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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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Report on measures taken by the member States to implement relevant parts of the Brighton Declaration

(as adopted by the CDDH at its 85th meeting, 15-17 June 2016)

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I. INTRODUCTION

1. The High-level Conference on the future of the European Court of Human Rights, organised by the UK Chairmanship of the Committee of Ministers in Brighton, United Kingdom, from 18 to 20 April 2012, called on "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" adopted at the end of the Conference (paragraph 39b of the Declaration). The Committee of Ministers subsequently called on member States to take the measures required of them by the Brighton Declaration and to report back.[1]

2. Under its terms of reference for the 2016-2017[2] biennium, the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC) was tasked with preparing a draft report for the Committee of Ministers containing (a) an analysis of the responses given by member States in their national reports on implementation of the Brighton Declaration (hereinafter "national reports") and (b) possible recommendations for follow-up. The Steering Committee for Human Rights (CDDH) had been given similar terms of reference following the Interlaken and Izmir Declarations, and its work had resulted in the CDDH Report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations.[3]

3. This report has been drafted on the basis of the national reports on implementation of the Brighton Declaration,[4] submitted on 1 March 2016, as well as on relevant information presented by experts during the 1st meeting of the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC). As of that date, 35 States Parties had submitted their reports.[5] The nature of the reports varies, on the one hand in terms of the scope and level of detail of the information provided, and on the other, in terms of the structure, although most of them do follow the structure of the Brighton Declaration. Frequent reference is made to measures adopted prior to the Brighton Declaration or there is a comment to the effect that the national report supplements the information provided in the previous national report on implementation of the Interlaken and Izmir Declarations. This report should therefore be regarded as supplementing the CDDH's previous exercise, in which all member States, on the basis of a structure provided by the CDDH and adopted by the Committee of Ministers, had submitted reports which in most cases went into greater detail than the reports submitted for this exercise. It addresses paragraphs 9. a), 9. b), 9. c) i., 9. c) iii., 9. c) iv., 9. c) vii., 9. d) i., 9. d) ii., 9. d) iii. and 9. e). of the Brighton Declaration.

4. The present report should also be read in the light of the main recent developments in intergovernmental work on the system of the European Convention on

[1] See the decisions taken at the 122nd session of the Committee of Ministers on Securing the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights, 23 May 2012. The deadline for the submission of reports had initially been set at 15 March 2014, and then extended to 31 December 2014 by decision of the Ministers' Deputies taken at their 1190th meeting, item 4.3 f, on 5 February 2014.
[2] Document DH-SYSC(2016)003.
[3] Document CDDH(2012)R76 Addendum I.
[4] Compiled in document DH-SYSC(2016)005.
[5] Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Ireland, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine.

Human Rights, namely the Brussels Declaration "on the implementation of the European Convention on Human Rights, our shared responsibility" (27 March 2015) and the CDDH report on the longer-term future of the Convention system.[6]

5. Several questions raised in the national reports will be examined by the DH-SYSC in the course of the 2016-2017 biennium in accordance with its terms of reference:

- Recommendation (2004)4 on the European Convention on Human Rights in university education and professional training[7];
- Recommendation (2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights[8];
- Recommendation (2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights[9];
- and Recommendation (2010)3 on effective remedies for excessive length of proceedings[10]; and on the follow-up to be given to the CDDH report on the longer-term future of the Convention system[11], in particular the question of the procedures for selecting and electing the judges of the Court.

For this reason it was decided to extract from the national reports the relevant information relating to these aspects that will be not analysed in the framework of the present report but at a subsequent stage, in the context of the relevant activities of the DH-SYSC in the course of the biennium.

6. Finally, it should be underlined that the present report is not intended to provide a compilation of national practices but rather an analysis of the national reports illustrated by selected examples of good practices.[12] The fact that a State is not mentioned with respect to a certain issue does not mean that its national practice is deficient or that it cannot be considered as a good practice. The report will successively present the analysis of the responses submitted by the Member States in their national reports, and the conclusions and recommendations of the CDDH for follow-up.

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[6] Document CDDH(2015)R84 Addendum I.

[7] See the terms of reference of the DH-SYSC for the biennium 2016-2017, document DH-SYSC(2016)003, whereby the DH-SYSC is instructed to "submit, if appropriate, proposals to the Committee of Ministers regarding […] the recommendation Rec(2004)4 on the Convention in university education and professional training, along with the development of guidelines on good practice in respect of human rights training for legal professionals".

[8] According to its terms of reference, the DH-SYSC is instructed to "submit, if appropriate, proposals to the Committee of Ministers regarding […] the recommendation Rec(2004)4".

[9] According to its terms of reference, the DH-SYSC is instructed to, "concerning Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights: take stock of its implementation, and make an inventory of good practices relating to it and, if appropriate, provide for updating the recommendation in the light of practices developed by the States Parties".

[10] According to its terms of reference, the DH-SYSC is instructed to "submit, if appropriate, proposals to the Committee of Ministers regarding […] recommendation CM/Rec(2010)3".

[11] According to its terms of reference, the DH-SYSC is instructed "concerning the longer-term future of the Convention system and the Court:[to] achieve any results expected on the basis of decisions that may be taken by the Committee of Ministers further to the submission of the CDDH report containing opinions and possible proposals on this issue".

[12] As the national reports had been submitted to the Secretariat of the Committee of Ministers over a very long period (between 2014 and 2016), member States were asked to ensure that this report reflected the current situation.

II. ANALYSIS OF NATIONAL REPORTS

" 9. a. [The Conference] affirms the strong commitment of the States Parties to fulfil their primary responsibility to implement the Convention at national level"

7. In their national reports on implementation of the Brighton Declaration, those States which had commented on this paragraph of the Declaration mainly indicated that **the Convention had been incorporated into their domestic legal order** and that it was **directly applicable**.[13] The importance of the full and rapid execution of the Court's judgments, in accordance with the obligation laid down in Article 46 of the Convention, was also emphasised.

8. Some countries mentioned the fact that they had established **structures to facilitate implementation of the Convention**. Quite apart from the important role played by the Government Agent in a large number of States,[14] this included, for example in Austria, human rights coordinators in each federal ministry and each office of the provincial governments, who regularly meet to discuss human rights issues. In Finland, under the Constitution, the Chancellor of Justice and the Parliamentary Ombudsman monitor the implementation of human rights and submit annual reports on their activities. Poland referred to the involvement of the inter-ministerial Committee for Matters of the European Court of Human Rights (its mandate was strengthened as a result of amendments introduced in 2015) and the role of the Supreme Audit Office which carries out auditing of the relevant activities of the public administration related to the implementation of the Convention at national level, and to, among others, the setting up of networks of plenipotentiaries to ensure the protection of human rights within the police and border guards. In Russia pursuant to the Decree of the President of the Russian Federation no. 657 (as amended on 25 July 2014) *on monitoring of Law Enforcement in the Russian Federation*, the Ministry of Justice jointly with other competent state authorities perform analyses of the judgments delivered by the Constitutional Court and the Court with the aim of making proposals for reform of the legislation currently in force and further realisation of the said proposals. In Greece a standing special Committee for Equality, Youth and Human Rights operates within the national Parliament. About two years ago, a standing special Committee was also establish to monitor and assess the implementation of the judgments of the Court, notably the compliance with judgments against Greece. Members of the Greek Delegation to the Parliamentary Assembly of the Council of Europe are *ex officio* members of this Committee.

9. The **measures taken to foster greater awareness of the Convention standards** included, primarily, publication and dissemination of the case-law and all kinds of specialist works (reports, bulletins or circulars) or events with participation of national stakeholders (conferences, seminars, workshops). Germany cited the drafting of two types of annual report, the first on Court decisions in respect of Germany and the second on Court decisions in respect of other countries having a bearing on the compatibility of the German legal order with the Convention. These reports were widely distributed

[13] See for example, in Austria, Belgium, Bosnia and Herzegovina, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Lithuania, Republic of Moldova, the Netherlands, Norway, Poland, Portugal, Serbia, Slovak Republic, Sweden, Spain, Switzerland and Turkey.

[14] For example, Cyprus, Croatia, Estonia, Greece, Republic of Moldova, Russian Federation.

among all the state and public authorities. These examples could be supplemented by the good practices identified in the previous exercise on implementation of the Interlaken and Izmir Declarations,[15] as regards both the arrangements put in place and the resources made available.

"9.b. [the Conference] 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"

10. The question of the implementation of the recommendations of the Committee of Ministers had been addressed in the previous CDDH exercise on implementation of the Interlaken and Izmir Declarations,[16] in view of the appeal made in the Interlaken Declaration to States Parties to undertake to ensure "review of the implementation of the recommendations adopted by the Committee of Ministers to help States Parties to fulfil their obligations."[17] The CDDH had then referred to the follow-up it had given to certain Committee of Ministers recommendations in 2008.[18]

11. Relatively little information has been provided on this question in this exercise. Those States which did provide comments mainly reported having **translated** and **disseminated** the relevant recommendations, in many cases posting them on their official websites, and carrying out an **analysis** with a view to their implementation. This analysis is generally assigned to the competent Ministry[19] or the Government Agent.[20] They will subsequently inform the relevant authorities of the measures to be taken for the purposes of implementation. In Austria, the network of human rights coordinators reports on a regular basis on the recommendations and discusses possible further actions. In Poland, all ministries have been asked, as part of the process of drafting the national report on implementation of the Brighton Declaration, to carry out an analysis of their compliance with the recommendations of the Committee of Ministers and are asked to suggest, if appropriate, new measures to ensure full compliance.

12. One example, among others, of the implementation of a recommendation was given by the Czech Republic with regard to Recommendation (2000)2 of the Committee of Ministers to member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights: since January 2013, the possibility of reopening proceedings before the Constitutional Court once an international court has found a violation of human rights or fundamental freedoms, has been extended to include not only criminal but also civil matters. Spain introduced through legislation the possibility of reopening of criminal, contentious-

[15] See more particularly paragraphs 18 to 38 of the CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document CDDH(2012)R76 Addendum I.
[16] See more particularly paragraphs 127 and 128 of the CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document CDDH(2012)R76 Addendum I.
[17] Part B. 4. f. of the Interlaken Declaration Action Plan.
[18] See CDDH(2008)008 Addendum I: CDDH Activity Report: Sustained action to ensure the effectiveness of the implementation of the ECHR at national and European levels.
[19] For example, in Austria, Bosnia and Herzegovina, Finland, Germany and Liechtenstein.
[20] For example, in Croatia, Cyprus, Lithuania, Malta, Republic of Moldova and Spain.

administrative, labour and civil proceedings. In Belgium, the reopening of criminal proceedings following a friendly settlement or a unilateral declaration is now provided for by the law. It would be useful to also refer to the many contributions submitted by States in the exchange of information held by the DH-GDR in 2015, on the provision in the domestic legal order for the re-examination or reopening of cases following judgments of the Court.[21]

13. Relevant information was also provided in the responses to paragraph 9 c. ii. of the Brighton Declaration on the implementation of practical measures to ensure that policies and legislation comply fully with the Convention, including by offering national parliaments information on the compatibility with the Convention of draft primary legislation proposed by the Government. This information will be analysed in the DH-SYSC's work on the mechanisms available at national level to guarantee the compatibility of laws (whether draft legislation, existing laws or administrative practice) with the Convention, in accordance with Recommendation Rec(2004)5 of the Committee of Ministers to member States on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the Convention.

"9. c. [the Conference] 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;"

14. In the present exercise, certain States have indicated that **the question of establishing a national human rights structure was being looked at**.[22] For example, in Switzerland a Centre of Expertise in Human Rights (SCHR) has been set up, comprising a vast network of academics and tasked with advising and assisting the authorities at all levels, civil society and the economic sector regarding the implementation of human rights. Following the evaluation of the work of the SCHR, the Federal Council decided, in July 2015, to instruct the Federal Administration to present various solutions with a view to reaching a final solution. To ensure continuity, the Federal Council prolonged the SCHR for a maximum of five years. Other States pointed out that **there was already an independent national human rights institution prior to the Brighton Conference**.[23]

15. The following are some examples from **among the States which indicated that a new structure had been set up since the Brighton Conference**.[24] In Finland, the Parliamentary Ombudsman Act was amended in 2012 to establish a Human Rights Centre and an associated Human Rights Delegation, both of which are attached to the Office of the Parliamentary Ombudsman. The Centre is an autonomous and independent institution, with the task of implementing human rights and strengthening cooperation

[21] See document DH-GDR(2015)008 Rev. "Overview of the exchange of views held at the 8th meeting of DH-GDR on the provision in the domestic legal order for the re-examination or reopening of cases following judgments of the Court", and the contributions by country. See also the national Report submitted by the Russian Federation (doc. DH-SYSC(2016)005).
[22] For example, Bulgaria, Liechtenstein, Malta, Sweden or Switzerland.
[23] For example, in Armenia, Bosnia and Herzegovina, in Denmark, Germany, Greece, Luxembourg, Republic of Moldova, Poland, Portugal, Romania, Slovak Republic, Spain and Ukraine.
[24] For example, in Croatia, Finland, Ireland, Monaco, the Netherlands, Norway, Slovak Republic, Switzerland and Turkey.

and the exchange of information among the various stakeholders. The Human Rights Delegation serves as a national cooperation body for all stakeholders in the human rights sector. In Ireland, the Irish Human Rights and Equality Commission was set up merging the Irish Human Rights Commission and the Equality Authority. The Commission has a statutory remit to protect and promote human rights and equality, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination. Under its mandate the Commission is tasked with monitoring the adequacy and effectiveness of law and practice relating to the protection of human rights and equality, on its own initiative or on request by the Government; reviewing any legislative proposal and reporting its views on any implications for human rights or equality, on its own initiative or at the request of the Government; formulating, where appropriate, recommendations to the Government concerning the measures that should be taken to strengthen, protect and uphold human rights and equality in Ireland; and consulting, if it deems it advisable, with such national, European Union or international bodies or agencies having a knowledge or expertise in the field of human rights or equality. Also of particular note is the power of the Commission to request permission from the High Court or the Supreme Court to act as *amicus curiae* in proceedings before that Court involving the human rights or equality rights of any individual.

16. In Croatia, in addition to the Ombudsman institution as an independent National Human Rights Institution, three specific authorities have also been set up – the Gender Equality Ombudsman, the Ombudsman for Children and the Disability Ombudsman. In the Slovak Republic, in addition to the Public Defender of Rights, the Commissioner for Children and the Commissioner for Disable Persons have also been set up. In Norway, a new national human rights institution has been established, attached to Parliament and established by law, which guarantees its independence.

17. **In certain other States in which there was already a national human rights structure, the latter's prerogatives have been extended**.[25] In Austria, for example, the Federal Constitution was amended by the OP-CAT Implementation Act, expressly stipulating that the competence for the investigation of cases of maladministration by the Ombudsman Board also includes the investigation of violations of human rights. Like in Austria, in Bulgaria and Lithuania, the Ombudsman's powers have also been strengthened insofar as this institution is now designated as being a National Prevention Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture. In Bulgaria, the Ombudsman's powers have also been extended to include the submission of opinions to the Council of Ministers and the National Assembly on draft legislation relating to the protection of human rights. In Poland, in 2012 the Human Rights Defender became an independent mechanism promoting, protecting and monitoring the implementation of the Convention on the Rights of Persons with Disabilities (in addition to his earlier functions as NPM and independent equality body).

[25] As, for example, Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, Lithuania, Republic of Moldova, Russian Federation, Slovenia.

"9.c. [the Conference] 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:
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;"

18. It should first of all be noted that paragraph 9.f.ii of the Brighton Declaration also called on the Committee of Ministers "to prepare a guide to good practice in respect of domestic remedies", which was subsequently drawn up by the CDDH and adopted by the Committee of Ministers on 23 September 2012.[26] Reference should be made to this guide for a more exhaustive presentation of the question and examples of good practices, and to Recommendation (2010)3 of the Committee of Ministers to member States on effective remedies for excessive length of proceedings and its accompanying Guide to Good Practice.

19. In the national reports on the implementation of the Brighton Declaration, a number of countries indicated that **new remedies, or the codification of remedies already established by case law, were being planned**[27] or have been introduced. **The following examples may be noted from among the many States which indicated that they had introduced new domestic remedies since the adoption of the Brighton Declaration.**[28]

- In many countries, as recently in *Bosnia and Herzegovina* and *Turkey*, it is possible to file a complaint before the Constitutional Court for an alleged violation of the Convention.
- In *Austria*, in administrative matters, a reorganisation of the public administration took place in 2014. Administrative courts were set up in all the provinces, along with a Federal Administrative Court and a Federal Financial Court to hear appeals against decisions taken by the administrative authorities.
- In *Estonia*, an Act for compensation of damage caused during offence proceedings (compensation for the damage caused by the body conducting the criminal proceedings) entered into force in May 2015. It provides for two groups of cases in which compensation for damage can be granted. The first comprises cases in which a measure constituting serious interference with an individual's fundamental rights has been applied but which, in view of the final outcome of the proceedings, was not proportionate. The second group includes cases in which the body conducting the proceedings has violated a procedural rule, thus causing damage to the individual; in such case the final outcome of the proceedings is irrelevant.
- In *France*, the law on asylum reform, which entered into force in November 2015 extends more broadly the suspensive effect of appeals before the National Asylum Court (CNDA) against decisions of the French Office for the Protection of Refugees and Stateless Persons (OFPRA) rejecting asylum applications, regardless of whether these applications had been considered in normal or

[26] See the online version.
[27] For example, Bulgaria, Poland and Sweden.
[28] As, for example, Austria, Armenia, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Greece, Ireland, Lithuania, the Netherlands, Poland, Romania and Turkey.

accelerated procedures. It is only in exhaustively enumerated exceptional cases that an asylum application can be considered under the "priority" procedure, in which case an appeal to the CNDA has no suspensive effect. However, the application of this procedure is subject to appeal before the administrative court, which can annul the decision to deal with the case under the priority procedure; this will then result in the appeal before the CNDA having a suspensive effect.

- In *Ireland*, the 2003 ECHR Act was amended in 2014 to provide for an enforceable right to compensation for any person whose detention was found to be in breach of Article 5 of the Convention and where the detention was the result of a judicial error. The 2003 Act, as amended, also provides that where an individual has suffered damage arising from an action by the State incompatible with the Convention, reparation may be sought by the person in question before the courts if no other remedy is available.
- In *Lithuania*, with the entry into force in early 2015 of the law amending and supplementing the Code of Civil Procedure, the preconditions for the functioning of collective action have been laid down, making it possible to protect private interests where several individuals submit identical claims against the respondent.
- In *Poland*, an independent mechanism for the examination of complaints against the police and border guard authorities had been created in 2010, whereby complaints can be transferred to the Human Rights Defender, as an independent authority. This mechanism was given an additional legal basis in 2014 with the entry into force of Guidelines of the Minister of the Interior concerning the rules and procedure. In 2014, the Prosecutor General also issued Guidelines regarding the conduct of prosecutors of proceedings relating to crimes linked with deprivation of life or inhuman or degrading treatment or punishment inflicted by the police or other public officials.
- In *Romania*, a new mechanism was established to finalise the process of the restitution of nationalised property which was considered by the European Court as effective.[29]

20. Some States have indicated that they have introduced new domestic remedies regarding excessive length of proceedings. The following examples may be noted:

- *Bulgaria* has introduced an enforceable right to compensation in case of violation of the rights under Article 6 of the Convention; the judicial remedy has been combined with an administrative remedy for cases of excessive length of proceedings. This mechanism has been considered effective by the European Court of Human Rights.[30]
- In *Finland*, by virtue of the Act amending the Act on compensation for excessive length of judicial proceedings, which entered into force in June 2013, the remedy providing for adequate redress for excessive length of proceedings in civil and criminal cases was extended to cover also administrative proceedings. The Code of Judicial Procedure has been supplemented with new provisions on urgent consideration of cases covered by the Act on compensation for excessive length of judicial proceedings. To accelerate the proceedings, a party may request the

[29] See the *Preda and others v. Romania* case, Application No. 9584/02, judgment of 29 April 2014, paragraph 133.
[30] See the *Valcheva and Abrashev v. Bulgaria* case, Application No. 6134/11 and the *Balakchiev and others v. Bulgaria* case, Application No. 65187/10, decisions of 18 June 2013.

district court to order urgent consideration of the matter. The Supreme Court extended the Compensation Act to cover also pre-trial investigation. Both this extension and the prior practice whereby individuals could request compensation directly from the authorities responsible for the harm caused, have also been found by the Court to constitute an effective remedy.[31]

- In *Greece*, remedies are provided for where the reasonable length of proceedings has been exceeded in civil, criminal and administrative cases, and before the Court of Auditors, considered by the European Court as effective remedies.[32]
- In *the Netherlands*, remedies in respect of the excessive length of proceedings have been developed by case-law. The Supreme Court had already delivered two judgments providing guidelines for time limits in criminal proceedings and for the consequences of breaching the reasonable time requirement. The criteria developed by the Supreme Court are based on those of the Court. Detailed case-law on time limits has also been developed in administrative proceedings, including on financial compensation in cases of excessive length of proceedings, also based on the case-law of the European Court. In civil proceedings, the Supreme Court delivered a judgment on 28 March 2014 widening the possibilities of awarding financial compensation for breaches of the reasonable time requirement.
- In *Poland*, on 28 March 2013 the Supreme Court adopted a resolution stating that the court examining complaints introduced under the 2004 Act alleging a violation of a party's right to have his or her case examined without undue delay, should take into account the whole length of the proceedings. As regards administrative proceedings, an amendment to the Law on Proceedings before Administrative Courts entered into force on 15 August 2015. Under this amendment, an administrative court may award the applicant a sum of money from an administrative authority if it allows a complaint (or a renewed complaint) about inactivity or excessive length of proceedings conducted by that authority. The administrative courts have also been authorised to rule on the existence or non-existence of a right or obligation in such situations, if the nature of the case so permits and its circumstances do not raise justified doubts as to the factual or legal situation.
- In *Romania*, the Act implementing the new Code of Criminal Procedure now makes it possible to challenge the length of criminal proceedings.
- In the *Russian Federation*, in the framework of execution of a pilot judgment[33], a new domestic remedy was established for violations connected with excessive length of proceedings (including the pre-trial stage) and non enforcement of decisions of domestic courts, recognised as effective by the Court[34]. In addition, on 8 March 2015 Federal Law no. 21-FZ Code of Administrative Procedure was adopted together with number of laws on introduction of amendments into certain legal acts in connection with its adoption. These laws envisage creation of an improved preventive domestic remedy allowing to appeal against the actions (omission) of state authorities, other state bodies, as well as of their officials.

[31] See the *Nikkinen v. Finland* case, Application No. 33290/11, decision of 28 January 2014, paragraph 24.
[32] See the *Xynos v. Greece* case, Application No. 30226/09, judgment of 9 October 2014, and the *Techniki Olympiaki A.E. v. Greece* case, Application No. 40547/10, decision of 1 October 2013.
[33] See the *Burdov v. Russian Federation (no.2),* Application No. 33509/04, pilot judgment of 15 January 2009.
[34] See the *Nagovitsyn and Nalgiyev v. Russian Federation* cases; Applications Nos.27451/09 and 60650/09, decision of 23 September 2010.

- In *Turkey*, a domestic remedy for cases pending before the European Court of Human Rights relating to excessive length of proceedings was introduced following a pilot judgment of the Court on this matter.[35] Claims under this new mechanism began to be dealt with in January 2013.

"9.c. [the Conference] 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:
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;"

21. The question of the courts' taking into account the case-law of the Court had been addressed in the previous CDDH exercise on implementation of the Interlaken and Izmir Declarations,[36] in the light of the Interlaken Conference's appeal to member States to "commit themselves to taking into account the Court's developing case-law, also with a view to considering the conclusions to be drawn from a judgment finding a violation of the Convention by another State Party, where the same problem of principle exists within their own legal system". A chapter in the Guide to good practice in respect of domestic remedies is devoted to consideration of the Convention by national courts and tribunals, and to developments regarding the direct invocation of the provisions of the Convention in the course of ordinary remedy proceedings.[37]

22. Before presenting the analysis of the measures taken in response to paragraph 9 c. iv. of the Brighton Declaration, reference should be made to the measures reported enabling the Convention to be directly invoked before the domestic courts and its applicability by the highest courts. As mentioned in paragraph 7 of this report, several States pointed out that the **Convention** had been **incorporated into its domestic law** and consequently could be **directly relied on by the litigants and applied by the courts**.[38] The Czech Republic stated that the Convention was part of the Czech constitutional order and that under the Constitution, the courts were obliged, if they considered the applicable legislation to be incompatible with the constitutional order, to refer the matter to the Constitutional Court, which pursuant to the Constitution, had the power to abrogate the legislation in question. Individuals can also directly invoke the Convention in their constitutional appeal after exhaustion of other remedies and ask for review, in light of the Convention, of the decisions previously taken and of the legal provisions applied. In Austria, the legal situation is similar. In January 2015, the right of individual application has even been extended. Since then individuals may turn directly to the Constitutional

[35] See the *Ummühan Kaplan v. Turkey* case, Application No. 24240/07, pilot judgment of 20 March 2012.
[36] See more particularly paragraph 72 of the CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document CDDH(2012)R76 Addendum I.
[37] See, respectively, Chapter V and Part B of Chapter IV of the Guide to good practice in respect of domestic remedies.
[38] For example, in Austria, Azerbaijan, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, Greece, Ireland, Liechtenstein, Lithuania, Malta, Republic of Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Slovak Republic, Spain, Sweden and Switzerland.

Court if they have any doubt about the constitutionality of a legal provision to be applied in criminal or civil proceedings pending at a court of appeal. In the Netherlands the "incorporation doctrine" is applied whereby the norm, i.e. a provision of the Convention, is interpreted as it has been by the Court in Strasbourg, regardless of whether the Court's decision was delivered in respect of the Netherlands or another State. In the Russian Federation, on 27 June 2013, the Plenum of the Supreme Court adopted Resolution no. 21 on the application by the courts of general jurisdiction of the Convention and its protocols. The said Resolution contains important clarifications aimed at ensuring their uniform application by domestic courts. It is noted therein that the legal positions expressed in the final judgments of the European Court delivered with respect to Russia are binding for the Russian courts, and that the courts must take into consideration the judgments in respect of other States Parties to the Convention. Many examples of decisions by the highest courts making explicit reference to the European Convention on Human Rights and the case-law of the Court were also quoted.[39] Against this background, it has been noted with respect to the constitutional adjudication, that amendments were introduced in December 2015 to the Federal Constitutional Law no. 1-FKZ of 21 July 1994 on the Constitutional Court of the Russian Federation. The new provisions stipulate that following a decision by the Constitutional Court that a judgment of the Court is non-executable, no measure to implement that judgment may be taken in the Russian Federation. These provisions have been commented upon by the Venice Commission.[40]

23. **The measures taken to encourage national courts and tribunals to take account of the principles of the Convention and the case-law of the Court**, very often implemented at the initiative of the Government Agent, include the following:

- The translation and dissemination to all relevant bodies and authorities,[41] the civil, administrative and highest courts,[42] of the relevant judgments of the Court, the Court's press releases,[43] circulars or journals on the Court's recent case-law;[44] or publications (analyses, commentaries, manuals)[45]. In Poland also the Court's decisions concerning friendly settlements or unilateral declarations are disseminated to the relevant bodies with information on the shortcomings found and the relevant Convention standards.
- Publication of the annual reports on the case-law of the Court and/or the execution of the judgments against the State in question, and/or annual reports on Court judgments against other States; and their wide distribution, including electronically, among all the relevant authorities and higher courts, universities, Bar associations, human rights institutions and non-governmental organisations;[46]

[39] For example, in Estonia, France, Liechtenstein, Lithuania, Poland and Spain.
[40] See Opinion no. 832/2015, Final opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court, adopted by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016), doc. CDL-AD(2016)016.
[41] For example, in Bulgaria, Croatia, Estonia, Germany, Republic of Moldova, Poland, Portugal, Romania, Russian Federation, Slovak Republic, Spain, Sweden, Turkey and Ukraine.
[42] For example, in Austria, Estonia, Germany, Greece, Republic of Moldova, Poland, Russian Federation, Slovak Republic, Spain, Sweden, Turkey and Ukraine.
[43] For example, in Cyprus and Republic of Moldova.
[44] For example, Armenia, Austria, Croatia, Czech Republic, Denmark, Poland, Romania, Russian Federation, Slovak Republic, Switzerland and Ukraine.
[45] For example, Poland.
[46] In Germany, Poland.

- In addition to the official websites of the authorities relating to the Convention system and which are available to all, the availability of databases accessible to judges, which contain the case-law of the Court translated, where applicable, into the national language,[47] occasionally with a search facility making it possible to select the case-law of the national courts referring to the Convention, providing specific examples of the direct application of the Convention;[48]
- Publication and dissemination of the Court's case-law, in particular by civil society[49] in certain specialist journals or reviews, sometimes with the financial assistance of the authorities;[50]
- An annual award for a judge whose drafting of the reasons for a decision refer to the fullest extent possible to the provisions of the Convention and the case-law of the Court.[51] Each year, the competition is devoted to a different Convention right and the winner is awarded with a study visit to Strasbourg, at the cost of the Ministry of Foreign Affairs, including the possibility to participate as an observer in a hearing before the Court.

24. With regard to the measures to enable litigants to draw to the attention of national courts and tribunals the relevant provisions of the Convention and the case-law of the Court, reference was made primarily to the importance of lawyer training.[52] In Greece the Criminal Procedure Code explicitly stipulates that a violation, at any stage of the criminal procedure, of the rights of the accused as guaranteed by the European Convention on Human Rights and the International Covenant on Civil and Political Rights automatically invalidates the proceedings; and the court responsible for the case will take the decision on this issue.

25. With regard more particularly to the training of both judges and legal practitioners, a considerable amount of information was provided in the responses to paragraph 9c. vi. of the Brighton Declaration, expressing the determination of the States Parties to provide "appropriate information and training about the Convention in the study, training and professional development of judges, lawyers and prosecutors". This information will be analysed in the work of the DH-SYSC on Recommendation Rec(2004)4 of the Committee of Ministers to member States on the European Convention on Human Rights in university education and professional training.

" 9.c. [The Conference] 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:
v. 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; "

26. The question of providing potential applicants with information on the Convention had been addressed in the previous CDDH exercise on the implementation of

[47] For example, in Bosnia and Herzegovina, Bulgaria, Czech Republic, Germany, Monaco, Poland, Slovak Republic and Spain.
[48] For example, in Bulgaria, France, Poland.
[49] For example, in Armenia, Austria, France and Poland.
[50] For example, in Germany and Portugal.
[51] In Poland.
[52] For example, in the Slovak Republic, Slovenia and Sweden.

the Interlaken and Izmir Declarations,[53] in the light of the Interlaken Conference appeal to the States Parties to "ensure that comprehensive and objective information is provided to potential applicants on the Convention and the Court's case-law, in particular on the application procedures and admissibility criteria." Reference had been made to the Secretary General's "Post-Interlaken" report on providing objective and comprehensive information to applicants to the European Court of Human Rights,[54] which stated that the impact of any measure would ultimately depend on the identification and/or setting up of effective means and channels for the dissemination of information and emphasised the key importance of national human rights structures and the use of information technologies.

27. While the importance of training lawyers and of the translation and broad dissemination of the Court's judgments was reiterated in this exercise, the emphasis was mainly placed on the use of information technologies. Most member States referred to the setting up and development of websites. These may be the official websites of the relevant ministries,[55] the Government Agent,[56] the courts[57], national human rights structures,[58] or Bar associations.[59] The online content included the text of the Convention and its Protocols, links to the Court website, the HUDOC database, the Practical Guide on Admissibility Criteria (3rd edition), the application form, information on Rule 47 of the revised Rules of the Court on the lodging of new applications, the video on the admissibility conditions and the video on lodging an application, and, more generally, the Council of Europe website. In Poland, not only are the Court's judgments published regularly, but also information on decisions of inadmissibility delivered by the Court in respect of Poland, which contributes to raising the potential applicants' awareness of the admissibility criteria as interpreted by the Court.

28. Several member States referred to the introduction of legal advice given free of charge by Bar associations,[60] specific departments within the courts,[61] or ministries,[62] and especially by the office of the Government Agent.[63] With regard to the information provided, reference was mainly made to the various resources mentioned in the previous paragraph. The Government Agent also at times makes available specific material for potential applicants,[64] such as a booklet on European legal remedies.

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[53] See, more particularly, paragraphs 129-136 of the CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document CDDH(2012)R76 Addendum I.
[54] Document SG/Inf(2010)23final of 9 January 2012.
[55] For example in Austria, Armenia, Bosnia and Herzegovina, Bulgaria, Czech Republic, Denmark, Estonia, Germany, Greece, Luxembourg, Republic of Moldova, Poland, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey and Ukraine.
[56] For example, in Bosnia and Herzegovina, Croatia, Czech Republic, Greece, Lithuania and Republic of Moldova.
[57] For example, in Poland and Spain.
[58] For example, in Greece and Norway.
[59] For example, in the Czech Republic.
[60] For example, in Austria, Portugal and Spain.
[61] For example, in Luxembourg.
[62] For example, in Austria and Armenia.
[63] For example, in Austria, Finland and Ukraine.
[64] For example, in Finland, Slovak Republic and Spain.

29. The role which national human rights structures,[65] and civil society[66] can play in this area was also highlighted, as it had been in the previous exercise. In this connection, reference may be made to the Round Table organised by the Council of Europe and the Spanish Ombudsman in Madrid on 21 and 22 September 2011, with the national human rights structures to discuss the active role that the latter can play in providing information to potential applicants to the Court.[67]

"9.d. [The Conference] encourages the States Parties, if they have not already done so, to: i. ensure that significant judgments of the Court are translated or summarized into national languages where this is necessary for them to be properly taken into account;"

30. All member States which commented on this paragraph, and whose official languages are neither English nor French, indicated that they had arranged for the translation of the judgments delivered against them or summaries of those judgments. These translations are then frequently forwarded to the Court to be included in the HUDOC database.[68] Most States also indicated that they had arranged for judgments delivered against other States to be translated and/or summarised. In selecting the judgments to be translated, some States specified that they relied on information provided by the Court,[69] in particular in its annual report or its information notes. In Norway, all Category I judgments are translated.[70] Some States mentioned that they had translated (or intended to translate) the HUDOC portal.[71] The Turkish version of the HUDOC portal was produced as a result of co-operation between the Ministry of Justice and the Court Registry.

31. The role of the Office of the Government Agent was given particular emphasis.[72] In the Czech Republic, for example, an online database has been developed by the Government Agent together with the registries of the Constitutional Court, Supreme and Supreme Administrative Courts and the Office of the Public Defender of Rights, containing judgments, summaries and relevant information in the national language, and cooperation of the registries and the other actors has been ensured to that end. In Estonia and Finland, a database containing similar information is maintained and updated by the

[65] For example, in Bulgaria (where this role is played by the Ombudsman), Luxembourg, Norway and Poland.

[66] For example, in Bulgaria and Poland. The Helsinki Foundation for Human Rights in Poland has been implementing "The Strategic Litigation Programme" since 2004. It involves preparing *amicus curiae* briefs and lodging them with civil courts, the Constitutional Court and the European Court of Human Rights in order to raise standards of human rights protection.

[67] http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/nhrs/RT_mad_DebriefingPaper_en.doc; see, in particular, the summary note on the prospects for national human rights institutions to play an active role in passing on information to potential applicants to the Court: http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/nhrs/RT_mad_Outline_Provision_information_applicants_en.doc

[68] For example, in Bulgaria, Croatia, Germany, Greece, Iceland, Italy, Republic of Moldova, Poland, Portugal, Spain, Sweden and Turkey.

[69] For example, Georgia, Poland, Serbia and Spain.

[70] According to the Court's priority policy, cases of category I consists of urgent applications (in particular risk to life or health of the applicant, other circumstances linked to the personal or family situation of the applicant, particularly where the well-being of a child is at issue, application of Rule 39 of the Rules of Court).

[71] For example, Spain and Turkey.

[72] For example, in Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Greece, Lithuania and the Slovak Republic.

Ministry of Justice. In Poland, in 2015 an obligation (with a time-limit) was imposed on all competent ministers to translate and disseminate Court judgments finding a violation in respect of Poland. In addition, an agreement on the translation and dissemination of the Court's judgments was concluded in 2014 between the Ministry of Justice, the Ministry of Foreign Affairs and the Constitutional Court and the Supreme Administrative Court, joined by the National Prosecution (in 2015), providing in particular for a co-operation mechanism between these five authorities. Under the co-ordination of the Ministry of Foreign Affairs, the five institutions together analyse the Court's case-law and select the most important judgments or decisions concerning other States Parties to be translated and published. To this end, the Government Agent provides them with a comprehensive overview of judgments against other States. The Ministry of Justice runs an on-line database of all translated judgments and decisions with some search facilities. Some States also mentioned partnerships with other member States for the purposes of translating judgments.[73] In Spain the Agent´s webpage has recently developed an automatic online news subscription which allows all interested actors to have immediate access to new information concerning the conventional legal texts and the latest case-law of the Court, together with short summaries of their content.

"9.d. [The Conference] encourages the States Parties, if they have not already done so, to: ii. translate the Court's Practical Guide on Admissibility Criteria into national languages;"

32. With the exception of States for which translations are unnecessary, either because English or French is one of the national languages or because there is widespread proficiency in one or the other, all the States which provided comments on this paragraph indicated that they had arranged for the translation of the Court's Practical Guide on Admissibility.

"9.d. [The Conference] encourages the States Parties, if they have not already done so, to: iii. consider making additional voluntary contributions to the human rights programmes of the Council of Europe or to the Human Rights Trust Fund;"

33. In addition to the voluntary contributions made to the Council of Europe's human rights programmes or to the Human Rights Trust Fund, reference was made to contributions to the special account for the Court's backlog of cases,[74] the translation of the Court's judgments,[75] the broadcasting of the Court's hearings,[76] or the secondment of judges to the Court registry or the Department for the Execution of Judgments of the Court.[77]

[73] For example, the partnership between Romania and the Republic of Moldova, or the partnership between the Czech Republic and the Slovak Republic.
[74] For example, Czech Republic, Ireland, Luxembourg, Monaco, the Netherlands and Sweden.
[75] For example, Bulgaria and Spain.
[76] For example, Ireland.
[77] As mentioned in the 2015 Report on "the Interlaken Process and the Court", as of the end of September 2015, there were 29 second lawyers working at the Registry, coming from 16 States: 5 from Turkey, 4 from Germany, 3 from France, 2 from Italy, Republic of Moldova, Romania and Russia, and 1 from Armenia, Austria, Estonia, Finland, Lithuania, Luxembourg, Montenegro, Poland and Switzerland. The overall number is lower than in previous years, which is explained by the departure of the largest group of seconded staff, after they achieved the objective of their secondment, i.e. dealing with the backlog of Single Judge cases from the Russian Federation (20 seconded lawyers).

"9.e. [The Conference] 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;"

34. Several States indicated that they had provided or were ready to provide bilateral technical assistance.[78] Other States mentioned that they were interested in such assistance or referred to their participation in the Council of Europe's co-operation programmes.[79]

Concerning the issue of interim measures under Rule 39 of the Rules of Court

35. This issue is examined in the light of the Brighton Declaration and the follow-up work conducted by the CDDH. The Brighton Declaration recalled that the Izmir Conference had invited the Committee of Ministers to consider further the question of interim measures under Rule 39 of the Rules of Court and invited 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 (paragraph 12 e.). At its 122nd Session (23 May 2012), the Committee of Ministers instructed the CDDH to submit its conclusions and possible proposals for action in response to the abovementioned paragraph. In 2013, the CDDH prepared a report on interim measures under Rule 39 of the Rules of Court[80], containing factual information on the questions posed by the Brighton Declaration; invitations addressed to the Court and recommendations to member States. The CDDH thus recalled "the importance of providing national remedies, where necessary with suspensive effect, which operate effectively and fairly and provide, in accordance with the Convention and in light of the Court's case law, a proper and timely examination of the issue of risk". It suggested that "it be recommended to member States that national decisions should be such as to provide the Court with sufficient information to ascertain the quality and sufficiency of the domestic procedure". The CDDH also indicated that member States "could also better publicise the domestic remedies with suspensive effect that are available to individuals subject to removal and which should therefore be exhausted before requesting an interim measure".[81] The CDDH further recalled that "Article 34 of the Convention entails an obligation for States Parties to comply with an indication of interim measures made under Rule 39 of the Rules of Court and that non-compliance normally implies a violation of Article 34 of the Convention".[82]

36. Little information has been provided by member States in their national reports regarding the implementation of the abovementioned CDDH recommendations. **With regard to national remedies, where necessary with suspensive effect,** some States have described existing mechanisms.[83] Concerning the last developments in this regard, the following few examples can be mentioned:

[78] For example, Austria, Denmark, Finland, Germany, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Romania and Sweden.
[79] For example, Armenia, Poland, Romania, Serbia, Spain and Ukraine.
[80] See document CDDH(2013)R77, Addendum III.
[81] See paragraph 45 of the CDDH report, document CDDH(2013)R77, Addendum III.
[82] See paragraph 54 of the CDDH report, document CDDH(2013)R77, Addendum III.
[83] See, for example, Croatia, Czech Republic, Estonia, the Netherlands, Norway, Poland, Romania, Spain, Sweden, Turkey.

- In *Czech Republic*, in addition to the two-tier system of judicial review of decisions on international protection offering an automatic suspensive effect at both levels ; it is noteworthy to mention that the Plenary of the Constitutional Court issued an opinion on 13 August 2013, whereby it confirmed that extradition of an alien cannot be allowed as long as asylum proceedings are pending and that a person to be potentially extradited can file a constitutional appeal against the decision of the Minister of Justice allowing the extradition. This approach has since been confirmed by the Constitutional Court's rulings.[84]
- In *France*, developments in respect of asylum have taken place recently, as described in paragraph 19.
- In *Poland* in a decision of 9 April 2014 (ref. no. II OZ 332/14), the Supreme Administrative Court relied on standards related to temporary protection as defined in the European Court's judgment in the case of *De Souza Ribeiro v. France*.
- Also in *Poland*, the new Aliens Act, as from 1 May 2014, provides that the Border Guard authorities are now competent to examine in the course of the proceedings the existence of circumstances justifying granting the alien protection against expulsion in the form of a residence permit on humanitarian grounds or a permit for tolerated stay. The Border Guard authorities are also obliged by the law to institute ex officio separate proceedings in this respect if the circumstances justifying such permits have become known after the delivery of the decision obliging the alien to return. Moreover, the organs conducting proceedings concerning obliging an alien to return are obliged to inform the alien about the possibility to lodge an application for granting refugee status.
- The Spanish Supreme Tribunal, in line with this Recommendation, in two binding leading judgments of 27 March 2013 on cassation appeals (Nos. 2429/2012 and 2526/2012), has declared that in cases where a coherent explanation of the reasons backing up the request for asylum is contained in the administrative application, even though some pieces of evidence may temporarily be lacking, a stay on the expulsion should be granted until a final decision (either administrative or judicial) is reached.

37. Little information has been provided **with regard to the dissemination of relevant information to individuals subject to removal**. It was mainly indicated that information is available on the relevant Ministries websites, in particular regarding free legal aid for asylum seekers[85]. Among the examples provided, it is noteworthy to mention that in Poland, the Aliens Act stipulates that the Border Guard authorities conducting proceedings in cases concerning the obligation to return are obliged to instruct an alien in writing and in the language that is understandable to him/her about the rules and the procedure, and about the rights vested in him/her and his/her obligations. Following the entry into force of the Aliens Act, the authorities have adopted uniform templates with instructions for aliens, describing the respective stages of the return procedure and indicating legal remedies available. The instruction is available in 17 languages. If necessary, translation in other languages can also be provided. The Aliens Act also stipulates that the organ conducting proceedings informs the alien about non-governmental organisations providing assistance to aliens, including legal assistance. The

[84] See in particular *Ali Atsaev v. Czech Republic*, App. No. 14021/10, inadmissibility decision of 7 July 2015.
[85] As, for example, in Croatia, Greece, the Netherlands.

system described in Poland is precisely the same as the one established in Spain, in Article 21 of Law 12/2009, of 30 October, on the right to asylum and subsidiary protection. According to this Law, the applicant for asylum has the right to receive an ID, to free legal aid and to an interpreter, to the communication of its application to the UNHCR, to have any expulsion, extradition or return procedure stayed until a final decision is approved, to access the whole content of the ongoing administrative file and to receive healthcare and any relevant social aid.

38. **With regard to mechanisms put in place by States to comply with interim measures indicated by the Court,** the most relevant examples are the following:

- In *Estonia*, the Ministry of Foreign Affairs has drawn up and disseminated among the relevant authorities Guidelines for acting in a situation where the Court request the State to refrain from implementing a certain domestic measure until the Court makes a judgment on the merits. In *Belgium* a General Note for officers likely to be confronted with an interim measure is being finalised to inform them about the aim, the nature and the binding character of the measure. In the same line, in *Finland*, the Ministry of the Interior has given instructions on how to deal with interim measures.
- *Finland*, *Germany* and *Spain* mentioned a continuously functioning alert system to ensure that the relevant authorities comply with interim measures indicated by the Court, as soon as the Agent of the Government is informed by the Court.

III. CONCLUSIONS AND RECOMMENDATIONS FOR FOLLOW-UP

39. The CDDH recently stated that inadequate national implementation of the Convention remained one of the principal challenges or was even the biggest challenge confronting the Convention system, as highlighted by successive high-level conferences in recent years.[86] The analysis of the measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, and subsequently the Brighton Declaration, is accordingly a key aspect of the intergovernmental work on the system of the European Convention on Human Rights.

40. While the responses given by States following the Brighton Declaration are, generally speaking, less detailed than those given for the work on implementation of the relevant parts of the Interlaken and Izmir Declarations, they provide a valuable complement to the information analysed by the CDDH in the course of the previous exercise. On this basis, and in the light of the conclusions of its report on the longer-term future of the Convention system, the CDDH suggests that the Committee of Ministers adopts the following recommendations, all intended to allow States Parties to fulfil their primary responsibility to implement the Convention at national level. For the implementation of those recommendations, member States are encouraged to draw inspiration from practice referred to in Part II of the present report.

With regard to account being taken of the recommendations of the Committee of Ministers on the implementation of the Convention at national level in their drawing up of legislation, policies and practices to give effect to the Convention:

41. Member States could draw inspiration from the practice referred to in paragraphs 10-11 above, when enhancing their efforts regarding the relevant recommendations of the Committee of Ministers.[87] .

42. The CDDH also reiterates the conclusions set out in its work on the longer-term future of the Convention system, namely the following recommended responses:

- The establishment, wherever appropriate, of contact points specialised on human rights matters within the relevant executive, judicial and legislative authorities should be encouraged, especially when no mainstreaming model exists within the relevant governmental bodies. These contact points could be called upon to advise on Convention matters.[88]

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[86] See paragraph 34 of the CDDH report on the longer-term future of the system of the European Convention on Human Rights CDDH(2015)R84 Addendum I.

[87] See Recommendations Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights; Rec(2002)13 on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case law of the European Court of Human Rights; Rec(2004)4 on the European Convention on Human Rights in university education and professional training; Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights; Rec(2004)6 on the improvement of domestic remedies.

[88] See document CDDH(2015)R84 Addendum I, paragraph 72 iii) ; in the light of the Brussels Declaration which called upon the States Parties to establish "contact points", wherever appropriate, for human rights matters within the relevant executive, judicial and legislative authorities, and create networks between them through meetings, information exchange, hearings or the transmission of annual or thematic reports or newsletters (B.2.i).

- Governments should fully inform parliaments on issues relating to the interpretation and application of Convention standards, including the compatibility of (draft) legislation with the Convention.[89]

- Sufficient expertise on Convention matters should be made available to members of parliament, where appropriate, by the establishment of parliamentary structures assessing human rights and/or by means of the support of a specialised secretariat and/or by means of ensuring access to impartial advice on human rights law, if appropriate in cooperation with the Council of Europe.[90]

- There is a need for national authorities to check in a systematic manner the compatibility of draft legislation and administrative practice (including as expressed in regulations, orders and circulars) with the Convention at an early stage in the drafting process and consider, where appropriate, substantiating in the explanatory memorandum to draft laws why the draft bill is deemed compatible with the requirements of human rights provisions.[91]

- The CDDH also stresses the importance of enhanced recourse by Member States to the existing mechanisms of the Council of Europe (among them the Venice Commission), which offer the possibility of assessing compliance of legislation with Convention standards.[92]

43. In addition, it should be noted that the DH-SYSC held an exchange of views,[93] in the course of its current work, on the mechanisms available at national level to guarantee the compatibility of laws (whether draft legislation, existing laws or administrative practice) with the Convention, in accordance with Recommendation Rec(2004)5 of the Committee of Ministers to member States on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the Convention.[94] The CDDH notes the further follow up work that will be carried out to elaborate an overview of good practice and through which States Parties may draw inspiration, where possible, from the experience and solutions found in many States Parties.

With regard to the setting up of an independent national human rights institution

44. The contribution of national human rights structures[95] to implementation of the Convention had been highlighted in the Wise Persons' report and reiterated in the

[89] See document CDDH(2015)R84 Addendum I, paragraph 72 v).
[90] See document CDDH(2015)R84 Addendum I, paragraph 72 vi).
[91] See document CDDH(2015)R84 Addendum I, paragraph 72 vii).
[92] See document CDDH(2015)R84 Addendum I, paragraph 72 viii).
[93] Held at its first meeting from 25-27 April 2016 see the meeting report, document DH-SYSC(2016)R1.
[94] The subjects addressed included in particular the obstacles encountered in introducing or implementing the mechanisms in question and the evaluation of the appropriateness and effectiveness of those mechanisms.
[95] National human rights structures include both national human rights institutions ("NHRIs"), which comply with the Paris Principles, and other bodies and offices engaged with human rights at national level.

Interlaken Declaration. Co-operation with national human rights structures had also been addressed in the analysis of the implementation of the Interlaken Declaration.[96]

45. The Brussels Conference renewed the appeal to States Parties to consider establishing an independent national human rights institution (B.1.g)). In its report on the longer-term future of the Convention system, the CDDH expressed its support for the establishment of such institutions and encouraged the existence of appropriate conditions at domestic level for the fulfilment of their human rights mission.[97] National human rights institutions can "significantly help meet the challenges relating to national implementation (in particular, by offering expert opinions on the compatibility of draft legislation and administrative practices with Convention standards as well as regarding the execution of Court judgments, by reporting on national compliance with the Convention before parliaments, or by providing human rights education for the public and professional groups)".[98] In the light of the information contained in the national reports on implementation of the Brighton Declaration, the CDDH cannot but note the relevance of its recent conclusions.

46. The CDDH further notes that it will, in the course of the 2016-2017 biennium, be conducting a study on the impact of current national legislation, policies and practices on the activities of civil society organisations, human rights defenders and national institutions for the promotion and protection of human rights, with a view to identifying the best examples thereof. It would be appropriate to consider, in the course of this work, whether national legislation, policies and practices address specifically the role of national human rights structures in the implementation of the Convention.

With regard to the introduction of new domestic legal remedies, whether of a specific or general nature, for alleged violations of the rights and freedoms protected under the Convention

47. The Brussels Conference reiterated the appeal to States Parties to provide effective remedies at domestic level to address alleged violations of the Convention (B. 1. e)) and to address violations of the Convention found by the Court (B. 2.b)).

48. Numerous developments in respect of domestic remedies have been provided by member States in their national reports. These examples are to be welcomed and would appear to be in keeping with the discussions of the CDDH which believes that this issue is one of vital importance. The implementation of effective domestic remedies for all arguable complaints of a violation of the Convention should permit a further reduction in the Court's workload. This would be, on the one hand, a result of the decreasing number of cases reaching it and, on the other, as a result of the fact that the detailed handling of the cases at national level would make their later examination by the Court easier. The

[96] See, more particularly, paragraphs 24-29 of the CDDH report on measures taken by member States to implement relevant parts of the Interlaken and Izmir Declarations, document CDDH(2012)R76 Addendum I.

[97] See paragraph 72 ix) of document CDDH(2015)R84 Addendum I.

[98] See paragraph 58 of the CDDH report on the longer-term future of the system of the European Convention on Human Rights, document CDDH(2015)R84 Addendum I.

introduction of new and improved remedies could also have a significant impact, especially on repetitive applications.[99]

49. Accordingly, the CDDH cannot but reiterate its recent conclusions, namely that "there is still a need to improve domestic remedies, either by the creation of new domestic remedies (including preventive, whether judicial or not) or by interpreting existing remedies or domestic procedural law in line with the obligations of Article 13 of the Convention. The issue of effective remedies should be at the heart of any activity supporting the national implementation of the Convention and in the thematic work of the relevant committees of the Council of Europe, especially those involving representatives of domestic justice systems (judges, prosecutors, etc.)".[100]

50. With regard more specifically to effective remedies for excessive length of proceedings, the CDDH points out that the DH-SYSC was asked by the Committee of Ministers to submit to it, in the 2016-2017 biennium, proposals regarding Recommendation (2010)3 of the Committee of Ministers to member States on this issue. The information supplied by States in this regard will therefore provide valuable input to the Committee's future work.

51. With regard to both specific and general remedies, in the light of the many detailed examples provided by States, the CDDH believes it would be useful to also update the Guide to good practice in respect of domestic remedies.

With regard to the measures designed to enable and encourage, having regard to the case law of the Court, in conducting proceedings and formulating judgments; and in particular to enable 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

52. In addition to the good practices cited in this report, the CDDH also refers to the examples contained in the Guide to good practice in respect of domestic remedies[101] as sources of inspiration for member States. While refusing the existence of a Convention-based legal obligation upon States Parties to abide by final judgments of the Court in cases to which they are not parties, the CDDH recently noted that "there would appear to be scope to better take into account the general principles found in the Court's judgments in cases against other High Contracting Parties, in preventive anticipation of possible violations. To this end, the identification of good practices on the kind of practical measures that may be adopted could have positive effects".[102]

[99] See paragraphs 49 and 50 of the CDDH report on the longer-term future of the system of the European Convention on Human Rights, document CDDH(2015)R84 Addendum I.
[100] See paragraph 72 iv) of the CDDH report on the longer-term future of the system of the European Convention on Human Rights, document CDDH(2015)R84 Addendum I.
[101] See Chapter V on consideration of the Convention by national courts and tribunals and Chapter IV B on the direct invocation of the provisions of the Convention in the course of ordinary remedy proceedings in the Guide to good practice in respect of domestic remedies.
[102] See paragraph 72 i) of the CDDH report on the longer-term future of the system of the European Convention on Human Rights CDDH(2015)R84 Addendum I.

53. Furthermore, the CDDH cannot but reiterate its recent conclusions[103] whereby it considers that "the CDDH considers the professional training on and awareness-raising activities concerning the Convention and the Court's case law to be a high priority in order to fill the implementation gap identified above. While acknowledging the efforts already made by all stakeholders, it stresses the need to:

a) offer, on a structural basis, more targeted and country-specific training to relevant legal professionals (for example, government officials, as well as judges, prosecutors and lawyers) addressing Convention implementation problems in each High Contracting Party, using to the fullest the potential of the Council of Europe pan-European Programme for Human Rights Education for Legal Professionals (HELP); and

b) increase efforts regarding the translation of (excerpts of) leading judgments and/or provide summaries of those judgments in national languages notably for education and training purposes."

54. With regard to the training of legal professionals, it should be recalled that the DH-SYSC's terms of reference task it with carrying out, in the course of this biennium, work relating to Recommendation Rec(2004)4 of the Committee of Ministers to member States on the European Convention on Human Rights in university education and professional training.

With regard to the provision of 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

55. The CDDH reiterates the recommendations it made in its previous work on implementation of the Interlaken and Izmir Declarations,[104] namely:

- ensure that all information provided to potential applicants is impartial and comes from a source whose objectivity in the provision of information is guaranteed;
- increase the use of information technology;
- establish or further develop co-operation with national human rights structures;
- ensure that the tools devised by the Court, particularly the practical guide on admissibility and the video clip on admissibility, are broadly disseminated, where appropriate after translation;
- make use, where appropriate, of the Council of Europe's technical and financial assistance, especially its HELP Programme, notably resources developed in the framework of the Council of Europe project "Enhancing the capacity of lawyers to comply with the admissibility criteria in application submitted to the European Court of Human Rights";
- consider contributing to the Human Rights Trust Fund.

[103] See paragraph 72 ii) of the CDDH report on the longer-term future of the system of the European Convention on Human Rights CDDH(2015)R84 Addendum I.

[104] See the conclusions of the CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document CDDH(2012)R76 Addendum I, paragraph 153.

56. While it is undeniable, in the light of the information gathered in the course of this exercise that States have fully embraced the use of information technology and have widely disseminated the tools developed by the Court, all of the above recommendations remain relevant. As the CDDH has previously noted, while it is difficult to assess the impact of the measures implemented, although this is generally identified as being a decrease in the number of inadmissible applications, the effect of any measure depends of the effectiveness of the communication channels used; in addition various bodies have a role to play, in particular national human rights structures and civil society.[105]

57. With regard to the role of national human rights structures, the conclusions of the Madrid Round Table[106] are also relevant and the CDDH cannot but reiterate its recent conclusions in this field, to the effect that these structures can be very well placed to provide information on the Court's role and functioning in response to certain (mis)perceptions in the public domain.[107]

With regard to the translation of the Court's significant judgments and Practical Guide on Admissibility Criteria

58. The responses given illustrate the importance States attach to the translation of relevant judgments and tools in their national language(s). This allows them to overcome the linguistic difficulties which have often been mentioned in the past as an obstacle to raising awareness of the Convention standards.[108] The Brussels Declaration reiterated the call upon State Parties to promote accessibility to the Court's judgments […] by translating or summarising relevant documents, including significant judgments of the Court, as required (B. 2. f.) and to maintain and develop the financial resources that have made it possible for the Council of Europe, since 2010, to translate a large number of judgments into national languages (B. 2. g.). The CDDH cannot but reiterate its recent conclusions in this field, encouraging member States to step up their efforts regarding the translation of (excerpts of) leading judgments of the Court and/or providing summaries of those judgments in the national languages, specifying that those translations should be sent to HUDOC and also be made available in national case law databases.[109] To this end, member States could consider the establishment of linguistic partnerships with other member States where relevant.

59. The possibility of agreements between the Court and Universities regarding the translation of the Court's judgments could also be explored. It could be very motivating for students to submit translations of the case law as part of their evaluation process. Universities might also consider interesting to be engaged in an agreement aimed at enhancing the protection of human rights. Following a high quality check, translations

[105] See the CDDH Report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document CDDH(2012)R76 Addendum I, paragraphs 137 and 138.
[106] See footnote 66.
[107] See paragraph 58 of the CDDH report on the longer-term future of the system of the European Convention on Human Rights CDDH(2015)R84 Addendum I, and the CDDH Contribution to the Ministerial Conference organised by the United Kingdom Chairmanship, document CDDH(2012)R74 Addendum III, part B, paragraph 9 iii.
[108] See, for example, the CDDH Report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document CDDH(2012)R76 Addendum I, paragraphs 38 and 42.
[109] See the CDDH report on the longer-term future of the system of the European Convention on Human Rights CDDH(2015)R84 Addendum I, paragraph 45.

could be sent to the HUDOC and published, with notification to the Government Agent´s Office in order to enhance dissemination. This might prove to be an effective way to spread knowledge of the case law of the Court.

With regard to the recommendations of the CDDH in its report on interim measures under Rule 39 of the Rules of Court

60. It is not possible, from the information provided by States, to produce a comprehensive overview of the measures taken and examples of good practices at national level, in response to the CDDH's recommendations in its above-mentioned report (see paragraph 35 above). It could be useful to consider holding an exchange of views on this subject in the DH-SYSC, in the light of recent developments and of the challenges and issues involved at national and European level.