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Council of Europe:

Ensuring the long-term effectiveness of the European Court of Human Rights – NGO Comments on the Group of Wise Persons' Report

16 January 2007 **Summary** **AI Index: IOR 61/002/2007**

The following document sets out the views of Amnesty International, the European Human Rights Advocacy Centre (EHRAC), Human Rights Watch, INTERIGHTS, Justice, Liberty, Redress and The AIRE Centre on proposals by the Council of Europe's Group of Wise Persons aimed at ensuring the long-term effectiveness of the European Court of Human Rights, in a manner which protects the basic philosophy underlying the European Convention on Human Rights (the ECHR). It also contains additional recommendations.

We welcome the commitment of the member states of the Council of Europe to ensuring the long-term effectiveness of the European Court of Human Rights (the Court), which is recognized as a pillar in the European system for the protection of human rights. We recognize that the enormous number of individual applications which are being lodged with the Court, coupled with the backlog of cases pending before it, in the context of the Court's current resources, jeopardize its functioning and consequently the right of individual application.

While addressing these issues was precisely the objective of the package of reforms adopted by the Council of Europe's Committee of Ministers in May 2004, including a series of recommendations of the Committee of Ministers to Member States and the adoption of Protocol 14 to the ECHR, these measures have yet to be implemented. Furthermore, it is clear that more is needed.

We consider that any reform should be designed to meet the following seven objectives:

I. Better implementation of the ECHR at national level, thereby reducing the need to apply to the Court for redress;

II. Preservation of the fundamental right of individual petition (the essence of which is the right of individuals to receive a binding determination on admissible cases from the European Court of Human Rights on whether the facts presented constitute a violation of rights secured in the ECHR);

III. III. Efficient, fair, consistent, transparent and effective screening of applications received, to weed out the very high proportion (around 90%) of applications that are inadmissible under the current criteria;

IV. The expeditious rendering of judgments, particular in cases that raise repetitive issues concerning violations of the ECHR where the Court's case law is clear—which represent some 60% of the Court's judgments on the merits—and those that arise from systemic problems;

V. Effective execution of the Court's judgments by Council of Europe member states, including appropriate follow-up by the Committee of Ministers where individual member states are slow to act or respond inadequately to Court judgments;

VI. Adequate financial and human resources for the Court, without drawing on the budgets of other Council of Europe human rights monitoring mechanisms and bodies;

VII. Transparent expert monitoring and assessment of the impact any reforms agreed on the workload of the court, and their effect on the right of individual application.

In summary, measured against these criteria the above-listed NGOs:

support the following proposals of the Group of Wise Persons:

- Any reforms to the Court should preserve the right of application; (para 3)[1]
- The creation of a separate body within the Court, composed of judges, to screen individual applications received by the Court; (para 26)
- The laying down of time limits, to be supervised by the Court, for the freezing of like-applications to those being considered under the "pilot judgment" procedure; (para 33)
- Strengthening the processes by which judges of Court are nominated and elected by member states and the Parliamentary Assembly of the Council of Europe, respectively; (paras 41- 45 and Annex B);

and;

oppose the following proposals of the Group of Wise Persons

- The addition of a treaty provision obligating states parties to the ECHR to introduce domestic legal mechanisms to redress the damage resulting from any violation of the ECHR (para 13)
- That Council of Europe Information Offices take on the function of advising individuals about existing domestic and other non-judicial remedies; (para 18)
- Any requirement that the information necessary for a determination of admissibility of an Application must be submitted *only* on the Court's application form; (para 29)
- The referral of decisions on awards of compensation back to the state concerned. (para 36-38)

[1] The paragraph references in this Summary refer the paragraphs of the full document: *Council of Europe: Ensuring the long-term effectiveness of the European Court of Human Rights- NGO comments on the Groups of Wise Persons' Report,* of 16 January 2007 (AI Index: IOR 61/00/2007).

We consider **further reflection** is needed on the proposals

- to empower the Court to issue Advisory Opinions at the request of national courts; (para 40)
- to enable the Committee of Ministers to amend certain "operating Procedures" of the Court in a "simplified amendment procedure" (paras 47-49).

In addition, the above-mentioned NGOs make the following **additional recommendations**:

- The Committee of Ministers should clarify, as a matter of urgency, the impact of the reform process of the recent negative vote by the Russian Duma on the ratification of Protocol 14; (para 7)
- Each Council of Europe member state should take all necessary measures to implement fully the recommendations of the Committee of Ministers Recommendations adopted during the 2000-2004 reform discussions, which aim to ensure better implementation of the ECHR at national level; (paras 14-15)
- Council of Europe member states should ensure that ombudspersons and national institutions for the promotion and protection of human rights are truly independent, appropriately mandated, staffed with experts and adequately resourced, and thus are in a strong position to play a significant role in providing information about and promoting observance of human rights; (para 16)
- Council of Europe member states should provide adequate resources to lawyers and NGOs, including free legal aid, to facilitate their expert assessment and provision of initial advice to would-be applicants to the Court; (para 18)
- The Council of Europe should ensure that any reforms to the Court, including those which may be implemented if Protocol 14 enters into force, are carefully and transparently monitored over a reasonable period of time to assess their impact, in particular on the Court's effectiveness and the right of individual application; (paras 8, 24,)
- The Council of Europe should ensure that the Court's application form is made available in all major languages used by individuals in its member states; (para 28)
- The Council of Europe should ensure comprehensive monitoring of the effectiveness and impact of the "pilot judgment" procedure, over a reasonable period of time; (paras 34-35)
- A 'Just Satisfaction Unit' within the Court's Registry should be created; (para 39)
- Council of Europe member states should increase the budget of the Council of Europe overall, including the budget allocated to the Court, so that any increase in the Court's budget are not made at the expense of funding for other core Council of Europe activities (para 46).

We also urge each of the 46 Council of Europe member states and the Council of Europe to ensure that the public is informed about the on-going discussion on reform. Past and future applicants to the Court have an interest in ensuring its future at least equal to that of member states of the Council of Europe. Representatives of civil society across the Council of Europe region should be consulted, and their views taken into account before any further reforms to the Court are made (para 50).

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Council of Europe:

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Council of Europe: Ensuring the long-term effectiveness of the European Court of Human Rights – NGO Comments on the Group of Wise Persons' Report

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We, the undersigned NGOs, submit the following comments on the proposals aiming to ensure the long-term effectiveness of the European Court of Human Rights presented by the Group of Wise Persons to the Council of Europe's Committee of Ministers in its report of 15 November 2006[1].

I. Introduction

1. We believe that the European Court of Human Rights (hereafter "the Court") is a "pillar" in the European system for the protection of human rights.

2. The Court has ensured that applicants have obtained redress for violations of human rights when states have failed to provide an appropriate remedy. In doing so, it has played a crucial role in holding states accountable for these violations. Strengthened by the Committee of Ministers' supervision process, the implementation of the Court's judgments have led to human-rights-compliant changes in the law and practice in states which are parties to th European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter "the ECHR"). The judgments of the Court have provided essential guidance to states of the Council of Europe and to other countries, on the steps necessary to respect and secure fundamental human rights. In the words of the

[1] The Report of the Group of Wise Persons, 15 November 2006 (CM 2006)203. Available at: https://wcd.coe.int/ViewDoc.jsp?id=1063779&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75, and attached hereto as **Annex A**.

Group of Wise Persons[2], the Court "lay[s] down common principles and standards relating to human rights and determines the minimum level of protection which states must observe."[3]

3. The right of individuals (and organizations) to submit an application directly to the European Court of Human Rights lies at the heart of the European regional system for the protection of human rights, and is part of the fundamental philosophy of the ECHR.[4] We consider that its essence is the right of individuals to receive a binding determination from the European Court of Human Rights as to whether the facts presented in admissible cases constitute a violation of the rights enumerated in the ECHR. We welcome the Group of Wise Persons' intention to ensure that the reforms it recommends do not affect the substance of the right of individual application.

4. We recognize that the enormous number of individual applications which are being lodged with the Court, coupled with the backlog of cases pending before it, in the context of the Court's current resources, jeopardize its functioning and consequently the right of individual application.

5. While addressing these issues was precisely the objective of the package of reforms adopted by the Council of Europe's Committee of Ministers in May 2004, including a series of recommendations of the Committee of Ministers to member states and the adoption of Protocol 14 to the ECHR, these measures have yet to be implemented. Furthermore, it is clear that more is needed.

6. We welcome the continuing commitment of the member states of the Council of Europe to ensure the long-term effectiveness of the European Court of Human Rights. This commitment was evidenced, among other things, by the decision taken by the Heads of State and Government gathered at the 3rd Summit of the Council of Europe to establish a Group of Wise Persons to consider this issue.[5]

7. We urge the Committee of Ministers to clarify, as a matter of urgency, the impact on the reform process of the recent negative vote by the Russian Duma on the ratification of Protocol 14 to the ECHR.

8. We consider it important that the Council of Europe carefully and transparently evaluate the impact on the Court of any reforms over a reasonable period of time, including those

[2] The Group of Wise Persons is mandated by the Council of Europe to make proposals aimed at ensuring the long-term effectiveness of the Court.

[3] Paragraph 24 of the Report of the Group of Wise Persons, November 2006.

[4] See Warsaw Declaration at para 2 and Action Plan at para I(1) available at http://www.coe.int/t/dcr/summit/20050517_decl_varsovie_en.asp; see also para 23 of the Report of the Group of Wise Persons, 15 November 2006.

[5] The Mandate and Composition of the Group of Wise Persons is set out in the Decision on item 1.5 of the Committee of Ministers Deputies of 14 September 2005 and in paragraphs 1 and 3 of the Group of Wise Persons' Report of 15 November 2006.

related to Protocol 14 if it enters into force. We urge the member states of the Council of Europe to ensure sufficient financial and expert resources to undertake such an evaluation.

9. We consider that any reform should be designed to meet the following seven objectives:

   I. Better implementation of the ECHR at national level, thereby reducing the need to apply to the Court for redress;

   II. Preservation of the fundamental right of individual petition (the essence of which is the right of individuals to receive a binding determination on admissible cases from the European Court of Human Rights on whether the facts presented constitute a violation of rights secured in the ECHR);

   III. Efficient, fair, consistent, transparent and effective screening of applications received, to weed out the very high proportion (around 90%) of applications that are inadmissible under the current criteria;[6]

   IV. The expeditious rendering of judgments, particular in cases that raise repetitive issues concerning violations of the ECHR where the Court's case law is clear—which represent some 60% of the Court's judgments on the merits—and those that arise from systemic problems;

   V. Effective execution of the Court's judgments by Council of Europe member states, including appropriate follow-up by the Committee of Ministers where individual member states are slow to act or respond inadequately to Court judgments;

   VI. VI. Adequate financial and human resources for the Court, without drawing on the budgets of other Council of Europe human rights monitoring mechanisms and bodies;

   VII. VII. Transparent expert monitoring and assessment of the impact any reforms agreed on the workload of the Court, and their effect on the right of individual application.

The following contains our assessment of the proposals in the Report of the Group of Wise Persons, in light of those objectives. It also includes additional recommendations.

[6] Paragraph 27 of the Report of the Group of Wise Persons, November 2006.

II. Steps at the National Level

Implementation of Committee of Ministers Recommendations

10. The primary responsibility for guaranteeing respect for the rights enshrined in the ECHR lies with the states parties themselves. This includes the obligation to ensure the availability of effective and accessible remedies.

11. We remain convinced that achieving greater respect for the Convention at the national level, would significantly diminish the Court's overall case load by reducing the need for people to seek redress from the Court for violations of their rights. We agree with the assessment of the Group of Wise Persons that "the remedies available at national level must be effective and well known..."[7]

12. We consider that 'length of proceedings' cases, which account for some 25% of the judgments issued by the Court in 2005, result from systemic deficiencies in the states concerned. 'Length of proceedings' cases involve the fundamental right of access to justice. Cases about excessive length of pre-trial detention, which also comprise a significant proportion of the Court's judgments on the merits, touch directly on the right to liberty and the right of detained persons to trial within a reasonable time or release pending trial. Ensuring the prompt and effective implementation of such judgments should be a major priority for the Committee of Ministers. We consider that the Committee of Ministers should require the states concerned to develop and implement Action Plans which address both the issue of compensation and the necessary structural changes, without undue delay.

13. Since States are already obligated under the ECHR, (in particular under Articles 5(5), 6(1) and 13), to ensure effective, accessible domestic remedies in the event of such violations, we question whether an additional ECHR provision, as proposed by the Group of Wise Persons[8] is necessary, or would result in states taking the measures necessary to address underlying structural problems. We consider, however, that the Committee of Ministers should bring concerted pressure to bear on states found regularly to violate these rights to take all necessary measures to implement these provisions of the Convention and Recommendation 2004(6).

14. We agree that governments have the responsibility to translate, disseminate and publish in appropriate, widely read and accessible journals, the Court's judgments and ensure that "national judicial and administrative institutions should be able to have access to the case-law of the Court in their respective languages."[9]

15. Accordingly, we regret the fact that, despite repeated commitments to do so, the majority of Council of Europe member states have yet to implement fully the Recommendations

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[7] Paragraph 16 of the Report of the Group of Wise Persons, 15 November 2006.

[8] Paragraph 93 of the Report of the Group of Wise Persons, 15 November 2006.

[9] Paragraph 72 of the Report of the Group of Wise Persons, 15 November 2006.

adopted in the course of the reform discussions which began in 2000, which aim at ensuring better implementation of the ECHR at national level, including effective and accessible domestic remedies.[10] We urge each Council of Europe member state to take all necessary measures to implement these recommendations rapidly. To that end, we recommend that each member state analyse its laws and practice in the light of the Recommendations and that they each create and implement an action plan to fill lacunae between state law and practice and the elements set out in each of the five Recommendations, without further delay.

Ombudspersons and National Institutions for the Promotion and Protection of Human Rights

16. We agree with the Group of Wise Persons that ombudspersons and national institutions for the promotion and protection of human rights have the potential to play a significant role in providing information about and promoting human rights, including those secured under the ECHR.[11] We consider, however, that in many member states more must be done to ensure that these institutions meet the minimum guidelines set out in the Paris Principles and in particular, are truly independent, appropriately mandated, staffed with experts and adequately resourced. We welcome the work of the Council of Europe's Commissioner for Human Rights in cooperating with, and facilitating, the activities of national human rights institutions and national and regional ombudspersons.

Council of Europe Information Offices[12]

17. We agree with the Group of Wise Persons that Council of Europe Information Offices located in member states could play an important role in informing people about the ECHR and the case-law of the Court, including that related to admissibility. This might

[10] The relevant Recommendations of the Committee of Ministers are: Recommendations R(2000)2 of the Committee of Ministers to Member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights; REC(2002)13 of the Committee of Ministers to Member States on the publication and dissemination in the Member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights; REC(2004)4 of the Committee of Ministers to Member States on the European Convention on Human Rights in university education and professional training; REC(2004)5 of the Committee of Ministers to Member States on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights; REC(2004)6 of the Committee of Ministers to Member States on the improvement of domestic remedies.

[11] Paragraphs 20, 111-113 of the Report of the Group of Wise Persons, 15 November 2006.

[12] Paragraph 19 of the Report of the Group of Wise Persons, 15 November 2006.

help to discourage individuals from submitting applications unnecessarily or prematurely, or without exhausting domestic remedies. (In this regard, we urge the Council of Europe to make public information about the Information Office in Warsaw, Poland, including the scope, methods and findings of any assessment into the Warsaw office pilot project.)

18. However we are concerned at the Group's suggestion that the personnel in these offices might also *advise* individuals about "the existing domestic and other non-judicial-remedies". Were such offices to offer advice, there is a danger of Council of Europe personnel influencing, or being seen to influence, individuals' decisions whether or not to lodge claims. We do not consider that it is appropriate for Council of Europe personnel to provide such advice, however informal the arrangement; they would not be in a position to act as independent, impartial advisers (and indeed, conflicts of interest may arise). There is also a risk that if an applicant seeks redress with a non-judicial remedy identified by the Council of Europe Information Office, they may find that any subsequent application to the Court is time-barred, under Article 35(1) of the ECHR.[13] We consider instead that such an advisory function should be played by independent lawyers and NGOs with relevant expertise. We therefore recommend that national authorities should be urged to provide adequate resources to lawyers and NGOs in order for them to assess and provide initial advice to would-be applicants to the Court. This should include the provision of free legal aid by the national authorities.

III. Reform of the European Court of Human Rights

19. We warmly welcome the fact that the Group of Wise Persons agreed not to pursue proposals to give the Court a discretionary power to decide whether or not to take up cases, a proposal rejected during the negotiations that led to the adoption of Protocol 14 to the ECHR. We endorse the Group of Wise Persons' conclusion that such a power would be "alien to the philosophy of the European human rights protection system" and would undermine the right of individual petition. tend to politicize the system and risk inconsistency, if not arbitrariness, in decision making.[14] We also agree with their assessment that it "would be perceived as a lowering of human rights protection."[15]

20. We also welcome the Group of Wise Persons' rejection of the proposal to establish regional courts of first instance. We concur with the views expressed that such courts would, among other things, raise "the risk of diverging standards and case law, whereas

[13] *Devlin v UK* (App. No. 29545/95); *Ryabykh v Russia* (App. No. 52854/99).

[14] Paragraph 42 of the Report of the Group of Wise Persons, November 2006, 2006 (CM 2006)88. Available at: https://wcd.coe.int/ViewDoc.jsp?id=998185&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

[15] Paragraph 33 of the Interim Report of the Group of Wise Persons, May 2006.

the essence of the Convention system is that uniform and coherent standards, collectively set and enforced should obtain throughout contracting states."[16]

Screening Body

21. We share the assessment of the Group of Wise Persons that the exponential increase in the number of individual applications, coupled with the backlog of cases pending before the Court, jeopardize its functioning and consequently the right of individual application.

22. It is widely agreed that the main challenges facing the Court are: screening quickly and effectively the very high proportion (90% or more) of applications received which are inadmissible under the current criteria, and handling in an effective and efficient manner the more than 60% of admissible applications that raise issues about which the Court's case law is clear, (known as "repetitive cases").

23. We are concerned at the statement contained in the Group of Wise Persons' Report that the Court should be "relieved" of manifestly inadmissible applications or repetitive cases which "distract" it from its essential role (paragraph 35).

24. The process of dealing with manifestly inadmissible cases is clearly burdensome. However, it is important to acknowledge that there is no way to prevent people from sending applications to the court. There is also no way around the fact that each application received by the Court will have to be separately thoroughly and effectively screened against the admissibility criteria. This takes time and resources and, arguably, would take more time and require even more resources if the Court were to apply the additional and complex admissibility criteria introduced into Article 35 of the ECHR by Protocol 14. [17] (We consider that, if it enters into force, the impact of the application of the new admissibility criteria set out in Protocol 14 on both human rights and the Court's productivity will need to be transparently assessed and monitored.)

25. As to repetitive cases – which make up a large part of the judgements on the merits issued by the Court – rather than being a "distraction", on the contrary, they are almost invariably indicative of a systemic problem within a state that needs to be addressed. If

[16] Paragraph 83 of the report of the Evaluation Group on the European Court of Human Rights, September 2001; paragraph 32 of the Interim Report of the Group of Wise Persons, May 2006; Joint Response to Proposals to Ensure the Future Effectiveness of the European Court of Human Rights, of 28 March 2003; paragraph 41 of the Report of the Group of Wise Persons, 15 November 2006.

[17] We continue to consider that the changes to the admissibility criteria set out in Protocol 14 to the ECHR, arrived at as a result of a last-minute compromise, were an unnecessary curtailment of the right of individual application, and were inimical to the aim of the last reform process because application of the new admissibility criteria is likely to be more time consuming and complex for the Registry and Court. We welcome Group of Wise Person's intent to ensure that reforms it recommends do not affect the substance of the right of individual application.

Friendly Settlements (to which both parties to the case consent) are not reached in these cases, measures must be taken to ensure that the Court can issue judgments on such cases within a reasonable time, and that these judgments are implemented, in a manner that ensures not only redress for the individual concerned, but also the resolution of any systemic problems from which they arise. With regard to repetitive cases, we believe that the expedited process for handling manifestly well-founded cases (by a Committee of three judges) set out in Article 8 of Protocol 14, which amends Article 28 of the ECHR, is one way to ensure their speedier resolution. If it is implemented, the effectiveness of this process will need to be transparently monitored and assessed.

26. We concur with the suggestion of the Group of Wise Persons that the effective and efficient screening of individual applications received by the court could be facilitated through the creation of a separate screening body, referred to as a Judicial Committee**,** within the Court. We welcome the recommendations that this group of judges, to be elected by the Parliamentary Assembly of the Council of Europe, would be independent, of high moral character and possess the requisite qualifications for appointment to judicial office and that the composition of this committee would be gender and geographically-balanced.[18] We also welcome the safeguard proposed by the Group of Wise Persons that would ensure that the Court could assume jurisdiction to review any decision of such a screening body, on its own motion.[19] We look forward with interest to further examination of the proposal to create a Judicial Committee to perform this task.

Application Forms

27. At present it is well established that a case can be introduced by letter, without using the Court's application form.[20] When a letter is used to initiate an application, the applicant is then asked to submit a completed application form, usually within 6 weeks.

28. We welcome the fact that the Court's application form is soon to be made available in electronic form.[21] Improving access for potential applicants (and their representatives) to the application form in this way is likely to increase the proportion of applications submitted within the appropriate time limit which incorporate all the requisite information. We recommend however, that measures be taken to ensure that the application form is made available not only in all the official languages of Council of Europe member states but also in other major languages used by individuals living in Council of Europe member states.

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[18] Paragraphs 53 and 54 of the Report of the Group of Wise Persons, 15 November 2006.

[19] Paragraph 64 of the Report of the Group of Wise Persons, 15 November 2006.

[20] See, *Practice Direction – Institution of Proceedings*, Directions 3, 4 & 7, available at: http://www.echr.coe.int/NR/rdonlyres/9F0B9646-3806-4814-A7CF-345304DCCDB2/0/PracticeDirectionsInstitutionOfProceedingsMarch2005.pdf.

[21] See Paragraph 60 of the Report of the Group of Wise Persons, 15 November 2006.

29. We would however oppose any recommendation which would impose a requirement that all the requisite information be submitted only *on the Court's application form.* Instead, we strongly urge that the Court should retain discretion on this point (as recommended by Lord Woolf[22]). We consider that a requirement that applications be lodged on the relevant form may bar effective access to the Court for some of the most vulnerable individuals. Even with the important development of the application form becoming available online, some people will find it difficult or impossible to access to the form. This may be because of a number of factors, for example: lack of access to the internet, including for those in detention, or the inability to speak a European language.

Pilot Judgments[23]

30. We agree with the Group of Wise Persons' analysis that the Court's development of a "pilot judgment" procedure is significant. It would apply to cases disclosing the existence within a state of a shortcoming which has resulted, or is likely to result, in the widespread violation of a human right guaranteed under the ECHR, and which may give rise to a number of well-founded applications being filed with the Court. We note that the Group of Wise Persons encourages the Court to use this procedure "as far as possible in future".

31. We welcome Rule 4 of Rules of the Committee of Ministers for the supervision of the execution of Judgments and the Terms of Friendly Settlements, adopted on 10 May 2006.[24] This rule requires the Committee of Ministers to prioritize the supervision of the execution of judgments where the Court has identified a systemic problem, in a manner which is not to the detriment of other priority cases, notably those where the violation established has caused grave consequences for the injured party. We consider that this will facilitate the rapid and effective implementation of such judgments. The rule should take into account the effects of the suspension of proceedings in similar cases pending before the Court.

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[22] *Review of the Working Methods of the European Court of Human Rights*, The Right Honourable Lord Woolf, December 2005. "The Court could, if it considered that this was necessary in the interests of justice, suspend time on receipt of the initial correspondence, and pending receipt of the properly completed application form. Such an extension would be as a matter of grace." (p. 22). Lord Woolf was invited by the Secretary General of the Council of Europe and the President of the European Court of Human Rights to make recommendations on steps that could be taken by the European Court of Human Rights to deal effectively and efficiently with its current and projected caseload.

[23] See further: *NGO Comments on the Group of Wise Persons' Interim Report – Further Observations on the Enforcement of European Court Judgments and Just satisfaction*, European Human Rights Advocacy Centre, Interights and the AIRE Centre, July 28, 2006.

[24] CM/Del/Dec(2006)963/4.1b, CM(2006)39 Addendum, available at https://wcd.coe.int/ViewDoc.jsp?id=999007&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75.

32. Because the suspension of the cases of similarly situated applicants can prejudice those applicants, we consider that it will be necessary for the Committee of Ministers not only to ensure the rapid execution of "pilot judgments", but also to take all possible measures to guarantee that the manner of implementation genuinely affords an effective remedy for similarly situated persons. In considering the effectiveness of the remedy, the state concerned and the Committee of Ministers should examine not only whether the measures proposed afford just compensation, but also whether such measures effectively address the systemic problem. In length of proceedings cases, for example this would likely include not only providing financial compensation to those whose rights have been violated *but also* include reviewing domestic structures for the administration of justice or enhancing judicial capacity and resources.

33. We welcome the fact that the Group of Wise Persons has recommended that time limits should be laid down, to be supervised by the Court, to ensure that "victims who have already applied to the Court, [whose applications remain "frozen" while the pilot case is heard and the resulting judgment implemented] do not have to wait indefinitely for just satisfaction".[25]

34. We would go further than the Group of Wise Persons' recommendations on "pilot judgments." Because the procedure is in its earliest stages, we strongly recommend that the Council of Europe should carry out comprehensive monitoring on the adequacy and timeliness of compliance with "pilot judgments." It should include consideration of the steps taken by the Committee of Ministers under its "priority supervision"[26] and those taken by the respondent state, as well as the impact of such judgments.

35. The monitoring process should seek to answer the following questions:

    - In what circumstances will the Court issue a "pilot judgment"?
    - What steps can be taken by a respondent state to implement a "pilot judgment"?
    - To what extent has a respondent state introduced measures that effectively address the systemic problem, as well as providing a remedy for the applicant?
    - What is the effect on similarly situated persons who have already lodged applications with the Court?
    - Within the domestic arena, what obstacles exist which may hamper effective implementation?
    - What measures can be taken by the Committee of Ministers to encourage or facilitate implementation of "pilot judgments"?
    - What assistance can be provided by other Council of Europe bodies, such as the Council of Europe's Commissioner for Human Rights and the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE)?

[25] Paragraph 105 of the Report of the Group of Wise Persons, 15 November 2006.

[26] Rule 4 of the Rules of the Committee of Ministers for the supervision of the execution of Judgments and the Terms of Friendly Settlements, adopted on 10 May 2006.

- What are the appropriate time limits for implementing "pilot judgments"?

Awards of Just Satisfaction

36. We oppose the proposal of the Group of Wise Persons to refer decisions on awards of compensation back to the state concerned.[27]

37. We consider that this approach:

    (a) increases the likelihood of further and lengthy delay in the determination of compensation decisions. This would be particularly regrettable given that the individuals effected would already have had to wait a number of years for a judgment acknowledging a violation of their human rights;
    (b) increases the risk of sharply differing standards being applied to awards of just satisfaction in different Council of Europe member states; and
    (c) potentially places an additional monetary burden on victims of violations of the ECHR, who might be required to pay filing fees and lawyers' fees, as well as other costs incurred in such proceedings. We believe that it would inappropriate to ask a successful applicant, in respect of whom the Court has established a violation of the Convention, to bear any further expenses in determining the amount of compensation for violations committed by the state concerned.

38. We also note that implementation of this proposal would require each member state to adopt the necessary laws and procedures which would grant national courts jurisdiction to consider such cases. The information provided to date by member states related to the implementation of Recommendation (2002) 2 indicates, that not all member states have procedures for the reopening or re-examination of all cases (civil and criminal), even following a judgment of the Court.[28]

39. We remain, however, strongly supportive of the proposal made by Lord Woolf to establish a just satisfaction unit within the Court's Registry which would carry out the task of assessing just satisfaction claims.[29] We believe that in this way, the Court would be able to rapidly develop the expertise to deal with such claims in an expeditious and logically consistent manner.

[27] Paragraph 96 of the Report of the Group of Wise Persons, 15 November 2006.

[28] See CDDH (2006) 008 at pages 13-14.

[29] Review of the Working Methods of the European Court of Human Rights, December 2005, at page 40. This report is available by a link on the Court's web site http://www.echr.coe.int/ECHR/

Advisory Opinions

40. We note the Group of Wise Persons' proposal to empower the Court to give Advisory Opinions at the request of national courts.[30] We consider that this has the potential to assist national courts in ensuring better implementation of the ECHR at the national level and reducing the number of applications submitted to the Court on the issue concerned. While our commentary on the Group of Wise Persons' Interim Report endorsed the proposal, on further reflection we consider that the concept raises a number of important issues that require its further elaboration and development. First, it is currently unclear in what circumstances an Advisory Opinion could be sought. Second, we suggest that the questions posed by the referring court must be sufficiently precise to ensure that the process of giving an Advisory Opinion is meaningful and consistent with the overall approach of the Court. Third, it is vital that would-be applicants would be able to participate effectively in the process of seeking an Advisory Opinion. We would therefore propose that legal aid should be available to would-be applicants whose cases are submitted to the Court for such an Opinion. Fourth, we also consider that it would be necessary to ensure that third parties are allowed to intervene in such cases, whether or not they had previously intervened in the domestic proceedings. Fifth, we would recommend that an Advisory Opinion should be binding as to the interpretation of the Convention on all member states. Otherwise there is a substantial risk that member states might choose not to follow the Court's opinion and thereby undermine its authority. Finally, we would be concerned if the new admissibility criteria set out in Protocol 14 to the ECHR were to be applied to any applications arising following a national court's receipt of such an Advisory Opinion; we would consider that such applications would merit a full review by the Court of the manner in which the national court had applied the Advisory Opinion in the case at issue.

IV. Concerning the institutional status of the Court and the judges

Nomination and Election of Judges

41. We welcome proposals of the Group of Wise Persons to enhance the reputation of the Court by strengthening the process by which judges of the Court are nominated and elected.

42. We consider that changes should be made to the nomination process in many states (including ensuring that they are open and transparent) and to enhance the Parliamentary Assembly's election process. Doing so would enhance the credibility and effectiveness of the Court, and improve public confidence in Europe's primary institution for the protection of human rights.

[30] Paragraphs 81-86 of the Report of the Group of Wise Persons, 15 November 2006.

43. We *endorse* in particular the proposals to require that the professional qualifications and knowledge of languages of candidates are taken into consideration during the election of judges by the Parliamentary Assembly of the Council of Europe (PACE).[31] We also consider that knowledge and experience in the application of international human rights law should be taken into account.

44. We welcome the proposal of the Group of Wise Persons for the establishment of a mechanism whereby PACE would consider, during the election process, the opinion of a committee of prominent persons on the suitability of candidate judges for the Court.[32] More detailed recommendations in regard to the nomination and election of judges to the Court are set out in **Annex B**, attached.

45. Efforts should be taken to encourage a gender balance and diversity at the Court at all stages of the nomination and election process.

Budget

46. We consider that the Court has been hampered by a lack of sufficient human and financial resources. This is true despite the fact that "no other international court is confronted with a workload of such magnitude while having at the same time such a demanding responsibility for setting the standard of conduct required to comply with the Convention."[33] While we note that the budget of the Court has been increased, we are concerned that this sum was taken from the existing budget of the Council of Europe which reportedly had zero real growth in recent years. This has meant that the increase of the Court's budget has come at the expense of funding for other Council of Europe activities, including inter-governmental and targeted cooperation activities. We consider that implementing cuts in one part of the Council of Europe's human rights budget to finance improvements in the performance of the Court is short-sighted, since a reduction on other human rights activities (for example awareness raising, etc.) is likely to increase the burden on the Court in the long run. We therefore call on the Council of Europe member states to increase the budget of the Council of Europe overall, including the budget allocated to the Court.

Making the System more flexible as regards the conditions for reforming it – Establishing a Statute for the Court

47. We welcome in principle, but with some reservations, the proposal to empower the Council of Europe's Committee of Ministers to amend certain "Operating Procedures" of the Court, so as to obviate the need for the time consuming process of drafting, adoption

[31] Paragraphs 117-118 of the Report of the Group of Wise Persons, 15 November 2006.
[32] It is proposed that the Committee would be composed of former members of the Court, current and former members of national supreme or constitutional courts and lawyers with acknowledged competence.
[33] Paragraph 37 of the Report of the Group of Wise Persons, 15 November 2006.

and ratification of additional Protocols for such purposes. We consider that this could provide more flexibility.

48. However, we would underscore that, if this proposal were to be further considered, a precise agreement of the contents of the Statute would have to be agreed in a transparent process. We agree with the Group of Wise Persons on the list of matters, now determined in provisions of the ECHR, that should be explicitly excluded from inclusion within any instrument that could be modified by any "simplified amendment procedure.[34] In addition, if Protocol 14 were to enter into force, we consider in addition that the new Article 27 (as would be amended by Article 7 of Protocol 14) and the new Article 28 (as would be amended by Article 8 of Protocol 14) should also be excluded from any simplified amendment procedure since, it is at this stage of the scrutiny of applications, that vulnerable applicants may risk losing the protection of the Convention organs if the rigour of the single judge and Committee procedures were to be significantly reduced.

49. Furthermore, the granting of such a power to the Committee of Ministers should be accompanied by provisions requiring transparency and consultation with key stakeholders including the views of Court users, civil society and National Institutions for the Promotion and Protection of Human Rights, before amendments to operating procedures are agreed. We also endorse the *caveat* proposed by the Group of Wise Persons that any such changes should be solely at the Court's own initiative.[35]

V. Consultation

50. We consider it incumbent on the Council of Europe and each of the 46 member states to ensure that the public (and in particular Court users, civil society and national human rights institutions) is informed about the on-going discussions on reform of the Court. Past and future applicants to the Court have an interest in ensuring its future at least equal to that of member states. Representatives of civil society across the Council of Europe region should be consulted, and their views taken into account before any further reforms to the Court are made.

Amnesty International

European Human Rights Advocacy Centre (EHRAC)

Human Rights Watch

INTERIGHTS

Justice

Liberty

Redress

The AIRE Centre

[34] The suggested list of exclusions is set out in Paragraph 49 of the Report of the Group of Wise Persons, 15 November 2006.
[35] Paragraph 48 of the Report of the Group of Wise Persons, 15 November 2006.

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III. SUMMARY

Appointment, terms of reference and work of the Group

1 The Heads of State and Government of the Council of Europe member states, meeting in Warsaw on 16 and 17 May 2005, decided in their Action Plan to set up a Group of Wise Persons to consider the long-term effectiveness of the ECHR control mechanism, including the initial effects of Protocol No. 14 and the other decisions taken in May 2004. They asked them to submit, as soon as possible, proposals going beyond these measures, while preserving the basic philosophy underlying the Convention.

2 At their 927th meeting, on 25 May 2005, the Ministers' Deputies entrusted their Chair, in conjunction with the Chairman of the European Court of Human Rights Liaison Committee, with carrying out the necessary consultations in order to present at the earliest opportunity proposals regarding the composition of the Group of Wise Persons set up by the Summit to draw up an overall strategy to ensure the long-term effectiveness of the Convention.

3 At their 937th meeting, on 14 September 2005, the Deputies decided that the Group of Wise Persons would comprise the following persons:

— Mr Rona AYBAY, Turkey,
— Ms Fernanda CONTRI, Italy,
— Mr Marc FISCHBACH, Luxembourg,
— Ms Jutta LIMBACH, Germany,
— Mr Gil Carlos RODRIGUEZ IGLESIAS, Spain,
— Mr Emmanuel ROUCOUNAS, Greece,
— Mr Jacob SÖDERMAN, Finland,
— Ms Hanna SUCHOCKA, Poland,
— Mr Pierre TRUCHE, France,
— Lord WOOLF of BARNES, United Kingdom,
— Mr Veniamin Fedorovich YAKOVLEV, Russia.

4 The Ministers' Deputies invited the Secretary General of the Council of Europe to provide the Group of Wise Persons with the appropriate assistance and asked the Group to submit an interim report on its work to the 116th session of the Committee of Ministers in May 2006.

5 On 18 October 2005, Mr Rodriguez Iglesias was elected Chair of the Group. On 9 November 2005, the Group appointed Mr Kurt Riechenberg, law clerk at the Court of Justice of the European Communities, as its secretary.

6 After being set up on 18 October 2005, the Group held meetings on 9 November and 7 December 2005 and on 9 January, 6/7 February, 6 March, 30/31 March, 24/25 April, 12 May, 14/15 June, 11/12 September and 4/5 October 2006.

7 The Group drew up an interim report which was presented by its Chair to the Committee of Ministers on 19 May 2006 [document CM (2006) 88]. This report incorporates much of the content of that document.

8 The Group was assisted in its work by Mr Patrick Titiun, Deputy Head of the Legal Advice Department, and Ms Susan Bradbury, Administrative Assistant, who were placed at its disposal by the Secretary General of the Council of Europe. The Group invited the Registrar of the Court, Mr Erik Fribergh, to attend its meetings.

9 In the course of its work, the Group:

— gave hearings to Mr Luzius Wildhaber, President of the European Court of Human Rights, Ms Maud De Boer Buquicchio, Deputy Secretary General of the Council of Europe, and Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe;

— held a meeting with NGOs, namely Amnesty International and the AIRE Centre (at their request);

— held a meeting with members of the Court, at which they reported on their work to implement the four main innovations introduced by Protocol No. 14, namely the single judge/rapporteur system, the new competence of committees under Article 28 amended, the new admissibility criterion provided for in Article 35 amended, and the new "admissibility/merits" procedure under Article 29 amended;

— held a meeting with the staff of the Registry, the main focus being on how cases are processed and prepared for hearing in the divisions and how the committees' decisions are prepared;

— gave a hearing to Mr Roeland Böcker, Chair of the Steering Committee for Human Rights.

10 The Group also considered a large amount of written material, in particular:

— resolutions and recommendations of the Parliamentary Assembly and the Committee of Ministers;

— documents produced by the Court, in particular the report by its committee on working methods;

— the report drawn up under the authority of Lord Woolf entitled "Review of the working methods of the European Court of Human Rights";

— the comments by Mr Hammarberg, Commissioner for Human Rights of the Council of Europe, following the interim report.

11 The Chair of the Group also met representatives of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe on 7 June 2006. The committee members expressed the wish that a link be established in the final report between the work of the Court and the tasks performed by other Council of Europe bodies (in particular the Parliamentary Assembly's monitoring work). They also raised the issue of the independence of judges.

12 They further expressed the wish that the filtering body mentioned in the interim report should not be a replica of the old European Commission of Human Rights.

13 Lastly, the Group took note of the many comments made following the presentation of the interim report.

I. THE CONTEXT

Human rights protection in the Council of Europe framework

14 It is important to begin by reiterating the fundamental importance attaching to human rights protection in the Council of Europe framework and the diversity of the means employed to achieve this, as it is in this context that the role and long-term effectiveness of the judicial control must be assessed.

15 The enlargement of the Council of Europe and the accession to the European Convention on Human Rights (hereinafter "the Convention") of the central and east European democracies have contributed to stability in the whole of Europe. The Convention and the Court have become genuine pillars in the protection of human rights and fundamental freedoms. For its part, the Committee of Ministers plays an important role in monitoring the execution of judgments.

16 Since the Convention forms part of the national law of the member states, the remedies available at national level must be effective and well known to their citizens. Indeed, they constitute the first line of defence of the rule of law and human rights. Initially, it is for the national courts to protect human rights within their domestic legal systems and to ensure respect for the rights safeguarded by the Convention. The principle of subsidiarity is one of the cornerstones of the system for protecting human rights in Europe.

17 In addition, the Council of Europe has set up many other institutions and bodies in the human rights field. These have proved their commitment and effectiveness. Not only is there the Commissioner for Human Rights. The European Committee for the Prevention of Torture, the European Commission against Racism and Intolerance, the Advisory Committee on the Framework Convention for the Protection of National Minorities and the European Committee on Social Rights also play important complementary roles.

18 It should also be remembered that the Council of Europe has a number of information offices which were set up pursuant to Committee of Ministers Resolution (99)9.

19 The Group noted with great interest the lessons drawn from the Warsaw information office project. In view of the success of this innovative initiative, the functions of such offices could be expanded and strengthened. In particular, they could provide potential applicants with information on admissibility issues and familiarise them with the existing domestic remedies and other, non-judicial remedies. These offices could assist in making citizens more aware of how the Convention operates and so save them from initiating proceedings unnecessarily or prematurely, without exhausting domestic remedies.

20 Furthermore, in many member states, non-judicial institutions such as ombudsmen, petition committees and human rights institutions play or could play a significant role in providing information on, and promoting, human rights.

21 Lastly, civil society plays a significant part in human rights protection. Partnership with civil society has always been important in the Council of Europe. It is reflected inter alia in the participation of many non-governmental organisations in the Organisation's activities. These play a leading role in the field of human rights protection which it is important to maintain and expand.

The judicial control mechanism

22 The setting up of a Court whose jurisdiction is binding on all the States Parties to the Convention represents the basic mechanism for supervising compliance by the Contracting Parties with the rights recognised in the Convention.

23 The right of individual application enshrined in Articles 34 and 35 of the Convention is the most distinctive feature of this control mechanism. The Court is the only international court to which any individual, non-governmental organisation or group of individuals have access for the purpose of enforcing their rights under the Convention. The right of individual application is today both an essential part of the system and a basic feature of European legal culture in this field.

24 This protection mechanism confers on the Court at one and the same time a role of individual supervision and a "constitutional" mission. The former consists in verifying the conformity with the Convention of any interference by a state with individual rights and freedoms and making findings as

to any violation by the respondent state. Its other function leads it to lay down common principles and standards relating to human rights and to determine the minimum level of protection which states must observe.

25 The Group stresses that the credibility of the human rights protection system depends to a great extent on execution of the Court's judgments. Full execution of judgments helps to enhance the Court's prestige and the effectiveness of its action and has the effect of limiting the number of applications submitted to it.

The explosion in the number of cases

26 The exponential increase in the number of individual applications is now seriously threatening the survival of the machinery for the judicial protection of human rights and the Court's ability to cope with its workload. This dramatic development jeopardises the proper functioning of the Convention's control system. This trend has been clear since the entry into force of Protocol No.11 and the abolition of the European Commission of Human Rights.

27 It should be stressed that over 90% of cases brought before the Court are declared inadmissible. At the end of September 2006, 89,000 cases were pending before the Court. Of this total, 24,650 individual communications are awaiting "regularisation" as applications. Many of these cases have been pending for a very long time. In addition, out of the total mentioned above, 21,900 are chamber cases.

28 This situation, which, despite the various measures taken by the Court, is likely to get worse, is extremely serious. If nothing is done to resolve the problem, the system is in danger of collapsing. It is the Group's responsibility, therefore, to recommend effective measures to remedy this situation on a permanent basis, thus making it possible to ensure the long-term effectiveness of the Convention's control mechanism. Achieving this is the main purpose of this report.

Protocol No. 14

29 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. It seeks in particular to reduce the time spent by the Court on manifestly inadmissible and repetitive cases.

30 The changes introduced by Protocol No. 14 will no doubt be extremely useful. The Group can only add its voice to those who have already stressed the need for this protocol to enter rapidly into force.

31 The Group is pleased to note that only 1 more instrument of ratification is now needed for this protocol to enter into force.

32 It will not be possible to make a final assessment of the effects of the entry into force of Protocol No. 14 until it has been in operation for some time. However, it can already be anticipated that the reforms it introduces will not be sufficient to enable the Court to find any lasting solution to the problem of congestion. According to estimates produced within the Court, the increase in productivity resulting from the implementation of this protocol might be between 20 and 25%.

33 The Group expects Protocol No. 14 to be rapidly implemented. It takes this protocol as a starting point. Its proposals go further than the protocol and are designed to ensure that the Court is able to perform its specific functions fully and on a long-term basis.

34 Lastly, although the Group's 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.

A Court able to perform its essential functions

35 In accordance with Article 32, paragraph 1 of the Convention, "the jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto". The Group believes that the Court should be relieved of a large number of cases which should not "distract" it from its essential role. Manifestly inadmissible or repetitive cases, in particular, need to be considered in this connection.

36 It is important, therefore, to set out measures which will enable the Court to concentrate on its function as the custodian of human rights by relieving it of a whole body of litigation which places an unnecessary burden on it. The raison d'être of this high-level European Court is to monitor states' compliance with human rights. Its authority and effectiveness will be all the greater if it is able to concentrate on interpretation and application of the Convention through decisions on the merits given within a reasonable time.

37 There is a fundamental conflict between the size of the population who have access to the Court with the right to lodge an individual application and the Court's responsibility as the final arbiter in human rights matters for so many different states. No other international court is confronted with a workload of such magnitude while having at the same time such a demanding responsibility for setting the standards of conduct required to comply with the Convention.

II. THE PROPOSED REFORM MEASURES

Introduction

38 With a view to proposing reforms based on the foregoing considerations, the Group examined a range of measures relating notably to the functioning of the judicial control system established by the Convention and to decentralised actions at the level of member states. The combined effect of the different proposals adopted should ensure the efficient long-term functioning of the control mechanism.

39 The measures which the Group is proposing concern the structure and modification of the judicial machinery, the relations between the Court and the States Parties to the Convention, alternative (non-judicial) or complementary means of resolving disputes and the institutional status of the Court and judges. They are arranged under ten headings:

1. Greater flexibility of the procedure for reforming the judicial machinery
2. Establishment of a new judicial filtering mechanism
3. Enhancing the authority of the Court's case-law in the States Parties
4. Forms of co-operation between the Court and the national courts - Advisory opinions
5. Improvement of domestic remedies for redressing violations of the Convention
6. The award of just satisfaction
7. The "pilot judgment" procedure
8. Friendly settlements and mediation
9. Extension of the duties of the Commissioner for Human Rights
10. The institutional dimension of the control mechanism.

40 The Group also considered other possible lines of reform which it finally decided not to pursue.

41 Thus, it thought that the setting up of "regional courts of first instance" would entail a risk of diverging case-law and be costly. An innovation of this kind would also be likely to raise a large number of procedural issues.

42 The Group also decided not to pursue the idea of giving the Court a discretionary power to decide whether or not to take up cases for examination (a system analogous to the *certiorari* procedure of the United States Supreme Court). It felt that a power of this kind would be alien to the philosophy of the European human rights protection system. The right of individual application is a key component of the control mechanism of the Convention and the introduction of a mechanism based on the *certiorari*

procedure would call it into question and thus undermine the philosophy underlying the Convention. Furthermore, a greater margin of appreciation would entail a risk of politicising the system as the Court would have to select cases for examination. The choices made might lead to inconsistencies and might even be considered arbitrary.

43 The Group is fully aware that implementation of the ideas and proposals put forward in this report is not budget-neutral. It feels, however, that it is essential to accept the additional cost involved in view of the importance of the issue at stake, which is nothing less than ensuring the long-term effectiveness of the control mechanism of the Convention. The Group's discussions have therefore been structured around three main objectives, the first being to harmonise the principles underpinning the Convention system, the second to ensure its long-term effectiveness and the third to guarantee its budgetary viability.

A. Concerning the structure and modification of the judicial machinery

1. Greater flexibility of the procedure for reforming the judicial machinery

44 The Group believes that it is essential to make the judicial system of the Convention more flexible. This aim could be achieved through an amendment to the Convention authorising the Committee of Ministers to carry out reforms by way of unanimously adopted resolutions without an amendment to the Convention being necessary each time.

45 This method has been used on numerous occasions in the European Communities. One notable example was the setting up of the Court of First Instance. The Treaty of Nice subsequently introduced the possibility for the Council to create "judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific areas". It was this means that was employed to set up the new European Union Civil Service Tribunal. In addition, under Article 245, second paragraph, of the treaty, the provisions of the Statute of the Court of Justice of the European Communities, with the exception of Title I, may also be amended by the Council acting unanimously. This reform facilitated the adjustments to the Community judicial system that were deemed necessary having regard to the trends in litigation.

46 Such a method could prove effective in the long term as a tool for making the Convention system more flexible and capable of adapting to new circumstances. The Group notes, however, that this method cannot apply to the substantive rights set forth in the Convention or to the principles governing the judicial system. Furthermore, any amendment would have to be subject to the Court's approval.

47 The idea underlying the proposal is to create a system structured around three levels of rules governing the system, viz:

— first of all, the Convention itself and its protocols, for which the amendment procedure would remain unchanged;

— secondly, the "statute" of the Court, ie a legal level whose content would need to be defined, comprising provisions relating to the operating procedures of the Court (and the "Judicial Committee" – see paragraphs 51 et seq);

— lastly, texts such as the Rules of Court, which could be amended by decisions taken by the Court itself.

48 The innovation suggested by the Group is the establishment of a "second" level of rules: the statute. The provisions of a statute could be amended by the Committee of Ministers, with the Court's approval.

49 If the European Union model were to be followed, the statute would be appended to the Convention and would form part of it, but, in accordance with a provision of the Convention itself, its provisions, with some exceptions, would be subject to a "simplified" amendment procedure, ie by decision of the Committee of Ministers with the Court's agreement. The statute of the Court should include all the provisions of section II of the Convention (and those governing the operation of the Judicial Committee,

see paragraphs 51 et seq) with the exception of the following provisions, which could either be kept in the body of the Convention or included in the statute, but would be explicitly excluded from any possibility of “simplified” amendment:

— Art. 19 (Establishment of the Court)
— Art. 20 (Number of judges)
— Art. 21 (Criteria for office)
— Art. 22 (Election of judges)
— Art.23 (Terms of office and dismissal)
— Art. 24, paragraph 1 (Registry)
— Art. 32 (Jurisdiction of the Court)
— Art. 33 (Interstate cases)
— Art. 34 (Individual applications)
— Art. 35, paragraph 1 (Admissibility criteria)
— Art. 46 (Binding force and execution of judgments)
— Art. 47 (Advisory opinions)
— Art. 51 (Privileges and immunities of judges)

50 The criterion governing this choice is the removal from the “simplified” amendment procedure of provisions defining key institutional, structural and organisational elements of the judicial system of the Convention, namely the establishment of the Court, its jurisdiction and the status of its judges.

2. Establishment of a new judicial filtering mechanism

51 The Group notes that Protocol No. 14 opens up significant possibilities for more efficient processing of cases by assigning new responsibilities to committees of three judges and by introducing the figure of the single judge. The Court is currently studying ways of implementing these possibilities, in particular a system whereby a number of judges might perform these new functions on an annual rotating basis.

52 The Group, whose proposals are aimed at the long term, beyond Protocol No. 14, recommends the setting up of a judicial filtering body which would be attached to, but separate from the Court, in order to guarantee, on the one hand, that individual applications result in a judicial decision and, on the other, that the Court is relieved of a large number of cases, enabling it to focus on its essential role. This body would be called the “Judicial Committee”. It would, in particular, perform functions which, under Protocol No. 14, are assigned to committees of three judges and single judges.

53 The members of the Judicial Committee would be judges enjoying full guarantees of independence. Their number should be less than the number of member states. It would be decided – and could be modified – by the Committee of Ministers on a proposal from the Court. The composition of the Judicial Committee should reflect a geographical balance as well as a harmonious gender balance and should be based on a system of rotation between states. The term of office of its members would be limited in duration in accordance with rules to be laid down by the Committee of Ministers.

54 The members of the Judicial Committee, like those of the Court, should be of high moral character and possess the qualifications required for appointment to judicial office. They would be subject to the same requirements as the members of the Court with regard to impartiality and meeting the demands of a full-time office. Candidates’ professional qualifications and knowledge of languages should be assessed by the Court in an opinion prior to their election by the Parliamentary Assembly.

55 In principle, the Judicial Committee would have jurisdiction to hear:

— all applications raising admissibility issues;

— all cases which could be declared manifestly well-founded or manifestly ill-founded on the basis of well-established case-law of the Court.

56 The power of the Judicial Committee to hear cases on the merits would also entail, where such cases are concerned, the exercise of the same powers as the Court in respect of just satisfaction (in this connection, see paragraphs 94 et seq).

57 Institutionally and administratively, the Judicial Committee would come under the Court's authority. The Group considers that, in order to ensure harmonious co-operation between the two bodies, the Chair of the Judicial Committee should be a member of the Court appointed by the Court for a set period.

58 For the same reason, the Judicial Committee should draw on the support of the Registry of the Court. It would be useful if a section of the Registry were assigned to the Committee. This section could be headed by a deputy registrar. There should be no rigid separation, however, so that it is possible to make optimum use of the Registry's human resources by placing its staff members' professional and linguistic skills at the service of both bodies.

59 As is already the case at present, each application should first be examined by the Registry, which would then refer it either to the Judicial Committee where it appears in principle to fall within its jurisdiction, or, if not, to the Court.

60 The Group considers that, if effective filtering of the many inadmissible applications is to be achieved, it is important to ensure that applications provide all the information necessary for assessing their admissibility within the time-limit set by the Convention and that the time-limit is strictly applied, save in exceptional circumstances where the Court or the Judicial Committee might give leave for an application to be lodged out of time. The Group is pleased to note that the Court has devised an application form which will soon be available in electronic form. When the Registry receives an application which seems admissible but does not contain all the information needed to assess its admissibility, it should quickly make the form available to the applicant and draw his or her attention to the need to submit an application in the proper form within the time-limit set by the Convention.

61 The Judicial Committee could refer a case to the Court either if it considered that it lacked jurisdiction or if it considered that the case raised admissibility or substantive issues which would warrant consideration by the Court.

62 The Court could also refer a case to the Judicial Committee if it considered that the case fell within the jurisdiction of the latter. It could, however, decide to keep the case if it deemed this preferable in the interests of the proper administration of justice, for example for reasons of procedural economy.

63 The Group believes that it would be inappropriate to provide for the possibility of appealing against the decisions of the Judicial Committee. Providing for such a possibility would place an additional burden on the control system and jeopardise the aim of easing the Court's workload.

64 However, the Court should be given a special power allowing it, of its own motion, to assume jurisdiction to review any decision adopted by the Judicial Committee. This procedure could be initiated by the President of the Court or by the Chair of the Committee (him/herself a member of the Court).

65 The decisions of the Judicial Committee should, in principle, be taken by benches of three judges. However, since the Judicial Committee would perform, among others, functions which, under Protocol No. 14, are assigned to a single judge, the Group considers it appropriate that provision should also be made for manifestly inadmissible cases to be heard by a single judge.

B. Concerning the relations between the Court and the States Parties to the Convention

3. Enhancing the authority of the Court's case-law in the States Parties

66 The dissemination of the Court's case-law and recognition of its authority above and beyond the judgment's binding effect on the parties would no doubt be important elements in ensuring the effectiveness of the Convention's judicial control mechanism.

67 It was with this in mind that, in the interim report, the Group referred to the possibility of making certain recommendations on "*judgments of principle*".

68 After discussing the matter in greater depth, the Group believes that it would be difficult to arrive at a precise definition of this category of judgments. Furthermore, it is not always possible to identify in advance all the cases that might give rise to judgments of principle.

69 The Group therefore does not make any proposal as to a specific procedure for dealing with such cases. It merely recommends that judgments of principle – like all judgments which the Court considers particularly important – be more widely disseminated.

70 The authority of the Court's case-law could also be enhanced through judicial co-operation with national courts. This aspect is dealt with in paragraphs 76 et seq.

71 The Group considers that national judicial and administrative institutions should be able to have access to the case-law of the Court in their respective language. This would assist them in identifying any judgments which might be relevant to deciding the cases before them.

72 In the Group's view, responsibility for translation, publication and dissemination of case-law lies with the member states and their competent bodies. Each country should make its own arrangements while taking due account of the importance of these texts.

73 On the other hand, it is for the Court to decide, as is already the case, which judgments to publish in full (or in summary form, as the case may be, including judgments on the admissibility of applications) and to ensure a structured presentation of these documents. Regular production of handbooks or other summaries in languages other than the Council of Europe official languages, in hard copy and/or in electronic form, might also constitute a useful means of dissemination.

74 These publications should be distributed as widely as possible, particularly within public institutions such as courts, investigative bodies and prison administrations, and non-state entities such as bar associations and professional organisations. Law faculties should also figure among the most important recipients of these publications. The basic principles of international and European law should be compulsory subjects in both secondary and university-level education.

75 In this connection, the Group emphasises the importance of implementing Committee of Ministers Recommendation (2002) 13 and Resolution (2002)58 of 18 December 2002, on the publication and dissemination in the member states of the text of the Convention and the case-law of the European Court of Human Rights.

4. Forms of co-operation between the Court and the national courts – Advisory opinions

76 The Group paid close attention to the relations between the Court and the national courts. The latter have responsibility for protecting human rights by upholding the Convention within their sphere of competence.

77 It should be noted in this connection that the national courts are called upon in particular to guarantee the effectiveness of domestic remedies and, where appropriate, the award of just satisfaction and proper execution of the Court's judgments. The Group therefore recommends that the Council of Europe continue and expand as far as possible its activities relating to human rights training for national judges.

78 The role of the member states' highest courts in applying the Convention is of paramount importance. The Group notes with satisfaction that the Court is maintaining and expanding its contacts with these courts. It emphasises the usefulness of those contacts and the importance of maintaining and even strengthening them.

79 The Group studied the possibility of institutionalising the links between the Court and the highest courts in the member states.

80 In this connection, the introduction of a preliminary ruling mechanism on the model of that existing in the European Union was discussed. However, the Group reached the conclusion that the EU system is unsuitable for transposition to the Council of Europe. The preliminary ruling mechanism represents an alternative model to the judicial control established by the Convention, which requires domestic remedies to be exhausted. The combination of the two systems would create significant legal and practical problems and would considerably increase the Court's workload.

81 On the other hand, the Group considers that it would be useful to introduce a system under which the national courts could apply to the Court for advisory opinions on legal questions relating to interpretation of the Convention and the protocols thereto. This is an innovation which would foster dialogue between courts and enhance the Court's "constitutional" role.

82 Requests for an opinion would always be optional for the national courts and the opinions given by the Court would not be binding.

83 The rules governing this category of advisory opinions should differ from those governing opinions given at the request of the Committee of Ministers, which are provided for under Article 47 of the Convention. Opinions given at the request of a national court should not be subject to the restrictions laid down in paragraph 2 of that provision.

84 The Group also believes that, to enhance the judicial authority of this type of advisory opinion, all the States Parties to the Convention should have the opportunity to submit observations to the Court on the legal issues on which an opinion is requested.

85 The Group is aware of the repercussions which the proliferation of requests for opinions might have on the Court's workload and resources, since the requests for opinions and the member states' observations would also need to be translated. In addition, providing such opinions would not be the Court's principal judicial function. Accordingly, the Court's new advisory jurisdiction should be subject to strict conditions.

86 It is proposed in this connection that:

a) only constitutional courts or courts of last instance should be able to submit a request for an opinion;

b) the opinions requested should only concern questions of principle or of general interest relating to the interpretation of the Convention or the protocols thereto.

c) the Court should have discretion to refuse to answer a request for an opinion. For example, the Court might consider that it should not give an answer in view of the state of its case-law or because the subject-matter of the request overlaps with that of a pending case. It would not have to give reasons for its refusal.

5. Improvement of domestic remedies for redressing violations of the Convention

87 The Group considers that, to ensure effective judicial protection of the rights secured by the Convention, domestic remedies for redressing violations of those rights should be improved.

88 The length of proceedings in civil, criminal and administrative cases, which is one of the main sources of litigation before the Court, highlights the need for such an improvement. Registry statistics show that the relevant cases represent a considerable workload for the Court. It has been estimated that this category of cases accounted for 25% of all judgments delivered in 2005.

89 One of the reasons for this profusion of cases is the fact that the majority of states do not have domestic procedures for redressing the damage resulting from the length of proceedings. The same question arises with regard to other violations, such as excessive length of detention pending trial, which is prohibited by Article 5, paragraph 3 of the Convention.

90 Several countries have introduced legislative, judicial and other machinery to remedy this type of shortcoming. The purpose of these solutions is to enhance the subsidiary nature of the central control mechanism by giving potential applicants satisfaction at domestic level before they submit an application to the Court.

91 Provided it is effective, the introduction of such a mechanism at domestic level would relieve the Court of a considerable number of cases. Persons seeking justice would not need to apply to the Court to obtain redress. In accordance with the rule of subsidiarity, it would be for the States Parties to pass appropriate legislation. States should, however, comply with a number of uniform criteria which can be derived from the Court's case-law.

92 Indeed, in a Grand Chamber judgment (cf SCORDINO v. Italy No 1 of 29 March 2006 – no 183), the Court set out the guidelines to be adopted:

- a combination of two types of remedy, one designed to expedite the proceedings, the other to afford compensation;

- in the latter case, there is a margin of appreciation depending, inter alia, on the standard of living in the country concerned;

- an application for compensation must remain an effective, adequate and accessible remedy. It must comply with the reasonable-time requirement;

- the same applies to the execution of the decision;

- the applicable procedural rules may not be exactly the same as for ordinary applications for damages;

- procedural and registration costs must not significantly reduce the compensation requested;

- where the national court has not afforded appropriate and sufficient "redress", the applicants can still claim to be "victims" and obtain compensation from the Court for pecuniary and non-pecuniary damage and the payment of costs and expenses.

93 Going beyond Recommendation (2004) 6 of the Committee of Ministers to member states on the improvement of domestic remedies, a Convention text should be introduced placing an explicit obligation on the States Parties to introduce domestic legal mechanisms consistent with the criteria noted above to redress the damage resulting from any violation of the Convention, and especially those resulting from structural or general shortcomings in a state's law or practice.

6. The award of just satisfaction

94 The Group considers that changes to the rules laid down in Article 41 of the Convention are necessary. The proposed reform would concern the function assigned both to the Court and to the Judicial Committee, which, in cases where it was competent to find a violation of the Convention, would exercise the same powers as the Court in this regard. The proposal is based on the principle of subsidiarity and is inspired by a concern to relieve the Court and the Judicial Committee of tasks which could be carried out more effectively by national bodies. This would apply in particular where expert reports were needed owing to the factual complexity of a case.

95 The question does not arise where the Court or, where appropriate, the Judicial Committee, finds a violation of the Convention but considers that there are no grounds for awarding compensation to the

victim, in particular because full reparation is possible or because the judgment finding the violation constitutes sufficient reparation in itself.

96 On the other hand, where the Court or, where appropriate, the Judicial Committee holds that the victim must be awarded compensation, it is proposed that the general rule should be that the decision on the amount of compensation is referred to the state concerned. However, the Court and the Judicial Committee would have the power to depart from this rule and give their own decision on just satisfaction where such a decision is found to be necessary to ensure effective protection of the victim, and especially where it is a matter of particular urgency.

97 Where the decision on the amount of compensation is referred to the state, it should discharge this obligation within the time-limit set by the Court or the Judicial Committee.

98 It would be for the state to determine the arrangements for affording just satisfaction while complying with the following requirements:

- each state should designate a judicial body with responsibility for determining the amount of compensation and inform the Committee of Ministers of the Council of Europe of the body so designated;

- the progress of the procedure should not be hindered by unnecessary formalities or the charging of unreasonable costs or fees.

99 Lastly, the determination of the amount of compensation should be consistent with the criteria laid down in the Court's case-law and the victim would be able to apply to the Court, or to the Judicial Committee where the latter gave the decision finding a violation of the Convention, to challenge the national decision by reference to those criteria, or where a state failed to comply with the deadline set for determining the amount of compensation.

7. The "pilot judgment" procedure

100 Among the many different initiatives taken by the Court to speed up the processing of the cases brought before it, the Group focused particular attention on the measures to facilitate increased use of the "pilot judgment" procedure.

101 In its judgment of 22 June 2004 in the Broniowski v Poland case, which concerned the compatibility with the Convention of legislative provisions affecting a large number of people (approximately 80,000), the Court for the first time found a systemic violation, which it defined as a situation where "the facts of the case disclose the existence, within the [domestic] legal order, of a shortcoming as a consequence of which a whole class of individuals have been or are still denied the peaceful enjoyment of [a right safeguarded by the Convention]" and where "the deficiencies in national law and practice identified in the applicant's individual case may give rise to numerous subsequent well-founded applications". The Court also found in this case that the violation originated in a "widespread problem which resulted from a malfunctioning of Polish legislation and administrative practice and which has affected and remains capable of affecting a large number of persons".

102 In that connection, the Court directed that "the respondent State must, through appropriate legal measures and administrative practice, secure the implementation of the property right in question in respect of the remaining (…) claimants or provide them with equivalent redress in lieu, in accordance with the principles of protection of property rights under Article 1 of Protocol No. 1"

103 The object in the Court's designating a case for a "pilot-judgment procedure" is to facilitate the most speedy and effective resolution of a dysfunction affecting the protection of the Convention right in question in the national legal order. One of the relevant factors considered by the Court in devising and applying that procedure has been the growing threat to the Convention system resulting from large numbers of repetitive cases that derive from, among other things, the same structural or systemic problem (see judgment of 19 June 2006 in the case of Hutten-Czapska v. Poland, para 234).

104 In its Rules for the supervision of the execution of judgments of 10 May 2006 [CM(2006)90], the Committee of Ministers said that it will give priority to supervision of judgments in which the Court has identified a systemic problem (Rule 4, paragraph 1). In addition, Resolution (2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem invited the Court to identify in these judgments what it considered to be the underlying systemic problem and the source of this problem and to notify such judgments to, among others, the states concerned and the Committee of Ministers.

105 The Group supports these developments. In the light of practical experience, consideration would need to be given in future to the question of whether the existing judicial machinery, including the Court's rules of procedure, will suffice for this model to be able to produce the desired results or whether a reform of the Convention should be contemplated in this connection. In any event, the Group encourages the Court to use the "pilot judgment" procedure as far as possible in future. To ensure that victims who have already applied to the Court do not have to wait indefinitely for just satisfaction, time-limits subject to supervision by the Court should be laid down.

C. Concerning alternative (non-judicial) or complementary means of resolving disputes

8. Friendly settlements and mediation

106 The Group notes that Protocol No 14, in an amendment to Article 39 of the Convention, provides that 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".

107 The Group also notes with approval that the Registry of the Court is already stepping up its efforts to encourage parties to reach friendly settlements in cases that lend themselves to the mediation approach.

108 In order to reduce the Court's workload still further and to assist both victims and member states, recourse to mediation at national or Council of Europe level should be encouraged where the Court, and more particularly the Judicial Committee, considers that an admissible case lends itself to such a solution. Proceedings in the cases concerned would be suspended for a limited and identified period pending the outcome of the mediation. This method of settlement would in any event be subject to the parties' agreement.

9. Extension of the duties of the Commissioner for Human Rights

109 Appointed under Resolution (99)50 of the Committee of Ministers, the Commissioner for Human Rights functions independently and impartially to "identify possible shortcomings in the law and practice of member states concerning the compliance with human rights as embodied in the instruments of the Council of Europe, promote the effective implementation of these standards by member states and assist them, with their agreement, in their efforts to remedy such shortcomings". Protocol No. 14 introduces a provision allowing the Commissioner to submit written observations and take part in hearings before the Court.

110 The Group considers that the Commissioner should have the necessary resources to be able to play a more active role in the Convention's control system, acting either alone or in co-operation with European and national non-judicial bodies. In particular, the Commissioner should respond actively to the announcement of Court decisions finding serious violations of human rights. The Commissioner could also promote the setting up of bodies with responsibility for resolving human rights violations through mediation at national level.

111 Under his mandate, the Commissioner facilitates the activities of national ombudsmen and similar institutions. However, these are not always competent in human rights matters. The Committee of Ministers might consider adopting a recommendation with the aim of assigning such competence to them.

112 The Group notes with approval that the Commissioner is extending his current co-operation with national and regional ombudsmen and national human rights institutes in order to form an active network of all these institutions, so as to disseminate appropriate information on human rights and, as far as their competence permits, take action on alleged violations and abuses.

113 This network could help to reduce the Court's workload with the active support of the Commissioner, who could identify a specific problem in a state likely to trigger a large number of applications to the Court and help to find a solution to the problem at national level in conjunction with the national ombudsman. National ombudsmen could also play a role in informing the public about the right to apply to the Court by distributing application forms and, above all, informing the public about the Court's mandate and competence and about the admissibility criteria contained in the Convention.

D. Concerning the institutional status of the Court and the judges

10. The institutional dimension of the control mechanism

114 The Group considered a number of institutional issues which are of undoubted importance for the effectiveness of the Convention's judicial control system.

115 They looked first of all at the question of whether the existing legal framework offers all the guarantees that are essential to ensure the independence of judges.

116 In this connection, they noted the total lack of any social security scheme (coverage for medical expenses and pension entitlement). It considers the setting up of such a scheme to be of vital importance.

117 Secondly, the Group considers that the professional qualifications and knowledge of languages of candidates for the post of judge should be carefully examined during the election procedure.

118 For this purpose, before the Parliamentary Assembly considers the candidatures, an opinion on the suitability of the candidates could be given by a committee of prominent personalities possibly chosen from among former members of the Court, current and former members of national supreme or constitutional courts and lawyers with acknowledged competence.

119 The Group also looked at the particularly sensitive issue of the number of judges. It noted that the present system as provided for under Article 20 of the Convention is based on the principle that the Court consists of a number of judges equal to the number of States Parties to the Convention.

120 In the Group's opinion, the logic underlying the new role proposed for the Court and the setting up of the Judicial Committee should lead in due course to a reduction in the number of judges, bringing it into line with the Court's functional requirements and the need to ensure consistency of case-law.

121 The Group therefore recommends limiting the number of members of the Court while ensuring the presence of a national judge of the State party to a dispute through the appointment of an ad hoc judge. In order to respect the principle of equality between States Parties to the Convention, it would be appropriate if the judges were elected on the basis of a system of rotation between states.

122 It should be noted that, in most international courts, the number of judges is significantly less than the number of States Parties. It need only be pointed out that the International Court of Justice consists of 15 judges and that the Inter-American Court of Human Rights based in San José (Costa Rica) – which, like the European Court, protects human rights in a regional framework – has only 7 judges for 23 States Parties.

123 The foregoing considerations may be applied to the proposed Judicial Committee, subject to the following reservations: first, it would be appropriate for the Court to participate in the procedure for electing the members of this Committee, and secondly, it would be disproportionate to provide for the

presence of a national judge of the respondent member State in all cases coming under this Committee's jurisdiction.

124 Lastly, in the interests of enhancing the Court's independence and effectiveness, the Group recommends granting it the greatest possible operational autonomy, as regards in particular the presentation and management of its budget and the appointment, deployment and promotion of its staff.

III. SUMMARY

125 The survival of the machinery for the judicial protection of human rights and the Court's ability to cope with its workload are seriously under threat from an exponential increase in the number of individual applications which jeopardises the proper functioning of the Convention's control system. It is essential to recommend effective measures to remedy this situation on a permanent basis, thus making it possible to ensure the long-term effectiveness of the Convention's control mechanism, without the right of individual application being affected, and allowing the Court to concentrate on its function as the custodian of human rights by relieving it of a whole body of litigation which places an unnecessary burden on it.

THE PROPOSED REFORM MEASURES

126 The Group has adopted a set of proposals of different kinds, which, combined, should ensure the efficient functioning of the control mechanism in the long term.

A. Concerning the structure and modification of the judicial machinery

1. Greater flexibility of the procedure for reforming the judicial machinery

127 The Group believes that it is essential to make the judicial system of the Convention **more flexible**. This could be achieved through an amendment to the Convention authorising the Committee of Ministers to carry out reforms by way of unanimously adopted resolutions without an amendment to the Convention being necessary each time. This method would make the Convention system more flexible and capable of adapting to new circumstances, but would not apply to the substantive rights set forth in the Convention or to the principles governing the judicial system.

128 The system created would be structured around three levels of rules, namely:

- the Convention itself and its protocols, for which the amendment procedure would remain unchanged;

- the "statute" of the Court, ie a legal level whose content would need to be defined, comprising provisions relating to the operating procedures of the Court. This second level would be an innovation. The provisions of this statute could be amended by the Committee of Ministers with the Court's approval;

- texts such as the Rules of Court, which could be amended by the Court itself.

2. Establishment of a new judicial filtering mechanism

129 A judicial filtering body should be set up which would be attached to, but separate from, the Court, in order to guarantee, on the one hand, that individual applications result in a judicial decision and, on the other, that the Court can be relieved of a large number of cases and focus on its essential role.

130 The members of the Judicial Committee would be judges enjoying full guarantees of independence. Their number should be less than the number of member states. It would be decided – and could be modified – by the Committee of Ministers on a proposal from the Court. The composition of the Judicial Committee should reflect a geographical balance as well as a harmonious gender balance and

should be based on a system of rotation between states. The term of office of its members would be limited in duration in accordance with rules to be laid down by the Committee of Ministers.

131 The members of the Judicial Committee, like those of the Court, should be of high moral character and possess the qualifications required for appointment to judicial office. They would be subject to the same requirements as the members of the Court with regard to impartiality and meeting the demands of a full-time office. Candidates' professional qualifications and knowledge of languages should be assessed by the Court in an opinion prior to their election by the Parliamentary Assembly.

132 The Judicial Committee would have jurisdiction to hear all applications raising admissibility issues and all cases which could be decided on the basis of well-established case-law of the Court allowing an application to be declared either manifestly well-founded or manifestly ill-founded. The Judicial Committee's jurisdiction to decide cases on the merits would involve, where such cases are concerned, the exercise of the same powers as the Court in respect of just satisfaction.

133 Institutionally and administratively, the Judicial Committee would come under the Court's authority. It would be chaired by a member of the Court, appointed by the latter for a set period, and would draw on the support of the Registry of the Court, thus enabling it to make optimum use of the Registry's human resources. There would be no possibility of appealing against the decisions of the Judicial Committee, although the Court would have a special power allowing it, of its own motion, to assume jurisdiction in order to review any decision adopted by the Judicial Committee.

B. Concerning the relations between the Court and the States Parties to the Convention

3. Enhancing the authority of the Court's case-law in the States Parties

134 The dissemination of the Court's case-law and recognition of its authority above and beyond the judgment's binding effect on the parties would no doubt be important elements in ensuring the effectiveness of the Convention's judicial control mechanism. The Group recommends that judgments of principle and judgments which the Court considers particularly important be more widely disseminated in line with the recommendations of the Committee of Ministers.

4. Forms of co-operation between the Court and the national courts – Advisory opinions

135 The Group considers that it would be useful to introduce a system under which the national courts could apply to the Court for advisory opinions on legal questions relating to interpretation of the Convention and the protocols thereto, in order to foster dialogue between courts and enhance the Court's "constitutional" role. Requests for an opinion, which would be submitted only by constitutional courts or courts of last instance, would always be optional and the opinions given by the Court would not be binding.

5. Improvement of domestic remedies for redressing violations of the Convention

136 Domestic remedies for redressing violations of the rights secured by the Convention should be improved. The length of proceedings in civil, criminal and administrative cases, which is one of the main sources of litigation before the Court, highlights the need for such an improvement, which would be achieved by means of a Convention text placing an explicit obligation on the States Parties to introduce domestic legal mechanisms to redress the damage resulting from any violation of the Convention, and especially those resulting from structural or general shortcomings in a state's law or practice.

6. The award of just satisfaction

137 Changes to the rules laid down in Article 41 of the Convention are necessary to relieve the Court and the Judicial Committee of tasks which could be carried out more effectively by national bodies (especially when expert reports are needed).

138 Where the Court or, where appropriate, the Judicial Committee holds that the victim must be awarded compensation, the decision on the amount of compensation would be referred to the state concerned. However, the Court or, as appropriate, the Judicial Committee would have the power to depart from this rule and give its own decision on just satisfaction where such a decision was found to be necessary.

139 The state should discharge its obligation to award compensation within the time-limit set by the Court or the Judicial Committee. It would be for the state to determine the arrangements for this, while complying with certain requirements. The amount of compensation should be consistent with the criteria laid down in the Court's case-law. The victim would be able to apply to the Court or to the Judicial Committee where the latter gave the decision finding a violation of the Convention, to set aside the national decision by reference to those criteria, or where the state failed to comply with the time-limit set for determining the amount of compensation.

7. The "pilot judgment" procedure

140 The Group encourages the Court to make the fullest possible use of the "pilot judgment" procedure. In the light of practical experience, consideration would need to be given in future to the question of whether the existing judicial machinery, including the Court's rules of procedure, will suffice for this model to be able to produce the desired results or whether a reform of the Convention should be contemplated in this connection.

C. Concerning alternative (non-judicial) or complementary means of resolving disputes

8. Friendly settlements and mediation

141 In order to reduce the Court's workload, recourse to mediation at national or Council of Europe level should be encouraged where the Court, and more particularly the Judicial Committee, considers that an admissible case lends itself to such a solution. Proceedings in the cases concerned would be suspended pending the outcome of mediation. This method of settlement would be subject to the parties' agreement.

9. Extension of the duties of the Commissioner for Human Rights

142 The Group considers that the Commissioner should have the necessary resources to be able to play a more active role in the Convention's control system, acting either alone or in co-operation with European and national non-judicial bodies. In particular, the Commissioner should respond actively to the announcement of Court decisions finding serious violations of human rights. The Commissioner could also lend his assistance to mediation machinery at national level. Under his mandate, the Commissioner facilitates the activities of national ombudsmen and similar institutions. The Committee of Ministers might consider adopting a recommendation aimed at assigning them competence in human rights matters in all cases. The Group notes with approval that the Commissioner is extending his current co-operation with national and regional ombudsmen and national human rights institutes in order to form an active network of all these institutions. This network could help to reduce the Court's workload with the active support of the Commissioner.

D. Concerning the institutional status of the Court and judges

10. The institutional dimension of the control mechanism

143 The Group thought that the existing legal framework should offer all the guarantees that are essential to ensure the independence of judges. In this connection, it considers the setting up of a social security scheme (coverage for medical expenses and pension entitlement) to be of vital importance.

144 The professional qualifications and knowledge of languages of candidates for the post of judge should be carefully examined during the election procedure. For this purpose, before the Parliamentary Assembly considers the candidatures, an opinion on the suitability of the candidates could be given by a committee of prominent personalities possibly chosen from among former members of the Court,

current and former members of national supreme or constitutional courts and lawyers with acknowledged competence. As regards the members of the proposed Judicial Committee, the prior opinion should be given by the Court.

145 The Group also looked at the particularly sensitive issue of the number of judges. In the Group's opinion, the logic underlying the new role proposed for the Court and the setting up of the Judicial Committee should lead in due course to a reduction in the number of judges.

146 Lastly, in the interests of enhancing the Court's independence and effectiveness, the Group recommends granting it the greatest possible operational autonomy, as regards in particular the presentation and management of its budget and the appointment, deployment and promotion of its staff.

Appendix B: Recommendations for the Procedures for the Nomination and Election of Judges to the European Court of Human Rights

(A.) As regards the nomination procedure for candidates by States

i.) All vacancies should be advertised in the specialist press – where it exists – or in the national press (pursuant to Parliamentary Assembly Recommendation 1429);

ii.) The member States should establish an independent body consisting of independent persons including judges and individuals with academic and other experience of international law and human rights;

iii.) The independent body would:

- Consult with interested civil society such as judicial and other State bodies and where possible human rights organisations and national bar associations regarding the suitability of candidates;
- It would then shortlist and interview candidates and forward the names of three nominees to the national government for transmission to the Council of Europe;
- Rank candidates in order of preference where, as a result of a thorough procedure, three suitable candidates emerge but there is a hierarchy between them;

iv.) As a general rule, the government should *follow the recommendation* of the independent body;

v.) The State should submit an account of its nomination procedure with its list of three candidates, to facilitate transparency and oversight. Where the government departs from the recommendation of the independent body, this too should be noted and explained;

To facilitate the process and ensure fair and effective interviewing of candidates, the Council of Europe should provide States with an interview template[36];

(B.) As regards the procedure for the review of State nominations for the election of judges

(i.) Prior to the consideration of State nominations, the accuracy of information provided in candidates' curriculum vitae should be verified;

(ii.) The lists of nominees submitted by States as well as the description of the nomination procedure adopted should be scrutinised. Where appropriate, States should be asked to provide details of these domestic nomination procedures. Where procedures do not meet the minimum standards outlined by the Council of Europe, as set out in paragraph A above, the lists should be returned to States;

[36] Details of the contents of this template as well as a fuller analysis these issues can be found in "Judicial Independence: Law and Practice of Appointments to the European Court of Human Rights", A Report produced by a panel of experts Professor Dr. Jutta Limbach (Chair), Professor Dr Pedro Cruz Villalon. Mr Roger Errera, The Rt. Hon. Lord Lester of Herne Hill QC, Professor Dr Tamara Morschakova, The Rt. Hon Lord Justice Sedley, Professor Dr, Andrzej Zoll, published by INTERIGHTS, May 2003.

(iii.) The body giving an opinion on the eligibility of candidates to the Parliamentary Assembly (as proposed in paragraph 118 of the Report of the Group of Wise Persons', 15 November 2006) should itself be *independent*, follow a fair and open procedure and possess the requisite expertise to fulfil its role;

(iv.) In the process of developing its opinion, this body should review the submitted curricula vitae and interview candidates thoroughly, with a view to identifying the most suitable professional judge. The independent body would provide reasons for its views;

(v.) The independent body should conduct the interviews of candidates reflecting standards on the national level (as described in paragraph A above) and in particular ensuring certainty of criteria, certainty, consistency and fairness of questions asked and the objective assessment of candidates' performance;

(vi.) The independent body should give detailed reports regarding the election process including reasons for its views and ranking of candidates. Where States propose rankings and these are changed, this should be noted, together with the reasons for the change;

(vii.) Guidance should be provided and procedures established for the circumstances in which the Parliamentary Assembly can or should reject lists in their entirety. These should include where States fail to provide three sufficiently qualified candidates;

(viii.) Once a State has submitted a list, it should not, in principle, be empowered to withdraw it, absent compelling reasons (such as the non-availability of candidates);

(ix.) All members of the Parliamentary Assembly should be provided with a copy of the independent body's report, along with the curricula vitae of candidates.