that the first conviction is fundamentally contrary to the Convention. Continuing to hold in detention would undoubtedly raise various questions with regard to articles 5 and 6 § 2 of the Convention.

e) Concerning the possible suspension of other proceedings:

Finally, as regards the extent to which the reopening of criminal proceedings implies the suspension of other proceedings, there do not seem to be pre-established rules, with the jurisdictions that handle the other proceedings taking their decision on a case-by-case basis.

4) The issue of possible re-examination in the context of a procedure for compensation made against the State on the basis of a finding of a violation of the Convention:

As certain States have indicated, this possibility is above all useful when there is no other possibility for obtaining re-examination or reopening, whether because there is no legal provision or because it would affect the principle of legal certainty, or simply because the objective pursued during the first procedure can no longer exist (for example, the right to exercise a professional activity for a particular period in the past). A sort of re-examination can thus take place, in the sense that the initial decision can be considered ill-founded so that compensation can be awarded (Germany, the Netherlands, Sweden). The decision will not, however, be modified without the procedure being reopened (Sweden).

III. CONCLUSIONS ON THE IMPACT OF THE MEASURES TAKEN ON THE LONG TERM EFFECTIVENESS OF THE CONVENTION

It has already been noted, during the first stage of follow-up, that important action in the area of reopening had been taken in response to the Recommendation. More than twelve member States have adopted legislation allowing the reopening of criminal proceedings, legislative reforms are underway (Italy) and a certain number of courts have developed their jurisprudence so as to allow reopening.

Thus, it is today possible to reopen criminal proceedings in the majority of member States. Around twenty member States allow for the possibility of reopening of civil proceedings following an individual application or the application of a public authority. For a minority of these, legislation does not contain a clear and specific example of the reopening of proceedings after the finding of a violation by the Court but existing general legislation or case-law might seem sufficiently "open" to allow this possibility. Around twenty member States allow for the possibility of reopening administrative proceedings, whether following an individual application or on the application of a public authority. It was underlined, in the first phase of the review, that when States have not given effect to the recommendation to allow for reopening of proceedings in the fields of civil and administrative law; major concerns expressed in this connection relate to the need for legal certainty and the need to protect the interests of good faith third parties.

When reopening is possible, it is necessary to ensure that specific limitations do not render the possibility impracticable in certain situations, for example the fact of too-short deadlines. In the same way, the absence of legal aid or the obligation to bear the costs of the procedure may, for the applicant, be just as much an obstacle to reopening a procedure. One can nevertheless welcome the fact that this is not the case in the great majority of member States.

Once reopening has been allowed, it is essential that the individual is treated as a defendant and that the presumption of innocence and the rules of provisional detention apply.

On the other hand, when reopening is not possible, it depends on States' practice whether re-examination can be an effective means of affording adequate relief, especially in certain types of civil or administrative case. It is apparent from the replies to the questionnaire that there also exists a great number of other ways chosen by member States to achieve, insofar as possible, *restitutio in integrum*.

If the impact on the long-term effectiveness of the Convention appears less obvious than for the other two priority recommendations, as it concerns more the interests of the applicant, the implementation of this Recommendation has nonetheless contributed to the effectiveness of the Convention. On the one hand, insofar as it has given rise to important reforms permitting reopening; on the other hand, the fact that the national authorities reconsider the applicants' situation would allow one to think that lessons would be learned and that certain measures would not be repeated.

That said, if the progress achieved by member States is notable, the conclusions drawn by the Ministers' Deputies in May 2006[56] remain fully applicable:

"In order to achieve, as far as possible, restitutio in integrum, particularly through the re-opening of cases in the circumstances highlighted in the recommendation, the member states which have not yet done so should be urged to provide for the possibility of re-opening of criminal proceedings and be encouraged to consider introducing such

[56] CM(2006)39 final / 12 May 2006 – Report by the Ministers' Deputies.

possibilities in respect of civil and administrative proceedings. In this context, member states should also be invited to consider whether adequate possibilities exist for re-examination of a case at national level, which can be an important way to offer adequate redress without re-opening the domestic proceedings themselves, where such re-opening is not strictly called for."

Appendix VI

Draft review of the implementation of Recommendation (2004) 5 of the Committee of Ministers to the 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

Rapporteur : Mr Hans-Jörg BEHRENS (Germany)
Member of the Secretariat : Mrs Virginie FLORES

I. INTRODUCTION ON THE STATE OF PLAY OF AVAILABLE INFORMATION :

The results are broadly satisfactory in that all the member states have now provided information on the implementation of Recommendation (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.

The replies to the two successive questionnaires issued during the first and then second phases of follow-up, taken as a whole, were compiled into a single document for each Member State.

It is also necessary to welcome the important contribution made by the Office of the Council of Europe Commissioner for Human Rights, who after the Round Table on cooperation with Ombudsmen and national human rights institutions (Athens, April 2007) expressed readiness to be involved in the follow-up of implementation of the Recommendations. Contributions were thereby obtained from almost all the contact persons for the Office of the Commissioner within the National Human Rights Structures. This information supported and confirmed the responses given by member States. It brought particular added value to the work by specifying the role of national institutions in this field.

The present review has been drawn up using all this information, on the basis of the first review drawn up at the conclusion of the first phase of the exercise and of the analysis that was made of the replies received to the second questionnaire. A global approach was preferred insofar as the task conferred by the Committee of Ministers was reaching its end and it was therefore now necessary to arrive at a summary of the state of implementation of the Recommendation, with the emphasis on existing good practices. For this reason, it had been decided to follow the provisions of the Recommendation when structuring the review, rather than referring to the successive questions put to member States.

II. ASSESSMENT OF THE IMPLEMENTATION OF THE RECOMMENDATION

Whilst several types of mechanisms, sometimes cumulative, for verifying the compatibility of draft laws, existing laws and administrative practice with the standards of the Convention were identified, it is important to underline that, according to the terms of the Recommendation, verification must take place against the Convention *"in the light of the case-law of the Court"* and that it is important that member States take into account also judgments in cases to which they were not a party insofar as these judgments are relevant for their internal legal order.

1) As concerns the compatibility of draft laws with the standards laid down in the Convention,

While many member states do not have a specific parliamentary procedure solely for verifying the compatibility of draft laws with the Convention, most do have mechanisms, often cumulative, which systematically verify compatibility.

Systematic supervision of draft laws is generally carried out both at the executive and then at the parliamentary level. Independent bodies are also consulted and, in this regard, contributions by the National Human Rights Structures, collected by the Office of the Commissioner for Human Rights, were of particular interest.

In many member states, the drafters of the law are requested to examine the compatibility of their draft with the Convention, (the Czech Republic, Denmark, Finland, Germany, Iceland, Ireland, Italy, Lithuania, the Netherlands, Norway, Sweden, Switzerland, United Kingdom), this does not preclude these states from having additional subsequent verification carried out by other bodies.

The examination of the compatibility of draft laws with existing laws, international conventions in general, and with the Convention in particular, can be provided for, step by step, by the Constitution (Finland).

a. Verification by the executive

In general, verification of conformity with the Convention and its protocols starts within the ministry which initiated the draft law. In addition, in a large number of member states, special responsibility is entrusted to certain ministries or departments, in most cases, the Chancellery, the Ministry of Justice and/or the Ministry of Foreign Affairs, to verify such conformity. In some member states, the agents of the government to the Court, beside other functions, have the opportunity to give their opinion on whether draft laws are compatible with the provisions of the Convention (Latvia, Romania, Ukraine). The agent is therefore empowered, on this basis, to submit proposals for the amendment of these draft laws or of any new legislation which is envisaged.

Some member states have a specialised office (a specific entity within a ministry, for example) to examine draft laws. This office has an in-depth knowledge of the European Convention on Human Rights and the case-law of the Court (Cyprus, Georgia, Greece, Lithuania, Monaco). In some other member states there are no specialised offices but the offices in charge of the examination of draft laws are required to have a good knowledge of the European Convention on Human Rights and the case-law of the Court (the Netherlands).

The national law of some 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 (Bosnia and Herzegovina, Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, the Netherlands, Portugal, Slovakia, Slovenia, Switzerland, United Kingdom).

b. Verification by the Parliament

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

Recently, the Italian Parliament instituted the permanent Committee for the examination of the judgments of the Court with two main tasks: collecting data about the specific requirements of the Convention and putting them at disposal of the Parliament during the legislative process, and suggesting to the Parliament the need of adopting specific laws in order to meet the requirements of the Convention, as interpreted by the Court.

Many Member States do not have a specific parliamentary procedure dedicated exclusively to the verification of compatibility of draft laws with the Convention. In many Member States a specific body within the Parliament may be charged with the verification of draft laws with the Convention, in addition to verification with other texts.

One or several parliamentary committees may be responsible for the systematic and continuous verification of the compatibility of all draft laws (Human Rights Committee in Cyprus, Croatia, Estonia, Latvia, Lithuania, Romania, United Kingdom; Constitutional Law Committee in Austria, Finland, Italy, Portugal, Slovakia; Legal Affairs Committee in Cyprus, Germany, Lithuania). Otherwise, it can happen that committees in charge of studying draft laws more generally are also requested to examine them with a view to their compatibility with human rights standards (Andorra, Bulgaria, Croatia, Denmark, Greece, Iceland, Poland, Sweden).

If the parliamentary committee in charge of examining the compatibility of draft laws considers that there are inconsistencies with the Convention, it may request additional information from those who drafted the law (Finland). In a member state, the consent of the President of the Assembly is needed before a draft law is accepted for discussion.

Finally, if in the third reading of a draft law by the parliament, it seems necessary to making it compatible with the Convention, it is possible to decide to the request from thirty MPs, to renew the second reading if the necessary modification can be voted at this stage through proposals for amendments (Slovakia).

c. Other consultations

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 is compulsory as established by law.

Compulsory consultations include, *inter alia*, consultation of a higher court, be it a constitutional court (Poland, Portugal, Romania), the state council (Belgium, France, Luxembourg, the Netherlands, Spain) or the supreme court (Cyprus). If the government has not consulted as required, the text will be tainted by procedural irregularity. If, after having consulted, it decides not to follow the opinion received, it accepts responsibility for the political and legal consequences that may result from such a decision.

Consultation can also be optional, as it is the case in numerous member states. The example of the Council on Legislation (comprising members coming from both the Supreme Court and the Supreme Administrative Court) should also be mentioned (Sweden). In some states it can also be provided for that the Head of State may refer to the Supreme Court for its opinion on the text in question (Cyprus, Ireland), or refuse to sign the draft law and send it back to the parliament (Finland, Slovakia).

Consultation of non-judicial bodies competent in the field of human rights may also be foreseen, be it optional or compulsory. In particular these may be independent national institutions for the promotion and protection of human rights (Denmark, France, Greece, Latvia, Ireland, Luxembourg, Portugal), non-governmental organisations (Austria, Finland, Latvia, Sweden), individual experts (Latvia), institutes or centres for human rights (Norway), political parties (Switzerland) or professional associations (Austria, the Netherlands). This may also be territorial authorities (Austria, Switzerland), the Office of the Attorney-General (Cyprus, Malta), the Government Council for Human Rights (chaired by the Commissioner for Human Rights) (the Czech Republic), the Legislative Council (Romania, Slovakia), the Legislative Studies Section of the Office of the State Attorney (San Marino), the Institute for Approximation of Law (under the authority of the Government) (Slovakia).

The contributions by the National Human Rights Structures to the review of the Recommendation highlighted some good practices. For instance, the Danish Institute for Human Rights conducts a legal analysis and assessment of draft bills, submits it to the relevant ministries and make it publicly available on the web page of the institute.

In Finland, the Parliamentary Ombudsman has the right to make proposals *ex officio* to ministries in order to amend draft laws, as well as existing laws and administrative practices. The Ombudsman's proposals are as a rule well respected and followed by respective ministries.

In other member states, all draft legislation is subject to a public hearing which gives the opportunity to human rights experts in the Ministries of Justice and Foreign affairs to consider whether the draft is in conformity with applicable international conventions (Norway), and the parliament can invite specialists on civil society or academics to ask them their opinions on the draft law in question (Austria, Slovakia).

Draft laws are also, in some member states, referred to the Council of Europe for expertise (Armenia, Azerbaijan, Bulgaria, Moldova, Serbia). However, this request for an opinion does not replace an internal examination of compatibility with the Convention.

2) As concerns the compatibility of existing laws with the standards laid down in the Convention,

The main general mechanism used to ensure that existing laws are compatible with the standards laid down in the Convention is the referral to a court, where it is the case the Constitutional Court. Control by specific bodies is nevertheless a relatively frequent option.

a. Verification by the executive

In some member states, a specialised office within a ministry is entrusted to examine all new judgments of the Court and to inform the ministries which are responsible for the legislation concerned (France) as well as domestic courts (Denmark, Georgia, Monaco, Ukraine). In some others, all the ministries are responsible to check the laws under their purview (Germany, Norway). In one state, both systems work in parallel (Sweden).

Some member states entrust the agent of the government to the Court, beside 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 (Bosnia and Herzegovina, Croatia, Latvia, Lithuania, Serbia). The Office of the Government Agent can also be authorised to draw the attention on other similar situations within the ministry concerned (Germany).

In one member state, the Human Rights Sector which is part of the Legal Department of the Office of the Attorney-General (who is the legal adviser of the Republic and who is also the Government agent) is responsible for the examination of the laws brought to its attention, in order to determine whether they need to be revised in the light of the Convention and the case law of the European Court of Human Rights. If they do need to be revised, it advises the competent authority accordingly (Cyprus).

Mechanisms that may be called "alert mechanisms" are sometimes set up. A body which notices that a law does not comply with the Convention, in particular, must notify it to the relevant body so that modifications to the law are made (Bulgaria, Romania, Russian Federation).

b. Verification by the parliament

Requests for verification of compatibility of existing laws may be made within the framework of parliamentary debates. However no practice was mentioned by member states.

c. Verification by judicial institutions

In most cases, judicial institutions are only required to examine the compatibility of an existing law when a case raises compatibility issues (in such circumstances they apply the relevant provision of the Convention and not the law in question). It is very rarely possible to bring a case directly before these bodies with a view to challenging an existing law, if the person who brought the case is not necessarily affected by the implementation of this law.

In many member states a case may be lodged with the Constitutional Court to challenge an existing law (Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Germany, Hungary, Latvia, Lithuania, Moldova, Poland, Portugal, Romania, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Spain, "the former Yugoslav Republic of Macedonia", Ukraine). In most of them, the case may be referred to the Constitutional Court by the highest State authorities (Head of State, Parliament, Chair of the Supreme Court, …). Sometimes, it can study it *ex officio* (the Czech Republic, Hungary), or the case may even be submitted by an individual (Austria, Latvia, Slovenia). If the challenged legislation is not in conformity with the relevant provisions, the Constitutional Court can annul it or decide that it loses effect (Croatia, the Czech Republic, Germany, Hungary, Portugal, Slovakia, Spain, "the former Yugoslav Republic of Macedonia"). In addition, by way of an example, the Slovakian Constitutional Court can suspend the effect of the challenged regulation. If the Constitutional Court finds the said regulation not to be in conformity it shall be considered null and void. The body that issued this text will have to harmonise it, within six months.

Several member states referred to their general courts which can decide not to apply to the specific case a law that is found in contradiction with the Convention (Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Iceland, Luxembourg, Portugal, Norway, Sweden, Switzerland, Turkey) or to rule that a law is contrary to the Convention, in which case the relevant ministry must consider whether the law in question ought to be amended (United Kingdom).

d. Verification by independent non-judicial institutions

In addition to their other roles, independent non-judicial institutions, and particularly national institutions for the promotion and protection of human rights, as well as ombudspersons, may decide to consider existing laws with a view to their compatibility with the standards laid down in the Convention (Finland, France, Greece, Ireland, Latvia, Norway, Portugal, Romania, Sweden). They may send the formal conclusions of such exercises to the parliament and the government.

These conclusions may take the form of recommendations (Belgium, the Czech Republic, Ireland, the Netherlands, Portugal, Spain), reports (Croatia, Cyprus, Hungary, Ukraine), or decisions (Sweden).

It should be noted that, whilst the Norwegian Parliamentary Ombudsman has no formal power to systematically verify the compatibility of draft laws, existing laws and administrative practices with the Convention, he has the responsibility to monitor the government's follow-up of judgments against Norway.

The Slovak Ombudsman can apply for commencement of proceedings before the Constitutional Court as regards consistency of legal regulations if their further application could represent a threat to human rights.

3) As concerns the compatibility of administrative practice with the standards laid down in the Convention,

Whilst some Member States have no definition of "administrative practice" in their domestic legal order, other Member States gave a long list of different meanings given to this notion. However, the mechanisms which exist for the verification of the compatibility of administrative practice with the standards laid down in the Convention are often the same as those which exist for the compatibility of laws.

a. Verification by the executive

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 (Germany, Monaco). In one member state it is specified that each ministry must follow the development of the case-law of the Court in its area of competence, even if the Ministry of Justice bears a special responsibility in this respect (Norway).

In other member states, governmental agencies draw the attention of independent bodies, and particularly courts, to certain developments in the case-law (this can be a function for the Government agent: Latvia, Serbia). The competent organs of the state have to ensure that those responsible in local and central authorities take into account the Convention and the case-law of the Court in order to avoid violations.

In another member state, in order to involve more the officials of local or regional authorities, these latter are required to be aware of and follow the case-law of the Court; when the Court finds a violation of the Convention, the state may ask the responsible authority to reimburse the amount paid in respect of compensation (Romania).

b. Verification by judicial institutions

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, either before domestic jurisdictions (Denmark, France, Iceland, Lithuania, Luxembourg, Norway, Sweden, Switzerland, Turkey, United Kingdom), the Constitutional Court (Armenia, Serbia, Slovak Republic), or both (the Czech Republic, Slovenia, Spain). In most cases, judicial institutions are only required to examine the compatibility of an administrative practice when a case raises compatibility issues (in such circumstances they apply the relevant provision of the Convention and not the administrative practice in question).

c. Verification by independent non-judicial institutions

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, as well as ombudspersons, mediators or chancellors of justice, play an important role in the verification of how administrative practice are applied and, notably, the Convention which is part of national law (Austria, Estonia, Finland, Greece, Ireland, Latvia, Lithuania, Luxembourg, Norway, Portugal, Spain, Sweden). In some countries, it is specified that these institutions may also, under certain conditions, consider individual complaints and initiate enquiries on their own initiative (Austria, Finland, France, Latvia, Luxembourg, Sweden). They strive to ensure that deficiencies are corrected, and may for this purpose send formal communications to the parliament or the government.

IV. CONCLUSIONS ON THE IMPACT OF THE MEASURES TAKEN ON THE LONG TERM EFFECTIVENESS OF THE CONVENTION

A. A positive situation as regards the implementation of the recommendation and its impact on the long-term effectiveness of the Convention

In the light of all that has been said above and the many examples of good practices cited, it is clear that the findings are generally positive about the implementation of Recommendation (2004)5 by member states and its impact on the long-term effectiveness of the Convention.

1) As concerns the compatibility of draft laws with the standards laid down in the Convention,

It has been made clear that while many member states do not have a specific parliamentary procedure solely for verifying the compatibility of draft laws with the Convention, such verification is systematically carried out through other mechanisms at executive or legislative level.

In practice, the impact of verification mechanisms on the long-term effectiveness of the Convention is obvious. By adopting legislation whose conformity with the Convention has been verified, the state reduces the risk of violating the Convention and being found wanting by the Court, and places its authorities in a situation where they must always show due regard for the Convention in their dealings with anyone within the state's jurisdiction.

While it is difficult to quantify the true impact of verification mechanisms, as many draft laws that would infringe the Convention are amended long before they come before parliament, a number of member states gave examples of draft laws that were amended at a later stage (Austria, Belgium, Croatia, Denmark, Georgia, Lithuania, Norway, Switzerland and the United Kingdom)[57].

2) As concerns the compatibility of existing laws with the standards laid down in the Convention,

As well as arranging verification by specialised or more general offices within the executive, member states often make provision for verification through their courts.

The examination of existing laws should take account not only of the Convention itself, but also of the Court's case-law, as this may have repercussions for a law which was initially compatible with the Convention, or one that was not checked for compatibility before adoption.

Verification of this type is particularly important in the case of laws relating to areas in which there is an objective possibility and a higher risk of a violation of human rights (such as policing, criminal procedure, prison conditions and legislation relating to foreigners). This is another field where there are many examples of existing laws being amended after being found to be incompatible with the standards set by the Convention (Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, France, Germany, Hungary, Iceland, Italy, the Netherlands, Poland, Romania, Slovakia, Sweden, Switzerland, Turkey, United Kingdom)[58], even though they sometimes related to situations in which a state was obliged, under Article 46 of the Convention, to comply with a judgment against itself.

[57] Examples appear in annex to the present follow-up note.
[58] Ibid.

It should also be noted that, in addition to the impact that amendment of a law has on the long-term effectiveness of the Convention, lowering the risk that the Convention will be violated and hence reducing the number of potential applications to the Court, examples of an even clearer impact are provided by laws which now allow cases to be brought directly before the national courts seeking compensation for losses connected with excessive length of proceedings, thereby relieving the Court even more directly (Italy).

3) As concerns the compatibility of administrative practice with the standards laid down in the Convention,

The type of mechanism used to verify the compatibility of administrative practices varies greatly, although in most cases verification seems to be carried out by the national courts or specific independent bodies (ombudspersons or national human rights institutions).

In the same way that the member states cannot reasonably be asked to verify systematically all their existing laws, they cannot be asked to check the compatibility of all their existing rules, regulations and practices. It is necessary, however, to run checks of this sort in a specific area when, for instance, some experience has been gained with the application of a rule at national level, or following a new judgment by the Court with regard to another member state.

Although member states provided considerably less information in this area than in others, largely because the interpretation of the concept of "administrative practices" varies so much between them, some countries did provide examples of specific amendments (Cyprus, Lithuania, Switzerland, United Kingdom)[59].

B. Possible follow-up

Although member states have shown a real desire to implement the Recommendation, the main impediment to their monitoring of implementation has been the difficulty of accurately assessing the effectiveness of the verification mechanisms in use.

In fact, little information was forthcoming on the assessment of the effectiveness of these tools, and the main explanations given to account for this lack of information were as follows:

- member states have not considered it helpful to assess the effectiveness of control mechanisms, as they already regard them as effective and appropriate;
- control mechanisms are regarded as too new to be assessed;
- the complexity of the subject involved makes it difficult to consider making an overall assessment of the mechanisms that verify compatibility;
- compatibility with human rights standards is only one of several criteria; the others needing to be checked are the compatibility of laws with the constitution, international law, European law and the domestic legal system;

[59] Ibid.

- to carry out an assessment, criteria would need to be set for measuring the success or failure of the functioning of a verification mechanism, and it would be difficult to determine what these criteria should be.

While more time and hindsight will most certainly be needed for more detailed conclusions to be drawn in this area, it is nevertheless essential for member states to continue to pursue the aims set by the Recommendation :

"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 and administrative practice in order to prevent violations of the Convention;"*

In addition to the good practices appended to the Recommendation, states should be able to draw on the large number of examples given in the present document, so that they can continue improving their mechanisms for implementation of the Recommendation.

As to whether the mechanisms for verifying compatibility are **appropriate** and **effective**, it has already been stated that the question of how to assess effectiveness remains open, for the reasons outlined above. One important sign of the effectiveness of mechanisms is probably the number of judgments highlighting incompatibilities, whether issued by national constitutional courts or by the European Court of Human Rights, although one must also bear in mind that other factors, such as public knowledge and the accessibility of the Court, are also potentially significant.

The effectiveness of verification mechanisms depends largely on the proficiency of those running them and their knowledge of the Convention and the Court's case-law**,** it being fundamental that verification take place in the light of the case-law and that States take into account also judgments in cases to which they were not a party. In this connection, government agents should be given a prime role in alerting the bodies concerned.

To ensure that the compatibility of draft laws is **systematically** verified, states should endeavour to ascertain the reasons for any failures to carry out systematic monitoring.

As to the **need** for verification of the compatibility of existing laws and administrative practices, states must continue to give thought to the criteria used to judge whether there is such a need. States should not necessarily wait for a judgment by the Court before beginning a process of verification, and should make a specific body responsible for monitoring, as far as possible, the Court's case-law as it evolves, so that legislation can be kept in line.

The Council of Europe's Commissioner for Human Rights plays a particularly important role in this respect and has already said that he would like to follow up the work done by the CDDH. The Commissioner could systematically discuss the implementation of the Recommendation with the authorities of the countries he visits and make use of his ongoing contacts with ombudspersons and national human rights institutions (NHRIs).

Furthermore, pursuant to the instructions given in the Recommendation by the Committee of Ministers to the Secretary General of the Council of Europe,[60] member states must be able to continue to draw on the Council of Europe's expertise when seeking assistance to improve their draft laws, existing laws and administrative practices in the light of the Convention. This assistance seems to be useful, as some member states referred to it in the information they provided on the implementation of the Recommendation. The important thing is for the opinions that are given to be duly taken into account.

States must also try to ensure that the change to bring the law or administrative practice into line is done as quickly as possible after a finding of incompatibility. The Committee of Ministers, assisted by the Department for the Execution of Judgments of the Court, plays an important role at this stage, when a state is required to comply with a judgment in accordance with Article 46 of the Convention.

Appendix

Non exhaustive list of examples of situations where the use of verification mechanisms led to changes in a draft law, an existing law or an administrative practice
(in the process of being translated)

I. Modification of a draft law:

Austria	- In the course of 1998, the Ministry for Defence elaborated a new Military Service Powers Act. The Constitutional Service advised the Ministry to formulate the provisions concerning life threatening use of weapons according to Art. 2 of the Convention. In 2000 the law bill was finally adopted and contained the required formulation - In the course of preparing a new asylum law in 2005, the Constitutional Service found that the envisaged provisions refusing aliens that are found and arrested within a certain zone near the border any asylum procedure might constitute a violation Art. 3 or 8 of the Convention. The ministry for Interior therefore refused to take up this provision into the draft
Belgium	- Dans le projet de loi qui a conduit à la loi du 8 août 1997 sur les faillites, la faillite d'office a été supprimée de notre droit positif car elle constituait une violation flagrante des droits de la défense de même qu'elle pouvait conduire à une violation de l'article 1er du Protocole additionnel à la Convention

[60] "The Committee of Ministers […] 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".

	(droit au respect des biens) - Dans le projet de loi qui a conduit à la loi du 17 juillet 1997 relative au concordat judiciaire, la communication des informations relatives à l'état de difficulté financière du débiteur a été encadrée de garde-fous destinés à protéger le droit à la vie privée - Dans le projet de loi portant suppression des titres au porteur, la procédure qui conduit à la disparition des titres dont le propriétaire reste inconnu a été rédigée de façon à éviter une violation de l'article 1er du Protocole additionnel à la Convention (droit au respect des biens)
Croatia	- In respect of enactment of the amendments of the Criminal Act (Official Gazette, no 71/06) the Committee for human rights and national minorities intervened considering that certain provisions of the bill were not in conformity with the International Convention on the Elimination of All Forms of Racial Discrimination. The Croatian parliament accepted proposed changes - The Committee for human rights and national minorities did not support the amendments on Public Assembly Act considering that it was contrary to the Article 11 of the ECHR and Article 21 of International Act on Civil and Political Right. The Draft bill was, subsequently withdrawn and rewritten respecting suggested changes
Denmark	Danish Radio and Television Act : In the autumn of 2002, the Minister of Culture tabled an amendment to the Radio and Television Act which was adopted. The amendment implied inter alia that it was not allowed to broadcast commercials concerning employers' associations, trade unions, religious movements or political parties on television. However, the amendment implied an unintended liberalization of the rules regarding political commercials since the old rules completely prohibited TV-commercials regarding political opinions and not just political parties. Therefore, in the spring of 2003 during the Parliament's second reading of an already tabled amendment to the Radio and Television Act, the Minister of Culture tabled yet another amendment which was intended to re-establish the previous prohibition concerning commercials regarding political opinions. However, in consequence of the Court's judgment of 28 June 2001, *Vgt Verein gegen Tier-fabriken v. Switzerland*, the former prohibition could not be re-established since it would be considered as a violation of Article 10 following the reasoning of the Court in the said judgment. Based on this, it would have been a violation of Article 10 if the minister's amendment of 2003 had been adopted and the former prohibition had been re-established. Thus, commercials regarding political opinions may be transmitted in Denmark today – as long as they are not a commercial for a political party
Georgia	The draft law "On Restitution of Property and Compensation for Victims as a Result of Conflict in the Autonomous Region of Former South Ossetia"
Lithuania	– The draft amendment of Article 8 (confidentiality of information source) of the Law on Provision of Information to the Public was rejected in the Parliament after the European Law Department expressed its opinion (on 8 July 2005) that the draft amendment contradicts Article 10 of the Convention, the case-law of the European Court of Human Rights and of the Constitutional Court of Lithuania. – The draft amendment of Point 9 Paragraph 1 of Article 366 (grounds of the re-opening of the proceedings) of the Code of Civil Proceedings was rejected in the Parliament after the European Law Department expressed its opinion (on 8 February 2006) that the draft amendment contradicts Article 6 of the Convention and its interpretation in the case-law of the European Court of Human Rights.

	– The Order of the Minister of the Interior of 15 November 2004 "On the approval of the rules of the examination of the demands of foreigners concerning the asylum, of the decision-making and of the implementation of the decisions", the draft of which was amended according to the proposals of the European Law Department, in which *inter alia* the doubt of compatibility with the Convention was expressed.
Norway	Examples of proposals having been returned by the Parliament to the Government because of insufficient information on compatibility with human rights obligations: This happened when the Government in 1995 proposed provisions to regulate the use of force towards certain mentally handicapped clients of the social services, and when a proposal relating to the teaching of Christianity, religion and stances of life was proposed in 1996
Switzerland	L'arrêt du 25 mars 1998 de la CourEDH dans l'affaire *Kopp c. Suisse* a entraîné une modification du projet de loi fédérale sur la surveillance de la correspondance par poste et télécommunication (adoptée le 6 janvier 2000)
United Kingdom	During its passage through Parliament the Joint Committee on Human Rights made five reports on the Asylum and Immigration (Treatment of Claimants etc.) Bill. The Bill raised many issues with relation to compliance with Convention rights and was subsequently amended by Government to reflect these concerns

II. Modification of an existing law:

Azerbaijan	- Law on media - Law on state registration and state register of legal persons - Law on lawyers and advocacy
Belgium	- L'avis du Conseil d'Etat et de la Commission de protection de la vie privée a obligé le législateur à modifier la loi du 22 mars 1999 relative à la procédure d'identification par analyse ADN en matière pénale - Un avis du Conseil d'Etat a obligé le législateur belge à se munir d'une loi-cadre définissant les finalités et moyens de la Sûreté de l'Etat: il s'agit de la loi du 30 novembre 1998 organique des services de renseignement
Bosnia and Herzegovina	- Following the decisions of the Constitutional Court establishing violations of Article 6 of the Convention and the Article 1 of the Protocol 1 to the Convention relating to inability of the appellants to dispose of their "old" foreign currency savings and following the decisions' order for adoption of the new law at state level which shall regulate the issue of payment of the "old" foreign currency savings in compliance with the standards of the Convention, in 2006 BiH authorities adopted the Old Foreign-Currency Savings Act fully complying with the guidelines given in the decisions of the BiH Constitutional Court. - 2. Following the judgment of the ECHR in the case *Jelicic v. Bosnia and Herzegovina,* where the Court found violation of Article 6 of the Convention and Article 1 of the Protocol 1 to the Convention due to failure to enforce the judgment which ordered the payment of the "old" foreign currency savings to the applicant, the Old Foreign-Currency Savings Act of 14 April 2006 was amended, so as to revoke the provision which prevented the enforcement of the final and enforceable courts' judgments ordering the payment of the old foreign currency savings.
Croatia	- *Horvat v. Croatia* case (judgment 26 July 2001, apl.51585/99) induced introduction of effective remedy for excessive length of proceedings against court proceedings - *Mikulić v. Croatia* judgment (7 February 2002, apl.53176/99) initiated

	change of Family Act in respect of determination of paternity in court proceeding - *Kutić v. Croatia* (apl. 48778/99, 1 March 2002) and *Aćimović v. Croatia* (apl.61237/00, 9 October 2003) judgments brought effective remedy in respect of violation of access to court in proceeding stayed for a long time by legislative intervention
Cyprus	- In the light of the Judgment of the Court in *Hirst v. the UK*, the Electoral Law of Cyprus was amended following legal advice from the Human Rights Sector of the Legal Service of the Republic on behalf of the Attorney-General, so as to give the right to prisoners to vote in elections (parliamentary, presidential and local elections). The Law was enacted before the last Parliamentary elections held in May 2006, and prisoners were able to vote under the amended law - The UN Convention against Torture Ratification Law was so amended as to create a presumption of ill-treatment in detention concerning persons who at the time of commencement of detention bear no external marks of injuries but bear such marks when they leave detention - Comprehensive legislation was drafted for the first time by the Human Rights Sector of the Legal Service of the Republic, on the rights of persons arrested, and detained on remand/pending trial (rights to a lawyer, visits, correspondence, telephone-calls, and conditions of detention) - Legislation was drafted by the Human Rights Sector of the Legal Service of the Republic for setting up an independent authority satisfying the Convention's norms and case-law, for investigating allegations/complaints as to inter alia human rights violations committed by the police
Denmark	In consequence of the Court's judgment of 11 January 2006 (*Sørensen and Rasmussen v. Denmark*, applications numbers 52562/99 and 52620/99), an amendment of the Freedom of Association Act (*Foreningsfrihedslov*) has been adopted in Denmark. The Court held that the fact that both applicants had been compelled to become members of a certain trade union constituted a violation of Article 11. Furthermore, the Court held that the State in authorising the use of the closed-shop agreements at issue failed in the circumstances to secure the applicants' effective enjoyment of their negative right to freedom of association. In light of this the Government has adopted an amendment to the Freedom of Association Act which prohibits closed-shop agreements and thereby secures an effective enjoyment of the negative right to freedom of association
Estonia	- The adoption of Administrative Procedure Act and its implementation made it clear that the existing system of state liability did not meet the contemporary needs and several important areas (such as compensation for damages) were not covered by the law. The working group that elaborated the draft State Liability Act paid much attention to the compatibility of the draft act with the principles of state responsibility deriving from the Convention. Also the working group paid attention to the Committee of Ministers Recommendation No (84)15 from 18 September 1984 that emphasizes the liability of the state instead of the liability of the official - In 2005 Chancellor of Justice submitted two proposals to the Parliament concerning the issues of health insurance system and misdemeanour procedure. In both cases the Parliament took into account the suggestions of the Chancellor of Justice and made relevant amendments to the acts
France	La loi française a été modifiée à plusieurs reprises, suite à un arrêt de la Cour. On peut, par exemple, citer les textes suivants : - en matière d'écoutes téléphoniques, la loi n° 91-646 du 10 juillet 1991 est intervenue après l'arrêt *Kruslin c. France* (24/04/1990) ; - en matière de droit de successions, la loi n° 2001-1135 du 3 décembre 2001

	a fait suite à l'arrêt *Mazurek c. France* (01/02/2000) ; - en matière d'asile à la frontière (effectivité du recours), la loi n° 2007-1631 du 20 novembre 2007 a tiré les conséquences de l'arrêt *Gebremedhin c. France* (26/04/2007).
Germany	A bill was drafted on the introduction of a remedy against court inaction in civil proceedings which was initiated after the Court's judgment in *Kudla vs. Poland*. In this case, the Office of the Agent analysed the judgment and, in conjunction with the department for procedural law, advised the minister that the jurisprudence of the Court called for action
Hungary	In connection with case *Dallos v. Hungary* the code on criminal procedure has been amended upon the initiative of the Unit for the Agent before the ECHR
Iceland	- The new bill to a Code on Criminal Procedure: The bill was prepared by the Commission on Procedural law and recently introduced by the Minister of Justice. It is expected to be adopted by the parliament before next spring and will replace the present legislation of criminal procedure, Act No. 19/1991. This is intended to be a comprehensive legislation on criminal procedure. In the explanatory report, number of detailed references are made to the European Convention of Human Rights and the practice of the ECHR or even specific judgments on the application of Article 6 of the Convention - The new comprehensive legislation on prison matters adopted in 2005, the Act on enforcement of punishment No. 49/2005: In the explanatory report following the bill, a special reference is made to the conclusions of the Ombudsman regarding prison matters and right of prisoners, as well as Article 3 of the European Convention of Human Rights and the European Prison Rules of 1987
Italy	- Entry into force of the law n. 89 of March the 24th 2001 (named "Pinto" law), that satisfies the principle of the auxiliary competence of the European Court of Human Rights (art. 35 and art 13 of the Convention) - Art. 175 of Code of criminal law (as modified by law n. 60 of April the 22nd 2005), regarding the re-examination of cases closed with final judgments by default
The Netherlands	Major changes to military disciplinary law, the law on committal to psychiatric hospitals, various sections of criminal law and the law of criminal procedure, administrative law and administrative procedural law, aliens law, family law, social security law and the law of civil procedure
Poland	Act of 17 June 2004 on a complaint against violation of the party's right to have a case examined without undue delay in judicial proceedings which establishes the rules and the course of lodging and examining a party's complaint when its right to have the civil executive case or other case concerning execution of a court decision examined without undue delay has been violated by an action or omission of a court or a court enforcement officer
Romania	- The abolishment, by Article 1 point 56 of Law no. 278/12 July 2006, entered into force on 11 August 2006, of Articles 205 and 206 of the Criminal code, regarding the insult and the defamation as a consequence of the judgments rendered by the ECHR in cases based on Article 10 of the Convention (such as Dalban, Cumpana and Mazare, Sabou and Pircalab) - The abolishment of the extraordinary remedy called recurs in anulare, provided by the Code of criminal procedure, after the *Brumarescu v. Romania* case - After the *Ignaccolo Zenide v. Romania* judgment, Romania adopted Law no. 369/2004 regarding the appliance of the Convention on civil aspects of international kidnap of children, adopted in Hague, on 25 October 1980 (entered into force on 29 December 2004)

	- Modification of the Code of criminal procedure consequently to the *Pantea v. Romania* judgment with regard to preventive measures (Law no. 281/2003, Government Ordinance no. 109/2003, Government Ordinance no. 748/26) - As a consequence to the *Petra v. Romania* judgment, the Ministry of Justice issued Order no. 2036/C regarding the correspondence of the detainees and guaranteed its secrecy; Government Ordinance no. 56/2003 regarding some rights of the persons executing punishments of imprisonment was issued and approved by Law no. 403/7 October 2003; Law no. 294/28 June 2004 regarding the execution of punishments and measures ordered by the judicial organs during the penal trial was adopted and entered into force on 29 June 2005 - Following *Vasilescu v. Romania* judgment, Government Ordinance no. 190/9 November 2000 regarding the regime of precious metals was adopted, its Chapter VII reglementing the procedure of the restitution of precious metals abusively taken by the state
Slovakia	- Incompatibility of the provision of Article 250f of the Code of Civil Procedure with the Article 6 § 1 of the Convention - Incompatibility of Part I Article 23 § 1, the third, the fourth and the fifth sentences, and Article 23 § 3 of the Act 187/1998 Coll. whereby amended was the Act 80/1990 Coll. on Election to the Slovak National Council, as amended, with Article 10 of the Convention - Incompatibility of the provision of Article 83 § 1 of the Misdemeanour Act 372/1990 Coll. with Article 6 § 1 of the Convention. It concerns the issue of a potential judicial examination of the decision made by the administrative authorities in cases with the imposed fine of less than SKK 2,000 - Incompatibility of Article 200i § 4 of the Act No. 99/1963 Coll., or Code of Civil Procedure, as amended, with Article 6 § 1 of the first sentence of the Convention - Incompatibility of Article 80k of the Health Care Act No. 277/1994 Coll., as amended, with Article 1 of the Protocol to the Convention, in connection with Article 14 of the Convention
Sweden	On 1 July 2006, a new Act on Judicial Review of Certain Governmental Decisions and some amendments in the Administrative Procedure Act came into force. The main purpose of the measures taken is to give Article 6.1 of the Convention a clearer and more efficient impact on the application of Swedish law. Thus, the new and amended acts include a direct reference to the notion of civil rights and obligations in the meaning of article 6.1 of the Convention
Switzerland	- Le Tribunal fédéral a ouvert l'accès à un tribunal, s'appuyant sur l'article 6 CEDH en écartant la règle contraire du droit interne (ATF [Arrêt du tribunal fédéral suisse] 125 II 417ss; cf. également la décision de la CourEDH déclarant irrecevable la requête no. 14015/02, *Haliti c. Suisse*, rendue le 1er mars 2005 ; etc.) - A la suite de l'arrêt du 22 février 1994 de la CourEDH dans l'affaire *Burghartz c. Suisse* (série A no. 280-B), p.ex., l'Ordonnance sur l'Etat civil a été modifiée afin de mettre sur pied d'égalité les époux en matière de nom - Ont également été modifiées les lois fédérales sur l'impôt fédéral direct et sur l'harmonisation des impôts directs des cantons et des communes à la suite de deux arrêts du 29 août 1997 de la CourEDH dans les affaires *E.L., R.L. et J.O.-L. c. Suisse* et *A.P., M.P. et T.P. c. Suisse* (voir les résolutions finales du Comités des ministres ResDH[2005]3 et ResDH[2005]) bien que le Tribunal fédéral dans un arrêt rendu sur demande de révision le 24 août 1998 avait explicitement déclaré que « la norme contraire à la CEDH ne doit plus être appliquée, même si la Cour n'a considéré comme contraire à la

	Convention que l'acte individuel et concret pris en application de cette norme » (ATF 124 II 480 ss, cons 3)
Turkey	L'ensemble des principaux textes concernant des domaines susceptibles de relever de la CEDH au cours des dernières années ont subi des modifications importantes suite à l'examen de compatibilité effectué à différents niveaux
United Kingdom	In *R (on the application of H) v Mental Health Review Tribunal for the North and East London Region & The Secretary of State for Health* [2001] EWCA Civ 415, for example, the court made a declaration of incompatibility of the Mental Health Act 1983 with Article 5(1) and 5(4) in as much as they did not require a Mental Health Review Tribunal to discharge a patient where it could not be shown that he was suffering from a mental disorder that warranted detention. The legislation was subsequently amended under section 10 of the Human Rights Act by means of a remedial order, that is, the Mental Health Act 1983 (Remedial) Order 2001 (SI 2001 No.3712) which came into force on 26 November 2001

III. Modification of an administrative practice :

Cyprus	The monitoring of telephone calls of prisoners, of installing cameras in prison cells, of registering changes in birth certificates and other public documents following sex-change operations, of the right of adopted children to information concerning their natural parents, the right to a lawyer of persons arrested, and the right of societies to be registered under relevant legislation
Lithuania	As regards the lengthy proceedings, the relevant court's practice redressing for the length of the proceedings using relevant provisions of the Civil Code has been developed (in Lithuanian Civil Code there is no particular provision concerning the right to redress in case of lengthy proceedings); the right to redress for the lengthy proceedings has been especially emphasized in the decision of the Supreme Court of 6 February 2007, in which the Supreme Court stated that the Lithuanian legal system comprises not only domestic but also international legal acts, thus, as in relevant provision of the Civil Code (Article 6.272) the civil liability is established for the violations of the rights of an individual, which are similar to those provided for in Article 6 § 1 of the Convention, the analogy of law shall be applicable while investigating the issue of the redress for damage caused by the said violations.
Switzerland	Modifier l'interprétation de la norme en question: ainsi, l'interdiction de la publicité politique à la télévision a été considérablement restreinte à la suite de l'arrêt du 28 juin 2001 de la CourEDH dans l'affaire *VgT c. Suisse*
United Kingdom	Various high-profile decisions (such as *Lindsay v Customs and Excise Commissioners* [2002] 1 WLR 1766 and *H & S Handel and Transport GMBH v Customs and Excise Commissions, VAT and Duties Tribunal*, 16 April 2004) have led to Her Majesty's Revenue & Customs (HMRC) adjusting its policies on when to agree to restoration of smuggled good and vehicles used to facilitate smuggling