APPLYING AND SUPERVISING THE ECHR

Reform of the European human rights system

Proceedings of the high-level seminar, Oslo, 18 October 2004

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Council of Europe
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FOREWORD

**Reform of the European human rights system:
high-level seminar, Oslo, 18 October 2004**

At its 114th session in May 2004, the Committee of Ministers of the Council of Europe adopted a series of measures intended to ensure the effective implementation of the European Convention on Human Rights at national and European levels.

Protocol No. 14 to the European Convention on Human Rights sets out in particular to guarantee the long-term effectiveness of the European Court of Human Rights by streamlining the filtering and the processing of applications. A further aim is to improve the execution of the Court's judgments. The protocol, which amends the Convention, was opened for signature by the Council of Europe's member states on 13 May 2004. It requires ratification by all the signatories to the European Convention on Human Rights to enter into force.

Alongside Protocol No. 14, the Committee of Ministers also adopted several other instruments addressing, in particular, measures to be adopted at national level as a necessary contribution to reaching the aims of the protocol. All relevant texts have been published in *Guaranteeing the effectiveness of the European Convention on Human Rights – Collected texts*, Council of Europe, 2004.

To further the reform process, the Norwegian chairmanship of the Council of Europe's Committee of Ministers organised a high-level seminar in Oslo on 18 October 2004. The purpose of the seminar was to enhance understanding of the agenda for reform of the European human rights system and identify practical measures to ensure that the reform package adopted by the Committee of Ministers in May 2004 is effectively implemented.

The seminar was opened by HRH Crown Prince Haakon. Norwegian Foreign Minister, Jan Petersen, in his capacity as Chairman of the Committee of Ministers, addressed the seminar. Presentations were also given by Mr Luzius Wildhaber, President of the European Court of Human Rights, and Mr Pierre-Henri Imbert, Director General of Human Rights in the Council of Europe. The seminar brought together high-level experts from a large number of member states, the Court and its Registry, national human rights institutions and NGOs, as well as representatives from the Council of Europe Secretariat and the OSCE.

On the basis of the participants' findings, a comprehensive list of conclusions was drawn up at the seminar by the Chair. These conclusions of the seminar were presented to the Committee of Ministers' Liaison Committee with the European Court of Human Rights on 9 November and to the Committee of Ministers at Deputy level on 17 November 2004. The Ministers' Deputies decided to transmit the conclusions to the Council of Europe's Steering Committee for Human Rights and to the Parliamentary Assembly.

The conclusions, key statements and written papers of the seminar are presented in this volume.

CONTENTS

CONCLUSIONS
OF THE SEMINAR

SUMMARY

There was general agreement that Protocol No. 14 must be ratified as soon as possible. The Court and its Registry should do everything they can to anticipate its entry into force. However, additional measures would also be called for. National measures by parliaments, governments and the courts are an indispensable component of the reform package. Member states are urged to examine closely and make use of the Recommendations, Declaration and Resolution adopted by the Committee of Ministers in 2004. Irrespective of Protocol No. 14, additional budgetary measures will be needed in view of the growing case-load of the Court. The Committee of Ministers has overall responsibility for seeing to it that the reform of the European Human Rights System becomes a success.

In particular, there was general agreement on the need to restore the balance between national Convention protection and international protection; both components must function effectively if the system is to work. Far too many cases come to Strasbourg which should, in accordance with the principle of subsidiarity, have been decided by the domestic courts. This requires above all the establishment of appropriate and effective remedies at the national level. The underlying aim of the Convention is to create a situation in which the great majority of individuals with complaints about violations of Convention rights do not have to come to Strasbourg, because their complaint has been satisfactorily addressed at national level.

INTRODUCTION

Participants focused on Protocol No. 14 to the European Convention on Human Rights and the declaration, recommendations and resolution adopted by the Committee of Ministers in 2004, as key components of the reform package. In their deliberations participants drew particular benefit from substantive presentations of Mr Luzius Wildhaber, President of the European Court of Human Rights (p. 23 of the present volume), and Mr Pierre-Henri Imbert, Director General of Human Rights, Council of Europe (p. 33), updated statistical analyses prepared by the Court on the increases in the case-load of the Court (p. 44), and an Aide-mémoire on ensuring a rapid entry into force of Protocol No. 14 prepared by the Directorate General of Human Rights of the Council of Europe (p. 63).

This document compiles observations of the Norwegian Chair at the end of the meeting. Particular emphasis was put on practical steps to be taken in order to implement the reform package swiftly and effectively, consistent with steps recommended by the Committee of Ministers of the Council of Europe. This is not a negotiated document and the Norwegian Chair is solely responsible for its contents. In the view of the Chair, the following points reflect views which enjoyed broad support among participants of the seminar.

CONCLUSIONS

There was broad support for the following conclusions:

I. Issues relating, in particular, to the Court

1 Protocol No. 14 must be *ratified* as rapidly as possible so as to benefit as soon as possible from the capacity and efficiency increases it will bring to the Convention system. Attention is drawn to practical guidance provided in the Aide-mémoire issued by the Directorate General of Human Rights (see p. 63).

2 The European Court of Human Rights and its registry are encouraged to anticipate the Protocol's entry into force by adapting, as far as possible, their working methods and procedures. Speeding up processing of cases could be aided by a review of the structure of the Registry and the *early introduction of certain working methods* designed for single judge formations and new Article 28 powers.

3 Irrespective of Protocol No. 14, the Court's caseload will continue to grow. As a consequence, the Registry will need additional *resources*, which may be lower than currently envisaged as a result of the entry into force of the Protocol.

4 It was acknowledged that Protocol No. 14 and the accompanying measures will not solve the specific problem of the Court's huge backlog, which will continue to grow at least until Protocol No. 14 enters into force. The *Court*, together with the *Secretary General* and the *Committee of Ministers*, will have to discuss ways and means of solving this problem.

5 Work will also have to continue on the future evolution of the Convention system. Particular interest attaches to *pilot judgments*, which seem to be the most effective way of dealing with certain structural situations. It may moreover be useful, in this context, to distinguish between specific situations and endemic problems – which may call for different measures (see below).

6 Consideration may be given to amending the *Rules of the Court* to take account of cases revealing systemic problems. When a case which is potentially of this kind is communicated to the respondent State, the State might be asked to state its view as to whether there is an underlying problem affecting a class of indi-

viduals. This would give the State an advance indication as to the possibility of a pilot judgment and might also assist the Court in identifying systemic problems.

7 It was underlined that member states should ensure dissemination of leading judgments of the Court in the national *language*(s) in accordance with Recommendation Rec (2002) 13. This cannot be a responsibility of the Court, but should be an important task of states.

8 In order to reduce the flood of unmeritorious cases, the *Court*, the *Council of Europe* as a whole, *member states* and *civil society* should take measures to ensure that prospective applicants receive sufficient and independent information about the Convention's basic admissibility criteria. Reference was made to the potential role, where appropriate, of information offices within the general human rights protection system, seen in the light of experience being gained at the Warsaw Council of Europe Information Office.

9 The balance must be restored between the national and international levels of human rights protection. The Court in Strasbourg is at present bearing a disproportionate part of the burden. Governments must assume to the full their responsibilities under the Convention, both when taking national measures and as members of the Committee of Ministers.

10 Intensified interaction is needed between the Committee of Ministers, the Court, the wider Council of Europe, member states and civil society in order to improve enforcement of the Convention at national level.

11 The Court was invited to look into ways and means of making its *annual report*, which should include, in particular, any findings with regard to structural situations, more accessible to the other institutions of the Council of Europe as well as to national policy-makers, including in parliamentary assemblies. Some form of executive summary highlighting the main issues could be drawn up.

II. As concerns steps to be considered with a view to speedy and effective implementation of the Committee of Ministers' Recommendations to member states concerning measures to be taken at national level

12 The *Committee of Ministers* should assist member states in ensuring that adequate training in Convention standards – in all relevant fields of law – is fully integrated in university education and professional training in conformity with Recommendation Rec (2004) 4; the idea of a European programme to assist member states in implementing this Recommendation, especially as regards professional training for judges, was strongly endorsed.

13 Furthermore, the role that may be played by civil society in implementing the above-mentioned Recommendation was underlined. So was the particular

need for continuous training for judges and other relevant groups of professionals, due to the continuously evolving nature of the Court's case-law ("*Formation continue*").

14 To facilitate the implementation of the various Recommendations and the Committee of Ministers' regular review of it, member states should consider the possibility of setting up national task forces of ministries directly concerned to review critically the law and practice in all three areas (training and education; verifying compatibility of (draft) laws and practice with the Convention; improvement of domestic remedies), prepare a *plan of action* for measures in these areas, and oversee its implementation.

15 Emphasis was put on the need also to engage *national parliaments* or legislatures, in addition to the Parliamentary Assembly of the Council of Europe, as particularly useful partners in a dialogue on the need for appropriate national measures involving legislative steps. It was agreed that such contacts, where appropriate, should be considered by the Committee of Ministers and the Secretary General of the Council of Europe, and not by the Court itself. In such a context the summary annual report referred to under item 11 above, was considered of particular importance.

16 In addition, the Committee of Ministers might arrange for a *review meeting* to be convened, for example, at the end of 2005, to take stock of progress achieved and to ensure transparency.

III. As concerns steps to be considered at European and/or national levels when dealing with violations stemming from underlying systemic problems capable of generating large numbers of repetitive cases

17 There was general recognition of the need to anticipate and address systemic problems even before they lead to the adoption of a pilot judgment. The *Commissioner for Human Rights* could play an "early warning" role in this respect, including by bringing issues to the attention of the Committee of Ministers and the Parliamentary Assembly.

18 The *Committee of Ministers* might give terms of reference to the Steering Committee for Human Rights (CDDH) to ensure that, whenever the Court adopts a pilot judgment, the CDDH examine whether there are broader consequences also for countries other than the respondent State and, if appropriate, to propose a recommendation aimed at solving the problem.

19 With regard to pilot judgments which reveal truly structural or endemic problems, the Committee of Ministers should demand that the respondent State rapidly produce a comprehensive *plan of action* with a *time-table* for solving the problem. The Department for the execution of judgments should offer assist-

ance if needed. The plan of action should be made public. Thus, civil society could assist the Committee of Ministers in ensuring that the plan is implemented.

20 Following a pilot judgment which reveals a truly structural or endemic problem, the respondent state should consider establishing a *national task force* between relevant ministries and authorities to prepare such a plan of action and ensure its sustained implementation (see item 19 above).

21 With regard to pilot judgments which reveal a specific problem (but one which affects a large number of individuals), the *Committee of Ministers* should follow a *fast-track supervision procedure* and insist that the State concerned rapidly solve the problem so as to avoid overloading the Court with a large number of repetitive cases.

22 In appropriate cases, and without detracting from the legal obligations incumbent on Respondent states under Article 46 of the Convention, assistance from the Council of Europe to help a state execute a pilot judgment could also include *financial assistance*; the possible role of the Council of Europe Development Bank was specifically mentioned.

23 The *Committee of Ministers* should consider adopting an annual report on its activities with regard to supervision of the execution of the Court's judgments, highlighting the most salient developments and problems, so as to enhance transparency and publicity.

24 In repetitive cases, the determination of *just satisfaction* is often a complex and time-consuming aspect, which may raise particular challenges e.g. of valuation related to property rights. Possible ways and means of dealing effectively with a multitude of such claims might be considered further by the Court together with the Committee of Ministers (one possibility would be for the Court to "outsource" such work to independent experts). As another example, reference was made to the possibility that, when a systemic problem has been identified raising particular valuation problems, the Committee of Ministers could, as appropriate, consider a separate international mechanism or encourage the State concerned to set up a national claims commission. Further study of these issues may however be needed, in light of differences of opinion at the seminar.

25 The pilot judgment procedure developed by the Court in the *Broniowski v. Poland* judgment of 22 June 2004 was welcomed as an effective way of dealing with violations affecting a category or class of persons. The *Court* was, however, invited to take care when selecting, from among a group of similar pending cases, a particular case for a pilot judgment so as to make sure that the case in question is really well-suited for statements concerning general measures.

IV. Furthermore, as concerns additional steps to be considered in order to improve and accelerate the execution of the Court's judgments, notably those revealing an underlying systemic problem

26 In order to assist the *Committee of Ministers*' supervision of the execution of pilot judgments, it might be useful to distinguish between, on the one hand, pilot judgments revealing truly structural or endemic problems and, on the other hand, pilot judgments revealing a specific problem which affects a large number of persons, as in the Broniowski case.

27 Direct application by national courts of the Court's case-law and individual judgments would contribute greatly both to the effective implementation of the Convention and to accelerating the execution of certain pilot judgments as it would reduce the need for time-consuming legislative measures.

28 In a case of a consistent failure of a respondent State to execute a judgment, the *Committee of Ministers* should consider, in addition to the possible institution of infringement proceedings as provided for in Protocol No. 14 (when the Protocol has entered into force), the possibility of excluding the member State concerned from assuming leading positions or certain functions in the Organisation, or, even, suspending the member State's voting rights in the Committee of Ministers. Reference was furthermore made to Article 8 of the Statute on expulsion of the State from the Council of Europe, as a last resort.

29 The responsibility of the *Committee of Ministers* with regard to improving and accelerating the execution of the Court's judgments was stressed. The ultimate purpose is to ensure greater respect for human rights obligations. member states were urged to prepare themselves thoroughly in advance of Deputies' meetings devoted to supervision of the execution of Court judgments, and to involve also ministries other than the Ministry for Foreign Affairs in those preparations.

30 The need was stressed for the Committee of Ministers to mobilise also *other Council of Europe bodies* in order to help overcome, in appropriate cases, certain difficulties encountered in the execution of a judgment. For example, targeted expertise could be provided through the *Venice Commission* or the *Directorate General of Human Rights*; the *Commissioner for Human Rights* can in his own work act in complementarity with ongoing Committee of Ministers' supervision and thus produce useful synergies; the *Parliamentary Assembly*, the *Secretary General* and/or the *Commissioner for Human Rights* might be useful partners for approaching national parliaments if execution problems are linked to the legislative process.

31 In accordance with the terms of Recommendation No. R (2000) 2, member states which have not already done so, were encouraged to adopt as soon as

possible legislation permitting the *reopening of national proceedings* found to be in violation of the Convention.

32 The Committee of Ministers should follow a *fast-track supervision procedure* in cases requiring urgent execution measures because of what is at stake for the individual applicant.

AGENDA

OF THE SEMINAR

Chair: Mr Rolf Einar Fife, Director General, Legal Department, Ministry of Foreign Affairs

8.00-8.30 Registration for participants who have not checked in at the Holmenkollen Park Hotel or the Hotel Rainbow Gyldenløve.

8.45-9.00 Opening of the meeting, organisational issues (participants are requested to find their seats at 8.45 sharp)

9.00-9.05 Welcome address by HRH Crown Prince Haakon of Norway

9.05-9.15 Address by Mr Jan Petersen, Minister of Foreign Affairs of Norway: The agenda for reform of the European Human Rights System

9.15-9.45 Presentation by Mr Luzius Wildhaber, President of the European Court of Human Rights: Consequences for the European Court of Human Rights of Protocol No. 14 and the Resolution on judgments revealing an underlying systemic problem – Practical steps of implementation and challenges

9.45-10.15 Presentation by Mr Pierre-Henri Imbert, Director General of Human Rights, Council of Europe: Follow-up to the Committee of Ministers' Recommendations on the implementation of the Convention at the domestic level and the Declaration on "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels"

10.15-10.30 Participants are divided into three parallel working groups

Topic One Behind the figures: An attempt to sum up trends and identify priorities for the Court in the implementation of reform measures, including strategies to cope with the flood of unmeritorious cases and an assessment of different approaches to violations stemming from underlying systemic problems

Chair: Mr Jan Helgesen, Associate Professor, Norwegian Centre for Human Rights, University of Oslo

Topic Two	The role of the Committee of Ministers and subsidiary bodies to promote full utilisation of the potential of adopted reform measures. How can a true synergy between the international and domestic levels be promoted? In particular, how can the Council of Europe assist States in solving underlying systemic problems revealed in Court judgments?
	Chair: Mr Roland Wegener, Ambassador, Permanent Representative of Germany to the Council of Europe
Topic Three	Steps to be taken by States to ensure effective implementation of Court judgments, in particular judgments revealing an underlying systemic problem
	Chair: Mr Antonio Cassese, Professor of International Law, University of Florence
10.30-13.00	Working Group discussions
13.00-14.30	Luncheon (with continuation of informal discussions)
14.30-15.30	Plenary discussion of working group results
15.30-16.00	Break
16.00-17.00	Concluding debate
	Presentation of the chair's preliminary conclusions of the meeting
19.00	Dinner

HRH CROWN PRINCE HAAKON OF NORWAY

WELCOME ADDRESS

Excellencies, Ladies and Gentlemen,

It is my pleasure to welcome you to this High Level Seminar in Oslo on Reform of the European Human Rights System.

Norway is a founding member and long standing supporter of the Council of Europe. Currently Norway chairs the Committee of Ministers. It is therefore a special honour to host such an event, which focuses on institutional reform in the field of human rights.

This area is fundamental to the organisation and to its member states. The protection of human rights is among the defining issues of European values and co-operation. It is a centrepiece of European ideals and aspirations.

An ultimate test for the continued success of the work of the Council of Europe is its continued and unrelenting focus on its core values and areas of expertise, while at the same time promoting an even more constructive relationship with the other European organisations. The protection of the universal human rights is at the basis of all these efforts.

In a world that is struck by violence and repression we have to relentlessly work to bring states into closer association on the basis of shared values and understanding. International law and human rights provide a unique common language for building and further strengthening such a basis. Pan-European co-operation on the basis of the rule of law is built on this language.

We believe that an active democracy at all levels and based on respect for the rule of law, is essential in creating stability and encouraging participation in society. Herein lies a fundamental tenet of the Council of Europe. Herein lie some of the canons of the European human rights system.

It is therefore a token of both the success and the importance of the European Court of Human Rights in Strasbourg that the number of individual applications has risen sharply over the years.

At the same time it is a fundamental challenge for the Court to adapt to the practical realities of being a court for a continent of forty-six member states and 800 million people.

A reform process has therefore been initiated. A key aim is to allow the Court to better focus its limited resources on cases which really raise issues of protection of human rights. Such a reform process is not only necessary, it is urgently needed.

I am confident that these perspectives will guide your deliberations today. This seminar will concentrate on how to make the reform process work. The seminar aims at developing further a practical understanding of how to ensure a swift, effective utilisation of the potential constituted by the reform measures recently adopted. I wish you all success with today's important discussions based on the values of the language of the human rights – a language we all share.

Thank you.

MR JAN PETERSEN,
MINISTER OF FOREIGN AFFAIRS OF NORWAY

The agenda for reform of the European human rights system

Your Royal Highness,

Excellencies, ladies and gentlemen,

As Chairman of the Committee of Ministers of the Council of Europe, I would also like to welcome you all to this seminar.

I am pleased that such eminent representatives of the European Court of Human Rights and the Council of Europe and such renowned experts from all parts of Europe have been able to join us today.

A particular welcome to the President of the Court, its Registrar and the representative of the Secretary General of the Council of Europe.

This seminar on reform of the European human rights system reflects one of the key priorities of the Norwegian chairmanship. All over Europe, individuals put their ultimate trust in the Court in Strasbourg when their fundamental rights and freedoms are at stake. It is thanks to the Court that the European Convention on Human Rights is a living instrument that has adapted to modern conditions.

This Court is widely perceived as the world's leading human rights court, and rightly so. The fact that its influence is growing, even outside Europe, is remarkable. Not only have other human rights bodies drawn on its rich case law – so have national supreme courts of States on other continents, as well as the international tribunals for the former Yugoslavia and Rwanda.

The Strasbourg Court thus contributes to the development of international law, promotes our common values and has a unique legitimacy even at the global level.

As members and representatives of the Council of Europe and the Court, we have reason to be proud of what has been achieved.

At the same time, we must not let pride lead to complacency.

The Court's formidable success has itself contributed to the rapidly increasing flow of individual applications. The huge backlog of pending cases, and also the failure in certain cases of States to effectively implement judgements, have become major challenges. These must be addressed if our sustainable and effective system for protecting human rights in Europe is to be preserved. When we consider that at this very

moment, more than 75 000 individuals, some of them in desperate circumstances, have an application pending, it is obvious that there is no time to lose.

The European Court of Human Rights must, as a court of last resort, respond to the human rights needs of 800 million people. It can therefore be no surprise that the practical and theoretical challenges are many and various. At the same time the resources available to respond to these needs are obviously limited.

The way these challenges are met also has a bearing on the broader discussion of the division of labour between national and international systems, as well as the form of co-operation between the two levels. The basic idea is that questions should primarily be solved at the local, national level. Furthermore, we may talk about complementarity between international criminal justice and national systems, or subsidiarity, as is the case between the Strasbourg Court and national systems. However, States retain a primary responsibility for ensuring full compliance with international obligations.

Issues of division of labour are common in federalist structures, but international courts are not federal courts, their relations are with sovereign States. These have different legal traditions and cultures and margins of appreciation recognised by the Strasbourg Court.

The Convention and the Court were not created to replace governments or remove important matters from national regulation. States retain the primary duty and responsibility to protect human rights through implementation of the Convention at the domestic level. At the international and European level, the Strasbourg Court is the ultimate safety net.

Moreover, a distinguishing feature and a core principle of the Strasbourg system is the fundamental right of individuals to petition the Court. This right is not at issue. Nor is the single Court that emerged from the reform in 1998, based on Protocol No. 11.

The agreed priorities are the Court's organisation and procedures, more effective implementation of judgements and the need for more adequate national measures. Thus in concrete terms, the questions before this seminar are simply:

What should now be done by

- the Court itself,
- by the Council of Europe
- and by member States?

The reform package adopted by the Committee of Ministers in May, with Protocol No. 14 and a number of other texts, is a turning point. But the adoption of these texts is also only a starting point. Concrete follow-up is now the task facing the Court and the Committee of Ministers, its subsidiary bodies, and other organs of the

Council of Europe. And last but by no means least, member States at the national level.

Some of the overriding questions in this respect are:

How can we ensure that the resources of the Court are allocated to the most important cases? And how can we deal with the flood of inadmissible cases?

I should like to list some of Norway's key priorities during its chairmanship with these questions in mind:

First, to promote the necessary steps to ensure the swift entry into force of Protocol No. 14 and the full utilisation of its potential;

Second, to support effective steps to follow up other reform measures by the competent bodies of the Council of Europe, including in particular the Committee of Ministers;

Third, to focus further on specific and effective measures to improve and accelerate the execution of the Court's judgements, notably those revealing an underlying systemic problem.

The *first* point concerns the amendment through Protocol No. 14 of the control system of the Convention. The aim is to make the system more efficient while at the same time preserving the individual right of application as the pillar of the European system of human rights protection.

The entry into force of the protocol has considerable potential for removing bottlenecks in the work of the Court. It will enable the Registry and the judiciary of the Court to take action themselves, for example through abbreviated or summary procedures. It is urgent to ensure that the Court is able to take such steps as soon as possible. We, the States, can contribute by swiftly signing and ratifying the Protocol.

I call on the participants in this seminar to consider ways and means of bringing the Protocol into force well before May 2006. It should be noted that ratification of the Protocol in most cases will not require any new legislation nor will it have financial implications.

To encourage the swift entry into force of Protocol No. 14, Norway and Poland have asked the Secretariat of the Council of Europe to organise a Treaty Event in Strasbourg on 10 November, to coincide with the transfer of the chairmanship of the Committee of Ministers from Norway to Poland.

I take this opportunity to urge all member States that have not already done so to sign the Protocol on this occasion and to proceed with ratification as soon as possible.

The *second* priority for our chairmanship reflects the fact that Protocol 14 is only one element of a broader reform package, which includes other measures requiring follow-up by States and competent bodies, notably those of the Council of Europe.

The Committee of Ministers should take specific and effective measures towards improving and accelerating the execution of the Court's judgements, notably those revealing an underlying systemic problem.

Furthermore, the Committee of Ministers should undertake a review of the implementation of the above-mentioned recommendations to member States.

Finally, the Ministers should assess the resources necessary for the rapid and effective implementation of Protocol No. 14, and take measures accordingly.

The main pillar of the European Human Rights system is of course compliance by States with the Human Rights Convention. The Court is not responsible for straightening out systemic failures within States. Effective measures must be adopted by parliaments, governments and courts at the national level. The obligations of States under the Convention and the recommendations and resolutions adopted by the Committee of Ministers must be put into effect.

Our *third* priority is to contribute to increased focus on specific and effective measures to improve and accelerate the execution of the Court's judgements, notably those revealing an underlying systemic problem.

In a Resolution concerning this issue, the Court is invited to identify, in the judgments that find a violation of the Convention, what it considers to be the underlying systemic problem and the source of this problem. The Court is also invited to notify other Council of Europe organs and the general public of any judgment containing indications of a systemic human rights problem.

Finally, I will revert to the main issue: States have the main responsibility for ensuring that the European system of human rights is effective.

We must therefore ask ourselves how States can ensure effective compliance. This question is not limited to the execution of judgements. Effective implementation goes deeper and beyond formal execution. It requires a full revision of legislation and administrative practice, in order to prevent the Court from being overloaded with cases of great similarity.

I believe it is indispensable that States and the Court develop an even closer partnership in addressing this most pressing issue.

I hope that this seminar, which is bringing together prominent practitioners and academics, will inspire a spirit of partnership in which we can enhance our understanding of these complicated issues.

I also hope that this forum will help to identify practical measures within the framework of the adopted reform package.

Before giving the floor to the President of the European Court of Human Rights, I should like to convey my particular thanks to the Council of Europe Secretariat and to the Court for their extremely useful assistance in the preparations for the seminar.

Thank you for your attention. I wish you all a fruitful and constructive day of discussions.

MR LUZIUS WILDHABER, PRESIDENT OF THE EUROPEAN COURT OF HUMAN RIGHTS

Consequences for the European Court of Human Rights of Protocol No. 14 and the Resolution on judgments revealing an underlying systemic problem – Practical steps of implementation and challenges

Your Royal Highness, Minister, Excellencies, distinguished colleagues,

In the note accompanying the draft agenda for this meeting, it was stated that the seminar would consist of a free and informal exchange of ideas. I take this as an invitation not to be overly diplomatic. I must nevertheless start by congratulating the Norwegian Chairmanship on their initiative in organising this event. It is important because it recognises that the opening for signature last May of Protocol No. 14 to the European Convention on Human Rights is, as I told the Ministers in May, not the end of the story. In some respects it is not even the end of the chapter, because Protocol No. 14 leaves quite a lot unsaid. Much, in terms of its implementation, is left open and its effectiveness in helping the Court deal with its still growing caseload will depend on the Court's preparedness to exploit to the full the procedural tools provided. Rest assured the Court has every intention of doing so, but I should make clear at the outset that there is one thing that Protocol No. 14 will not do. It will not itself reduce the volume of cases coming to Strasbourg; it will not turn off the tap; it will not even slow down the flow. That fundamental truth has, among other things, budgetary implications. It means for instance that, if we are to be able to process cases within a reasonable time, the Registry will have to continue to grow, perhaps not as fast as it might have without Protocol No. 14, but let there be no mistake, the Court will remain a drain on the Council of Europe's budget. If, as has been suggested in some quarters, the Council of Europe is to be subject to zero nominal growth, not just zero real growth, difficult choices will have to be made. Governments will have to redefine their priorities if the human rights protection system set up by the European Convention, which of course involves not only the Court, but other sectors of the Council of Europe, is to retain its credibility and effectiveness. The Convention system has, in more than one sense, a life of its own; it cannot be contained within a non-growth budget for any period of time without risking serious damage. Insufficient funding will in itself place limits on access to the Court. Just as Governments are held responsible for the functioning of their national systems of justice, they must also be for the Convention supervisory mechanism. So I

will begin with that unpopular and undiplomatic message: an effective human rights protection system in Europe will continue to cost Governments more money, although – we would say – not very much money compared with the potential long term benefits of stabilised democracy and the rule of law.

There is something else that Protocol No. 14 will not do. Since 1998 the Court's backlog has been growing inexorably. If we define the backlog as cases in respect of which the Court's objective of completing each of the different procedural stages within one year (for example one year between allocation and first examination and one year between communication and admissibility), the total backlog stood on 1 September 2004 at over 21 000 applications, approximately half of which are designated as Chamber cases. We are told that, on the most optimistic view, Protocol No. 14 will enter into force within 2 to 3 years. The backlog will continue to grow during those years. Even assuming Protocol No. 14 does make it possible to increase the Court's productivity significantly, a solution will therefore have to be found for the backlog. It is true that the worst backlog situations concern only a limited number of countries. There are cases which have been pending for an unacceptably long time, thus frustrating one purpose of the Convention protection system which is to identify flaws in the national protection of fundamental rights in a timely way. Neither the individual applicant nor the respondent Government can be satisfied with a judgment that may come so long after the events that it loses much of its relevance. As the guardians of the system, we cannot be satisfied with it either. What sort of solution? The idea of a task force has been tried. One difficulty is that much of the backlog consists of the more complex cases requiring the attention of the more experienced Registry lawyers, diverting them from current cases, which in turn may accumulate to build up a new backlog. Perhaps the starting point should be a detailed inventory for the countries with the largest backlog to see whether there are not groups of cases in respect of which some settlement can be reached with the respondent State; I shall come back to this idea later on when considering systemic problems. Another suggestion that has been made is the setting up of an ad hoc Chamber to specialise in backlog cases. In any event further thought must be given to this problem because if Protocol No.14 enters into force without a solution to the backlog the chances of its achieving its aims will be seriously compromised.

But let me come back to Protocol No. 14. One of the guiding notions of the Convention is that of balance; balance between conflicting rights, balance between the individual interest and the general interest. If balance plays an important role in the substantive application of the Convention, it is also a crucial element in the operation of the supervisory mechanism. Here the balance is between national protection and international protection; both components must function effectively if the system is to work. In recent years that balance has been upset to the detriment of the international component. Far too many cases come to Strasbourg which should, in accordance with the principle of subsidiarity, have been decided by the domestic

courts. This is not merely a question of the implementation of the Convention rights and freedoms in the domestic order; it is above all the establishment of appropriate and effective remedies. The Strasbourg Court cannot bear a disproportionate burden in enforcing the Convention; that burden has to be shared with the domestic authorities. Indeed the underlying aim of the Convention is to create a situation in which the great majority of Convention complainants do not have to come to Strasbourg, because their complaint has been satisfactorily addressed at national level.

It seems to me that the basic philosophy of Protocol No. 14 and the accompanying measures is or at least should be to recover that balance, to restore the national component of Convention protection to its proper and I would say inevitable place in the system. At the same time the Protocol aims to streamline the machinery.

As regards the first element, the Recommendations and Resolution adopted by the Ministers at the same time as Protocol No. 14 largely speak for themselves: Recommendation (2004) 5 on the verification of the compatibility of draft laws and administrative practice with the standards laid down by the European Convention on Human Rights, Recommendation (2004) 6 on the improvement of domestic remedies and Resolution (2004) 3 on judgments revealing an underlying systemic problem. The Court does not underestimate the importance of these instruments. They correctly identify the sources of many of the Court's problems. Similarly Recommendation (2004) 4 on human rights in university education and professional training can no doubt make a valuable contribution; unquestionably training in Convention law is essential if national courts are to be expected to apply it. The Court and its Registry are increasingly solicited to take part in national judicial training schemes and do so willingly, though at some point it will be necessary to consider whether this activity is impinging too much on the judicial work and whether it would be possible to organise, together with other interested Council of Europe actors, a coordinated approach on a slightly different footing. In any case all these measures are helpful but, as the explanatory report observes, their effects will only be felt in the medium term.

In response in particular to the Recommendation on the improvement of domestic remedies and the Resolution on judgments revealing an underlying systemic problem, the Court adopted a judgment on 22 June of this year in which it found for the first time the existence of a systemic violation in what has become known as a pilot judgment. I would remind you that in its different opinions submitted to the Steering Committee for Human Rights the Court repeatedly urged the introduction of a Convention provision formally establishing a "pilot judgment procedure".[1] That proposal was rejected by the Government Experts, who noted nevertheless, and I

1. See, for example, paragraphs 43 to 46 of the Court's position paper of 12 September 2003.

quote from their interim activity report of 23 November 2003, "the pilot judgment procedure proposed by the Court could be followed without there being a need to amend the Convention".[2] Well the Court took the experts at their word in the *Broniowski* judgment, which provides a definition of systemic violation in the following terms as: "where the facts of the case disclose the existence, within the [relevant] legal order, of a shortcoming as a consequence of which a whole class of individuals have been or are still denied [their Convention rights]" and "where the deficiencies in national law and practice identified … may give rise to numerous subsequent well-founded applications".[3] In the particular case the Court found 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".[4] The Court indicated further that "general measures should either remove any hindrance to the implementation of the right of the numerous persons affected by the situation found to have been in breach of the Convention or provide equivalent redress in lieu".[5] In the operative provisions the Court held notably that the respondent State must, through appropriate legal measures and administrative practices, secure the implementation of the property right in question in respect of the remaining claimants or again provide them with equivalent redress. Moreover, and this is an important element, consideration of applications derived from the same general cause would be adjourned pending the adoption of the necessary general measures.[6]

This was, I think we can say, a groundbreaking judgment and one in which the Court has been at pains to spell out its judicial policy. It states, and I quote, "measures adopted must be such as to remedy the systemic defect underlying the Court's finding of a violation so as not to overburden the Convention system with large numbers of applications deriving from the same cause".[7] This is entirely consistent with the aim of restoring the balance in the relationship between international protection and domestic system. It shares out the burden of Convention enforcement. Faced with a structural situation, the Court is in effect saying to the respondent State and to the Committee of Ministers that they too must play their role and assume their responsibilities. As a result the respondent State will hopefully introduce general measures capable of providing redress to both current and future applicants. This will in turn help to ease the case-load pressure in Strasbourg. So this approach is wholly justified both in terms of the philosophy of restoring the balance and on

2. See paragraphs 20 and 21 of the Interim Activity Report of 26 November 2003 (CDDH (2003) 026 Addendum I Final).
3. See § 189 of the judgment of 22 June 2004.
4. Ibid.
5. See § 194.
6. See § 198.
7. See § 193.

the practical level of physically reducing the number of well-founded cases which the Court and its Registry will have to process through to a judgment on the merits. As far as the individual applicants are concerned, it may well be that a greater number of individual applicants will secure redress more rapidly than if the Court were to attempt to process and adjudicate each application in turn. We know that there is a limit to the number of cases that can be dealt with at any one time, which is why there is an accumulation of some 12 000 substantial cases waiting to be examined. To seek to process large numbers of cases raising the same issue or shortcoming within the national system would run the risk of paralysing the system, preventing the Court from devoting sufficient attention to other individual cases and therefore possibly also from identifying new structural situations.

This is also relevant to the backlog, to which I referred earlier and much of which is composed of groups of cases whose individual settlement would prove extremely time-consuming. Here too a pilot-judgment type of approach may be appropriate. One feature of cases deriving from structural situations is that they are almost by definition well-founded. The most complex issue will be the determination of compensation, which is something for which the Court is singularly ill-equipped. We simply lack the expertise in Strasbourg to carry out sophisticated property valuations for example, even if we had the time to devote to such exercises. We must therefore look for ways to transfer that task to other bodies, preferably domestic bodies or possibly, as I shall explain later, to special Claims Commissions.

Before I leave the question of pilot judgments, and in obedience to the invitation to be frank, I should say that, although some of our repetitive cases come from the older Contracting States, the majority of the most serious structural or systemic problems derive from the newer Contracting States. This was of course foreseeable. States which were only just emerging from decades of non-democratic government, often within a fragile economic environment, were required to ratify the Convention within months of joining the Council of Europe, rather than being granted a reasonable period within which to bring their legal systems into conformity with the Convention. Many of these States also faced the enormously difficult task of responding to the demand for redress for the injustices committed by their predecessors. It was inevitable in that situation that there should be structural problems of Convention compliance. We – that is the Court, the Council of Europe, the Convention system – are paying for that now and I think that pilot judgments should also be seen in that context: the identification and resolution of problems that should have been dealt with before the ratification of the Convention. By saying to those governments there is a wide-scale problem that has to be resolved in a way that provides redress also to the complainants in Strasbourg and by leaving them a reasonable period within which to achieve that, we go some way towards repairing what I believe, with the benefit of hindsight, was an historical mistake.

It is perhaps paradoxical that I should speak first of all about a measure which was not included in Protocol No. 14 and indeed expressly not included, if I may put it like that. But one important thing that has come out of the discussions leading to the adoption of Protocol No. 14 is a widespread realisation of the gravity of the problem facing the Court, and even within the Court itself there were some who did not fully appreciate the situation only a short time ago. Protocol No. 14 will have – is already having – a collateral effect. The pilot judgment procedure is an example of how the Court is prepared to look beyond the terms of Protocol No. 14 in its search for additional solutions, because additional solutions will be necessary.

Naturally I accept that not every situation giving rise to what we call repetitive cases is suitable for the pilot-judgment approach adopted in *Broniowski*. Here we come to the streamlining effect of Protocol No. 14 and its answer to this problem, which remains relevant and to which the Court will also no doubt have frequent recourse. This is the amended Article 28 extending the power of three-judge Committees which will henceforward be able not just to declare applications inadmissible, but also to declare them admissible and decide on the merits if the underlying question is the subject of "well-established case-law". The explanatory report makes clear that this provision is aimed principally at repetitive cases, or what in the past we have referred to as manifestly well-founded cases. Just as we expect applicants to accept a drastically slimmed down procedure for manifestly inadmissible cases, it is not unreasonable for Governments to be asked to make some procedural concessions where the application is manifestly well-founded, while retaining the right to question the use of this accelerated summary procedure.

This new procedure assumes and requires a degree of good faith on both sides. The Court must not seek to use it for cases in respect of which there is a genuine doubt about whether they fall into the relevant category or about their admissibility. On the other hand, Governments must also refrain from opposing the application of the new Article 28 § 1 (b) in cases where such opposition is not justified. Governments will not be entitled to veto its application, but I would say that the Court would be unlikely to override a justified challenge to its use. If the opposition is systematic, however, the hoped for effect will not be achieved. I think we should be clear about what this provision means. We are saying essentially that Governments will in effect not be contesting the finding of violation in a given category of cases. Once they have accepted that a case falls within that category and that there are no obstacles to admissibility, the complaint on the merits will not be contested. Governments should also observe some restraint in advancing admissibility arguments. If admissibility is systematically challenged for the principle, we will not be making any savings of time and resources. There remains what is often the most time-consuming aspect of these cases, namely the determination of just satisfaction and here, as I suggested in relation to pilot judgments, it seems to me there may be room for new solutions, perhaps involving outside agencies, a special Claims Commission,

an arbitration commission or – and we always come back to the same point – ideally a remedy at national level, transferring the task back to where it can be carried out most efficiently. If an international solution has to be found (for example a team of international experts), special budgetary arrangements would be necessary. This would have the advantage of increasing transparency in that the real cost of dealing at international level with unresolved structural situations in the domestic legal system would be clearly identified.

It will not of course be possible for the Court formally to make use of the new Article 28 competence before the entry into force of the Protocol, but it does provide us with an incentive to explore even further the scope for streamlining working methods and procedures for this category of case and perhaps reorganising the work of Chambers, including making greater use of silent procedures. It may be that Sections can integrate into the organisation of their programme the use of existing Committee formations, which could examine, in addition to inadmissibility, the admissibility and merits of certain categories of repetitive cases. The draft judgment could then perhaps be approved by the remaining four Judges (including the national Judge) through a silent procedure. We should also now investigate avenues for dealing with the Article 41 question in a rapid and efficient way, preparing the ground for the new Article 28 power. As I have just said, this should involve wherever possible returning the problem to the national arena. This is of critical importance in reducing the Court's case-load.

I am relatively optimistic that the combination of pilot judgments and the amended Article 28 can have a considerable impact on the Court's case-load, if, and this is perhaps a big if, Governments keep their side of the bargain, if Governments accept that they have a responsibility to remedy structural situations effectively.

Coming now to the question of the massive inflow of manifestly inadmissible cases, which constitute around 90% of all applications lodged, allow me just to recall that the Court's proposal throughout the Protocol No. 14 discussions was for a separate filtering body,[8] a feasibility study into which had been recommended by the Evaluation Group.[9] No feasibility study was ever carried out and without such a detailed investigation the Steering Committee was never going to be able to come up with concrete proposals. In passing, let me reiterate that more effective domestic Convention implementation, however desirable and however effective it may be in reducing in the longer term well-founded applications, does not necessarily reduce manifestly inadmissible applications.

8. See, for example, paragraphs 47 and 48 of the Court's position paper of 12 September 2003.
9. See Report of the Evaluation Group, 27 September 2001, chapter XI, recommendation 21.

As you know Protocol No. 14's answer to this problem is the establishment of a single judge procedure; a single judge will be empowered to declare applications inadmissible under the same conditions as a three-judge Committee at present, in other words where he or she can do so without further examination of the application. The single judge, who cannot be the national judge, will be assisted by non-judicial rapporteurs, who according to the explanatory report, will perform the function currently carried out by the Judge Rapporteurs. There are two things to say here: firstly this new procedure does give the Court more flexibility; it entails vesting greater responsibility in the registry or recognising a responsibility which already exists to some extent. It increases judicial capacity in this field. It will no doubt be possible to introduce less formal procedures and thus to speed up the processing of inadmissible cases. But there is a price for this and this is my second point. The degree of judicial scrutiny will be considerably diminished. Applicants coming to Strasbourg, for whom the procedure is already pared down to the minimum and who receive only the barest reasoning for the rejection of their complaints will enjoy significantly fewer safeguards. We should not conceal this fact. It is the inevitable consequence of the growth of the system far beyond its original conception and design. Moreover in principle these are cases which do nothing to enhance the protection of human rights, the strengthening of the rule of law and democracy; their examination and determination does not directly pursue the Court's aim of ensuring that the Contracting Parties observe their engagements under the Convention. Yet we know that behind each application there lies a human story, often a dramatic one. We also know that the Convention and its enforcement mechanism have generated enormous expectations throughout the member States of the Council of Europe and that the frustration and lack of understanding of applicants whose cases fall outside the Court's jurisdiction is a real problem, which increasingly in itself creates work for the Registry.

We will need to consider what preparations can be made for this new procedure and to what extent we can anticipate its entry into operation. Work is already under way in the Registry to examine the options, including a possible restructuring of the Registry with a part of it, under the responsibility of the Rapporteurs, devoted exclusively to the work of processing inadmissible cases. As with the new power of Committees, we can explore ways of using the current Committees so as to prepare for the single judge. For example the work of Committees could be detached from that of the Sections to lay the ground for when the judges carry out this function completely independently of their Chamber business. It is too early to go into further details, but once the Court starts work in its new composition on 1 November, the Standing Committee on Working methods will be mandated to take forward the proposals which are now being prepared.

The most controversial provision of Protocol No. 14 is the amendment of Article 35. The compromise solution reached introduces a new criterion, that of significant dis-

advantage, which is however subject to two further conditions, that of respect for human rights and the stipulation that an application cannot be declared inadmissible on this ground if the complaint has not been duly considered by a tribunal at national level. The emphasis is correctly placed on the need for remedies at national level; the question remains as to whether determination of this condition will not entail a lengthy examination of substantive issues which would defeat the purpose of the provision. In any case, under the transitional rules, the single judge will not be able to apply this provision for the first two years following the entry into force of the Protocol, during which time Chambers and, where necessary, the Grand Chamber will have to develop the necessary case-law principles to define the notions contained in it. There is of course no reason why in the period leading up to the entry into force of Protocol No. 14 the Court should not already begin a process of reflection on the scope of these notions and consider to what extent the three elements, significant disadvantage, respect for human rights and examination at national level, may provide guidance for the Court in its present work.

One measure in Protocol No. 14 is already proving effective. This is the joint procedure under Article 29 § 3 of the Convention. This actually codifies a growing practice which enables the Court to deal with cases more rapidly and without unnecessary duplication and delay which is inherent in the separate treatment of admissibility and the merits. Once again there will be cases where this approach is not suitable, but the Court is applying this measure now whenever it can. This is a further indication that where it is possible to anticipate the entry into force of the Protocol we will do so.

I must now come to a conclusion. Let me leave you with four main messages; the first is that I remain convinced, particularly in the present international climate, of the absolute necessity of preserving this unique system for the international protection of fundamental rights, of maintaining this quite fragile flame which still today serves as a beacon of light whose sometimes flickering rays reach out even beyond the frontiers of our Europe. It must remain at the heart of the Council of Europe's activity. In this connection, it is, I understand, suggested that the Council of Europe's third summit will concentrate on terrorism. It is only natural that governments should see that as a major and topical concern. They should not however forget that human rights are both a target of, and in the long term probably the most effective weapon against, terrorism.

My second message is that Protocol No. 14 on its own will not be sufficient, that unless Governments assume to the full their responsibilities under the Convention, both at national level and in the Committee of Ministers, the system will not be able to work satisfactorily. We must as I said earlier restore the balance.

Thirdly, despite what may have come across as a somewhat lukewarm reception for the Protocol, I do unreservedly encourage States to ratify Protocol No. 14 as rapidly as possible. Certainly the Court will proceed on the basis that it will enter into force

within the next two years and will adapt its working methods and procedures accordingly.

Finally, and this may be the most difficult message for us and for you to accept, work has to continue on the future evolution of the Convention system. The figures speak for themselves.

Thank you for your attention.

MR PIERRE-HENRI IMBERT, DIRECTOR GENERAL OF HUMAN RIGHTS, COUNCIL OF EUROPE

Follow-up to the Committee of Ministers' Recommendations on the implementation of the Convention at the domestic level and the Declaration on "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels"

Ladies and gentlemen,

It is a great pleasure for me to address today some issues relating to the implementation of the Convention reform measures adopted last May by the Committee of Ministers of the Council of Europe. I also extend, on behalf of the Secretary General, our gratitude to the Norwegian authorities for this initiative, which is most timely. Indeed, this seminar is a useful reminder that the adoption of the reform package does not constitute the end of the story. Yes, the drafting of the reform texts at European level has now finished. But this does not mean we should all sit back. The reform process is now merely entering a new phase, focused on implementation. It is absolutely essential now to ensure that the texts adopted produce their effects as soon as possible. This seminar therefore provides an excellent occasion for a frank discussion of the implementation measures needed, not only in Strasbourg but also, perhaps most importantly, at home, in your own countries. It is essential that all actors and institutions concerned mobilise themselves without delay in order to exploit to the full the important potential which this reform offers in terms of maintaining and strengthening the effectiveness of the Convention at home and in Strasbourg.

You have just heard from President Wildhaber what consequences Protocol No. 14 will have for the Court. This Protocol is undoubtedly the centre-piece of the reform, but it is also part of a wider package of interdependent measures adopted by the Committee of Ministers, and most of my presentation will focus on those other measures. But before going into that, allow me to recall the fact that the member States have committed themselves to ratifying the Protocol speedily so as to ensure its entry into force within two years, that is: before May 2006. A rapid entry into force is not only important in its own right, to allow the Protocol to produce practical results as soon as possible. It is also necessary to allow for an early stock-taking of its impact on the Court's effectiveness. Two years seems a relatively short time, certainly compared with the time needed for the entry into force of Protocol No. 11,

but it is not for nothing that the Steering Committee for Human Rights (CDDH) and the Committee of Ministers agreed on this deadline. In fact, given the urgency of the entry into force of Protocol No. 14, I call on all those concerned to regard this two-year period *as a maximum* and strive for a ratification date well before, if possible by the middle of next year. This is not unrealistic, far from it. In this connection, it may be useful for you and for colleagues in the capitals who are responsible for preparing and accompanying the national ratification process to take note of a short aide-mémoire prepared by the Directorate General of Human Rights recapitulating some practical points which may help you at home in promoting a rapid ratification of Protocol 14. These points may be briefly summarised as follows:

(i) the amendments contained in Protocol 14 represent no important restructuring of the control system of the Convention. To use the words of its Explanatory Report (§ 35): "Unlike Protocol No. 11, Protocol No. 14 makes no radical changes […] The changes it does make relate more to the functioning than to the structure of the system." It should therefore be much easier to ratify swiftly;

(ii) it seems highly improbable, given the nature of the amendments in Protocol No. 14, that ratification would require any substantive changes of domestic legislation;

(iii) ratification of Protocol No. 14 *as such* does not entail any direct budgetary consequences. Such financial considerations should therefore not be a complicating factor during the domestic ratification processes. One could even argue that, if there is any direct financial dimension to the Protocol at all, it is simply that the efficiency and capacity increases it brings will mean more "value for money" for member States! Of course, there is wide agreement that budgetary measures are necessary in order to reinforce the Registry so as to realise the Protocol's full potential. But such measures are at all events necessary, with or without Protocol No. 14. I recall that a special programme to increase the resources for the Court and for the execution of judgments was already adopted in 2002, well before the adoption of the Protocol;

(iv) we know from the experience of many members of our expert committees how important and useful it is to explain in plain language and in summary form the content of a treaty to other domestic authorities involved in the ratification process. Those other authorities often lack the relevant expert knowledge or simply have not followed the European drafting process. It is mainly for the benefit of the non-initiated that paragraphs 35 – 46 of the Explanatory report contain a helpful, 1-page summary of the changes introduced by Protocol No. 14. I invite you to arrange for a translation in your national language(s) and to use this text in contacts with other ministries and of course for your parliaments.

I believe that these different points and reminders should help to secure a rapid ratification process in the member States and thus a rapid entry into force of the Protocol.

It is clear that Protocol No. 14, once in force, will increase the Court's case-processing capacity. But, from the outset of the negotiations on the reform, all governments were keenly aware that the reform cannot and should not stop there. It is crucially important to ensure that the inflow of cases and the Court's workload are mitigated. This cannot, almost by definition, be realised through procedural amendments to the Convention itself. It is at the national level that the relevant measures should be taken to address the root causes of the phenomenon of the increasing inflow of cases. The Committee of Ministers has stressed this in the strongest terms in its Declaration of May 2004: "… *it is indispensable* that any reform of the Convention aimed at guaranteeing the long-term effectiveness of the European Court of Human Rights be accompanied by effective national measures by the legislature, the executive and the judiciary to ensure protection of Convention rights at the domestic level …".

This not only a matter of making the reform a success, it is also simply a question of member States assuming their primary responsibility for securing the rights and freedoms, in accordance with Article 1 of the Convention and the principle that the role of the Convention organs is subsidiary to that of national authorities.

As the Secretary General of the Council of Europe aptly stated at the Ministerial Conference in Rome which launched the reform process: "human rights protection begins and ends at home". In other words, the European system of human rights protection is *of a circular kind*. Effective national systems and structures should be able to prevent or remedy human rights violations at home. Only where national systems fails does the Strasbourg system step in, when the Court is seized, notably by individual applications. But after the Court has given judgment, the emphasis shifts back to the national arena where action must be taken to take the individual and/or general measures required to execute the judgment, under the supervision of the Committee of Ministers. Failure or too much delay in taking such measures will inevitably generate further individual complaints to the Court.

National measures

What are the main measures recommended for action at the national level?

The Seminar materials include the texts of the various Recommendations adopted by the Committee of Ministers. I strongly encourage all participants to study these Recommendations and their annexes carefully, for they contain very practical examples of measures and initiatives that could be adopted to strengthen the capacity of national legal systems to provide effective human rights protection, with a specific focus on measures that can help reduce the flow of cases to Strasbourg.

Three main sets of measures are being recommended.

The first Recommendation (Rec (2004) 4) concerns university education and professional training in the Convention and the case-law of the Court. Such education and training should be included as components of the core curriculum of law degrees, as a component for the professional training for judges, prosecutors and lawyers and in the training for personnel in other areas of law enforcement, particularly the police, the security forces, prison officers, hospital staff and immigration services. As a personal comment, I will not hide from you that I find it rather surprising that such Convention education and training is still not in place in all member States. This should become a routine practice everywhere. In this context, I should also mention that the Committee of Ministers is expected soon to discuss the advisability of a European programme to assist States in the implementation of this Recommendation, especially as regards the professional training for judges.

The second Recommendation (Rec (2004) 5) deals with the verification of the compatibility of draft laws, existing laws and administrative practice with the Convention standards. Like the first Recommendation, it is primarily geared towards the *prevention of violations*, thereby avoiding litigation in Strasbourg. The main focus is on systematically verifying that draft laws are "Convention-compatible", because by adopting a law that has been so verified, the State reduces the risk that that law gives rise to violations subsequently established by the Court. The Recommendation also encourages States to set up mechanisms for checking existing laws and administrative practice for compatibility with the Convention. Indeed, it has happened on several occasions in the history of the Convention that even a judgment against State X has led to changes of law or practice in state Y, simply because the two legal systems were similar on the point at issue. In such cases, it is certainly better for State Y to remove the problem quickly than to sit back and wait until the first complaints start to arrive in Strasbourg.

The third Recommendation (Rec (2004) 6) is concerned with the improvement of domestic remedies. Member States should ascertain that such remedies exist for anyone with an arguable complaint of a violation of the Convention and that these remedies are effective. In addition, they should, after a judgment of the Court identifying a structural or general deficiency in law or practice, review the effectiveness of existing domestic remedies and where necessary create effective remedies to avoid repetitive cases coming before the Court in Strasbourg. Special attention must be paid to the existence of effective remedies concerning the length of judicial proceedings. This Recommendation pursues several objectives. It seeks not only to ensure full implementation of Article 13 of the Convention and to avoid cases coming to Strasbourg which have not been properly examined by a national authority and which create extra work for the Court, but also to encourage the establishment of remedies for repetitive cases at the national level so as to avoid the need for the

Court to give judgment on the merits of large numbers of cases which merely form a repeat of a case already decided by the Court in a pilot judgment.

States should where necessary introduce such domestic remedies not only as a way of dealing with future cases (avoiding the need for individuals to go to Strasbourg), but also to the extent possible, retroactively, for people who have already suffered the same disadvantage as the successful applicant in the pilot case. That would undoubtedly simplify the Court's handling of any such pending repetitive applications.

As a first step to the implementation of these three Recommendations, I would urge participants to take matters in hand within their own countries, for example by setting up task forces of ministries directly concerned to review critically the existing law and practice in all three areas and make proposals for legislative or practical measures to be adopted by the government and/or parliament.

It is clear that not only legal measures are required, but also practical ones, especially in the field of Convention training for the legal community. Those who have responsibility for providing professional legal training should be mobilised to review the situation and as appropriate ensure the integration of Convention standards in training curricula. As I said, the Committee of Ministers will soon be considering whether the Council of Europe should help them in this regard. Even if, more than 50 years after the adoption of the Convention, it may seem strange to say so, it is necessary to ensure that the standards of the Convention (including the case-law) become genuinely integrated into the domestic law of States. The Convention and its case-law are still too often considered as alien and disturbing elements.

For the implementation of these Recommendations, inspiration can be drawn from the Recommendations themselves and their annexes, which contain a wealth of examples of good practice. I would also encourage you to exchange ideas and practical experience during your discussions today, especially those in Working Groups 2 and 3. The Convention system is in need of urgent progress in the implementation of these various national measures, for they constitute a unique means, perhaps the unique means, of exercising a mitigating effect on the inflow of individual applications into the Convention system. The Committee of Ministers has recognised this in the Declaration adopted in May and has set up a specific mechanism to review progress made by member States in their implementation of these texts. The CDDH will, by June next year, submit a first progress report to the Committee of Ministers. It is largely up to you and your colleagues in the capitals to ensure that good progress can indeed be reported on that occasion.

Execution of Court judgments

Allow me now to move on to some main challenges regarding the execution of the Court's judgments. To quote the Explanatory Report to Protocol No. 14 (§ 16), "Exe-

cution of the Court's judgments is an integral part of the Convention system. […] The Court's authority and the system's credibility both depend to a large extent on the effectiveness of this process." In addressing this area, I will certainly not be exhaustive, but focus on some topical issues clearly meriting reflection at today's seminar.

First, I should point to the changing *nature of the cases* that come to the Court and subsequently to the Committee of Ministers for execution supervision. In the past, some have said that almost all the cases brought to Strasbourg concerned complaints about minor or rather sophisticated violations of the Convention. Even supposing that that assessment was accurate at the time – I personally believe that it is somewhat exaggerated – those days are definitely over. One only needs to look at the judgments delivered in the past few years, or indeed at the cases currently pending before the Court. The cases have led to findings, or involve allegations, of very serious violations. Some cases stem from areas of (unresolved) conflict.

In addition, today much more than in the past, the Court decides cases with a more or less prominent political connotation or dimension. Some have criticised the Court on this score: they consider that it is - wrongly in their view - taking on a political role. I strongly disagree. First of all, the Court does not "take on" any role, its role is defined in the Convention itself and – as far as its contentious jurisdiction is concerned – is essentially that of taking judicial decisions on the cases that are brought before it. It is true that the political dimension or background of human rights cases brought before the Court is today often more prominent than in the past, but it would be wrong, even rather disingenuous, to blame the Court for that. After all, in most if not all cases this is simply due to the fact that serious problems that are not solved by political means (Cyprus, Transdniestria, Chechnya) tend to have a negative impact on the enjoyment of the Convention rights and thus generate complaints to Strasbourg. Sometimes one even wonders: if the Court would not address such problems, who else would on behalf of the Council of Europe? It is often the failure to solve such problems by political means which leads to consequences and complaints on which the Court is obliged to render a legal judgment on the basis of the Convention. In other cases, the political connotation of a complaint is not at all self-evident: it receives a political load merely because of specific political sensitivities in a country (think, for example, of certain expropriation and freedom of expression cases, or cases seen as a threat to the position of a traditional church). Here again: countries that have accepted the legal obligations of the Convention must also accept that some of their traditional practices may have consequences which the Court qualifies as violations of the Convention. I must stress the *legal* nature of these obligations. The fact that a case has political connotations does not prevent it from raising human rights issues under the Convention capable of judicial determination on legal grounds.

A second, even more recent, development which has an impact on the Committee of Ministers' supervisory role is the fact that the Court's judgments, in certain cases, are becoming more explicit than in the past as to the *kind of measures* that the Respondent State must take in order to put an end to the breach of the Convention and make reparation for its consequences. There is a series of judgments concerning Turkey (starting with *Gencel v. Turkey* of 23 October 2003) about the lack of independence and impartiality of the State security courts where the Court has indicated a retrial in conformity with Article 6 as an appropriate means of reparation. Other examples are the *Assanidze v. Georgia* judgment of 8 April 2004 and the *Ilascu and Others v. Moldova and Russia* judgment of 8 July 2004. In both cases, the Court specified that the applicants should be released from their arbitrary detention. A last example, this time concerning *general* measures of execution, is of course the *Broniowski v. Poland* judgment of 22 June 2004, where the Court not only stated *that* general measures were required but also indicated what the aims of such measures should be and even to some extent *the kind* of measures to be taken.

The Broniowski judgment also exemplifies a third new phenomenon in the Court's approach. President Wildhaber has explained how the Court has swiftly responded to the Committee of Ministers' Resolution inviting it to mark a judgment as a "pilot judgment" if it reveals an underlying problem affecting the rights of many other individuals who are in a situation comparable to that of the successful applicant. The Court was also invited to indicate, in such judgments, the source of the underlying problem. In other words, such a pilot case forms the tip of the iceberg, in that many other people have suffered the same violation as a result of the same problem. I must confess that I am not very happy with the expressions "systemic" or "structural" problems for such situations, because they seem to refer only to situations where there is an endemic or really structural and widespread problem or dysfunctioning in the national legal order (such as non-execution of domestic courts' judgments, general slowness in the administration of justice, unacceptable prison conditions in a country, etc.). But the Broniowski case shows that there are other situations where the Resolution can also be applied: it concerned not a systemic but a rather specific problem (the State had not, or not sufficiently, given effect to the property rights of persons whose possessions came to fall outside Polish territory after the change of the eastern border of Poland made at the end of the Second World War). A specific problem, yes, but one which affects some 80 000 people! While the title of the Committee of Ministers' Resolution refers to "an underlying *systemic* problem" only, it is more important to recall that its purpose is clearly to help avoid a situation where the Court has to pronounce on large numbers of repetitive cases after it has already clarified the legal position under the Convention in a pilot case. For this reason, it is perhaps better to speak of judgments revealing a problem –whether systemic or specific – which affects a category or "class" of persons. Of course, it is understood that this category may be very broadly drawn if

there really is a systemic problem: persons deprived of their liberty, persons with criminal, civil or administrative cases pending before the courts, etc.

I am drawing your attention to the difference between these two sources of (potential) repetitive cases (structural problems vs. specific problems) not as a purely theoretical exercise but because it has implications for the execution of judgments and its supervision by the Committee of Ministers. The consequences are quite different. Whilst specific problems affecting large numbers of people (as in Broniowski) can be addressed through specific measures which normally would not need a long time to take, solving a truly systemic problem will often be a more difficult and time-consuming task, involving a comprehensive set of measures to tackle it.

Finally, *Broniowski* also illustrates another novelty (but see, *mutatis mutandis*, the practice of the Court pending the adoption of the Pinto Law in Italy) in the Court's approach: the Court has decided, pending the execution of the pilot judgment, to suspend its examination of all 167 similar Polish cases that have already been brought before it. This obviously adds a great deal of extra pressure on the execution process and constitutes an important further incentive to solve the underlying problem rapidly. It also places an enhanced responsibility on the Committee of Ministers in evaluating the adequacy of measures taken in execution of the judgment: those measures must ultimately remove the need for those 80 000 other people affected to turn to the Strasbourg Court.

What does all this imply for the execution practice? What national measures, procedures or mechanisms could be devised to meet these various challenges and, similarly, what should the Committee of Ministers do at the European level to ensure that its supervisory task meets them?

Obviously, it is up to you today to propose and discuss concrete answers and suggestions, especially in Working Groups 2 and 3.

I would like to offer a few thoughts myself to stimulate your debates:

- As concerns **the execution of judgments on issues with political aspects**, it is clear that such cases in particular demand a strong resolve and maintaining an acute sense of collective responsibility within the Committee of Ministers in order to see to it that judgments are fully executed. But the first responsibility lies with the country directly concerned. It is not helpful, and even dangerous, for it to contest the findings of the Court, whose jurisdiction it has accepted. Here I would plead for a different regard to the Court and its judgments. It is not the Court which creates a political problem, the case merely *reveals* it and the Court identifies its consequences in human rights terms. The Committee of Ministers should remind respondent States that they have joined the Convention system not for themselves but for the benefit of their populations and the protection of their fundamental rights. States should be pleased that such problems and deficiencies are exposed by the Court for it gives them an extra

impetus to solve them, for the benefit of their people. The Council of Europe is the only international organisation where politically loaded issues are dealt with through a judicial approach. That is a great advantage, for it permits progress in a step-by-step, pragmatic manner. Especially in sensitive cases, Court judgments should be *used* by government agents and their ministries as a lever to persuade other authorities and the parliaments of the need to take legislative or other action. Also at the international plane, governments have much to gain politically by taking execution measures, especially in sensitive cases. The *Loizidou* case comes to mind as an obvious example.

- As concerns **the Court's new practice of including in its judgments more explicit indications of execution measures**: this is a welcome development, which does not really contradict the general principle of free choice of means of execution since, as the Court has indicated, in certain cases the nature of the violation dictates the course of action to be followed. This will undoubtedly facilitate execution and help the Committee of Ministers to determine how to carry out its supervisory role. In this context, I recall the example of the Ilascu case (involving the taking of all necessary measures by Moldova and Russia to put an end to the continued arbitrary detention of two of the applicants and secure their immediate release). The case has been on the agenda of the Ministers' Deputies every week since the beginning of September. There is thus an agreed sense of urgency given the nature of the objective fixed by the Court itself. This practice should be developed further.

- As concerns the **Court's identification of underlying problems in pilot judgments**: I refer to the distinction I made earlier. If the problem is really systemic it is not reasonable to demand general measures in the short term to remedy the problem. But it is legitimate and even necessary for the Committee of Ministers to ask that the State concerned rapidly produce a comprehensive plan of action and time-table on how it plans to tackle the problem. This will frequently require close interministerial co-operation and co-ordination in the country. My suggestion for such cases would be that special task forces be set up between relevant ministries and authorities to prepare such a plan of action and vigorously implement it. It would also seem appropriate to transmit progress reports not only to the Council of Europe, but also to national parliaments and national human rights institutions. They, and human rights NGOs, can be instrumental in promoting sustained implementation.
  On the other hand, in pilot cases where the underlying problem is specific, the State concerned should proceed rapidly to legislative or other measures to remove the source of the problem and create appropriate remedies or compensation mechanisms (a matter also addressed in the Committee of Ministers' Recommendation on the improvement of domestic remedies (Rec (2004) 6), possibly in combination with offering friendly settlements. The execution of

pilot judgments calls for a strong determination on the part of the Committee of Ministers to see early results, even more so where the Court has decided to suspend its examination of the repetitive applications.

A few general remarks concerning the execution of judgments and the role of the Committee of Ministers. Accelerating and improving the execution of judgments must be the overriding general objective. I have outlined some of the challenges that the Committee of Ministers faces. But I would not want to leave you with the incorrect impression that this role of the Committee of Ministers is *generally* difficult or problematic. It remains a fact that execution of judgments works well in the great majority of cases. Most problems are solved in the course of the supervision of execution. It is also true that the Committee has over the years made substantial progress in developing its practice, sometimes also inspiring the Court's own practice. Examples are the requirement that States pay default interest in case of late payment of just satisfaction to the applicant, or the reference to non-respect of the State's obligations under Article 46 which was included in an Interim resolution in the Loizidou case, taken up by the Court in its Ilascu judgment and indeed also by the new provisions on execution in Protocol No. 14. I also refer to the excellent initiative of the Norwegian Chairmanship of streamlining the working methods of the Ministers' Deputies when supervising execution of judgments.

I would plead, though, for a stronger implication of other ministries (Justice, Interior, etc.) in the supervision of execution of judgments against *another country*. This supervision role is quasi-judicial by nature but too often it is left only to Foreign Ministries, where quite naturally diplomatic considerations and the need to preserve good bilateral relations play a strong role. In a way, these factors may even lead to an unhelpful politicisation of the execution question. It would really help maintain and develop the common European legal space created by the Convention and the quasi-judicial nature of the role of the Committee of Ministers if those other ministries would feel more concerned by the execution process and were aware of its real nature and spirit.

Finally, I must point to the fact that the Committee of Ministers is not only a Convention organ tasked with the supervision of judgments. It is also the executive organ of the Council of Europe. As such it has both the responsibility and the possibility to ensure that, wherever necessary, the wider Council of Europe is mobilised to help carry forward the execution of judgments. I welcome the keen interest shown by the Parliamentary Assembly, which follows closely the execution practice, notably through parliamentary questions and regular reports. The usefulness of involving other institutions of the Council of Europe (like the Commissioner for Human Rights – who will now be mentioned in the Convention as a result of Protocol No. 14 – or the Venice Commission) has also been stressed by the CDDH in its report of April 2003. The idea is not, of course, that they would duplicate the role of the Committee of Ministers, but that they can, within their own area of compe-

tence, take useful supportive action to help bring about speedy and full execution of judgments. Too often, the Council of Europe is seen only as a constellation of mechanisms to monitor respect for human rights. But the Council of Europe does much more than monitoring. It also provides concrete assistance to member States to help them comply with human rights standards. We should intensify efforts to ensure greater synergies between these assistance programmes and the monitoring mechanisms. There are already good examples concerning not only the Convention but also other mechanisms such as the Framework Convention for the Protection of National Minorities. The CPT is also examining ways to promote concrete assistance activities to help States in their follow-up to the recommendations made to them. Existing or new assistance programmes should also be geared towards helping a country to overcome certain difficulties in complying with a judgment of the Court.

Concluding remarks

Ladies and gentlemen,

I have offered you a rapid overview of some key issues concerning the implementation of the comprehensive reform package adopted last May. I hope that my presentation will have made clear how interdependent these issues are, whether they concern the entry into force of Protocol No. 14, the role of the Committee of Ministers, or the measures to be adopted within the national legal orders. This interdependence is not surprising. As I said at the beginning, the Convention system for the protection of human rights is characterised by a circular kind of interaction between the national and the European levels. Human rights protection begins and ends at home. It is now up to you, to national authorities, both ministries and parliaments, to take up this challenge in a equally comprehensive manner, where necessary with the help and support of the Council of Europe. It is only thus that we can all ensure that this reform becomes a success.

On behalf of the Council of Europe, I wish this Seminar every success. I thank you for your attention.

EUROPEAN COURT OF HUMAN RIGHTS

CASE-LOAD STATISTICS[1]

SUMMARY

I. Inflow of applications

- About 39 000 "new applications lodged" in 2003 with an estimated increase to 45 000 applications in 2004, 52 000 in 2005 and 60 000 in 2006.
- 27 200 "applications allocated to a decision body" in 2003 with an estimated increase to 31 300 applications in 2004, 35 700 in 2005 and 40 900 in 2006.

II. Processing applications

- 17 950 applications were finally disposed of by decision or judgment in 2003. 17 250 were declared inadmissible or struck off (96% of the applications disposed of). 16 500 applications were rejected by a Committee (92% of the total disposed of and 96% of the applications declared inadmissible or struck off).
- There is a trend of increase in the totals for other main procedural events (number of applications communicated to a respondent Government and number of applications declared admissible).

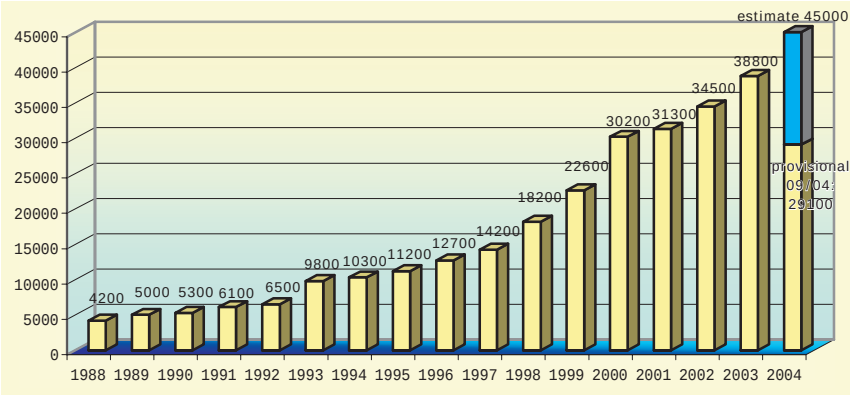
III. Pending applications

- A total of 75 800 applications were pending on 1 September 2004, of which about 49 000 were pending before a decision body (as compared with 38 500 on 1 January 2004).
- The inflow of applications exceeds the number of cases disposed of. The "backlog" of applications which do not meet the maximum acceptable duration of one year at one of the main procedural stages has increased from 8 100 on 1 January 2003 to 15 300 on 1 January 2004 (increase rate 89%) and further to 21 400 on 1 September 2004 (increase rate 40%).
- It is estimated that at least 50 000 applications will be pending before a decision body on 1 January 2005.

1. A glossary explaining the terminology used in these statistics appears on page 59.

I. INFLOW OF APPLICATIONS

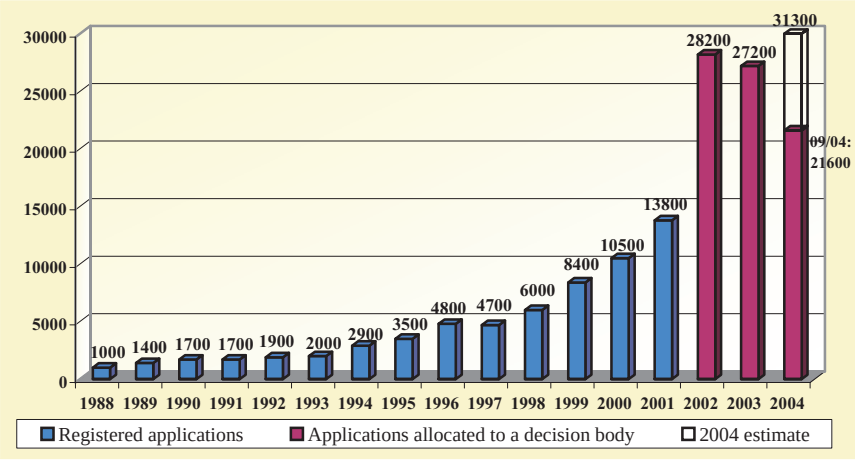
Chart 1: New applications lodged per year (1988-2003 and estimate for 2004)



About 39 000 applications[2] were lodged in 2003: this represents an increase of 13% as compared with 34 500 applications lodged in 2002. It is estimated that the figure will rise to 45 000 applications in 2004, 52 000 in 2005 and 60 000 in 2006.

2. Figures represent the total number of applications, including joined applications. The document generally refers to round figures. Figures prior to 1 November 1998 relate to the European Commission of Human Rights.

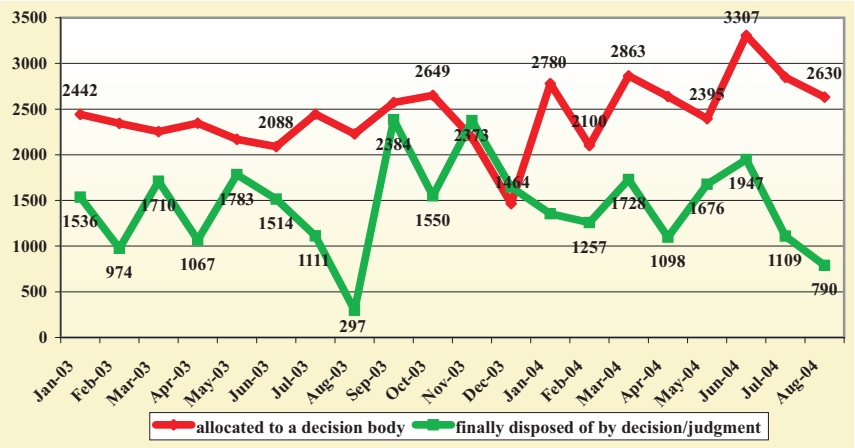
Chart 2: Applications allocated to a decision body per year (1988-2003 and 2004 estimate)



The 2003 statistics – 27 200 applications allocated to a decision body – confirm that the dramatic upsurge in applications allocated in 2002 was to some extent a transitional phenomenon following a change in working methods, transferring much of the screening of inadmissible applications from the administrative, pre-judicial stage to a judicial decision by a Committee. Upon allocation, 80% were earmarked for Committee procedure. It is estimated that the number of applications allocated will increase to 31 300 applications in 2004, 35 700 in 2005 and 40 900 in 2006.

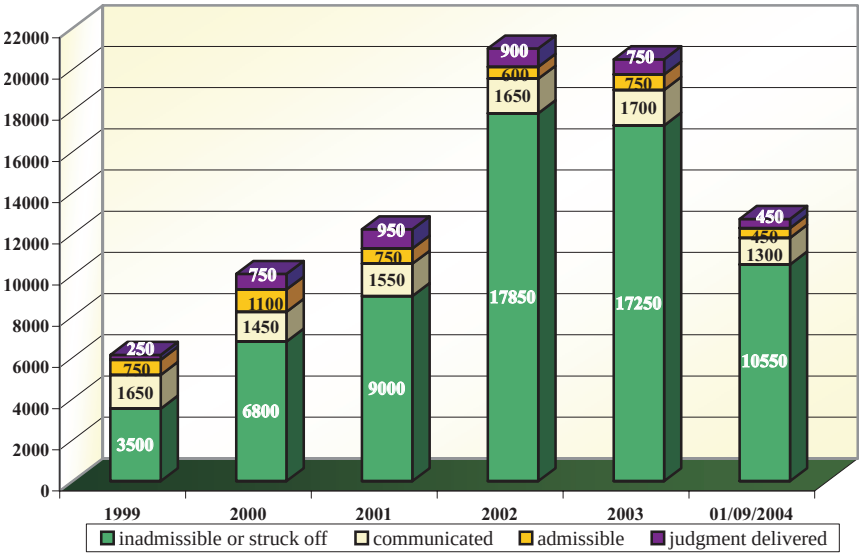
II. PROCESSING APPLICATIONS

Chart 3: Comparison between applications allocated to a decision body and applications finally disposed of by decision/judgment (2003-August 2004)



The inflow of applications exceeds the number of cases disposed of. In 2003, 17 950 applications were disposed of by decision or judgment, leaving a deficit of 9 246 applications. In the first eight months of 2004, this deficit amounted to 10 601 applications (10 950 disposed of). 92% were rejected by a Committee.

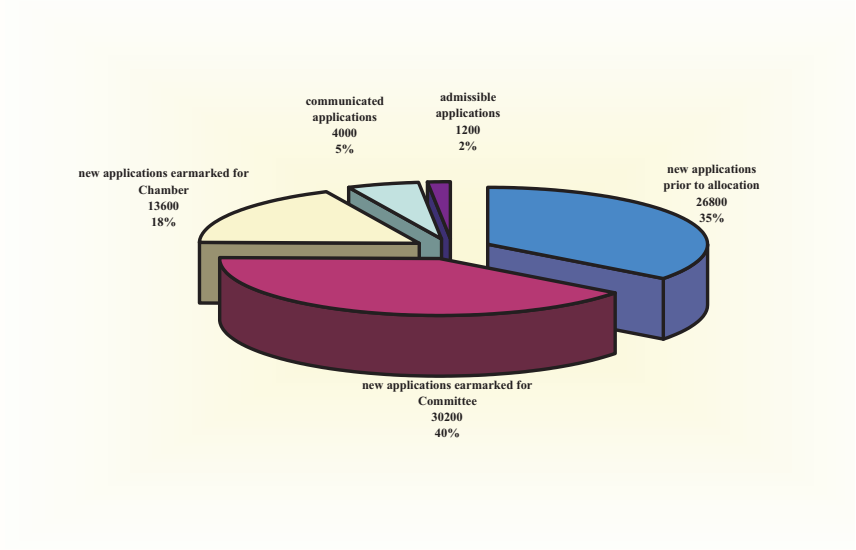
Chart 4: Major procedural steps in processing applications (1999-2003, first eight months 2004)



Since 2002, there has been a trend of increase in the number of applications communicated to the respondent Government (76% by a Section President in 2004) or declared admissible (including by means of recourse to the joint examination of admissibility and merits under Article 29 § 3 of the Convention).

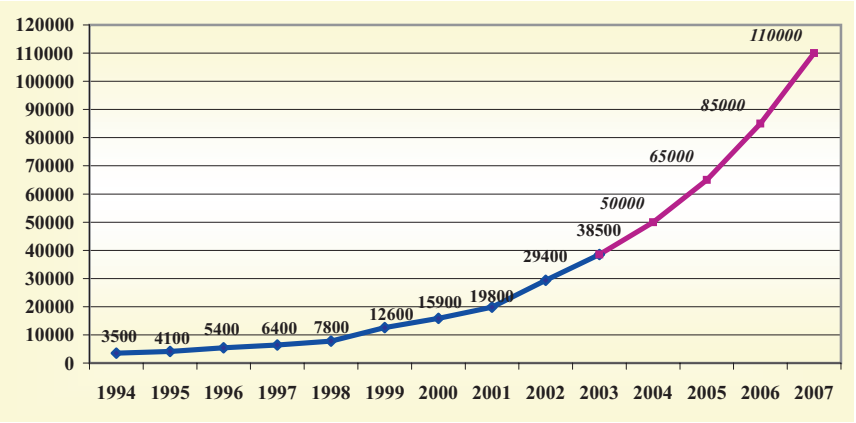
III. THE COURT'S CASE-LOAD

Chart 5: Composition of the Court's case-load by stage of proceedings



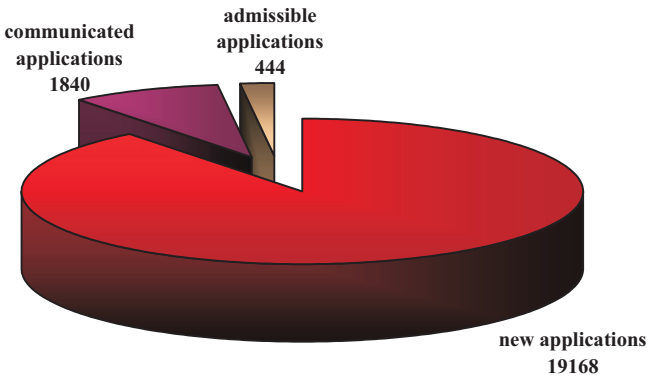
Approximately two-thirds of the total of 75 800 applications pending before the Court are allocated to a decision body, which opens the way to judicial examination. 58% are awaiting a first judicial examination and 7% are in the process of judicial examination after communication to the respondent Government or after having been declared admissible.

Chart 6: Applications pending before a decision body (1998-2003 and possible trend)



During the three years which followed the entry into force of Protocol No. 11 the Court's case-load grew at an unprecedented rate. At the beginning of September 2004, 48 750 applications were pending before a decision body. It is estimated that by the end of 2004, at least 50 000 applications will be pending before a decision body. With the current annual increase rate of 30%, this figure would have more than doubled by the end of 2007.

Chart 7: Backlog applications



At the end of 1999, the Court set targets regarding the time-limit within which certain procedural steps should be taken. Twelve months ("one-year target") are regarded as a maximum acceptable duration of the proceedings

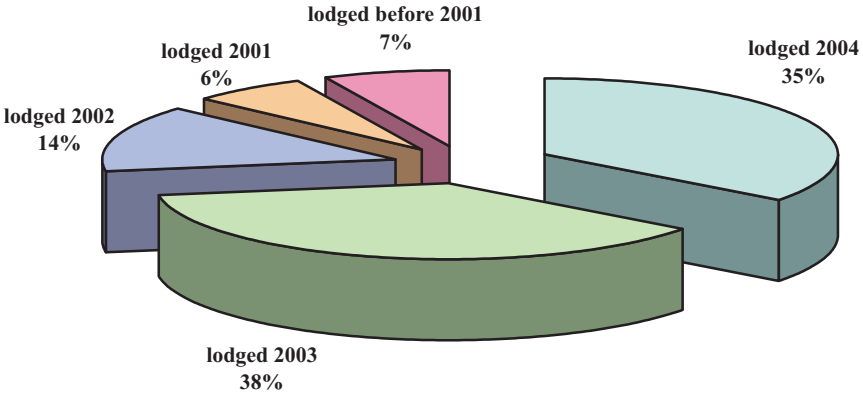
(i) from allocation to the first examination of admissibility (de plano inadmissibility or strike off, or communication),

(ii) from communication to a decision on admissibility and

(iii) from admissibility to the delivery of judgment.

The term "backlog" is used to refer to applications which do not meet the one-year target at one of the procedural stages. The Court started 2004 with a total number of 15 300 "backlog applications", as compared with 8 100 applications at the beginning of 2003 (increase of 89%). In the course of the first eight months of 2004, this figure increased by 40% to 21 400. As a result, in 2004 applications exceeding the one-year-target make up 44% of the total of applications pending before a decision-body, as compared with 28% in January 2003.

Chart 8: Time-span since lodging of applications pending before the Court



About three-quarters of all applications pending before the Court were lodged in the course of this and last year. More than half of the 5 200 applications lodged before 2001 and still pending have not yet been subject of a first judicial examination.

IV. COUNTRY-SPECIFIC INFORMATION

Chart 9: Pending applications pending per Contracting State (prior to allocation/pending before a decision body)

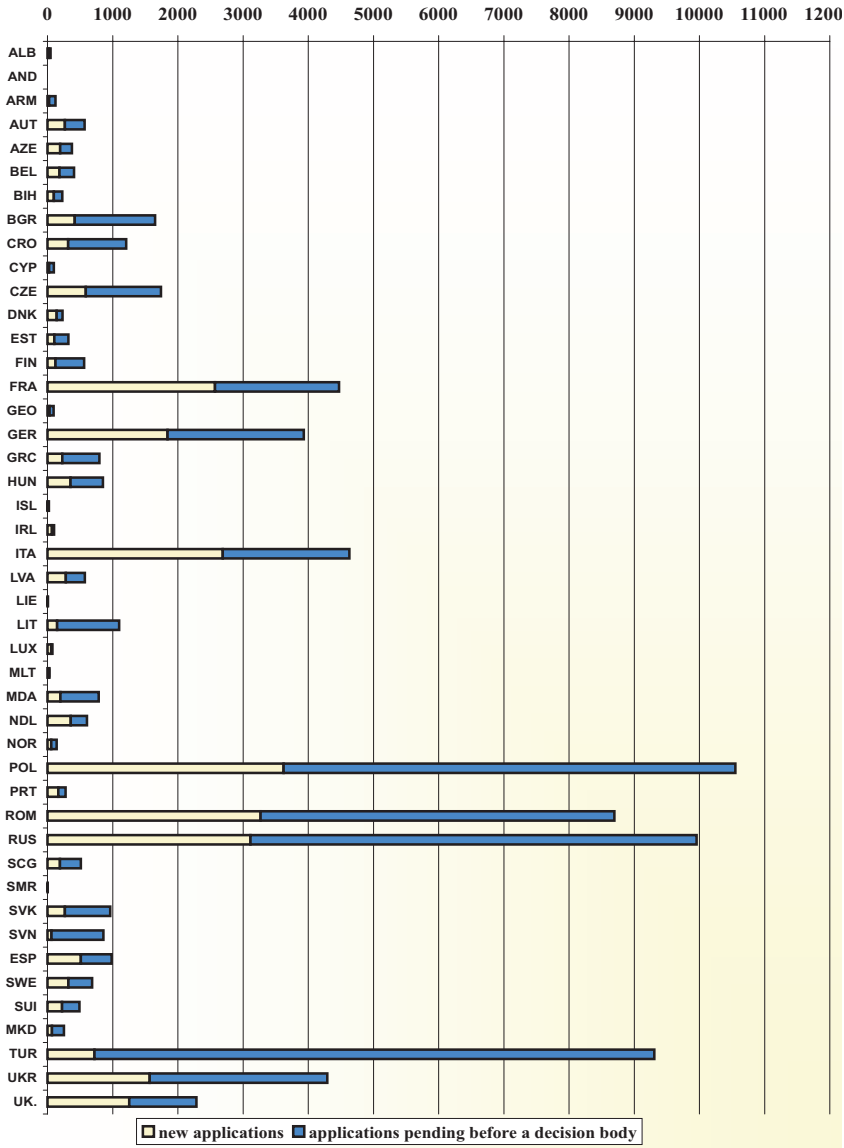
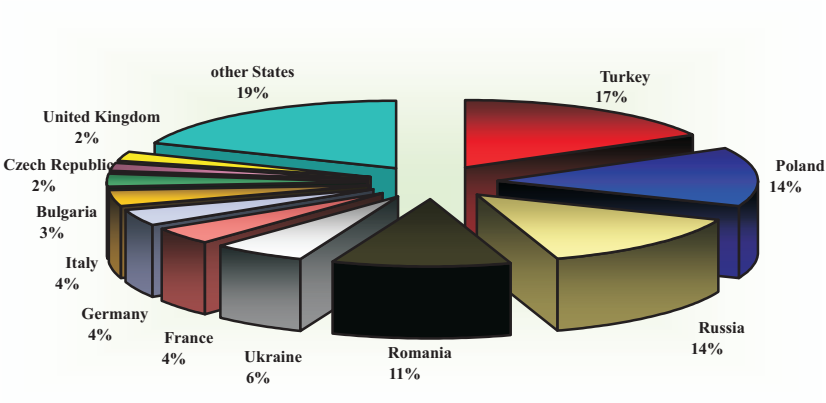
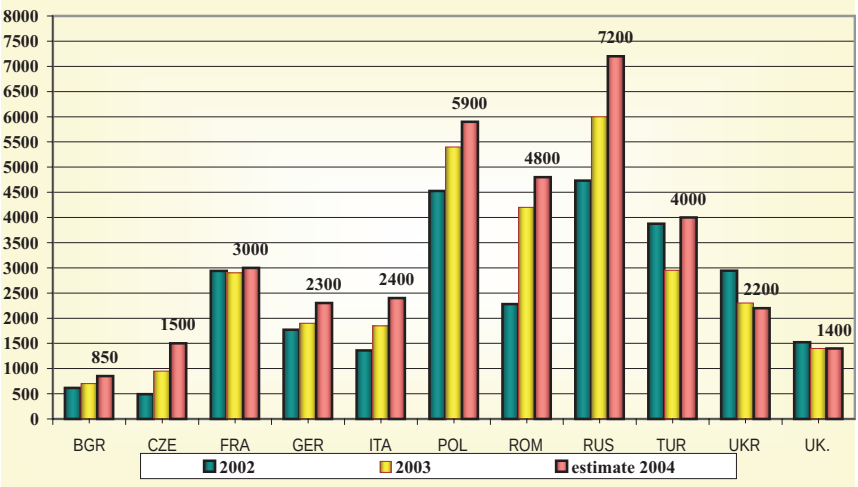


Chart 10: High case-count States with more than 1000 applications pending before a decision body



In numerical terms, and irrespective of the nature and relative complexity of applications, the eleven Contracting States with more than 1000 applications pending before a decision body account for 81% of the Court's case-load requiring judicial examination (total of 48 750 applications). For some of these States there has been a marked rise in the first eight months in the number of applications pending before a decision body, in particular for the Czech Republic (69%), Romania and Germany (43%), Poland and Bulgaria (39%), Russia (28%), Turkey (19%) and the United Kingdom (18%).

Chart 11: Inflow of new applications in respect of the above high case-count States (2002-2003 and trend 2004)



The inflow of applications lodged increases in respect of most of the countries with a high number of applications pending with the Court.

Applications lodged per Contracting State and per inhabitant

State	Population (1000s)		Applications lodged		Applications lodged per head of population (10 000s)	
	01/01/2002	01/01/2003	2002	2003	2002	2003
Albania[a]	3 401	3 401	23	24	0.07	0.07
Andorra[b]	66	66	0	2	0.0	0.3
Armenia	3 212	3 210	32	90	0.1	0.3
Austria	8 039	8 058	434	442	0.5	0.5
Azerbaijan	8 141	8 202	267	265	0.3	0.3
Belgium	10 310	10 356	264	215	0.3	0.2
Bosnia and Herzegovina	3 832	3 832	47	95	0.1	0.2
Bulgaria	7 891	7 846	615	702	0.8	0.9
Croatia[c]	4 438	4 438	862	808	1.9	1.8
Cyprus	793	805	38	44	0.48	0.55
Czech Republic	10 206	10 203	490	943	0.5	0.9
Denmark	5 368	5 384	127	142	0.2	0.3
Estonia	1 361	1 356	116	179	0.9	1.3
Finland	5 195	5 206	229	285	0.4	0.5
France	59 338	59 629	2 937	2 906	0.5	0.5
Georgia[d]	3 948	3 948	42	42	0.1	0.1
Germany	82 440	82 537	1 773	1 911	0.2	0.2
Greece	10 988	11 018	378	481	0.3	0.4
Hungary	10 175	10 142	318	478	0.3	0.5
Iceland	287	289	5	17	0.2	0.6
Ireland	3 901	3 964	85	76	0.22	0.19
Italy	56 994	57 321	1 360	1 845	0.2	0.3
Latvia	2 346	2 332	260	300	1.1	1.3
Liechtenstein	34	34	3	5	0.9	1.5
Lithuania	3 476	3 463	439	482	1.3	1.4
Luxembourg	444	448	47	58	1.1	1.3
Malta	395	397	9	19	0.2	0.5
Moldova	3 627	3 618	253	356	0.7	1

State	Population (1000s)		Applications lodged		Applications lodged per head of population (10 000s)	
	01/01/2002	01/01/2003	2002	2003	2002	2003
Nether-lands	16 105	16 193	574	451	0.4	0.3
Norway	4 524	4 552	79	75	0.2	0.2
Poland	38 237	38 219	4 526	5 359	1.2	1.4
Portugal	10 336	10 408	250	245	0.2	0.2
Romania	21 872	21 773	2 280	4 195	1	1.9
Russia[e]	143 954	153 954	4 733	5 996	0.3	0.4
San Marino[f]	28	28	5	2	1.8	0.7
Serbia and Monte-negro	10 662	10 675				
Slovakia	5 379	5 379	432	540	0.8	1
Slovenia	1 994	1 995	264	265	1.3	1.3
Spain	40 409	40 683	822	603	0.2	0.1
Sweden	8 909	8 941	371	434	0.4	0.5
Switzer-land	7 261	7 324	281	273	0.4	0.4
"The former Yugoslav Republic of Macedo-nia"	2 039	2 039	95	148	0.5	0.7
Turkey	69 078	70 169	3 874	2 918	0.6	0.4
Ukraine[g]	49 037	49 037	2 944	2 276	0.6	0.5
United Kingdom	58 922	59 329	1525	1393	0.3	0.2

Source: Joint Council of Europe/Eurostat demographic data collection, Statistics in focus, Population and social conditions, Theme 3, 20/2003; partly amended on the basis of Eurostat, News release 6/ 2004, 9 January 2004.

a. Population at 01/01/2000.
b. No new data for 01/01/2003.
c. Population at 01/01/2001.
d. Population at 01/01/2001.
e. No new data for 01/01/2003.
f. No new data for 01/01/2003.
g. Population at 01/01/2001.

Non-exhaustive list identifying groups of similar applications against the Contracting States

Czech Republic: complaints about length of proceedings (500 applications);

France: complaints about

- length of civil/administrative and criminal proceedings (about 220 applications);
- retroactivity of specific labour legislation (about 40 applications);
- fairness of proceedings before the Court of Cassation (about 30 applications);

Germany: complaints about property issues (some 120 applications, including 70 applications concerning post-unification compensation for expropriation measures in the Soviet Occupied Zone of Germany and 30 applications concerning restitution claims or compensation claims relating to expropriation in the German Democratic Republic after 1949);

Greece: complaints about length of proceedings (about 145 applications);

Italy: complaints about

- length of proceedings (about 850 applications as compared with 200 at the beginning of 2003);
- property issues, such as expropriation (about 160 applications) and impediments to the eviction of tenants (about 50 applications as compared with 330 at the beginning of 2003);
- bankruptcy proceedings raising not only a length issue but also an Article 8 issue regarding the applicant's legal situation (about 130 applications);
- child care (70 applications);

Moldova: complaints about non-enforcement of judgments (about 120 applications);

Poland: complaints

- about the length of civil proceedings (more than 700 applications);
- that an entitlement to compensation for property abandoned in the "territories beyond the Bug River" had not been satisfied (about 180 applications);

Romania: complaints concerning

- non-execution of judgments (about 90 applications);
- nationalisations and other property issues (about 80 applications);
- military pensions (about 60 applications);
- discrimination against Jehovah's Witnesses (about 20 applications);

- lawfulness of detention on remand (about 20 applications, one of them covering some 180 individual cases);

Russia: complaints about

- non-execution of judgments (about 220 applications);
- events in Chechnya (about 110 applications);
- quashing of final judgments in supervisory review proceedings (20/30 applications);
- absence of the applicant at the second stage of civil proceedings (20 applications);

Slovenia: complaints about length of proceedings (410 applications);

Turkey: complaints mainly about

- property issues, such as expropriation and destruction of property, the late and insufficient payment of interest on State debts (altogether about 4 000 applications, i.e. 50% of the total of applications pending before a decision body, including about 1 500 applications concerning forced displacement from home and prohibition on return to the village, as well as an increasing number of post-Loizidou cases concerning the refusal of access to property in northern Cyprus – more than 1 000 applications);
- Articles 2 and 3 issues not including the above property cases (about 300 applications).

GLOSSARY

The Court's statistical analyses refer to a set of specific terms. This glossary – presented in alphabetical order – is not exhaustive, but may assist in understanding the Court's terminology.[3]

Applications allocated to a decision body

When applications are made on the application form provided by the Registry and are accompanied by copies of all relevant documents, they are "allocated to a decision body" which opens the way to judicial examination.[4] Upon allocation, the case-processing lawyer is required to make a preliminary assessment of whether the application is to be considered by a Committee or by a Chamber (applications are "earmarked" for Committee or for Chamber procedure). Statistics under this head indicate the total number of applications allocated in a given year (or any other reference period), irrespective of the current state of proceedings.

Applications disposed of administratively

If applicants, having lodged a first summary application but without filling in the necessary application form or submitting all relevant documents, do not respond to the Registry's reply within one year of its dispatch, their complaints are taken to have been withdrawn and are not examined by the Court. The file opened in respect of the application is destroyed.

Applications disposed of by decision

Applications allocated to a decision body are "disposed of" once a decision or judgment terminating their examination has become final.

Applications lodged

Any application made under Articles 33 or 34 of the Convention, i.e. where a first document setting out, at least summarily, the Convention complaints is sent to the Court.[5] They are recorded in the Court's database (CMIS) with a sequential number and the last two digits of the current year. Thus, the first number assigned to an application in 2004 was 1/04 and the number 2222/04 was the 2222nd application recorded in 2004. Statistics under this head indicate the total of applications lodged

3. New terminology was introduced following the changes of working methods in 2002, transferring much of the screening of inadmissible applications from the administrative, pre-judicial stage to a judicial decision by a Committee. The previous practice is indicated in a footnote, where appropriate.
4. This is the equivalent to "registering an application" under the previous practice.

in a given year (or any other reference period), irrespective of the current state of proceedings.

Applications pending

"Pending applications" are the total of applications lodged, irrespective of the date of lodging, and not yet disposed of.[6]

Applications pending and not allocated to a decision body

"Applications lodged" which have not been allocated to a decision body (e.g. the completed application form is not returned or copies of relevant documents are not sent).[7] Statistics under this head indicate the total applications pending and not allocated to a decision body, irrespective of the date of lodging. Applications which cannot be disposed of administratively should be allocated to a decision body within two years of having been lodged.

Applications pending before a decision body

Applications which have been allocated to a decision body and have not been finally disposed of. Statistics under this head indicate the total of applications pending before a decision body, irrespective of the date of allocation.

Backlog applications

The Court has set targets regarding the time-limit within which certain procedural steps should be taken. Twelve months ("one-year target") are regarded as a maximum acceptable duration of the proceedings

(i) from allocation to the first examination of admissibility (*de plano* inadmissibility or strike off, or communication),

(ii) from communication to a decision on admissibility and

(iii) from admissibility to the delivery of judgment.

5. Under the Court's previous practice, a provisional file was opened in respect of a first letter from an applicant setting out summarily the Convention complaints. The application was only formally registered once the application form and copies of any relevant documents relating to the object of the application had been received.
6. Under the Court's previous practice, the notion of "pending applications" was reserved for applications which had been formally registered and assigned a composite registration number. Applications at the stage of a "provisional file", which had a different numbering, were not regarded as "pending".
7. This is the equivalent under the previous practice of "provisional files". It should be noted that part of the applications lodged are not pursued by the applicants (see "applications disposed of administratively").

The term "backlog" is used to refer to applications which do not meet the one-year target at one of the procedural stages.

Case-processing lawyers

The Court is assisted by a Registry, which at the beginning of 2004 was composed of 427 staff members. 157 of these were case-processing lawyers in the twenty Legal Divisions (75 permanent, of whom 3 were on secondment or on leave for personal reasons, and 82 temporary, of whom 23 were junior lawyers).

Decision bodies

Decision bodies within the Court are Committees, Chambers and the Grand Chamber.

Committees of three judges are set up within each four Sections of the Court for twelve-month periods. A Committee may decide, by unanimous vote, to declare inadmissible or strike out an application where it can do so without further examination.

Chambers of seven members are constituted within each Section on the basis of rotation.[8] Individual applications which are not declared inadmissible by Committees, or which are referred directly to a Chamber by the Judge Rapporteur, and State applications are examined by a Chamber. Chambers determine both admissibility and merits, in separate decisions or where appropriate together.

The **Grand Chamber** is composed of seventeen judges, who include, as *ex officio* members, the President, Vice-Presidents and Section Presidents. The Grand Chamber examines cases after a Chamber decision to relinquish jurisdiction or after a decision of the Grand Chamber's Panel to accept a request for re-examination after judgment by a Chamber.

Judge Rapporteurs

Each individual application is assigned to a Section, whose President designates a judge as Judge Rapporteur. After a preliminary examination of the case, the Judge Rapporteur decides whether it should be examined by a Committee or by a Cham-

8. The Section President and the Judge elected in respect of the Party concerned sit in each case. The members of the Section who are not full members of the Chamber sit as substitute members. If two or more Contracting Parties have a common interest and a common-interest judge is appointed, he or she sits *ex officio*. An a*d hoc* judge may be appointed by a Contracting Party if the Judge elected in respect of that Party is unable to sit in the Chamber, withdraws, or is exempted, or if there is none, and if not other elected Judge is appointed by that Party to sit as judge.

ber and submits the court working documents necessary for the judicial examination of the case.

Priority treatment

Applications are normally dealt with in the order in which they become ready for examination, unless a particular application is given priority. In November 2003 the Court introduced a new policy regarding the grant of formal priority to applications in order to speed up the processing of important cases from all Contracting States.

Processing applications, major events

Where an application is not **declared inadmissible or struck out of the Court's list of cases**, the Section President or the competent Chamber generally decides to give notice of the application to the respondent Contracting State and invite that Party to submit written observations on the application and, upon their receipt, invite the applicant to submit observations in reply (**"communication"**). On the basis of the material received, the Chamber will resume the examination of the admissibility and merits of the applications, mostly in a joint examination under Article 29 § 3 of the Convention to the effect that the **decision on admissibility** is incorporated in the **judgment on the merits** (practice changed in September 2004), which normally terminates the proceedings after expiry of a three-month period for submitting a request for referral to by the Grand Chamber.

ENSURING A RAPID ENTRY INTO FORCE
OF PROTOCOL NO. 14 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Aide-mémoire prepared by the Directorate General of Human Rights, Council of Europe

The political commitment

In the Declaration "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels", adopted on 12 May 2004 at the Ministerial session of the Committee of Ministers of the Council of Europe, the member States have committed themselves to ratifying Protocol No. 14 as speedily as possible so as to ensure its entry into force within two years, that is: at the latest on 1 May 2006. The Protocol (Article 19) provides that it shall enter into force three months after the last member State will have ratified it (or otherwise has expressed its consent to be bound). Therefore, all member States should ratify the Protocol *before the end of January 2006*.

The need for speedy ratification

The latest statistics on the case-load of the European Court of Human Rights (as at 1 September 2004, 75 800 applications were pending and a rapidly increasing backlog stood at 21 400 applications) demonstrate the urgency of the entry into force of Protocol No. 14. This is essential to enable the Court to make use of the important procedural efficiency improvements and increased case-processing capacity brought about by the amendments contained in the Protocol. A speedy entry into force is not only important in its own right, to allow the Protocol to produce practical results as soon as possible. It is also necessary to allow for an early stock-taking of its impact on the Court's effectiveness.

Reasons why ratification before mid-2005 should be feasible

A period of two years for entry into force seems a relatively short time, certainly compared with the time needed for the entry into force of Protocol No. 11. However,

it is not for nothing that the Steering Committee for Human Rights (CDDH) and the Committee of Ministers agreed on this deadline. In fact, given the urgency of the entry into force of Protocol No. 14, this two-year period should be seen *as a maximum* and member States should make every effort to ratify the Protocol well before January 2006, if possible *by the middle of next year*.

This is not unrealistic, far from it. This short aide-mémoire seeks to illustrate that point by means of some practical reminders which may be of assistance to all those who are responsible for preparing and accompanying the national ratification process in the member States. The aim is to help them in ensuring a rapid ratification of Protocol 14. Attention is drawn to the following points:

(i) the amendments contained in Protocol 14 represent no important restructuring of the control system of the Convention. To use the words of its Explanatory Report (§ 35): "Unlike Protocol 11, Protocol No. 14 makes no radical changes […] The changes it does make relate more to the functioning than to the structure of the system." It should therefore be much easier to ratify swiftly;

(ii) it seems highly improbable, given the nature of the amendments in Protocol No. 14, that ratification would require any substantive changes of domestic legislation;

(iii) ratification of Protocol 14 *as such* does not entail any direct budgetary consequences. Such financial considerations should therefore not be a complicating factor during the domestic ratification processes. One could even argue that, if there is any direct financial dimension to the Protocol at all, it is simply that the efficiency and capacity increases it brings will mean more "value for money" for member States. Of course, there is wide agreement that budgetary measures are necessary in order to reinforce the Registry so as to realise the Protocol's full potential. In fact, such measures are at all events necessary, with or without Protocol No. 14. It is recalled that a special programme to increase the resources for the Court and for the execution of judgments was already adopted in 2002, well before the adoption of the Protocol;

(iv) experience shows how important and useful it is for those who were involved in the drafting work to explain in plain language and in summary form the content of a treaty to other domestic authorities involved in the national ratification process. Those other authorities often lack the relevant expert knowledge or simply have not followed the European drafting process. It is mainly for the benefit of the non-initiated that paragraphs 35-46 of the Explanatory report contain a helpful, 1-page summary of the changes introduced by Protocol No. 14. This text could usefully be translated in the national language(s) and be used in contacts with other ministries and of course parliaments.

NORWEGIAN NON-PAPER

SUMMARY OF NEW WORKING METHODS ADOPTED BY THE COMMITTEE OF MINISTERS' DEPUTIES IN APRIL 2004[1]

Following an initiative of the Norwegian Vice-Chair of the Committee of Ministers, the Ministers' Deputies took note, in April 2004, of Guidelines of the Chair for the conduct of Human Rights meetings (i.e. Committee of Ministers' meetings especially devoted to the control of execution of judgments of the European Court of Human Rights). These guidelines aim at ensuring that meeting time is mainly used for cases or issues that require collective attention and suggest that the Chair be guided by a non-exhaustive list of criteria in proposing cases for debate.

Furthermore, the Secretariat, the respondent State and the other member States are invited to adhere to a code of good practices in the submission of information and during the meetings.

The Deputies also took note of a number of practical measures, notably the preparation of new working documents, over and above the **annotated agenda**,[2] to assist the execution control. The introduction of the Status Sheet as a new tool is essential in this respect.

The Status Sheet will provide succinct information on the state of execution of judgments, relevant to the task of supervision. It will include an **action plan** for execution, to be prepared by the respondent State, with the Execution Department of the Secretariat, within 6 months after each new relevant judgment (containing notably information on planned measures and time tables). The Status Sheets of cases to be debated will constitute the **order of business** for Human Rights meetings, which will thus explain why certain cases are proposed for discussion.

These elements are being progressively implemented, but the use of the Status Sheets is pending finalisation of a computer-based database.

They also noted that, within a year of the delivery of a judgment, it ought to be clear how the judgment has been or will be executed. If the judgment has not been executed within the year, the Deputies should examine how to best ensure that execution will take place as rapidly as possible. In this way action plans should also assist

1. Ref. Document CM/Inf (2004) 8 dated 7 April 2004.
2. The annotated agenda (containing relevant information on state of execution) and other documents are available on: http://www.coe.int/: "Activities", "Human Rights" "Supervision of execution of judgments of the Court".

in better structuring the execution process and in developing adequate responses in cases of delays or negligence in execution.

Further reflection on responses to delay or negligence is presently being carried out by the Deputies.

First experiences of new working methods for the Committee of Ministers' execution control

- Too early for firm conclusions – first cycle of 6 months just finished.
- First experience appears **globally positive**:
  - more effective debate in the Committee of Ministers;
  - meeting time better used;
  - problem cases better identified;
  - delegations more involved in cases against other countries, both to put pressure and to learn from their experiences.
- Still a number of **dark spots**:
  - 6-month time limit for the presentation of action plan not respected by states
  - better national procedures for following up judgments appear necessary (e.g. more responsibility for agent, creation of inter-ministerial working group)
  - even if situations of delay and negligence in execution better identified, question of adequate responses left open – ideas for responses are: better follow up and advice by Execution Department; better peer pressure at meetings; more high-level meetings; more interim resolutions; "black lists" publishing situations of negligence or delay.
  - the Execution Department's capacity to follow up execution progress and provide advice to the Deputies more limited as a result of extra work caused by new working methods.
- **Outstanding issue**: The call for maximum publicity during the execution process, in particular of systemic problems, and better co-operation with other bodies, notably Parliamentary Assembly still unattended;
  - order of business with explanations not public (annotated agenda is, however);
  - unsatisfactory information on outcome of meetings – remedy could be more individualised and public decisions rapidly available on the Internet;

  - absence of an adequate system (there is e.g. no register of pending cases, even less per country) to inform other interested bodies: e.g. Human Rights Commissioner, Parliamentary Assembly, Secretary General.
- Linked to all above concerns is the project to set up a **computerised database** with relevant execution information, both for delegations and for the public.

CONTENTS

DIRECTORATE GENERAL OF HUMAN RIGHTS
COUNCIL OF EUROPE
F-67075 STRASBOURG CEDEX
http://www.coe.int/human_rights/

MINISTRY OF FOREIGN AFFAIRS
PO BOX 8114 DEP.
N-0032 OSLO
http://odin.dep.no/ud/