Summer 6-1-1998

The European Human Rights Convention: A New Court of Human Rights in Strasbourg as of November 1, 1998

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I. Introduction

Protocol No. 11 to the European Convention on Human Rights (ECHR), ratified by all Council of Europe member states— in other words, ratified by all of the forty contracting states parties to the ECHR (Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia," Turkey, Ukraine and United Kingdom)—establishes a full-time, single court to replace the Convention’s prior monitoring machinery. It entered into force on November 1, 1998.¹

This text, opened for signature on May 11, 1994, is one of the concrete results of decisions taken by the Council of Europe’s Heads of State and Government at their first summit meeting in Vienna on October 8-9, 1993.

II. Main Aspects of the Reform

A. The prior part-time monitoring institutions, namely the European Commission of Human Rights and the European Court of Human Rights, ceased to exist. A new European Court of Human Rights, operating full-time, was set up in Strasbourg, France.

B. The system has been streamlined and, above all, all applicants now have direct access to the new court.

Any cases that are clearly unfounded will be sifted out of the system at an early stage by a unanimous decision of the court sitting as a three-judge

¹ All of the 16 new member states from central and eastern Europe have now ratified the ECHR (including Protocol No. 11). The last one to do so, the Russian Federation, deposited instruments of ratification on May 5, 1998. See infra Appendix II (containing detailed list).
committee (the cases will therefore be declared inadmissible). In the large majority of cases, the court will sit as a seven-judge chamber. Only in exceptional cases will the court, sitting as a Grand Chamber of seventeen judges, decide on the most important issues. The President of the court and the presidents of chambers will always be able to sit in the Grand Chamber so as to ensure consistency and uniformity of the main caselaw. A judge elected in respect of the state party involved in a case will also sit in the Grand Chamber in order to ensure a proper understanding of the legal system under consideration.

C. All allegations of violations of individuals’ rights will be referred to the court. The Committee of Ministers (the Council of Europe’s executive organ) will no longer have jurisdiction to decide on the merits of these cases. It will, however, retain its important role of monitoring the enforcement of the court’s judgments.

D. The right of individual application will be mandatory, and the court will have jurisdiction with respect to all inter-state cases.

III. Operation of the New Procedure as of November 1, 1998

As under the past system, individual applications and inter-state applications will exist side by side. As the secretariat of the Commission did in the past, the registry of the court will establish all necessary contacts with the applicants and, if necessary, request further information.

Then, a chamber of the court will register the application, and the application will be assigned to a judge-rapporteur. The judge-rapporteur may refer the application to a three-judge committee, which may include the judge-rapporteur. The committee may, by a unanimous decision, declare the application inadmissible; this decision will then be final.

When the judge-rapporteur considers that the application raises a question of principle and is not inadmissible or when the committee is not unanimous in rejecting the complaint, a chamber will examine the application. (This procedure matches the prior system that was in force before the Commission.)

A chamber, composed of seven judges, will decide on the merits of an application and, if necessary, its competence to adjudicate the case. The judge-rapporteur will prepare the casefile and establish contact with the parties. The parties will then submit their observations in writing. A hearing may take place before the chamber. The chamber will also place itself at the parties’ disposal with a view towards a friendly settlement. If no friendly settlement can be reached, the chamber will deliver its judgment.
The chamber may decide *proprio motu* to refer a case to the Grand Chamber when it intends not to follow the court’s previous caselaw or when a question of principle is involved. This procedure may be adopted on the condition that none of the parties object to it.\(^2\)

Once the judgment has been delivered, the parties will have three months to request that the case be referred to the Grand Chamber. However, this procedure will be restricted to exceptional instances, that is, when a case raises a serious question concerning the interpretation or application of the Convention and its protocols or a matter of general interest. A panel of five judges of the Grand Chamber will determine whether the request for a rehearing is admissible.\(^3\)

The chamber’s judgment will become final when there is no further possibility of a referral to the Grand Chamber. The Grand Chamber’s judgment will be final and, as previously, binding in international law. As under the former system, the Committee of Ministers will supervise the execution of the court’s judgment.

* * *

Although the new system is less complicated than the one it has replaced, one cannot honestly say that it is simple to understand by an "outsider."\(^4\) For a comparative schema of both control mechanisms, consult Appendix I.

### IV. Transitional Arrangements

The Protocol, in Articles 4 and 5, regulates the transition from the prior system to the new system. As Protocol No. 11 is an amending protocol, all parties to the Convention have had to express their consent for the text to become mandatory.

#### A. Article 4 of Protocol No. 11

Article 4 specifies that the Protocol enters into force on the first day of the month one year after the last state party to the Convention has ratified Protocol No. 11.\(^5\) In other words, it entered into force on November 1, 1998.

Protocol No. 11 provides that prior to the date of entry into force, the "election of new judges may take place, and any further necessary steps may

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3. *Id.* art. 43.
4. *See infra* Appendix I (providing comparative schema of both control mechanisms).
5. Protocol No. 11, *supra* note 2, art. 4.
be taken to establish the new Court." Here, top priority has been given to the election of judges (which took place in January and April of 1998), who have already had their first meeting between April 28 and May 2, 1998, and a second meeting on July 23-25, 1998. The competent bodies of the Council of Europe have also undertaken a number of other preparatory measures to which later reference will be made.

B. Article 5 of Protocol No. 11

Article 5 provides the necessary transitional provisions for applications that have been lodged in Strasbourg and that will need to be processed, both pending and subsequent to the Protocol’s entry into force. The provision was quite difficult to draft because no appropriate solution could initially be found that satisfied all parties in the negotiations; discussions on this subject were lengthy and continued well into 1994.

The terms of office of the members of the prior court and Commission, as well as the Registrar and the Deputy Registrar of the court, terminated with the entry into force of this Protocol on November 1, 1998. This prevented two courts from operating at the same time. However, the Commission will continue to exist for the additional period of one year so as to settle any pending applications.

Paragraphs 2 through 4 of Article 5 explain what will happen with applications pending before the Commission. If, at the time of the Protocol’s entry into force, the Commission had not declared them admissible, the new court will automatically deal with these applications. On the other hand, applications already declared admissible will be finalized by the Commission under the prior system. Because the drafters of the text considered it inappropriate for the Commission to continue its work many years after this Protocol’s entry into force, paragraph 3 of Article 5 provides for a time limit of one year within which the Commission will, hopefully, be able to complete work on most applications that it has declared admissible. Applications not finalized during this time limit (by November 1, 1999) will go before the new court for determination under the new system. Obviously, as the Commission will already have declared these applications admissible, no need will exist for a committee of the new court to examine them.

6. Id.
8. Protocol No. 11, supra note 2, art. 5, para. 3.
9. Id. art. 5, paras. 2-4.
10. Id.
11. Id. art. 5, para. 3.
It should be noted that the first sentence of paragraph 3 stipulates that members of the Commission may continue their work for one year after the entry into force of this Protocol, even if their term in office expired before that date. This will allow them to complete work on cases declared admissible during that additional one year period. But, because the office of members of the Commission expired at the entry into force of the Protocol, those Commissioners elected as judges to the new court will be able to continue, at the same time, their Commission functions as provided in paragraph 3 of Article 5. (Any vacancy that may occur in the Commission during this additional one year period may be filled in accordance with the relevant provisions of the formerly applicable text of the Convention so that no contracting party need be without a Commissioner during the said period.) Here, it can be assumed that the workload of persons that may find themselves both on the new court and completing work as Commissioners will be substantial. The President of the new court probably will need to make special arrangements for them, so as to ensure an equitable distribution of work among the newly appointed judges.

Paragraph 4 of Article 5 relates to cases in which the Commission has adopted an Article 31 Report — a legal opinion as to whether the ECHR has been breached — within the period of twelve months following the entry into force of Protocol No. 11. In such instances, the procedure for bringing cases before the court in the former Article 48 of the Convention (and Protocol No. 9, where applicable) will apply. In other words, the Commission or a state party, as well as the applicant if Protocol No. 9 is applicable, will have the right to refer the case to the new court.

However, in order to avoid cases that have already been examined from being dealt with at three levels, the panel of five judges of the new court will be given the power to decide whether the Grand Chamber or a chamber should decide the case. Cases not referred to the new court under this Article will be decided by the Committee of Ministers in accordance with the present Article 32 of the Convention.

The prior court ceased to function on November 1, 1998, and all cases pending before it were transmitted to the Grand Chamber of the new court. Again, for the Grand Chamber not to be inundated with "less important" cases, the prior court had to resort to some fine-tuning in the months leading up to the Protocol’s entry into force. It is understood that, although this matter was on the prior court’s agenda, the Grand Chamber of the new court in effect has many more cases to deal with in this context than had originally been anticipated.

12. Id.
13. Id. art. 5, para. 4.
14. Id. art. 32.
Lastly, paragraph 6 of Article 5 specifies that the Committee of Ministers will be able to continue to deal with cases not transmitted to the court under the present Article 48 of the Convention, even after Protocol No. 11 entered into effect, until such time as these cases are completed. Although this will, in all probability, prolong consideration of cases before the Committee of Ministers for (potentially) several years after the Protocol’s entry into force, the drafters considered it inappropriate, by means of such an instrument, to try to tie the hands of an organ whose existence predates the ECHR and, as the Council of Europe’s executive, works independently of the Convention mechanism.

V. Election of Judges to the New Permanent Court

In a circular letter addressed to all Foreign Ministers of contracting states parties back in October 1997, the Secretary General of the Council of Europe reminded them all of the procedure agreed upon, indicating to them the importance of a list of candidates reaching him by mid-November 1997, at the very latest. Unfortunately, for a variety of reasons, the initially agreed upon timetable could not be maintained with respect to all states.

The Parliamentary Assembly’s interviews with most candidates took place within a special subcommittee of the Assembly’s Committee on Legal Affairs and Human Rights at the Council of Europe’s offices in Paris during two periods from December 17-19, 1997 and from January 17-19, 1998. A second set of interviews, with respect to an additional eight states, took place on April 6, 1998.

The basic criteria laid down for the election procedure were as follows: States had to provide a list of three candidates accompanied by a detailed biographical note on each of them in English or French, structured in accordance with a model *curriculum vitae* established by the Parliamentary Assembly, as provided in Appendix IV. Unfortunately, in a number of instances, this proposal was not always scrupulously followed.

15. See *id.* art. 5, para. 6 (stating that cases shall be completed by Committee of Ministers).

16. See infra Appendix III (providing indicative timetable concerning election procedure).


It is interesting to note, in this connection, the fact that certain states openly invited applications from candidates possessing the necessary qualifications and experience for this position. See Judge of the European Court of Human Rights, *Times* (London), Sept. 16, 1997; Selection of Judges for the European Court of Human Rights in Strasbourg, *Rzeczpospolita* (Warsaw), Oct. 6, 1997; *Cour Européenne des Droits de l'Homme*, MONITEUR
Of interest to note, in this connection, was the rather unusual decision taken by the Committee of Ministers on May 28, 1997 to establish an informal procedure for the examination of prospective candidacies for election as judges.\textsuperscript{18} In accordance with this decision, the Committee of Ministers' Deputies undertook an examination of such candidacies before formally submitting the list of candidates to the Parliamentary Assembly.

The main elements of the new election procedure may be summarized as follows: "The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party."\textsuperscript{19}

The former requirement that no two judges may have the same nationality no longer applies under Protocol No. 11.

"[T]he judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence."\textsuperscript{20} They "shall sit on the court in their individual capacity. During their term of office [they] shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office . . . ."\textsuperscript{21}

"The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years."\textsuperscript{22}

"The judges whose terms of office are to expire at the end of the initial period of three years [were] chosen by lot by the Secretary General of the Council of Europe immediately after their election" on April 29, 1998.\textsuperscript{23} Twenty of the judges were given a six year mandate, and nineteen were given a three year mandate; the fortieth judge, when elected, will automatically be put into the latter category. The terms of office of judges shall expire when they reach the age of seventy. Further details regarding the status and conditions of service of the judges have been enumerated in a resolution adopted by the Committee of Ministers on September 10, 1997.\textsuperscript{24}

\footnotesize{BELGE (Brussels), Oct. 10, 1997; see also Human Rights Bill No. 38, House of Lords, Oct. 1997, cl. 18 (stipulating that holder of judicial office to which clause applies may become judge of European Court of Human Rights without being required to relinquish his office and that he is not required to perform duties of his judicial office while he is judge of Strasbourg Court).}

The purpose of this Bill is to incorporate the ECHR into U.K. law.

\begin{itemize}
  \item 18. See infra Appendix V (providing copy of text adopted).
  \item 19. Protocol No. 11, supra note 2, art. 22, para. 1.
  \item 20. Id. art. 21, para. 2.
  \item 21. Id. art. 21, para. 3.
  \item 22. Id. art. 23, para. 1.
  \item 23. Id. art. 23, para. 2.
  \item 24. See infra Appendix VI (showing copy of resolution).
\end{itemize}
Finally, mention should also be made of the fact that in his letter in October 1997, the Secretary General made specific reference to the Ministers’ Deputies invitation for states to try to achieve a more balanced representation of men and women on the new court.  


At the Vienna Summit of October 1993, the Heads of State and Government of the Council of Europe made the solemn commitment that they "will ensure that this Protocol is submitted for ratification at the earliest possible date." With this in mind, and in particular the obvious need to facilitate the entry into force of Protocol No. 11, Mr. Peter Leuprecht, the then Deputy Secretary General of the Organization, had a discussion on this subject with the court’s President, the late Mr. R. Ryssdal, in the autumn of 1994. During this discussion they agreed that it would be useful to set up an informal working party to discuss preparatory measures that will need to be taken prior to and upon the (possible rapid) entry into force of Protocol No. 11.

The informal working party came into being in February 1995. In addition to its Chairman, Mr. Peter Leuprecht, Mr. R. Ryssdal, President of the court, and Mr. Carl Aage Nørgaard, former President of the Commission (with the agreement of Mr. S. Trechsel, the present President of the Commission), members of the informal working party included Mr. Pierre-Henri Imbert, Director of Human Rights, Mr. Hans ChristianKrüger, Secretary to the Commission (who has recently been elected as Deputy Secretary General), and Mr. H. Petzold, Registrar of the court. I provided secretariat backup to the working party.

This informal working party had a total of ten meetings. During these meetings it discussed a variety of issues such as the provision of adequate working conditions for judges when the new court is established, the "merger" of the Commission’s and the court’s secretariats, and the need to refurbish the Commission’s "hearing room," which at present only has facilities for in

25. See Infra Appendix VII (providing copy of text adopted in May 1997). The origins of this proposal can probably be traced to an initiative taken by Ms. Err. See EUR. PARL. ASS., Order No. 519 (1996) <http://stars.coe.fr/ta/ta96/edir519.htm> (providing procedure for examining candidacies for election of judges to European Court of Human Rights); see also Eur. Parl. Ass., Doc. No. 7530 (motioning for order by Ms. Err). Here again, it would appear that "the result product" is less than satisfactory; 8 out of the 39 new judges are women.

camera meetings. From among the numerous matters discussed, often of a technical, administrative, and managerial nature, the following seven subjects can be mentioned.

A. Privileges and Immunities of Judges

The privileges and immunities of judges was a matter to which members of the working party attached considerable importance, stressing the urgency of drafting a new text on this subject. Now that Protocol No. 6 to the General Agreement on Privileges and Immunities, as well as the European Agreement on persons participating before the new court, has been opened for signature and ratification, the onus is firmly on member states of the Council of Europe to ensure that this instrument is ratified by all contracting states parties as soon as possible.27 Here, it should be appreciated that although this Protocol on Privileges and Immunities entered into force at the same time as Protocol No. 11 to the ECHR, that is, November 1, 1998, it is important for it to be ratified in particular by France, the Organization’s host state. Were this not to occur, a number of ad hoc arrangements may even at this late stage need to be made to ensure that matters dealt with therein are appropriately handled in the meantime.28

Entry into force of the 6th Protocol was contingent on (i) ratification by three parties to the General Agreement on Privileges and Immunities of the Council of Europe (General Agreement) that have expressed their consent to be bound by the Protocol, and (ii) entry into force of Protocol No. 11, ECHR. Presently, only ten parties (Albania, Austria, Croatia, the Czech Republic, Finland, Hungary, Italy, Latvia, the Netherlands, and Sweden) to the General Agreement have ratified the 6th Protocol; it has been signed by thirteen other states (including France), all of which are parties to the General Agreement.

This matter is more important than initially meets the eye, as nonratification by France, among others, might cause a number of practical difficulties. Although the Statute of the Council of Europe and the General Agreement remain possible legal bases to ensure appropriate privileges and immunities for the new judges, legal problems could exist. Here, reference can be made to Article 18 of the General Agreement, which grants certain privileges and immunities to "[o]fficials of the Council of Europe." However, when the 6th


28. See Andrew Drzemczewski, Protocole n° 11 à la CEDH: préparation à l’entrée en vigueur, 8 EUR. J. INT’L. L. 59, 68-72 (1997). See generally European Agreement, supra note 27, at 472-76 (publishing texts of these legal instruments including their explanatory reports). It is understood that France intends to ratify the 6th Protocol.
Protocol to the General Agreement was being drafted, it was considered inappropriate to qualify judges as "officials" of the Council of Europe. Article 51 of the ECHR, as amended by Protocol No. 11 (Article 59 of the Convention currently in force) refers to "privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder." However, as concerns Article 40 of the Statute, this provision cannot apply directly to judges because it refers to "representatives of members" and to the "Secretariat." Also, not all states parties to the ECHR are parties to either or both the 4th and the 5th Protocols to the General Agreement.

Consequently, one may have to anticipate a situation in which the 6th Protocol to the General Agreement may not be considered as applicable to all states parties to the ECHR despite its simultaneous entry into force with Protocol No. 11. In this circumstance, the Committee of Ministers may well need to consider or anticipate the adoption of a specific resolution on this subject. Such a resolution could solemnly confirm that the new judges enjoy all the privileges and immunities necessary for the fulfilment of their functions and specify what this actually means.

Additionally, the position of France as the host country of the new court may need clarification, especially with regard to the new judges' fiscal situation. It should be recalled, in this connection, that in so far as the prior members of the court and Commission elected in respect of France are concerned, France has not signed or ratified the 5th Protocol to the General Agreement. Here, it is difficult to know to what extent, if at all, the French delegation's statement attached to Appendix I of Resolution (97)9 clarifies matters in this respect. The French signature of Protocol No. 6 to the General Agreement on March 31, 1998 is certainly helpful in this respect, bearing in mind the significance of Article 18 of the Vienna Convention on the Law of Treaties, which stipulates that a state that has signed a treaty should refrain from acting in a way that would be contrary to its "object and purpose."

B. Library and Research Facilities

The Council of Europe's Human Rights Library, which is part of the Directorate of Human Rights Information Centre, is at present a public reference library that also services the human rights sector of the Organization, including the control organs and staff of the European Social Charter and the European Committee for the Prevention of Torture. This library is in need of expansion or restructuring, or both, bearing in mind its size and limited

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29. Protocol No. 11, supra note 2, art. 51.
30. See infra Appendix VI (providing copy of statement).
32. Id. art. 18.
facilities available for readers. Currently, this library, situated in the new *Palais des Droits de l’Homme*, is not in a position to provide the various human rights bodies or their staff with modern efficient services. Hence, appropriate facilities to users, for example, extended operating hours, provisions of legal search and photocopying services, and separate research facilities for judges of the new court, must be envisaged.

A decision will also need to be made on an important matter: the extent to which, if at all, the Human Rights Library should be maintained as a public reference library. The way in which the libraries of the European Court of Justice in Luxembourg, the International Court of Justice in the Hague, and those of the highest judicial organs in member states are run are presently being considered on the hypothesis that the library should, if at all possible, continue to be accessible to bona fide postgraduate students, academics, and researchers rather than being limited for internal Council of Europe use only.

### C. Legal Secretaries

The desirability of providing the new court with a number of highly qualified legal secretaries had been discussed. The informal working party was of the view that legal secretaries should be chosen from a pool of lawyers from within the new registry of the court. In other words, they should be chosen principally from the Council of Europe staff members already working in the Commission’s secretariat and in the court’s registry. This view was based not only on financial considerations (important though they be), but rather for more self-evident reasons: Present staff members of the two supervisory organs possess the required legal and linguistic qualifications as well as the "institutional memory" and practical experience in the processing of cases. They would be immediately operational and would be able to carry out duties assigned to them by judges. (It should not be forgotten, in this connection, that not all the judges on the new court will have had prior experience with the Strasbourg system and the multifaceted nature of the work that this entails.) This being said, it is not at all certain as to how this matter will be dealt with by the new court.

### D. Composition of Chambers

The composition of chambers was discussed in considerable detail by the informal working party. A proposal, put forward by Carl Aage Nørgaard, was

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noted with interest. The accepted hypothesis was that chambers should be composed in such a way as to ensure that different legal families are represented in each chamber and are regionally balanced, that the workload of each chamber should (to the extent possible) be equal, and that the presence of the "national judge" be possible when "his or her state" is being considered without too many practical difficulties. Similarly, note was taken of Rule 21 of the court's rules, as adopted on April 27, 1995.34 Bearing the above considerations in mind, Nørgaard proposed that chambers could be composed in such a way as to reflect, respectively, the actual number of cases registered against different states at a given time together with an equitable rearrangement of the subdivision adopted by the prior court in its Rule 21. (In situations in which no cases have been registered, for example, with respect to some new contracting states parties, these states would be placed according to the size of their population.) After having established the above order, the judge from the state with the highest number of registered cases could be placed in the first chamber, the judge with the second highest number of registered cases in the second chamber, and so forth. At the same time, cross reference would need to be made to the subdivision of states effectuated in Rule 21 to ensure that an appropriate "mix" is effectuated. With a few adjustments (as explained by Nørgaard) the resultant product would be an equal distribution of work among chambers, with due regard taken to "regional balance." This proposal, although slightly complicated, appeared to be a well-balanced, equitable, and practical solution worthy to be reflected upon by the new court.

34. Rule 21 states:

Composition of the Court when constituted in a Chamber

1. When a case is brought before the Court . . .
2. For the purposes of the drawing of lots provided for in Article 43 of the Convention and Rule 51 of these Rules, the members of the Court shall be divided into three groups.

(a) The first group shall contain the judges elected in respect of Belgium, Denmark, Estonia, Finland, Iceland, Ireland, Latvia, Luxembourg, the Netherlands, Norway, Russia, Sweden and the United Kingdom.
(b) The second group shall contain the judges elected in respect of Austria, the Czech Republic, France, Germany, Hungary, Liechtenstein, Lithuania, Moldova, Poland, Slovakia, Slovenia, Switzerland and Ukraine.
(c) The third group shall contain the judges elected in respect of Albania, Andorra, Bulgaria, Cyprus, Greece, Italy, Malta, Portugal, Romania, San Marino, Spain, The Former Yugoslav Republic of Macedonia and Turkey . . .

4. There shall sit as ex officio members of the Chamber:

(a) in accordance with Article 43 of the Convention, every judge who has the nationality of a Party;

(b) on an alternate basis, the President or the Vice-President of the Court, provided that they do not sit by virtue of the preceding sub-paragraph.

European Court of Human Rights (Rules of Court A) (as amended April 27, 1995).
In a "model" set of rules of procedure of the new court (prepared by the working party and discussed under subsection E), the working party was unable to find an appropriate solution with respect to the way in which chambers of the court were to be composed. It considered that this matter needs further study in the light of the above proposal put forward by Norgaard, with the President of the new court probably needing to decide in each case which seven judges are to constitute a chamber and which judge (or judges) is (are) to sit as (a) substitute judge(s) so as to ensure an appropriate "rotation" of judges in each chamber.

Finally, all members of the informal working party were also of the view that chambers should be constituted for three year periods and should always be composed of at least eight judges. Jochen A. Frowein's idea of creating "specialist chambers" was considered inappropriate by the working party.

E. Draft Rules of Court

The informal working party carefully looked into drafting new rules and has prepared a draft set of "model" rules for the new court. Although it will obviously be for the new court to adopt its own rules, it is probably desirable to ensure that it is able, to the extent it so desires, to take into account the experience of both the prior court and Commission, as well as the views of those familiar with the work of the Strasbourg organs, in particular government agents and practicing lawyers. What is important in this respect, in my view, is to tap the combined experience of Messrs. Norgaard, the late Ryssdal, and Trechsel, coupled with that of Messrs. Krüger and Petzold (who have many years of precious in-house experience within the Convention control bodies' secretariats), as well as others whose practical experience in the operation of the prior control mechanism could be put into good use by the new court. This type of preparatory work (including the "brainstorming" organized on this subject by the DH-PR in September 1997 with lawyers who have had practical experience of pleading cases in Strasbourg, as well as certain or outside academic and research institutions, as was the case in Potsdam on September 19-20, 1997) will almost certainly be of the utmost utility if one takes into account that members of the new court had less than seven months to draft the new rules of court and to take all other necessary steps as required under new Article 26 of the Convention prior to the entry into force of Protocol No. 11 on November 1, 1998.

36. The text of these "model" rules, issued in May 1997, will soon be published in the Human Rights Law Journal.
37. See Protocol No. 11, supra note 2, art. 4. As can be seen from the timetable in
The drafting of the new rules of court has undoubtedly been one of the priority tasks of the judges elect. Two working parties were created in May 1998, one to prepare the rules of court and the other to deal with administrative questions. In this connection, I should perhaps add that in so far as intergovernmental "work" on this subject is concerned, the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights, known as the DH-PR Committee (a subordinate committee of the Steering Committee for Human Rights, CDDH), made a number of useful comments pertaining to the informal working party's "model" rules during its meetings in 1997 and early 1998. Subsequently, the CDDH, at its meetings in October 1997 and June 1998, requested the Secretary General of the Organization to have these comments transmitted to the judges of the new court (as well as, for information, to the Committee of Ministers and the Parliamentary Assembly).

In addition to the need of establishing a viable internal working mechanism (which will, presumably, initially at least, be an amalgam of the practice of the Commission and the prior court so as to integrate such concepts as "judge rapporteur" and "friendly settlement proceedings"), issues of fundamental importance will need to be confronted. The way in which chambers are to be constituted is one such subject; the use of languages is another. As concerns the latter, financial considerations will need to be borne in mind: Whereas the prior court worked on the premise that all documents submitted for its consideration must be provided in both Council of Europe official languages, in the Commission such a procedure would be impracticable. Members of the Commission receive documents either in English or in French; a passive knowledge of the second official language is required. Indeed, in this connection, the working party has probably rightly underlined the need for the Council of Europe to provide new judges with language training (and, if need be, training in the use of electronic office equipment).

F. Staffing Issues

Much progress was made on staffing issues within the informal working party. This was due principally to the close co-operation (at that time) of the heads of the two secretariats of the Convention control organs, supplemented by a handful of their respective staff members possessing an acquired management experience.

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Appendix III, the choice of candidates by contracting states parties, the subsequent transmission of a list to the Parliamentary Assembly, hearings organized by the Assembly, formal voting by the Assembly, and convocation to a first meeting in Strasbourg of the newly elected judges all together took about seven months. The first meeting of the new court took place from April 28 to May 2, 1998.
The structure to be proposed must involve a viable registry capable of serving the new court properly as from the first day of its existence and must, at the same time, be sufficiently flexible to enable smooth changes that will subsequently follow from decisions taken by the court itself once it has become operational. Although it is impossible to foresee how the new court will ultimately choose to organize its activities, certain hypotheses can reasonably be made in light of the text of Protocol No. 11 and of the experience of the Convention organs.

It is therefore obvious that a "merger" of the secretariat of the Commission and the registry of the court needed to be well-prepared ahead of time. Appendix VIII reproduces the "organizational chart" of the new court's registry as was suggested by the informal working party. The working party's basic premise (an idea that was, in effect, subsequently accepted by the Committee of Ministers) was that all the staff members of the prior court's registry and Commission's secretariat should be "transferred" into the new court's registry from the very first day of the entry into force of Protocol No. 11; staff working for the "old" Commission for up to one year after Protocol No. 11's entry into force would be "lent" from the new court's registry. This transfer of posts necessitated a formal decision by the Committee of Ministers, which took place on February 18, 1998. Also, and this was stressed by the informal working party, it was essential that staff posts (probably in the region of at least twenty in the first year) be created for the new court and that such appointments be made ahead of time so that the new court (including, for example, judges' secretaries and the chambers' structure) could function as of the very first day of Protocol No. 11's entry into force, namely November 1, 1998.

G. Transitional Provisions

There are many complex issues that were in need of substantial advance planning in order to ensure, to the extent possible, that the permutation, in organizational terms, from a well-established and efficiently functioning system into a completely new regime occurred as smoothly as possible. As of April 1998, a number of matters were under active consideration. In addition to structural changes within the Convention control mechanisms as provided in Articles 4 and 5 of Protocol No. 11, practical, down-to-earth matters such as appropriate provisions for working facilities, office space within the new Palais des Droits de l'Homme, and the installation of modern computer workstations for judges were being actively studied. Some of the internal changes involved the new court's registry as suggested by the informal working party.

38. See infra Appendix IX.
39. Other related matters, such as staffing issues, budgetary appropriations, and the need for specialized translators and interpreters, need to be considered carefully.
above-mentioned required forward planning; indeed, adequate budgetary appropriations needed to be set aside in anticipation of these changes.

Following is, for illustrative purposes, a nonexhaustive list of matters that need to be settled at the very outset by the newly elected court: 40

1. drafting and adoption of the new court’s rules,
2. election of President and Vice-President(s) of the court,
3. election of Registrar and Deputy Registrar(s),
4. election of Presidents, and setting up, of chambers (and committees thereunder),
5. putting into place a new administrative/secretariat structure (new Article 25),
6. setting up of the Grand Chamber and its panel of five judges, and
7. allocation, to the extent possible, of tasks with other sectors of the Organization (for example, privileges and immunities of other staff of the registry, relations with the media, publication of documents, library and computer facilities, and personnel and budgetary matters).

The preparation and putting into effect of Protocol No. 11’s Article 5 "transitional arrangements" within the new court’s registry structure also needs to be ensured, especially as concerns procedures under paragraphs 3 and 4.

Also, every effort had been made by the "outgoing" court to ensure, to the extent possible, that recourse not be made to the procedure envisaged in paragraph 5 of Protocol No. 11, namely the transmission of cases pending before the prior court at the date of entry into force of this Protocol to the new court’s Grand Chamber.

Obviously, appropriate arrangements also had to be made (budgetary and logistic) for the Commission members who continue work for up to one extra year after the entry into force of Protocol No. 11. 41

VII. We Are Going into Uncharted Waters . . .

The implementation of the machinery laid out in Protocol No. 11 inevitably involves some uncertainties, and a difficult period can be envisaged in the

40. Who should chair meetings prior to the election of the new court’s President? Probably the "doyen" of the new court, that is, the oldest, in age, of the newly elected judges. The court might, as an alternative, envisage the election of an Acting President, and Acting Registrar, for the "transitional" period or until the formal adoption of the new court’s Rules of Procedure. The judges-elect agreed that Benedetto Conforti, age 68, the "doyen" of the new court, should be the Acting President of the new court, pending the election of the court’s President.

41. See Protocol No. 11, supra note 2, art. 5, para. 3; Explanatory report to Protocol No. 11 to the European Convention on Human Rights, 15 HUM. RTS. L.J. 91, 100 para. 119 (1994).
run up, and in particular, in the transitional period leading to the entry into force of Protocol No. 11 and for a few years thereafter. States have to face additional costs during the transitional period; the setting-up of the new system also calls for supplementary budgetary resources.

Also, tied to implementing the new system is the need to readjust and "accommodate" the prior substantial caseload. As of November 1, 1998, the new court was faced with the following caseload: some 35,000 provisional files from the Commission and about 6800 registered applications. There were about 400 admissible cases pending before the Commission as of November 1, 1998, with some 1300 cases pending before the Committee of Ministers for just satisfaction issues. By the end of April 1998, there were 102 cases pending before the court, and it had been estimated that some 50 to 60 of these cases would not have been dealt with by the prior court by October 31, 1998. In addition, it had been calculated that as of November 1, 1998, the remaining Commission members would have some 450 admissible cases to deal with, with some 1300 cases pending before the Committee of Ministers.

Be that as it may, a more fundamental issue will need to be broached so as to ensure the success of the new system. As the late Marc-André Eissen, former Registrar of the European Court of Human Rights, had rightly pointed out, the real problem for the credibility of the reformed system is likely to reside in identifying the best ways to deal with the six to eight percent of complaints declared admissible.42 With this in mind, three interrelated factors can be emphasized when speculating as to how the new system will work in the future.

The first, decisive factor, is the political context. As P. Van Dijk and G.J.H. Van Hoof have rightly observed in their book *Theory and Practice of the European Convention on Human Rights*:

> The success or failure of international instruments, including those like the European Convention, in the end depends on the political will of the States involved. Legal arguments, however cogent they may be, in the final analysis seldom override political considerations when States feel that their vital interests are at stake.43

The second element is, of course, the difficult issue of the so-called "political compromise" that must somehow be made to work appropriately, not to mention other important changes made to the prior control mechanism.

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Here again, it is perhaps worth citing yet another passage, this time from a remarkable, though highly critical, analysis of Protocol No. 11 by Frédéric Sudre. His conclusion is rather surprising. Sudre writes:

49. — Le Protocole 11, malgré les réserves que le caractère biscomu de certaines de ces dispositions appelle, nous semble — pour paradoxal que cela soit — atteindre un résultat positif. Le protocole contient indis- cutablement de bonnes choses — compétence obligatoire de la cour, droit de saisine individuelle, suppression du Comité des ministres comme organe de décision —, bien que celles-ci ne soient pas vraiment nouvelles, puisque déjà réalisées en pratique ou en droit (le Protocole 9), ou ne font qu’achever un processus largement engagé. Il n’en reste pas moins que le Protocole 11, en <<constitutionnalisanter >> les progrès antérieurs, fait accomplir au mécanisme européen de garantie des droits de l’homme un saut qualitatif, qu’il faut saluer : la protection des droits de l’homme en Europe s’inscrit désormais dans une procédure judiciaire, publique et contradictoire, sous l’autorité d’un organe indépendant et impartial. Comme l’a relevé très justement le Doyen Cohen-Jonathan, le Protocole 11 lie l’ordre public européen des droits de l’homme à un juge européen ayant une compétence obligatoire. Ce faisant, la Convention européenne des droits de l’homme offre le modèle de protection des droits individuels le plus perfectionné dans l’ordre international. Il faut néanmoins souhaiter que la nouvelle cour sache préserver le remarquable acquis jurisprudentiel de l’actuelle cour et de la Commission européenne des droits de l’homme, qui, par une interprétation évolutive et dynamique du texte conventionnel, ont largement contribué non seulement à la sauvegarde des droits de l’homme mais aussi à leur développement.

50. — Plus discutables sont les innovations — la Grande chambre et ses compétences —, qui viennent altérer la juridiction unique, générant des distorsions procédurales et une incohérence globale (mais il est vrai que le système actuel ne brille pas non plus par son homogénéité et peut également être qualifié d’hybride).

Ce n’est pas dire, pour autant, que le compromis qui fonde le Protocole 11 (en bref, le réexamen par la Grande chambre) est mauvais: il a l’immense mérite non seulement, en existant, de permettre la réforme, mais aussi de ne pas figer le système. Les États ont voulu un mécanisme de contrôle bâtarde, à la fois juridiction unique et double degré de juridiction, mais cela pourrait bien être un marché de dupes. En effet, la nouvelle architecture repose entièrement sur le collège de cinq juges, qui, <<tenant >> la procédure de réexamen, donnera vie à la Grande chambre ou la maintiendra (ce que l’on espère) en état de lethargie. C’est donc l’institution judiciaire elle-même, et non les États, qui maîtrisera l’évolution du nouveau mécanisme de garantie.44

44. Frédéric Sudre, La réforme du mécanisme de contrôle de la Convention européenne des droits de l’homme : le Protocole 11 additionnel à la convention, 69 LA SEMAINE JURIDIQUE 231, 240 (1995). He then concludes:
Is Sudre not right? Is it not, in the final analysis, better to leave the system's potential evolution in the hands of judges rather than in those of the states themselves?

Directly linked, at least in part, with the above observations of Sudre (as well as those of Gérard Cohen-Jonathan cited therein) is another matter worth stressing, namely the fact that the Convention has become a constitutional instrument of European public order ("instrument constitutionnel de l'ordre public européen"). This has recently been reiterated in no uncertain terms by both the Commission and the court. This statement, important as it certainly is, needs to be kept in perspective. The prior role of the Strasbourg control organs was, and that of the new single court will continue to be, subsidiary; it is principally for the domestic courts and internal state organs to adequately protect human rights at the national level. This point must always continue to be emphasized.

La pratique prétorienne antérieure a montré combien la cour (mais aussi la commission) savait exploiter toutes les ressources que lui offrait la procédure européenne pour mieux garantir les droits individuels (on songe, particulièrement, à la place fait à l'individu dans la procédure) et asseoir son autorité. Il nous semble que l'on peut alors être confiant : les vices du Protocole 11 sont tels qu'ils devraient avoir une fonction dissuasive. L'intérêt même de la nouvelle cour, afin de préserver la crédibilité de sa jurisprudence, d'assurer l'efficacité de son contrôle (rapidité de la procédure) et de rendre <=lisible=> la procédure européenne, est de ne faire intervenir la Grande chambre qu'à titre tout à fait exceptionnel pour des affaires hors du commun, qui revêtiront un aspect exemplaire. Gageons alors que la procédure de droit commun sera simple et efficace : l'individu saisit la cour qui, en chambre, rend une décision définitive par laquelle elle statue sur la violation ou non-violation de la convention. La pratique dévoilerait alors le vrai visage du Protocole 11, la juridiction unique pure et simple.

En bref, la réforme réalisée par le Protocole 11 sera d'autant mieux appliquée qu'elle sera appliquée. . . à demi.

Id.


46. See Articles 13, 26, and 60 of the present text of the Convention, which will resurface as Articles 13, 35, and 53 in the revised text of the ECHR when Protocol No. 11 comes into force. See Emmanuel Decaux, Article 60, in LA CONVENTION EUROPÉENNE DES DROITS DE L'HOMME 897 (Emmanuel Decaux & Pierre-Henry Imbert eds., 1995) (analyzing Article 60); Andrew Drzemczewski & Christos Giakoumopoulos, Article 13, in LA CONVENTION EUROPÉENNE DES DROITS DE L'HOMME supra, at 455 (analyzing Article 13); Etienne Picard,
In short, the revision of the Convention was necessitated by the increase in the number of applications, their growing complexity, and the widening of the Council of Europe's membership. The Convention was designed for ten or twelve member states, and it is quite simply impossible for the prior monitoring arrangements to work effectively with the expected forty or more states parties. Revision of the Convention control mechanism was therefore essential to strengthen its efficiency. The new system should, in particular, make the machinery more accessible to individuals, speed up the procedure, and make for greater efficiency. The credibility of the ECHR is at stake here.

* * *

Article 26, in LA CONVENTION EUROPÉENNE DES DROITS DE L'HOMME, supra, at 591 (analyzing Article 26).
European Convention on Human Rights (ECHR)

**New control mechanism**

- Full-time Court
  - Inter-state applications: Article 33
  - Individual applications: Article 34
  - Court: committee of 3 judges
    - Inadmissible: unanimous decision: end of case
    - Admissible:
      - Establishment of facts and friendly settlement proceedings
        - No friendly settlement
        - Court judgment: Articles 36 and 41 (2) (and just satisfaction if necessary: Article 41)
        - Request accepted in exceptional cases by panel of 5 judges: Article 43
        - Rejection: Court judgment stands
        - Committee of Ministers supervises execution of judgment: Article 46 (2)
  - Court chamber
    - Examination of admissibility: Articles 29 and 35

**Former control mechanism**

- Two distinct procedural stages before part-time Commission and then before part-time Court or Committee of Ministers
  - Individual applications: Article 25
  - Inter-state applications: Article 24
  - Commission: committee of 3 members
    - Inadmissible: unanimously decision: end of case
  - Commission (chamber or plenary)
    - Examination of admissibility: Articles 26 and 27
    - Admissible:
      - Establishment of facts and friendly settlement negotiations
        - No friendly settlement
        - Commission reports: Article 40
        - Court filter by committee of 3 when case brought by individual applicant
        - Seizure of Court by Commission or State concerned within 3 months: Articles 46 and 49
        - Committee of Ministers seized: Article 32 (1)
        - Committee of Ministers decision: Article 32 (2)
        - Committee of Ministers supervises execution of judgment: Article 54
  - Committee of Ministers supervises execution of decision: Article 32 (3)
European Convention on Human Rights (ECHR)
Summary overview

New control mechanism

ECHR
Strasbourg 1994

Reports from the Contracting Parties:
Article 62

Secretary General of the Council of Europe

State v. State:
Article 33
(Compulsory jurisdiction)

European Court of Human Rights
Admissibility (Articles 29 and 35)

Establishment of facts, attempt to reach friendly settlement on the basis of respect for human rights:
Articles 36 and 39

Judgment of the European Court of Human Rights
Committee of Ministers supervises the execution of the Court's judgment:
Article 46 (2)

Former control mechanism

ECHR
Rome 1950

Reports from the Contracting Parties:
Article 57

Secretary General of the Council of Europe

State v. State:
Article 24
(Compulsory jurisdiction)

European Commission of Human Rights
Admissibility (Articles 26 and 27)

Establishment of facts, attempt to reach friendly settlement on the basis of respect for human rights:
Article 28

Consultative Assembly of the Council of Europe

Commission report:
Legal opinion as to breach

European Court of Human Rights:
Judgment
Committee of Ministers supervises the execution of the Court's judgment:
Article 54

Commission report:
Compulsory jurisdiction

If necessary, the Committee of Ministers supervises the execution of its own decision:
Article 32 (3)

Committee of Ministers of the Council of Europe

Compulsory jurisdiction

Optional Jurisdiction

* Applicant with respect to State that ratified Protocol No. 9

Concept and design: P. Drzewiecki
Graphic: Publications unit, Directorate of Human Rights
Appendix II

The Council of Europe and Central and Eastern Europe
(as of May 6, 1998)

I. Membership of Organization: 40 countries (all of which have ratified the ECHR)

16 new member States from Central and Eastern Europe:

- Hungary (Nov. 6, 1990)
- Poland (Nov. 26, 1991)
- Bulgaria (May 7, 1992)
- Estonia (May 14, 1993)
- Lithuania (May 14, 1993)
- Slovenia (May 14, 1993)
- Czech Rep. (June 30, 1993)
- Slovakia (June 30, 1993)
- Romania (Oct. 7, 1993)

6 applications for membership:

- Armenia (Mar. 7, 1996)
- Azerbaijan (July 13, 1996)
- Belarus (Mar. 12, 1993; but see III below)
- Albania (July 13, 1995)
- Moldova (July 13, 1995)
- Ukraine (Nov. 9, 1995)
- "the former Yugoslav Republic of Macedonia" (Nov. 9, 1995)
- Russian Federation (Feb. 28, 1996)
- Croatia (Nov. 6, 1996)

II. European Convention on Human Rights (ECHR)

16 ratifications:

- Bulgaria (Sept. 7, 1992)
- Hungary (Nov. 5, 1992)
- Czech Rep. (Jan. 1, 1993)
- Slovakia (Jan. 1, 1993)
- Poland (Jan. 19, 1993)
- Romania (June 20, 1994)
- Slovenia (June 28, 1994)
- Lithuania (June 20, 1995)
- Estonia (Apr. 16, 1996)
- Albania (Oct. 2, 1996)
- "the former Yugoslav Republic of Macedonia" (Apr. 10, 1997)
- Latvia (June 27, 1997)
- Ukraine (Sept. 11, 1997)
- Moldova (Sept. 12, 1997)
- Croatia (Nov. 5, 1997)
- Russian Federation (May 5, 1998)

47. The Czech and Slovak Federal Republic was a member from February 21, 1991 to December 31, 1992.

48. The Czech and Slovak Federal Republic was a Contracting Party from March 18, 1992 to December 31, 1992. Following declarations made by the Czech Republic and by Slovakia of their intention to succeed the Czech and Slovak Federal Republic and to consider themselves bound by the ECHR as of January 1, 1993, the Committee of Ministers decided on June 30, 1993 that these states are to be regarded as Parties to the Convention effective January 1, 1993. Similarly, these states are bound as of January 1, 1993 by the declarations made by the Czech and Slovak Federal Republic (Mar. 18, 1992) with respect to Articles 25 and 46 of the Convention.
All of the above countries accepted the right of individual petition (Article 25) and compulsory jurisdiction of the European Court of Human Rights (Article 46), pending entry into force of Protocol No. 11, ECHR on November 1, 1998.

III. Special Guest Status with the Parliamentary Assembly of the Council of Europe

Armenia (Jan. 26, 1996); Azerbaijan (June 28, 1996); Bosnia-Herzegovina (Jan. 28, 1994); and Georgia (May 28, 1996) have Special Guest Status. Special Guest Status, given to Belarus on September 16, 1992, was suspended on January 13, 1997.

Special Guest Status was introduced by the Parliamentary Assembly in 1989 to forge closer links with the Parliaments of Central and Eastern European countries. Guest Status Parliaments send delegations reflecting different currents of opinion to plenary sessions in Strasbourg and to committee meetings.

IV. Co-operation programs:

The Council of Europe’s co-operation programs were set up with two aims: reinforcing, consolidating and expediting the democratic reform process in the beneficiary countries and facilitating the gradual and harmonious integration of these countries into the structures of European co-operation, primarily the Council of Europe. In the human rights field, co-operation focuses on promoting conformity and implementation of the major human rights treaties, especially the ECHR. This co-operation includes expert consultations, training workshops, study visits, and providing documentation. It is conducted with both governmental and nongovernmental partners.

All countries that are either member states of the Council of Europe or have applied for membership may take part in co-operation activities (see Section I, above), although some, having reached a certain level of development, are gradually withdrawing from the program. (A limited number of co-operation activities have also been implemented with Kyrgyzstan in 1996-1997.)

The programs are all funded from a specific article in the Council of Europe budget (Vote IX), totaling some eighty million French francs in 1998. This is supplemented by voluntary contributions from a number of member

states, which make it possible to implement certain additional or expanded activities. Moreover, a number of Joint Programs with the European Commission (Brussels) have been initiated in favor of Albania, the Baltic States (currently covering Estonia and Latvia), the Russian Federation, and Ukraine as well as in the field of minorities and the fight against organized crime and corruption.
Appendix III

Timetable for the Election of Judges and Entry into Force of Protocol No. 11, ECHR

| I. November 1997 | Submission of the list of candidates by States Parties to the Committee of Ministers and transmission of candidate lists to the Parliamentary Assembly of the Council of Europe |
| II. December 17-19, 1997 and January 7-9, 1998 | First set of personal interviews of candidates by an Ad Hoc Sub-Committee to the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly |
| January 27-28, 1998 | Election of thirty-one judges by the Parliamentary Assembly |
| III. April 6, 1998 | Second set of personal interviews of candidates by an Ad Hoc Sub-Committee to the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly |
| April 20-24, 1998 | Election of remaining (eight) judges by the Parliamentary Assembly |
| IV. May-October 1998 | New court elected President and Vice-President(s); started work on Rules of court, setting up of chambers, settling staffing arrangements, etc. |
| V. November 1, 1998 | Protocol No. 11 entered into force; inauguration ceremony on November 3, 1998 |
Appendix IV

Model Curriculum Vitae for Candidates Seeking Election to the
European Court of Human Rights

I. Personal details
   Name, forename
   Sex
   Date and place of birth
   Nationality/ies

II. Education and academic and other qualifications

III. Professional activities
   a. Details of judicial activities
   b. Details of non-judicial legal activities
   c. Details of all non-legal professional activities

IV. Activities and experience in the field of human rights

V. Public activities

VI. Other Activities
   – Field
   – Duration
   – Functions

VII. Publications and other works
   (Indicate the total number of books and articles published but select
    only the most important ones (maximum twelve))

VIII. Languages
   (Indicate degree of fluency: speaking, reading, writing)
   a. Mother tongue
   b. Official languages
      – English
      – French
   c. Other languages

IX. Other relevant information

50. See generally EUR. PARL. ASS. RES. 1082, supra note 17.
Appendix V

EUROPEAN COURT OF HUMAN RIGHTS

Informal procedure for the examination of candidature for the election of judges

[Decision adopted by the Committee of Ministers on May 28, 1997]

The [Ministers’] Deputies agreed on the following informal procedure for the examination of prospective candidatures for the election of Judges of the European Court of Human Rights:

i. States Parties to the European Convention on Human Rights are invited to provide informally copies of the curriculum vitae of prospective candidates for election as members of the European Court of Human Rights to the Deputies;

ii. An Ad Hoc group of the Deputies established for this purpose will hold, in camera, an informal exchange of views on such candidates before the lists are formally submitted to the Committee of Ministers for transmission to the Parliamentary Assembly;

iii. It is understood that the results of this exchange of views would neither bind governments, who would retain the right to present candidates of their choosing, nor interfere with the Parliamentary Assembly’s function of electing judges from the lists provided.
Appendix VI

RESOLUTION (97)951

ON THE STATUS AND CONDITIONS OF SERVICE OF
JUDGES OF THE EUROPEAN COURT OF HUMAN RIGHTS TO BE
SET UP UNDER PROTOCOL No. 11 TO THE CONVENTION FOR THE
PROTECTION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS

(Adopted by the Committee of Ministers on September 10, 1997
at the 600th meeting of the Ministers' Deputies)

The Committee of Ministers, acting pursuant to Article 16 of the Statute
of the Council of Europe,

Having regard to the Convention for the Protection of Human Rights and
Fundamental Freedoms, signed at Rome on November 4, 1950 ("the Conven-
tion");

Having regard to Protocol No. 11 to the Convention, restructuring the
control machinery established thereby, signed at Strasbourg on May 11, 1994
("Protocol No. 11"), which establishes a permanent European Court of Human
Rights ("the Court") to replace the European Commission and Court of
Human Rights;

Having regard to the General Agreement on Privileges and Immunities
of the Council of Europe, signed at Paris on September 2, 1949,

Resolves as follows:

Article 1

Elected members of the Court to be set up under Protocol No. 11 shall
enjoy the special status of "judges of the European Court of Human Rights"
("judges").

Article 2

In accordance with Article 51 of the Convention as amended by Protocol
No. 11, judges and ad hoc judges appointed pursuant to Article 27 § 2 of the
Convention shall be entitled, during the exercise of their functions, to the
privileges and immunities provided for in Article 40 of the Statute of the
Council of Europe and in the agreements made thereunder.

Article 3

The conditions of service of judges and ad hoc judges shall be governed by the provisional Regulations set out in appendices I and II respectively to this Resolution. These provisional Regulations shall be reviewed by the Committee of Ministers within the twelve months following the entry into force of Protocol No. 11, on the proposal of the Secretary General of the Council of Europe and in consultation with the President of the Court.

The provisional Regulations shall be implemented by the Secretary General of the Council of Europe, who, for this purpose, shall act in consultation with the President of the Court and may have regard to the rules applied concerning staff members of the Council of Europe.

Article 4

This Resolution shall enter into force on the same day as Protocol No. 11.

APPENDIX I TO RESOLUTION (97)9
PROVISIONAL REGULATIONS GOVERNING THE CONDITIONS OF SERVICE OF JUDGES

Article 1 – Annual salary

1. The all-inclusive annual salary of judges, as holders of a full-time office, shall be 1,100,000 French francs, payable in equal monthly instalments in advance.

2. Additional remuneration at the following annual rates shall be paid, on a pro rata temporis basis, to the following office-holders:
   - the President of the Court: 75,000 French francs;
   - the Vice-President of the Court and the Presidents of Chambers: 37,500 French francs.

3. The Committee of Ministers shall consider each year whether the foregoing amounts should be adjusted having regard to the evolution of the cost-of-living in France.

4. The above salaries and remuneration shall be free of all taxation.52

52. At the 600th meeting of the Ministers’ Deputies (September 10, 1997), the French delegation stated that the exemption of Judges’ salaries and remuneration from taxation had been agreed to by all ministerial departments concerned by this question.

The French delegation also recalled that the requirements laid down in Article 53 of the
Article 2 – Place of residence

Judges shall reside at or near the seat of the Court.

Article 3 – Leave

i. Holiday leave

Judges shall be entitled to annual holiday leave of two-and-a-half working days per month of service.

For the purpose of calculating annual leave entitlement, periods of sick leave during which judges are paid their salary, in full or in part, by the Council of Europe in accordance with the general provisions contained in paragraph ii of this Article, shall be considered as service. In the case of sick leave occasioned by occupational injury, absences for health reasons lasting a continuous period of up to one year shall be considered as service.

ii. Sick leave

The Administration of the Council of Europe shall be notified immediately, through the Registry of the Court, whenever judges are absent and unable to perform their duties for health reasons and be supplied with appropriate medical certificates.

Judges who are absent on account of illness shall receive from the Council of Europe:

- for the first three days: their full salary;
- thereafter and for a period of eighty-seven days: 90% of their salary;
- thereafter and for a period of ninety days: one-half of their salary.

At the end of the said period of ninety days, judges shall no longer be remunerated by the Council of Europe.

Article 4 – Payment of expenses by the Council of Europe

1. The Council of Europe shall pay:
   a. the travel and subsistence expenses of a judge on an official journey;
   b. travel, subsistence and removal expenses incurred by judges and their household (spouse and children) when taking up or on termination of their duties.

French Constitution implied that the ratification and entry into force, with respect to France, of the 6th Protocol to the General Agreement on the privileges and immunities of the Council of Europe, which enshrines the principle of this exemption, can only take place once a law authorizing such ratification has been passed.
2. On the death of a judge during his or her term of office, the Council of Europe shall defray:
   a. the cost of transporting the body of the judge from the place of death to the place of funeral;
   b. the cost of transporting the deceased judge's personal belongings;
   c. the travel costs of the survivors who were dependent on the judge and were part of the judge's household.

3. The rules issued by the Secretary General of the Council of Europe applicable to payment of expenses to staff members of the Council of Europe shall apply to judges, save that the amounts payable in respect of travel and subsistence expenses shall be governed by the rules issued by the Secretary General applicable to the reimbursement of the expenses of members of the Parliamentary Assembly and Ministers' Deputies when travelling at the charge of the Council of Europe.

Article 5 – Social protection

1. Judges are required to ensure that they have arranged, at their own expense, for adequate insurance cover of the following risks, for the full period of their terms of office:
   - temporary incapacity to work due to illness or accident – the cover must be such as to replace the loss of salary indicated under Article 3, paragraph ii above;
   - costs of health care, including maternity expenses, for themselves and their dependants;
   - permanent incapacity to work due to an illness or an accident;
   - death.

2. Judges shall provide the Council of Europe at the beginning of each year with proof that they have adequate coverage of the risks listed above. The Council of Europe will make available proposals for an insurance policy which covers the risks, the full premium to be paid by judges.

APPENDIX II TO RESOLUTION (97)9

PROVISIONAL REGULATIONS GOVERNING THE CONDITIONS OF SERVICE OF AD HOC JUDGES

1. For each day on which they exercise their functions ad hoc judges shall receive an allowance of an amount equal to 1/365th of the annual salary
payable to judges of the Court by virtue of Article 1 § 1 of Appendix I above. The allowance shall be free of all taxation. 53

2. The Council shall also reimburse to *ad hoc* judges travel and subsistence expenses incurred by them in connection with the performance of their functions. The rules issued by the Secretary General of the Council of Europe applicable to the reimbursement of the expenses of members of the Parliamentary Assembly and Ministers’ Deputies when travelling at the charge of the Council of Europe shall apply.

53. At the 600th meeting of the Ministers' Deputies (September 10, 1997), the French delegation stated that the exemption of Judges’ salaries and remuneration from taxation had been agreed to by all ministerial departments concerned by this question.

The French delegation also recalled that the requirements laid down in Article 53 of the French Constitution implied that the ratification and entry into force, with respect to France, of the 6th Protocol to the General Agreement on the privileges and immunities of the Council of Europe, which enshrines the principle of this exemption, can only take place once a law authorizing such ratification has been passed.
Appendix VII

EUROPEAN COURT OF HUMAN RIGHTS

Balanced representation of women and men in the new European Court of Human Rights

The Deputies, in order to achieve a more balanced representation of women and men in the new European Court of Human Rights, invited the governments of States Parties to the European Convention on Human Rights:

i. to foster a more balanced representation of women and men when drawing up the national lists of candidates to be put forward for election to the Court;

ii. to ensure that the qualifications and experience of all the candidates put forward, whether men or women, allow their candidatures to be taken into consideration on an equal footing.

54. Declaration adopted by the Ministers' Deputies at their 593rd meeting on May 28, 1997. See EUR. PARL. ASS., Order No. 519, supra note 25; see also text accompanying note 25.
Appendix VIII

Single Court Organizational Chart
Appendix IX

RESOLUTION (98)3

ON THE REGISTRY OF THE
EUROPEAN COURT OF HUMAN RIGHTS
TO BE SET UP UNDER THE TERMS OF PROTOCOL No. 11 TO
THE EUROPEAN CONVENTION ON HUMAN RIGHTS

(Adopted by the Committee of Ministers on February 18, 1998
at the 621st meeting of the Ministers’ Deputies)

Having regard to Protocol No. 11 to the European Convention on Human Rights;

At the proposal of the Secretary General;

Having consulted the President of the European Court of Human Rights and the President of the European Commission of Human Rights;

Having consulted the Staff Committee in accordance with Article 6, paragraph 1, of the Regulations on Staff participation (Appendix I to the Staff Regulations),

The Deputies:

1. decide that upon the date of entry into force of Protocol No. 11, the Registry of the European Court of Human Rights will be established in accordance with Article 25 of the European Convention on Human Rights as amended by the said Protocol, in place of the Secretariat of the European Commission of Human Rights and the Registry of the present European Court of Human Rights;

2. approve in principle the transfer, as of the same date, of the staff allocated at that date to the Secretariat of the European Commission of Human Rights and the Registry of the European Court of Human Rights, with their posts, to the Registry of the new Court, it being understood that the Secretary General is satisfied that the persons concerned are qualified for their new tasks;

3. decide that, as from the date of entry into force of Protocol No. 11 and for the period specified in Article 5, paragraph 3 thereof, the Secretariat of the European Commission of Human Rights will be provided by the Registry of the new Court.

Appendix X

List of Judges Elected onto the New European Court of Human Rights

The following judges were elected by the Parliamentary Assembly in January and April 1998:

Albania: Mr. Kristaq TRAJA (3 years)
Andorra: Mr. Josep CASADEVALL MEDRANO (3 years)
Austria: Dr. Willi FUHRMANN (3 years)
Belgium: Françoise TULKENS (6 years)
Bulgaria: Mrs. Damianova BOUTOUCHAROVA-DOÎTCHEVA (3 years)
Croatia: Mrs. Nina VAJIC (6 years)
Cyprus: Mr. Loukis LOUCAIDES (3 years)
Czech Republic: Mr. Karel JUNGWIERT (6 years)
Denmark: Mr. Peer LORENZEN (3 years)
Estonia: Mr. Rait MARUSTE (6 years)
Finland: Mr. Matti PELLONPÅÄ (6 years)
France: Mr. Jean-Paul COSTA (6 years)
Germany: Mr. Georg RESS (6 years)
Greece: Mr. Christos L. ROZAKIS (6 years)
Hungary: Mr. András BAKA (3 years)
Iceland: Mr. Gaukur JÖRUNDSSON (6 years)
Ireland: Mr. John HEDIGAN (6 years)
Italy: Mr. Benedetto CONFORTI (3 years)
Latvia: Mr. Egils LEVITS (3 years)
Liechtenstein: Mr. Lucius Conrad CAFLISCH (6 years)
Lithuania: Mr. Pranas KURIS (6 years)
Luxembourg: Mr. Marc FISCHBACH (3 years)
Malta: Mr. Giovanni BONELLO (6 years)
Moldova: Mr. Tudor PANTIRU (3 years)
Netherlands: Mrs. Wilhelmina THOMASSEN (6 years)
Norway: Mrs. Hanne Sophie GREVE (6 years)
Poland: Mr. Jerzy MAKARCZYK (6 years)
Portugal: Mr. Ireneu CABRAL BARRETO (6 years)

56. Of the 39 judges elected, 20 have been given a six-year mandate and 19 have been given a three-year mandate (as indicated in parentheses next to the name).

Romania: Mr. Corneliu BIRSAN (3 years)
San Marino: Mr. Luigi FERRARI' BRAVO (3 years)
Slovakia: Mrs. Viera STRÁZNICKÁ (6 years)
Slovenia: Mr. Bostjan ZUPANCIC (3 years)
Spain: Mr. Antonio PASTOR RIDRUEJO (3 years)
Sweden: Mrs. Elisabeth PALM (6 years)
Switzerland: Mr. Luzius WILDHABER (3 years)
"the former
Yugoslav Republic
of Macedonia": Mrs. Margarita CACA-NIKOLOVSKA (3 years)
Turkey: Mr. Riza TÜRMEN (3 years)
Ukraine: Mr. Volodymyr BUTKEVYCH (3 years)
United Kingdom: Mr. Nicholas BRATZA (6 years)

The judge in respect of Russia has not yet been elected.
### Composition of the Grand Chamber

<table>
<thead>
<tr>
<th>GRAND CHAMBER 1</th>
<th>GRAND CHAMBER 2</th>
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<tr>
<td>Mr. L. Wildhaber, <em>President</em></td>
<td>Mr. L. Wildhaber, <em>President</em></td>
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<tr>
<td>Mrs. E. Palm, <em>Vice-President, President of Chamber, Section I</em></td>
<td>Mrs. E. Palm, <em>Vice-President, President of Chamber, Section I</em></td>
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<tr>
<td>Mr. C. Rozakis, <em>Vice-President, President of Chamber, Section II</em></td>
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<tr>
<td>Mr. N. Bratza, <em>President of Chamber, Section III</em></td>
<td>Mr. N. Bratza, <em>President of Chamber, Section III</em></td>
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<td>Mr. M. Pellonpää, <em>President of Chamber, Section IV</em></td>
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<td>Mr. B. Conforti</td>
<td>Mr. L. Ferrari Bravo</td>
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<td>Mr. A. Pastor Ridruejo</td>
<td>Mr. G. Jörundsson</td>
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<td>Mr. G. Bonello</td>
<td>Mr. G. Ress, <em>Vice-President of Chamber, Section IV</em></td>
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<td>Mr. J. Makarczyk</td>
<td>Mr. L. Caflisch</td>
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<td>Mr. J.-P. Costa, <em>Vice-President of Chamber, Section III</em></td>
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<td>Mr. B. Zupančič</td>
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<tr>
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<td>Mr. J. Hedigan</td>
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<tr>
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(Russian judge)

Elected staff members of the Registry (see Articles 25 and 26 of the Convention and Rules of Court, Rules 15-18; see <http://www.dhcour.coe.fr>):

- **Registrar:** Mr. M. de Salvia
- **Deputy Registrars:** Mr. P. Mahoney (*Grand Chamber Registrar*)
  Mrs. M. Buicchio-de Boer
### Appendix XII

**Composition of the Sections**

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<td>Mr. J. Hedigan</td>
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<tr>
<td><strong>Mr. R. Maruste</strong></td>
<td>Mr. E. Levits</td>
<td>(Russian judge)</td>
<td></td>
<td>Mrs. S. Botoucharova</td>
</tr>
<tr>
<td><strong>Section Registrar (staff member of Registry)</strong></td>
<td>Mr. M. O'Boyle</td>
<td>Mr. E. Fribergh</td>
<td>Mrs. S. Dollé</td>
<td>Mr. V. Berger</td>
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*The term "Section" means a Chamber set up by the plenary Court for a fixed period in pursuance of Article 26(b) of the Convention and the expression "President of the Section" means the judge elected by the plenary Court in pursuance of Article 26(c) of the Convention as President of such a Section. For more details consult Rules of the Court, adopted on November 4, 1998. These Rules are in force as of November 1, 1998; see <http://www.dhcour.coe.fr>.*