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Committee on Legal Affairs and Human Rights

The Future of the European Court of Human Rights and the Brighton Declaration¹

Background memorandum prepared by the Secretariat upon instructions of the Rapporteur

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¹ The title of the report may need to be amended to reflect the need to focus on the future of the Convention system as a whole, rather than exclusively on the Court. For example, the title could read: "The Effectiveness of the European Convention on Human Rights: the Brighton Declaration and Beyond".

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1. Introduction

1. The current issues threatening the longevity of the Convention system relate not just to the functioning of the European Court of Human Rights (hereinafter “the Court”), but to the whole system of implementation. Only through a collective endeavour between the executive, legislative, and judicial organs, at both the national and European levels, can the future of the Convention system be preserved.² This background memorandum - prepared upon the specific instructions of the Rapporteur - seeks to provide the AS/Jur with a summary of follow-up action that has been taken subsequent to the Brighton Declaration of 20 April 2012 and to realign the parameters of the debate, focusing in particular (although not exclusively) on the increased role which parliamentarians may need to play, both within the Parliamentary Assembly of the Council of Europe and their national Parliaments, in order to ensure the viability of the Convention system.³ As indicated by the Assembly, the increased involvement of parliamentarians is crucial in two regards in particular: the resolution of structural/systemic problems in States Parties, and the oversight of effective and rapid implementation of Court judgments. The present background memorandum focuses on steps that are being taken and which are to be taken which require neither amendment of the Convention, nor a change in the working methods of the Court.⁴

2. The recent Brighton Declaration⁵ is the latest step in the ongoing Interlaken Process, which followed the adoption of Protocol No.14 in 2004, and the Report of the Group of Wise Persons submitted to the Committee of Ministers in 2006. The first High Level Conference was held at Interlaken in 2010, resulting in adoption of the Interlaken Declaration and Action Plan.⁶ In June 2010, Protocol No.14 entered into force, implementing certain reforms to the Court aimed at reducing the backlog and speeding up the resolution of applications before the Court. The second High Level Conference was held at Izmir in 2011,⁷ followed by the High Level Conference at Brighton in 2012. Throughout this process, three key issues have repeatedly been emphasised: firstly, the need to enforce domestic implementation of Convention standards (including the strengthening of the principle of subsidiarity), secondly, the need to find solutions for, in particular, dealing with repetitive applications; and thirdly, the need to ensure full, effective, and prompt compliance with final judgments of the Court.⁸

² This, in turn, will ensure the safeguarding of the Court as the “jewel in the Crown of the Convention system”, see Introductory remarks by Sir Nicolas Bratza, President of the European Court of Human Rights, European Conference of Presidents of Parliament 20 September 2012.

³ See, in this respect, the Opening Statements by Jean-Claude Mignon, President of the Parliamentary Assembly of the Council of Europe, at the Brighton Conference, 19 April 2012 at:

http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/President/Mignon/Discours/2012/19042012_BrightonConferenceE.htm, and the European Conference of Presidents of Parliament 20-21 September, at: <http://assembly.coe.int/Conferences/2012Strasbourg/Background/FutureECHRRoleE.pdf>. See also “Guaranteeing the authority and effectiveness of the European Convention on Human Rights” (rapporteur Ms. Marie Bemelmans-Videc) Assembly Doc. 12811 of 3 January 2012 at:

<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12914&Language=EN>, Resolution 1856(2012) at:

<http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=18060&Language=EN>,

and Recommendation 1991(2012) at:

<http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=18059&Language=EN>

⁴ See Resolution 1726(2010) Effective implementation of the ECHR: the Interlaken Process, at

<http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=17849&Language=EN>; See also, the recently adopted text, Ensuring the viability of Strasbourg Court judgments: structural deficiencies in States Parties, Doc. AS/Jur (2012) 29 Rev, rapporteur Mr Serhii Kivalov, provisional text available at:

http://assembly.coe.int/Communication/pressajdoc29_2012rev.pdf

⁵ Adopted at the High Level Conference on the Future of the European Court of Human Rights (19-20 April 2012), Appendix I to this memorandum, and at:

<https://wcd.coe.int/ViewDoc.jsp?id=1934031>

⁶ Interlaken Declaration, High Level Conference on the Future of the European Court of Human Rights (18-19 February 2010), at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2045095&SecMode=1&DocId=1547616&Usage=2>

⁷ Izmir Declaration, High Level Conference on the Future of the European Court of Human Rights (26-27 April 2011), at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2074588&SecMode=1&DocId=1733590&Usage=2>

⁸ See “The future of the Strasbourg Court and enforcement of ECHR standards: reflections on the Interlaken process”, Conclusions of the Chairperson, Mrs Herta Däubler-Gmelin of the hearing held in Paris on 16 December 2009, document AS/Jur (2010)06 at: http://assembly.coe.int/CommitteeDocs/2010/20100121_ajdoc06%202010.pdf See also Report of the UK Parliament’s Joint Committee on Human Rights 2010, “Enhancing parliament’s role in relation to human rights judgments”, at: <http://www.publications.parliament.uk/pa/it200910/jtselect/jtrights/85/85.pdf>

3. This background memorandum will summarise the reforms proposed at the Brighton Conference as part of the ongoing "Interlaken Process", and will consider further measures and changes in working methods which may be necessary in order to ensure the long-term viability of the Convention system.

2. The Brighton Declaration

2.1. Introductory remarks

4. The third High Level Conference on the Future of the European Court of Human Rights was held in Brighton between 19-20 April 2012, under the United Kingdom Chairmanship of the Committee of Ministers. At the outset, it should be noted that the very title of these Conferences is apt to mislead, suggesting that the problems facing the Court should be the main concern of the member States of the Council of Europe, and moreover that these can be resolved through reform of the Court alone. However, as noted by Mrs Herta Däubler-Gmelin, throughout the Interlaken Process insufficient emphasis has been placed on enforcing Convention standards at the domestic level, in particular, in respect of the Court's (at the time) four main "clients" (Russia, Turkey, Ukraine and Romania), which had "made no serious effort to put into effect the 2000-2004 reform package", and consequently had "put into jeopardy the existence of the ECHR system."⁹

5. The Brighton Declaration is considered to be politically of great importance in so far as it reaffirms the importance of the Convention system, the pre-eminent role of the Court, and the States' Parties attachment to the right of individual application. Further, the Declaration specifically highlights the important role played by the Parliamentary Assembly and national parliaments, scant reference to which was made in the Interlaken Declaration, but subsequently excluded at Izmir.¹⁰ Although the substantive reforms required by the Declaration are not extensive, these changes do encompass some which are of particular importance to the Parliamentary Assembly. Firstly, in respect of the wording of the Preamble of the Convention, a specific reference to the principle of subsidiarity and to the doctrine of the margin of appreciation will be inserted.¹¹ Secondly, as regards the substance of the Convention itself, relevant amendments are fourfold:

- The time limit under Article 35(1) of the Convention within which an application must be made to the Court will be shortened from six months to four months;¹²
- The admissibility criterion under Article 35(3)(b) of the Convention will be amended so as to remove the words "and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal";¹³
- The criterion for relinquishment to the Grand Chamber under Article 30 of the Convention will be amended to remove the words "unless one of the parties to the case objects";¹⁴ and
- The age limit for judges under Article 23(2) of the Convention will be amended so that judges must be no older than 65 years of age at the date on which their term of office commences.¹⁵

6. These changes will be implemented in an amending protocol to the Convention, Protocol No. 15.¹⁶

⁹ Document AS/Jur (2010)06, supra.

¹⁰ See Assembly Resolution 1823 (2011) National parliaments: guarantors of human rights in Europe, § 5.2 at: <http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=18011&Language=EN>; See also A. Drzemczewski, "The Parliamentary Assembly's Involvement in the Supervision of the Judgments of the Strasbourg Court", Netherlands Quarterly of Human Rights, Vol.28/2 (2010), pp. 164- 178, at p.165.

See also Doc.12811, supra., at [18].

¹¹ Brighton Declaration, § B 12 b).

¹² Brighton Declaration, § C 15 a).

¹³ Brighton Declaration, § C 15 c).

¹⁴ Brighton Declaration, § E 25 d).

¹⁵ Brighton Declaration, § E 25 f).

¹⁶ See below, especially paragraphs 28, 37, 46 and 65 as well as the CDDH's website for up-to-date information on this subject: available on the CDDH's website at: http://www.coe.int/t/dghl/standardsetting/cddh/default_en.asp. See CDDH(2012)009 rev for a timetable for completion of the CDDH's various tasks following the Brighton Declaration, at: http://www.coe.int/t/dghl/standardsetting/cddh/CDDH-DOCUMENTS/CDDH_2012_009_REV_Follow-up_%20Brighton.pdf

7. Furthermore, note can be taken of three subjects broached at the Brighton Conference and addressed in the Brighton Declaration, namely (i) the execution of judgments of the Court,¹⁷ (ii) the quality of judges elected to the Court and the clarity and consistency of the Court's caselaw, thereby promoting legal certainty,¹⁸ and (iii) the fact that any major overhaul of the Convention system has been postponed to the future.

8. For ease of reference and clarity, this background memorandum uses the same structure as that of the Brighton Declaration. Under each of the headings to follow (as found in the Declaration, which is appended) the memorandum sets out, firstly, the steps which States Parties and the Council are required to take in order to implement the Declaration, and, secondly, places these in context in addition to indicating further measures which could be envisaged in order to secure the future of the Convention system.

2.2. Implementation of the Convention at national level¹⁹

9. The first section of the Brighton Declaration concerns general measures to be taken on the domestic plane, and broadly echoes section B of the Interlaken Action Plan. National implementation should thus be seen as a central part of the Interlaken reform process.²⁰

10. Such measures have a three-fold aim: firstly, ensuring the authority of Convention rights at the national level, secondly, redressing what has been termed, the "democratic deficit" in the field of human rights,²¹ and thirdly (connected to the second point), fostering a human rights culture²² within States Parties. In pursuit of this aim, particular use should be made of the double mandate of parliamentarians as members of the Assembly and of respective national parliaments.²³ Moreover, embedding human rights policy in parliamentary structures will help to stem the flow of applications to the Court, and to enhance the principle of subsidiarity (see below, 2.3 "Interaction between the Court and national authorities").

11. The specific measures identified in the Brighton Declaration as necessary in order to ensure effective implementation of the Convention at national level include:

- The establishment of an independent National Human Rights Institution (NHRI) in all States Parties,²⁴
- The implementation of measures to ensure that national policies and legislation are fully compatible with the Convention,²⁵
- The introduction of new domestic legal remedies for violations of rights and freedoms under the Convention,²⁶
- Enabling national courts and tribunals to take into account the relevant principles of the Convention²⁷ (in particular by inviting the Court to indicate those judgments it would particularly

¹⁷ Brighton Declaration, § F.

¹⁸ Brighton Declaration, § E.

¹⁹ Brighton Declaration, § A.

²⁰ See CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, 30 November 2012 (CDDH(2012)R76 Addendum I, § 149: "national implementation is at least as important as an effective Strasbourg control mechanism", available on the CDDH's website at:

http://www.coe.int/t/dghl/standardsetting/cddh/default_en.asp

²¹ See *Parliament and Human Rights: Redressing the democratic deficit*, Hunt, Hooper and Yowell, (2012, UK Arts and Humanities Research Council Public Policy Series No. 5). This research paper concludes that such a deficit stems not (contrary to the common perception) from the Court exceeding its competence, but from shortcomings at, *inter alia*, the parliamentary level.

²² See Helfer, "Redesigning the ECtHR: Embeddedness as a Deep Structural Principle of the European Human Rights Regime" 19 *European Journal of International Law* (EJIL) (2008) 125; "National parliaments; guarantors of human rights in Europe" (rapporteur Mr Christos Pourgourides), Assembly Document 12636, at:

<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12866&Language=EN>

²³ See Doc.12811, supra., at § 55; Assembly Resolution 1823 (2011) National parliaments: guarantors of human rights in Europe, supra. § 3; Opening Speech of Mr Jean-Claude Mignon, President of the Parliamentary Assembly of the Council of Europe, European Conference of Presidents of Parliament 20-21 September 2012, at:

<http://assembly.coe.int/Conferences/2012Strasbourg/Background/FutureECHRRE.pdf>

²⁴ Brighton Declaration, § A 9 c) i).

²⁵ Brighton Declaration, § A 9 c) ii).

²⁶ Brighton Declaration, § A 9 c) iii).

²⁷ Brighton Declaration, § A 9 c) iv).

recommend for translation into national languages,²⁸ and encouraging States to ensure these are accordingly translated or summarized),²⁹

- Providing information and training about the Convention to public officials, judges, lawyers and prosecutors;³⁰
- Providing information on the Convention to potential applicants (including translating the Court's Practical Guide on Admissibility Criteria into national languages);³¹ and
- Encouraging States Parties to make additional voluntary contributions to the Human Rights Trust Fund.³²

2.2.1. Setting up of dedicated parliamentary human rights committees

12. Greater involvement by parliaments should come in two main forms: firstly, scrutinising draft legislation for compatibility with the Convention,³³ and secondly, overseeing the implementation of Court judgments. Here, only the first dimension is addressed, as the second will be referred to below at §§ 49-58 of this memorandum.

13. Assembly Resolution 1823 (2011) called for "national parliaments to establish appropriate parliamentary structures to ensure rigorous and regular monitoring of compliance with and supervision of international human rights obligations, such as dedicated human rights committees", whose remits should cover, *inter alia* (i) the systematic verification of the compatibility of draft legislation with international human rights obligations, (ii) the review of domestic implementation of Court judgments, and (iii) the initiation of legislative proposals and amendments to laws³⁴. Such structures should have access to independent expertise in human rights law. At present, very few states appear to have dedicated committees which scrutinise the compatibility of draft legislation with the Convention.³⁵ An example of good practice is the UK Joint Committee on Human Rights. This committee's work also assists the government minister responsible for a Bill to discharge his or her duty under the Human Rights Act 1998 of stating either that the Bill is compatible with the Convention, or that he or she wishes to proceed with the Bill, notwithstanding its incompatibility.³⁶

2.2.2. Awareness raising and provision of training for relevant bodies/persons

14. The report of Ms Marie-Louise Bemelmans-Vidéc³⁷ outlines efforts which are already being undertaken (within States Parties and in co-operation with the Council of Europe) to provide professional training on the Convention for those responsible for law enforcement and the administration of justice.

²⁸ Brighton Declaration, § A 9 h).

²⁹ Brighton Declaration, § A 9 d) i).

³⁰ Brighton Declaration, § A 9 c) v), vi). Work is also being done on this issue by the AS/Jur, see Motion for a Recommendation Doc. 12843 (rapporteur Mr Jean-Pierre Michel), The European Convention on Human Rights: reinforcement and consolidation of the training of judges, law enforcement officials and lawyers. See also report of Mr. Kivalov, Ensuring the viability of Strasbourg Court judgments: structural deficiencies in States Parties, Doc. AS/Jur (2012) 29 Rev (supra) at §§ 59-61, and Draft Resolution thereto §§ 7.4.2.

³¹ Brighton Declaration, § A 9 c) vii). The Court's Practical Guide on Admissibility Criteria is available on the Court's website, at:

<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Case-law+analysis/Admissibility+guide/>

³² Brighton Declaration, § A 9 d) iii).

³³ See in particular Assembly Resolution 1726 (2010) Effective implementation of the European Convention on Human Rights: the Interlaken process, § 5 at:

<http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=17849&Language=EN;>

CM Recommendation (2004)5 on the verification of the compatibility of draft laws, existing laws, and administrative practices with the standards laid down in the ECHR, available at :

<https://wcd.coe.int/ViewDoc.jsp?id=743297&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

³⁴ Resolution 1823(2011), supra.

³⁵ Croatia, Ukraine, Finland, UK, Hungary, Romania.

³⁶ Human Rights Act 1998 section 19. Even in countries such as the UK where *ex ante* legislative scrutiny does exist, this could be further improved, for example by requiring the minister to state the reasons why the Bill is believed to be compatible with Convention standards.

³⁷ Doc. 12811, supra., see §§ 40-42. See also CM Rec(2004)4 on the Convention in university education and professional training, at:

15. In addition to the programmes already in operation, the Council of Europe's Steering Committee on Human Rights (CDDH) recommends the identification of a central authority within States Parties with responsibility for implementation of awareness-raising measures at the national level. It also recommends greater co-operation between NHRIs, the Commissioner for Human Rights, and senior officials in the Council of Europe, as well as assistance from the Human Rights Trust Fund to finance national initiatives.³⁸

16. As regards the provision of information on the Convention to potential applicants, in particular improving awareness of the Court's admissibility criteria, see below, "Applications to the Court" at §§ 34-39.

2.2.3. *Res interpretata* authority of Court judgments

17. The Brighton Declaration § A 9 c) iv) calls on States Parties to "[enable and encourage] national courts and tribunals to take into account the relevant principles of the Convention, **having regard to the caselaw of the Court**" (emphasis added). In this respect, cross-reference can be made to work undertaken on this subject by the AS/Jur, in particular Mrs Herta Däubler-Gmelin,³⁹ Ms Marie-Louise Bemelmans-Videc,⁴⁰ and Mr Christos Pourgourides;⁴¹ all of whom – at different times – have underlined the importance of the interpretative authority, or *res interpretata* of the Court's judgments.

18. The *res interpretata* authority of the Court's judgments results from Articles 1, 19 and 32 of the Convention, and "means nothing more and nothing less than the duty for national legislators and courts to take into account the Convention as interpreted by the Strasbourg Court even in judgments concerning violations that have occurred in other countries".⁴² Whilst Court judgments do not have *erga omnes*⁴³ effect, they have wider significance than simply between the original parties to the case.⁴⁴ Significantly, enforcement of the *res interpretata* authority of Court judgments could prevent the Court drowning in large numbers of repetitive cases⁴⁵ (currently comprising 40,000 of the Court's 139,500 pending cases).⁴⁶ However, despite repeated calls for such enforcement,⁴⁷ the Brighton Declaration does not contain an explicit reference to the principle.

19. Assembly Recommendation 1991(2012) urged the Committee of Ministers "to address a recommendation to the member States calling on them to reinforce without delay, by legislative, judicial or other means, the interpretative authority (*res interpretata*) of the judgments of the European Court of Human Rights".⁴⁸ In § 5 of its reply to the Recommendation,⁴⁹ the Committee of Ministers "takes note" of the

<https://wcd.coe.int/ViewDoc.jsp?id=743277&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>;

³⁸ "CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations", supra.

³⁹ Doc. AS/Jur (2010) 06, supra., at § 15.

⁴⁰ Doc. 12811, supra., at §§ 34-39. See also Doc. 12221, Effective implementation of the European Convention on Human Rights: the Interlaken process (rapporteur Mrs. Marie Bemelmans-Videc), Resolution 1726 (2010) § 4.

⁴¹ "Strengthening subsidiarity: integrating the Court's case-law into national law and judicial practice", Conference on the Principle of Subsidiarity, Skopje 1-2 October 2010, AS/Jur/Inf (2010) 04.

⁴² Presentation by Mr Christos Pourgourides, Chairperson of the Committee on Legal Affairs and Human Rights, at the Conference on the Principle of Subsidiarity, Skopje. This has also been referred to as the "principle of solidarity", see Resolution 1226 (2000), Execution of judgments of the European Court of Human Rights, § 3 at:

<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=16834&Language=EN>

⁴³ See Helfer, "Redesigning the ECtHR: Embeddedness as a Deep Structural Principle of the European Human Rights Regime" 19 EJIL (2008) 125.

⁴⁴ Under Article 46(1), Court judgments are *res judicata* for the Parties to the specific case.

⁴⁵ Presentation by Mr Christos Pougourides, Committee on Legal Affairs and Human Rights Contribution to the Conference on the Principle of Subsidiarity, supra.

⁴⁶ Statistics at 30 November 2012, see CDDH report containing elements to contribute to the evaluation of the effects of Protocol No. 14 to the Convention and the implementation of the Interlaken and Izmir Declarations on the Court's situation, CDDH(2012)R76 Addendum II, available on the CDDH's website, at:

http://www.coe.int/t/dghl/standardsetting/cddh/default_en.asp

⁴⁷ See Report of the Group of Wise Persons to the Committee of Ministers 15 November 2006, at: <https://wcd.coe.int/ViewDoc.jsp?id=1063779&Site=CM&BackColorInternet=9999CC&BackColorIntranet>; Memorandum of the President of the Strasbourg Court to states with a view of preparing the Interlaken Conference, at:

http://www.echr.coe.int/NR/rdonlyres/80B918C6-6319-4D50-B37B-5F951C1C5B30/2792/03072009_Memo_Interlaken_anglais1.pdf;

Assembly Resolution 1726(2010), supra., Assembly Recommendation 1991(2012) Guaranteeing the authority and effectiveness of the ECHR, supra.

⁴⁸ Assembly Recommendation 1991(2012), supra. at § 2, see also Doc. 12811, supra. § 34.

⁴⁹ CM Reply to Recommendation 1991 (2012), adopted on 12 September 2012, at:

Assembly's wish, however it does not accede to the request, citing instead the responsibility of the States Parties to guarantee the application and implementation of the Convention under the Interlaken Action Plan, and stating that "the Brighton Declaration contains a number of provisions setting out the measures which would enable member States to apply in practice the principle of the interpretative authority of the Court's judgments".

20. Legislative examples of good practice in terms of enhancing the interpretative authority of the Court's caselaw at the domestic level are found in the UK Human Rights Act 1998 s.2(1)(a),⁵⁰ the Irish European Convention on Human Rights Act 2003 s.4, and the Ukrainian Law No.3477-IV of 2006.⁵¹ Certain cases have also had particularly significant effects in other States Parties, in particular *Salduz v Turkey*,⁵² *M v Germany*, and *Hirst v UK*.⁵³ In order to ensure systematic, widespread enforcement, the CDDH recommends the identification of a central national authority with a clear legal mandate to follow the Court's caselaw and transmit information to the relevant actors within domestic systems. Examples of this are seen in the Netherlands and Switzerland,⁵⁴ where government agents are responsible for preparing regular reports for Parliament covering all Court judgments not only against themselves, but against all States Parties which could have a direct or indirect effect on the domestic legal system. Greater use of Third Party Interventions (Article 36, ECHR) by other States Parties in cases which could have an impact on their own legal systems would also help to enhance the *res interpretata* authority of the Court's judgments.⁵⁵

21. In national reports submitted to the CDDH's Drafting Group A on the Reform of the Court (GT-GDR-A), the biggest obstacles cited by States to applying the Court's caselaw were the volume and complexity of this caselaw (see below, "Improving the consistency and clarity of the caselaw of the Court", at §§ 47-48) and linguistic difficulties.⁵⁶ The identification of key judgments and translation of these into all national languages⁵⁷ will require collaboration between the Court, states and national organisations/institutions, with one issue to be resolved being the need to determine which actor should bear the responsibility for translation.⁵⁸ The Court currently publishes on its website monthly information notes containing summaries of cases considered to be of particular interest,⁵⁹ thematic factsheets dealing with different issues under the Convention,⁶⁰ and research reports on the Court's caselaw,⁶¹ and has also launched a project to make available a collection of the most important judgments with translation into national languages, financed by

<https://wcd.coe.int/ViewDoc.jsp?id=1974685&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

⁵⁰ Although s.2 only requires courts to "take into account" Convention jurisprudence, the House of Lords and Supreme Court have stated that absent a "strong reason", they regard such jurisprudence as binding, see *R v Special Adjudicator, ex p Ullah* [2004] UKHL 26; [2004] 2 AC 323 at [20] per Lord Bingham, *Cadder v Her Majesty's Advocate* [2010] UKSC 43; see also Masterman, "Section 2(1) of the HRA 1998: Binding Domestic Courts to Strasbourg" [2004] PL 725.

⁵¹ "Courts shall apply the Convention and the case law of the Court as a source of law".

⁵² Particularly in Andorra, Belgium, France, Netherlands and Scotland.

⁵³ CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, supra., see also "Strengthening subsidiarity: integrating the Court's case-law into national law and judicial practice", Conference on the Principle of Subsidiarity, Skopje 1-2 October 2010, AS/Jur/Inf (2010) 04 for specific examples of domestic authorities taking into account the Court's jurisprudence.

⁵⁴ For examples of other good practices, see Doc.12636, supra., and Contribution to the Conference on the Principle of Subsidiarity, supra., for example the Constitutional Court of Croatia Records and Documents Department includes a senior legal adviser who monitors the case-law of the Court on a daily basis, selects judgments with implications for Croatia, and stores these on a database to which judges and legal advisers have access.

⁵⁵ On importance of 3rd party interventions in development of principles of general/wide application, see CDDH Activity Report on guaranteeing the long-term effectiveness of the control system of the ECHR, doc. CDDH(2009)007 Addendum I, § 26-30, see also Assembly Recommendation 1477(2000) Execution of Judgments of the ECtHR, at:

<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=16835&Language=EN>; see also Assembly Recommendation 1477(2000) Execution of judgments of the European Court of Human Rights, § 3, at:

<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=16835&Language=EN>

⁵⁶ -CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, supra.

⁵⁷ As required in the Brighton Declaration §§ A 9 h) and d) i).

⁵⁸ Concerning translation, the CDDH recommends increased collaboration between States having similar legal systems and mutually understandable languages. Examples of collaboration are being seen between Slovakia and the Czech Republic, and between Bosnia and Herzegovina, Croatia, Serbia and 'the former Yugoslav Republic of Macedonia'.

⁵⁹ Available in English and French, e.g.:

<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Case-law+analysis/Information+notes/>

⁶⁰ Available in English, French, German and Russian (thanks to voluntary contribution by Germany): <http://www.echr.coe.int/ECHR/EN/Header/Press/Information+sheets/Factsheets/>.

Poland is in the process of translating factsheets, and has begun to publish these translations on the Polish Courts website.

⁶¹ Available in English and French:

<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Case-law+analysis/Research+reports/>

the Human Rights Trust Fund. However, the Court has indicated that its collection of judgments and decisions will be reduced in future years, containing “only the most important cases decided each year.”⁶²

22. The introduction of an advisory opinion procedure (see below, “Dialogue between national courts and the ECtHR”, at §§ 31-33) may also help to strengthen the principle of *res interpretata*, if the opinion delivered by the Court is ultimately given due consideration and applied by domestic courts and tribunals in other States Parties.

2.3. *Interaction between the Court and national authorities*⁶³

23. This section of the Brighton Declaration concerns the nature of the relationship between domestic authorities and the Strasbourg Court, in terms of how these interact with one another. The Declaration reaffirms that the primary responsibility for enforcing Convention standards and providing a remedy when these are breached rests on States Parties, and that the Court’s role is always subsidiary to this: it is not a fourth instance court, but a “safeguard for individuals whose rights and freedoms are not secured at the national level”.⁶⁴

24. The Brighton Declaration requires the Committee of Ministers to adopt amending instruments in two respects:

- To include a reference to the principle of subsidiarity and the doctrine of the margin of appreciation as developed in the Court’s caselaw in the Preamble to the Convention,⁶⁵ and
- To facilitate a new power for the Court to deliver advisory opinions on request on the interpretation of the Convention in the context of a specific case at domestic level.⁶⁶

2.3.1. *Subsidiarity and the margin of appreciation*

25. Subsidiarity is a key principle on which the Convention system is built, made clear in Article 1 (placing primary responsibility on States Parties to secure fundamental rights and freedoms to everyone within their jurisdiction), and Article 35(1), (the Court should be seized only after all domestic remedies are exhausted) of the Convention. Here reference can be made to the report by Ms Marie-Louise Bemelmans-Videc, stressing that subsidiarity is thus composed of both a procedural and a substantive component.⁶⁷ However, the numbers of repetitive cases reaching Strasbourg indicate that the subsidiarity principle does not always operate effectively, and that the assumption that there exist effective protective mechanisms at national level may be unwarranted. The evident need to enforce the principle of subsidiarity has therefore repeatedly been stressed, in particular in the Interlaken Declaration,⁶⁸ and Assembly Resolution 1726(2010).⁶⁹

26. Despite this state of affairs, it is far from clear that a reference to the principle of subsidiarity, and even less so to the doctrine of the margin of appreciation, is necessary within the text of the Convention itself, or that this will further enhance its application. This view was expressed by the former President of the Court, Sir Nicholas Bratza, in his speech made at the Brighton Conference.⁷⁰ Rather, the focus should be on initiatives taken to make effective use of Convention standards in domestic systems, all of which will necessarily strengthen the principle of subsidiarity.

⁶² “The Interlaken Process and the Court”, 16 Oct 2012, Doc.4038635

⁶³ Brighton Declaration § B.

⁶⁴ Brighton Declaration § B 11, see also Helfer, *supra.*; The ECHR is not always sufficiently and “directly embedded” in national legal systems, unlike European Union law (in the 27 member states of the latter).

⁶⁵ Brighton Declaration § B 12 b).

⁶⁶ Brighton Declaration § B 12 d).

⁶⁷ Doc.12811, *supra* at §§ 24-25, see also Memorandum of the President of the ECtHR to the States with a View to Preparing the Interlaken Conference, 3 July 2009, at 4, available at :

<http://www.coe.int/t/dc/files/>, and Keller, Fischer and Kuhne, “Debating the Future of the ECtHR after the Interlaken Conference: Two Innovative Proposals”, EJIL (2010), Vol.21 No.4 at p. 1031; For in-depth explanation and analysis of the principle of subsidiarity, see Y.Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECtHR* (2002), *passim*.

⁶⁸ Interlaken Declaration, *supra*. P 6.

⁶⁹ Resolution 1726(2010), *supra*. § 4.

⁷⁰ At:

http://www.echr.coe.int/NR/rdonlyres/8D587AC3-7723-4DB2-B86F-01F32C7CBC24/0/2012_BRIGHTON_Discours_Bratza_EN.pdf

27. As noted by Sir Nicholas Bratza, the margin of appreciation is merely a “tool of interpretation” used by the Court in adjudicating some rights under the Convention,⁷¹ and as such, it does not warrant special emphasis, nor mention in the text of the Convention itself. Legislative references to subsidiarity and the margin of appreciation cannot be used to oust the supervisory jurisdiction of the Court. Rather, States Parties should enhance domestic processes in the field of national implementation, so that the Court’s deference to national decision-makers becomes appropriate.⁷²

28. The amendment to the Preamble will be made in Protocol No.15 to the Convention.⁷³ Draft Protocol No.15⁷⁴ was adopted and transmitted to the Committee of Ministers by the CDDH at its 76th meeting held on 27 to 30 November 2012. The Assembly is likely to be seized for opinion in January 2013.

2.3.2. Dialogue between national courts and the ECtHR

2.3.2.1. General dialogue

29. In the Court’s Preliminary Opinion in Preparation for the Brighton Conference,⁷⁵ it was stated that “an important aspect of domestic implementation is reinforced dialogue between Strasbourg and national courts”. In pursuit of this, the Court has regular working meetings with national superior courts, in addition to which a seminar, “Dialogue Between Judges”, is held each January at the opening of the Strasbourg Court’s judicial year.

30. An informal dialogue also exists through judgments concerning cases which raise complex areas of Convention law, and where national courts and the Strasbourg Court have divergent views. An example is the Grand Chamber’s judgment delivered in 2011 in the case of *Al-Khawaja and Tahery v. the UK*,⁷⁶ after the initial Chamber judgment in the same case, dating back to 2009, had not been followed by the UK Supreme Court in *R v Horncastle*.⁷⁷ Whilst the Supreme Court commented that such cases afforded the opportunity for “valuable dialogue” between the courts, such dialogue could, so it has been suggested, be rendered more efficient by the introduction of a formal advisory opinion procedure.⁷⁸

2.3.2.2. Introduction of an advisory opinion procedure under Protocol No. 16

31. As regards the desirability of the introduction of a formal advisory opinion procedure, reference can be made, in this connection, to the views expressed by Ms Bemelmans-Vidéc in her explanatory report on the Interlaken Process.⁷⁹ This is not a priority issue, and may in the short-term increase the workload of the Court. However, there is potential for such a procedure to enhance the principles of subsidiarity and the *res interpretata* authority of the Court’s caselaw, and to prevent future repetitive applications to the Court.

⁷¹ For example, in respect of Articles 3 (prohibition of torture) and 4 (prohibition of slavery and forced labour), there is no room for any margin of appreciation to be left to States Parties in interpretation of the Convention.

⁷² See Helfer, “Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime”, 19 *EJIL* (2008) 125, at 149. Helfer argues that by increasing the embeddedness of the Convention in national systems, including through enhanced regional supervision, subsidiarity will necessarily be revived as domestic decision-makers will have “resumed their position as the Convention’s first-line defenders”.

⁷³ Draft Protocol No. 15, Article 1.

⁷⁴ See Draft Protocol No.15, ECHR (CDDH(2012)R76 Addendum III) and the Explanatory report to Protocol No.15, ECHR (CDDH(2012)R76 Addendum III), available on the CDDH’s website at: http://www.coe.int/t/dghl/standardsetting/cddh/default_en.asp

⁷⁵ Preliminary Opinion of the Court in Preparation for the Brighton Conference, at:

http://www.coe.int/t/dgi/brighton-conference/Documents/Court-Preliminary-opinion_en.pdf

⁷⁶ Application Nos. 26766/05 and 22228/06. The Supreme Court of the United Kingdom had conveyed to Strasbourg its misgivings over what it perceived as an inflexible application of the Court’s case-law on the fairness of relying on hearsay evidence, with no proper regard to the specific features of the country’s rules of criminal procedure. This view was considered carefully by the Court, and responded to at length in the Grand Chamber’s judgment.

⁷⁷ [2009] UKSC 14. With reference to *Al-Khawaja v UK*, the Supreme Court expressed the view that the Court had not sufficiently appreciated or accommodated particular aspects of UK domestic process (*per* Lord Phillips at § 11).

⁷⁸ For further discussion of judicial dialogue between national and supranational courts, particularly in the context of the Strasbourg Court, see Merris Amos, “The Dialogue Between UK Courts and the ECtHR” in *International and Comparative Law Quarterly*, Vol. 61, Issue 3, July 2012, at:

<http://journals.cambridge.org/action//displayFulltext?fromPage=online&type=6&fid=S002058931200019X&aid=8600958&next=true&jid=ILQ&volumeld=61&issueld=02&next=Y>

⁷⁹ Doc. 12811, *supra.*, at §§ 43-44.

32. The Brighton Declaration states that opinions delivered by the Court under the advisory opinion procedure will be non-binding for other States Parties, leaving open for discussion the question of whether the opinions should be legally binding on the State Party making the request.

33. The procedure will be established in an additional (optional) Protocol No. 16 to the Convention. Draft Protocol No. 16⁸⁰ was provisionally adopted by the CDDH at its 76th meeting held on 27 -30 November 2012. The CDDH decided to send back, to the Committee of Experts on the Reform of the Court (DH-GDR), the Draft explanatory report to Protocol No.16 (along with the provisionally adopted Draft Protocol No.16) for further consideration at the DH-GDR's meeting to be held on 19-22 February 2013. The Draft Protocol and its explanatory report will then (again) be considered by the CDDH at its plenary meeting between on 19-23 March 2013, and the Assembly is likely to be seized for opinion shortly afterwards.

2.4. Applications to the Court⁸¹

34. In respect of applications to the Court, the Brighton Declaration requires two changes to admissibility criterion:

- The time limit under Article 35(1) of the Convention within which an application must be made to the Court is to be shortened from six to four months;⁸²
- The "significant disadvantage" admissibility criterion under Article 35(3)(b) of the Convention is to be amended to remove the words "and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal".⁸³

35. The Declaration also encourages increased provision by the Court of information to applicants on the admissibility criteria.⁸⁴

2.4.1. Admissibility criteria

36. The Court has noted that, until now, the "significant disadvantage" criterion introduced under Protocol No.14 has yet to achieve the impact foreseen in terms of reducing the number of cases pending before it.⁸⁵ The removal of the safeguarding clause in Article 35(3)(b) may help in this respect, as the Court will now be able to reject as inadmissible applications from "problem countries" where the "underlying problem is typically related to a congested and ailing judicial infrastructure".⁸⁶

37. The changes to admissibility criteria will be made in Protocol No. 15⁸⁷ to the Convention, on which the Assembly is likely to be seized for opinion in January 2013 (see above).

2.4.2. Provision of information to potential applicants regarding admissibility criteria

38. The Brighton Declaration reiterates the call made in the Interlaken Action Plan for increased provision of information to potential applicants on application procedures and admissibility criteria.⁸⁸ To this end, the Court itself has issued an admissibility guide,⁸⁹ admissibility checklist,⁹⁰ and admissibility video.⁹¹ To meet the demands of the Brighton Declaration, this admissibility guide should be translated into national languages and disseminated to all relevant bodies. A suggestion has also been made in some quarters that

⁸⁰ See Draft Protocol No.16, ECHR (CDDH(2012)R76 Addendum V) and Draft explanatory report to Protocol No.16, ECHR, available on the CDDH's website, at:

http://www.coe.int/t/dghl/standardsetting/cddh/default_en.asp

⁸¹ Brighton Declaration § C.

⁸² Brighton Declaration § C 15 a).

⁸³ Brighton Declaration § C 15 c).

⁸⁴ Brighton Declaration § C 15 e).

⁸⁵ Preliminary Opinion of the Court in Preparation for the Brighton Conference, *supra*.

⁸⁶ See Keller, Fischer and Kuhne, "Debating the Future of the ECtHR after the Interlaken Conference: Two Innovative Proposals", EJIL 21 (2010), 1025 at p. 1037.

⁸⁷ Draft Protocol No 15, Articles 4 and 5.

⁸⁸ Interlaken Action Plan C 6 a).

⁸⁹ Available in 19 languages, at:

[European Court of Human Rights - Case-Law](http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist/)

⁹⁰ At:

<http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist/>

⁹¹ At:

<http://www.youtube.com/watch?v=mcbDDhs5ZVA&list=UUeKYK7AiOqPyJMk5-cSjseQ&index=1&feature=plcp>

the Court could make the conditions for admissibility more transparent by providing reasons when it declares cases to be manifestly unfounded.⁹²

39. In addition to the Court, various bodies can play a role at the national level in providing information to potential applicants as well as to lawyers regarding admissibility criteria.⁹³ Such bodies include NHRIs,⁹⁴ ombudspersons, law centres, legal professional associations, civil society organisations, and the government. As mentioned above, the report of Ms Marie-Louise Bemelmans-Videc notes that many states are working with the Council of Europe to provide professional training to lawyers and those responsible for the administration of justice. An example of such co-operation is the HELP programme, launched in 2006.⁹⁵ Mr. Jean-Pierre Michel, the AS/Jur's Rapporteur who has been mandated to work on this subject, will provide an in-depth study in his report "The European Convention on Human Rights: reinforcement and consolidation of the training of judges, law enforcement officials and lawyers".⁹⁶

2.5. Processing of applications⁹⁷

40. In order to assist the Court in its processing of applications, the Brighton Declaration makes two new proposals:

- Consideration by the Committee of Ministers of a procedure by which the Court could determine a small number of representative applications from a group of applications alleging the same violation against the same State Party, that determination being applicable to the whole group;⁹⁸ and
- Amending the Convention so as to allow the Committee of Ministers to appoint additional judges to the Court, having a different term of office and/or a different range of functions from existing judges of the Court.⁹⁹

41. The latest statistics from the Court¹⁰⁰ show that the innovations introduced by Protocol No.14 have to some extent improved the situation facing the Court. The introduction of the single-judge formation and the new summary procedure for three-judge committees have had the greatest effect in increasing the Court's case-load management capacity: whereas in 2009, 31,500 applications were rejected at the filtering stage, by 2011 this had increased to 47,300. In respect of filtering, the Court envisages that by the end of 2015, a balance will have been achieved between the "input" of new cases and the "output" of decided cases, as well as elimination of the current backlog, however reaching this position will require additional resources for the registry.¹⁰¹ Moreover, despite the encouraging effects of the entry into force of Protocol No. 14, it has repeatedly been stressed that this protocol alone cannot resolve the problems, and that longer-term solutions must now be found.¹⁰²

⁹² Concern has been expressed that applicants do not know why their application has been declared inadmissible, see *Quel filtrage des requêtes par la Cour européenne des droits de l'homme (2011)*, Pascal Dourneau-Josette et Elisabeth Lambert Abdelgawad; see also Keller, *supra.*; Lester "The ECtHR after 50 Years" 4 EHRLR (2009) 461. Lord Lester suggests this would not unduly increase the workload of the Court.

⁹³ Ensuring lawyers are well-trained and comply with admissibility criteria is a key goal in reducing applications to the Court, see Document SG/Inf(2010)23final of 6 January 2012.

⁹⁴ See Madrid Round Table 21-22nd September 2011, at :

http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/nhrs/RT_mad_DebriefingPaper_en.doc,
http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/nhrs/RT_mad_Outline_Provision_information_applicants_en.doc, also PACE resolution 1823 (2011).

⁹⁵ For information on the HELP initiative, and follow-up programme HELP II, see the website, at:

<http://www.coehelp.org/>

⁹⁶ Motion for a Recommendation Doc. 12843, available at:

<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=13038&Language=EN>

⁹⁷ Brighton Declaration § D.

⁹⁸ Brighton Declaration § D 20 d).

⁹⁹ Brighton Declaration § D 20 e).

¹⁰⁰ 2011 statistics available at :

http://www.echr.coe.int/NR/rdonlyres/11CE0BB3-9386-48DC-B012-AB2C046FEC7C/0/STATS_EN_2011.PDF

¹⁰¹ CDDH Report containing elements to contribute to the evaluation of the effects of Protocol No. 14 to the Convention and the implementation of the Interlaken and Izmir Declarations on the Court's situation, *supra.* Available on the CDDH website, for hyperlink see footnote 20, above.

¹⁰² See for example the speech given by Mr Luzius Wildhaber, President of the European Court of Human Rights, on the occasion of the opening of the judicial year, 21 Jan. 2005, in European Court of Human Rights, *Annual Report 2004*, *supra* note 12, at 34; see also Greer, "Protocol No. 14 and the Future of the ECtHR" [2005] *Public L* 83, at 104.

42. It remains the case that the origin of applications made to the Court is heavily unbalanced. As at September 2012,¹⁰³ 67% of pending applications originated from just six States Parties: Russia, Italy, Turkey, Romania, Ukraine and Serbia. In her 2009 report cited above, Mrs Herta Däubler-Gmelin called on ministers to “name and shame” the States identified as the “big sinners” of the Convention system, and called on the Council to subject persistent defaulters to “aggravated, if not “punitive” or “exemplary” damages”.¹⁰⁴ A specific proposal to introduce “astreintes” was made by the Assembly back in 2000.¹⁰⁵

43. In respect of the Brighton proposal to amend the Convention so as to allow the Committee of Ministers to appoint additional judges to the Court, cross-reference can be made to the concerns expressed by Ms Marie-Louise Bemelmans-Videc in Doc. 12811 at §§ 52-54. At its meeting on 14 November 2012, the Ministers’ Deputies took note of the CDDH final report on this matter,¹⁰⁶ and agreed to return to this subject once work has been completed on the priority issues set out in the Committee of Ministers’ decisions for the current biennium.¹⁰⁷

2.6. Judges and caselaw of the Court¹⁰⁸

44. Section E of the Brighton Declaration reaffirms the need for judges to be of the highest quality, and for clarity and consistency in the judgments delivered by the Court.¹⁰⁹ The Declaration:

- Welcomes the adoption by the Committee of Ministers of the Guidelines¹¹⁰ on the selection of candidates for the post of judge at the Court;¹¹¹
- Invites, respectively, the Assembly and Committee of Ministers, to reflect upon how the procedures for electing judges can be further improved;¹¹²
- Calls for the words “unless one of the parties to the case objects” to be removed from Article 30 of the Convention, concerning relinquishment to the Grand Chamber;¹¹³
- Calls for the amendment of Article 23(2) of the Convention to replace the age limit for judges by a requirement that they be no older than 65 years of age when their term of office commences.¹¹⁴

¹⁰³ Available on the Court’s website, at:

[http://www.echr.coe.int/NR/rdonlyres/D552E6AD-4FCF-4A77-BB70-CBA53567AD16/0/CHART_30092012.pdf\\$](http://www.echr.coe.int/NR/rdonlyres/D552E6AD-4FCF-4A77-BB70-CBA53567AD16/0/CHART_30092012.pdf$)

¹⁰⁴ “The future of the Strasbourg Court and enforcement of ECHR standards: reflections on the Interlaken process”, Conclusions of the Chairperson, Mrs Herta Däubler-Gmelin, supra., at §§ 4-9.

¹⁰⁵ In its Recommendation 1477 (2000) on execution of judgments of the European Court of Human Rights the Assembly recommended amending the Convention to introduce a system of “astreintes” (fines for a delay in the performance of a legal obligation) to be imposed on states that persistently fail to execute a Strasbourg Court judgment. Available at: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=16835&Language=EN> See also AS/Jur (2012) 29 Rev, supra., Draft Recommendation § 2: “The Assembly reiterates its call in Recommendations 1764 (2006) and 1955 (2011) to increase pressure and take firmer measures in cases of dilatory and continuous non-compliance with the Court’s judgments by States Parties.”

¹⁰⁶ CDDH Final Report on a simplified procedure for amendment of certain provisions of the European Convention of Human Rights (adopted at the 75th meeting of the CDDH (Strasbourg, 19-22 June 2012)), at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM\(2012\)105&Ver=add&Language=lanEnglish&Site=CM&BackColorInternet=DBD CF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2012)105&Ver=add&Language=lanEnglish&Site=CM&BackColorInternet=DBD CF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

¹⁰⁷ Decision taken at the 1154th meeting of the Ministers’ Deputies, at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2012\)1154/1.6&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2012)1154/1.6&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383); see also the website of the Committee of Experts on a simplified procedure for amendment of certain provisions of the European Convention on Human Rights (DH-PS), at: http://www.coe.int/t/dghl/standardsetting/cddh/dhps_EN.asp?

¹⁰⁸ Brighton Declaration § E.

¹⁰⁹ See Resolution 1726 (2010), § 7: “The authority of the Court is contingent on the stature of judges and the quality and coherence of the Court’s case-law”.

¹¹⁰ Adopted by the Committee of Ministers in March 2011.

¹¹¹ Brighton Declaration § E 25 a).

¹¹² Brighton Declaration § E 25 b).

¹¹³ Brighton Declaration § E 25 d).

¹¹⁴ Brighton Declaration § E 25 f).

2.6.1. Quality and independence of judges elected to the Court

45. It is crucial that the judges elected to the Court are of the highest quality, and that their independence is guaranteed. Under Article 22 of the Convention, the Assembly is responsible for electing judges to the Court, from a shortlist of three candidates submitted by States Parties. A number of texts have been adopted by the Assembly in order to improve its own procedure, as well as to assist States Parties in drawing up their lists.¹¹⁵ In so doing, States Parties should also have reference to the Guidelines of the Committee of Ministers adopted in March 2012, as well as the Explanatory Memorandum thereto.¹¹⁶

46. The amendment to Article 23(2) of the Convention, concerning judges' ages, will be made in Protocol No. 15,¹¹⁷ for which the Assembly is likely to be seized for opinion in early 2013.

2.6.2. Improving the consistency and clarity of the caselaw of the Court

47. "The Court must make its caselaw as clear and coherent as possible".¹¹⁸ Ambiguity and a lack of clarity in Strasbourg caselaw may hinder its effective implementation by domestic courts: not only would this lead to a risk of *bona fide* misinterpretation, but moreover such ambiguity could undermine the legitimacy of the Court's judgments.¹¹⁹

48. In addition to the amendment to Article 30 of the Convention required under the Brighton Declaration (which will be made in Protocol No. 15¹²⁰), the Court has indicated that it is considering an amendment to Rule 72 of the Rules of Court, making it obligatory for a Chamber to relinquish jurisdiction where it envisages departing from well-established caselaw.¹²¹

2.7. Improving the execution of judgments of the Court¹²²

49. The rapid execution of Court judgments is vital for the efficiency and legitimacy of the Convention system.¹²³ In order to improve the execution of judgments, the Brighton Declaration calls for:

- States Parties to facilitate the important role of national parliaments in scrutinising the effectiveness of implementation measures;¹²⁴
- Action Plans for the execution of judgments to be as widely accessible as possible;¹²⁵
- Consideration by the Committee of Ministers as to whether more effective measures are needed in respect of States that fail to implement judgments in a timely manner;¹²⁶ and
- Welcomes the Assembly's regular reports and debates on the execution of judgments.¹²⁷

¹¹⁵ See Doc. AS/Jur/Inf (2012) 02 rev4, "Procedure for electing judges to the European Court of Human Rights", including reference to the Resolutions and Recommendations adopted in this regard. Available at: http://assembly.coe.int/CommitteeDocs/2012/ajinfdoc02_2012.pdf

¹¹⁶ Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights, adopted on 28 March 2012, available at :

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM\(2012\)40&Language=lanEnglish&Ver=final&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2012)40&Language=lanEnglish&Ver=final&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)

¹¹⁷ Draft Protocol No. 15, supra., Article 8(1). Of interest to note in this connection is that no age limit applies in relation to ad hoc judges. Concerning ad hoc judges, see the Information Report, Ad hoc judges at the European Court of Human Rights: an overview, Doc. 12827 (rapporteur Ms Marie-Louise Bemelmans-Videc), at: http://assembly.coe.int/CommitteeDocs/2011/ajdoc36_2011.pdf

¹¹⁸ Opening statement by Jean-Claude Mignon at the Brighton Conference, 19 April 2012, at: http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/President/Mignon/Discours/2012/19042012_BrightonConferenceE.htm

¹¹⁹ See "CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations", supra, at § 63; see also Merris Amos, "The Dialogue Between UK Courts and the ECtHR", supra.

¹²⁰ Draft Protocol No. 15, supra., Article 3.

¹²¹ Preliminary Opinion of the Court in Preparation for the Brighton Conference, supra., at § 16.

¹²² Brighton Declaration § F.

¹²³ As noted in the preamble to Committee of Ministers' Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the Court, at:

<https://wcd.coe.int/ViewDoc.jsp?id=1246081&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

¹²⁴ Brighton Declaration § F 29 a) iii).

¹²⁵ Brighton Declaration § F 29 a) ii).

¹²⁶ Brighton Declaration § F 29 d).

2.7.1. States with structural/systemic problems

50. One of the biggest causes of the overload at the Court, and which threatens the effectiveness of the whole Convention system, is the huge number of “repetitive” or “clone” cases received.¹²⁸ The Court itself has implemented the pilot judgment procedures to address this issue, as well as the system of unilateral declarations.¹²⁹ It is currently considering implementation of a default judgment procedure to be used where States’ failure to implement judgments continues to result in repetitive applications being made to the Court.¹³⁰ However, the responsibility for fully resolving underlying structural problems and preventing such applications from coming to the Court lies principally with the States themselves.¹³¹ In this respect, States should work together to overcome similar systemic problems which exist in their countries.¹³²

51. In respect of specific states where major structural problems have led to many repeat violations, reference can be made to the report by Mr. Christos Pourgourides, “Implementation of judgments of the European Court of Human rights”,¹³³ in addition to the recently adopted text by Mr. Serhii Kivalov, “Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties”.¹³⁴ The Brighton Declaration also echoes – rather timidly - the report of Mrs Herta Däubler-Gmelin referred to above, suggesting that the time has come to implement stronger measures against states which fail to resolve the underlying problems identified by the Court.¹³⁵

2.7.2. Increased role for parliamentarians: utilising their “dual role”

52. Although the formal responsibility for supervising the execution of judgments is attributed to the Committee of Ministers under Article 46 of the Convention, there is an increased realisation that this supervisory role is not the exclusive domain of the Committee of Ministers, nor of governments at national level.¹³⁶ Parliaments could play a much more active role, and here too the dual mandate of members of the Assembly should be fully exploited, with members of the Assembly ensuring they contribute to the process of

¹²⁷ Brighton Declaration § F 29 e).

¹²⁸ See Preliminary Opinion of the Court in Preparation for the Brighton Conference at [35]: “These cases raise issues which go to the effective operation of the rule of law and failure to resolve the underlying problems undermines the Council of Europe’s mission of furthering democracy and the rule of law...the Court considers that Council of Europe member States should make collective and individual efforts to target the structural and endemic situations which generate repetitive cases”. Available at:

http://www.coe.int/t/dgi/brighton-conference/Documents/Court-Preliminary-opinion_en.pdf. There are currently some 40,000 repetitive cases pending before the Court, see above at § 18 of this memorandum.

¹²⁹ The system of unilateral declarations was introduced in order to settle, before judgment, cases concerning systemic, repetitive violations on which the Court’s case-law is well-established. However, there is concern that unilateral declarations are being abused in some States, and applied to cases which are not strictly repetitive, but are more strategic and precedential in nature. Bychawska-Siniarska argues that unilateral declarations should be under the supervision of the Committee of Ministers in all cases, and that the consequences of non-compliance with the terms of a unilateral declaration (including whether the application should be restored to the Court’s list) should be clearly and unequivocally formulated in law: see Dominika Bychawska-Siniarska, “Unilateral Declarations: The Need for Greater Control”, EHRLR 2012 6, 77.

¹³⁰ See European Law Institute “Statement on case-overload at the European Court of Human Rights», Vienna (2012), pp. [28]-[31]. Available at: http://www.europeanlawinstitute.eu/news-events/news-contd/article/the-eli-council-endorses-the-statement-on-the-case-overload-at-the-european-court-of-human-rights/?tx_ttnews%5Bpointer347456%5D=2&tx_ttnews%5BbackPid%5D=132848&cHash=fa52636d482efacce9eb6422efabed95

¹³¹ CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, supra., at § 46.

¹³² See CM Reply to Recommendation 1955(2011) § 6, at : <https://wcd.coe.int/ViewDoc.jsp?id=1878969&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

¹³³ “Implementation of judgments of the European Court of Human rights” (rapporteur Mr Christos Pourgourides) Assembly Doc. 12455 of 20 December 2012, at:

<http://assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc10/EDOC12455.htm>; see also “States with major structural/systemic problems before the European Court of Human Rights: statistics”, Assembly Doc. AS/Jur/Inf (2011) 05, available at: http://assembly.coe.int/CommitteeDocs/2011/ajinfdoc05%202011rev_EN.pdf.

¹³⁴ Doc. AS/Jur (2012) 29 Rev, supra.

¹³⁵ See also Keller, supra. at p. 1045.

¹³⁶ See Progress report of the Rapporteur of the Committee on Legal Affairs and Human Rights, “Implementation of judgments of the European Court of Human Rights”, AS/Jur (2009) 36, § 14 (Mr. Christos Pourgourides), September 2009: “The execution of a Strasbourg Court judgment is often a complex legal and political process, requiring cumulative and complementary measures implemented by several state organs.”

supervising implementation in their capacity as national parliamentarians.¹³⁷ Reference can again be made, in this connection, to the report of Ms Marie-Louise Bemelmans-Videc which stressed this point.¹³⁸

53. Since 2000,¹³⁹ the Parliamentary Assembly, through the AS/Jur, has played a significant role in monitoring the implementation of Court judgments.¹⁴⁰ This now includes holding hearings with heads of national PACE delegations on measures taken to respond to adverse Court judgments, which provide a forum for constructive debate and scrutiny at the inter-parliamentary level. Indeed, it has been suggested that all members of the AS/Jur should take a more active role in these hearings by scrutinising the reports presented to them, and asking searching questions of national representatives. This point has most recently been emphasised in the Draft Resolution adopted by the AS/Jur on 12 November 2012 (AS/Jur (2012) 29 Rev), at § 8.3; “The Assembly invites members, in their capacity as national parliamentarians, of the Assembly to question regularly their governments regarding execution of the Court’s judgments.”

54. Several Assembly texts¹⁴¹ have called for national parliaments to take a more active role in the implementation of Court judgments, and this dimension has now been emphasised in the Brighton Declaration. Parliamentary oversight is particularly crucial in the implementation of judgments revealing structural problems. The Committee of Ministers has recognised that the implementation of Strasbourg judgments has “greatly benefitted” from the increased involvement of national parliaments, and has encouraged “parliamentary oversight” of this process.¹⁴² The advantages of parliamentary involvement are threefold: firstly reducing the flood of applications to the Court, secondly raising awareness of human rights issues in parliament, and thirdly increasing the political transparency of the government’s response to Court judgments.¹⁴³

55. As with scrutinising draft legislation for human rights compliance, parliamentary oversight of the execution of judgments should, so the Assembly has indicated, be entrusted to dedicated committees.¹⁴⁴

¹³⁷ Pourgourides, Report, September 2009 § 16.

¹³⁸ Doc. 12811, supra., § 55-57.

¹³⁹ Initiated by Assembly Resolution 1226(2000) on the execution of judgments of the EctHR, at: <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=16834&Language=EN>. For a recent overview consult “La nécessité d’impliquer d’avantage l’Assemblée parlementaire dans la surveillance des arrêts de la Cour de Strasbourg” in *Les mutations de l’activité du Comité des ministres. La surveillance de l’exécution des arrêts de la Cour européenne des droits de l’homme par cet organe du Conseil de l’Europe* (2012, International Institute of Human Rights, Strasbourg), pp. 131- 163.

¹⁴⁰ Under Resolution 1226 (2000), Implementation of decisions of the European Court of Human Rights, the LAHR Committee was assigned open-ended terms of reference, under which it is not bound by Rule 25(3) of the Assembly’s Rules of Procedure. This enables the rapporteur to supervise the implementation of Strasbourg Court judgments on an open-ended basis.

¹⁴¹ Resolution 1516(2006) Implementation of judgments of the European Court of Human Rights, at:

<http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=17472&Language=EN>

Resolution 1787(2011) Implementation of judgments of the ECtHR, at:

<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=17953&Language=EN>

See in particular the Explanatory Memorandum by Mr. Christos Pourgourides, Doc.12455 at §§ 195-208;

Resolution 1823(2011) National parliaments: guarantors of human rights in Europe, at:

<http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=18011&Language=EN>;

Resolution 1856(2012) Guaranteeing the authority and effectiveness of the ECHR, at:

<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12914&Language=EN>;

See also AS/Jur (2012) 29 Rev Draft Resolution, in particular § 8, at:

http://assembly.coe.int/Communication/pressajdoc29_2012rev.pdf

¹⁴² Ministers’ Deputies, *Implementation of judgments of the European Court of Human Rights*, Parliamentary Assembly Recommendation 1764 (2006), document CM/AS (2007) Rec 1764 final 30 March 2007, Reply adopted by the Committee of Ministers on 28 March 2007 at the 991st meeting of the Ministers’ Deputies, § 1. However, in his recently adopted text, Ensuring the viability of Strasbourg Court judgments: structural deficiencies in States Parties (supra), Mr Kivalov notes at § 40 that “a national parliamentary supervision system of the implementation of Strasbourg Court judgments is still an exceptional rather than a widespread practice”.

¹⁴³ Report of the UK Parliament’s Joint Committee on Human Rights, 2010, “Enhancing Parliament’s role in relation to human rights judgments”, supra. In turn, this can help to address the perception that changes in law/policy lack democratic legitimacy. See also A.Drzemcewski and J. Gaughan, “Implementing Strasbourg Court Judgments: the Parliamentary Dimension” in vol.2 *European Yearbook on Human Rights* (2010, W. Benedek, W.Karl, A.Mihr, M.Nowak, editors), pp. 247-258, for analysis of the benefits of effective parliamentary oversight.

¹⁴⁴ See Resolution 1787(2011). As an example of good practice, the UK JCHR both (i) carries out scrutiny of all draft legislation for compatibility with the ECHR, and (ii) carries out ongoing monitoring work on the government’s response to Court judgments. In October 2012 hearings with the Committee on Legal Affairs and Human Rights, Poland stated that they currently have a group of MPs dealing with the implementation of Court judgments, and are debating whether to establish a permanent committee in the near future. Romania has established a sub-committee within the Parliamentary Legal Affairs Committee, focusing on the non-execution of judgments.

Where possible, there would be considerable merit in establishing close links between such committees and the AS/Jur.¹⁴⁵

2.7.3. Co-operation between all branches of state authority, at the domestic and European levels

56. Full and effective implementation of Court judgments can best be achieved by co-operation between parliamentary, executive, and judicial actors, at the domestic and European levels.¹⁴⁶ This is particularly so in regard to ensuring the passage of legislation necessary to the implementation of general measures.¹⁴⁷

57. Copies of Action Plans which national governments are required to provide to the Committee of Ministers¹⁴⁸ should be sent to parliaments and their human rights committees (or other competent parliamentary bodies/committees), who should also be included in subsequent communications with the Committee of Ministers.¹⁴⁹ In Germany, the Netherlands and the UK, the government submits an annual report to Parliament on the implementation of judgments. In addition, the government could be required to inform parliament whenever it intends to intervene as a third party in cases concerning other States (giving reasons for the intervention and providing the substance of its arguments).¹⁵⁰

58. In order to facilitate such co-operation, CM/Rec (2008)2¹⁵¹ recommends the designation of national coordinators of Court judgments.¹⁵² The CDDH suggests that the work of national coordinators would be enhanced by; (i) an explicit domestic legal basis setting out their remit, (ii) dialogue with national parliaments regarding drafting reforms being undertaken, (iii) informing the coordinator of developments before relevant domestic courts concerning the resolution of execution issues, (iv) imposition of a domestic legal obligation on national authorities to execute Court judgments, and (v) rapid translation and dissemination of Court judgments.

2.7.4. Infringement proceedings for non-execution

59. As noted above, there have been repeated calls for stronger “sanctions” at both the Strasbourg and domestic levels with respect to States which persist in the non-execution of Court judgments.¹⁵³ In Doc.12455, rapporteur Mr Christos Pourgourides wrote that “the Assembly ought to consider suspending the voting rights of national delegations when their parliaments do not seriously exercise parliamentary control over the executive in cases of non-implementation of judgments of the European Court of Human Rights.”¹⁵⁴ In § 2 of the Draft Recommendation adopted by the AS/Jur on 12 November 2012, “the Assembly reiterates its call in Recommendations 1764 (2006) and 1955 (2011) to increase pressure and take firmer measures in cases of dilatory and continuous non-compliance with the Court’s judgments by State Parties”. In addition to more stringent “verification mechanisms” such as fact-finding missions, meetings, hearings with political representatives, the suggestion to suspend voting rights - in the Assembly - of parliamentary delegations, it has also been suggested that “positive incentives” could be developed or reinforced, such as foreign aid, assistance programmes and funds to assist various national institutions, including NGOs, in order to induce compliance with Court judgments.¹⁵⁵

¹⁴⁵ Report of the UK Joint Committee on Human Rights 2010, “Enhancing parliament’s role in relation to human rights judgments”, supra.

¹⁴⁶ See Recommendation 1955(2011) §§ 1.1 and 1.3.

¹⁴⁷ CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarationssupra.

¹⁴⁸ See CM Reply to Recommendation 1955(2011), supra., at § 4-5.

¹⁴⁹ See CM/Inf/DH (2009) 29 Rev, 3 June 2009, “Action Plans – Action Reports, Definitions and Objectives, Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights”.

¹⁵⁰ See report of the UK Parliament’s Joint Committee on Human Rights 2010, “Enhancing Parliament’s role in relation to human rights judgments”, supra.

¹⁵¹ Brighton Declaration § F 29 a) i) encourages States Parties to implement the Recommendation.

¹⁵² See also the recent report of the AS/Jur, Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties, supra., §§ 50 and 51 (and Draft Resolution § 7.1.3), which suggests the establishment of a national body responsible solely for the execution of the Court’s judgments. Where no formal coordinator has been assigned, certain government departments (e.g. the Ministry of Justice or the Ministry of Foreign Affairs) assume a *de facto* coordinating role.

¹⁵³ See Recommendations 1477 (2000) § 4.a, 1764(2006) § 1.5 and 1955(2011) § § 1.4 and 1.5; see also Gerards, “The Prism of Fundamental Rights Protection”, E.C.L. Review 2012, 8(2), 173.

¹⁵⁴ Doc. 12455, supra., at § 213, cited by Mrs Bemelmans-Videc, Doc. 12221, supra., § 21.

¹⁵⁵ Helfer, supra.

60. The issue of infringement proceedings was recently discussed in the context of an NGO's meeting held in Strasbourg on 16 November 2012, a meeting which was sponsored by the Open Society Justice Initiative to discuss the role of civil society in the supervision of the execution of the Court's judgments.¹⁵⁶

2.8. Longer-term future of the Convention system and the Court¹⁵⁷

61. Although the Brighton Declaration does not entail an overhaul of the Convention system, it reminds States Parties of the need to consider taking more significant measures in the long-term. In section G, the Declaration:

- Invites the Committee of Ministers to consider the future of the Convention system, encompassing future challenges to the enjoyment of the rights and freedoms guaranteed by the Convention and the way in which the Court can fulfill its twin role of acting as a safeguard for individuals whose rights and freedoms are not secured at the national level and authoritatively interpreting the Convention;¹⁵⁸ and
- Invites the Committee of Ministers to reach an interim view on these issues by the end of 2015.¹⁵⁹

62. The long-term measures deemed necessary in order to safeguard the future of the Court depend largely on whether the Court's primary role is perceived as that of constitutional court, in safeguarding individual rights in specific circumstances, or in the need of maintaining both functions which are not mutually exclusive (as is the view of the Assembly at present). Rigorous enforcement of the Court's priority policy,¹⁶⁰ as well as concentrating efforts on the Convention system's "big sinners" may, so it has been suggested, prevent the Court from being inundated with applications. It follows that, when considering specific measures for further reforms, such initiatives need not be directed either at the Court or at all States Parties, but could, and perhaps should, instead primarily target those states which can objectively be identified as deserving "differentiated treatment".¹⁶¹

3. Further issues affecting the future of the Convention system

3.1. Resources of the Court

63. The budgetary predicament facing the Court, and the Council as a whole, remains a significant "stumbling block". This issue was not addressed in the Brighton Declaration. For a detailed analysis, including comparative surveys with other international courts, bodies and institutions, reference should be made back to Ms Marie-Louise Bemelmans-Videc's report.¹⁶²

64. Assembly Recommendation 1991(2012) urged the Committee of Ministers to ensure that the Council's "difficult financial predicament be tackled at the highest political level." However, the Committee of Ministers Reply¹⁶³ states that "the current budgetary situation in member States does not make it possible to increase the budget of the Organisation". The Reply makes reference instead to the opening of the special account¹⁶⁴ to recruit lawyers to deal with the backlog of priority cases, to which member States have been invited to make voluntary contributions. However, provision of the special account through *ad hoc* voluntary contributions from member States has the potential to undermine the independence of the Court. In any event, the account will not address the wider budgetary predicament facing the Court, as it will only be used to help reduce the number of pending (priority) cases.

¹⁵⁶ Initiative taken by the European Human Rights Advocacy Centre, referred to in the report by Mrs M-L Bemelmans-Videc (Netherlands, EPP/CD), "Guaranteeing the authority and effectiveness of the European Convention on Human Rights," Assembly [Doc. 12811](#), 3 January 2012, paragraph 33 (and footnote 93), *supra*. See also, on the work of NGO's, L. Miara and V. Prais, "The Role of Civil Society in the Execution of Judgments of the European Court of Human Rights", EHRLR 5/2012, pp. 528-537.

¹⁵⁷ Brighton Declaration § G.

¹⁵⁸ Brighton Declaration § G 35 c).

¹⁵⁹ Brighton Declaration § G 35 g).

¹⁶⁰ Adopted in 2009, at:

http://www.echr.coe.int/NR/rdonlyres/DB6EDF5E-6661-4EF6-992E-F8C4ACC62F31/0/Priority_policyPublic_communication_EN.pdf

¹⁶¹ See in particular, Keller, Fischer and Kuhne, "Debating the Future of the ECtHR after the Interlaken Conference: Two Innovative Proposals", EJIL (2010), Vol.21 No.4 at pp. 1043-1045.

¹⁶² Doc. 12811, *supra*., § § 19-22.

¹⁶³ CM Reply to Recommendation 1991 (2012), adopted on 12 September 2012, *supra*.

¹⁶⁴ The special account was opened on 20 June 2012.

3.2. *EU accession to the ECHR*

65. The accession of the EU to the Convention became a legal obligation under Article 6(2) of the Treaty of Lisbon. This issue is currently under active consideration by the Committee of Ministers, and the CDDH has given the mandate of elaborating an accession instrument to informal Working Group CDDH-UE.¹⁶⁵ This subject has recently been reactivated at the intergovernmental level, and the most recent negotiation meeting “47 + 1” took place between 7 and 9 November 2012.¹⁶⁶

4. **Conclusions**

4.1. *Opinions on draft Protocols Nos. 15 and 16*

66. As discussed in the relevant sections above, draft Protocol No. 15 to the ECHR, implementing relevant parts of the Brighton Declaration, was adopted by the CDDH and transmitted to the Committee of Ministers on 30 November 2012. Draft Protocol No. 16 to the ECHR has been remitted to the DH-GDR for further consideration and is likely to be considered at the next plenary meeting of the CDDH, scheduled for 19-22 March 2013. The Assembly is likely to be seized for opinion, by the Committee of Ministers, on draft Protocol No.15 in January 2013, and on draft Protocol No.16 in April or in May 2013.

4.2. *Outlook*

67. It is understood that the Rapporteur wishes to hold hearings on this subject after Protocols Nos. 15 and 16 have been formally adopted and opened for signature by the Committee of Ministers.

¹⁶⁵ For general information on the EU's accession to the Convention, see:

<http://hub.coe.int/what-we-do/human-rights/eu-accession-to-the-convention>

¹⁶⁶ Meeting report of the 75th meeting of the CDDH, 17-19 November 2012 available at:

[http://www.coe.int/t/dghl/standardsetting/hrpolicy/accession/Working_documents/47_1\(2012\)02_Extracts_CDDH_Report_EN.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/accession/Working_documents/47_1(2012)02_Extracts_CDDH_Report_EN.pdf)

Appendix 1: High Level Conference on the Future of the European Court of Human Rights Brighton Declaration 20 April 2012

The High Level Conference meeting at Brighton on 19 and 20 April 2012 at the initiative of the United Kingdom Chairmanship of the Committee of Ministers of the Council of Europe ("the Conference") declares as follows:

1. The States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") reaffirm their deep and abiding commitment to the Convention, and to the fulfilment of their obligation under the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention.
2. The States Parties also reaffirm their attachment to the right of individual application to the European Court of Human Rights ("the Court") as a cornerstone of the system for protecting the rights and freedoms set forth in the Convention. The Court has made an extraordinary contribution to the protection of human rights in Europe for over 50 years.
3. The States Parties and the Court share responsibility for realising the effective implementation of the Convention, underpinned by the fundamental principle of subsidiarity. The Convention was concluded on the basis, *inter alia*, of the sovereign equality of States. States Parties must respect the rights and freedoms guaranteed by the Convention, and must effectively resolve violations at the national level. The Court acts as a safeguard for violations that have not been remedied at the national level. Where the Court finds a violation, States Parties must abide by the final judgment of the Court.
4. The States Parties and the Court also share responsibility for ensuring the viability of the Convention mechanism. The States Parties are determined to work in partnership with the Court to achieve this, drawing also on the important work of the Committee of Ministers and the Parliamentary Assembly of the Council of Europe as well as the Commissioner for Human Rights and the other institutions and bodies of the Council of Europe, and working in a spirit of co-operation with civil society and National Human Rights Institutions.
5. The High Level Conference at Interlaken ("the Interlaken Conference") in its Declaration of 19 February 2010 noted with deep concern that the deficit between applications introduced and applications disposed of continued to grow; it considered that this situation caused damage to the effectiveness and credibility of the Convention and its supervisory mechanism and represented a threat to the quality and the consistency of the case law and the authority of the Court. The High Level Conference at Izmir ("the Izmir Conference") in its Declaration of 27 April 2011 welcomed the concrete progress achieved following the Interlaken Conference. The States Parties are very grateful to the Swiss and Turkish Chairmanships of the Committee of Ministers for having convened these conferences, and to all those who have helped fulfil the action and follow-up plans.
6. The results so far achieved within the framework of Protocol No. 14 are encouraging, particularly as a result of the measures taken by the Court to increase efficiency and address the number of clearly inadmissible applications pending before it. However, the growing number of potentially well-founded applications pending before the Court is a serious problem that causes concern. In light of the current situation of the Convention and the Court, the relevant steps foreseen by the Interlaken and Izmir Conferences must continue to be fully implemented, and the full potential of Protocol No. 14 exploited. However, as noted by the Izmir Conference, Protocol No. 14 alone will not provide a lasting and comprehensive solution to the problems facing the Convention system. Further measures are therefore also needed to ensure that the Convention system remains effective and can continue to protect the rights and freedoms of over 800 million people in Europe.

A. Implementation of the Convention at national level

7. The full implementation of the Convention at national level requires States Parties to take effective measures to prevent violations. All laws and policies should be formulated, and all State officials should discharge their responsibilities, in a way that gives full effect to the Convention. States Parties must also provide means by which remedies may be sought for alleged violations of the Convention. National courts and tribunals should take into account the Convention and the case law of the Court. Collectively, these measures should reduce the number of violations of the Convention. They would also reduce the number of well-founded applications presented to the Court, thereby helping to ease its workload.
8. The Council of Europe plays a crucial role in assisting and encouraging national implementation of the Convention, as part of its wider work in the field of human rights, democracy and the rule of law. The provision of technical assistance upon request to States Parties, whether provided by the Council of Europe or bilaterally by other States Parties, disseminates good practice and raises the standards of human rights observance in Europe. The support given by the Council of Europe should be provided in an efficient manner with reference to defined outcomes, in co-ordination with the wider work of the organisation.
9. The Conference therefore:
 - a) Affirms the strong commitment of the States Parties to fulfil their primary responsibility to implement the Convention at national level;
 - b) Strongly encourages the States Parties to continue to take full account of the recommendations of the Committee of Ministers on the implementation of the Convention at national level in their development of legislation, policies and practices to give effect to the Convention;
 - c) In particular, expresses the determination of the States Parties to ensure effective implementation of the Convention at national level by taking the following specific measures, so far as relevant:
 - i) Considering the establishment, if they have not already done so, of an independent National Human Rights Institution;
 - ii) Implementing practical measures to ensure that policies and legislation comply fully with the Convention, including by offering to national parliaments information on the compatibility with the Convention of draft primary legislation proposed by the Government;
 - iii) Considering the introduction if necessary of new domestic legal remedies, whether of a specific or general nature, for alleged violations of the rights and freedoms under the Convention;
 - iv) Enabling and encouraging national courts and tribunals to take into account the relevant principles of the Convention, having regard to the case law of the Court, in conducting proceedings and formulating judgments; and in particular enabling litigants, within the appropriate parameters of national judicial procedure but without unnecessary impediments, to draw to the attention of national courts and tribunals any relevant provisions of the Convention and jurisprudence of the Court;
 - v) Providing public officials with relevant information about the obligations under the Convention; and in particular training officials working in the justice system, responsible for law enforcement, or responsible for the deprivation of a person's liberty in how to fulfil obligations under the Convention;
 - vi) Providing appropriate information and training about the Convention in the study, training and professional development of judges, lawyers and prosecutors; and
 - vii) Providing information on the Convention to potential applicants, particularly about the scope and limits of its protection, the jurisdiction of the Court and the admissibility criteria;
 - d) Encourages the States Parties, if they have not already done so, to:
 - i) Ensure that significant judgments of the Court are translated or summarised into national languages where this is necessary for them to be properly taken into account;

- ii) Translate the Court's Practical Guide on Admissibility Criteria into national languages; and
 - iii) Consider making additional voluntary contributions to the human rights programmes of the Council of Europe or to the Human Rights Trust Fund;
- e) Encourages all States Parties to make full use of technical assistance, and to give and receive upon request bilateral technical assistance in a spirit of open co-operation for the full protection of human rights in Europe;
- f) Invites the Committee of Ministers:
- i) To consider how best to ensure that requested technical assistance is provided to States Parties that most require it;
 - ii) Further to sub-paragraphs c(iii) and (iv) above, to prepare a guide to good practice in respect of domestic remedies; and
 - iii) Further to sub-paragraph c(v) above, to prepare a toolkit that States Parties could use to inform their public officials about the State's obligations under the Convention;
- g) Invites the Secretary General to propose to States Parties, through the Committee of Ministers, practical ways to improve:
- i) The delivery of the Council of Europe's technical assistance and co-operation programmes;
 - ii) The co-ordination between the various Council of Europe actors in the provision of assistance; and
 - iii) The targeting of relevant technical assistance available to each State Party on a bilateral basis, taking into account particular judgments of the Court;
- h) Invites the Court to indicate those of its judgments that it would particularly recommend for possible translation into national languages; and
- i) Reiterates the importance of co-operation between the Council of Europe and the European Union, in particular to ensure the effective implementation of joint programmes and coherence between their respective priorities in this field.

B. Interaction between the Court and national authorities

10. The States Parties to the Convention are obliged to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, and to provide an effective remedy before a national authority for everyone whose rights and freedoms are violated. The Court authoritatively interprets the Convention. It also acts as a safeguard for individuals whose rights and freedoms are not secured at the national level.
11. The jurisprudence of the Court makes clear that the States Parties enjoy a margin of appreciation in how they apply and implement the Convention, depending on the circumstances of the case and the rights and freedoms engaged. This reflects that the Convention system is subsidiary to the safeguarding of human rights at national level and that national authorities are in principle better placed than an international court to evaluate local needs and conditions. The margin of appreciation goes hand in hand with supervision under the Convention system. In this respect, the role of the Court is to review whether decisions taken by national authorities are compatible with the Convention, having due regard to the State's margin of appreciation.
12. The Conference therefore:
- a) Welcomes the development by the Court in its case law of principles such as subsidiarity and the margin of appreciation, and encourages the Court to give great prominence to and apply consistently these principles in its judgments;

- b) Concludes that, for reasons of transparency and accessibility, a reference to the principle of subsidiarity and the doctrine of the margin of appreciation as developed in the Court's case law should be included in the Preamble to the Convention and invites the Committee of Ministers to adopt the necessary amending instrument by the end of 2013, while recalling the States Parties' commitment to give full effect to their obligation to secure the rights and freedoms defined in the Convention;
- c) Welcomes and encourages open dialogues between the Court and States Parties as a means of developing an enhanced understanding of their respective roles in carrying out their shared responsibility for applying the Convention, including particularly dialogues between the Court and:
 - i) The highest courts of the States Parties;
 - ii) The Committee of Ministers, including on the principle of subsidiarity and on the clarity and consistency of the Court's case law; and
 - iii) Government Agents and legal experts of the States Parties, particularly on procedural issues and through consultation on proposals to amend the Rules of Court;
- d) Notes that the interaction between the Court and national authorities could be strengthened by the introduction into the Convention of a further power of the Court, which States Parties could optionally accept, to deliver advisory opinions upon request on the interpretation of the Convention in the context of a specific case at domestic level, without prejudice to the non-binding character of the opinions for the other States Parties; invites the Committee of Ministers to draft the text of an optional protocol to the Convention with this effect by the end of 2013; and further invites the Committee of Ministers thereafter to decide whether to adopt it; and
- e) Recalls that the Izmir Conference invited the Committee of Ministers to consider further the question of interim measures under Rule 39 of the Rules of the Court; and invites the Committee of Ministers to assess both whether there has been a significant reduction in their numbers and whether applications in which interim measures are applied are now dealt with speedily, and to propose any necessary action.

C. Applications to the Court

- 13. The right of individual application is a cornerstone of the Convention system. The right to present an application to the Court should be practically realisable, and States Parties must ensure that they do not hinder in any way the effective exercise of this right.
- 14. The admissibility criteria in Article 35 of the Convention define which applications the Court should consider further on their merits. They should provide the Court with practical tools to ensure that it can concentrate on those cases in which the principle or the significance of the violation warrants its consideration. It is for the Court to decide on the admissibility of applications. It is important in doing so that the Court continues to apply strictly and consistently the admissibility criteria, in order to reinforce confidence in the rigour of the Convention system and to ensure that unnecessary pressure is not placed on its workload.
- 15. The Conference therefore:
 - a) Welcomes the Court's suggestion that the time limit under Article 35(1) of the Convention within which an application must be made to the Court could be shortened; concludes that a time limit of four months is appropriate; and invites the Committee of Ministers to adopt the necessary amending instrument by the end of 2013;
 - b) Welcomes the stricter application of the time limit in Article 35(1) of the Convention envisaged by the Court; and reiterates the importance of the Court applying fully, consistently and foreseeably all the admissibility criteria including the rules regarding the scope of its jurisdiction, both to ensure the efficient application of justice and to safeguard the respective roles of the Court and national authorities;

- c) Concludes that Article 35(3)(b) of the Convention should be amended to remove the words “and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal”; and invites the Committee of Ministers to adopt the necessary amending instrument by the end of 2013;
- d) Affirms that an application should be regarded as manifestly ill-founded within the meaning of Article 35(3)(a), *inter alia*, to the extent that the Court considers that the application raises a complaint that has been duly considered by a domestic court applying the rights guaranteed by the Convention in light of well-established case law of the Court including on the margin of appreciation as appropriate, unless the Court finds that the application raises a serious question affecting the interpretation or application of the Convention; and encourages the Court to have regard to the need to take a strict and consistent approach in declaring such applications inadmissible, clarifying its case law to this effect as necessary;
- e) Welcomes the increased provision by the Court of information to applicants on its procedures, and particularly on the admissibility criteria;
- f) Invites the Court to make specific provision in the Rules of Court for a separate decision to be made on admissibility at the request of the respondent Government when there is a particular interest in having the Court rule on the effectiveness of a domestic remedy which is at issue in the case; and
- g) Invites the Court to develop its case law on the exhaustion of domestic remedies so as to require an applicant, where a domestic remedy was available to them, to have argued before the national courts or tribunals the alleged violation of the Convention rights or an equivalent provision of domestic law, thereby allowing the national courts an opportunity to apply the Convention in light of the case law of the Court.

D. Processing of applications

- 16. The number of applications made each year to the Court has doubled since 2004. Very large numbers of applications are now pending before all of the Court’s primary judicial formations. Many applicants, including those with a potentially well-founded application, have to wait for years for a response.
- 17. In light of the importance of the right of individual application, the Court must be able to dispose of inadmissible applications as efficiently as possible, with the least impact on its resources. The Court has already taken significant steps to achieve this within the framework of Protocol No. 14, which are to be applauded.
- 18. Repetitive applications mostly arise from systemic or structural issues at the national level. It is the responsibility of a State Party, under the supervision of the Committee of Ministers, to ensure that such issues and resulting violations are resolved as part of the effective execution of judgments of the Court.
- 19. The increasing number of cases pending before the Chambers of the Court is also a matter of serious concern. The Court should be able to focus its attention on potentially well-founded new violations.
- 20. The Conference therefore:
 - a) Welcomes the advances already made by the Court in its processing of applications, particularly the adoption of:
 - i) Its priority policy, which has helped it focus on the most important and serious cases; and
 - ii) Working methods that streamline procedures particularly for the handling of inadmissible and repetitive cases, while maintaining appropriate judicial responsibility;
 - b) Notes with appreciation the Court’s assessment that it could dispose of the outstanding clearly inadmissible applications pending before it by 2015; acknowledges the Court’s request for the further secondment of national judges and high-level independent lawyers to its Registry to allow it to achieve this; and encourages the States Parties to arrange further such secondments;

- c) Expresses continued concern about the large number of repetitive applications pending before the Court; welcomes the continued use by the Court of proactive measures, particularly pilot judgments, to dispose of repetitive violations in an efficient manner; and encourages the States Parties, the Committee of Ministers and the Court to work together to find ways to resolve the large numbers of applications arising from systemic issues identified by the Court, considering the various ideas that have been put forward, including their legal, practical and financial implications, and taking into account the principle of equal treatment of all States Parties;
- d) Building on the pilot judgment procedure, invites the Committee of Ministers to consider the advisability and modalities of a procedure by which the Court could register and determine a small number of representative applications from a group of applications that allege the same violation against the same respondent State Party, such determination being applicable to the whole group;
- e) Notes that, to enable the Court to decide in a reasonable time the applications pending before its Chambers, it may be necessary in the future to appoint additional judges to the Court; further notes that these judges may need to have a different term of office and/or a different range of functions from the existing judges of the Court; and invites the Committee of Ministers to decide by the end of 2013 whether or not to proceed to amend the Convention to enable the appointment of such judges following a unanimous decision of the Committee of Ministers acting on information received from the Court;
- f) Invites the Court to consult the States Parties as it considers applying a broader interpretation of the concept of well-established case law within the meaning of Article 28(1) of the Convention, so as to adjudicate more cases under a Committee procedure, without prejudice to the appropriate examination of the individual circumstances of the case and the non-binding character of judgments against another State Party;
- g) Invites the Court to consider, in consultation with the States Parties, civil society and National Human Rights Institutions, whether:
 - i) In light of the experience of the pilot project, further measures should be put in place to facilitate applications to be made online, and the procedure for the communication of cases consequently simplified, whilst ensuring applications continue to be accepted from applicants unable to apply online;
 - ii) The form for applications to the Court could be improved to facilitate the better presentation and handling of applications;
 - iii) Decisions and judgments of the Court could be made available to the parties to the case a short period of time before their delivery in public; and
 - iv) The claim for and comments on just satisfaction, including costs, could be submitted earlier in proceedings before the Chamber and Grand Chamber;
- h) Envisages that the full implementation of these measures with appropriate resources should in principle enable the Court to decide whether to communicate a case within one year, and thereafter to make all communicated cases the subject of a decision or judgment within two years of communication;
- i) Further expresses the commitment of the States Parties to work in partnership with the Court to achieve these outcomes; and
- j) Invites the Committee of Ministers, in consultation with the Court, to set out how it will determine whether, by 2015, these measures have proven sufficient to enable the Court successfully to address its workload, or if further measures are thereafter needed.

E. Judges and jurisprudence of the Court

21. The authority and credibility of the Court depend in large part on the quality of its judges and the judgments they deliver.

22. The high calibre of judges elected to the Court depends on the quality of the candidates that are proposed to the Parliamentary Assembly for election. The States Parties' role in proposing candidates of the highest possible quality is therefore of fundamental importance to the continued success of the Court, as is a high-quality Registry, with lawyers chosen for their legal capability and their knowledge of the law and practice of States Parties, which provides invaluable support to the judges of the Court.
23. Judgments of the Court need to be clear and consistent. This promotes legal certainty. It helps national courts apply the Convention more precisely, and helps potential applicants assess whether they have a well-founded application. Clarity and consistency are particularly important when the Court addresses issues of general principle. Consistency in the application of the Convention does not require that States Parties implement the Convention uniformly. The Court has indicated that it is considering an amendment to the Rules of Court making it obligatory for a Chamber to relinquish jurisdiction where it envisages departing from settled case law.
24. A stable judiciary promotes the consistency of the Court. It is therefore in principle undesirable for any judge to serve less than the full term of office provided for in the Convention.
25. The Conference therefore:
 - a) Welcomes the adoption by the Committee of Ministers of the Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights, and encourages the States Parties to implement them;
 - b) Welcomes the establishment of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights; notes that the Committee of Ministers has decided to review the functioning of the Advisory Panel after an initial three-year period; and invites the Parliamentary Assembly and the Committee of Ministers to discuss how the procedures for electing judges can be further improved;
 - c) Welcomes the steps that the Court is taking to maintain and enhance the high quality of its judgments and in particular to ensure that the clarity and consistency of judgments are increased even further; welcomes the Court's long-standing recognition that it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart without cogent reason from precedents laid down in previous cases; and in particular, invites the Court to have regard to the importance of consistency where judgments relate to aspects of the same issue, so as to ensure their cumulative effect continues to afford States Parties an appropriate margin of appreciation;
 - d) In light of the central role played by the Grand Chamber in achieving consistency in the Court's jurisprudence, concludes that Article 30 of the Convention should be amended to remove the words "unless one of the parties to the case objects"; invites the Committee of Ministers to adopt the necessary amending instrument, and to consider whether any consequential changes are required, by the end of 2013; and encourages the States Parties to refrain from objecting to any proposal for relinquishment by a Chamber pending the entry into force of the amending instrument;
 - e) Invites the Court to consider whether the composition of the Grand Chamber would be enhanced by the *ex officio* inclusion of the Vice Presidents of each Section; and
 - f) Concludes that Article 23(2) of the Convention should be amended to replace the age limit for judges by a requirement that judges must be no older than 65 years of age at the date on which their term of office commences; and invites the Committee of Ministers to adopt the necessary amending instrument by the end of 2013.

F. Execution of judgments of the Court

26. Each State Party has undertaken to abide by the final judgments of the Court in any case to which they are a party. Through its supervision, the Committee of Ministers ensures that proper effect is given to the judgments of the Court, including by the implementation of general measures to resolve wider systemic issues.

27. The Committee of Ministers must therefore effectively and fairly consider whether the measures taken by a State Party have resolved a violation. The Committee of Ministers should be able to take effective measures in respect of a State Party that fails to comply with its obligations under Article 46 of the Convention. The Committee of Ministers should pay particular attention to violations disclosing a systemic issue at national level, and should ensure that States Parties quickly and effectively implement pilot judgments.
28. The Committee of Ministers is supervising the execution of an ever-increasing number of judgments. As the Court works through the potentially well-founded applications pending before it, the volume of work for the Committee of Ministers can be expected to increase further.
29. The Conference therefore:
- a) Encourages the States Parties:
 - i) to develop domestic capacities and mechanisms to ensure the rapid execution of the Court's judgments, including through implementation of Recommendation 2008(2) of the Committee of Ministers, and to share good practices in this respect;
 - ii) to make action plans for the execution of judgments as widely accessible as possible, including where possible through their publication in national languages; and
 - iii) to facilitate the important role of national parliaments in scrutinising the effectiveness of implementation measures taken;
 - b) Reiterates the invitation made by the Interlaken and Izmir Conferences to the Committee of Ministers to apply fully the principle of subsidiarity by which the States Parties may choose how to fulfil their obligations under the Convention;
 - c) Invites the Committee of Ministers to continue to consider how to refine its procedures so as to ensure effective supervision of the execution of judgments, in particular through:
 - i) more structured consideration of strategic and systemic issues at its meetings; and
 - ii) stronger publicity about its meetings;
 - d) Invites the Committee of Ministers to consider whether more effective measures are needed in respect of States that fail to implement judgments of the Court in a timely manner; and
 - e) Welcomes the Parliamentary Assembly's regular reports and debates on the execution of judgments.

G. Longer-term future of the Convention system and the Court

30. This Declaration addresses the immediate issues faced by the Court. It is however also vital to secure the future effectiveness of the Convention system. To achieve this, a process is needed to anticipate the challenges ahead and develop a vision for the future of the Convention, so that future decisions are taken in a timely and coherent manner.
31. As part of this process, it may be necessary to evaluate the fundamental role and nature of the Court. The longer-term vision must secure the viability of the Court's key role in the system for protecting and promoting human rights in Europe. The right of individual application remains a cornerstone of the Convention system. Future reforms must enhance the ability of the Convention system to address serious violations promptly and effectively.
32. Effective implementation of the Convention at national level will permit the Court in the longer term to take on a more focussed and targeted role. The Convention system must support States in fulfilling their primary responsibility to implement the Convention at national level.
33. In response to more effective implementation at the national level, the Court should be in a position to focus its efforts on serious or widespread violations, systemic and structural problems, and important questions of interpretation and application of the Convention, and hence would need to remedy fewer violations itself and consequently deliver fewer judgments.

34. The Interlaken Conference invited the Committee of Ministers to evaluate, during the years 2012 to 2015, to what extent the implementation of Protocol No. 14 and of the Interlaken Action Plan had improved the situation of the Court. It provided that, on the basis of this evaluation, the Committee of Ministers should decide before the end of 2015 whether there is a need for further action. It further provided that, before the end of 2019, the Committee of Ministers should decide on whether the measures adopted have proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary.
35. The Conference therefore:
- a) Welcomes the process of reflection on the longer-term future of the Court begun at the Interlaken Conference and continued at the Izmir Conference; and welcomes the contribution of the informal Wilton Park conference to this reflection;
 - b) Invites the Committee of Ministers to determine by the end of 2012 the process by which it will fulfil its further mandates under this Declaration and the Declarations adopted by the Interlaken and Izmir Conferences;
 - c) Invites the Committee of Ministers, in the context of the fulfilment of its mandate under the Declarations adopted by the Interlaken and Izmir Conferences, to consider the future of the Convention system, this consideration encompassing future challenges to the enjoyment of the rights and freedoms guaranteed by the Convention and the way in which the Court can best fulfil its twin role of acting as a safeguard for individuals whose rights and freedoms are not secured at the national level and authoritatively interpreting the Convention;
 - d) Proposes that the Committee of Ministers carry out this task within existing structures, while securing the participation and advice of external experts as appropriate in order to provide a wide range of expertise and to facilitate the fullest possible analysis of the issues and possible solutions;
 - e) Envisages that the Committee of Ministers will, as part of this task, carry out a comprehensive analysis of potential options for the future role and function of the Court, including analysis of how the Convention system in essentially its current form could be preserved, and consideration of more profound changes to how applications are resolved by the Convention system with the aim of reducing the number of cases that have to be addressed by the Court.
 - f) Further invites the States Parties, including through the Committee of Ministers, to initiate comprehensive examination of:
 - i) the procedure for the supervision of the execution of judgments of the Court, and the role of the Committee of Ministers in this process; and
 - ii) the affording of just satisfaction to applicants under Article 41 of the Convention; and
 - g) As a first step, invites the Committee of Ministers to reach an interim view on these issues by the end of 2015.

H. General and final provisions

36. The accession of the European Union to the Convention will enhance the coherent application of human rights in Europe. The Conference therefore notes with satisfaction progress on the preparation of the draft accession agreement, and calls for a swift and successful conclusion to this work.
37. The Conference also notes with appreciation the continued consideration, as mandated by the Interlaken and Izmir Conferences, as to whether a simplified procedure for amending provisions of the Convention relating to organisational matters could be introduced, whether by means of a Statute for the Court or a new provision in the Convention, and calls for a swift and successful conclusion to this work that takes full account of the constitutional arrangements of the States Parties.
38. Where decisions to give effect to this Declaration have financial implications for the Council of Europe, the Conference invites the Court and the Committee of Ministers to quantify these costs as soon as possible, taking into account the budgetary principles of the Council of Europe and the need for budgetary caution.

39. The Conference:

- a) Invites the United Kingdom Chairmanship to transmit the present Declaration and the Proceedings of the Conference to the Committee of Ministers;
- b) Invites the States Parties, the Committee of Ministers, the Court and the Secretary General of the Council of Europe to give full effect to this Declaration; and
- c) Invites the future Chairmanships of the Committee of Ministers to ensure the future impetus of the reform of the Court and the implementation of the Convention.