Taking Cases to the European Court of Human Rights

A MANUAL

Kerim Yildiz and Lucy Claridge

Kurdish Human Rights Project
KHRP
Established 1992
Bar Human Rights Committee
OF ENGLAND AND WALES

TAKING CASES TO THE EUROPEAN COURT OF HUMAN RIGHTS

A MANUAL

NOVEMBER 2006

KURDISH HUMAN RIGHTS PROJECT
BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

Acknowledgements

This manual was writtten by KHRP Executive Director Kerim Yildiz and KHRP Legal Officer Lucy Claridge, with assistance from legal intern Kondylia Gogou.

KHRP gratefully acknowledges the financial support of:

The Big Lottery Fund (UK), Irish Aid (Ireland), The Sigrid Rausing Trust (UK), European Action Council for Peace in the Balkans (Netherlands), Oak Foundation (USA), Finnish Ministry for Foreign Affairs (Finland), Bishop's Subcommission for Misereor (Germany), UN Voluntary Fund for Torture (Switzerland), The Bromley Trust (UK), and Stiching Cizera Botan (Netherlands).

Layout & Design: Torske & Sterling Lawyer Marketing
www.lawyermarketing.co.uk

Keywords: European Court of Human Rights, ECtHR, human rights, manual.

Printed in Great Britain
November 2006
Published by KHRP (London)
ISBN 1-905592-04-3
ISBN 978-1-905592-04-3

Kurdish Human Rights Project
11 Guilford Street
London
WC1N 1DH, United Kingdom
Tel: +44 (0)20 7405-3835
Fax: +44 (0)20 7404-9088
khrp@khrp.org
www.khrp.org

Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living within the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.

Bar Human Rights Committee of England and Wales
BHRC
Garden Court Chambers
57-60 Lincoln's Inn Fields
London, WC2A 3LS, UK
Tel 020 7993 7755
Fax 020 7993 7700
bhrc@compuserve.com www.barhumanrights.org.uk

The Bar Human Rights Committee is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards relating to the right to a fair trial. The remit of the Bar Human Rights Committee extends to all countries of the world, apart from its own jurisdiction of England & Wales.

Contents

Foreword

The Kurdish Human Rights Project (KHRP) started its litigation programme in 1992. Since then this programme has been developed widely. Following on from the success of its European Convention Training and Litigation Support Programme in Turkey, KHRP and the Bar Human Rights Committee of England and Wales (BHRC) initiated the programme in Armenia and Azerbaijan, who ratified the European Convention on Human Rights in April 2002. We co-operate with a number of organisations focusing on these and numerous other regions. The programme seeks to give advice and assistance to non-governmental organisations (NGOs) and legal practitioners about the practice, procedure and law of the European Convention on Human Rights.

This manual provides commentaries on the practice and procedure of the European Court, as well as including key texts such as the Convention itself, the Court's application form and a table of legal aid rates. It has been produced in order to complement the on-going training seminars being held in Armenia, Azerbaijan, Turkey and other parts of Europe, which have been designed to provide very practical advice about taking cases to the European Court of Human Rights.

This is the second edition of the manual. It is published jointly by KHRP and BHRC. The publication of this manual was made possible by the support of the KHRP funders, to whom we are very grateful for their continuing financial support of this Project. I welcome this opportunity for our organisations to work together with the aim of promoting and supporting human rights standards in the regions.

Mark Muller

Chair
Bar Human Rights Committee of England & Wales

November 2006

Introduction

The European Convention on Human Rights (ECHR, 'The Convention') was the first Convention adopted by the Council of Europe in 1950 and is integrally linked with the founding principles of the organisation. These principles, which are implicitly stated in the Council of Europe Statute, are the promotion of pluralist democracy, respect for the rule of law and the protection of human rights and fundamental freedoms.

The Council of Europe and the Convention emerged as part of the response to the death and suffering and the widespread destruction of the Second World War. 'Europe's leaders' were 'determined' that this should 'never happen again' and ten European countries met in London on 5 May 1949 to bring into being the Council of Europe.

From this time onwards, the organisation has been working towards 'greater unity between its members'.

However, it was only with the fall of the Berlin Wall in 1989 that the Council of Europe could begin to fulfil its 'true' pan-European vocation and this is reflected in the fact that the organisation now has 46 member states, which are all signatories to the Convention.

One of the conditions for entry into the Council of Europe is to sign and ratify the ECHR and its Protocols within a certain timeframe. The majority of member states of the Council of Europe have incorporated the Convention into their domestic legal system, thus enabling the domestic courts to invoke the ECHR principles and its case law.

For instance, in the UK, the ECHR was incorporated into domestic law through the Human Rights Act 1998 which came into force in October 2000.

It is also central to the effectiveness of the Convention that a person can raise a Convention issue before the local courts and have it adjudicated upon locally. This is in keeping with the philosophy of the Convention as a system for the protection

of human rights subsidiary to national law.

The ECHR has evolved in time and, besides the original Convention, there are now a number of additional Protocols in force which either add new rights (Protocols 1, 4, 6, 7, 12 and 13) or improve the Convention machinery (Protocol 11 and, when it enters into force, Protocol 14).

It should be remembered that the Convention is always evolving and that its Protocols are supplemented by the case law of the (former) European Commission of Human Rights and the European Court of Human Rights (ECtHR), which have reinforced and developed these rights over the years.

The uniqueness of the Convention system is that once domestic legal remedies have been exhausted, an individual may lodge a complaint in Strasbourg for an alleged breach of the Convention by a Contracting State.

The Strasbourg machinery is not a substitute for national courts but rather, in a way, an extension of them. It should, however, be stressed that the Strasbourg organs are not a 'fourth instance' court reviewing cases at a domestic level. Protection of human rights should be ensured at national level with Strasbourg as the 'fall back'.

The uniqueness of the ECHR is reinforced in that it differs from other international treaties in a fundamental way. For example, the concept of nationality is considered irrelevant since 'everyone within the contracting party's jurisdiction' is covered by the Convention (Article 1). This means that the ECHR offers protection not only to citizens but also to anyone within the jurisdiction of a Contracting State, whether he or she is an immigrant, refugee or tourist, and they can also complain to the ECtHR. Complaints have been received from nationals of more than 80 countries.

In addition, the ECtHR has in certain circumstances accepted that a Contracting Party has exercised extra-territorial jurisdiction. For example, in the case of *Loizidou v Turkey,*[1] the Respondent State claimed it did not have jurisdiction over the activities of the Turkish military forces occupying Northern Cyprus, who had prevented the applicant from gaining access to her property. The ECtHR confirmed that Article 1 of the Convention comprises the idea of State jurisdiction over the individual through State organs or authorities. It also held that the 'responsibility of a contracting party may also arise when as a consequence of military action…. it exercises effective control of an area outside its national territory'.

The Court took a different view in the case of *Banković and others v Belgium and 16*

1 ECtHR Appl. No. 15318/89, Judgment of 18 December 1996.

other Contracting States.[2] The case concerned the death of the applicants' relatives during the NATO bombings in the territory of the Federal Republic of Yugoslavia (FRY). The Court rejected the applicants' arguments that there was a jurisdictional link between the persons who were victims of the bombings and the Respondent State. It stated that the FRY did not fall within the legal space of the ECHR Contracting States. It underlined that 'the Convention was not designed to be applied throughout the world, even in respect of the conduct of Contracting States'.[3] The Court decided to rely on the desirability of avoiding a gap in human rights protection in favour of establishing jurisdiction only when the territory in question was one that, but for the specific circumstances, would normally be covered by the Convention. However, in *Issa v Turkey,*[4] the Court made a slight departure from *Banković*. In this case, the Iraqi Kurd applicants claimed a violation of Article 2 following the killings of their relatives by Turkish armed forces in Northern Iraq. While the Court did not '…exclude the possibility that as a consequence of military action, the respondent State could be considered to have exercised, temporarily, effective overall control of a particular portion of Northern Iraq', it did not find that the evidence presented was sufficient to establish that the Turkish forces conducted operations in the area where the victims died.

It should also be remembered that the Convention concerns a number of essentially civil and political rights and that there are a wide range of other human rights not covered. For example, a number of social and economic rights are protected under the Social Charter (another Council of Europe Convention). This point is relevant because the ECtHR is inundated every day with applications concerning alleged injustices (including social and economic matters). While many of these injustices might well be true, they often concern matters outside the scope of the ECHR and hence are rejected.

An indication of the growing importance of the Convention system within Europe can be seen from considering the number of applications to the European Court of Human Rights. In the first 30 years of the ECHR, less than 10,000 complaints were filed with the Commission. Since then, the number of applicants has grown rapidly – in 1995, 10,201 communications were received, whilst by 1999, there were more than 47,000 provisional files pending at the Court. By the end of 2005, there were 82,100 pending registered cases.[5]

These figures do not necessarily illustrate that human rights abuses are multiplying,

2 ECtHR, Appl. No 52207/99, Judgment of 12 December 2001.

3 Ibid, para. 80.

4 KHRP case, ECtHR Appl. No. 31821/96, Judgment of 16 November 2004.

5 See 'Review of the Working Methods of the European Court of Human Rights', Report of the Right Honourable Lord Woolf, December 2005, p 4.

but rather they show that awareness of the Convention is improving and with the assistance of NGOs and human rights groups, individuals are more readily able to pursue their cases to the ECtHR.

1. The European Court of Human Rights: An Overview

1.1 Introduction to the European Convention System

- The ECHR is a creation of the Council of Europe which was established immediately after the Second World War, with the aim of enhancing the cultural, social and political life of Europe. The text can be found at Appendix A.

- The creation of, and early work of, the Council of Europe (based in Strasbourg) was in part a reaction to the serious human rights violations encountered in Europe during World War II.

- There were originally ten member States.

- The Council of Europe's primary decision-making bodies are the Committee of Ministers (the executive organ), and the Parliamentary Assembly.

- The ECHR was adopted in 1950 and came into force in 1953. It was intended to protect civil and political rights, rather than economic, social or cultural rights. The Convention created a right of individual petition - the right of individuals and organisations to challenge their Government through the Strasbourg process, by taking their case to the European Commission of Human Rights, and then to the ECtHR. The Court's judgments are binding on the State Parties to the Convention.

- There has been great expansion of the Convention system, particularly in the 1990s when a number of central and eastern European states ratified the Convention – for example, Bulgaria, Czech Republic and Slovakia (1992), Poland (1993), Romania and Slovenia (1994), Lithuania (1995), Albania, Andorra and Estonia (1996), Ukraine, Croatia, Moldova, 'the former Yugoslav Republic of Macedonia' and Latvia (1997), Russia (1998), Georgia (1999), Armenia, Azerbaijan and Bosnia-Herzegovina (2002) and

Serbia and Montenegro (2004). There are now 46 member states who are all signatories to the Convention.

1.1.1 Protocol 11[6]

- ECHR cases have been taking at least four or five years to proceed through the system (in addition to any domestic proceedings which may have been pursued).

- Protocol 11 to the Convention, which came into force on 1 November 1998, abolished the two-tier system of Commission and Court, and created a single full-time permanent Court. The primary aim of the changes was to speed up the procedure.

- In spite of Protocol 11 coming into force, the backlog of Convention cases has continued to increase. In 1999, 8,396 applications were registered, compared with 5,981 in the previous year.[7] The number of new applications rose from 18,200 in 1998 to 44,100 in 2004 and this dramatic growth raised concerns about the Court's capability to deal with this influx of applications. Thus, calls for further reform were made which materialised with the drafting and adoption of Protocol 14.

1.1.2 Protocol 14

- On 12 May 2004, the Council of Europe member States adopted Protocol 14 in order to deal with the massive influx of individual applications that were viewed as endangering the effectiveness of the ECHR control system.[8]

- This Protocol is not yet in force. It will come into force on the first day of the month following the expiration of three months after the date on which all Contracting Parties have expressed their consent to be bound by it (Articles 18 and 19 (P14)). By July 2006, 41 out of the 46 Council of Europe member States had signed and ratified it. The other five have

6 Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Thereby, Council of Europe, Doc. H (94) 5; 17 EHRR 501 (1994).

7 Press release of the Registry of the European Court of Human Rights, 24 January 2000.

8 Protocol No. 14 to the ECHR amending the control system of the Convention, CETS No. 194 and Explanatory Report.

signed the Protocol but have yet to follow suit in its ratification.

- The changes introduced by Protocol 14 relate more to the functioning than to the structure of the control system. The main changes are: (a) the introduction of a new admissibility requirement in Article 35 ECHR, which will be explained in more detail later; (b) the introduction of a single-judge formation who will have the competence to make final decisions on the admissibility of applications where such decisions can be taken without further examination; (c) the extension of the competence of the committee of three judges to cover repetitive cases; (d) the establishment of a new procedure which will enable the Committee of Ministers to bring proceedings before the Court where a state refuses to comply with a judgment.

The effect of the above changes will be discussed in the relevant sections of this manual, however, they have been italicised since the Protocol has yet to come into effect.

1.2 Substantive Rights in the European Convention

Article 1 - obligation to respect human rights
Article 2 - right to life
Article 3 - prohibition of torture
Article 4 - prohibition of slavery and forced labour
Article 5 - right to liberty and security
Article 6 - right to a fair trial
Article 7 - prohibition of retrospective penalties
Article 8 - right to respect for private and family life
Article 9 - freedom of thought, conscience and religion
Article 10 - freedom of expression
Article 11 - freedom of assembly and association
Article 12 - right to marry
Article 13 - right to an effective remedy
Article 14 - prohibition of discrimination
Article 15 - derogation in time of emergency
Article 16 - restrictions on political activity of aliens
Article 17 - prohibition of abuse of rights
Article 18 - limitation on use of restrictions on rights

1.2.1 Additional Protocols to the Convention

The substantive rights have been supplemented by additional Protocols:[9]

- Protocol 1: Adopted in 1952 and came into force in 1954. The rights protected are as follows: (1) peaceful enjoyment of possessions; (2) right to education; (3) free elections at reasonable intervals. This has been ratified by most Contracting States.

- Protocol 4: Adopted in 1963 and came into force in 1968. The rights protected are as follows: (1) no deprivation of liberty merely on the grounds of inability to fulfil a contractual obligation; (2) freedom of movement and residence; (3) no expulsions of nationals; (4) prohibition of collective expulsion of aliens. This has been ratified by most Contracting States.

- Protocol 6: Adopted in 1983 and came into force in 1985. The sixth Protocol provides for the abolition of the death penalty (except in time of war or imminent threat of war). This has been ratified by most Contracting States.

- Protocol 7: Adopted in 1984 and came into force in 1988. The rights protected are as follows: (1) conditions on expulsion of lawfully resident aliens; (2) right of review of a criminal conviction or sentence; (3) compensation for miscarriages of justice; (4) no second criminal trial or punishment; (5) equality of rights of spouses. This has been ratified by most Contracting States.

- Protocol 12: Adopted on 26 June 2000 and came into force on 1 April 2005. It provides a free-standing prohibition against discrimination. As of July 2006, 34 states have signed it whilst 11 have ratified.

- Protocol 13: Adopted on 21 February 2002 and came into force on 1 July 2003. It abolishes the death penalty in all circumstances, including crimes committed during war and imminent threat of war. This has been ratified by 33 Contracting States.

1.3 The New System Under Protocol 11

- There are no changes to the substantive rights (Articles 1-18).

9 A table of ratification of the Convention and its Protocols can be found at Appendix F

- The amended Convention created a new Court functioning on a permanent basis (Article 19). One judge is elected by the Parliamentary Assembly for each state party, who holds office for six years and may be re-elected (Article 23). Each judge must retire at 70. There is a power of dismissal where a 2/3 majority of the judges consider that the judge has ceased to fulfil the required conditions (Article 24).

- The Plenary Court is concerned with electing the President, Vice-Presidents, Presidents of chambers, the Registrar and Deputy Registrar, and adopting rules (Article 26). The Plenary Court has no judicial role.

- The Court may establish Committees of three judges which will be able unanimously to declare cases inadmissible (Article 28). Chambers of seven judges will determine the remainder of the cases (Articles 27 & 29). The national judge will be an *ex officio* member of the chamber. There is no right of appeal from an admissibility decision.

- Individuals have a mandatory right to complain directly to the Court (for the first time).

1.3.1 The Process

- **Admissibility criteria**: The pre-existing admissibility criteria have been retained (Article 35). The Court pursues the examination of the case and, if necessary, undertakes an investigation. States are obliged to furnish 'all necessary facilities' for investigations (Article 38). Chambers may hold an oral hearing, which will be in public, unless exceptional circumstances decide otherwise (Article 40).

- **Friendly settlement:** The Court will place itself at the disposal of the parties to secure a friendly settlement on the basis of respect for human rights (Articles 38 and 39). Cases will be struck out if they are settled. If so, the Court publishes a decision which will give a brief statement of the facts and the solution reached.

- **Judgment of a chamber:** There will be a reasoned judgment with provision for dissenting judgments (Article 45). The Court has power to grant 'just satisfaction' (Article 41).

- **Execution of judgments:** The role of the Committee of Ministers is reduced to supervising the execution of judgments (Article 46).

- **Chamber relinquishment:** a Grand Chamber of 17 judges (Article 27(1)) will determine cases relinquished to it by the chamber (Article 30):

  (i) Where a case involves a serious question affecting the interpretation of the Convention (or the Protocols); or

  (ii) Where a judgment might be inconsistent with earlier jurisprudence.

  These cases will be considered by the broadest composition of judges, but one party to the case may block relinquishment (Article 30).

- **Re-hearings:** within three months of a chamber giving judgment, any party may ask for the case to be referred to the Grand Chamber for a final judgment (Article 43). The request is considered by a panel of five judges from the Grand Chamber to decide if the case involves:

  (i) A serious question affecting the interpretation of the Convention; or

  (ii) A serious question affecting its application (for example, if it necessitates a substantial change to national law or practice); or

  (iii) A serious issue of general importance (for example, a substantial political issue or an important issue of policy) (Article 43(2)).

  Therefore, the re-hearings process creates an unusual scenario of a single court providing two judgments on the merits of the same case, which arguably represents a political compromise.

1.3.2 Third Party Interventions

- The President may permit any Convention signatory or 'any person concerned' to submit written comments or participate in hearings (Article 36(2)).

- Applications for permission to intervene can be made by letter to the President of the Court. If permission is granted by the President, it is likely to be conditional. For example, interveners will usually be required not to comment on the facts or law of the particular case and they may be required to keep their submissions to within a specified length. There is, otherwise, no required format for an intervention.

- It is advisable (but not necessary) to consult with the applicant(s), for

example, to avoid duplication of submissions. Interventions may be useful for the Court in providing, for example, the wider context relating to the particular case in question or relevant comparative jurisprudence.

- *When Protocol 14 comes into force, the Council of Europe Commissioner Human Rights will be able to submit written comments to the Court and take part in hearings. He will no longer have to seek leave to do so, as is the case now.*

1.3.3 Inter-State Cases

- Any State Party may refer to the Court any alleged breach of the Convention by another State Party (Article 33).

- The applicant, State Party or any of its nationals need *not* have been affected by the alleged violation.

- Chambers will decide the admissibility and merits of inter-state cases (Article 29(2)). Cases may be relinquished or referred for re-hearing.

1.4 Rules of the Court

- New rules of the Court were adopted on 4 November 1998 and were last amended on 7 November 2005. The rules specify the procedure and internal workings of the Court. A copy of the rules can be found on the ECtHR website, http://www.echr.coe.int/echr.

1.5 Changes under Protocol 14[10]

- *There is no change in the substantive rights under the ECHR (Articles 1-18).*

- *The changes introduced by Protocol 14 relate more to the functioning than to the structure of the system.*

- *The Protocol introduces changes regarding the composition of the Court and the terms of judicial office. The latter intend to promote the impartiality and independence of judges. Thus, the renewable six year term of office will become a single, nine year term. Judges are required to retire at 70. Candidates who are older than 61 can be elected although it is suggested that the High Contracting*

10 The text of Protocol 14 can be found at Appendix K

Parties should propose candidates that will be able to serve at least half of their appointed term.

- *Furthermore, if the Plenary Court requests, the size of the Court's chambers may be reduced for a fixed period from seven to five judges by a unanimous decision of the Committee of Ministers. Also, the Protocol introduces a new system of appointment of ad hoc judges. Thus, the High Contracting Parties are required to draw in advance a reserve list of ad hoc judges from which the President of the Court will choose when the need arises for the appointment of an ad hoc judge.*

1.5.1 The Process

- ***Admissibility criteria:*** *A new inadmissibility criterion is added to those stipulated in Article 35 ECHR. This allows the Court to declare inadmissible applications where 'the applicant has not suffered significant disadvantage' (Article 12 of the Protocol amending Article 35). The effect of this amend is discussed in more detail in Section 3.12.*

- ***Filtering of inadmissible applications:*** *Protocol 14 addresses the problem of filtering inadmissible applications by adding a single judge formation to the already existing formations of the Court (Article 6 of the Protocol and new Article 26). The single judge will have the competence to declare an individual application inadmissible or strike it out of the list, '…where such decision can be taken without further examination' (Article 7 of the Protocol and new Article 27 of the Convention). The Explanatory Report clarifies that '….the judge will take such decisions only in clear-cut cases, where the inadmissibility of the application is manifest from the outset'. His decisions will be final.*

  However, if a single judge does not reach any of the above types of decision, he/she must forward the application either to a Committee or a chamber. The single judge will be assisted in his work by a Registry Rapporteur but the decision will remain his sole responsibility. The Registry Rapporteur will undertake the functions the Judge Rapporteur and the case lawyer. A single judge cannot decide on the admissibility of an individual application filed against his own State.

  Finally, under the current system, it is the three-judge committee that is empowered to declare an individual application inadmissible or strike it out of the list when the inadmissibility is manifest from the outset. Under the new Protocol, the three-judge committee retains this competence but will share it with the single-judge formation (Article 8 and new Article 28.

- ***Repetitive cases:*** *Protocol 14 also introduces an accelerated procedure for*

repetitive but manifestly well-founded cases which derive from the same structural defect at the national level. Article 8 of the Protocol (amending Article 28 of the Convention) extends the competence of the committees of three judges from declaring individual applications inadmissible to rendering a joint decision on the admissibility and the merits of an individual application, if the underlying question of the case is already the subject of well-established case law of the Court. The decision and judgment reached is required to be unanimous. If a unanimous decision is reached, that will be final.

If the judges fail to reach unanimity, the chamber procedure will be applied (Article 9 of the Protocol amending Article 29 of the Convention). The Parties are entitled to contest the 'well established' character of the case law. The presence of the national judge in this type of procedure is not mandatory. However, amended Article 28 (3) of the Convention provides the Committee with the possibility to invite the judge elected in respect of the Respondent State to take the place of one of the members of the Committee, especially in cases where the Respondent State had contested the application of the accelerated procedure.

- ***Execution:*** *Changes are introduced which aim to improve the execution of the Court's judgments (Article 15 and 16). These are discussed in more detail in Section 4.3.1.*

- ***Third-party interventions:*** *Article 13 of the new Protocol adds a new paragraph to Article 36 ECHR which concerns third-party interventions. According to the new amendment, the Commissioner for Human Rights may submit written comments and take part in hearings in all cases before the chamber and the Grand Chamber.*

- ***Friendly settlement****: A new more flexible friendly settlement procedure is introduced in Article 15 of the Protocol which amends Article 39 ECHR. Thus, the Court may place itself at the disposal of the parties at any stage of the proceedings in order to secure a friendly settlement. Furthermore, the Committee of Ministers is provided with the power to supervise the execution of the friendly settlements as set out in the relevant decisions.*

- ***EU Accession:*** *Finally, Article 17 of the Protocol provides for the EU's accession to the Convention.*

1.6 Underlying Convention Principles

- **Subsidiarity:** The Convention system is subsidiary to the national systems of the Contracting Parties. Thus, applicants are required to exhaust

effective domestic remedies before filing an application to the Court.

- **Democratic Society:** The principle of democratic society is also prominent in the Convention. In the Preamble, the Contracting Parties reaffirm their profound belief that the fundamental freedoms which are the foundation of justice are best maintained, *inter alia*, by effective political democracy. An interference with many of the rights guaranteed in the Convention is justified only if it is necessary in a democratic society (see Articles 8-11).

- **Proportionality:** The Court uses the principle of proportionality when it assesses whether an interference with many of the Convention provisions (for example, Articles 8-11, Article 14) constitutes a violation. This principle requires the existence of a pressing social need for the measure in question and that this measure is proportionate to the legitimate aim pursued.

- **Margin of Appreciation:** The Court refers to the national authorities' margin of appreciation doctrine when it assesses whether a limitation upon one of the rights and freedoms guaranteed in the Convention, is necessary in a democratic society. In cases concerning limitations of the freedom of the press, the Court has found in favour of a narrowed margin of appreciation, unless the prohibited publication is initiating violence. In cases concerning environmental planning or regulation of names, the Court has found that national authorities enjoy a wider margin of appreciation.

- **The Convention as a 'Living Instrument':** The Convention is a multilateral treaty and the Court has held as early as 1975 that it will be guided in its interpretation of the Convention provisions by the principles codified in the Vienna Convention on the Law of the Treaties 1969.[11]

  Through the years, the Court has developed two other doctrines of interpretation which take into account the special character of the Convention as a treaty for the collective enforcement of human rights and fundamental freedoms.[12]

  The first doctrine is that of interpreting the Convention as 'a living

11 *Golder v. the UK*, ECtHR Appl. No. 4451/70, , Judgment of 21 February 1975, Series A, No. 18 (1979-80) 1 EHRR 524

12 See Mowbray, A, 'The Creativity of the European Court of Human Rights', (2005) 5 HRLR, pp. 57-79; also *Soering v the UK*, ECtHR Appl. No. 14038/88, Judgment of 7 July 1989, Series A, No. 161, (1989).

instrument'. Thus, in *Tyrer v UK*, the Court held that the 'the Convention is a living instrument which must be interpreted in the light of present-day conditions'.[13] This doctrine has been invoked by the Court in several cases. For example, in *Loizidou v Turkey*, it was held that the 'living instrument' doctrine should not only be confined to the substantive provisions of the Convention but it should also apply to provisions, such as Articles 25 and 46, which govern the operation of the Convention's enforcement machinery.[14] According to the Court, 'these provisions cannot be interpreted solely in accordance with the intentions of their authors as expressed more that forty years ago'.[15] Sometimes, the Court interprets the Convention by referring to its 'dynamic and evolutive' interpretation which is another facet of the 'living instrument' doctrine.[16]

The second doctrine is that of interpreting the guaranteed rights and freedoms in a way that makes their application not theoretical and illusory but practical and effective.[17] The Court has used the 'practical and effective' doctrine in its case law and has interpreted various of the Convention provisions, such as Article 8, as requiring from the Contracting Parties to fulfil not only the negative obligation of non-interference with the right to private life but also the positive obligation to adopt measures designed to secure the genuine and effective respect for private life even in the sphere of the relations of individuals between themselves.[18] In respect of the right to genuine and effective freedom of assembly, the Court has held that Article 11 places States under the positive obligation to take reasonable and appropriate measures such as deploying a police force in order to enable a lawful demonstration to proceed peacefully.[19]

13 *Tyrer v the UK*, ECtHR Appl. No. 5856/72, Judgment of 25 April 1978, Series A, No. 26, para. 31.

14 *Loizidou v Turkey* (Preliminary Objections), ECtHR Appl. No. 15318/89, Judgment of 18 December 1996, Series A, No. 310, (1995).

15 Ibid, para. 70.

16 Mowbray, p. 64.

17 *Airey v Ireland*, ECtHR Appl. No. 6289/73, Judgment of 9 October 1979, Series A., No. 32, (1979), para. 24.

18 *X and Y v the Netherlands*, ECtHR Appl. No. 8978/80, Judgment of 26 March 1985, Series A, No. 91 (1985).

19 *Plattform 'Ärtze für das Leben' v Austria*, ECtHR Appl. No. 10126/82, Series A, No. 139 (1988), para. 32, dec. of 21 June 1988, (1991) 13 EHRR 204,.

2. Outline of the Procedure for Taking a Case to the European Court of Human Rights

Contact details:

The Registrar
European Court of Human Rights
Council of Europe
67075 Strasbourg Cedex
France

Telephone: +33 (0)3 88 41 20 18
Fax: +33 (0)3 88 41 27 30

Website: http://www.echr.coe.int

The Court can easily be contacted in writing or by telephone should there be any queries regarding the progress of a case. The relevant section staff are usually able to assist. The case name, Respondent State and application number should be stated in all correspondence.

2.1 Lodging the Application with the Court

- The initial letter should identify the applicant(s), summarise the relevant facts and any domestic proceedings which have been brought and set out the Articles of the Convention which the applicant claims have been breached.
- An application need *not* be submitted by a lawyer.
- There is no Court fee.
- The date of introduction of the complaint is the date of the initial

letter (for the purposes of the six months time limit – under Article 35(1)). The introductory letter may be sent by fax.

- The Court has two official languages, English and French. However, prior to an admissibility decision in a case, the introductory letter and indeed any communication or pleading submitted to the Court, may be in any one of the official languages of the ECHR State Parties. After admissibility, parties will be required to communicate with the Court in English or French, unless they obtain the permission of the President of the chamber to continue to use the official language of a State Party.

- A *pro forma* introductory letter is attached at Appendix H.

2.2 Registration and Examination of the Case

- The Court will open a provisional file and assign a case number. A Court Registry lawyer will respond in writing to confirm the case number and the date of introduction of the complaint, together with an application form and a form of authority (which should be signed by the client authorising the lawyer to act on the client's behalf). See Appendices B and C for copies of both.

- The application will be assigned to one of the Court's five sections (see Appendix G for details of their composition).

- The application form and form of authority should be completed and returned to the Court within six weeks (if necessary, it is possible to obtain extensions of time by request in writing).

- Copies of all relevant documents should be lodged at the Court with the application form.

- Legal aid is *not* available at this stage.

- The application is registered on receipt of the completed application form. The Court will reply in writing to confirm receipt. The Court may also refer in the letter to any apparent problems as to the admissibility of the application (which the applicant should try to answer).

- Following registration, all documents lodged with the Court are

accessible to the public (unless the Court decides otherwise).

- Once registered, an application is assigned to a Judge Rapporteur (whose identity is not disclosed to the applicant) to consider admissibility.

- The Court (in Committees of three or chambers of seven) may declare an application inadmissible or the application may be communicated to the respondent Government.

2.3 Communication of a Case

- If a case is communicated to the Respondent Government, the Government will be asked to reply to specific questions (copies of which are sent to the applicant) within a stipulated time (extensions of time may be obtained by the Government).

2.4 Legal Aid

- When a case is communicated to the Respondent Government, the applicant is then invited to apply for legal aid. He or she will have to complete a 'declaration of means' form (see Appendix D). The assessment of financial means is carried out by the appropriate *domestic* authority. The Court will send an application for legal aid to the Government to comment on. The grant of legal aid is retrospective and there is a set scale of fees for each stage of the proceedings. Details are set out at Appendix E. Offers of legal aid are sent to the lawyer at each stage of the proceedings and should be signed and returned by the lawyer. Monies are paid by bank transfer.

2.5 Government's Observations and Applicant's Observations in Reply

- A copy of the Government's written Observations will be sent to the applicant. The applicant may submit further written Observations in reply (within a stipulated time). The Government will then be provided with an opportunity to respond to these (again, within a stipulated time).

2.6 Interim Measures

- Interim measures (Rule 39): a chamber may indicate to the parties any interim measures which it considers should be adopted in the interests of the parties or the proper conduct of the proceedings.

- The Court applies a threefold test:

  (1) There must be a threat of irreparable harm of a very serious nature;

  (2) The harm threatened must be imminent and irremediable; and

  (3) There must be an arguable (*prima facie*) case.

- For example, interim measures may be applied where an applicant is threatened with expulsion to a country where there is a danger of torture or death. In *Shamayev and 12 Others v. Georgia and Russia,*[20] the Court requested the Georgian authorities to stay the extradition of several suspected terrorists of Chechen origin to Russia, pending receipt of more detailed information concerning the circumstances surrounding the extradition.

- Interim measures have also been applied in other types of cases. In *Öcalan v. Turkey*, the Court requested the Government to take interim measures in order to ensure that the applicant, who was facing the death penalty, had a fair trial and was able to exercise his right of individual petition to the Court through lawyers of his own choosing.[21]

- Requests for interim measures in urgent cases should be sent to the Court by fax, e-mail or by courier, preferably during working hours. If a request is sent by e-mail, a hard copy should also be sent at the same time. The request should be marked as URGENT – RULE 39 and written, where possible, in one of the official languages of the Contracting States. In extradition and deportation cases, a request and relevant supporting material should be submitted prior to the final domestic decision being issued. The requests must be accompanied with all necessary supporting documents such as relevant domestic

20 ECtHR Appl. No. 36378/02, Interim Measures adopted on 4 October 2002.

21 ECtHR Appl. No. 46221/99, Judgment of 12 May 2005.

decision and any other material that will substantiate the applicant's allegations.

- Failure of a State to comply with interim measures may amount to a violation of Article 34 ECHR. More specifically, in *Mamatkulov and Askarov v. Turkey,*[22] the Court held that '…a failure to comply with interim measures had to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34'.

2.7 Decision on Admissibility

- An application may be declared inadmissible by a Committee of three judges (if unanimous). The remainder of the cases are dealt with by a chamber of seven judges.

- The Court may hold an oral hearing to decide admissibility, although this is now rare and usually only if the case raises difficult or new issues. An application may be declared admissible/inadmissible in part.

- *Under Protocol 14 to the Convention, the Court will also be able to sit in single-judge formation, assisted by Rapporteurs (Articles 6 and 7). However, a single judge will not consider any application against the State in respect of which he or she has been elected.*

2.8 Admissibility and Merits Dealt With Together

- The Court may decide an application's admissibility and merits at the same time (Article 29(3)). This is happening on an increasing basis, mainly to speed up cases, particularly where they are repetitive.

- If so, the Court will take this decision at the time of communicating a case to the Respondent State. The parties will be invited to lodge submissions dealing with just satisfaction and friendly settlement.

- Alternatively, where it considers it appropriate, a chamber may decide to proceed to adopt a judgment on the merits which incorporates the

22 ECtHR Appl. No. 46827/99 and 46951/99, Judgment of 4 February 2005.

decision on admissibility without giving notice to the parties at the time of communication.

2.9 Establishing the Facts

- The Court *may* examine witnesses and carry out fact-finding hearings and/or on-the-spot investigations, although this is rare.

2.10 Friendly Settlement

- The friendly settlement procedure provides the Respondent Government and the applicant with an opportunity to resolve a dispute.

- Following the decision on admissibility, the Court will write to the parties asking for any proposals as to settlement (Article 39 ECHR). The case is struck off the Court's list of cases if settlement is agreed.

- Applicants who receive friendly settlement proposals from a Respondent State would be advised to negotiate firmly for both redress, including compensation and costs, and also for Government commitments to revise policy or practice or to introduce new legislation.

- *Under Protocol 14, Article 39 ECHR will be amended to state that a friendly settlement may be concluded 'at any stage of the proceedings' (Article 15).*

2.11 Final Submissions Post-Admissibility and Examination of the Merits

- Where admissibility and merits are not considered together, the parties are invited to lodge final written submissions (commonly referred to as the 'Memorial'). This should encapsulate the totality of the applicant's case.

- Details of any costs or compensation which are being claimed should either be included with the Memorial or should be submitted to the Court within two months of the admissibility decision (or other stipulated time).

- The Rapporteur will carry out a detailed examination of the merits.

2.12 Oral Hearing

- The practice whereby the Court holds a hearing on the merits of the case is now the exception rather than the rule. It is rare for an oral hearing to be held in most cases. The Court is generally more likely to do so if the case is of high legal or political importance or if further clarification is needed on the facts.

- The Court's hearings take place in public, unless there are reasons for the hearing to be held in private. The hearings usually take no more than two hours in total. Applicants are usually given 30 minutes to make their initial oral arguments. If the Court asks questions of the parties there may be a 15-20 minute adjournment, then each party may have 15-20 minutes to answer questions and reply to the other side.

2.13 Judgment[23]

- The Court's reasoned judgment is published several months after the submission of final written observations or after any oral hearing. Parties will be given notice of the date and time of delivery of the judgment, which will also be posted on the Court's website.

- Judges may append their dissenting judgment to the majority judgment. Once final, judgments have binding force (Article 46(1)).

- The Court's primary remedy is a declaration that there has been a violation of one or more Convention rights.

- The judgment may include an award for 'just satisfaction' under Article 41 (previously Article 50). This may include compensation for both pecuniary and non-pecuniary loss and legal costs. Awards for just satisfaction may be reserved in order for the Court to receive further submissions.

- The Court will *not* quash decisions of the domestic authorities or courts or strike down domestic legislation, but it may in some circumstances recommend that a respondent Government take particular measures. In instances where there has been a breach of the right to a fair trial, for example, the Court may recommend that

23 Further information about judgments can be found in Section 4

the most appropriate form of relief would be to ensure the application a retrial by an independent and impartial tribunal.[24]

- There is *no provision* in the Convention for costs to be awarded against an applicant.

2.14 Enforcement of Court Judgments

- Judgments are transmitted to the Committee of Ministers which supervises enforcement (Article 46(2)). This is explained in more detail in Section 4.3.

A flowchart summarising the above process is attached at Appendix I.

24 See *Gencel v Turkey*, ECtHR Appl. No 53431/99, Judgment of 23 October 2003

3. Admissibility Criteria at the European Court of Human Rights

The admissibility rules are a critical aspect of the European Convention system, not least because only about 10 to 20 percent of cases are found admissible. In 2005, for example, the Court took decisions in 28,648 cases, and of those about 95 percent were declared inadmissible or struck off the list.[25]

Article 34 of the Convention (formerly Article 25) sets out the requirements relating to standing. Article 35 (formerly Article 26) sets out the admissibility criteria, the most important of which in practice are the requirement to exhaust effective domestic remedies and to submit an application to the Court within six months of the final decision in the domestic proceedings.

Article 34

> The Court may receive applications from any person, NGO or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

25 European Court of Human Rights Survey of Activities 2005, at < http://www.echr.coe.int/NR/rdonlyres/4753F3E8-3AD0-42C5-B294-0F2A68507FC0/0/2005_SURVEY__COURT_.pdf> (last accessed 23 October 2006)

2. The Court shall not deal with any application submitted under Article 34 that

    a. Is anonymous; or

    b. Is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of application.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

3.1 Standing and Capacity - Who May Petition the Court?

The ECtHR rules relating to capacity and standing are not restrictive, although they are inextricably linked to the requirement that an applicant must claim to be the *victim* of a violation of one or more Convention rights (which is dealt with below).

Article 34 states that the Court may receive applications from 'any person, non-governmental organisation or group of individuals…' Accordingly, individuals, groups of individuals, NGOs, companies (even if dissolved),[26] shareholders, trusts, professional associations, trade unions, political parties and religious organisations may all submit applications to the Court. Depending on the nature of the Convention violation alleged, a company itself may bring an application under the Convention, as may the chair and managing director of the company[27] and as many individual shareholders in exceptional circumstances.[28]

However, certain rights by definition can only be claimed by individuals and cannot extend to organisations, such as freedom of thought, conscience and religion,[29] the

26 *Pine Valley v Ireland* ECtHR Appl. No. 12742/87, Judgment of 29 November 1992, (1992) 14 EHRR 319, para. 42.

27 *Kaplan v UK*, ECtHR Appl. No. 7598/76, Judgment of 17 July 1980, (1982) 4 EHRR 64.

28 *Agrotexim v Greece*, ECtHR Appl. No. 14807/89, Judgment of 24 October 1995, (1996) 21 EHRR 250

29 *X and Church of Scientology v Sweden*, ECtHR Appl. No. 7805/77, dec. of 5 May 1979, (1979) 16 DR 68.

right to education[30] and the right not to be subjected to degrading treatment or punishment.[31]

3.1.1 Nationality and Residence

Nationality and place of residence are irrelevant to the right to complain to the Court of violations of the Convention, reflecting the obligation in Article 1 for the parties to secure Convention rights to everyone within their jurisdiction. The test applied is whether or not the applicant can claim to be a victim of a violation of their Convention rights.

3.1.2 Legal Capacity

Lack of legal capacity may not affect the right of petition,[32] but applicants may be represented by a relative or other suitable person. Where, however, applicants are represented before the Court by a relative or other person, the Court will require evidence of their authority to represent the applicant.

3.1.3 Children

Children may be applicants in cases before the European Court, both in conjunction with adult 'victims' arising from the same complaint and in their own right. For example, in *Marckx v Belgium,*[33] an unmarried mother and her young daughter complained of the illegitimacy laws in Belgium, including in relation to the bequeathing and inheritance of property. The case of *A v UK*[34] concerned the severe ill-treatment of the applicant child by his step-father and the failure of the State to provide the child with protection from ill-treatment.

Children may also be represented by a parent,[35] unless there is a conflict of interest or for any reason the parent does not have legal standing in domestic law to do

30 *Ingrid Jordebo Foundation of Christian Schools v Sweden*, ECtHR Appl. No. 11533/85, DR 5.

31 *Kontakt-Information-Therapie and Hengen v Austria*, ECtHR Appl. No. 11921/86, (1988) 57 DR 81.

32 See, for example, *Winterwerp v The Netherlands*, ECtHR Appl. No. 6301/79, Judgment of 24 October 1979, (1979) 2 EHRR 387; *Van der Leer v the Netherlands* ECtHR Appl. No. 11509/85, Judgment of 21 February 1990, (1990) 12 EHRR 567.

33 Series A, No. 31, ECtHR Appl. No. 6833/74, Judgment of 13 June 1979, (1980) 2 E.H.R.R. 330.

34 ECtHR Appl. No. 25599/94, Judgment of 23 September 1998.

35 *Campbell & Cosans v UK*, ECtHR Appl. Nos. 7511/76 and 7743/76 , Judgment of 16 May 1980, (1981) 3 EHRR 531.

so. In *Hokkanen v Finland*[36] an application was brought by a father in respect of a child custody dispute with the child's maternal grandparents. The applicant father also lodged an application on behalf of his daughter, but that aspect of the case was declared inadmissible as it was found that he was no longer the child's custodian at the relevant time. Where it is alleged that parents have a conflict of interest with any child on whose behalf they purport to act, the Court has emphasised that the key consideration is that any serious issues concerning respect for a child's rights should be examined.[37]

Children may be represented at the Court by others, such as solicitors, provided that the representative produces proof of their authority to act. For example, in *SD, DP and T v UK,*[38] which concerned delay in care proceedings, the application was brought by a solicitor on behalf of the three children, supported by a letter of authority from the guardian *ad litem* appointed by the court to safeguard the interests of the children in the domestic proceedings. This was challenged by the Government who argued that neither the solicitor nor the guardian *ad litem* had authority to act on the children's behalf in the proceedings under the European Convention. However, the Commission rejected the Government's objections, emphasising that it would not take a restrictive or technical approach to such questions, as children generally relied on others to represent their interests, and required specific protection of their interests which had to be both practical and effective. No conflict of interests was found to arise and on the facts there was no alternative means of representation.

3.1.4 Death of an Applicant

The Court will not accept applications in the name of a deceased person. However, it is well established that an application can be brought on behalf of the deceased by a close relative or heir. For example, the case of *McCann v UK,*[39] concerning the fatal shooting of three members of the IRA in Gibraltar by British soldiers, was brought by members of the victims' families who were representatives of the estates of the deceased. In *Keenan v UK,*[40] following her son's suicide in prison, the applicant complained of the prison authorities' failure to take adequate steps to safeguard her son's life.

It is *not* necessary for an applicant in such cases to have to establish financial

36 ECtHR Appl. No. 19823/92, Judgment of 23 September 1994, (1995) 19 EHRR 139.

37 *P, C and S v UK*, ECtHR Appl. No. 56547/00, Judgment of 11.December 2001

38 ECtHR Appl. No. 23715/94, Judgment of 20 May 1996, (1996) 22 EHRR CD 148.

39 ECtHR Appl. No. 18984/91, Judgment of 27 September 1995, (1996) 21 EHRR 97.

40 ECtHR Appl. No. 27229/95, Comm. Rep. 6 September 1999.

dependency or pecuniary loss. In *Keenan*, the applicant's son had been over 18 when he died and he had no dependants, which effectively ruled out proceedings under the Fatal Accidents Act 1976 or for bereavement damages. The absence of any pecuniary loss did not prevent Mrs Keenan from making an application to the European Commission and indeed the very fact that she could not bring domestic proceedings in respect of her son's death led to a finding by the Court of a violation of the right to an effective remedy under Article 13.[41]

Where the standing of an applicant to bring Convention proceedings in respect of a deceased relative has been challenged, the Strasbourg institutions have underlined the objective and purpose of the Convention as being to provide practical and effective safeguards.[42]

If an applicant dies whilst a case is pending before the Court, the case can usually be continued by the applicant's close relatives or heirs, if that person has a legitimate interest, or if the Court is satisfied that the complaint is of general importance. For example, the parents of a haemophiliac who had contracted HIV could continue an application brought in respect of the length of domestic proceedings for compensation following the applicant's death.[43] In *Laskey, Jaggard and Brown v UK,*[44] a case concerning criminal proceedings for assault brought in relation to sadomasochistic activities, there was no objection to the father of the first applicant continuing with the proceedings following the first applicant's death.

3.1.5 Public Corporations

Public bodies, such as councils, cannot make applications to the ECtHR, as Article 34 only permits a 'person, non-governmental organisation or group of individuals' to petition the Court. This rule excludes any 'decentralised authorit[y] that exercise[s] public functions'.[45]

---

41 *Keenan v UK*, ECtHR Appl. No. 27229/95, Judgment of 18 April 2001.

42 See, for example, *Yasa v Turkey* ECtHR Appl. 22495/93, Judgment of 2 September 1988, (1999) 28 EHRR 408; *Kurt v Turkey*, ECtHR Appl. No. 24276/94, Judgment of 25 May 1998, (1999) 29 EHRR 373.

43 *X v France*, ECtHR Appl. No. 9993/82, Judgment of 31 March 1992, (1992) 14 EHRR 483.

44 ECtHR Appl. No. 21627/93, Judgment of 19 February 1997, (1997) 24 EHRR 39.

45 *Danderyds Kommun v Sweden*, ECtHR Appl. No. 52559/99, Judgment of 7 June 2001. See also *16 Austrian Communes and some of their councillors v Austria*, ECtHR Appl. No. 5765/77, Judgment of 31 May 1974; *Rothenthurm Commune v Switzerland*, ECtHR Appl. No. 13252/87, Judgment of 14 December 1988; 59 DR 251 (1988) *Ayuntamiento de M v Spain*, ECtHR Appl. No. 15090/89, dec. of 7 January 1991, 68 DR 209; *The Province of Bari, Sorrention and Messeni Nemagna v Italy*, ECtHR Appl. No. 41877/98, Judgment of 15 September 1998; *The Municipal Section of Antilly v France*, ECtHR Appl. No. 45129/98, dec. 23 November 1999, EHRR 1999-VIII & *Ayuntamiento de Mula v Spain*, ECtHR Appl. No. 55346/00, dec. 1 February 2001. For the position of the BBC, see *BBC v*

3.2 Who Can Claim to be a Victim?

In accordance with Article 34, an applicant must claim to be the *victim* of a violation of one or more Convention rights. The Court will only consider the particular circumstances of each case and will not permit abstract challenges (*actio popularis*),[46] nor will the Court admit hypothetical breaches. This may lead to all or part of Convention applications being rejected. For example, in *Buckley v UK*[47] the applicant, who was a gypsy, complained that she was prevented from living in caravans on her own land with her family and from following a life as a traveller. The applicant also complained to the Court of the provisions of the Caravan Sites Act 1968 and the Criminal Justice and Public Order Act 1994 which criminalised the use of gypsy caravans in certain circumstances. However, the Court found that as measures had been taken against the applicant under neither statute, those particular complaints could not be considered.

The test applied by the Court is that the applicant must show that s/he has been personally or directly affected by the alleged Convention violation.

The victim test may rule out some applicants in a case, but not others.[48] In *Ahmed and Others v UK*,[49] a complaint made by the union UNISON concerning the restrictions on the political activities of local government officers was declared inadmissible. The Commission found that the regulations in question[50] did not affect the rights of the union as such (under Articles 10 or 11) and therefore UNISON could not claim to be a victim of a violation of the Convention. However, applications brought by individual local government officers who were affected by the regulations were declared admissible. Therefore if there are doubts about an applicant organisation's victim status, it is advisable to include at least one individual victim as an applicant.

The Strasbourg institutions have allowed a degree of flexibility in certain circumstances in defining what is meant by a 'victim'. Where there is any doubt about an individual's 'victim' status, practitioners should consider carefully whether their clients fall into any of the categories set out below.

UK, ECtHR Appl. No. 25978/94, Judgment of 19 January 1996, 84-A DR 129, (1996) EHRLR 322.

46 See, for example, *Lindsay and Others v UK*, ECtHR Appl. No. 31699/96, dec. of 17 January 1997 – application claiming to represent more than 1 million people in Northern Ireland declared inadmissible ratione personae with the provisions of the Convention.

47 ECtHR Appl. No. 20348/92, Judgment of 25 September 1996, (1997) 23 EHRR 101.

48 See, for example, B*owman and the Society for the Protection of Unborn Children v UK*, ECtHR Appl. No. 24839/94, Judgment of 4 December 1995.

49 ECtHR Appl. No. 22954/93, Judgment of 12 September 1995. See also, for example, *Purcell and Others v Ireland*, ECtHR Appl. No. 15404/89, Judgment of 16 April 1991.

50 The Local Government Officers (Political Restrictions) Regulations 1990.

3.2.1 Potential Victims

Article 34 may permit an applicant to complain that the law itself violates their Convention rights, even if there has been no specific measure implemented against them. However, potential victims of Convention violations must satisfy the Court that there is a real personal risk of being directly affected by the violation.[51]

Those considered to be at risk have fallen into various categories, including those at risk of criminal prosecution. The cases of *Dudgeon v UK,*[52] *Norris v Ireland,*[53] *Modinos v Cyprus*[54] all concerned domestic legislation criminalising homosexual acts.[55] In *Dudgeon*, the applicant complained that he was liable to prosecution because of his homosexual conduct and complained of the fear, suffering and psychological distress caused by the very existence of the laws in question. He had been questioned by the police about his homosexual activities and his house had been searched, but criminal proceedings had not been brought against him. Nevertheless, the Court accepted that the very existence of the legislation continuously and directly affected his private life. It was also relevant that the law in question was not a 'dead letter'.

Another category of potential victims includes those who fall into a particular group within society who might be affected by a particular measure or omission. In *Balmer-Schafroth v Switzerland*[56] the Government argued that the applicants who were residents living close to a nuclear power station could not claim to be victims of a decision to extend the power station's operating licence because the consequences of the violations of which they complained were too remote to affect them directly and personally. However, the Court rejected those arguments, as the applicants' objections had been found admissible by the Swiss Federal Council and because there could be a Convention violation even in the absence of prejudice.

Potential violations of the Convention will also arise in cases concerning specific measures which, if implemented, would breach the Convention. This often arises in

51 See, for example, *Open Door Counselling and Dublin Well Woman v Ireland* ECtHR Appl. Nos. 14234/88 and 14253/88 Series A, No. 246 , Judgment of 29 October 1992, (1993) 15 EHRR 244, para. 44 & *Johnston and Others v Ireland* ECtHR Appl. No. 9697/82, Series A, No. 112, Judgment of 18 December 1986, (1987) 9 EHRR 203, para. 42.

52 ECtHR Appl. No. 7525/76, Judgment of 22 October 1981, (1982) 4 EHRR 149.

53 ECtHR Appl. No. 10581/83, Series A, No. 142 , Judgment of 26 October 1988, (1991) 13 EHRR 186.

54 ECtHR Appl. No. 15070/89, Series A, No. 259 , Judgment of 22 April 1993, (1993) 16 EHRR 485.

55 See also *Sutherland v UK*, ECtHR Appl. No. 25186/94, Comm. Rep. 1 July 1997, (1997) 24 EHRR CD 22; *A.D.T. v UK*, ECtHR Appl. No. 35765/97, Judgment of 31 July 2000, (2001) 31 EHRR 33.

56 ECtHR Appl. No. 22110/93, Judgment of 26 August 1997, (1998) 25 EHRR 598, paras. 24-26. See also, for example, *Amuur v France*, ECtHR Appl. No. 19776/92, Judgment of 25 June 1996, (1996) 22 EHRR 533, para. 36.

the context of immigration or extradition cases. The case of *Soering v UK*[57] concerned the decision of the Home Secretary to extradite the applicant to the US where he faced capital murder charges in Virginia and a possible death sentence. Therefore, if he were sentenced to death, he would be exposed to the 'death row phenomenon' which he claimed would violate Article 3. In those circumstances, the Court found that the responsibility of the State would be engaged where there were substantial grounds for believing that, if extradited, the applicant faced a real risk of being subjected to torture or inhuman or degrading treatment or punishment. That had to be the case, in order to ensure the effectiveness of the Article 3 safeguards, given the serious and irreparable nature of the suffering which the applicant faced. There have been many examples of applicants complaining of prospective violations in deportation cases.[58] In *Chahal v UK*[59] the applicant complained that his deportation to India would violate his rights under Article 3 because as a Sikh political activist he risked being subjected to torture. The State's responsibility will be engaged where there are substantial grounds for believing that the applicant, if expelled, would face a real risk of treatment contrary to Article 3. In *D v UK*[60] the applicant, who was suffering from the advanced stages of the AIDS virus, complained of a violation of Article 3 were he to be removed to St Kitts, where he was born, because the lack of adequate medical treatment would expose him to inhuman and degrading treatment.

Nevertheless, applicants will be required to wait for the final decision in any domestic proceedings and to exhaust available and effective avenues of appeal before their complaints will be admitted by the Court.[61]

The extent of the secrecy of legislation or measures taken by public authorities may have a bearing on the question of victim status. In *Klass and others v Germany,*[62] the applicant lawyers complained about the domestic law in Germany relating to secret surveillance, even though they had no evidence that they had been under surveillance themselves. The Court found that the applicants should not be prevented from claiming to be victims of the alleged violation where, because of the secrecy of the measures in question, it was not possible to prove any specific implementation against the applicant. Accordingly, applicants may in certain circumstances legitimately complain to the Court of being a victim of a violation

57 ECtHR Appl. No. 14038/88, Series A, No. 161 , Judgment of 7 July 1989, (1989) 11 EHRR. 439.

58 See, for example, *Hilal v United Kingdom*, ECtHR Appl. No. 45276/99, Judgment of 6 March 2001.

59 ECtHR Appl. No. 22414/93, Judgment of 15 November 1996, (1997) 23 EHRR 413.

60 ECtHR Appl. No. 30240/96, Judgment of 2 May 1997, (1997) 24 EHRR 423. But see *Bensaid v United Kingdom*, ECtHR Appl. No. 44599/98, Judgment of 6 February 2001.

61 See, for example,*Vijayanathan and Pusparajah v France*, ECtHR Appl. Nos.17550/90 and 17825/91, Series A, No. 241-B , Judgment of 27 August 1992, (1993) 15 EHRR 62.

62 ECtHR Appl. No. 5029/71, Judgment of 6 September 1978, (1978) 2 EHRR. 214.

because of the mere existence of secret measures.[63]

3.2.2 Indirect Victims

An individual who is not directly affected by a particular measure or omission may nevertheless have been 'indirectly' affected by the violation of the Convention rights of another person. This may often be the case in respect of close family connections, but it could also include other third parties. For example, family members of a person who is subject to a deportation decision might claim to be a victim of a Convention violation. The case of *Chahal v UK*[64] concerned the proposed deportation of Mr Chahal, a Sikh separatist leader, on grounds that he posed a threat to national security. Not only did Mr Chahal himself bring proceedings under the Convention, but so too did his wife and children, arguing that his deportation would violate their right to respect for family life under Article 8. The case of *Abdulaziz, Cabales and Balkandali v UK*[65] concerned the 1971 Immigration Act and Rules which prevented the applicants' husbands from remaining with them or joining them in the UK. The case was brought by the wives who were lawfully and permanently settled in the UK and the Court found a violation of Article 8 taken together with Article 14 (as victims of sex discrimination) and of Article 13.

3.2.3 Absence of Requirement for 'prejudice'

There is no need for a 'victim' to have suffered 'prejudice' or 'detriment', which is relevant only in relation to awards of 'just satisfaction' under Article 41 of the Convention (formerly Article 50).[66]

For example, in *CC v UK,*[67] the applicant complained of automatic pre-trial detention. The Commission found that the deduction of the period of pre-trial detention from his sentence did not remove his victim status as it did not constitute an acknowledgement that the Convention had been violated.

The position may be different, however, where the national authorities have acknowledged, either expressly or in substance, that there has been a violation of

63 See also, for example, *Virginia Matthews v UK*, ECtHR Appl. No. 28576/95, Judgment of 16 October 1996 – allegation that applicant peace campaigner's telephone calls had been intercepted.

64 ECtHR Appl. No. 22414/93, Judgment of 15 November 1996, (1997) 23 EHRR 413.

65 ECtHR Appl. Nos. 9214/80, 9473/81 and 9474/81, Judgment of 28 May 1985, (1985) 7 EHRR 471.

66 See, for example, *Balmer-Schafroth v Switzerland* ECtHR Appl. No.22110/93, Judgment of 26 August 1997, (1998) 25 EHRR 598, para. 26 & *Amuur v France*, ECtHR Appl. No. 19776/92, (1996) 22 EHRR 533, para. 36.

67 ECtHR Appl. No. 32819/96, Judgment of 1 December 1997.

the Convention and where redress has then been provided to the victim.[68] This is discussed further below.

3.2.4 Losing Victim Status

Applicants may lose their status as 'victims' for the purposes of Article 34. For example, an applicant's status may be affected by settlement of domestic proceedings, or acquittal in criminal proceedings,[69] a successful appeal or discontinuation of the domestic proceedings. For example, in *Caraher v UK*[70] the applicant alleged violations of Articles 2 and 13 arising from the fatal shooting of her husband by British soldiers in Northern Ireland. Two soldiers were prosecuted for the shooting, but were acquitted. The application was introduced in Strasbourg in 1994. In 1998 the applicant settled a High Court action against the Ministry of Defence for aggravated damages in respect of the death of her husband on receipt of £50,000 in full and final settlement of all claims. The application was subsequently declared inadmissible as the Court found that the applicant could no longer claim to be a victim of a violation of the Convention, having settled the civil proceedings. However, an award of damages from the Criminal Injuries Compensation Scheme will not remove an applicant's victim status.[71]

In *Eckle v Federal Republic of Germany,*[72] the Court laid down a threefold test as to when an applicant would be considered to have lost their victim status:

(i) Where the national authorities had acknowledged that there had been a breach of the Convention, either expressly, or in substance; and
(ii) Where the applicant had been provided with redress; and
(iii) The applicant had been treated in such a way that there were sufficient indications to allow an assessment of the extent to which the violation was taken into account.

Applying this test in the case of *Ludi v Switzerland,*[73] the Court rejected the

68 *Eckle v Federal Republic of Germany*, ECtHR Appl. No. 8130/78, Judgment of 15 July 1982, (1983) 5 EHRR 1, para. 66.

69 However, an acquittal may still mean that an applicant can claim to be a victim of procedural violations – see, for example, *Heaney and McGuinness v Ireland*, ECtHR Appl. No. 34720/97, Judgment of 21 December 2000.

70 ECtHR Appl. No. 24520/94, Judgment of 11 January 2000.

71 *Z.W. v UK*, ECtHR Appl. No. 34962/97, Judgment of 27 November 2001.

72 ECtHR Appl. No. 8130/78, Series A, No.51, Judgment of 15 July 1982, (1983) 5 EHRR 1, para. 66. See also *Dalban v Romania*, ECtHR Appl. No. 28114/95, Judgment of 28 September 1999 and *Amuur v France* ECtHR Appl. No. 19776/92, Judgment of 25 June 1996, (1996) 22 EHRR 533.

73 ECtHR Appl. No. 12433/86, Judgment of 15 June 1992, (1993) 15 EHRR 173.

Government's arguments that the applicant was no longer a victim of a Convention violation because his sentence had been reduced by the Court of Appeal. The Court found that rather than acknowledging that the use of an undercover agent in the criminal proceedings against the applicant had violated the Convention, the authorities had expressly decided that it had been compatible with the Convention's obligations.

Where interferences with rights are caused by 'incidental errors' rather than being deliberate and systematic, a formal apology may remove the applicant's victim status. For example, an apology for interference with prisoners' correspondence, and an assurance that steps would be taken to prevent it happening again, have been found to do so.[74]

3.3 When Inadmissibility Arguments can be Raised and Decided

The Court may declare an application inadmissible at any stage of the proceedings (Article 35(4)). It may uphold a respondent Government's arguments that the applicants had failed to exhaust appropriate domestic remedies at the merits stage of the case, even though the case was previously declared admissible.[75]

However, the respondent Government will be stopped from raising new admissibility arguments at the merits stage, if those arguments were not previously raised at the admissibility stage,[76] unless there are developments after the admissibility decision which are relevant to the question of admissibility amounting to special circumstances warranting its re-examination,[77] such as a reversal of domestic case law or the introduction by the applicant of a new complaint. In *McGonnell v UK,*[78] the Government argued before the Court that the applicant had failed to exhaust domestic remedies in relation to his complaint that the domestic proceedings had not been independent or impartial, as he had failed to appeal to the Court of Appeal. The Court found that the Government were stopped from relying on such arguments which had not been raised before the Commission.

74 See, for example, *Faulkner v UK*, ECtHR Appl. No. 37471/97, dec. 18 September 2001 & *Armstrong v UK*, ECtHR Appl. No. 48521/99, Judgment of 25 September 2001.

75 See, for example, *Aytekin v Turkey*, 22880/93, Judgment of 23 September 1998, (2001) 32 EHRR 22.

76 *Artico v Italy*, ECtHR Appl. No. 6694/74, Series A, No. 37, Judgment of 13 May 1980, (1981) 3 EHRR 1, paras. 27-28; *Pine Valley Developments v Ireland* ECtHR Appl. No. 12742/87, Judgment of 9 February 1993, (1992) 14 EHRR. 319, para. 45.

77 *Stankov and the United Macedonian Organisation Ilinden v Bulgaria*, ECtHR Appl. Nos. 29221/95 and 29225/95, Judgment of 2 October 2001, para. 54.

78 Judgment of 8 February 2000.

3.4 Exhaustion of Domestic Remedies

By far the most important of admissibility rules, in practice, are the requirement to exhaust domestic remedies and to lodge an application with the European Court within six months from the date when the final decision was taken. The rules are closely linked, as the time limit for lodging an application will depend upon the extent of the domestic remedies available. Respondent governments will frequently raise, wherever possible, any objection that domestic remedies have not been exhausted, therefore this is an area where practitioners need to be very clear about their client's position.

The rationale for the domestic remedies rule is the principle that the domestic authorities should always be given the opportunity to put right a Convention violation before the matter is to be considered by the European Court. The rule is based on the assumption, reflected in Article 13, that there is in the domestic system an effective remedy available in respect of the alleged breach, whether or not the Convention is incorporated into national law.[79]

3.4.1 Burden of Proof

Applicants are required to set out in their application the steps taken to exhaust domestic remedies. The burden of proof is then on the respondent Government to raise non-exhaustion,[80] by pointing to a domestic remedy which in the circumstances of the particular case should have been, but which had not been, invoked. The Government must satisfy the Court that the remedy was an effective one available both in theory and in practice at the relevant time. This will mean a remedy that was accessible, that was capable of providing redress in respect of the applicant's complaint and offered reasonable prospects of success. If the Government raises an available remedy which in its view should have been utilised, the applicant must either show why the remedy was in fact exhausted, or why the purported remedy is not adequate or effective or that there were special reasons absolving the applicant from invoking the remedy (see below).

A respondent Government whose submissions in relation to domestic remedies are inconsistent with their arguments in the domestic proceedings will be given short

79 See, for example, *Akdivar v Turkey*, KHRP case ECtHR Appl. No. 21893/93, Judgment of 16 September 1996, (1997) 23 EHRR 143, para. 65.

80 *De Wilde, Ooms and Versyp v Belgium* ECtHR Appl. Nos. 2832/66, 2835/66 and 2899/66, Judgment of 18 June 1971, (1979) 1 EHRR 373, para. 60 & *Deweer v Belgium* ECtHR Appl. No. 6903/75, Judgment of 27 February 1980, (1980) 2 EHRR 439, para. 26.

shrift by the Court.[81]

An applicant should raise in domestic proceedings the substance of the complaint to be made to the Court[82] on the basis that the domestic courts should have the opportunity to decide on a claim before it is considered by the European Court. For example, in *Ahmet Sadik v Greece,*[83] the applicant was found by the Court not to have exhausted domestic remedies as he had at no stage relied on Article 10, or on equivalent arguments, in the domestic courts, even though Article 10 was directly applicable in Greek law.

3.4.2 Compliance with Domestic Procedural Rules

In raising the issue expressly or in substance in domestic proceedings, an applicant will be required to have complied with the formal and procedural rules, including time limits, in the domestic law and to have invoked any procedural means which might have prevented a breach of the Convention.[84] Domestic remedies will accordingly not be considered exhausted if an applicant has not pursued a remedy because the time limits or other procedural rules have not been complied with.

3.4.3 Flexibility of the Rule

The Court has said that the rules in Article 35 should be applied with 'some degree of flexibility and without excessive formalism'.[85] This flexibility reflects the fact that the rule is being applied in the context of a system intended to protect human rights[86]. Therefore the exhaustion of domestic remedies rule is not absolute, nor is it applied automatically. The circumstances of each case are always considered, including the general context in which the formal remedies operate and the

81 *Kolompar v Belgium*, ECtHR Appl. No. 11613/85, Series A, No. 235-C , Judgment of 24 September 1992, (1993) 16 EHRR 197.

82 See, for example, *Glasenapp v Germany* ECtHR Appl. No.9228/80, Series A, No. 104, Judgment of 28 August 1986, (1987) 9 EHRR. 25, paras. 42-46. However, it may not be strictly necessary for the applicant to have been a party to the proceedings, provided that her/his claims were in substance brought to the attention of the courts (see, for example, *P., C. & S v UK*, ECtHR Appl. No. 56547/00, Judgment of 11 December 2001).

83 ECtHR Appl. No. 18877/91, Judgment of 15 November 1996, (1997) 24 EHRR 323.

84 *Cardot v France* ECtHR Appl. No.11069/84, Judgment of 19 March 1991, (1991) 13 EHRR 853, para. 34.

85 See, for example, *Guzzardi v Italy*, ECtHR Appl. No. 7367/76, Judgment of 6 November 1980, (1981) 3 EHRR 333, para. 72 & *Cardot v France* ECtHR Appl. No. 11069/84, Judgment of 19 March 1991, (1991) 13 EHRR 853, para. 34.

86 *Akdivar v Turkey*, KHRP case ECtHR Appl. No. 21893/93, Judgment of 16 September 1996, (1997) 23 EHRR 143, para 69.

personal circumstances of the applicant. The Court will then examine, in all the circumstances of the case, whether applicants have done everything that could reasonably be expected of them to exhaust domestic remedies.[87]

3.4.4 Availability, Effectiveness and Sufficiency of Remedies

Whilst Article 35(1) states that the Court may only deal with a matter after all domestic remedies have been exhausted; an applicant is only required to pursue remedies which are available, effective and sufficient.

For a domestic remedy to be available, the applicant must be able to initiate the proceedings directly (without being reliant upon a public official). The unavailability of legal aid may affect the accessibility of a remedy, depending upon the applicant's financial resources, the complexity of the remedy and whether or not legal representation is compulsory in domestic proceedings.[88]

The European Court will not be satisfied with respondent Governments raising the existence of remedies which are only theoretically available. In this respect, the Court may require the Government to produce examples of the claimed remedy having been successfully utilised.[89]

A remedy will be considered effective if it may provide redress for the applicant in respect of the alleged Convention violation. This includes not only judicial remedies, but also any administrative domestic remedy which may provide (binding) redress in the circumstances of the particular case.

The opportunity to request an authority to reconsider a decision it has already taken does not generally constitute a sufficient remedy.[90] Applicants will also not be required to have pursued remedies which are purely discretionary.[91]

In cases of doubt about the effectiveness of a domestic remedy, including an appeal process (see below), for the purposes of the ECtHR's exhaustion of domestic remedies test, the remedy should be pursued. This has been found to be particularly the case in a common law system, where the courts extend and develop principles through

87 See, for example, *Yasa v Turkey*, ECtHR Appl. 22495/93, Judgment of 2 September 1998, para. 77.

88 See *Airey v Ireland*, ECtHR Appl. No. 6289/73, Judgment of 9 October 1979, 2 EHRR 305; *Faulkner v UK*, ECtHR Appl. No. 30308/96, Comm. Rep. 1 December 1998.

89 See, for example, *De Jong, Baljet and van den Brink v The Netherlands*, ECtHR Appl. Nos. 8805/79, 8806/79 and 9242/81, Series A, No. 77, Judgment of 22 May 1984, (1986) 8 EHRR 20.

90 *B v UK*, ECtHR Appl. No. 18711/91, dec. of 9 December 1992, (1993) 15 EHRR CD100.

91 See, for example, *Buckley v UK*, ECtHR Appl. No. 20348/92, Judgment of 3 March 1994; *Temple v UK*, ECtHR Appl. No. 10530/83, Judgment of 16 May 1985, (1986) 8 EHRR 252.

case law: 'it is generally incumbent on an aggrieved individual to allow the domestic courts the opportunity to develop existing rights by way of interpretation'.[92]

In general, applicants will be required to pursue processes of appeal available in the course of domestic remedies, if such an appeal process would or might provide a remedy for the alleged Convention violation.[93] However, it is not necessary for applicants to pursue a potential form of redress or an appeal process which would not in fact provide a remedy,[94] for example, where it is clear in settled legal opinion that it has no prospects of success.[95] In that situation, the applicant will have to satisfy the Court that there were no such prospects of success and practitioners should consider filing with the Court counsel's opinion to that effect.[96] The length of domestic proceedings will also be a factor in the consideration of their effectiveness.[97] For example, the case of *Tanli v Turkey*[98] concerned the killing of the applicant's son in police custody. Criminal proceedings had been instituted but were still pending one year and eight months after the death of the applicant's son. In view of the serious nature of the crime involved, the Commission found that the criminal proceedings were an ineffective remedy.

If there are a number of possible domestic remedies, an applicant will not be required to have exhausted them all, or even to have utilised more than one if they would not achieve anything more. The Court has held that an applicant cannot be criticised for not having had recourse to legal remedies which would have been directed essentially to the same end and would in any case not have offered better chances of success.[99]

Exhaustion of domestic remedies may take place after an application has been introduced with the Court, but such remedies must have been exhausted before the admissibility decision is made.[100]

92 *Earl and Countess Spencer v UK*, ECtHR Appl. No. 28851-2/95, Judgment of 16 January 1998.

93 See, for example, *Civet v France*, ECtHR Appl. No. 29340/95, Judgment of 28 September 1999.

94 See, for example, *Hilton v UK*, ECtHR Appl. No. 5613/72, Judgment of 5 March 1976; (1976) 4 DR 177; A.D.T. v UK, ECtHR Appl. No. 35765/97, Judgment of 31 July 2000.

95 See, for example, *De Wilde, Ooms and Versyp v Belgium*, ECtHR Appl. Nos. 2832/66, 2835/66 and 2899/66, Judgment of 18 November 1980, (1979) 1 EHRR 373, para. 62.

96 See, for example, *H v UK*, ECtHR Appl. No. 10000/82, Judgment of 4 July 1983, 33 DR 247.

97 See, for example, *Tanli v Turkey*, KHRP case ECtHR Appl. No. 26129/95, Judgment of 5 March 1996.

98 ECtHR Appl. No. 26129/94, Judgment of 5 March 1996.

99 *A v France*, ECtHR Appl. No. 14838/89, Series A, No. 277-B, Judgment of 23 November 1993, (1994) 17 EHRR 462, para. 32.

100 *Luberti v Italy*, ECtHR Appl. No. 9019/80, dec. of 7 July 1981, DR 27, p 281.

3.4.5 Special Circumstances

There may, exceptionally, be special circumstances absolving the applicant from exhausting domestic remedies.[101] However, 'special circumstances' will *not* include lack of legal knowledge of the Convention, negligent advice by lawyers, or the applicant's depressive state.

Delay in the availability of a remedy may mean that it need not be utilised by the applicant. In *Reed v UK,*[102] the applicant complained of being assaulted in prison, invoking Article 3. The Government argued that he had failed to exhaust domestic remedies because he had not brought a civil action for damages. However, the applicant had been first required to allow the prison authorities to investigate his complaints and he was denied access to a solicitor for more than two years. In those circumstances, the applicant was not barred for non-exhaustion of domestic remedies, even where the remedy subsequently became available after the two year period, as in principle, a remedy should have been immediately available to every aggrieved person, particularly in cases of alleged maltreatment.

3.5 Six-Month Time Limit

3.5.1 General Principles

According to Article 35(1), the Court may only deal with a matter which has been submitted within six months of the final decision taken in the domestic proceedings.

The time limit is intended to promote legal certainty, to provide the authorities with a degree of protection from uncertainty, and to ensure that past decisions are not continually open to challenge. It is also intended to ensure that cases are dealt with within a reasonable time, and it increases the likelihood of evidence being available which might otherwise disappear. However, as Convention cases take at least average four-five years to progress through the various stages (in addition to the time taken for the matter to be dealt with in the domestic courts), it is common for applicants and witnesses to be asked to produce evidence (usually documentary, and occasionally oral) many years after the original events which are the subject matter of the case.

101 *Akdivar v Turkey*, KHRP case ECtHR Appl. No. 21893/93, Judgment of 16 September 1996, (1997) 23 EHRR 143.

102 ECtHR Appl. No. 7630/76, Judgment of 6 December 1979, (1981) 3 EHRR 136.

The Court considers that the six-month rule allows a prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised.

Time runs from the day after the date of the final decision in the domestic proceedings which the applicant is required to invoke under the exhaustion of domestic remedies rule. This will usually mean the date when judgment is given. If judgment is not given publicly, time will run from the date when the applicant or their representative is informed of the decision.[103] This will mean that time will start to run when the applicant's solicitor receives notification of a decision, even if the applicant is not informed until later.

If reasons for a decision follow after the date when the decision itself was made public or notified to the applicant, the time will only start to run from the later date if the reasons given for the decision are relevant to the Convention application.[104] In *Worm v Austria,*[105] the applicant journalist had been prosecuted for publishing an article which was considered capable of influencing the outcome of criminal proceedings relating to a former Minister. The Government challenged the admissibility of the application as it had not been lodged within six months of the date when the operative provisions and the relevant reasons were read out by the Court of Appeal. The applicant was not provided with a written copy of the judgment until more than five months later. The Court held that time only started to run after receipt of the written judgment, which contained more than nine pages of detailed legal reasoning.

In relation to a reference to the European Court of Justice (ECJ),[106] the six-month time limit runs from the domestic court's application of the ruling of the ECJ, rather than from the date of the decision of ECJ itself.[107]

If there are no domestic remedies, practitioners should lodge an application at the Court within six months of the incident or decision complained of, or within six months of the applicant's date of knowledge of the incident or decision.[108] This will

103 See, for example, *K.C.M. v the Netherlands*, ECtHR Appl. No. 21034/92, Judgment of 9 January 1995, DR 80, p.87.

104 *Worm v Austria*, ECtHR Appl. No. 22714/93, Judgment of 29 August 1997, (1998) 25 EHRR 454.

105 ECtHR Appl. No. 22714/93, Judgment of 29 August 1997, (1998) 25 EHRR 454.

106 Under Article 234 - formerly Article 177 - of the EC Treaty.

107 *Bosphorus Hava Yollari Turizm Ve Ticaret AS v Ireland*, ECtHR Appl. No. 45036/98, Judgment of 13 September 2001.

108 See, for example, *X v the UK* ECtHR Appl. No. 7379/76, Judgment of 10 December 1977, DR 8, p.211; *Scotts' of Greenock (Estd. 1711) Ltd. Lithgows Ltd (Formerly Lithgows Holdings Ltd) v the UK* ECtHR Appl. No. 9599/81, Judgment of 11 March 1985, DR 42, p33.

be the Court's approach where it is clear that from the outset no effective remedy was available to the applicant.

Where there has been a series of events which the applicant proposes to raise with the European Court, the safest course is to lodge an application within six months of the first incident. However, if the events are linked, it may be possible to lodge within six months of the final event in the series.

The six-month time limit can be satisfied by the lodging of a letter with the European Court which sets out the circumstances of the applicant's complaint[109] (see Appendix H for pro forma letter). However, an application may not, other than in very exceptional circumstances, be introduced by telephone.[110]

However, if there is a significant delay between the initial letter and the submission of the completed application form, an applicant may fall foul of the six months rule.[111]

The six months rule has a value in itself of promoting legal certainty and therefore cannot be waived by respondent Governments.[112]

3.5.2 Doubtful Remedies

If an applicant pursues a remedy which proves to be ineffective, the six months may run from the final decision in the effective remedy pursued (or from the date of the incident itself, if there were no effective remedies). For some prospective applicants to the European Court, it may not be at all clear whether a particular form of redress would amount to a 'domestic remedy' for the purposes of Article 35. However, if there is any doubt about the effectiveness of a particular 'remedy', practitioners should consider lodging an introductory letter with the Court in order to protect their client's position. This can simply be done by a letter to the Court. The procedure is set out in chapter 2. The Court will not usually require a full application to be lodged in those circumstances, although applicants will be required to keep the Court informed of any developments in the domestic proceedings. A full application should then be lodged once the domestic remedy has been exhausted. If such a letter is not lodged, there is a danger that the Government might argue that the applicant had pursued a remedy that was not 'effective' for the purposes of Article 35 and therefore that the application should be declared inadmissible as

109 See, for example, *Allan v UK*, ECtHR Appl. No. 48539/99, Judgment of 28 August 2001.

110 *West v UK*, ECtHR Appl. No. 34728/97, Judgment of 20 October 1997.

111 See, for example, *Nee v Ireland*, ECtHR Appl. No. 52787/99, dec. of 30 January 2003.

112 See, for example, *Walker v UK*, ECtHR Appl. No. 24979/97, Judgment of 25 January 2000.

having been submitted after the expiry of the six months period. For example, the UK Government successfully argued such a point in the case of *Raphaie v UK*[113] on the basis that the applicant had pursued an internal prison complaint which was not 'effective'.

Where there is real doubt as to the availability or effectiveness of domestic remedies, the Court *may* be more flexible in applying the six months rule. The Court will, in general, not require an applicant to lodge a complaint before the position in relation to the matter in question has been settled at the domestic level[114]. If an applicant pursues an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the six months may only start to run from the date when the applicant first became aware, or ought to have become aware of the circumstances which made the remedy ineffective.[115]

The case of *Keenan v UK*[116] concerned the applicant's son's suicide in prison and the failure of the prison authorities to safeguard his life, given his history of threatening to kill himself in custody. The Government argued that the applicant had failed to comply with the six months rule as there had been no effective domestic remedies and the complaint should therefore have been lodged within six months of the applicant's son's death. The applicant had had a potential remedy under the Law Reform (Miscellaneous Provisions) Act 1934. She applied for and was granted legal aid. She obtained the opinion of a consultant psychiatrist and then obtained counsel's opinion. Counsel advised that there were no effective domestic remedies available to her. An application to the European Commission was lodged within six months of that advice. The Commission found that it was not until she had received counsel's advice that she could reasonably have known that there were no domestic remedies and accordingly the six months only ran from the date of that advice. The position might be different however, if there were any evidence of abuse or delay by an applicant or an applicant's lawyers. It may be that in reaching this decision the Commission was influenced by the gravity of the case.

Edwards v UK[117] concerned the death of the applicants' son who was kicked and stamped to death by his cell-mate whilst being held on remand in Chelmsford Prison in 1994. His parents were advised in 1996 that any civil proceedings would have been uneconomic and they only lodged their Strasbourg application in 1998

113 ECtHR Appl. No. 20035/92, Judgment of 2 December 1993.

114 See, for example, *Scotts' of Greenock (Estd. 1711) Ltd. Lithgows Ltd (Formerly Lithgows Holdings Ltd) v the UK*, ECtHR Appl. No. 9599/81, Judgment of 11 March 1985, DR 42, p. 33.

115 See, for example, *Lacin v Turkey*, ECtHR Appl. No. 23654/94, Judgment of 15 May 1995, DR 81, p. 76.

116 *Keenan v the UK*, ECtHR Appl. No. 27229/95, Judgment of 22 May 1998, [1998] EHRLR 648.

117 *Paul and Audrey Edwards v the UK*, ECtHR Appl. No. 46477/99, Judgment of 7 June 2001.

after a non-statutory inquiry had published its findings. Nevertheless, the Court rejected the Government's arguments that the case had been lodged out of time, taking into account the difficulties for the applicants in obtaining information about their son's death in prison and finding it reasonable for them to have awaited the outcome of the inquiry.

Care should be taken to ensure that if an applicant pursues domestic remedies or appeals, that those remedies would be capable or providing redress for every complaint to be made to the European Court.[118] This frequently arises in criminal cases where the applicant wishes to complain about aspects of their detention, as well as the fairness of the proceedings. However, if the applicant's appeal against conviction would have no bearing on the question of the lawfulness of the pre-trial detention, then the question of the detention must be considered carefully and a Convention application lodged within six months of the end of the period of the detention at the latest (or within six months of the final decision in any domestic remedy relating to the detention). For example, in *Surriye Ali v UK,*[119] the applicant complained under Article 6 about the fairness of the criminal proceedings against him and also under Article 5 about the lawfulness of her initial detention. The application concerning both aspects of the case was not lodged until after judgment was handed down by the Court of Appeal, but the applicant's Article 5 complaint was found to be out of time as the appeal proceedings were not capable of affecting the position in relation to the detention.

3.5.3 Continuing Breaches of the Convention

Where the matter which the applicant complains about is continuing, the time limit will not start to run until the breach ceases to have a continuing effect. Great care should of course be taken to ascertain that the violation is a continuing one, rather than a one-off decision. There will be a continuing breach, for example, where the applicant complains of the continued existence of particular laws, as in *Dudgeon v UK,*[120] which concerned the existence in Northern Ireland of laws which made homosexual acts between consenting adult males criminal offences.

There was a violation of the applicant's rights under Article 8 because of the non-enforcement of his right of access to his daughter in the case of *Hokkanen v Finland.*[121]

118 See, for example, *Lines v UK*, ECtHR Appl. No. 24519/94, dec. of 17 January 1997, (1997) 23 EHRR CD 58.

119 *Ali v the UK*, ECtHR Appl. No. 25605/94, Judgment of 28 February 1996, (1996) EHRLR 428.

120 ECtHR Appl. No. 7525/76, Judgment of 23 September 1981, (1982) 4 EHRR 149.

121 ECtHR Appl. No.19823/92, Series A, No. 299-A, Judgment of 23 September 1994, (1995) 19 EHRR 139.

The case was introduced in 1992 and the Court found that the violation arising from the non-enforcement of access had continued until September 1993 when the Court of Appeal decided that the applicant's access to his daughter could not be enforced against her wishes.

3.6 Anonymous Applications

Every application to the European Court must identify the applicant (Article 35(2)(a)). Any application which does not do so may be declared inadmissible on this ground alone.

In some cases applicants may have very good reasons for not wishing to have their identities disclosed. In such cases, the applicant's details (including name, address, date of birth, nationality and occupation) will have to be set out in the application form, but the applicant can request confidentiality. If the applicant's request for confidentiality is accepted by the Court, the applicant will be identified in the case reports by their initials or simply by a letter.

3.7 Applications Substantially the same as a Matter which has Already Been Examined by the Court

An application which is substantially the same as a matter that has already been examined by the Court and which contains no relevant new information will be declared inadmissible by the Court (Article 35(2)(b)). For example, repeated applications from the same applicant concerning the same matter will be declared inadmissible on this ground, unless new relevant information has come to light.

However, the exception concerning 'relevant new information' is important. For example, an applicant whose petition has previously been declared inadmissible for non-exhaustion of domestic remedies may re-submit the case to the European Court after having exhausted effective domestic remedies. There may also be new factual information, or new developments in domestic proceedings, which may justify a further application, such as the increased length of domestic proceedings.[122] However, additional legal arguments will not amount to 'relevant new information'.[123]

122 See, for example, *X v the UK*, ECtHR Appl. No. 8233/78, Judgment of 3 October 1979, DR 17, p 122 & *Vallon v Italy*, ECtHR Appl. No. 9621/81, dec. of 3 June 1985, DR 33, p 217.

123 *X v the UK*, ECtHR Appl. No. 8206/78, Judgment of 10 July 1981, DR 25, p 147.

3.8 Applications Already Submitted to Another Procedure of International Investigation or Settlement

The Court may not consider any application which has already been submitted to another procedure of international investigation or settlement, and which contains no relevant new information (Article 35(2)(b)). This has very rarely raised any difficulties in practice.[124]

3.9 Incompatibility with the Provisions of the Convention

Article 35(3) requires the Court to declare inadmissible any application which it considers 'incompatible with the provisions of the Convention or the Protocols…' This has four aspects to it:

- Incompatibility of an application because of the limits of the State's jurisdiction (known as '*ratione loci*');
- Incompatibility of an application because of the limits as to what the Convention rights cover (known as '*ratione materiae*');
- Incompatibility of an application because of the limits in time as to the State's obligations under the Convention (known as '*ratione temporis*');
- Incompatibility of an application because of the limits as to who may bring Convention applications and as to who may be respondents (known as '*ratione personae*').

3.9.1 Jurisdiction: *Ratione loci*

The alleged violation of the Convention must have occurred within the Respondent State's *jurisdiction*. This includes a 'dependent territory' if the State has made a declaration under Article 56 that the Convention applies to the territory.

For example, in the *Cyprus v Turkey* cases, Turkey has been found to be responsible for its armed forces in Cyprus. The Turkish armed forces in Cyprus were considered to have brought any persons or property there within the jurisdiction of Turkey, 'to the extent that they exercise control over such persons or property'.[125]

It is generally not possible to complain about the decision of an international

124 But see, for example, *Cacerrada Fornieles and Cabeza Mato v Spain*, ECtHR Appl. No. 17512/90, dec. of 6 July 1992, DR 214.

125 See, for example, *Cyprus v Turkey*, ECtHR Appl. Nos. 6780/74 and 6950/75 , Judgment of 10 July 1976, (1976) 4 EHRR 482, para. 83.

organisation. However, the transfer of State power to an international organisation does not necessarily exclude the State's responsibility, as otherwise the Convention guarantees could easily be excluded or limited.[126]

3.9.2 *Ratione materiae*

Complaints about rights which are not protected by the Convention will be declared inadmissible on this ground, including rights clearly not covered by the Convention at all, and rights which are found not to fall within the scope of Convention Articles, for example, if an activity is not considered to be part of your 'private life' under Article 8.[127]

3.9.3 *Ratione temporis*

Complaints against a State which had not ratified the Convention or accepted the right of individual petition at the relevant date will be declared inadmissible on this ground.

Where the events complained of started before the entry into force of the Convention and continued afterwards, only the latter part can be the subject of a complaint, although the Court may take facts into account which have occurred before the entry into force of the Convention.[128] The case of *Zana v Turkey*[129] concerned the length of criminal proceedings which had started before Turkey had accepted the right of individual petition. In assessing the reasonableness of the length of the proceedings, the Court took into account that at that date the proceedings had already lasted two years and five months.

3.9.4 *Ratione personae*

This condition will in general exclude complaints which are not directed against the State (or any emanation of the State, such as a public authority, court or tribunal), but against a private individual or organisation.

126 See, for example, *Beer and Regan v Germany*, ECtHR Appl. No.28934/95 & *Waite and Kennedy v Germany*, ECtHR Appl. No. 26083/94; Judgments of 18 February 1999.

127 See, for example, *Botta v Italy*, ECtHR Appl. No.21439/93, Judgment of 24 February 1998, (1998) 26 EHRR 241.

128 See, for example, *Kerojarvi v Finland*, ECtHR Appl. No. 17506/90, Series A, No. 328, Judgment of 19 July 1995;.

129 *Zana v Turkey*, ECtHR Appl. No. 18954/91, Judgment of 25 November 1997, para. 82.

However, the Court has emphasised that the State cannot absolve itself from responsibility by delegating its obligations to private bodies or individuals. In *Costello-Roberts v UK,*[130] the Court applied this principle in a case relating to corporal punishment in a private school. The Court found that the State has an obligation to provide children with their right to education, including responsibility for a school's disciplinary system; the right to education applies equally to pupils in independent schools as well as those in state schools.

There may also be exceptions to this condition where the State is found to be responsible for the alleged breach, by, for example, failing to take appropriate measures to protect an individual against the actions of others. For example, the case of *Young, James & Webster v UK*[131] concerned former British Rail employees who had been dismissed for failing to comply with the closed shop agreement. The Court found the State to be responsible for the domestic law which made the treatment of the applicants lawful.

The responsibility of the State in cases concerning ill-treatment by private individuals will also be incurred under the Convention by virtue of the combined obligations under Articles 1 and 3. Article 1 requires the State to secure to everyone within their jurisdiction the rights and freedoms set out in the Convention. The State must therefore take the necessary steps to prevent individuals being subjected to inhuman and degrading treatment or punishment, even by private individuals. This will require that there is effective deterrence to prevent ill-treatment, in particular, of children and other vulnerable people, such as those with mental health problems.

A v UK[132] concerned the applicant nine-year-old child's ill-treatment by his stepfather. The stepfather was prosecuted for assault occasioning actual bodily harm for beating the child with a garden cane, but was acquitted. The applicant complained, *inter alia*, of a violation of Article 3. The Court found that as it was a defence to a charge of assault that the treatment in question amounted to 'reasonable chastisement', the law did not provide adequate protection against the ill-treatment of the applicant, in violation of Article 3. This was accepted before the Court by the UK Government.

Complaints against a State which has not signed the Convention or the Protocol will also be excluded by this condition. For example, complaints against the UK in respect of Protocols 4 or 7 would be declared inadmissible on this ground, as the UK has, as yet, ratified neither Protocol.

---

130 *Costello-Roberts v the UK*, ECtHR Appl. No. 13134/87, Series A, No. 247-C , Judgment of 25 March 1993, (1995) 19 EHRR 112.

131 *Young, James & Webster v UK*, ECtHR Appl. Nos. 7601/76 and 7807/77, Series A, No. 55 , Judgment of 18 October 1982, (1982) 4 EHRR 38.

132 ECtHR Appl. No. 25599/94, Judgment of 23 September 1998, (1999) 27 EHRR 611.

3.10 Manifestly Ill-founded

An application may be declared inadmissible as being 'manifestly ill-founded' (Article 35(3)), if, on a preliminary investigation, the application does not disclose *prima facie* grounds that there has been a breach of the Convention;[133] for example, where the applicant fails to adduce any evidence in support of the application, or if the facts complained of clearly fall within the limitations or restrictions on the Convention rights. In this case, for example, an applicant would need to produce sufficient evidence of telephone tapping or of torture, failing which, the application would be declared inadmissible as being manifestly ill-founded.

In practice, this requirement amounts to a preliminary merits test and a large number of cases are declared inadmissible on this ground. It is in effect a filtering mechanism, intended to root out the weakest cases. This is perhaps an inevitable part of the Strasbourg system given the very large number of cases which the Court has to deal with. However, it is something of a misnomer, as applications can still be declared 'manifestly ill-founded' even after the Court has decided that the case was worthy of being communicated to the respondent Government, and only in the light of the Government's submissions. Furthermore, such decisions do not require unanimity, but can be made by a majority of the chamber of the Court.

3.11 Abuse of the Right of Application

Under Article 35(3), the Court will declare inadmissible any application which it considers an abuse of the right of application. Vexatious petitions[134] or petitions written in offensive language will be declared inadmissible on this ground. Deliberately concealing relevant information from the Court might lead to a declaration of inadmissibility on this ground.[135]

The application in *Foxley v UK,*[136] was declared partly inadmissible for failure to comply with the six months rule, but the Commission found that as there was evidence of the applicant's original representative having forged a letter purportedly from the Commission, it could equally have been rejected as an abuse of the right of application. In *Drozd v Poland,*[137] the application was struck off the Commission's

133 See, for example, *Brady v UK*, ECtHR Appl. No. 55151/00, Judgment of 3 April 2001.

134 See, for example, *M v the UK*, ECtHR Appl. No. 13284/87, Judgment of 15 October 1987, DR 54, p 214 – a series of 'ill-founded and querulous complaints'.

135 See, for example, *F v Spain*, ECtHR Appl. No. 13524/88, dec. of 12 April 1991, DR 69, p 185, where the applicant was found not to have deliberately concealed certain domestic proceedings in progress.

136 *Foxley v the UK*, ECtHR Appl. No. 33274/96, Judgment of 12 October 1999.

137 *Drozd v Poland*, ECtHR Appl. No. 25403/94, dec. of 5 March 1996, (1996) EHRLR 430 – the case

list of cases following publication in a newspaper (of which the applicant was on the editorial board) of correspondence from the Commission, in breach of the Commission's confidentiality rules.

But this condition will *not* exclude 'political' applications or those made for purposes of gaining publicity. In *McFeeley v UK,*[138] the applicants complained about the conditions in the Maze prison in Northern Ireland. The Government argued that the application was an abuse of the right of petition as it was inspired by motives of publicity and propaganda and was intended to pressurise the Government into re-introducing the special category status. The Commission rejected these arguments, finding that a complaint of abuse might be upheld if an application were clearly unsupported by the evidence or outside the scope of the Convention.

3.12 The New Admissibility Criterion Introduced by Protocol No. 14

Article 12 of the new Protocol amends paragraph 3 of Article 35 of the Convention and adds a new admissibility criterion (paragraph 3 (b)). The amended paragraph stipulates that the Court shall declare an individual application inadmissible if the applicant has not suffered 'significant disadvantage'. However, this amendment also has two safeguard clauses:
1) The Court shall not declare an application in these kind of cases inadmissible if respect for human rights as defined in the Convention and the Protocols requires an examination of the application on the merits; or
2) Such a case has not been duly considered by a domestic tribunal.

This wording would seem to suggest that a violation of the ECHR can occur without a 'significant disadvantage' for the individual. However, these terms are open to interpretation and it is hoped that, once the Protocol has come into force, gradual development of ECtHR jurisprudence will lead to the establishment of some objective criteria.[139] *Moreover, the new admissibility criterion will not be applied to applications declared admissible before the entry into force of the Protocol and, in the two years following the entry into force of the Protocol, the new admissibility criterion may only be applied by the chambers and the Grand Chamber (Article 20 (2), Protocol No. 14).*

was struck off under the then Article 30(1)(c).

138 *McFeeley et al. v the UK*, ECtHR Appl. No. 8317/78, Judgment of 15 May 1980, (1981) 3 EHRR 161.

139 Frederic Vanneste, 'A New Inadmissibility Ground' in Paul Lemmens and Wouter Vandenhole (eds.), Protocol No 14 and the Reform of the European Court of Human Rights (Intersentia, Antwerpen, Oxford, 2005), 69- 88

4. Judgment and Enforcement

4.1 Judgment

The Court's judgment is usually published several months after the submission of final written observations. Judgments are drafted in one of the two official languages of the Court (English or French) unless the Court decides that it must be given in both official languages (Rule 76). They are written in standard format and will contain, *inter alia*, the dates on which it was adopted and delivered, the facts of the case, a summary of the submissions of the parties, the reasons in points of law, the operative provisions and the decision, if any, in respect of costs. A judgment also must contain the number of the judges constituting the majority. Concurring or dissenting judges are entitled to have their separate opinions annexed to the judgment (Rule 74).

A judgment may be read out at a public hearing and certified copies are sent by the Registry to the parties. It will also be posted on the website the day the judgment is given, but not until later in the day, usually around 1.30pm GMT.

A party may request the interpretation of a judgment within a year following the delivery of that judgment (Rule 79). If a party discovers a new fact that might have a decisive influence upon the outcome of case but was unknown to the Court when the judgment was delivered, it may request the revision of the judgment within a period of six months after it acquired knowledge of that fact (Rule 80).

In exceptional cases, any party to the case may request for its referral to the Grand Chamber. Such a request must take place within a period of three months from the date that the chamber rendered its judgment on the case (Article 43, Rule 73).

A judgment rendered by a chamber shall become final in one of the following instances:

> *'a. when the parties declare that they will not request that the case be referred to the Grand Chamber; or*

> *b. three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or*
>
> *c. when the panel of the Grand Chamber rejects the request to refer under Article 43'.*[140]

A refusal to refer a case to the Grand Chamber and a judgment rendered by the Grand Chamber are both final (Article 44 (1) ECHR).

4.2 Remedies

The European Court's primary remedy is a declaration that there has been a violation of the Convention. Where the Court finds that there has been a violation of the Convention, the judgment may include an award for 'just satisfaction' under Article 41 (previously Article 50, prior to November 1998), if the question of compensation is ready for decision.

> *Article 41*
>
> *If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.*

Just satisfaction under Article 41 may include compensation for both pecuniary and non-pecuniary loss and legal costs and expenses. Awards for just satisfaction are an equitable remedy, at the discretion of the Court.

4.2.1 Pecuniary and Non-pecuniary Compensation

In general, awards of damages are relatively low compared to damages awarded by the domestic courts of many of the older Council of Europe States. This is probably due to a prevailing view that the primary remedy in Strasbourg is the finding of a violation of the Convention itself. Indeed, in many cases, the Court will decline to award any damages on the basis that the declaration is 'sufficient' just satisfaction. In considering awards for just satisfaction, the Court is unlikely to take account of principles or scales of assessment used by domestic courts.[141]

140 Article 44 (2) ECHR.

141 *Osman v UK*, ECtHR Appl. No. 23452/94, Judgment of 28 October 1998, (2000) 29 EHRR 245, para. 164.

Rather than lay down specific means of calculating damages awards (such as an hourly rate for unlawful detention), the Court applies general principles in assessing just satisfaction. The legal effect of a judgment is to place a duty on the Respondent State to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*). The Court will frequently comment that it is unable to speculate on the outcome of the applicant's domestic proceedings, had there not been a violation of the Convention. This is often the position, for example, in cases where there has been a violation of the right to a fair trial in criminal proceedings.[142] In *Findlay v UK,*[143] for example, the applicant's claim for loss of income of £440,200 following his conviction and sentence by a court-martial which violated Article 6(1) was rejected for this reason by the Court. On many occasions, the Court states that its award is made 'on an equitable basis'.

The Respondent State is usually expressly required to pay compensation and costs within three months of the date of the judgment becoming final. The Court usually directs that interest at a prescribed rate shall be payable on any sums not paid within that time.

It is vital that detailed claims for just satisfaction are made by the applicant. Where an applicant fails to make such a claim, the Court will not consider an award of its own motion.[144] Details of how to set out the claims are included at Appendix J.

Claims for punitive or aggravated damages have been rejected by the Court, without ruling out the possibility of making such awards.[145]

One of the highest awards for damages, inter alia, for personal injury, in recent years was the award of 500,000 French francs in *Selmouni v France*[146] following the torture of the applicant by French police. In *Tomasi v France*[147] the applicant who was also ill-treated in police custody, was awarded 700,000 French francs for both pecuniary and non-pecuniary loss.

142 See, for example, *Hood v UK*, ECtHR Appl. No. 27267/95, Judgment of 18 February 1999, (2000) 29 EHRR 365, para 86.

143 ECtHR Appl. No. 22107/93, Judgment of 25 February 1997, (1997) 24 EHRR 221.

144 See, for example, *Moore and Gordon v UK*, ECtHR Appl. Nos. 36529/97 and 37393/97, Judgment of 29 September 1999, (2000) 29 EHRR 728, para. 28.

145 See, for example, *Selcuk and Asker v Turkey*, ECtHR Appl. Nos. 23184/94 and 23185/94, Judgment of 24 April 1998, (1998) 26 EHRR 477, para. 119 and *Hood v UK*, ECtHR Appl. No. 27267/95, Judgment of 18 February 1999, (2000) 29 EHRR 365, para. 89.

146 ECtHR Appl. No. 25803/94, Judgment of 28 July 1999, (2000) 29 EHRR 403.

147 ECtHR Appl. No. 12850/87, Series A, No. 241-A, Judgment of 27 August 1992, (1993) 15 EHRR 1.

The conduct of the applicant may also be a factor in assessing awards. No award was made in *McCann and others v UK*[148] 'having regard to the fact that the three terrorist suspects who were killed had been intending to plant a bomb in Gibraltar'.

In order to succeed in claiming pecuniary losses, the applicant must establish a causal link between the violation and the losses claimed. Awards may include loss of earnings (past and future), loss of pension scheme benefits, fines and taxes imposed, costs incurred, loss of inheritance and loss of the value of land. Awards for non-pecuniary damage may include elements in respect of pain and suffering, anguish and distress, trauma, anxiety, frustration, feelings of isolation, helplessness and injustice and for loss of opportunity, reputation or relationship.

If one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment.[149]

4.2.2 Restitution in Property Cases

In cases of unlawful expropriation of immovable property where the Court finds a violation of the Convention, it may order the return of the property to the applicants and also hold that should the Respondent State fail to do so it should pay the applicants, in respect of pecuniary damage, an amount corresponding to the current value of the property. For example, in *Strain and others v. Romania* concerning the failure of the Respondent State to return to the applicants part of their property that was nationalised in the 1950s, the Court found a violation of Article 1 Protocol 1 ECHR and ordered Romania to return the property to the applicants or, if it failed to so, to pay the applicants the amount, in pecuniary damage, corresponding to the current value of their flat.[150] In such cases, it is suggested that the applicant(s) submit a detailed valuation of the property expropriated.

4.2.3 Release of a Person Unlawfully Detained

In cases where the Court has found a violation of Article 5 in relation to the applicant's continuing arbitrary detention, it may request the authorities of the State Party to take all the necessary measures to put an end to the arbitrary detention of

148 ECtHR Appl. No. 18984/91, Series A, No. 324, Judgment of 27 September 1995, (1996) 21 EHRR 97, para. 219.

149 *Comingersoll v. Portugal [GC]*, ECtHR Appl. No. 35382/97, (2000) IV ECHR, para. 29.

150 *Strain and others v. Romania*, ECtHR Appl. No. 57001/00, Judgment of 21 July 2003, paras. 74-75.

the applicant(s) still imprisoned and secure their immediate release.[151]

4.2.4 Re-hearings in Criminal Proceedings

The Court is placing increasing pressure on states to hold a re-hearing in the domestic proceedings following a finding of an ECHR violation in the course of those proceedings. Re-examination of a case by the domestic authorities or the re-opening of proceedings will often be the most effective way of achieving *'restitutio in integrum'*. For example, in a series of judgments against Turkey which found that the applicants had been convicted by a court which was not independent and impartial within the meaning of Article 6(1), the Court recommended that the most appropriate form of redress would be for them to be re-tried by an independent and impartial court at an early date. However, such recommendations do not seem to have been adopted in practice.

4.2.5 Costs and Expenses

The Court may award an applicant their costs provided that each of the following conditions is satisfied:

(a) That the costs are actually incurred; and
(b) That they are necessarily incurred; and
(c) That they are reasonable as to quantum.

In addition to the costs of the European Court proceedings, a successful applicant may seek to recover from the Court costs incurred in domestic proceedings which were aimed at obtaining redress in respect of the Convention violation.[152] Domestic fee scales may be relevant, but they are not binding on the Court.

It is essential to submit to the Court detailed bills of costs setting out the tasks carried out, the hours worked, the hourly rates and details of all expenses. Costs will not be deemed to have been incurred where a legal representative has acted free of charge and therefore they cannot in those circumstances be claimed under Article 41.[153] A suggested format can be found at Appendix J.

If the applicant has not succeeded in establishing a violation of the Convention in

151 *Ilascu and others v. Russia and Moldova*, ECtHR Appl. No. 48787/99, Judgment of 8 July 2004, para. 221.

152 See, for example, *Lustig-Prean and Beckett v UK*, Judgment of 25 July 2000, paras. 30-33.

153 See, for example, *McCann v UK*, (1996) 21 EHRR 97, para. 221.

respect of part of their case, this may be a factor in the Court reducing the costs sought.

Costs awards may be expressed to be inclusive or exclusive of VAT and any sums previously paid by the Court as legal aid will be deductible.

There is no provision in the Convention for costs to be awarded against an unsuccessful applicant.

4.3. Enforcement

The standard of protection provided by the ECtHR cannot be maintained if Member States refuse or delay the execution of the Court's final judgments in cases to which they are parties. The final judgments issued by the Court are legally binding but essentially declaratory.[154] Thus, in cases where the Court finds that a violation of the ECHR stems directly from contested legislation it cannot annul or repeal that legislation.[155] It is up to the Respondent State to choose the means to fulfil the obligations arising from Article 46 ECHR.[156]

The Committee of Ministers is the body entrusted with the supervision of the execution of the judgments and friendly settlement agreements.[157] The Committee is assisted in its task by the Directorate General of Human Rights. A final judgment is transmitted to the Committee of Ministers and the latter invites the Respondent State to inform it of the steps taken to pay any just satisfaction awarded as well as of any individual or general measures which may be necessary in order to comply with the State's legal obligation to abide by the Court's findings. When the judgment becomes final, the Applicant(s) should submit their bank details to the Directorate General for payment of the just satisfaction, as well as the bank details of their representatives for payment of the costs and expenses, as applicable. These should be sent to:

Department for the Execution of Judgments
Directorate General II – Human Rights
Council of Europe
F-67075 STRASBOURG CEDEX

154 Article 46 para. 1 ECHR; see, for example, *Marckx v. Belgium*, ECtHR Appl. No. 6833/74, Series A, No. 31, Judgment of 13 June 1979.

155 Ibid.

156 Report on the execution of judgments of the European Court of Human Rights, on behalf of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Jurgens, Doc. 8808, adopted on 28 September 2000, reproduced in (2000) 21 4-7 HRLJ 275.

157 Article 46 para. 2, ECHR.

FRANCE
Tel.: +33 (0)3 90 21 55 54
Fax: +33 (0)3 88 41 27 93
E-mail: DGII.Execution@coe.int

For information of the supervision on the execution of the Court's final judgments can also be sought from them or from their website: http://www.coe.int/T/E/Human_Rights/execution.

Applicants, their representatives and NGOs all have a discretion to make submission to the Committee about the execution – or non-execution – of a judgment or friendly settlement (Rules 9 and 15 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements). This should similarly be submitted to the address above.

The work of the supervision of the final judgments is carried out by the Committee of Ministers in six regular meetings during the year. The Committee completes the supervision of a case by issuing a final resolution.

Although Respondent States are usually willing to pay the just satisfaction and try to abide with their obligation under Article 46(1), there are also many occasions where a Respondent State refuses or delays to execute a final judgment. There may be political, budgetary or other reasons why execution does not take place, such as in connection with the scale of the reforms required. The Committee of Ministers may take various steps in order to assist execution, such as diplomatic initiatives or the issuing of interim resolutions. If problems persist, the Committee may issue more strongly-worded resolutions urging the Respondent State to comply with the judgment, ultimately recalling the unconditional nature of the obligation to comply with the Court's judgments and stressing that compliance is a condition of membership of the Council of Europe.

The ECHR does not provide for sanctions when a State delays or does not execute a final judgment in a case to which it is a party. However, as a last resort, Article 8 in conjunction with Article 3 of the Council of Europe Statute can be applied and the Committee of Ministers may decide to suspend a Council of Europe member from its rights of representation or expel it in view of its persistent refusal to implement the Court's judgments. This avenue has never been used since the view in the Council of Europe circles is that 'human rights can best be protected by working with a State within the organisation.'[158]

158 Ovey, Clare & Robin C.A.White, *The European Convention on Human Rights*, 3rd ed. (Oxford University Press, 2002), 434.

4.3.1 *Protocol 14*

When Protocol 14 enters into force, the Committee of Ministers will have two extra tools that are likely to help it influence governments of Respondent States with regards to the execution of the Court's judgments.[159]

Paragraph 3 of new Article 46 provides that in cases where the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation.[160]

Article 46 para. 4 provides that in cases where the Committee of Ministers considers that a Respondent State refuses to execute a judgment in a case to which it is a party, it may refer to the Court the question whether the Respondent State has failed to fulfil its obligations under para.1 of Article 46.[161] *This procedure is likely to be invoked only in the most exceptional cases.*

159 See also the proposals in Resolution 1226 (2000), Execution of Judgments of the European Court on Human Rights, Texts adopted by the Assembly, 28 September 2000, reproduced in (2000 21 4-7 HRLJ 273). The Parliamentary Assembly has also undertaken efforts to encourage the timely execution of the Court's judgments by holding debates in which non-implementing governments are publicly called to account (see Resolution 1411 (2004) (provisional edition), text adopted by the Standing Committee acting on behalf of the Assembly on 23 November 2004).

160 See Protocol No. 14 and Explanatory Report.

161 See Protocol No. 14 and Explanatory Report.

Appendix A: European Convention on Human Rights

Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11

with Protocol Nos. 1, 4, 6 and 7

The text of the Convention had been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, is repealed.

Registry of the European Court of Human Rights
November 1998

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;
Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

Article 1 – Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Section I – Rights and freedoms

Article 2 – Right to life

1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2 Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

a in defence of any person from unlawful violence;

b in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 – Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4 – Prohibition of slavery and forced labour

1 No one shall be held in slavery or servitude.

2 No one shall be required to perform forced or compulsory labour.

3 For the purpose of this article the term “forced or compulsory labour” shall not include:

a any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

b any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

c any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

d any work or service which forms part of normal civic obligations.

Article 5 – Right to liberty and security

1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a the lawful detention of a person after conviction by a competent court;

b the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

c the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

d the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

f the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6 – Right to a fair trial

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3 Everyone charged with a criminal offence has the following minimum rights:

a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b to have adequate time and facilities for the preparation of his defence;

c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 – No punishment without law

1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2 This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8 – Right to respect for private and family life

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9 – Freedom of thought, conscience and religion

1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 – Freedom of expression

1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 – Freedom of assembly and association

1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12 – Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13 – Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15 – Derogation in time of emergency

1 In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2 No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3 Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 16 – Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17 – Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18 – Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Section II – European Court of Human Rights

Article 19 – Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

Article 20 – Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21 – Criteria for office

1 The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2 The judges shall sit on the Court in their individual capacity.

3 During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22 – Election of judges

1 The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

2 The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

Article 23 – Terms of office

1 The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.

2 The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.

3 In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.

4 In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.

5 A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.

6 The terms of office of judges shall expire when they reach the age of 70.

7 The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

Article 24 – Dismissal

No judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfil the required conditions.

Article 25 – Registry and legal secretaries

The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court. The Court shall be assisted by legal secretaries.

Article 26 – Plenary Court

The plenary Court shall

a elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;

b set up Chambers, constituted for a fixed period of time;

c elect the Presidents of the Chambers of the Court; they may be re-elected;

d adopt the rules of the Court, and

e elect the Registrar and one or more Deputy Registrars.

Article 27 – Committees, Chambers and Grand Chamber

1 To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2 There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge.

3 The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.

Article 28 – Declarations of inadmissibility by committees

A committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an application submitted under Article 34 where such a decision can be taken without further examination. The decision shall be final.

Article 29 – Decisions by Chambers on admissibility and merits

1 If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34.

2 A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33.

3 The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30 – Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 31 – Powers of the Grand Chamber

The Grand Chamber shall

a determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and

b consider requests for advisory opinions submitted under Article 47.

Article 32 – Jurisdiction of the Court

1 The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.

2 In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33 – Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34 – Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35 – Admissibility criteria

1 The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

2 The Court shall not deal with any application submitted under Article 34 that

a is anonymous; or

b is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3 The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.

4 The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36 – Third party intervention

1 In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2 The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Article 37 – Striking out applications

1 The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

a the applicant does not intend to pursue his application; or

b the matter has been resolved; or

c for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

2 The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38 – Examination of the case and friendly settlement proceedings

1 If the Court declares the application admissible, it shall

a pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

b place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.

2 Proceedings conducted under paragraph 1.b shall be confidential.

Article 39 – Finding of a friendly settlement

If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

Article 40 – Public hearings and access to documents

1 Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.

2 Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41 – Just satisfaction

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42 – Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

Article 43 – Referral to the Grand Chamber

1 Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

2 A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.

3 If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44 – Final judgments

1 The judgment of the Grand Chamber shall be final.

2 The judgment of a Chamber shall become final

a when the parties declare that they will not request that the case be referred to the Grand Chamber; or

b three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or

c when the panel of the Grand Chamber rejects the request to refer under Article 43.

3 The final judgment shall be published.

Article 45 – Reasons for judgments and decisions

1 Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

2 If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46 – Binding force and execution of judgments

1 The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2 The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

Article 47 – Advisory opinions

1 The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.

2 Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3 Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48 – Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

Article 49 – Reasons for advisory opinions

1 Reasons shall be given for advisory opinions of the Court.

2 If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3 Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50 – Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

Article 51 – Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

Section III – Miscellaneous provisions

Article 52 – Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Article 53 – Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

Article 54 – Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Article 55 – Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

Article 56 – Territorial application

1 Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.

2 The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.

3 The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

4 Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

Article 57 – Reservations

1 Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

2 Any reservation made under this article shall contain a brief statement of the law concerned.

Article 58 – Denunciation

1 A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.

2 Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

3 Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.

4 The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

Article 59 – Signature and ratification

1 This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.

2 The present Convention shall come into force after the deposit of ten instruments of ratification.

3 As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

4 The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1 – Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2 – Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 3 – Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Article 4 – Territorial application

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

Article 5 – Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 6 – Signature and ratification

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

Done at Paris on the 20th day of March 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as the "Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952,

Have agreed as follows:

Article 1 – Prohibition of imprisonment for debt

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

Article 2 – Freedom of movement

1 Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2 Everyone shall be free to leave any country, including his own.

3 No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4 The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3 – Prohibition of expulsion of nationals

1 No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2 No one shall be deprived of the right to enter the territory of the state of which he is a national.

Article 4 – Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

Article 5 – Territorial application

1 Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

2 Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

3 A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

4 The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

5 Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of all or any of Articles 1 to 4 of this Protocol."

Article 6 – Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 7 – Signature and ratification

1 This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

2 The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 16th day of September 1963, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory states.

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty

The member States of the Council of Europe, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty;

Have agreed as follows:

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.

Article 2 – Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 4 – Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 5 – Territorial application

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

Article 6 – Relationship to the Convention

As between the States Parties the provisions of Articles 1 and 5 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 7 – Signature and ratification

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 8 – Entry into force

1 This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

Article 9 – Depositary functions

The Secretary General of the Council of Europe shall notify the member States of the Council of:

a any signature;

b the deposit of any instrument of ratification, acceptance or approval;

c any date of entry into force of this Protocol in accordance with articles 5 and 8;

d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 28th day of April 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 7 to the Convention
for the protection of human rights and fundamental freedoms

The member States of the Council of Europe signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows :

Article 1 – Procedural safeguards relating to expulsion of aliens

1 An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

a to submit reasons against his expulsion,

b to have his case reviewed, and

c to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2 An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

Article 2 – Right of appeal in criminal matters

1 Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2 This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

Article 3 – Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 4 – Right not to be tried or punished twice

1 No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2 The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3 No derogation from this Article shall be made under Article 15 of the Convention.

Article 5 – Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

Article 6 – Territorial application

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and state the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.

2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.

4 A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5 The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.

6 Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

Article 7 – Relationship to the Convention

As between the States Parties, the provisions of Article 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 8 – Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 9 – Entry into force

1 This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 10 – Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

a any signature;

b the deposit of any instrument of ratification, acceptance or approval;

c any date of entry into force of this Protocol in accordance with Articles 6 and 9;

d any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 22nd day of November 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Appendix B: Application Form

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

Conseil de l'Europe – *Council of Europe*
Strasbourg, France

REQUÊTE
APPLICATION

présentée en application de l'article 34 de la Convention européenne des Droits de l'Homme, ainsi que des articles 45 et 47 du règlement de la Cour

under Article 34 of the European Convention on Human Rights and Rules 45 and 47 of the Rules of Court

IMPORTANT: La présente requête est un document juridique et peut affecter vos droits et obligations.
This application is a formal legal document and may affect your rights and obligations.

I. LES PARTIES
THE PARTIES

A. LE REQUÉRANT/LA REQUÉRANTE
THE APPLICANT

(Renseignements à fournir concernant le/la requérant(e) et son/sa représentant(e) éventuel(le))
(Fill in the following details of the applicant and the representative, if any)

1. Nom de famille ..... 2. Prénom(s) .....
Surname *First name(s)*

Sexe : masculin / féminin *Sex: male / female*

3. Nationalité ..... 4. Profession .....
Nationality *Occupation*

5. Date et lieu de naissance .....
Date and place of birth

6. Domicile .....
Permanent address

7. Tel. N° .....

8. Adresse actuelle (si différente de 6.) .....
Present address (if different from 6.)

9. Nom et prénom du/de la représentant(e)* .....
*Name of representative**

10. Profession du/de la représentant(e) .....
Occupation of representative

11. Adresse du/de la représentant(e) .....
Address of representative

12. Tel. N° ..... Fax N° .....

B. LA HAUTE PARTIE CONTRACTANTE
THE HIGH CONTRACTING PARTY

(Indiquer ci-après le nom de l'Etat/des Etats contre le(s)quel(s) la requête est dirigée)
(Fill in the name of the State(s) against which the application is directed)

13. .....

* Si le/la requérant(e) est représenté(e), joindre une procuration signée par le/la requérant(e) et son/sa représentant(e).
If the applicant appoints a representative, attach a form of authority signed by the applicant and his or her representative.

II. EXPOSÉ DES FAITS
STATEMENT OF THE FACTS

(Voir chapitre II de la note explicative)
(See Part II of the Explanatory Note)

14.

Si nécessaire, continuer sur une feuille séparée
Continue on a separate sheet if necessary

III. EXPOSÉ DE LA OU DES VIOLATION(S) DE LA CONVENTION ET/OU DES PROTOCOLES ALLÉGUÉE(S), AINSI QUE DES ARGUMENTS À L'APPUI
STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND/OR PROTOCOLS AND OF RELEVANT ARGUMENTS

(Voir chapitre III de la note explicative)
(See Part III of the Explanatory Note)

15.

IV. EXPOSÉ RELATIF AUX PRESCRIPTIONS DE L'ARTICLE 35 § 1 DE LA CONVENTION
STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION

(Voir chapitre IV de la note explicative. Donner pour chaque grief, et au besoin sur une feuille séparée, les renseignements demandés sous les points 16 à 18 ci-après)
(See Part IV of the Explanatory Note. If necessary, give the details mentioned below under points 16 to 18 on a separate sheet for each separate complaint)

16. Décision interne définitive (date et nature de la décision, organe – judiciaire ou autre – l'ayant rendue)
Final decision (date, court or authority and nature of decision)

17. Autres décisions (énumérées dans l'ordre chronologique en indiquant, pour chaque décision, sa date, sa nature et l'organe – judiciaire ou autre – l'ayant rendue)
Other decisions (list in chronological order, giving date, court or authority and nature of decision for each of them)

18. Dispos(i)ez-vous d'un recours que vous n'avez pas exercé? Si oui, lequel et pour quel motif n'a-t-il pas été exercé?
Is there or was there any other appeal or other remedy available to you which you have not used? If so, explain why you have not used it.

Si nécessaire, continuer sur une feuille séparée
Continue on a separate sheet if necessary

V. EXPOSÉ DE L'OBJET DE LA REQUÊTE ET PRÉTENTIONS PROVISOIRES POUR UNE SATISFACTION EQUITABLE
STATEMENT OF THE OBJECT OF THE APPLICATION AND PROVISIONAL CLAIMS FOR JUST SATISFACTION

(Voir chapitre V de la note explicative)
(See Part V of the Explanatory Note)

19.

VI. AUTRES INSTANCES INTERNATIONALES TRAITANT OU AYANT TRAITÉ L'AFFAIRE
STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

(Voir chapitre VI de la note explicative)
(See Part VI of the Explanatory Note)

20. Avez-vous soumis à une autre instance internationale d'enquête ou de règlement les griefs énoncés dans la présente requête? Si oui, fournir des indications détaillées à ce sujet.
Have you submitted the above complaints to any other procedure of international investigation or settlement? If so, give full details.

VII. PIÈCES ANNEXÉES (PAS D'ORIGINAUX, UNIQUEMENT DES COPIES)
LIST OF DOCUMENTS *(NO ORIGINAL DOCUMENTS, ONLY PHOTOCOPIES)*

(Voir chapitre VII de la note explicative. Joindre copie de toutes les décisions mentionnées sous ch. IV et VI ci-dessus. Se procurer, au besoin, les copies nécessaires, et, en cas d'impossibilité, expliquer pourquoi celles-ci ne peuvent pas être obtenues. Ces documents ne vous seront pas retournés.)
(See Part VII of the Explanatory Note. Include copies of all decisions referred to in Parts IV and VI above. If you do not have copies, you should obtain them. If you cannot obtain them, explain why not. No documents will be returned to you.)

21. a) .....

b) .....

c) .....

VIII. DÉCLARATION ET SIGNATURE
DECLARATION AND SIGNATURE

(Voir chapitre VIII de la note explicative)
(See Part VIII of the Explanatory Note)

Je déclare en toute conscience et loyauté que les renseignements qui figurent sur la présente formule de requête sont exacts.
I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

Lieu/*Place* .....

Date/*Date* .....

(Signature du/de la requérant(e) ou du/de la représentant(e))
(Signature of the applicant or of the representative)

Appendix C: Form of Authority

EUROPEAN COURT OF HUMAN RIGHTS

AUTHORITY

I,.……

……...

(Name and address of applicant)

Hereby authorise ……..

……...

……...

(Name and address of representative)

to represent me in the proceedings before the European Court of Human Rights, and in any subsequent proceedings under the European Convention on Human Rights, concerning my application introduced under the Article 34 of the Convention against

……...

(Respondent State)

On……..

(Date of letter of introduction)

……...

(Place and date)

……

(Signature)

Appendix D: Declaration of Applicant's Means

DECLARATION OF APPLICANT'S MEANS

1. Name of applicant and case number:

2. Are you married, divorced or single?

3. Nature of your employment, name of employer:
(If not at present employment, give details of your last employment)

4. Details of net salary and other net income (e.g., interest from loans and investments, allowances, pensions, insurance benefits, etc.) after deduction of tax:

5. List and value of capital assets owned by you:

   (a) Immovable property (e.g., land, house, business premises)
   (b) Movable property and nature thereof (e.g., bank balance, savings account, motor-car valuables)

6. List your financial commitments:

   (a) Rent, mortgage and other charges

   (b) Loans and interest payable thereon

   (c) Maintenance of dependants

   (d) Any other financial obligations

7. What contribution can you make towards your legal representation before the Court of Human rights?

8. The name of the person whom you propose to assist
   (see Rule 94 of the Rules of Court)

I certify that the above information is correct.

Signed: Dated:

Appendix E: European Court Legal Aid Rates

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

Legal aid rates
applicable as from 1 January 2006

A. FEES AND EXPENSES — **Lump sum per case**

Preparation of the case

- **Filing written pleadings at the request of the Court on the admissibility or merits of the case**
- **Supplementary observations at the request of the Court (on the admissibility or merits of the case)**
- **Submissions on just satisfaction or friendly settlement**
- **Normal secretarial expenses (for example telephone, postage, photocopies)**

€ 850

B. OTHER

1. **Appearance at an oral hearing before the Court or attending the hearing of witnesses (including preparation) …….. € 300**
2. **Assisting in friendly settlement negotiations ……..... € 200**
3. **Travelling costs incurred in connection with appearance at an oral hearing or hearing of witnesses or with friendly-settlement negotiations ……. according to receipts**
4. **Subsistence allowance in connection with appearance at an oral hearing or hearing of witnesses or with friendly-settlement negotiations …….. € 169 per diem**

Appendix F: Table of Ratification

Dates of ratification of the European Convention on Human Rights and Additional Protocols as at August 2006

States	Convention	Protocol No. 1	Protocol No. 4	Protocol No. 6	Protocol No. 7	Protocol No. 12	Protocol No. 13
Albania	02/10/96	02/10/96	02/10/96	01/10/00	01/01/97	01/04/05	
Andorra	22/01/96			01/02/96			01/07/03
Armenia	26/04/02	26/04/02	26/04/02	01/10/03	01/07/02	01/04/05	
Austria	03/09/58	03/09/58	18/09/69	01/03/85	01/11/88		01/05/04
Azerbaijan	15/04/02	15/04/02	15/04/02	01/05/02	01/07/02		
Belgium	14/06/55	14/06/55	21/09/70	01/01/99			01/10/03
Bosnia and Herzegovina	12/07/02	12/07/02	12/07/02	01/08/02	01/10/02	01/04/05	01/11/03
Bulgaria	07/09/92	07/09/92	04/11/00	01/10/99	01/02/01		01/07/03
Croatia	05/11/97	05/11/97	05/11/97	01/12/97	01/02/98	01/04/05	01/07/03
Cyprus	06/10/62	06/10/62	03/10/89	01/02/00	01/12/00	01/04/05	01/07/03
Czech Republic	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93		01/11/04
Denmark	03/09/53	18/05/54	02/05/68	01/03/85	01/11/88		01/07/03
Estonia	16/04/96	16/04/96	16/04/96	01/05/98	01/07/96		01/06/04
Finland	10/05/90	10/05/90	10/05/90	01/06/90	01/08/90	01/04/05	01/03/05
France	03/05/74	03/05/74	03/05/74	01/03/86	01/11/88		
Georgia	20/05/99	07/06/02	13/04/00	01/05/00	01/07/00	01/04/05	01/09/03

Germany	03/09/53	13/02/57	01/06/68	01/08/89			01/02/05
Greece	28/11/74	28/11/74		01/10/98	01/11/88		01/06/05
Hungary	05/11/92	05/11/92	05/11/92	01/12/92	01/02/93		01/11/03
Iceland	03/09/53	18/05/54	02/05/68	01/06/87	01/11/88		01/03/05
Ireland	03/09/53	18/05/54	29/10/68	01/07/94	01/11/01		01/07/03
Italy	26/10/55	26/10/55	27/05/82	01/01/89	01/02/92		
Latvia	27/06/97	27/06/97	27/06/97	01/06/99	01/09/97		
	08/09/82	14/11/95		01/12/90	01/05/05		01/07/03
Lithuania	20/06/95	24/05/96	20/06/95	01/08/99	01/09/95		01/05/04
Luxembourg	03/09/53	18/05/54	02/05/68	01/03/85	01/07/89		
Malta	23/01/67	23/01/67	05/06/02	01/04/91	01/04/03		01/07/03
Moldova	12/09/97	12/09/97	12/09/97	01/10/97	01/12/97		
Monaco	30/11/05		30/11/05	01/12/05	01/02/05		01/03/06
Netherlands	31/08/54	31/08/54	23/06/82	01/05/86		01/04/05	
Norway	03/09/53	18/05/54	02/05/68	01/11/88	01/01/89		01/12/05
Poland	19/01/93	10/10/94	10/10/94	01/11/00	01/03/03		
Portugal	09/11/78	09/11/78	09/11/78	01/11/86			01/02/04
Romania	20/06/94	20/06/94	20/06/94	01/07/94	01/09/94		01/08/03
Russia	05/05/98	05/05/98	05/05/98		01/08/98		
San Marino	22/03/89	22/03/89	22/03/89	01/04/89	01/06/89	01/04/05	01/08/03
Serbia	03/03/04	03/03/04	03/03/04	01/04/04	01/06/04	01/04/05	01/07/04
Slovakia	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93		01/12/05
Slovenia	28/06/94	28/06/94	28/06/94	01/07/94	01/09/94		01/04/04
Spain	04/10/79	27/11/90		01/03/85			
Sweden	03/09/53	18/05/54	02/05/68	01/03/85	01/11/88		01/08/03
Switzerland	28/11/74			01/11/87	01/11/88		01/07/03
The former Yugoslav Republic of Macedonia	10/04/97	10/04/97	10/04/97	01/05/97	01/07/97		01/11/04
Turkey	18/05/54	18/05/54		01/12/03			
Ukraine	11/09/97	11/09/97	11/09/97	01/05/00	01/12/97		01/07/03
United Kingdom	03/09/53	18/05/54		01/06/99			01/02/04

Appendix G: List of European Court Judges

(By Section and By Country)

Composition of the Sections as at August 2006

Section I	**Section II**	**Section III**	**Section IV**	**Section V**
Mr C.L. Rozakis **President**	Mr J.-P. Costa **President**	Mr B.M. Zupančič **President**	Sir Nicolas Bratza **President**	Mr P. Lorenzen **President**
Mr L. Loucaides **Vice-President**	Mr A.B. Baka **Vice-President**	Mr J. Hedigan **Vice-President**	Mr J. Casadevall **Vice-President**	Mrs S. Botoucharova **Vice-President**
Mrs F. Tulkens	Mr I. Cabral Barreto	Mr L. Caflisch	Mr G. Bonello	Mr L. Wildhaber
Mrs N. Vajić	Mr R. Türmen	Mr C. Birsan	Mr M. Pellonpää	Mr K. Jungwiert
Mr A. Kovler	Mr M. Ugrekhelidze	Mr V. Zagrebelsky	Mr K. Traja	Mr V. Butkevych
Mrs E. Steiner	Mrs A. Mularoni	Mrs A. Gyulumyan	Mr S. Pavlovschi	Mrs M. Tsatsa-Nikolovska
Mr K. Hajiyev	Mrs E. Fura-Sandström	Mr E. Myjer	Mr L. Garlicki	Mr R. Maruste
Mr D. Spielmann	Mrs D. Jočienė	Mr D. Björgvinsson	Mrs L. Mijović	Mr J. Borrego Borrego
Mr S. E. Jebens	Mr D. Popović	Mrs I. Ziemele	Mr J. Šikuta	Mrs R. Jaeger

Section Registrars

S. Nielsen	S. Dollé	V. Berger	L. Early	C. Westerdiek

Deputy Section Registrars

S. Quesada	S. Naismith	M. Villiger	F. Elens-Passos	S. Phillips

Composition of the Court as at August 2006

Mr Luzius WILDHABER, President	(Swiss)
Mr Christos ROZAKIS, Vice-President	(Greek)
Mr Jean-Paul COSTA, Vice-President	(French)
Sir Nicolas BRATZA, Section President	(British)
Mr Boštjan ZUPANČIČ, Section President	(Slovenian)
Mr Peer LORENZEN, Section President	(Danish)
Mr Giovanni BONELLO	(Maltese)
Mr Lucius CAFLISCH	(Swiss)*
Mr Loukis LOUCAIDES	(Cypriot)
Mr Ireneu CABRAL BARRETO	(Portuguese)
Mr Riza TÜRMEN	(Turkish)
Mrs Françoise TULKENS	(Belgian)
Mr Corneliu BÎRSAN	(Romanian)
Mr Karel JUNGWIERT	(Czech)
Mr Volodymyr BUTKEVYCH	(Ukrainian)
Mr Josep CASADEVALL	(Andorran)
Mrs Nina VAJIĆ	(Croatian)
Mr John HEDIGAN	(Irish)
Mr Matti PELLONPÄÄ	(Finnish)
Mrs Margarita TSATSA-NIKOLOVSKA	(citizen of "The former Yugoslav Republic of Macedonia")
Mr András BAKA	(Hungarian)
Mr Rait MARUSTE	(Estonian)
Mr Kristaq TRAJA	(Albanian)

Mrs Snejana BOTOUCHAROVA	(Bulgarian)
Mr Mindia UGREKHELIDZE	(Georgian)
Mr Anatoly KOVLER	(Russian)
Mr Vladimiro ZAGREBELSKY	(Italian)
Mrs Antonella MULARONI	(San Marinese)
Mrs Elisabeth STEINER	(Austrian)
Mr Stanislav PAVLOVSCHI	(Moldovan)
Mr Lech GARLICKI	(Polish)
Mr Javier BORREGO BORREGO	(Spanish)
Mrs Elisabet FURA-SANDSTRÖM	(Swedish)
Mrs Alvina GYULUMYAN	(Armenian)
Mr Khanlar HAJIYEV	(Azerbaijani)
Mrs Ljiljana MIJOVIĆ	(citizen of Bosnia and Herzegovina)
Mr Dean SPIELMANN	(Luxemburger)
Mrs Renate JAEGER	(German)
Mr Egbert MYJER	(Dutch)
Mr Sverre Erik JEBENS	(Norwegian)
Mr David Thór BJÖRGVINSSON	(Icelandic)
Mrs Danutė JOČIENĖ	(Lithuanian)
Mr Ján ŠIKUTA	(Slovakian)
Mr Dragoljub POPOVIĆ	(Serbian)
Mrs Ineta ZIEMELE	(Latvian)
Mrs Isabelle BERRO-LEFEVRE	(Monegasque)
Mr Erik FRIBERGH, Registrar	(Swedish)
Mr Michael O'BOYLE, Deputy Registrar	(Irish)

Appendix H: Pro Forma Introductory Letter to the European Court of Human Rights

BY POST & BY FAX

The Registrar
European Court of Human Rights
Council of Europe
67075 Strasbourg - Cedex
France

[Date]

Dear Sirs

[Name of Applicant(s)] v [Respondent State]

I act for [Applicant(s)] of [Address]. I am writing to introduce to the Court an application by [Applicant(s)] (the 'Applicant(s)') against [Respondent State] pursuant to Article 34 of the European Convention on Human Rights (the 'Convention').

Factual History

[Set out brief detail of the events, including dates of violations, damage suffered by Applicant(s), details of domestic court proceedings]

Applicant's submissions

[Set out alleged violations of the specific Convention articles with brief

reasons].

Procedural Requirements

This letter has been lodged within six months of the decision handed down by [Court] on [date], in accordance with Article 35 (1) of the Convention.

OR

The Applicant(s) claims that the available domestic remedy is neither adequate nor effective since [brief reason why]. Therefore, the Applicant(s) submits that they are absolved from complying with the requirements of Article 35 of the Convention.

The Applicant seeks a declaration that his rights have been violated pursuant to Articles [insert] of the Convention.

I enclose a copy of the Form of Authority duly signed by the Applicant. A full application will be lodged with the Court shortly.

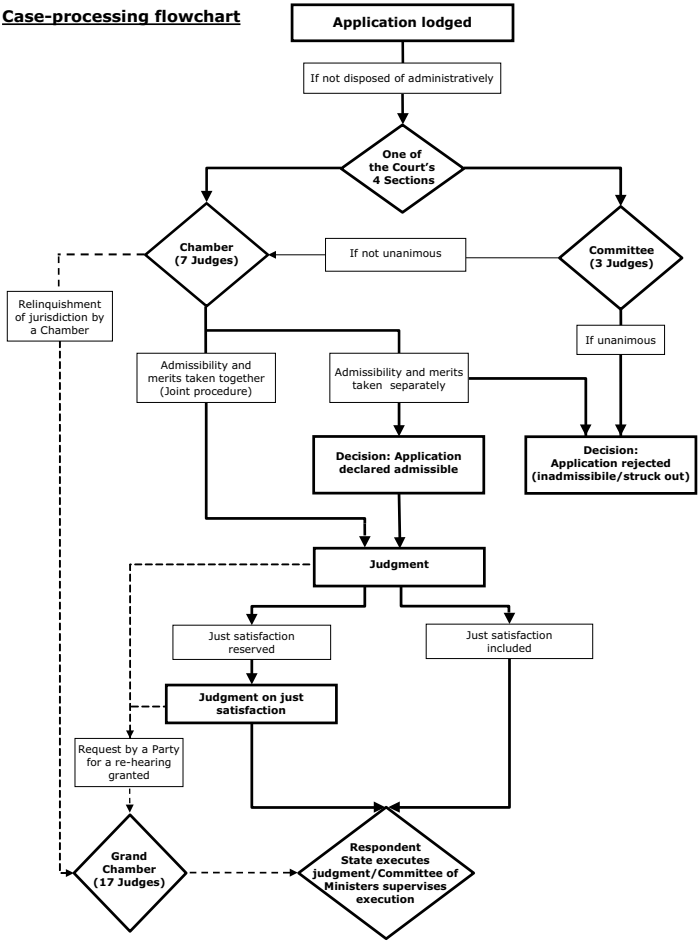
I would be grateful for acknowledgment of receipt of this letter and enclosures as soon as possible.

Yours faithfully,

[Applicant's Representative]

Appendix I: Flowchart of European Court of Human Rights Procedure

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME



This flowchart indicates the progress of a case through the different judicial formations. In the interests of readability, it does not include certain stages in the procedure – such as communication of an application to the respondent State, consideration of a re-hearing request by the Panel of the Grand Chamber and friendly settlement negotiations.

Appendix J: Precedent Timesheet and Costs & Expenses Schedule

SAMPLE
SCHEDULE OF COSTS & EXPENSES

[Name and Address of Applicant]

[Date]

Schedule of Costs

[Applicant(s)] & v [Respondent State] (Case no ……)

Total Costs	**£3,319.99**

[Name and Address of Applicant]

[Date]

Schedule of Costs

[Applicant(s)] & v [Respondent State] (Case no ……)

Total Costs £…….

A. Fees incurred from [date of first working on case] to [current date] (see attached time recording schedules)

Fee earner	*Number of hours*	*Hourly rate*	*Total*
Fee earner A	12 hours	£150	£1,800.00
Fee earner B	9 hours 20 mins	£150	£1,399.99
Total			**£3,199.99**

Additional fees and expenses incurred in preparing for and attending any hearing will be submitted to the Court in the event that a hearing is held in this case.

B. Administrative costs and expenses

Administrative costs and disbursements within office

- Telephone /fax (including international calls and mobile)
  ……. £40.00
- Postage (including international courier)
  ……. £25.00
- Photocopy/stationary

…… £35.00

- Translation costs

…… £20.00

Total **£120.00**

Summary

A. Legal fees (between … dates…) **£3,199.99**

B. Administrative costs and expenses **£120.00**

TOTAL **£3,319.99**

Payment should be made in sterling (GBP) direct to the account of ….

[Insert bank details]

FEE EARNER'S TIME RECORDING SCHEDULES

Name	Date	Work Carried Out	Time Taken
Fee Earner A	02/11/05	Drafting Application	3 hours
Fee Earner A	04/11/05	Drafting Application and Submitting to Court	1.5 hours
Fee Earner B	06/04/06	Considering court correspondence	10 minutes
Etc			

Appendix K: Protocol 14 to the Convention: Explanatory Report and Convention as amended by Protocol 14

Council of Europe Treaty Series No. 194

**PROTOCOL No. 14
TO THE CONVENTION
FOR THE PROTECTION
OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS,
AMENDING THE CONTROL SYSTEM
OF THE CONVENTION**

Preamble

The member States of the Council of Europe, signatories to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Having regard to Resolution No. 1 and the Declaration adopted at the European Ministerial Conference on Human Rights, held in Rome on 3 and 4 November 2000;

Having regard to the Declarations adopted by the Committee of Ministers on 8 November 2001, 7 November 2002 and 15 May 2003, at their 109th, 111th and 112th Sessions, respectively;

Having regard to Opinion No. 251 (2004) adopted by the Parliamentary Assembly of the Council of Europe on 28 April 2004;

Considering the urgent need to amend certain provisions of the Convention in order to maintain and improve the efficiency of the control system for the long term, mainly in the light of the continuing increase in the workload of the European Court of Human Rights and the Committee of Ministers of the Council of Europe;

Considering, in particular, the need to ensure that the Court can continue to play its pre-eminent role in protecting human rights in Europe,

Have agreed as follows:

Article 1

Paragraph 2 of Article 22 of the Convention shall be deleted.

Article 2

Article 23 of the Convention shall be amended to read as follows:

"**Article 23 – Terms of office and dismissal**

1 The judges shall be elected for a period of nine years. They may not be re-elected.

2 The terms of office of judges shall expire when they reach the age of 70.

3 The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

4 No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions."

Article 3

Article 24 of the Convention shall be deleted.

Article 4

Article 25 of the Convention shall become Article 24 and its text shall be amended to read as follows:

"**Article 24 – Registry and rapporteurs**

1 The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court.

2 When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's registry."

Article 5

Article 26 of the Convention shall become Article 25 ("Plenary Court") and its text shall be amended as follows:

1 At the end of paragraph d, the comma shall be replaced by a semi-colon and the word "and" shall be deleted.

2 At the end of paragraph e, the full stop shall be replaced by a semi-colon.

3 A new paragraph f shall be added which shall read as follows:

"f make any request under Article 26, paragraph 2."

Article 6

Article 27 of the Convention shall become Article 26 and its text shall be amended to read as follows:

"**Article 26 – Single-judge formation, committees, Chambers and Grand Chamber**

1 To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2 At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.

3 When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.

4 There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

5 The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned."

Article 7

After the new Article 26, a new Article 27 shall be inserted into the Convention, which shall read as follows:

"**Article 27 – Competence of single judges**

1 A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.

2 The decision shall be final.

3 If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination."

Article 8

Article 28 of the Convention shall be amended to read as follows:

"**Article 28 – Competence of committees**

1 In respect of an application submitted under Article 34, a committee may, by a unanimous vote,

a declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or

b declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

2 Decisions and judgments under paragraph 1 shall be final.

3 If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.b."

Article 9

Article 29 of the Convention shall be amended as follows:

1 Paragraph 1 shall be amended to read as follows: "If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately."

2 At the end of paragraph 2 a new sentence shall be added which shall read as follows: "The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise."

3 Paragraph 3 shall be deleted.

Article 10

Article 31 of the Convention shall be amended as follows:

1 At the end of paragraph a, the word "and" shall be deleted.

2 Paragraph b shall become paragraph c and a new paragraph b shall be inserted and shall read as follows:

"b decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and".

Article 11

Article 32 of the Convention shall be amended as follows:

At the end of paragraph 1, a comma and the number 46 shall be inserted after the number 34.

Article 12

Paragraph 3 of Article 35 of the Convention shall be amended to read as follows:

"3 The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that :

a the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

b the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

Article 13

A new paragraph 3 shall be added at the end of Article 36 of the Convention, which shall read as follows:

"3 In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings."

Article 14

Article 38 of the Convention shall be amended to read as follows:

"**Article 38 – Examination of the case**

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

Article 15

Article 39 of the Convention shall be amended to read as follows:

"**Article 39 – Friendly settlements**

1 At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.

2 Proceedings conducted under paragraph 1 shall be confidential.

3 If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

4 This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision."

Article 16

Article 46 of the Convention shall be amended to read as follows:

"**Article 46 – Binding force and execution of judgments**

1 The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2 The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3 If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

4 If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

5 If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case."

Article 17

Article 59 of the Convention shall be amended as follows:

1 A new paragraph 2 shall be inserted which shall read as follows:

"2 The European Union may accede to this Convention."

2 Paragraphs 2, 3 and 4 shall become paragraphs 3, 4 and 5 respectively.

Final and transitional provisions

Article 18

1 This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by

a signature without reservation as to ratification, acceptance or approval; or

b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2 The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 19

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 18.

Article 20

1 From the date of the entry into force of this Protocol, its provisions shall apply to all applications pending before the Court as well as to all judgments whose execution is under supervision by the Committee of Ministers.

2 The new admissibility criterion inserted by Article 12 of this Protocol in Article 35, paragraph 3.b of the Convention, shall not apply to applications declared admissible before the entry into force of the Protocol. In the two years following the entry into force of this Protocol, the new admissibility criterion may only be applied by Chambers and the Grand Chamber of the Court.

Article 21

The term of office of judges serving their first term of office on the date of entry into force of this Protocol shall be extended *ipso jure* so as to amount to a total period of nine years. The other judges shall complete their term of office, which shall be extended *ipso jure* by two years.

Article 22

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

a any signature;

b the deposit of any instrument of ratification, acceptance or approval;

c the date of entry into force of this Protocol in accordance with Article 19; and

d any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 13th day of May 2004, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention

(CETS No. 194)

Français

Explanatory Report

Introduction

1. Since its adoption in 1950, the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") has been amended and supplemented several times: the High Contracting Parties have used amending or additional protocols to adapt it to changing needs and to developments in European society. In particular, the control mechanism established by the Convention was radically reformed in 1994 with the adoption of Protocol No. 11 which entered into force on 1 November 1998.

2. Ten years later, at a time when nearly all of Europe's countries have become party to the Convention, (1) the urgent need has arisen to adjust this mechanism, and particularly to guarantee the long-term effectiveness of the European Court of Human Rights (hereinafter referred to as "the Court"), so that it can continue to play its pre-eminent role in protecting human rights in Europe.

I. Need to increase the effectiveness of the control system established by the Convention

Protocol No. 11

3. Protocol No. 11 substituted a full-time single Court for the old system established by the 1950 Convention, namely, a Commission, a Court and the Committee of Ministers which played a certain “judicial” role.

4. Protocol No. 11, which was opened for signature on 11 May 1994 and came into force on 1 November 1998, was intended, firstly, to simplify the system so as to reduce the length of proceedings, and, secondly, to reinforce their judicial character. This protocol made the system entirely judicial (abolition of the Committee of Ministers' quasi-judicial role, deletion of the optional clauses concerning the right of individual application and the compulsory jurisdiction of the Court) and created a single full-time Court.

5. In this way Protocol No. 11 contributed to enhancing the effectiveness of the system, notably by improving the accessibility and visibility of the Court and by simplifying the procedure in order to cope with the influx of applications generated by the constant increase in the number of states. Whereas the Commission and Court had given a total of 38 389 decisions and judgments in the forty-four years up to 1998 (the year in which Protocol No. 11 took effect), the single Court has given 61 633 in five years.(2) None the less, the reformed system, which originated in proposals first made in the 1980s, proved inadequate to cope with the new situation. Indeed, since 1990, there has been a considerable and continuous rise in the number of individual applications as a result, amongst other things, of the enlargement of the Council of Europe. Thus the number of applications increased from 5 279 in 1990 to 10 335 in 1994 (+96%), 18 164 in 1998 (+76%) and 34 546 in 2002 (+90%). Whilst streamlining measures taken by the Court enabled no less than 1 500 applications to be disposed of per month in 2003, this remains far below the nearly 2 300 applications allocated to a decision body every month.

6. This increase is due not only to the accession of new States Parties (between the opening of Protocol No. 11 for signature in May 1994 and the adoption of Protocol No. 14, thirteen new States Parties ratified the Convention, extending the protection of its provisions to over 240 million

additional individuals) and to the rapidity of the enlargement process, but also to a general increase in the number of applications brought against states which were party to the Convention in 1993. In 2004, the Convention system was open to no fewer than 800 million people. As a result of the massive influx of individual applications, the effectiveness of the system, and thus the credibility and authority of the Court, were seriously endangered.

The problem of the Court's excessive caseload

7. It is generally recognised that the Court's excessive caseload (during 2003, some 39 000 new applications were lodged and at the end of that year, approximately 65 000 applications were pending before it) manifests itself in two areas in particular: i. processing the very numerous individual applications which are terminated without a ruling on the merits, usually because they are declared inadmissible (more than 90% of all applications), and ii. processing individual applications which derive from the same structural cause as an earlier application which has led to a judgment finding a breach of the Convention (repetitive cases following a so-called "pilot judgment"). A few figures will illustrate this. In 2003, there were some 17 270 applications declared inadmissible (or struck out of the list of cases), and 753 applications declared admissible. Thus, the great majority of cases are terminated by inadmissibility or strike-out decisions (96% of cases disposed of in 2003). In the remaining cases, the Court gave 703 judgments in 2003, and some 60% of these concerned repetitive cases.

8. Such an increase in the caseload has an impact both on the registry and on the work of the judges and is leading to a rapid accumulation of pending cases not only before committees (see paragraph 5 *in fine* above) but also before Chambers. In fact, as is the case with committees, the output of Chambers is far from being sufficient to keep pace with the influx of cases brought before them. A mere 8% of all cases terminated by the Court in 2003 were Chamber cases. This stands in stark contrast with the fact that no less than 20% of all new cases assigned to a decision-making body in the same year were assigned to a Chamber. This difference between input and output has led to the situation

that, in 2003, 40% of all cases pending before a decision-making body were cases before a Chamber. In absolute terms, this accumulation of cases pending before a Chamber is reflected by the fact that, on 1 January 2004, approximately 16 500 cases were pending before Chambers. It is clear that the considerable amount of time spent on filtering work has a negative effect on the capacity of judges and the registry to process Chamber cases.

9. The prospect of a continuing increase in the workload of the Court and the Committee of Ministers (supervising execution of judgments) in the next few years is such that a set of concrete and coherent measures – including reform of the control system itself – was considered necessary to preserve the system in the future.

10. At the same time – and this was one of the major challenges in preparing the present protocol – it was vital that reform should in no way affect what are rightly considered the principal and unique features of the Convention system. These are the judicial character of European supervision, and the principle that any person claiming to be the victim of a breach of the rights and freedoms protected by the Convention may refer the matter to the Court (right of individual application).

11. Indeed, the Convention's control system is unique: the Parties agree to subject themselves to international judicial supervision of their obligation to secure to everyone within their jurisdiction the rights and freedoms set out in the Convention. This control is exercised by the Court, which gives judgments on individual applications brought under Article 34 of the Convention and on state applications – which are extremely rare [(3)] – brought under Article 33. The Court's judgments are binding on respondent Parties and their execution is supervised by the Committee of Ministers of the Council of Europe.

12. The principle of subsidiarity underlies all the measures taken to increase the effectiveness of the Convention's control system. Under Article 1 of the Convention, it is with the High Contracting Parties that the obligation lies "to secure to everyone within their jurisdiction the rights and

freedoms" guaranteed by the Convention, whereas the role of the Court, under Article 19, is "to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention". In other words, securing rights and freedoms is primarily the responsibility of the Parties; the Court's role is subsidiary.

13. Forecasts from the current figures by the registry show that the Court's caseload would continue to rise sharply if no action were taken. Moreover, the estimates are conservative ones. Indeed, the cumulative effects of greater awareness of the Convention in particular in new States Parties, and of the entry into force of Protocol No. 12, the ratification of other additional protocols by states which are not party to them, the Court's evolving and extensive interpretation of rights guaranteed by the Convention and the prospect of the European Union's accession to the Convention, suggest that the annual number of applications to the Court could in the future far exceed the figure for 2003.

14. Measures required to ensure the long-term effectiveness of the control system established by the Convention in the broad sense are not restricted to Protocol No. 14. Measures must also be taken to prevent violations at national level and improve domestic remedies, and also to enhance and expedite execution of the Court's judgments.(4) Only a comprehensive set of interdependent measures tackling the problem from different angles will make it possible to overcome the Court's present overload.

Measures to be taken at national level

15. In accordance with the principle of subsidiarity, the rights and freedoms enshrined in the Convention must be protected first and foremost at national level. Indeed this is where such protection is most effective. The responsibility of national authorities in this area must be reaffirmed and the capacity of national legal systems to prevent and redress violations must be reinforced. States have a duty to monitor the conformity of their legislation and administrative practice with the requirements of the Convention and the Court's case-law. In order to achieve this, they may have the assistance of outside bodies. If fully applied, these measures

will relieve the pressure on the Court in several ways: they should not only help to reduce the number of well-founded individual applications by ensuring that national laws are compatible with the Convention, or by making findings of violations or remedying them at national level, they will also alleviate the Court's work in that well-reasoned judgments already given on cases at national level make adjudication by the Court easier. It goes without saying, however, that these effects will be felt only in the medium term.

Measures to be taken concerning execution of judgments

16. Execution of the Court's judgments is an integral part of the Convention system. The measures that follow are designed to improve and accelerate the execution process. The Court's authority and the system's credibility both depend to a large extent on the effectiveness of this process. Rapid and adequate execution has, of course, an effect on the influx of new cases: the more rapidly general measures are taken by States Parties to execute judgments which point to a structural problem, the fewer repetitive applications there will be. In this regard, it would be desirable for states, over and above their obligations under Article 46, paragraph 1, of the Convention, to give retroactive effect to such measures and remedies. Several measures advocated in the above-mentioned recommendations and resolutions (see footnote 4) pursue this aim. In addition, it would be useful if the Court and, as regards the supervision of the execution of judgments, the Committee of Ministers, adopted a special procedure so as to give priority treatment to judgments that identify a structural problem capable of generating a significant number of repetitive applications, with a view to securing speedy execution of the judgment. The most important Convention amendment in the context of execution of judgments of the Court involves empowering the Committee of Ministers to bring infringement proceedings in the Court against any state which refuses to comply with a judgment.

17. The measures referred to in the previous paragraph are also designed to increase the effectiveness of the Convention system as a whole. While the supervision of the execution of judgments generally functions satisfactorily, the process

needs to be improved to maintain the system's effectiveness.

Effectiveness of filtering and of subsequent processing of applications by the Court

18. Filtering and subsequent processing of applications by the Court are the main areas in which Protocol No. 14 makes concrete improvements. These measures are outlined in Chapter III below, and described in greater detail in Chapter IV, which comments on each of the provisions in the protocol.

19.During the preparatory work on Protocol No. 14, there was wide agreement as to the importance of several other issues linked to the functioning of the control system of the Convention which, however, did not require an amendment of the Convention. These are the need to strengthen the registry of the Court to enable it to deal with the influx of cases whilst maintaining the quality of the judgments, the need to encourage more frequent third party interventions by other states in cases pending before the Court which raise important general issues, and, in the area of supervision of execution, the need to strengthen the department for the execution of judgments of the General Secretariat of the Council of Europe and to make optimum use of other existing Council of Europe institutions, mechanisms and activities as a support for promoting rapid execution of judgments.

II. Principal stages in the preparation of Protocol No. 14

20. The European Ministerial Conference on Human Rights, held in Rome in November 2000 to mark the 50th anniversary of the signing of the Convention, found that "the effectiveness of the Convention system [...] is now at issue" because of "the difficulties that the Court has encountered in dealing with the ever-increasing volume of applications" (Resolution I on *institutional and functional arrangements for the protection of human rights at national and European level*).[(5)] It accordingly called on the Committee of Ministers to "initiate, as soon as possible, a thorough study of the different possibilities and options with a view to ensuring the

effectiveness of the Court in the light of this new situation".(6) The conference also thought it "indispensable, having regard to the ever-increasing number of applications, that urgent measures be taken to assist the Court in carrying out its functions and that an in-depth reflection be started as soon as possible on the various possibilities and options with a view to ensuring the effectiveness of the Court in the light of this new situation".(7)

21. As a follow-up to the ministerial conference, the Ministers' Deputies set up, in February 2001, an Evaluation group to consider ways of guaranteeing the effectiveness of the Court. The group submitted its report to the Committee of Ministers on 27 September 2001.(8)

22. Concurrently, the Steering Committee for Human Rights (CDDH) set up its own Reflection Group on the Reinforcement of the Human Rights Protection Mechanism. Its activity report was sent to the Evaluation group in June 2001, so that the latter could take it into account in its work.(9)

23. To give effect to the conclusions of the Evaluation group's report, the Committee of Ministers agreed in principle to additional budgetary appropriations for the period from 2003 to 2005, to allow the Court to recruit a significant number of extra lawyers, as well as administrative and auxiliary staff. It took similar action to reinforce the Council of Europe Secretariat departments involved in execution of the Court's judgments.

24. The Court also took account of the Evaluation group's conclusions and those of its Working party on working methods.(10) On this basis it adopted a number of measures concerning its own working methods and those of the registry. It also amended its Rules of Court in October 2002 and again in November 2003.

25. At its 109th session (8 November 2001) the Committee of Ministers adopted its declaration on *"The protection of Human Rights in Europe - Guaranteeing the long-term effectiveness of the European Court of Human Rights*".(11) In

this text it welcomed the Evaluation group's report and, with a view to giving it effect, instructed the CDDH to:

> – carry out a feasibility study on the most appropriate way to conduct the preliminary examination of applications, particularly by reinforcing the filtering of applications;
>
> – examine and, if appropriate, submit proposals for amendments to the Convention, notably on the basis of the recommendations in the report of the Evaluation group.

26. In the light of the work done, particularly by its Reflection Group on the Reinforcement of the Human Rights Protection Mechanism (CDDH-GDR) and its Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR), the CDDH reported on progress in these two areas in an interim report, adopted in October 2002 (document CM(2002)146). It focused on three main issues: preventing violations at national level and improving domestic remedies, optimising the effectiveness of filtering and subsequent processing of applications, and improving and accelerating the execution of the Court's judgments.

27. In the light of this interim report, and following the declaration, "*The Court of Human Rights for Europe*", which it adopted at its 111th session (6-7 November 2002), [(12)] the Committee of Ministers decided that it wished to examine a set of concrete and coherent proposals at its ministerial session in May 2003. In April 2003, the CDDH accordingly submitted a final report, detailing its proposals in these three areas (document CM(2003)55). These served as a basis for preparation of the Committee of Ministers' recommendations to the member states and for the amendments made to the Convention.

28. In its declaration, "*Guaranteeing the long-term effectiveness of the European Court of Human Rights*", adopted at its 112th session (14-15 May 2003), the Committee of Ministers welcomed this report and endorsed the CDDH's approach. It instructed the Ministers' Deputies to

implement the CDDH's proposals, so that it could examine texts for adoption at its 114th session in 2004, taking account of certain issues referred to in the declaration. It also asked them to take account of other questions raised in the report, such as the possible accession of the European Union to the Convention, the term of office of judges of the Court, and the need to ensure that future amendments to the Convention were given effect as rapidly as possible.

29. The CDDH was accordingly instructed to prepare, with a view to their adoption by the Committee of Ministers, not only a draft amending protocol to the Convention with an explanatory report, but also a draft declaration, three draft recommendations and a draft resolution. Work on the elaboration of Protocol No. 14 and its explanatory report was carried out within the CDDH-GDR (renamed Drafting Group on the Reinforcement of the Human Rights Protection Mechanism),while work concerning the other texts was undertaken by the DH-PR.

30. The Committee of Ministers also encouraged the CDDH to consult civil society, the Court and the Parliamentary Assembly. With this in view, the CDDH carefully examined the opinions and proposals submitted by the Parliamentary Assembly's Committee on Legal Affairs and Human Rights, the Court, the Council of Europe Commissioner for Human Rights and certain member states, as well as non-governmental organisations (NGOs) and national institutions for the promotion and protection of human rights. The CDDH-GDR and CDDH have benefited greatly from the contributions of representatives of the Parliamentary Assembly, the Court's registry and the Commissioner's office, who played an active part in its work. The reports and draft texts adopted by the CDDH and the CDDH-GDR were public documents available on the Internet, and copies were sent directly to the Court, Parliamentary Assembly, Commissioner for Human Rights and NGOs. The CDDH-GDR also organised two valuable consultations with NGOs and the CDDH benefited from the contribution of the NGOs accredited to it. The Ministers' Deputies were closely involved throughout the process. Protocol No. 14 is thus the fruit of a collective reflection, carried out in a very transparent manner.

31. After an interim activity report in November 2003 (document CM(2003)165, Addendum I), the CDDH sent the Committee of Ministers its final activity report (document CM(2004)65) in April 2004. This contained the draft amending protocol to the Convention. The Parliamentary Assembly adopted an opinion on the draft protocol (Opinion No. 251 (2004) of 28 April 2004).

32.As well as adopting the amending protocol at the 114th ministerial session, held on 12 and 13 May 2004, the Committee of Ministers adopted the declaration "*Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels*". In that declaration, the member states recognised the urgency of the reform, and committed themselves to ratifying Protocol No. 14 within two years.

33. The text of the amending protocol was opened for signature by Council of Europe member states, signatory to the European Convention on Human Rights on 13 May 2004.

III. Overview of the changes made by Protocol No. 14 to the control system of the European Convention on Human Rights

34. During the initial reflection stage on the reform of the Convention's control system, which started immediately after the European Ministerial Conference on Human Rights in 2000, a wide range of possible changes to the system were examined, both in the Evaluation group and the CDDH's Reflection group. Several proposals were retained and are taken up in this protocol. Others, including some proposals for radical change of the control system, were for various reasons rejected during the reflection stage.(13) Some of these should be mentioned here. For example, the idea of setting up, within the framework of the Convention, "regional courts of first instance" was rejected because, on the one hand, of the risk it would create of diverging case-law and, on the other hand, the high cost of setting them up. Proposals to empower the Court to give preliminary rulings at the request of national courts or to expand the Court's competence to give advisory opinions (Articles 47-49 of the Convention) were likewise rejected. Such innovations

might interfere with the contentious jurisdiction of the Court and they would, certainly in the short term, result in additional, not less, work for the Court. Two other proposals were rejected because they would have restricted the right of individual application. These were the proposal that the Court should be given discretion to decide whether or not to take up a case for examination (system comparable to the *certiorari* procedure of the United States Supreme Court) and that it should be made compulsory for applicants to be represented by a lawyer or other legal expert from the moment of introduction of the application (see however Rule 36, paragraph 2, of the Rules of Court). It was felt that the principle according to which anyone had the right to apply to the Court should be firmly upheld. The proposal to create a separate filtering body, composed of persons other than the judges of the Court, was also rejected. In this connection, the protocol is based on two fundamental premises: filtering work must be carried out within the judicial framework of the Court and there should not be different categories of judges within the same body. Finally, in the light of Opinion No. 251 (2004) of the Parliamentary Assembly, it was decided not to make provision for permitting an increase of the number of judges without any new amendment to the Convention.

35. Unlike Protocol No. 11, Protocol No. 14 makes no radical changes to the control system established by the Convention. The changes it does make relate more to the functioning than to the structure of the system. Their main purpose is to improve it, giving the Court the procedural means and flexibility it needs to process all applications in a timely fashion, while allowing it to concentrate on the most important cases which require in-depth examination.

36. To achieve this, amendments are introduced in three main areas:

– reinforcement of the Court's filtering capacity in respect of the mass of unmeritorious applications;

– a new admissibility criterion concerning cases in which the applicant has not suffered a significant disadvantage; the new criterion contains two safeguard clauses;

– measures for dealing with repetitive cases.

37. Together, these elements of the reform seek to reduce the time spent by the Court on clearly inadmissible applications and repetitive applications so as to enable the Court to concentrate on those cases that raise important human rights issues.

38. The filtering capacity is increased by making a single judge competent to declare inadmissible or strike out an individual application. This new mechanism retains the judicial character of the decision-making on admissibility. The single judges will be assisted by non-judicial rapporteurs, who will be part of the registry.

39. A new admissibility requirement is inserted in Article 35 of the Convention. The new requirement provides the Court with an additional tool which should assist it in concentrating on cases which warrant an examination on the merits, by empowering it to declare inadmissible applications where the applicant has not suffered a significant disadvantage and which, in terms of respect for human rights, do not otherwise require an examination on the merits by the Court. Furthermore, the new requirement contains an explicit condition to ensure that it does not lead to rejection of cases which have not been duly considered by a domestic tribunal. It should be stressed that the new requirement does not restrict the right of individuals to apply to the Court or alter the principle that all individual applications are examined on their admissibility. While the Court alone is competent to interpret the new admissibility requirement and decide on its application, its terms should ensure that rejection of cases requiring an examination on the merits is avoided. The latter will notably include cases which, notwithstanding their trivial nature, raise serious questions affecting the application or the interpretation of the Convention or important questions concerning national law.

40.The competence of the committees of three judges is extended to cover repetitive cases. They are empowered to rule, in a simplified procedure, not only on the admissibility but also on the merits of an application, if the underlying question in the case is already the subject of

well-established case-law of the Court.

41. As for the other changes made by the protocol, it should be noted, first of all, that the Court is given more latitude to rule simultaneously on the admissibility and merits of individual applications. In fact, joint decisions on admissibility and merits of individual cases are not only encouraged but become the norm. However, the Court will be free to choose, on a case by case basis, to take separate decisions on admissibility.

42. Furthermore, the Committee of Ministers may decide, by a two-thirds majority of the representatives entitled to sit on the Committee, to bring proceedings before the Grand Chamber of the Court against any High Contracting Party which refuses to comply with the Court's final judgment in a case to which it is party, after having given it notice to do so. The purpose of such proceedings would be to obtain a ruling from the Court as to whether that Party has failed to fulfil its obligation under Article 46, paragraph 1, of the Convention.

43.The Committee of Ministers will in certain circumstances also be able to request the Court to give an interpretation of a judgment.

44. Friendly settlements are encouraged at any stage of the proceedings. Provision is made for supervision by the Committee of Ministers of the execution of decisions of the Court endorsing the terms of friendly settlements.

45. It should also be noted that judges are now elected for a single nine-year term. Transitional provisions are included to avoid the simultaneous departure of large numbers of judges.

46. Finally, an amendment has been introduced with a view to possible accession of the European Union to the Convention.

47. For all these, as well as the further amendments introduced by the protocol, reference is made to the explanations in Chapter IV below.

IV. Comments on the provisions of the Protocol [14]

Article 1 of the amending protocol

Article 22 – Election of judges

48. The second paragraph of Article 22 has been deleted since it no longer served any useful purpose in view of the changes made to Article 23. Indeed, there will be no more "casual vacancies" in the sense that every judge elected to the Court will be elected for a single term of nine years, including where that judge's predecessor has not completed a full term (see also paragraph 51 below). In other words, the rule contained in the amended Article 22 (which is identical to paragraph 1 of former Article 22) will apply to every situation where there is a need to proceed to the election of a judge.

49. It was decided not to amend the first paragraph of Article 22 to prescribe that the lists of three candidates nominated by the High Contracting Parties should contain candidates of both sexes, since that might have interfered with the primary consideration to be given to the merits of potential candidates. However, Parties should do everything possible to ensure that their lists contain both male and female candidates.

Article 2 of the amending protocol

Article 23 – Terms of office and dismissal

50. The judges' terms of office have been changed and increased to nine years. Judges may not, however, be re-elected. These changes are intended to reinforce their independence and impartiality, as desired notably by the Parliamentary Assembly in its Recommendation 1649 (2004).

51. In order to ensure that the introduction of a non-renewable term of office does not threaten the continuity of the Court, the system whereby large groups of judges were renewed at three-year intervals has been abolished. This has been brought about by the new wording of paragraph 1 and the deletion of paragraphs 2 to 4 of

former Article 23. In addition, paragraph 5 of former Article 23 has been deleted so that it will no longer be possible, in the event of a casual vacancy, for a judge to be elected to hold office for the remainder of his or her predecessor's term. In the past this has led to undesirable situations where judges were elected for very short terms of office, a situation perhaps understandable in a system of renewable terms of office, but which is unacceptable in the new system. Under the new Article 23, all judges will be elected for a non-renewable term of nine years. This should make it possible, over time, to obtain a regular renewal of the Court's composition, and may be expected to lead to a situation in which each judge will have a different starting date for his or her term of office.

52. Paragraphs 6 and 7 of the former Article 23 remain, and become paragraphs 2 and 3 of the new Article 23.

53. In respect of paragraph 2 (the age limit of 70 years), it was decided not to fix an additional age limit for candidates. Paragraphs 1 and 2, read together, may not be understood as excluding candidates who, on the date of election, would be older than 61. That would be tantamount to unnecessarily depriving the Court of the possibility of benefiting from experienced persons, if elected. At the same time, it is generally recommended that High Contracting Parties avoid proposing candidates who, in view of their age, would not be able to hold office for at least half the nine-year term before reaching the age of 70.

54. In cases where the departure of a judge can be foreseen, in particular for reasons of age, it is understood that the High Contracting Party concerned should ensure that the list of three candidates (see Article 22) is submitted in good time so as to avoid the need for application of paragraph 3 of the new Article 23. As a rule, the list should be submitted at least six months before the expiry of the term of office. This practice should make it possible to meet the concerns expressed by the Parliamentary Assembly in its Recommendation 1649 (2004), paragraph 14.

55. Transitional provisions are set out in Article 21 of the protocol.

56. For technical reasons (to avoid renumbering a large number of Convention provisions as a result of the insertion of a new Article 27), the text of former Article 24 (Dismissal) has been inserted in Article 23 as a new fourth paragraph. The title of Article 23 has been amended accordingly.

Article 3 of the amending protocol

57. For the reason set out in the preceding paragraph, former Article 24 has been deleted; the provision it contained has been inserted in a new paragraph 4 of Article 23.

Article 4 of the amending protocol

Article 24 – Registry and rapporteurs

58. Former Article 25 has been renumbered as Article 24; it is amended in two respects. First of all, the second sentence of former Article 25 has been deleted since the legal secretaries, created by Protocol No. 11, have in practice never had an existence of their own, independent from the registry, as is the case at the Court of Justice of the European Communities. Secondly, a new paragraph 2 is added so as to introduce the function of rapporteur as a means of assisting the new single-judge formation provided for in the new Article 27. While it is not strictly necessary from a legal point of view to mention rapporteurs in the Convention text, it was none the less considered important to do so because of the novelty of rapporteur work being carried out by persons other than judges and because it will be indispensable to create these rapporteur functions in order to achieve the significant potential increase in filtering capacity which the institution of single-judge formations aims at. The members of the registry exercising rapporteur functions will assist the new single-judge formations. In principle, the single judge should be assisted by a rapporteur with knowledge of the language and the legal system of the respondent Party. The function of rapporteur will never be carried out by a judge in this context.

59. It will be for the Court to implement the new paragraph 2 by deciding, in particular, the number of rapporteurs needed and the manner and duration of appointment. On

this point, it should be stressed that it would be advisable to diversify the recruitment channels for registry lawyers and rapporteurs. Without prejudice to the possibility to entrust existing registry lawyers with the rapporteur function, it would be desirable to reinforce the registry, for fixed periods, with lawyers having an appropriate practical experience in the functioning of their respective domestic legal systems. Since rapporteurs will form part of the Court's registry, the usual appointment procedures and relevant staff regulations will apply. This would make it possible to increase the work capacity of the registry while allowing it to benefit from the domestic experience of these lawyers. Moreover, it is understood that the new function of rapporteur should be conferred on persons with a solid legal experience, expertise in the Convention and its case-law and a very good knowledge of at least one of the two official languages of the Council of Europe and who, like the other staff of the registry, meet the requirements of independence and impartiality.

Article 5 of the amending protocol

Article 25 – Plenary Court

60. A new paragraph f has been added to this article (formerly Article 26) in order to reflect the new function attributed to the plenary Court by this protocol. It is understood that the term "Chambers" appearing in paragraphs b and c refers to administrative entities of the Court (which in practice are referred to as "Sections" of the Court) as opposed to the judicial formations envisaged by the term "Chambers" in new Article 26, paragraph 1, first sentence. It was not considered necessary to amend the Convention in order to clarify this distinction.

Article 6 of the amending protocol

Article 26 – Single-judge formation, committees, Chambers and Grand Chamber

61. The text of Article 26 (formerly Article 27) has been amended in several respects. Firstly, a single-judge formation is introduced in paragraph 1 in the list of judicial formations of the Court and a new rule is inserted in a new

paragraph 3 to the effect that a judge shall not sit as a single judge in cases concerning the High Contracting Party in respect of which he or she has been elected. The competence of single judges is defined in the new Article 27. In the latter respect, reference is made to the explanations in paragraph 67 below.

62. Adequate assistance to single judges requires additional resources. The establishment of this system will thus lead to a significant increase in the Court's filtering capacity, on the one hand, on account of the reduction, compared to the old committee practice, of the number of actors involved in the preparation and adoption of decisions (one judge instead of three; the new rapporteurs who could combine the functions of case-lawyer and rapporteur), and, on the other hand, because judges will be relieved of their rapporteur role when sitting in a single-judge formation and, finally, as a result of the multiplication of filtering formations operating simultaneously.

63. Secondly, some flexibility as regards the size of the Court's Chambers has been introduced by a new paragraph 2. Application of this paragraph will reduce, for a fixed period, the size of Chambers generally; it should not allow, however, for the setting up of a system of Chambers of different sizes which would operate simultaneously for different types of cases.

64. Finally, paragraph 2 of former Article 27 has been amended to make provision for a new system of appointment of *ad hoc* judges. Under the new rule, contained in paragraph 4 of the new Article 26, each High Contracting Party is required to draw up a reserve list of *ad hoc* judges from which the President of the Court shall choose someone when the need arises to appoint an *ad hoc* judge. This new system is a response to criticism of the old system, which allowed a High Contracting Party to choose an *ad hoc* judge after the beginning of proceedings. Concerns about this had also been expressed by the Parliamentary Assembly. It is understood that the list of potential *ad hoc* judges may include names of judges elected in respect of other High Contracting Parties. More detailed rules on the implementation of this new system may be included in the

Rules of Court.

65. The text of paragraph 5 is virtually identical to that of paragraph 3 of former Article 27.

Article 7 of the amending protocol

Article 27 – Competence of single judges

66. Article 27 contains new provisions defining the competence of the new single-judge formation.

67. The new article sets out the competence of the single-judge formations created by the amended Article 26, paragraph 1. It is specified that the competence of the single judge is limited to taking decisions of inadmissibility or decisions to strike the case out of the list "where such a decision can be taken without further examination". This means that the judge will take such decisions only in clear-cut cases, where the inadmissibility of the application is manifest from the outset. The latter point is particularly important with regard to the new admissibility criterion introduced in Article 35 (see paragraphs 77 to 85 below), in respect of which the Court's Chambers and Grand Chamber will have to develop case-law first (see, in this connection, the transitional rule contained in Article 20, paragraph 2, second sentence, of this protocol, according to which the application of the new admissibility criterion is reserved to Chambers and the Grand Chamber in the two years following the entry into force of this protocol). Besides, it is recalled that, as was explained in paragraph 58 above, single-judge formations will be assisted by rapporteurs. The decision itself remains the sole responsibility of the judge. In case of doubt as to the admissibility, the judge will refer the application to a committee or a Chamber.

Article 8 of the amending protocol

Article 28 – Competence of committees

68. Paragraphs 1 and 2 of the amended Article 28 extend the powers of three-judge committees. Hitherto, these committees could, unanimously, declare applications inadmissible. Under the new paragraph 1.b of Article 28,

they may now also, in a joint decision, declare individual applications admissible and decide on their merits, when the questions they raise concerning the interpretation or application of the Convention are covered by well-established case-law of the Court. "Well-established case-law" normally means case-law which has been consistently applied by a Chamber. Exceptionally, however, it is conceivable that a single judgment on a question of principle may constitute "well-established case-law", particularly when the Grand Chamber has rendered it. This applies, in particular, to repetitive cases, which account for a significant proportion of the Court's judgments (in 2003, approximately 60%). Parties may, of course, contest the "well-established" character of case-law before the committee.

69. The new procedure is both simplified and accelerated, although it preserves the adversarial character of proceedings and the principle of judicial and collegiate decision-making on the merits. Compared to the ordinary adversarial proceedings before a Chamber, it will be a simplified and accelerated procedure in that the Court will simply bring the case (possibly a group of similar cases) to the respondent Party's attention, pointing out that it concerns an issue which is already the subject of well-established case-law. Should the respondent Party agree with the Court's position, the latter will be able to give its judgment very rapidly. The respondent Party may contest the application of Article 28, paragraph 1.b, for example, if it considers that domestic remedies have not been exhausted or that the case at issue differs from the applications which have resulted in the well-established case-law. However, it may never veto the use of this procedure which lies within the committee's sole competence. The committee rules on all aspects of the case (admissibility, merits, just satisfaction) in a single judgment or decision. This procedure requires unanimity on each aspect. Failure to reach a unanimous decision counts as no decision, in which event the Chamber procedure applies (Article 29). It will then fall to the Chamber to decide whether all aspects of the case should be covered in a single judgment. Even when the committee initially intends to apply the procedure provided for in Article 28, paragraph 1.b, it may declare an application inadmissible

under Article 28, paragraph 1.a. This may happen, for example, if the respondent Party has persuaded the committee that domestic remedies have not been exhausted.

70. The implementation of the new procedure will increase substantially the Court's decision-making capacity and effectiveness, since many cases can be decided by three judges, instead of the seven currently required when judgments or decisions are given by a Chamber.

71. Even when a three-judge committee gives a judgment on the merits, the judge elected in respect of the High Contracting Party concerned will not be an *ex officio* member of the decision-making body, in contrast with the situation with regard to judgments on the merits under the Convention as it stands. The presence of this judge would not appear necessary, since committees will deal with cases on which well-established case-law exists. However, a committee may invite the judge elected in respect of the High Contracting Party concerned to replace one of its members as, in some cases, the presence of this judge may prove useful. For example, it may be felt that this judge, who is familiar with the legal system of the respondent Party, should join in taking the decision, particularly when such questions as exhaustion of domestic remedies need to be clarified. One of the factors which a committee may consider, in deciding whether to invite the judge elected in respect of the respondent Party to join it, is whether that Party has contested the applicability of paragraph 1.b. The reason why this factor has been explicitly mentioned in paragraph 3 is that it was considered important to have at least some reference in the Convention itself to the possibility for respondent Parties to contest the application of the simplified procedure (see paragraph 69 above). For example, a respondent Party may contest the new procedure on the basis that the case in question differs in some material respect from the established case-law cited. It is likely that the expertise of the "national judge" in domestic law and practice will be relevant to this issue and therefore helpful to the committee. Should this judge be absent or unable to sit, the procedure provided for in the new Article 26, paragraph 4 *in fine* applies.

72. It is for the Court, in its rules, to settle practical questions relating to the composition of three-judge committees and, more generally, to plan its working methods in a way that optimises the new procedure's effectiveness.

Article 9 of the amending protocol

Article 29 – Decisions by Chambers on admissibility and merits

73. Apart from a technical change to take into account the new provisions in Articles 27 and 28, paragraph 1 of the amended Article 29 encourages and establishes the principle of the taking of joint decisions by Chambers on the admissibility and merits of individual applications. This article merely endorses the practice which has already developed within the Court. While separate decisions on admissibility were previously the norm, joint decisions are now commonly taken on the admissibility and merits of individual applications, which allows the registry and judges to process cases faster whilst respecting fully the principle of adversarial proceedings. However, the Court may always decide that it prefers to take a separate decision on the admissibility of a particular application.

74. This change does not apply to interstate cases. On the contrary, the rule of former Article 29, paragraph 3, has been explicitly maintained in paragraph 2 of Article 29 as regards such applications. Paragraph 3 of former Article 29 has been deleted.

Article 10 of the amending protocol

Article 31 – Powers of the Grand Chamber

75. A new paragraph b has been added to this article in order to reflect the new function attributed to the Grand Chamber by this protocol, namely to decide on issues referred to the Court by the Committee of Ministers under the new Article 46, paragraph 4 (question whether a High Contracting Party has failed to fulfil its obligation to comply with a judgment).

Article 11 of the amending protocol

Article 32 – Jurisdiction of the Court

76. A reference has been inserted to the new procedures provided for in the amended Article 46.

Article 12 of the amending protocol

Article 35 – Admissibility criteria

77. A new admissibility criterion is added to the criteria laid down in Article 35. As explained in paragraph 39 above, the purpose of this amendment is to provide the Court with an additional tool which should assist it in its filtering work and allow it to devote more time to cases which warrant examination on the merits, whether seen from the perspective of the legal interest of the individual applicant or considered from the broader perspective of the law of the Convention and the European public order to which it contributes. The new criterion therefore pursues the same aim as some other key changes introduced by this protocol and is complementary to them.

78. The introduction of this criterion was considered necessary in view of the ever-increasing caseload of the Court. In particular, it is necessary to give the Court some degree of flexibility in addition to that already provided by the existing admissibility criteria, whose interpretation has become established in the case-law that has developed over several decades and is therefore difficult to change. This is so because it is very likely that the numbers of individual applications to the Court will continue to increase, up to a point where the other measures set out in this protocol may well prove insufficient to prevent the Convention system from becoming totally paralysed, unable to fulfil its central mission of providing legal protection of human rights at the European level, rendering the right of individual application illusory in practice.

79. The new criterion may lead to certain cases being declared inadmissible which might have resulted in a judgment without it. Its main effect, however, is likely to be that it will in the longer term enable more rapid disposal of

unmeritorious cases. Once the Court's Chambers have developed clear-cut jurisprudential criteria of an objective character capable of straightforward application, the new criterion will be easier for the Court to apply than some other admissibility criteria, including in cases which would at all events have to be declared inadmissible on another ground.

80. The main element contained in the new criterion is the question whether the applicant has suffered a significant disadvantage. These terms are open to interpretation (this is the additional element of flexibility introduced); the same is true of many other terms used in the Convention, including some other admissibility criteria. Like those other terms, they are legal terms capable of, and requiring, interpretation establishing objective criteria through the gradual development of the case-law of the Court.

81. The second element is a safeguard clause to the effect that, even where the applicant has not suffered a significant disadvantage, the application will not be declared inadmissible if respect for human rights as defined in the Convention or the protocols thereto requires an examination on the merits. The wording of this element is drawn from the second sentence of Article 37, paragraph 1, of the Convention where it fulfils a similar function in the context of decisions to strike applications out of the Court's list of cases.

82. A second safeguard clause is added to this first one. It will never be possible for the Court to reject an application on account of its trivial nature if the case has not been duly considered by a domestic tribunal. This clause, which reflects the principle of subsidiarity, ensures that, for the purposes of the application of the new admissibility criterion, every case will receive a judicial examination whether at the national level or at the European level.

83. The wording of the new criterion is thus designed to avoid rejection of cases warranting an examination on the merits. As was explained in paragraph 39 above, the latter will notably include cases which, notwithstanding their trivial nature, raise serious questions affecting the application or

interpretation of the Convention or important questions concerning national law.

84. As explained in paragraph 67 above, it will take time for the Court's Chambers or Grand Chamber to establish clear case-law principles for the operation of the new criterion in concrete contexts. It is clear, having regard to the wording of Articles 27 and 28, that single-judge formations and committees will not be able to apply the new criterion in the absence of such guidance. In accordance with Article 20, paragraph 2, second sentence, of this protocol, single-judge formations and committees will be prevented from applying the new criterion during a period of two years following the entry into force of this protocol.

85. In accordance with the transitional rule set out in Article 20, paragraph 2, first sentence, of this protocol (see also paragraph 105 below), the new admissibility criterion may not be applied to applications declared admissible before the entry into force of this protocol.

Article 13 of the amending protocol

Article 36 – Third party intervention

86. This provision originates in an express request from the Council of Europe Commissioner for Human Rights,(15) supported by the Parliamentary Assembly in its Recommendation 1640 (2004) on the 3rd Annual Report on the Activities of the Council of Europe Commissioner for Human Rights (1 January-31 December 2002), adopted on 26 January 2004.

87. It is already possible for the President of the Court, on his or her own initiative or upon request, to invite the Commissioner for Human Rights to intervene in pending cases. With a view to protecting the general interest more effectively, the third paragraph added to Article 36 for the first time mentions the Commissioner for Human Rights in the Convention text by formally providing that the Commissioner has the right to intervene as third party. The Commissioner's experience may help enlighten the Court on certain questions, particularly in cases which highlight structural or systemic weaknesses in the respondent or other

High Contracting Parties.

88. Under the Rules of Court, the Court is required to communicate decisions declaring applications admissible to any High Contracting Party of which an applicant is a national. This rule cannot be applied to the Commissioner, since sending him or her all such decisions would entail an excessive amount of extra work for the registry. The Commissioner must therefore seek this information him- or herself. The rules on exercising this right of intervention, and particularly time limits, would not necessarily be the same for High Contracting Parties and the Commissioner. The Rules of Court will regulate practical details concerning the application of paragraph 3 of Article 36.

89. It was not considered necessary to amend Article 36 in other respects. In particular, it was decided not to provide for a possibility of third party intervention in the new committee procedure under the new Article 28, paragraph 1.b, given the straightforward nature of cases to be decided under that procedure.

Article 14 of the amending protocol

Article 38 – Examination of the case

90. Article 38 incorporates the provisions of paragraph 1.a of former Article 38. The changes are intended to allow the Court to examine cases together with the Parties' representatives, and to undertake an investigation, not only when the decision on admissibility has been taken, but at any stage in the proceedings. They are a logical consequence of the changes made in Articles 28 and 29, which encourage the taking of joint decisions on the admissibility and merits of individual applications. Since this provision applies even before the decision on admissibility has been taken, High Contracting Parties are required to provide the Court with all necessary facilities prior to that decision. The Parties' obligations in this area are thus reinforced. It was not considered necessary to amend Article 38 (or Article 34, last sentence) in other respects, notably as regards possible non-compliance with these provisions. These provisions already provide strong legal obligations for the High Contracting Parties and, in line with current practice, any

problems which the Court might encounter in securing compliance can be brought to the attention of the Committee of Ministers so that the latter take any steps it deems necessary.

Article 15 of the amending protocol

Article 39 – Friendly settlements

91. The provisions of Article 39 are partly taken from former Article 38, paragraphs 1.b and 2, and also from former Article 39. To make the Convention easier to read with regard to the friendly settlement procedure, it was decided to address it in a specific article.

92. As a result of the implementation of the new Articles 28 and 29, there should be fewer separate decisions on admissibility. Since under the former Article 38, paragraph 1.b, it was only after an application had been declared admissible that the Court placed itself at the disposal of the parties with a view to securing a friendly settlement, this procedure had to be modified and made more flexible. The Court is now free to place itself at the parties' disposal for this purpose at any stage in the proceedings.

93. Friendly settlements are therefore encouraged, and may prove particularly useful in repetitive cases, and other cases where questions of principle or changes in domestic law are not involved.(16) It goes without saying that these friendly settlements must be based on respect for human rights, pursuant to Article 39, paragraph 1, as amended.

94. The new Article 39 provides for supervision of the execution of friendly settlements by the Committee of Ministers. This new provision was inserted to reflect a practice which the Court had already developed. In the light of the text of former Article 46, paragraph 2, the Court used to endorse friendly settlements through *judgments* and not – as provided for in former Article 39 of the Convention – through *decisions*, whose execution was not subject to supervision by the Committee of Ministers. The practice of the Court was thus in response to the fact that only the execution of *judgments* was supervised by the Committee of Ministers (former Article 39). It was recognised, however,

that adopting a judgment, instead of a decision, might have negative connotations for respondent Parties, and make it harder to secure a friendly settlement. The new procedure should make this easier and thus reduce the Court's workload. For this reason, the new Article 39 gives the Committee of Ministers authority to supervise the execution of *decisions* endorsing the terms of friendly settlements. This amendment is in no way intended to reduce the Committee's present supervisory powers, particularly concerning the strike-out decisions covered by Article 37. It would be advisable for the Committee of Ministers to distinguish more clearly, in its practice, between its supervision function by virtue of the new Article 39, paragraph 4 (friendly settlements), on the one hand and that under Article 46, paragraph 2 (execution of judgments), on the other.

Article 16 of the amending protocol

Article 46 – Binding force and execution of judgments

95. The first two paragraphs of Article 46 repeat the two paragraphs of the former Article 46. Paragraphs 3, 4 and 5 are new.

96. The new Article 46, in its paragraph 3, empowers the Committee of Ministers to ask the Court to interpret a final judgment, for the purpose of facilitating the supervision of its execution. The Committee of Ministers' experience of supervising the execution of judgments shows that difficulties are sometimes encountered due to disagreement as to the interpretation of judgments. The Court's reply settles any argument concerning a judgment's exact meaning. The qualified majority vote required by the last sentence of paragraph 3 shows that the Committee of Ministers should use this possibility sparingly, to avoid over-burdening the Court.

97. The aim of the new paragraph 3 is to enable the Court to give an interpretation of a judgment, not to pronounce on the measures taken by a High Contracting Party to comply with that judgment. No time-limit has been set for making requests for interpretation, since a question of interpretation may arise at any time during the Committee of Ministers' examination of the execution of a judgment. The Court is

free to decide on the manner and form in which it wishes to reply to the request. Normally, it would be for the formation of the Court which delivered the original judgment to rule on the question of interpretation. More detailed rules governing this new procedure may be included in the Rules of Court.

98. Rapid and full execution of the Court's judgments is vital. It is even more important in cases concerning structural problems, so as to ensure that the Court is not swamped with repetitive applications. For this reason, ever since the Rome ministerial conference of 3 and 4 November 2000 (Resolution I),[(17)] it has been considered essential to strengthen the means given in this context to the Committee of Ministers. The Parties to the Convention have a collective duty to preserve the Court's authority – and thus the Convention system's credibility and effectiveness – whenever the Committee of Ministers considers that one of the High Contracting Parties refuses, expressly or through its conduct, to comply with the Court's final judgment in a case to which it is party.

99. Paragraphs 4 and 5 of Article 46 accordingly empower the Committee of Ministers to bring infringement proceedings in the Court (which shall sit as a Grand Chamber – see new Article 31, paragraph b), having first served the state concerned with notice to comply. The Committee of Ministers' decision to do so requires a qualified majority of two thirds of the representatives entitled to sit on the Committee. This infringement procedure does not aim to reopen the question of violation, already decided in the Court's first judgment. Nor does it provide for payment of a financial penalty by a High Contracting Party found in violation of Article 46, paragraph 1. It is felt that the political pressure exerted by proceedings for non-compliance in the Grand Chamber and by the latter's judgment should suffice to secure execution of the Court's initial judgment by the state concerned.

100. The Committee of Ministers should bring infringement proceedings only in exceptional circumstances. None the less, it appeared necessary to give the Committee of Ministers, as the competent organ for supervising execution of the Court's judgments, a wider range of means of

pressure to secure execution of judgments. Currently the ultimate measure available to the Committee of Ministers is recourse to Article 8 of the Council of Europe's Statute (suspension of voting rights in the Committee of Ministers, or even expulsion from the Organisation). This is an extreme measure, which would prove counter-productive in most cases; indeed the High Contracting Party which finds itself in the situation foreseen in paragraph 4 of Article 46 continues to need, far more than others, the discipline of the Council of Europe. The new Article 46 therefore adds further possibilities of bringing pressure to bear to the existing ones. The procedure's mere existence, and the threat of using it, should act as an effective new incentive to execute the Court's judgments. It is foreseen that the outcome of infringement proceedings would be expressed in a judgment of the Court.

Article 17 of the amending protocol

Article 59 – Signature and ratification

101. Article 59 has been amended in view of possible accession by the European Union to the Convention. A new second paragraph makes provision for this possibility, so as to take into account the developments that have taken place within the European Union, notably in the context of the drafting of a constitutional treaty, with regard to accession to the Convention. It should be emphasised that further modifications to the Convention will be necessary in order to make such accession possible from a legal and technical point of view. The CDDH adopted a report identifying those issues in 2002 (document DG-II(2002)006). This report was transmitted to the Committee of Ministers, which took note of it. The CDDH accepted that those modifications could be brought about either through an amending protocol to the Convention or by means of an accession treaty to be concluded between the European Union, on the one hand, and the States Parties to the Convention, on the other. While the CDDH had expressed a preference for the latter, it was considered advisable not to refer to a possible accession treaty in the current protocol so as to keep all options open for the future.

102. At the time of drafting of this protocol, it was not yet

possible to enter into negotiations – and even less to conclude an agreement – with the European Union on the terms of the latter's possible accession to the Convention, simply because the European Union still lacked the competence to do so. This made it impossible to include in this protocol the other modifications to the Convention necessary to permit such accession. As a consequence, a second ratification procedure will be necessary in respect of those further modifications, whether they be included in a new amending protocol or in an accession treaty.

Final and transitional provisions

Article 18 of the amending protocol

103. This article is one of the usual final clauses included in treaties prepared within the Council of Europe. This protocol does not contain any provisions on reservations. By its very nature, this amending protocol excludes the making of reservations.

Article 19 of the amending protocol

104. This article is one of the usual final clauses included in treaties prepared within the Council of Europe. The period of three months mentioned in it corresponds to the period which was chosen for protocols Nos 12 and 13. As the implementation of the reform is urgent, this period was chosen rather than one year, which had been the case for Protocol No. 11. For Protocol No. 11, the period of one year was necessary in order to allow for the setting up of the new Court, and in particular for the election of the judges.

Article 20 of the amending protocol

105. The first paragraph of this transitional provision confirms that, upon entry into force of this protocol, its provisions can be applied immediately to all pending applications so as not to delay the impact of the system's increased effectiveness which will result from the protocol. In view of Article 35, paragraph 4 *in fine* of the Convention it was considered necessary to provide, in the second paragraph, first sentence, of Article 20 of the amending protocol, that the new admissibility criterion inserted by

Article 13 of this protocol in Article 35, paragraph 3.b, of the Convention shall not apply to applications declared admissible before the entry into force of the protocol. The second sentence of the second paragraph explicitly reserves, for a period of two years following the entry into force of this protocol, the application of the new admissibility criteria to the Chambers and the Grand Chamber of the Court. This rule recognises the need to develop case-law on the interpretation of the new criterion before the latter can be applied by single-judge formations or committees.

Article 21 of the amending protocol

106. This article contains transitional rules to accompany the introduction of the new provision in Article 23, paragraph 1, on the terms of office of judges (paragraphs 2 to 4 of new Article 23 are not affected by these transitional rules). The terms of office of the judges will not expire on the date of entry into force of this protocol but continue to run after that date. In addition, the terms of office shall be extended in accordance with the rule of the first or that of the second sentence of Article 21, depending on whether the judges are serving their first term of office on the date of the entry into force of this protocol or not. These rules aim at avoiding a situation where, at any particular point in time, a large number of judges would be replaced by new judges. The rules seek to mitigate the effects, after entry into force of the protocol, of the existence – for election purposes – under the former system of two main groups of judges whose terms of office expire simultaneously. As a result of these rules, the two main groups of judges will be split up into smaller groups, which in turn will lead to staggered elections of judges. Those groups are expected to disappear gradually, as a result of the amended Article 23 (see the commentary in paragraph 51 above).

107. For the purposes of the first sentence of Article 21, judges completing their predecessor's term in accordance with former Article 23, paragraph 5, shall be deemed to be serving their first term of office. The second sentence applies to the other judges, provided that their term of office has not expired on the date of entry into force of the protocol.

Article 22 of the amending protocol

108. This article is one of the usual final clauses included in treaties prepared within the Council of Europe.

Notes :

(1) In early 2004, Belarus and Monaco were the only potential or actual candidates for membership still outside the Council of Europe.

(2) Unless otherwise stated, the figures given here are taken from the document "Survey of Activities 2003" produced by the European Court of Human Rights or based on more recent information provided by its registry.

(3) As at 1 January 2004, there have only been 20 interstate applications.

(4) The Committee of Ministers has adopted a series of specific instruments for this purpose:

– Recommendation No. R (2000) 2 of the Committee of Ministers on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;
– Recommendation Rec(2002)13 of the Committee of Ministers on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights;
– Recommendation Rec(2004)4 of the Committee of Ministers on the European Convention on Human Rights in university education and professional training;
– Recommendation Rec(2004)5 of the Committee of Ministers on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down by the European Convention on Human Rights;
– Recommendation Rec(2004)6 of the Committee of Ministers on the improvement of domestic remedies;
– Resolution Res(2002)58 of the Committee of Ministers on the publication and dissemination of the case-law of the European Court of Human Rights;
– Resolution Res(2002)59 of the Committee of Ministers concerning the practice in respect of friendly settlements;
– Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem.

All these instruments, as well as this protocol, are referred to in the general declaration of the Committee of Ministers "*Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels*", adopted on 12 May 2004.

(5) Paragraph 16 of the resolution.

(6) Paragraph 18 ii. of the resolution.

(7) Declaration of the Rome Ministerial Conference on Human Rights: "The European Convention on Human Rights at 50: what future for the protection of human rights in Europe?".

(8) "*Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights",* Strasbourg, Council of Europe, 27 September 2001, published in the *Human Rights Law Journal* (*HRLJ*), 22, 2001, pp. 308 ff.

(9) The "*Report of the Reflection Group on the Reinforcement of the Human Rights Protection Mechanism*" is contained in Appendix III to the "*Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights"* (op. cit.).

(10) "*Three years' work for the future. Final report of the Working Party on Working Methods of the European Court of Human Rights"*, Strasbourg, Council of Europe, 2002.

(11) Declaration published in French in the *Revue universelle des droits de l'homme* (*RUDH*) 2002, p. 331.

(12) Declaration published in French in the *Revue universelle des droits de l'homme* (*RUDH*) 2002, p. 331.

(13) See, for a fuller overview, the activity report of the CDDH's Reflection group (document CDDH-GDR(2001)10, especially its Appendices I and II), the report of the Evaluation group (see footnote 8 above) as well as the CDDH's interim report of October 2002 (document CM(2002)146) which contains a discussion of various suggestions made at the Seminar on Partners for the Protection of Human Rights: Reinforcing Interaction between the European Court of Human Rights and National Courts (Strasbourg, 9-10 September 2002).

(14) Unless otherwise specified, the references to articles are to the Convention as amended by the protocol.

(15) The Council of Europe Commissioner for Human Rights was established by Resolution (99) 50, adopted by the Committee of

Ministers on 7 May 1999.

(16) See, in this connection, Resolution Res(2002)59 concerning the practice in respect of friendly settlements (adopted by the Committee of Ministers on 18 December 2002, at the Deputies' 822nd meeting.

(17) See paragraphs 19 to 22 of the resolution.

ISBN 1905592043