

FOREWORD

The European ministerial conference on human rights, meeting in Rome on the 50th anniversary of the Convention for the Protection of Human Rights and Fundamental Freedoms, emphasised two crucial elements:

- ▶ the responsibility of member states, Parties to the Convention, to ensure constantly that their law and practice conform to the Convention and to execute the judgments of the European Court of Human Rights;
- ▶ that urgent measures be taken to assist the Court in carrying out its functions, given the ever increasing number of applications. An in-depth reflection should be started as soon as possible on the various possibilities and options with a view to ensuring the effectiveness of the Court in the light of this new situation.

The Rome conference has sparked intensive work. Ever since January 2001, the intergovernmental co-operation activities of the Steering Committee for Human Rights (CDDH) of the Council of Europe have concentrated on developing normative instruments, of which the most important has been Protocol No. 14 of the Convention. This work has benefited greatly from high-level debates during a series of round-table discussions, within working groups and at seminars organised mainly by the successive presidencies of the Committee of Ministers.

The present volume contains a record of this work. ★

PROCEEDINGS

EUROPEAN MINISTERIAL CONFERENCE ON HUMAN RIGHTS

Conference organised under the Italian chairmanship
of the Committee of Ministers of the Council of Europe

Rome, 3-4 November 2000

Proceedings (Extracts)

FOREWORD

Mr Walter Schwimmer

Secretary General of the Council of Europe

In the field of human rights protection, Europe, which in the first half of the twentieth century experienced what were perhaps the most massive human rights violations in history, today sets an example to other regions of the world. It is only right that attention should be drawn to this when presenting the proceedings of the ministerial conference held to mark the fiftieth anniversary of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Over these fifty years, it has been possible to bring together almost all European states around respect for freedom, democracy and the rule of law. These states are committed to recognising that every person under their jurisdiction enjoys the rights and fundamental freedoms set out in the European Convention on Human Rights, and to complying with the judgments of the European Court of Human Rights in disputes to which they are party. The Convention, with its unique control system, has an important future before it. It must continue to play its central role as a constitutional instrument of European public policy on which the well-being of individuals and the democratic stability of the Continent depend.

And yet, despite the progress that has been made, conflict and crisis situations resulting in serious and massive violations of the most fundamental human rights have been deplored in certain parts of Europe in the recent past, and

persist even today. Furthermore, very large numbers of individual applications continue to reach the European Court of Human Rights, to the point of jeopardising the current system's viability. The ministerial conference therefore called upon the Council of Europe member states to shoulder fully the responsibility that falls to them in the first place for ensuring that human rights are respected, and, to this end, to ensure constantly that their law and practice conform to the Convention and to execute the judgments of the European Court of Human Rights. It also asked the Council of Europe to take the necessary steps in the short and medium term to ensure the effectiveness of the Court.

With regard to the protection of human rights and fundamental freedoms, no battles are won in advance, nor can past victories be taken for granted. Far from being self-satisfied, the member states taking part in the conference gave new impetus to their commitment to protect these rights and freedoms effectively, both in their domestic legal systems and at European level. The declaration and two resolutions adopted by the conference thus constitute a genuine programme for intergovernmental co-operation within the Council of Europe in the field of human rights, a programme whose implementation has already begun and will continue over the years to come. ★

STATEMENTS MADE AT THE OPENING SESSION

Mr Walter Schwimmer

Secretary General of the Council of Europe

Allow me first to express my deep thanks to the Italian Government for its initiative of convening this ministerial conference on the occasion of the fiftieth anniversary of the European Convention on Human Rights. This excellent initiative allows us not only to look at the results achieved over the last fifty years, but also and above all to discuss the question raised in the main theme of this conference: “what future for the protection of human rights in Europe?”

This conference comes at an appropriate moment. Europe, and the Council of Europe, has undergone profound changes over the last decade. At the informal ministerial conference on human rights held ten years ago here in Rome, there were twenty-three delegations of member states seated at the conference table. It suffices to look around this table today to note the tremendous scale and speed of the enlargement of the Council of Europe since 1990. It is also a great pleasure to note the pres-

ence today of representatives of several non-member states, including states that have applied for membership and observer states of the Council of Europe. The same is true for representatives of other international organisations and institutions as well as nongovernmental organisations.

Europe has changed, and it has definitely changed for the better. The values and principles for which the Council of Europe stands – democracy, rule of law, human rights – are now shared in a greater Europe. This is both an immense source of joy and a momentous challenge; for we all know from our experience in the last ten years that it is not an easy process to anchor those principles and values firmly in all branches of government and in all parts of society. It involves hard work, and the Council of Europe has worked, and works, very hard to protect and promote its values and principles throughout the Continent, and especially in the new member states and candidate states.

Courageous choice

The process of enlargement of the Council of Europe is nearing its completion. We are expecting soon new member states in the Organisation. And a few weeks ago the people of Serbia made a very courageous choice which will smooth the way for them to join the European family of democracies.

We should therefore use the opportunity offered by this conference and the experience gained over the last decade to discuss where Europe stands and where it should go in an area that is crucial for its identity and its stability: the protection of human rights.

More particularly, the two sub-themes chosen for the conference are sufficiently broad to enable us to fix priorities for the future. sub-theme I concerns, first of all, our institutional machinery for human rights protection. The enlargement of the Organisation has had a deep impact on the control system of the European Convention on Human Rights and our other human rights mechanisms, and several new mechanisms have also been created in the last ten years. We should examine how to maintain and improve their effectiveness in the years to come. The European Convention on Human Rights must remain the backbone of human rights protec-

tion in Europe, and I am pleased to note that the draft European Union Charter of Fundamental Rights recognises this. The Council of Europe observers to the convention drafting the European Union charter text insisted on the necessity to incorporate explicit references to the European Convention on Human Rights

Possible improvements

Full execution of judgments of our Court of Human Rights is essential and we must never compromise on this point. None of our human rights mechanisms operates in isolation: they are in constant interaction with the national level. We should also look at improvements that are possible in respect of the various national arrangements for the protection of human rights.

The second sub-theme allows us to discuss a number of current human rights challenges which in the longer or shorter term pose a threat to the stability of our Continent and our societies. This obviously includes the question of serious and massive violations, also in situations of conflict or crisis. In the past, this item would have been unthinkable as a topic on the agenda of a high-level meeting of the Council of Europe. Today, it is a necessary topic for discussion, for we should indeed draw lessons from our experiences in order to do better in the future. For my part, I have taken the unprecedented step of using the powers of investigation under Article 52 in respect of a single State Party in relation to the conflict in the Chechen Republic of the Russian Federation. The Council of Europe is for the time being the only international organisation

thereby guaranteeing an equivalent level of protection and even offering scope for further progress. And an additional very useful step would be, as already proposed by Finland, if the European Union were to consider accession to the European Convention on Human Rights.

which maintains a presence in the area. Our three experts have just begun their second six-month mandate. Their eyewitness reports furnish us with first-hand information and allow us to act and bring pressure on the competent authorities to identify and search for missing persons. The Council of Europe experts have also contributed to the re-establishment of the court system on the territory of the Chechen Republic. The population of this war-torn region depend on and encourage the Council of Europe to help normalise life in Chechnya.

I am pleased that the abolition of the death penalty, a clear priority for the Council of Europe, will also be on the agenda of this conference. Europe is now a death penalty-free zone, and this should also entail the abolition of the death penalty in time of war.

The Council of Europe has changed into a more political and operational organisation. One thing has not changed: the protection of human rights is and remains at the heart of its mission. This conference should give fresh impetus for political decisions and strengthen active human rights protection all over Europe. ★

Mr Lamberto Dini

Minister for Foreign Affairs of Italy

On behalf of the Italian Government, I should like first of all to welcome all the esteemed participants in the ministerial conference on human rights, which we have the pleasure of hosting here in Rome. We are here

also to commemorate the fiftieth anniversary of the European Convention on Human Rights in the city where it first saw the light of day.

This conference will also offer the opportunity to reaffirm and update the message of

peace and civilisation which the Council of Europe has helped to spread over fifty years of its activities.

On 5 May 1949, the Statute of the Council of Europe was signed in London. Thus was born a far-seeing workshop for ideas and content of a high ethical value, led by a vanguard of ten sovereign states committed to a process of political rapprochement, to the concept of putting national instruments to common use and creating an influence shared by all in the future.

At the time, the hopes raised by the signature of the Treaty of London were high, in particular for those who, with the horror of the second world war still fresh in their memory, saw the Consultative Assembly – which brought together, for the first time, parliamentary representatives of different European states – as the expression of the mutual democratic will of the people of the old Continent.

The Council of Europe made an essential contribution to the respect and protection of fundamental human rights.

I firmly believe in the important achievements in the field of codifying rights: the 1961 European Social Charter and its 1996 revision, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987, the Framework Convention for the Protection of National Minorities of 1995, and, especially, in the twelve protocols that have extended and enriched the Convention signed in Rome in 1950. But at the same time, I think also of the long work of the European Commission and Court of Human Rights in establishing the substantial case-law relating to the Convention.

Growing awareness

The very nature of the Council of Europe and the scope of its undertaking necessitate a profound and timely reflection on the way forward to ensure its correct functioning. I am thinking, for example, of the European Court of Human Rights, which finds itself today faced with an increasing number of potential applications from a population of some 800 million individuals, whose growing awareness of their rights can only increase this tendency.

Yet the road before us is still a long one. Every day we are made aware of serious and repeated violations of human rights, of even the most fundamental among them. In too many countries, too many people see their dignity despised and humiliated, often in the face of general indifference.

The Council of Europe has fulfilled, convincingly and consistently, its role as the conscientious watchdog of the Continent, so attracting the respect and attention of those countries that saw the Council as the guarantor and defender of fundamental freedoms.

Let us remind ourselves that the Council of Europe has changed from an organisation of twenty-three member states to one encompassing forty-one today. This is a proof that the totalitarian regimes of central and eastern Europe have not been able, among the peoples they have held subject to their authority, to quash their aspirations towards democracy, freedom and justice; nor to eradicate from their consciousness these same aspirations which ultimately manifested themselves both inevitably and irresistibly.

The 1993 Vienna Summit of Heads of State and Government confirmed the indivisible and interdependent nature of human rights. It is this facet of their character which has led the Council of Europe towards more effective protection systems, including also, with the adoption of the European Social Charter, economic and social rights. The charter has become a very useful instrument for reducing social tensions and guaranteeing decent living and working conditions.

This conference can be the venue and the occasion for assessing the progress already made and for defining the perspective of the Council of Europe's future action.

The outcome of our discussions will show, I am sure, the attention paid by the Council to social phenomena likely to worsen the situation, or to introduce difficulties or even danger threatening the harmonious development of our society.

On this point, the European Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance, which I had the honour to chair last October in Strasbourg, was a most successful experiment in collaboration between government delegations, specialised organs, independent experts and representatives of civil society; it constituted a unique event which gave the Council of Europe the opportunity to reaffirm its role as a source of ideas and initiatives in the search for new solutions adapted to the real world.

Once more, our Organisation and the countries that belong to it were able to give a lucid analysis of the principal ills that beset modern European society, drawing up a realistic account, without complacency or false modesty, of the serious difficulties which all western countries may have to face in the present socio-economic climate. In addition to the alarming resurgences of racist behaviour, the Strasbourg conference expressed concern, in particular, at the manifestations of xenophobia and intolerance directly related to the migration flows of recent years, which have drawn our attention to grave social, legal and humanitarian problems. On the basis of contemporary law and guarantees concerning fundamental freedoms, Europe must commit itself to the drawing up of new codes of conduct aimed at protecting the weakest in society, and thus allow us to strengthen the values of the solidarity of mankind and respect for peoples who, having grievously suffered in

wars, now aspire only to a better and fairer way of life.

And we must not forget, in our enumeration of the deprived members of society, those subjected to the most heinous and barbarous forms of exploitation. I am thinking of trafficking in women and children, and the victimisation of immigrants, who are often used as virtual slaves by organised crime in drug dealing and other illicit activities.

We must condemn such activities high and loud, without reserve or hesitation, to help bring about maximum collaboration between the countries of origin, of transit and of destination of these unfortunate masses. We must eliminate criminal activity and restore to these individuals the right to lead a decent life.

It is Europe's task, in the first place, to fight against such clandestine phenomena and to oppose the exploitation of these people's lack of hope, by means of agreements, on-the-spot training and development initiatives in the countries of origin. To those who have already fallen victim to these odious traffickers we should show our solidarity with their suffering and the abuse of their dignity.

That is why I believe that the Council of Europe can be legitimately proud to welcome into the great family of international legal instruments Protocol No. 12, covering non-discrimination. Appropriately, we shall be signing this tomorrow at the Campidoglio. It represents one of the most progressive international agreements in the fight against racism.

The abolition of the death penalty: a fixed criterion

To conclude, I should like to recall a theme which traditionally recurs in the thoughts and conduct of the Council of Europe: the abolition of the death penalty. Since Protocol No. 6 to the European Convention on Human Rights was adopted in 1983, the abolition of capital punishment has been a constant and common priority of our Organisation. The battle fought by the Council of Europe has become, in recent years, a fixed criterion in the evaluation of a prospective member state's ability to preserve the life of its citizens. On this subject, I should like to pay tribute to the parliamentary side of the Council of Europe. Without the zealous

action of the Parliamentary Assembly, it would never have been possible to attain our goal. This fight for fairness represents the latest and greatest in a long series of measures aimed at strengthening respect for human dignity and the fundamental rights of the individual.

This is why Italy, at the end of its six-month chairmanship, will present to the Committee of Ministers on 9 November a solemn declaration in favour of the creation of a Europe free from the death penalty.

Life is our most precious possession. Progress, social advances and economic devel-

opment are phenomena that influence the ordered march of society. The globalisation of the economy, of trade and of means of communication, the discoveries in the fields of science and technology, and even the evolution of human thought have all helped to revolutionise our habits – our way of learning, of working and of speaking. I believe we are making our way towards a new order of things.

Yet this constant advance towards the future, so exhilarating yet so confounding,

should not make us lose sight of what lies at the centre of this universe driven by dynamic events: humankind. A humankind with its hopes, utopias and rights – right to life, right to respect.

It is up to us first and foremost, fellow members of the Council of Europe, defenders of democratic values of liberty and pluralism everywhere, to make sure that these hopes, utopias and rights are not obscured and oppressed. ★

Lord Russell-Johnston

President of the Parliamentary Assembly of the Council of Europe

I have been repeatedly told by our hosts that I should not speak for longer than four minutes. It would be against my humble nature not to comply with this request, so you will perhaps forgive me if, in these circumstances, I leave out rhetoric and platitude. This gathering of ministers and the occasion we are celebrating are too important to be wasted on empty verbiage.

As we meet here in Rome to celebrate the fiftieth anniversary of the European Convention on Human Rights, more than 15 000 registered applications are pending before its Court. More than 700 letters are received every day and almost 200 telephone calls are taken from all over Europe.

These are not empty statistics, and should not be treated as such. Behind every application there is a human life, a story, sometimes plain and ordinary, but often tragic. But behind

every letter, every call and every visit to the Court's headquarters in Strasbourg, there is hope. Hope that grievances will be heard. Hope that wrongs will be made right. Hope that justice will be done.

It is this hope, and trust, of hundreds of millions of people living in Europe, from Grozny to Rome to the Isle of Skye, that should set our agenda for today. When we all leave for our capitals, let us not leave behind only empty declarations and speeches.

Our mechanism for the protection of human rights, unique in the whole world, needs a renewed commitment – political and financial – to continue to do what it was set up for and what the people in Europe expect it to do, that is deliver justice and protect the rights of Europe's citizens against the might of Europe's states.

Concrete acts

This is an expectation that cannot be fulfilled through diplomatic “shoulder clapping”, but only through concrete acts, which are:

- firstly, the Convention's and the Court's primacy in human rights questions in Europe cannot be endangered;
- secondly, additional money to meet the exponentially growing burden of applications must be made available;

- thirdly, the Court's decisions must be respected unconditionally and by all.

In conceiving and creating the Convention in the aftermath of the second world war, our predecessors showed great vision, resolve and political courage. Fifty years later, we have an opportunity to demonstrate that we too can act with the same resolve, vision and courage – not for our own glory, but for the ideals we believe

in. The ideals of justice and human rights. The
ideals that safeguard our freedom. ★

PRESENTATION OF THE TWO INTRODUCTORY REPORTS ON THE SUB- THEMES OF THE MINISTERIAL CONFERENCE

Mr Walter Schwimmer

Secretary General of the Council of Europe

It is my duty and honour to present to you, as a general introduction to the discussions of this conference, the two reports which I have prepared on the two sub-themes of this conference. I can reassure you that I will not read them out; they are in your file.

Let me just make the preliminary comment that it is rather exceptional for the Secretary General to act as rapporteur at a ministerial conference. In most cases, it is the governments of member states that prepare reports on the themes to be discussed. However, the Steering Committee for Human Rights preferred that I perform this task and I have accepted the invitation with pleasure. None the less, I should point out that such reports are intended to stimulate debate and decision-making, and the reports for this conference are no exception. For this reason, I have conceived my reports not so much as technical information documents describing ongoing work in the Council of Europe – even if they do contain some information of that kind – but more as critical and forward-looking papers identifying priority areas and proposals for the short and medium term. The structure of the reports mirrors that of the two draft resolutions which have been submitted for adoption by this conference. They cover a lot of ground and it is not possible here and now to go over all the issues raised.

This presentation will therefore be confined to highlighting just a few points made in the two written reports which I believe are central questions facing Europe, and the

Council of Europe, in the field of human rights today. Of course, the fact that a specific issue is not mentioned in my presentation today does not mean that it is of lesser importance. I therefore refer to my written reports for a number of concrete proposals which I will not repeat orally.

I should like to begin by stating a simple truth: human rights protection begins and ends at home. It may be surprising to hear the Secretary General of an international organisation stress the responsibility of national authorities to protect and promote human rights inside their own legal systems. To avoid any misunderstandings, let me stress straight away that this does not detract from the essential role which the Council of Europe and its human rights protection systems have to play. However, I believe that this phrase reflects very well the experience with human rights protection which the Council of Europe has built up over the last fifty years. It also sums up, and allows us to analyse, the main challenges facing us in today's Europe.

First of all, human rights can only be truly protected at home if that home is stable and democratic. Conversely, there can be no question of a stable democracy if the human rights of all or part of the population are flouted. Putting the house in order is certainly first and foremost the responsibility of governments of individual member states, but it is not theirs alone, as the very existence of the Council of Europe demonstrates. Europe has, unfortunately, been confronted with pockets of insta-

bility and even outright crisis and conflict situations in which human rights have been violated on a massive scale: Bosnia and Herzegovina, Kosovo and Chechnya, to name but a few. In the face of such situations, there is a need for rapid and effective international responses. For the Council of Europe, there are lessons to be learnt from our experience with the Chechen conflict. We need to remain firm in our condemnation of such massive and serious violations, but at the same time, there is a need to improve our response capacity. We must bear in mind that our experience and role in such situations is relatively recent, and I believe that the time has come to create and fund a rapid response capacity in the Secretariat in the form of a human rights task force and an intervention fund. These could play a vital role in helping the state concerned to restore quickly a minimum level of respect for human rights. In addition, our political response capacity needs to be improved.

If one takes seriously our statutory mission of achieving a greater unity in Europe through the maintenance of human rights, we must, where necessary, not shy away from developing and implementing new forms of constructive pressure whenever a country does not live up to the basic duties and principles inherent in membership of this Organisation. I feel this requires urgent attention from the Committee of Ministers and the Parliamentary Assembly; for realism tells us that new challenges will undoubtedly arise in the future.

The recent events in the former Yugoslavia provide the most eloquent illustration of the fact that human rights begin at home. We must pay tribute to the courage and democratic spirit of the people of Yugoslavia who have themselves shrugged off the yoke of totalitarian dictatorship and chosen the path of democracy, rule of law and respect for human rights, thereby following in the steps of the neighbouring countries. The role of the Council of Europe must be to encourage, reinforce and assist this transition in every way we can, even and especially now in the fragile early stages of this process. As is the case with Bosnia and Herzegovina, the clear perspective must be to bring the country into the stabilising European community of standards and values which the Council of Europe constitutes, whilst remain-

ing vigilant that the necessary progress is indeed made.

However, the importance of respect for human rights for stable and cohesive societies at home is not only illustrated by such spectacular examples. There are worrying signals of increasing racism and other forms of discrimination and intolerance throughout Europe. These were recognised in the major European Conference organised in Strasbourg only three weeks ago as a European contribution to next year's world conference against racism. In the longer term, these phenomena pose a serious threat to stability and cohesion because they are inherently divisive factors for each society. I believe this conference should express support for the various institutions and activities of the Council of Europe which deal with these and related problems: the European Commission against Racism and Intolerance, but also the pioneering Framework Convention for the Protection of National Minorities and its Advisory Committee.

I regard it as a sign of the times that Protocol No. 12 on non-discrimination has been added to the European Convention on Human Rights. This will give the Court a solid legal basis for dealing with discrimination complaints, so far not covered by the Convention, and thus enhance further the stabilising and unifying role of the Convention system on our Continent. The protocol will be signed by many member states tomorrow and I trust that others will soon follow suit.

Social rights, too, are important for stability. Too often, the protection of social rights is set apart as a less important area of human rights protection. There is thus a wide gap between this practice and the officially proclaimed theory that all human rights are indivisible. Unfortunately, invisibility of indivisibility seems to be current practice. Regarding social rights as a lesser category of human rights – if they are considered to be human rights at all – is first of all plainly wrong; if one thinks of persistent poverty, the situation of many elderly people, child abuse and so on, one must admit that some of the gravest affronts to human dignity lie precisely in the social sphere. But relativisation of these rights is also dangerous for it overlooks the fact that these rights are

essential for social cohesion and peace, and thus for stability. In my written report on sub-theme I, I therefore plead for a rethinking of our traditional categorisations of human rights. I feel obliged to note here that the draft texts submitted for adoption by this conference pay only limited attention to the importance of social rights in our societies.

Human rights protection begins at home; it requires much more than a stable and democratic system. It presupposes the availability and accessibility of effective legal procedures before independent courts capable of offering legal redress within a “reasonable time”, to use the words of Article 6 of the Convention. It presupposes the existence of a whole range of countervailing powers and watchdogs that help prevent or redress any abuses of power, such as ombudsmen and national human rights institutions, and a vibrant civil society with critical and independent media and NGOs. It also presupposes the existence of a democratic human rights culture in all branches of government, not least in those involved in law enforcement.

In most of these areas, Europe as a whole has made significant progress over the last fifty years and the Council of Europe has made its own contribution thereto, by setting standards and providing concrete assistance to member states. However, a lot remains to be done, for example as concerns the full integration of human rights standards and values in our educational and professional training systems.

Another area where further encouragement would seem necessary is transparency of government. Active and passive transparency are hallmarks of open, democratic and accountable government; they offer important safeguards against abuse of power, corruption and other evils. In this age of the “information society”, it appears incongruous that not all member states recognise a right of access for individuals to information held by public authorities. However, legislation is being prepared in several countries and I believe that it should be possible, in the next few years, to transform the basic principles which are currently being drawn up in the Council of Europe into a binding European convention on access to official information. I invite this ministerial

conference to recognise this as a medium-term objective.

Human rights protection begins and ends at home; it is so to speak in the middle, in between the beginning and the end, that international protection of human rights steps in and it is here that our human rights protection systems come into play. In particular, where human rights protection machinery at home fails to prevent or remedy an alleged human rights violation, individuals have the possibility to submit their case to the European Court of Human Rights.

We will be commemorating the fiftieth anniversary of the Convention tomorrow and, of course, this is a proper occasion to pay tribute to the great achievements and success of this unique bill of rights. This conference should, however, also look to the challenges that lie ahead.

Here, I want to be frank with you: I see a few key areas that call for action. The first is the workload of the European Court of Human Rights. As we speak, the Court has more than 15 000 individual applications pending before it. The reform brought about by Protocol No. 11 – establishment of a full-time Court in place of the former two-tier system of Commission and Court – is not sufficient to cope with this massive influx of cases. I know the Court is working hard to rationalise further its working methods – President Wildhaber will address this issue in a moment – but it seems totally unrealistic to expect that this will lead to a capacity increase on a scale commensurate with the number of cases brought to Strasbourg. So, what should be done?

First, it is necessary to come to an understanding that the budgetary requirements of the Court are, in the short term at least, outside the control of the Secretariat and of the Court itself, as they depend on the number of individual applications. In this vein, I asked the Committee of Ministers last January to examine the role and operation of the Court with a view to proposing a method of financing that does not penalise the Council of Europe’s other activities in the medium term. For example, the Committee of Ministers could decide to treat the Court’s budget as a “separate basket” within the Ordinary Budget, or alternatively,

and after detailed scrutiny of requests received, include the additional budgetary requirements of the Court in a zero real growth coefficient of adjustment of the Ordinary Budget. In one way or the other, the Court should be provided with the necessary financial and human resources.

A second measure is a further reform of the Convention system. This raises a number of fundamental questions, some of which are mentioned in my written report on sub-theme I. Several ideas have been floated already, and while it is premature for this conference to indicate the precise direction that such a reform should take, I do believe that this conference should launch an urgent in-depth study of the various options. However, it is already possible to identify one main parameter for any future reform: the principle of subsidiarity must be firmly maintained if not reinforced. This dictates that, in the first instance, it is the job of the national authorities, in particular the courts, to protect the rights and freedoms of the Convention. The Strasbourg system should only operate on a subsidiary basis, namely when the national legal system has failed to provide adequate protection. We should resist any temptation to assign to the Strasbourg Court a role which should, and can only, be fulfilled by national courts and other authorities. The Convention system rests on the assumption that there are effective protection systems in place at the national level. Once again, this means that human rights protection begins at home.

Therefore, a third category of measures concerns this national level. I would stress that such measures are essential not only to reduce the flow of cases coming to Strasbourg, but, naturally, first and foremost, to improve human rights protection within the national legal systems. There is still much to be done to ensure that the courts and other public authorities are fully aware of the Strasbourg case-law, for example through training and dissemination and translation of judgments. How many contracting states have proper guarantees in place to ensure that draft legislation is systematically screened on its compatibility with the Convention? National human rights institutions and government agents can play a pivotal role in these respects.

There is a second main aspect of the Convention system that calls for attention: the execution of judgments of the Court. This is fundamental to the credibility and effectiveness of the Convention system. There is so far good compliance with judgments, but I must draw attention to a worrying tendency, at least in some cases, to politicise the Committee of Ministers' role of supervising the execution of judgments. This is wholly alien to the judicial nature of the Convention procedure.

It is a fundamental requirement of the rule of law that all judgments must be executed, even if there is a political context to the case at hand. This is as true in Strasbourg as it is at the national level. Unfortunately, it would seem necessary to start thinking about possible responses, political and other, to late or even non-execution of a judgment by a contracting state. In this respect, I welcome the increased attention which the Parliamentary Assembly has paid in recent years to the question of the execution of judgments. More generally, I would stress that this supervisory role of the Committee of Ministers places it in an ideal position to note the existence of certain structural problems which individual cases may exemplify. Excessive length of proceedings in criminal and civil cases, torture and other ill-treatment during police interrogations, and non-execution of national judgments are obvious examples of such problems. It is of course in the first place for national governments and parliaments to solve them, but the Council of Europe can assist in finding solutions through a comprehensive effort. The Committee of Ministers can see to it that such issues are also taken up in our intergovernmental work, assistance programmes can be devised for the countries concerned and the Commissioner for Human Rights may also play a useful role here.

Human rights protection ends at home. Our European human rights standards, the judgments rendered by the Court, the recommendations made by our specific bodies for the prevention of torture, for the protection of social rights, for the protection of national minorities or in the field of racism and intolerance, etc. – all of these can only, and must be, implemented by the member states at the national level.

I am convinced that both the member states and the Council of Europe should give more attention to the implementation of standards. A moment ago, I stressed the importance of the execution of judgments, but the same is true for country-specific recommendations produced by our other human rights mechanisms. We must acknowledge that there are occasions when member states, while demonstrating the political will to implement these recommendations, sometimes encounter genuine difficulties of different kinds (financial, infrastructural or otherwise) in giving effect to them.

An example is the improvement of prison conditions following recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Member states turn to the Council of Europe for assistance, and in many cases we unfortunately do not have the means to respond favourably to such requests.

To answer this type of request I have obtained authorisation from the Committee of Ministers to create a new head in the Ordinary Budget called "Intervention Fund". Unfortunately, at the moment, this is an empty box that needs to be filled if we want to mean business in this or in other important areas of our activities.

Before I conclude, allow me to make a last observation in relation to the European Convention on Human Rights. It concerns its place in the wider European institutional architecture. In a few weeks' time, the European Union intends to proclaim officially its Charter of Fundamental Rights. I congratulate the Union on this important achievement. Of course, we are particularly pleased that the charter establishes a direct link with the European Convention on Human Rights as far as the interpretation of the charter is concerned. It is vital that the process of European construction proceed without construction errors, in order to create

a Europe without dividing lines. Accession of the Union to the Convention, as advocated by many, would be an important step in this respect and allow for impartial control of EU institutions by an independent court, similar to the way national courts are subjected to control by the Strasbourg Court. I hope that the forthcoming intergovernmental conference will show the political vision and enable an agreement to be concluded to make such accession legally possible. Within the Council of Europe, a preliminary examination could be carried out in the meantime in order to look at the amendments that could be envisaged to the Convention in order to remove legal obstacles to accession. I therefore solemnly call upon the European Union to accede to the European Convention on Human Rights.

In this new century, the Council of Europe has an important role to play in encouraging and ensuring that human rights are effectively protected at home. This brief *tour d'horizon* has, I hope, served to highlight some key challenges facing us in the field of human rights. Whether they concern our response to situations of serious and massive human rights violations, the immediate needs of the Court and the future reform of the Convention system or the need for an increased focus on implementation of standards, finding solutions to all these issues requires the political will of the governments of our member states. In particular, it is essential that the Committee of Ministers fully assumes its role as the political guardian of our standards and mechanisms in the field of human rights, alongside the Parliamentary Assembly. It has been said that the Council of Europe is about human rights or it is about nothing. I can only agree, and therefore ask our member states to give priority consideration to this area, which is at the heart of the community of values that the Council of Europe constitutes. ★