

**ADVISORY COMMITTEE ON ISSUES OF PUBLIC INTERNATIONAL LAW**

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**ADVISORY REPORT ON  
THE APPLICATION OF PROTOCOL NO. 14  
TO THE EUROPEAN CONVENTION ON  
HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

**(translation)**

**THE HAGUE – NETHERLANDS  
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## **ANNEXES**

- Members of the Advisory Committee on Issues of Public International Law
- Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 and supplementary Protocols Nos. 1, 4, 6, 7, 12 en 13.
- Protocol No.14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

## ABBREVIATIONS

|       |   |
|-------|---|
| CAVV  | [Commissie van advies inzake volkenrechtelijke vraagstukken] Advisory Committee on Issues of Public International Law |
| CETS  | Council of Europe Treaty Series   |
| ECHR  | European Convention for the Protection of Human Rights and Fundamental Freedoms                                       |
| ECtHR | European Court of Human Rights  |
| ETS   | European Treaty Series  |
| Trb.  | [Tractatenblad] Dutch Treaty Series   |
| VCLT  | Vienna Convention on the Law of Treaties  |

## 1. INTRODUCTION

On 2 June 2008 the Minister of Foreign Affairs of the Kingdom of the Netherlands asked the Advisory Committee on Issues of Public International Law (Commissie van advies inzake volkenrechtelijke vraagstukken; CAVV) to produce an advisory report on the entry into force of Protocol No. 14 to the European Convention on Human Rights and Fundamental Freedoms (ECHR).<sup>1</sup> This Protocol was concluded in May 2004. Ratification of the Protocol by all Parties to the Convention is required for its entry into force.<sup>2</sup> As, however, the Russian Federation has not yet expressed its consent to be bound, Protocol No. 14 cannot enter into force.

The request states that the primary purpose of this Protocol is to provide the European Court of Human Rights with instruments that can enable it to work off the large backlog of cases with which it is faced. The main instruments mentioned in the request are the establishment of single-judge formations, extension of the competence of the committees of three judges and the introduction of a new admissibility criterion. The Minister asked the CAVV to 'advise him on the entry into force of Protocol No. 14' and noted that this will 'in particular concern the question whether there are possibilities – and, if so, what possibilities – under international law for arranging for the provisions of Protocol No. 14 to enter into force in some other way, for example in relation to all Member States minus one'.

To explain the Russian position on Protocol No. 14 some relevant declarations made by the Russian Federation when signing this Protocol are quoted in chapter 2 of this report. This chapter will also describe the objections that apparently caused the Russian parliament (the Duma) to withhold its consent to Protocol No. 14 in the autumn of 2006. In view of the emphasis put on limiting the ECtHR's backlog of cases the CAVV has studied the measures taken within the Council of Europe to control the workload. Chapter 3 outlines these measures. Chapter 4 contains some general thoughts on solutions. These solutions are then explained in detail in chapter 5. Chapter 6 sets out the CAVV's recommendations.

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<sup>1</sup> Rome, 4 November 1950; ETS 005. Strasbourg, 13 May 2004; CETS 194; Trb. 2004, 191; 285.

<sup>2</sup> Pursuant to Article 19 of Protocol No. 14, which reads: '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'.

## **2. THE RUSSIAN FEDERATION**

### **2.1 The declarations of the Russian Federation at the time of signature**

When signing Protocol No. 14 the Russian Federation made a number of declarations which may be relevant to the willingness of Russia to accept solutions for the application of Protocol No. 14. The Russian Federation declared:

‘The application of the Protocol will be without prejudice to the process of improving the modalities of functioning of the European Court of Human Rights, first of all to strengthen the stability of its Rules, not excluding supplementary measures to be adopted by the Committee of Ministers of the Council of Europe aimed at reinforcing the control over the use of financial means allocated to the European Court of Human Rights and at ensuring the quality of staff of its Registry, *with the understanding that procedural rules relating to examination of applications by the European Court of Human Rights must be adopted in the form of an international treaty subject to ratification or to any other form of expression by a State of its consent to be bound by its provisions*’. (italics added)

“The Russian Federation declares that, signing the Protocol under the condition of its subsequent ratification, [...] proceeds from the following: no provision of the Protocol will be applied prior to its entry into force in accordance with Article 19.”<sup>3</sup>

These declarations do not constitute an agreement between the Parties to Protocol No. 14 within the meaning of Article 31 (2) (a) of the Vienna Convention on the Law of Treaties.<sup>4</sup> Nor can they be seen as reservations. They are instead unilateral declarations for which the Russian Federation remains accountable and which are intended to explain the Russian position on Protocol No. 14.

### **2.2 Parliamentary approval in the Russian Federation**

The President of the Russian Federation presented Protocol No. 14 to the Duma in the autumn of 2006. Contrary to the President’s recommendation, the Duma withheld consent.

A Memorandum drawn up by the Secretariat of the Council of Europe for the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly (referred to in this section as ‘the Memorandum’) shows that the Russian objections are partly to the content

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<sup>3</sup> *List of declarations made with respect to Treaty No. 194*;  
<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp>.

<sup>4</sup> Trb. 1972, 51; 1985, 79; 1996, 89. United Nations Treaties series 1155, p. 332,

of Protocol No. 14.<sup>5</sup> A general objection to Protocol No. 14 appears to be that the simplified system created by it could result in poorer examinations of individual cases, thereby lowering the quality of the Court's work and increasing the likelihood of miscarriages of justice. In addition, the Duma would prefer a long-term solution rather than the provisional solutions in Protocol No. 14 which are based on a compromise.

The Duma also appears to have the following more specific objections:

- (1) The finality of decisions by single judges on admissibility could jeopardise the principle of equal access to the Court, which would be incompatible with the Russian justice system (right to a fair trial).
- (2) The new admissibility criterion requires not only a procedural but also a substantive assessment of applications. This increases the chance that applicants' rights will be infringed at an early stage of proceedings.
- (3) If the European Union were to become a party to the ECHR, non-Member States of the European Union would not have the same opportunity to bring cases before the ECtHR as EU Member States.
- (4) It is unclear how the proposed changes to the judges' terms of office would help the efficiency of the ECtHR.
- (5) The absence of a guarantee that a Russian judge would be a member of the Court hearing cases against the Russian Federation.<sup>6</sup>

The Memorandum also states that another factor is that confidence in the ECtHR has been undermined by what the Duma sees as the 'politicisation' of judicial decisions by the ECtHR.

The CAVV wishes to stress that the absence of ratification by the Russian Federation is a consequence of a decision of the State Duma which invokes – rightly or wrongly – criteria such as the right to a fair trial, which are common to the member States of the Council of Europe. In Article 19 of Protocol No. 14, the member States of the Council of Europe decided that the entry into force of the Protocol should be dependent on unanimous

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<sup>5</sup> *The Russian Federation's non-ratification of Protocol No 14 to the European Convention on Human Rights. Memorandum prepared by the Secretariat upon instructions of the Chairperson. Committee on Legal Affairs and Human Rights, September 2008.*

[http://assembly.coe.int/committeeDocs/2008/20080905\\_ajdoc45\\_2008.pdf](http://assembly.coe.int/committeeDocs/2008/20080905_ajdoc45_2008.pdf).

<sup>6</sup> This objection was mentioned by the Russian Federation in the declaration made at the time of signature. See note 3.

ratification. In doing so they undoubtedly realised that this would entail the need for parliamentary consent in many and perhaps all of the member States. Against this background, a request to commit to certain measures in the continued absence of a positive decision by a national parliament should be treated with extreme caution.

### **3. THE MEASURES TAKEN BY THE COUNCIL OF EUROPE TO CONTROL THE WORKLOAD OF THE ECtHR**

#### **3.1 The increase in the workload**

The number of cases pending before the ECtHR has risen spectacularly in the past 15-20 years, partly due to the increase in the number of members of the Council of Europe and hence in the number of parties to the ECHR. As a result, the control mechanism of the ECtHR has come under mounting pressure.

In the early 1990s some 5,000 applications were filed annually. The total number of applications had risen to 18,000 in 1998, over 35,000 in 2003 and over 89,000 in 2006. In September 2008 the pending applications totalled 100,000. Each month around 2,300 new applications are filed, whereas the ECtHR can only handle an average of 1,500 a month. Around 90% of the cases submitted to the ECtHR are declared inadmissible.<sup>7</sup>

The countries from which the most applications are received in proportion to the size of the population are Slovenia, Moldova and Romania. The Russian Federation ranks sixteenth on this list. However, in absolute terms 25% of the applications are from Russia.<sup>8</sup>

The number of pending applications is expected to be reduced by some 20-25% once Protocol No. 14 enters into force.<sup>9</sup>

#### **3.2 Protocol No. 11**

In 1991 the Committee of Ministers decided to reform the control mechanism. This resulted in Protocol No. 11 to the ECHR being opened for signature on 11 May 1994.<sup>10</sup> The principal measures in this Protocol were the abolition of the European Commission of Human Rights, the establishment of a full-time European Court of Human Rights and the introduction of an automatic right of citizens to submit a complaint against all States that are party to the ECHR. Under Protocol No. 11 the procedure became fully judicial. In particular, there was no longer a decisive role for the Committee of Ministers of the

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<sup>7</sup> *Report of the Group of Wise Persons to the Committee of Ministers; Committee of Ministers 979bis Meeting*, 15 November 2006; CM(2006)203 15 November 2006, para 27.

<sup>8</sup> See [www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+information+by+year](http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+information+by+year).

<sup>9</sup> *Report of the Group of Wise Persons*, para 32.

Council of Europe, as there had previously been in cases before the Commission. The role of the Committee was limited to supervising execution of final judgments of the Court. Protocol No. 11 entered into force on 1 November 1998.

### **3.3 Protocol No. 14<sup>11</sup>**

#### **3.3.1 General**

The innovations introduced by Protocol No. 11 were unable to prevent the continuing increase in the workload of the ECHR's control mechanism. The need for more far-reaching reforms of the mechanism was therefore recognised almost immediately after the entry into force of Protocol No. 11. A European Ministerial Conference on human rights was held in Rome on 3 and 4 November 2000 to celebrate the fiftieth anniversary of the ECHR. The Conference called, among other things, for measures to ensure the effectiveness of the ECtHR and, more specifically, for rapid and thorough examination of the possible ways of supporting the ECtHR in carrying out its duties.<sup>12</sup> A high-level Evaluation Group was formed, which identified the problems and presented recommendations for solutions in September 2001.<sup>13</sup> Protocol No. 14 to the ECHR was then drawn up by an intergovernmental working group. This Protocol was opened for signature on 13 May 2004. The Committee of Ministers adopted a Declaration on 12 May 2004 urging the parties to the ECHR to ratify Protocol No. 14 within two years of the date on which it was opened for signature.<sup>14</sup>

#### **3.3.2 The contents of Protocol No. 14**

Protocol No. 14 includes provisions on:

- the term of office of the judges;
- changes to the formations in which the ECtHR sits and the powers of these formations;
- a new criterion for admissibility;

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<sup>10</sup> Strasbourg, 11 May 1994; ETS 155; Trb. 1994, 141, 165; 1998, 95.

<sup>11</sup> For a discussion of Protocol No. 14 see: Roeland Böcker, *Protocol nr. 14 bij het EVRM – hervorming van de hervorming*, Nederlands Juristenblad 35, p. 1840.

<sup>12</sup> CM(2000) 172 (Part I) 14 November 2000.

<sup>13</sup> *Evaluation Group to examine the needs of the European Court of Human Rights in the medium term – reference, composition and proposed work schedule*, CM/Del/Dec(2001)740/4.5 7 February 2001; *Report of the Evaluation Group to the Committee of Ministers of the European Court of Human Rights*; EG-Court(2001)1 27 September 2001.

<sup>14</sup> *Declaration of the Committee of Ministers – Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels*, 12 May 2004, 114th session. Decision 12.05.2004/1E 12 May 2004.

- the role of the Council of Europe Commissioner for Human Rights;
- the friendly settlement of cases;
- improved supervision of the execution of the ECtHR's final judgments; and
- the possibility for the European Union to accede to the ECHR.

### 3.3.3 The Explanatory Report

As usual in the case of Protocols to the ECHR, Protocol No. 14 is explained in an Explanatory Report.<sup>15</sup>

In surveying the changes to the control system of the ECHR, the Explanatory Report emphasises that Protocol No. 14 does not make radical changes to the system. The changes relate more to the functioning than to the structure of the system.<sup>16</sup> According to the Explanatory Report the main purpose of Protocol No. 14 is therefore:

‘to improve [the system], 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’.<sup>17</sup>

This purpose is also evident from the preamble to Protocol No. 14, which emphasises the urgent need for the entry into force of the Protocol and the role of the ECtHR:

‘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;’

The Explanatory Report also states that the purpose of Protocol No. 14 is to be achieved in three main areas, namely:

- (1) reinforcement of the ECtHR's filtering capacity in respect of the mass of unmeritorious applications;
- (2) a new admissibility criterion concerning cases in which the applicant has not suffered a significant disadvantage;
- (3) measures for dealing with repetitive cases.<sup>18</sup>

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<sup>15</sup> *Explanatory report to the [draft] Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention*; CM (2004)65add2finalE 7 May 2004.

<sup>16</sup> Explanatory Report, part III, paras 34 and 35.

<sup>17</sup> Explanatory Report, para 35.

The report refers in this connection to three measures, namely:

- (1) the addition of single judges to the existing ECtHR formations;
- (2) extension of the competence of the existing committees of three judges, and
- (3) the nature and effects of the new admissibility criterion.<sup>19</sup>

On the basis of the Explanatory Report it can be concluded that for the purposes described in the preamble to Protocol No. 14. and, in particular, the safeguarding of the pre-eminent role of the ECtHR and the control of the workload, the most relevant measures are the establishment of single-judge formations, the extension of the competence of the committees of three judges and the introduction of the new admissibility criterion.

### **3.4 The Group of Wise Persons**

#### **3.4.1 The setting up of the Group of Wise Persons**

The exponential growth in the number of applications prompted the Heads of State and Government to set up a Group of Wise Persons on 16 and 17 May 2005 to study the long-term effectiveness of the ECtHR.

#### **3.4.2 Protocol No. 14**

The report of the Group of Wise Persons of 15 November 2006 emphasises that stability in Europe has increased as a consequence of the accession of Central and East European States to the Council of Europe.<sup>20</sup> The ECHR is a very important supporting pillar in this respect. The report expresses great concern about the danger of the ECHR control mechanism ceasing to function properly.<sup>21</sup>

According to the report, Protocol No. 14 is designed to give the Court the necessary procedural means and flexibility to process all applications within a reasonable time, while enabling it to concentrate on the most important cases. The Protocol seeks in particular to reduce the time spent by the Court on manifestly inadmissible and repetitive cases. In

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<sup>18</sup> Explanatory Report, para 36.

<sup>19</sup> Explanatory Report, paras 38, 39 and 40. The measures concerned are contained in Articles 6, 7, 8 and 12 of Protocol No. 14.

<sup>20</sup> Report of the Group of Wise Persons, para 14 et seq.

discussing Protocol No. 14 the Group of Wise Persons also states that although its proposals are aimed at the long term, 'attention should be drawn to the need to take exceptional measures as of now to reduce the backlog'. The Group 'calls on the member States to support the measures which the Court will be required to take for this purpose, by making the necessary resources available to it'.<sup>22</sup> The report is based on the text of the ECHR incorporating the provisions of Protocol No. 14.<sup>23</sup>

### **3.4.3 Long-term measures**

The long-term measures proposed by the Group of Wise Persons concern (1) the structure and modification of the judicial machinery, (2) the relations between the Court and the States Parties to the Convention, (3) alternative (non-judicial) or complementary means of resolving disputes and (4) the institutional status of the Court and judges.<sup>24</sup>

The measures in Protocol No. 14, as referred to in section 3.3.3, which can make the greatest contribution to controlling the workload are in keeping with the spirit of the long-term measures concerning the structure and modification of the judicial machinery. In order to ensure the flexibility of the mechanism in the future, the Group of Wise Persons proposes the creation of a system structured around three levels of rules governing the system, namely:

- (1) the ECHR itself, for which the amendment procedure would remain unchanged;
- (2) a 'Statute' of the Court, i.e. a legal level whose content would need to be defined, comprising provisions relating to the operating procedures of the Court. This Statute could be amended by the Committee of Ministers on the basis of unanimity; and
- (3) texts such as the Rules of Court, which could be amended by decisions taken by the Court itself.<sup>25</sup>

According to the report, the Statute should include all the provisions of section II of the ECHR, with the exception of some explicitly specified provisions. The exceptions do not include articles 26, 27, 28 and 35, paragraph 3 of the ECHR, concerning single judges, the competence of the committees of three judges and the new admissibility criterion.<sup>26</sup>

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<sup>21</sup> Report of the Group of Wise Persons, para 26 et seq.

<sup>22</sup> Report of the Group of Wise Persons, para 29 et seq.

<sup>23</sup> Report of the Group of Wise Persons, para 33.

<sup>24</sup> Report of the Group of Wise Persons, para 39.

<sup>25</sup> Report of the Group of Wise Persons, paras 47 and 48.

<sup>26</sup> Report of the Group of Wise Persons, para 49.

These three measures could in the future also form part of the Statute proposed by the Group of Wise Persons.

## **4. GENERAL CONSIDERATIONS IN THE SEARCH FOR A SOLUTION**

### **4.1 Focus on the ECtHR's workload**

The wording of the request for advice clearly shows that its primary premise is the need to control the ECtHR's workload. The CAVV therefore concludes that the starting point for its recommendations must be control of this workload.

The CAVV too believes that the three measures expressly mentioned in Protocol No. 14, namely the establishment of single-judge formations, extension of the competence of committees of three judges and the introduction of the new admissibility criterion, are the main instruments by which the workload can be controlled. This is evident, for example, from the Explanatory Report, as discussed in section 3.3.3. Although the CAVV recognises that it is important for all provisions of Protocol No. 14 to enter into force, the following study will concentrate exclusively on these three measures.

### **4.2 A two-track regime within the ECtHR**

The CAVV study examines in particular the possibility that a two-track regime could occur within the ECHR if the three measures concerned were to apply only to the member States that participate in a solution, while the unmodified ECHR continues to apply to non-participating member States. From a legal perspective this makes it necessary to discuss the possibility of divergent case law developing within the ECtHR.

The CAVV notes in this connection that the schemes in Protocol No. 14 relating to single judges and the committees of three judges concern changes to the formations in which the ECtHR sits and that the competence of the ECtHR remains unchanged. The powers which the single-judge formations and the committees of three judges can derive from Protocol No. 14 are very strictly defined. This is also reflected in the passages in the Explanatory Report concerning Article 7 of Protocol Nr. 14 (about the competence of single judges) and Article 8 of Protocol Nr. 14 (about the competence of committees of three judges), which read as follows:

'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. (...) In case of doubt as to the admissibility, the judge will refer the application to a committee or a Chamber.'* (italics added)

'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 their merits, when the questions they raise concerning the interpretation of 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.'<sup>27</sup> (italics added)

The CAVV considers that there is no reason to expect case law to be developed by the single-judge formations and committees of three judges that differs from that of the Chambers and the Grand Chamber of the ECtHR.

Although the possibility cannot be excluded that a means could be found of preventing divergent case law within the ECtHR through the new admissibility criterion, the CAVV would prefer this criterion not to form part of the solution. A factor to be taken into account here is that, according to sources involved in the negotiations on Protocol No. 14, this new criterion was apparently the most controversial point. If it were to be included in the solution, this might limit participation in it.

### **4.3 Conclusion**

In the CAVV's opinion this warrants the conclusion that the solution should be limited to the establishment of single-judge formations and extension of the competence of the committees of three judges. According to reports the President of the ECtHR requested the authorisation to apply these provisions of Protocol No. 14 in anticipation of the entry into force of Protocol Nr. 14. Such a request would agree with the conclusion in this paragraph.

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<sup>27</sup> Explanatory Report, paras 67 and 68.

#### **4.4 Ways of implementing the measures**

The CAVV has concentrated on three ways of implementing these two measures quickly, namely:

- (1) provisional application of the part of Protocol No. 14 relating to the two measures through a joint declaration of the Parties to the ECHR;
- (2) conclusion of a treaty (Protocol 14bis) which covers the provisions of Protocol No. 14 relating to single-judge formations and the extension of the competence of the committees of three judges and which arranges for its rapid entry into force; or
- (3) a decision of the Committee of Ministers of the Council of Europe authorising the ECtHR to introduce single-judge formations and to extend the competence of the committees of three judges in accordance with the relevant provisions of Protocol No. 14.

The legal and other implications of these three ways of implementing the measures are discussed in chapter 5. The CAVV would emphasise at the outset that as all three ways merely involve the adoption of parts of Protocol No. 14 there is no need for substantive negotiations. Nor are any of the three proposed schemes intended as a replacement of Protocol No. 14. They merely anticipate the entry into force of the Protocol and should be concluded pending this entry into force. The CAVV would also point out that all member States bar one have ratified Protocol No. 14, which will facilitate the national approval procedures (in so far as these are necessary).

## **5. PROPOSED SOLUTIONS**

### **5.1 The application of treaty law within the Council of Europe**

The Vienna Convention on the Law of Treaties (VCLT) applies to the ECHR and the Protocols amending or supplementing the ECHR (including the proposed Protocol No. 14bis), subject to rules that apply within the Council of Europe. Pursuant to Article 5 of the VCLT this requires examination of the rules applicable within the Council of Europe to the conclusion of treaties.<sup>28</sup>

Statutory Resolution (93) 27 of the Committee of Ministers concerns the opening of conventions and agreements for signature within the Council of Europe and reads as follows:

‘Decisions on the opening for signature of Conventions and Agreements concluded within the Council of Europe shall be taken by a two thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee, as set out in Article 20.d of the Statute.’

Article 15 of the Statute is supplemented in a Resolution which was passed by the Committee of Ministers during its eighth session in May 1951 and reads as follows:

‘The conclusions of the Committee may, where appropriate, take the form of a convention or agreement. In that event the following provisions shall be applied:

- i. The convention or agreement shall be submitted by the Secretary General to all members for ratification;
- ii. Each member undertakes that, within one year of such submission or, where this is impossible owing to exceptional circumstances, within eighteen months, the question of ratification of the convention or agreement shall be brought before the competent authority or authorities in its country;
- iii. The instruments of ratification shall be deposited with the Secretary General;
- iv. The convention or agreement shall be binding only on such members as have ratified it.’<sup>29</sup>

This means that the VCLT is applicable virtually in full to conventions and agreements concluded within the Council of Europe.

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<sup>28</sup> Article 5 VCLT reads: ‘The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.’

## **5.2 Provisional and partial application of Protocol No. 14**

### **5.2.1 Article 25 VCLT**

It was concluded in section 5.1 above that the VCLT is applicable virtually in full to conventions and agreements concluded within the Council of Europe. This means that the States concerned can agree to apply Protocol Nr. 14 provisionally pursuant to Article 25 of the VCLT. This article reads as follows:

- ‘1. A treaty or part of the treaty is applied provisionally pending its entry into force if:
  - (a) the treaty itself so provides; or
  - (b) the negotiating States have in some other manner so agreed.
2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.’

### **5.2.2 Provisional application of part of Protocol No. 14**

As Article 25 VCLT permits *part of a treaty* to be provisionally applied, the provisional application of Protocol No. 14 can be limited to such of its provisions as relate to single-judge formations and extension of the competence of the committees of three judges.

### **5.2.3 Consultation with the Russian Federation**

Section 5.3 describes the possibility of concluding a treaty (Protocol No. 14bis) which regulates the single-judge formations and the extension of the competence of the committees of three judges and which could, if desired, be applied provisionally.<sup>30</sup> The present section concerns the possibility of regulating the provisional application of these provisions *in some other manner so agreed between the negotiating States*.<sup>31</sup>

As the *negotiating States*<sup>32</sup> include the Russian Federation, agreement about the provisional application must be reached with this State. These consultations may produce three different results:

- (1) agreement is reached with the Russian Federation about this provisional application; or

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<sup>29</sup> ETS No. 001

<sup>30</sup> On basis of Article 25(1)(a) VCTL.

<sup>31</sup> Article 25(1)(b) VCLT.

- (2) the Russian Federation agrees to the provisional application of part of Protocol No. 14, but only by those Parties to the ECHR that so wish; or
- (3) the Russian Federation refuses to agree to the provisional application of part of Protocol No. 14.

If the consultations produce the first result, the Russian Federation would join with other Parties to the ECHR in provisionally applying the provisions of the Protocol relating to the single-judge formations and the committees of three judges. If they produce the second result, the Russian Federation would make it possible for Parties to the ECHR to provisionally apply part of Protocol No. 14 without participating itself. In this scenario, the ECHR would continue to apply to the Russian Federation in full. And in the third and last case provisional application of part of Protocol No. 14 would not be possible.

#### **5.2.4 A joint declaration of the Parties**

The question is also how ‘the other manner so agreed by the negotiating States’ must be applied. The International Law Commission, which drafted the VCLT, considered that the Parties should be left maximum freedom in this respect.<sup>33</sup> The literature on the provisional application of conventions also suggests that many forms of agreement are possible and that a wide variety exists in practice.<sup>34</sup>

In the present case the CAVV recommends that in the course of a meeting of the Committee of Ministers the member States of the Council of Europe, in their capacity of Parties to the ECHR, make a joint declaration regulating the provisional application of the relevant provisions of Protocol No. 14. The declaration should contain an authorisation enabling the ECtHR to modify its procedural rules to allow application of the provisions concerning single-judge formations and the committees of three judges.

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<sup>32</sup> Article 2(1)(e) VCLT reads: ‘For the purposes of the present Convention (...) “negotiating State” means a State which took part in the drawing up and adoption of the text of the treaty’.

<sup>33</sup> The most outspoken member of the Commission was Manfred Lachs: ‘There was every intention to leave States maximum freedom both with regard to the provisional application of treaties and with regard to the modalities of such application, while protecting the rights of others’. (Yearbook of the International Law Commission, 1965, Vol. I, p. 112, para 44).

<sup>34</sup> D. Mathy, *Article 25 – Convention de 1969*, O. Corten and P. Klein (eds), *Les Conventions de Vienne sur le droit des Traités*, Brussels, 2006; p. 1065. D. Sagar, *Provisional Application in an International Organisation*, *Journal of Space Law*, 27, 2, pp 99 and 104.

### 5.3 The conclusion of Protocol No. 14bis

On the basis of Statutory Resolution 93(27) the decision to open Protocol 14bis for signature can be taken by the Committee of Ministers.<sup>35</sup> A two-thirds majority of the representatives of member States casting a vote and a simple majority of the representatives entitled to sit on the Committee is required for this purpose. As almost all Parties to the ECHR have ratified Protocol No. 14 and the scope of Protocol No. 14bis would not exceed that of Protocol No. 14, obtaining the requisite majorities should not, in the opinion of the CAVV, pose any problem.

Pursuant to the Resolution of May 1951, Protocol No. 14bis should be submitted by the Secretary General of the Council of Europe to the members for ratification.<sup>36</sup> This involves an administrative procedure on the part of the Secretary General, which is not subject to further requirements and can therefore be performed by the Secretary General in the quickest and most efficient way.

The word 'ratification' is used in a general sense in the May 1951 Resolution and covers various ways of expressing the consent to be bound. Under the relevant provisions of the ECHR and the Protocols the consent to be bound can, for example, be expressed by:

- (a) signature without reservation as to ratification, acceptance or approval;
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

Protocol No. 14bis should, in the opinion of the CAVV, contain a provision allowing rapid application of this Protocol. It therefore recommends that the consent to be bound by Protocol No. 14bis should be expressed as far as possible by signature *without* reservation as to ratification, acceptance or approval. As the possibility cannot be entirely excluded that Parties to the ECHR may have to go through a ratification procedure for Protocol No. 14bis under their national treaty law despite the fact that they have already ratified Protocol No. 14, Protocol 14bis could contain an explicit provision enabling Parties that sign subject to reservation as to ratification, acceptance or approval to make an

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<sup>35</sup> See paragraph 5.1.

<sup>36</sup> See paragraph 5.1.

individual declaration that Protocol No. 14bis will be provisionally applied.<sup>37</sup> The CAVV assumes that the great majority of the Parties to the ECHR wish to solve the problem of the workload as quickly as possible and that each of the member States will seek its own creative ways of facilitating the rapid entry into force of Protocol 14bis.

The CAVV considers that, unlike Protocol No. 14, Protocol No. 14bis should enter into force once it has been ratified by a given proportion of the Parties. A provision to this effect should be included in Protocol No. 14bis. How many ratifications should trigger the entry into force of Protocol No. 14bis depends above all on practical considerations, in particular the minimum number of Parties that would make a two-track regime feasible. The CAVV recommends that the ECtHR be consulted about this.

## **5.4 A decision of the Committee of Ministers**

### **5.4.1 The legal basis for decisions of international organisations**

The third possibility for regulating the application of the measures concerned is a decision of the Committee of Ministers of the Council of Europe. This solution entails the question of what legal grounds can serve as the basis for application of the two measures concerned.

An international organisation has powers only in so far as these have been conferred by its member States.<sup>38</sup> However, it may possess these powers even if they have not been expressly granted. The principle that still governs these implied powers was formulated by the International Court of Justice in the *Reparation for Injuries Case* in 1949. This is that:

‘[u]nder international law, the Organisation must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.’<sup>39</sup>

The International Court interpreted this principle broadly. This led to criticism that an international organisation could derive very broad implied powers from this principle and

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<sup>37</sup> On the basis of Article 25(1)(a) VCLT

<sup>38</sup> In the wording of the International Court of Justice: ‘international organisations [...] do not, unlike States, possess a general competence. International organisations are governed by the “principle of speciality”, that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust in them’. *Legality of the use by a State of Nuclear weapons in armed conflict*, Advisory Opinion, ICJ Reports 1996, para 25.

<sup>39</sup> *Reparation for injuries suffered in the service of the United Nations*, Advisory Opinion, ICJ Reports 1949, p. 174; p. 182.

that it created the possibility of extending the powers of the international organisation.<sup>40</sup>

Judge Fitzmaurice, for example, argued that the principle:

‘is acceptable if it is read as being related and confined to existing and specific duties; but it would be quite another matter, by a process of implication, to seek to bring about an *extension* of functions’.<sup>41</sup>

This criticism – which can also be found in the literature – did not prevent the International Court of Justice from applying the principle again later. In the Nuclear Weapons Case the International Court held, with reference to the Reparation for Injuries Case, that:

‘The powers conferred on international organisations are normally the subject of an express statement in their constituent instruments. Nevertheless, the necessities of international life may point to the need for organisations, in order to achieve their objectives, to possess subsidiary powers which are not expressly provided for in the basic instruments which govern their activities. It is generally accepted that international organisations can exercise such powers, known as “implied” powers.’<sup>42</sup>

The International Court applied the principle from the Reparation for Injuries Case restrictively and stated that it:

‘could not be deemed a necessary implication of the Constitution of the Organisation in the light of the purposes assigned to it by its member States’.<sup>43</sup>

#### **5.4.2 The legal basis for a decision of the Committee of Ministers**

It can be concluded from this case law and the criticism of it that (1) the implied powers of an international organisation may not conflict with its explicit powers, and that (2) the crucial factor in deciding if an organisation has implied powers is whether these powers are essential to the exercise of the organisation’s functions.

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<sup>40</sup> See, for example, Skubiszewski: ‘A term is being read into the organisation’s statute not in order to modify it or add to members’ burdens, but in order to give effect to what they agreed by becoming parties to the constitutional treaty’. K. Skubiszewski, *Implied Powers of International Organisations*, International Law at a Time of Perplexity. Essays in Honour of Shabtai Rosenne; Y. Dinstein and M. Tabor (eds.), Dordrecht 1989.

<sup>41</sup> *Legal consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*; Advisory Opinion. Dissenting Opinion of Judge Gerald Fitzmaurice, ICJ Reports 1971, p. 16, p. 282.

<sup>42</sup> *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, ICJ Reports 1996, para 25.

<sup>43</sup> *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, para 25.

Section 5.1 quoted the statutory rules applied within the Council of Europe for the conclusion of conventions and agreements. These mean that the conclusion of a convention or agreement is dependent on the consent of the Parties, since they have, in principle, unlimited legal capacity and treaty-making power under international law. This is reflected in Protocol No. 14, which constitutes an agreement amending the ECHR and for which the consent of all Parties to be bound was considered necessary.

The CAVV concludes that the Council of Ministers lacks the explicit powers to take a decision to apply the relevant measures of Protocol Nr. 14 and that the implied powers seem to be at odds with the schemes applicable in the Council of Europe. However, it must be inferred from the case law of the International Court of Justice that an international organisation may need to take certain measures if its essential aims cannot otherwise be achieved. In the opinion of the CAVV, there can be no doubt that such a necessity exists in this case.

The ECHR is generally regarded as making an extremely important – if not the most important – contribution to the achievement of the aims of the Council of Europe. The preamble to the ECHR therefore states that one of the methods by which greater unity can be achieved between the members of the Council of Europe is the maintenance and further realisation of human rights and fundamental freedoms and that:

“the governments of European countries which are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law [are resolved] to take the first steps for the *collective enforcement* of certain of the rights stated in the Universal Declaration;” (italics added)

The system of collective enforcement of human rights has fully evolved since the ECHR came into force over fifty years ago. The ECtHR has acquired an essential role within this system. As is apparent from chapter 3, the adequate performance of this role is now jeopardised to such an extent by the growth in the number of applications that there are fears for the effectiveness of the enforcement of human rights and fundamental freedoms.

In the opinion of the CAVV, the need to take quick and effective measures to control the workload of the ECtHR should take precedence over any interest which the Parties to the ECHR have in maintaining their treaty-making power. What is also very relevant is that since all Parties to the ECHR – with the exception of the Russian Federation – have

ratified Protocol No. 14, they have all exercised their treaty-making power. In the opinion of the CAVV, a decision of the Committee of Ministers covering only the measures of Protocol No. 14 most relevant to tackling the workload would therefore be appropriate. The CAVV also refers to the request of the president of the ECtHR referred to in paragraph 4.3 to authorize the ECtHR to apply the measures in question in advance of the entry into force of Protocol Nr. 14.

The Council of Europe also has a relevant precedent. On 2 May 2001 the Meeting of the Ministers' Deputies unanimously decided that the number of members of the Committee of Experts referred to in Article 25 of the European Social Charter should be increased from nine to fifteen.<sup>44</sup> This implemented Article 3 of the Protocol to amend the European Social Charter. The Protocol had been concluded on 21 October 1991 and had not yet entered into force.<sup>45</sup> The documents show that this decision was based on a report of the Rapporteur Group on Human Rights, which endorsed the Committee of Experts' opinion that this measure was 'an important and urgently required step' in view of the Committee's workload.<sup>46</sup> The measure was also supported by the Governmental Committee of the European Social Charter and by the Parliamentary Assembly.<sup>47</sup> In this case too, it was stated that the decision anticipated the entry into force of the relevant Protocol (of 21 October 1991).<sup>48</sup>

There are no indications that the decision of the Ministers' Deputies of 2 May 2001 eroded the treaty-making power of the member States of the Council of Europe. In view of this and of the very specific circumstances of the present case, the danger that a decision of the Committee of Ministers relating to the provisions of Protocol No. 14 introducing single-judge formations and extending the competence of the committees of three judges might erode these powers is regarded by the CAVV as being extremely small.

### **5.4.3 Conclusion**

All things considered, the CAVV believes that a decision of the Committee of Ministers introducing single-judge formations and extending the competence of the committees of

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<sup>44</sup> 751st meeting of the Ministers' Deputies/European Social Charter. Increase in the number of members of the European Committee of Social Rights. 751.4.2 / 07 May 2001.

<sup>45</sup> ETS No. 142 Trb. 1992, 7.

<sup>46</sup> GR-H(98)10, para 9.

<sup>47</sup> GR-H(98)11 and GR-H(98)12.

<sup>48</sup> GR-H(98)11 para 7.

three judges would be one way of taking swift action to restrict the workload. It considers that any such decision, which would apply only to the member States that vote in favour, should be regarded as an act of the Committee of Ministers that is necessary in order to further the aim of the Council of Europe.

#### **5.4.4 Procedure**

In the opinion of the CAVV the decision concerned would be an implementation of Article 15a of the Statute, which reads:

‘On the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers *shall consider the action required to further the aim of the Council of Europe*, including the conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters. Its conclusions shall be communicated to members by the Secretary General.’

As Article 20 of the Statute does not lay down any specific procedure for decisions resulting from Article 15a, the CAVV believes that such a decision requires a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee (Article 20d of the Statute). However, the CAVV acknowledges that there may be calls for a unanimous vote.<sup>49</sup> In that case the voting could take place in two stages. First, two-thirds of the representatives casting a vote and a majority of the representatives entitled to vote should determine whether the relevant decision of the Committee of Ministers does indeed require unanimity. Depending on the result of this vote, the decision itself should then be put to the vote on the basis of either unanimity or majority.

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<sup>49</sup> Under Article 20 of the Statute, unanimity means that there must be unanimity among those representatives casting their vote, but that it is sufficient for there to be a majority of the representatives entitled to sit on the Committee.

## **6. THE RECOMMENDATIONS OF THE CAVV**

The CAVV has concluded from the wording of the request for advice that it relates not to the integral application of Protocol No. 14 but to the need to find a solution to the problem of controlling the workload of the ECtHR. The need for this solution is also evident from chapter 3, which describes the problem and steps taken to tackle it within the Council of Europe.

Although it does not deny the importance of integral application of Protocol No. 14, the CAVV found that three measures in this Protocol are crucial to controlling the workload, namely the establishment of single-judge formations, extension of the competence of the committees of three judges and the introduction of a new admissibility criterion. The CAVV therefore decided that its efforts to find a solution should be focused on the feasibility of applying these three measures.

This study concerns the possibility that if not all member States are parties to a solution a situation may arise in which the ECHR is applied in two different ways. This might then result in divergent case law. On the basis of the text of the relevant provisions of Protocol No. 14 and the notes on this in the Explanatory Report, the CAVV considers that there is no danger of a rift in the case law of the ECtHR as a consequence of the establishment of single-judge formations and the extension of the competence of the committees of three judges. However, the CAVV thinks that this is less certain in the case of the admissibility criterion.

Ultimately, the CAVV therefore concludes that a solution must be sought that is confined to the establishment of single-judge formations and the extension of the competence of the committees of three judges.

The CAVV then examined how these two measures could be implemented. It considers that there are three possible ways:

- (1) provisional application of the part of Protocol No. 14;
- (2) conclusion of a new treaty (Protocol 14bis) which contains a provision allowing for its rapid entry into force;
- (3) a decision of the Committee of Ministers of the Council of Europe.

What these three options have in common is that they anticipate the entry into force of Protocol No. 14 and cease to apply once this Protocol enters into force. Moreover, they would be binding only on those States which have expressly consented to be bound by them.

The consent of all Parties would be required for the *provisional application* of the relevant provisions of Protocol No. 14. This would enable the government of the Russian Federation not only to agree to the chosen solution and thus show understanding for the wish of the ECtHR to function as effectively as possible but also to point out in the Duma that the solution is merely of a provisional nature, pending the entry into force of Protocol No. 14.

The *conclusion of a new treaty* – Protocol No. 14bis – could be interpreted as a relatively far-reaching instrument, partly because it might possibly oblige the Parties to the ECHR to complete a ratification procedure under national treaty law before the consent to be bound can be expressed. The CAVV would emphasise that Protocol No. 14bis does not require substantive treaty negotiations. It also assumes that the great majority of the Parties to the ECHR wish to solve the problem of the workload as quickly as possible and that each of the member States will seek its own creative ways of facilitating the rapid entry into force of Protocol 14bis. The possibility of provisional application of this Protocol could be useful in this connection. As Protocol No. 14bis would be opened for signature on the basis of a majority decision of the Committee of Ministers, not all Parties would need to agree to the contents of Protocol No. 14bis and its opening for signature.

A *decision of the Council of Ministers* could, in principle, be criticised on the grounds that it would be contrary to the arrangements within the Council of Europe on the conclusion of conventions and agreements, which leave the powers of the member States intact. As explained in section 5.4, the need to solve the problem of the workload should in this case be given precedence in view of the danger that the ECtHR may otherwise be unable to function properly.

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The Advisory Committee on Issues of Public International Law (CAVV) is responsible for advising the Dutch government and parliament on international law issues.

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

with Protocol Nos. 1, 4, 6, 7, 12 and 13

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  
September 2003

Convention for the Protection  
of Human Rights and  
Fundamental Freedoms

Rome, 4.XI.1950

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 reelected. 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

Paris, 20.III.1952

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

Strasbourg, 16.IX.1963

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 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, nongovernmental 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

Strasbourg, 28.IV.1983

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

Strasbourg, 22.XI.1984

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, nongovernmental 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.

Protocol No. 12 to the Convention for  
the Protection of Human Rights and  
Fundamental Freedoms

Rome, 4.XI.2000

The member States of the Council of Europe signatory hereto,

Having regard to the fundamental principle according to which all  
persons are equal before the law and are entitled to the equal protection  
of the law;

Being resolved to take further steps to promote the equality of all  
persons through the collective enforcement of a general prohibition of  
discrimination 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.);

Reaffirming that the principle of non-discrimination does not prevent  
States Parties from taking measures in order to promote full and  
effective equality, provided that there is an objective and reasonable  
justification for those measures,

Have agreed as follows:

Article 1 . General prohibition of discrimination

1

The enjoyment of any right set forth by law 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.

2

No one shall be discriminated against by any public authority on any  
ground such as those mentioned in paragraph 1.

Article 2 . 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 expiration of a period of three 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 of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three 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

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, nongovernmental organisations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

#### Article 3 . Relationship to the Convention

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

#### Article 4 . 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 5 . Entry into force

1

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 ten

member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.

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 three months after the date of the deposit of the instrument of ratification, acceptance or approval.

#### Article 6 . 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 2 and 5;
- 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 Rome, this 4th day of November 2000, 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. 13 to the Convention for  
the Protection of Human Rights and  
Fundamental Freedoms  
Concerning the abolition of the death  
penalty in all circumstances

Vilnius, 3.V.2002

The member States of the Council of Europe signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as .the Convention.);

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

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 . Prohibitions of derogations

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

Article 3 . Prohibitions of reservations

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

Article 4 . 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 expiration of a period of three 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 three months after the date of receipt of such notification by the Secretary General.

#### Article 5 . Relationship to the Convention

As between the states Parties the provisions of Articles 1 to 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 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 7 . Entry into force

1

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 ten member states of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.

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 three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 8 . 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 4 and 7;
- 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 Vilnius, this 3rd day of May 2002, 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**

**Strasbourg, 13.V.2004**

Convention | Protocol  
Protocols: No. 4 | No. 6 | No. 7  
No. 12 | No. 13  
Explanatory Report  
Français

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### **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 13<sup>th</sup> 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.