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Council of Europe: Ensuring the long-term effectiveness of the European Court of Human Rights – NGO Comments on the Group of Wise Persons' Report

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We, the undersigned NGOs, submit the following comments on the proposals aiming to ensure the long-term effectiveness of the European Court of Human Rights presented by the Group of Wise Persons to the Council of Europe's Committee of Ministers in its report of 15 November 2006¹.

I. Introduction

1. We believe that the European Court of Human Rights (hereafter “the Court”) is a “pillar” in the European system for the protection of human rights.
2. The Court has ensured that applicants have obtained redress for violations of human rights when states have failed to provide an appropriate remedy. In doing so, it has played a crucial role in holding states accountable for these violations. Strengthened by the Committee of Ministers' supervision process, the implementation of the Court's judgments have led to human-rights-compliant changes in the law and practice in states which are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter “the ECHR”). The judgments of the Court have provided essential guidance to states of the Council of Europe and to other countries, on the steps necessary to respect and secure fundamental human rights. In the words of the

¹ The Report of the Group of Wise Persons, 15 November 2006 (CM 2006)203. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1063779&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>, and attached hereto as **Annex A**.

Group of Wise Persons², the Court “lay[s] down common principles and standards relating to human rights and determines the minimum level of protection which states must observe.”³

3. The right of individuals (and organizations) to submit an application directly to the European Court of Human Rights lies at the heart of the European regional system for the protection of human rights, and is part of the fundamental philosophy of the ECHR.⁴ We consider that its essence is the right of individuals to receive a binding determination from the European Court of Human Rights as to whether the facts presented in admissible cases constitute a violation of the rights enumerated in the ECHR. We welcome the Group of Wise Persons' intention to ensure that the reforms it recommends do not affect the substance of the right of individual application.
4. We recognize that the enormous number of individual applications which are being lodged with the Court, coupled with the backlog of cases pending before it, in the context of the Court's current resources, jeopardize its functioning and consequently the right of individual application.
5. While addressing these issues was precisely the objective of the package of reforms adopted by the Council of Europe's Committee of Ministers in May 2004, including a series of recommendations of the Committee of Ministers to member states and the adoption of Protocol 14 to the ECHR, these measures have yet to be implemented. Furthermore, it is clear that more is needed.
6. We welcome the continuing commitment of the member states of the Council of Europe to ensure the long-term effectiveness of the European Court of Human Rights. This commitment was evidenced, among other things, by the decision taken by the Heads of State and Government gathered at the 3rd Summit of the Council of Europe to establish a Group of Wise Persons to consider this issue.⁵
7. We urge the Committee of Ministers to clarify, as a matter of urgency, the impact on the reform process of the recent negative vote by the Russian Duma on the ratification of Protocol 14 to the ECHR.
8. We consider it important that the Council of Europe carefully and transparently evaluate the impact on the Court of any reforms over a reasonable period of time, including those

² The Group of Wise Persons is mandated by the Council of Europe to make proposals aimed at ensuring the long-term effectiveness of the Court.

³ Paragraph 24 of the Report of the Group of Wise Persons, November 2006.

⁴ See Warsaw Declaration at para 2 and Action Plan at para I(1) available at http://www.coe.int/t/dcr/summit/20050517_decl_varsovie_en.asp; see also para 23 of the Report of the Group of Wise Persons, 15 November 2006.

⁵ The Mandate and Composition of the Group of Wise Persons is set out in the Decision on item 1.5 of the Committee of Ministers Deputies of 14 September 2005 and in paragraphs 1 and 3 of the Group of Wise Persons' Report of 15 November 2006.

related to Protocol 14 if it enters into force. We urge the member states of the Council of Europe to ensure sufficient financial and expert resources to undertake such an evaluation.

9. We consider that any reform should be designed to meet the following seven objectives:
- I. Better implementation of the ECHR at national level, thereby reducing the need to apply to the Court for redress;
 - II. Preservation of the fundamental right of individual petition (the essence of which is the right of individuals to receive a binding determination on admissible cases from the European Court of Human Rights on whether the facts presented constitute a violation of rights secured in the ECHR);
 - III. Efficient, fair, consistent, transparent and effective screening of applications received, to weed out the very high proportion (around 90%) of applications that are inadmissible under the current criteria;⁶
 - IV. The expeditious rendering of judgments, particular in cases that raise repetitive issues concerning violations of the ECHR where the Court's case law is clear—which represent some 60% of the Court's judgments on the merits—and those that arise from systemic problems;
 - V. Effective execution of the Court's judgments by Council of Europe member states, including appropriate follow-up by the Committee of Ministers where individual member states are slow to act or respond inadequately to Court judgments;
 - VI. VI. Adequate financial and human resources for the Court, without drawing on the budgets of other Council of Europe human rights monitoring mechanisms and bodies;
 - VII. VII. Transparent expert monitoring and assessment of the impact any reforms agreed on the workload of the Court, and their effect on the right of individual application.

The following contains our assessment of the proposals in the Report of the Group of Wise Persons, in light of those objectives. It also includes additional recommendations.

⁶ Paragraph 27 of the Report of the Group of Wise Persons, November 2006.

II. Steps at the National Level

Implementation of Committee of Ministers Recommendations

10. The primary responsibility for guaranteeing respect for the rights enshrined in the ECHR lies with the states parties themselves. This includes the obligation to ensure the availability of effective and accessible remedies.
11. We remain convinced that achieving greater respect for the Convention at the national level, would significantly diminish the Court's overall case load by reducing the need for people to seek redress from the Court for violations of their rights. We agree with the assessment of the Group of Wise Persons that "the remedies available at national level must be effective and well known..."⁷
12. We consider that 'length of proceedings' cases, which account for some 25% of the judgments issued by the Court in 2005, result from systemic deficiencies in the states concerned. 'Length of proceedings' cases involve the fundamental right of access to justice. Cases about excessive length of pre-trial detention, which also comprise a significant proportion of the Court's judgments on the merits, touch directly on the right to liberty and the right of detained persons to trial within a reasonable time or release pending trial. Ensuring the prompt and effective implementation of such judgments should be a major priority for the Committee of Ministers. We consider that the Committee of Ministers should require the states concerned to develop and implement Action Plans which address both the issue of compensation and the necessary structural changes, without undue delay.
13. Since States are already obligated under the ECHR, (in particular under Articles 5(5), 6(1) and 13), to ensure effective, accessible domestic remedies in the event of such violations, we question whether an additional ECHR provision, as proposed by the Group of Wise Persons⁸ is necessary, or would result in states taking the measures necessary to address underlying structural problems. We consider, however, that the Committee of Ministers should bring concerted pressure to bear on states found regularly to violate these rights to take all necessary measures to implement these provisions of the Convention and Recommendation 2004(6).
14. We agree that governments have the responsibility to translate, disseminate and publish in appropriate, widely read and accessible journals, the Court's judgments and ensure that "national judicial and administrative institutions should be able to have access to the case-law of the Court in their respective languages."⁹
15. Accordingly, we regret the fact that, despite repeated commitments to do so, the majority of Council of Europe member states have yet to implement fully the Recommendations

⁷ Paragraph 16 of the Report of the Group of Wise Persons, 15 November 2006.

⁸ Paragraph 93 of the Report of the Group of Wise Persons, 15 November 2006.

⁹ Paragraph 72 of the Report of the Group of Wise Persons, 15 November 2006.

adopted in the course of the reform discussions which began in 2000, which aim at ensuring better implementation of the ECHR at national level, including effective and accessible domestic remedies.¹⁰ We urge each Council of Europe member state to take all necessary measures to implement these recommendations rapidly. To that end, we recommend that each member state analyse its laws and practice in the light of the Recommendations and that they each create and implement an action plan to fill lacunae between state law and practice and the elements set out in each of the five Recommendations, without further delay.

Ombudspersons and National Institutions for the Promotion and Protection of Human Rights

16. We agree with the Group of Wise Persons that ombudspersons and national institutions for the promotion and protection of human rights have the potential to play a significant role in providing information about and promoting human rights, including those secured under the ECHR.¹¹ We consider, however, that in many member states more must be done to ensure that these institutions meet the minimum guidelines set out in the Paris Principles and in particular, are truly independent, appropriately mandated, staffed with experts and adequately resourced. We welcome the work of the Council of Europe's Commissioner for Human Rights in cooperating with, and facilitating, the activities of national human rights institutions and national and regional ombudspersons.

Council of Europe Information Offices¹²

17. We agree with the Group of Wise Persons that Council of Europe Information Offices located in member states could play an important role in informing people about the ECHR and the case-law of the Court, including that related to admissibility. This might

¹⁰ The relevant Recommendations of the Committee of Ministers are: Recommendations R(2000)2 of the Committee of Ministers to Member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights; REC(2002)13 of the Committee of Ministers to Member States on the publication and dissemination in the Member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights; REC(2004)4 of the Committee of Ministers to Member States on the European Convention on Human Rights in university education and professional training; REC(2004)5 of the Committee of Ministers to Member States on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights; REC(2004)6 of the Committee of Ministers to Member States on the improvement of domestic remedies.

¹¹ Paragraphs 20, 111-113 of the Report of the Group of Wise Persons, 15 November 2006.

¹² Paragraph 19 of the Report of the Group of Wise Persons, 15 November 2006.

help to discourage individuals from submitting applications unnecessarily or prematurely, or without exhausting domestic remedies. (In this regard, we urge the Council of Europe to make public information about the Information Office in Warsaw, Poland, including the scope, methods and findings of any assessment into the Warsaw office pilot project.)

18. However we are concerned at the Group's suggestion that the personnel in these offices might also *advise* individuals about "the existing domestic and other non-judicial-remedies". Were such offices to offer advice, there is a danger of Council of Europe personnel influencing, or being seen to influence, individuals' decisions whether or not to lodge claims. We do not consider that it is appropriate for Council of Europe personnel to provide such advice, however informal the arrangement; they would not be in a position to act as independent, impartial advisers (and indeed, conflicts of interest may arise). There is also a risk that if an applicant seeks redress with a non-judicial remedy identified by the Council of Europe Information Office, they may find that any subsequent application to the Court is time-barred, under Article 35(1) of the ECHR.¹³ We consider instead that such an advisory function should be played by independent lawyers and NGOs with relevant expertise. We therefore recommend that national authorities should be urged to provide adequate resources to lawyers and NGOs in order for them to assess and provide initial advice to would-be applicants to the Court. This should include the provision of free legal aid by the national authorities.

III. Reform of the European Court of Human Rights

19. We warmly welcome the fact that the Group of Wise Persons agreed not to pursue proposals to give the Court a discretionary power to decide whether or not to take up cases, a proposal rejected during the negotiations that led to the adoption of Protocol 14 to the ECHR. We endorse the Group of Wise Persons' conclusion that such a power would be "alien to the philosophy of the European human rights protection system" and would undermine the right of individual petition. tend to politicize the system and risk inconsistency, if not arbitrariness, in decision making.¹⁴ We also agree with their assessment that it "would be perceived as a lowering of human rights protection."¹⁵
20. We also welcome the Group of Wise Persons' rejection of the proposal to establish regional courts of first instance. We concur with the views expressed that such courts would, among other things, raise "the risk of diverging standards and case law, whereas

¹³ *Devlin v UK* (App. No. 29545/95); *Ryabykh v Russia* (App. No. 52854/99).

¹⁴ Paragraph 42 of the Report of the Group of Wise Persons, November 2006, 2006 (CM 2006)88. Available at:

<https://wcd.coe.int/ViewDoc.jsp?id=998185&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

¹⁵ Paragraph 33 of the Interim Report of the Group of Wise Persons, May 2006.

the essence of the Convention system is that uniform and coherent standards, collectively set and enforced should obtain throughout contracting states.”¹⁶

Screening Body

21. We share the assessment of the Group of Wise Persons that the exponential increase in the number of individual applications, coupled with the backlog of cases pending before the Court, jeopardize its functioning and consequently the right of individual application.
22. It is widely agreed that the main challenges facing the Court are: screening quickly and effectively the very high proportion (90% or more) of applications received which are inadmissible under the current criteria, and handling in an effective and efficient manner the more than 60% of admissible applications that raise issues about which the Court's case law is clear, (known as “repetitive cases”).
23. We are concerned at the statement contained in the Group of Wise Persons' Report that the Court should be “relieved” of manifestly inadmissible applications or repetitive cases which “distract” it from its essential role (paragraph 35).
24. The process of dealing with manifestly inadmissible cases is clearly burdensome. However, it is important to acknowledge that there is no way to prevent people from sending applications to the court. There is also no way around the fact that each application received by the Court will have to be separately thoroughly and effectively screened against the admissibility criteria. This takes time and resources and, arguably, would take more time and require even more resources if the Court were to apply the additional and complex admissibility criteria introduced into Article 35 of the ECHR by Protocol 14.¹⁷ (We consider that, if it enters into force, the impact of the application of the new admissibility criteria set out in Protocol 14 on both human rights and the Court's productivity will need to be transparently assessed and monitored.)
25. As to repetitive cases – which make up a large part of the judgements on the merits issued by the Court – rather than being a “distraction”, on the contrary, they are almost invariably indicative of a systemic problem within a state that needs to be addressed. If

¹⁶ Paragraph 83 of the report of the Evaluation Group on the European Court of Human Rights, September 2001; paragraph 32 of the Interim Report of the Group of Wise Persons, May 2006; Joint Response to Proposals to Ensure the Future Effectiveness of the European Court of Human Rights, of 28 March 2003; paragraph 41 of the Report of the Group of Wise Persons, 15 November 2006.

¹⁷ We continue to consider that the changes to the admissibility criteria set out in Protocol 14 to the ECHR, arrived at as a result of a last-minute compromise, were an unnecessary curtailment of the right of individual application, and were inimical to the aim of the last reform process because application of the new admissibility criteria is likely to be more time consuming and complex for the Registry and Court. We welcome Group of Wise Person's intent to ensure that reforms it recommends do not affect the substance of the right of individual application.

Friendly Settlements (to which both parties to the case consent) are not reached in these cases, measures must be taken to ensure that the Court can issue judgments on such cases within a reasonable time, and that these judgments are implemented, in a manner that ensures not only redress for the individual concerned, but also the resolution of any systemic problems from which they arise. With regard to repetitive cases, we believe that the expedited process for handling manifestly well-founded cases (by a Committee of three judges) set out in Article 8 of Protocol 14, which amends Article 28 of the ECHR, is one way to ensure their speedier resolution. If it is implemented, the effectiveness of this process will need to be transparently monitored and assessed.

26. We concur with the suggestion of the Group of Wise Persons that the effective and efficient screening of individual applications received by the court could be facilitated through the creation of a separate screening body, referred to as a Judicial Committee, within the Court. We welcome the recommendations that this group of judges, to be elected by the Parliamentary Assembly of the Council of Europe, would be independent, of high moral character and possess the requisite qualifications for appointment to judicial office and that the composition of this committee would be gender and geographically-balanced.¹⁸ We also welcome the safeguard proposed by the Group of Wise Persons that would ensure that the Court could assume jurisdiction to review any decision of such a screening body, on its own motion.¹⁹ We look forward with interest to further examination of the proposal to create a Judicial Committee to perform this task.

Application Forms

27. At present it is well established that a case can be introduced by letter, without using the Court's application form.²⁰ When a letter is used to initiate an application, the applicant is then asked to submit a completed application form, usually within 6 weeks.
28. We welcome the fact that the Court's application form is soon to be made available in electronic form.²¹ Improving access for potential applicants (and their representatives) to the application form in this way is likely to increase the proportion of applications submitted within the appropriate time limit which incorporate all the requisite information. We recommend however, that measures be taken to ensure that the application form is made available not only in all the official languages of Council of Europe member states but also in other major languages used by individuals living in Council of Europe member states.

¹⁸ Paragraphs 53 and 54 of the Report of the Group of Wise Persons, 15 November 2006.

¹⁹ Paragraph 64 of the Report of the Group of Wise Persons, 15 November 2006.

²⁰ See, *Practice Direction – Institution of Proceedings*, Directions 3, 4 & 7, available at: <http://www.echr.coe.int/NR/ronlyres/9F0B9646-3806-4814-A7CF-345304DCCDB2/0/PracticeDirectionsInstitutionOfProceedingsMarch2005.pdf>.

²¹ See Paragraph 60 of the Report of the Group of Wise Persons, 15 November 2006.

29. We would however oppose any recommendation which would impose a requirement that all the requisite information be submitted only *on the Court's application form*. Instead, we strongly urge that the Court should retain discretion on this point (as recommended by Lord Woolf²²). We consider that a requirement that applications be lodged on the relevant form may bar effective access to the Court for some of the most vulnerable individuals. Even with the important development of the application form becoming available online, some people will find it difficult or impossible to access to the form. This may be because of a number of factors, for example: lack of access to the internet, including for those in detention, or the inability to speak a European language.

Pilot Judgments²³

30. We agree with the Group of Wise Persons' analysis that the Court's development of a "pilot judgment" procedure is significant. It would apply to cases disclosing the existence within a state of a shortcoming which has resulted, or is likely to result, in the widespread violation of a human right guaranteed under the ECHR, and which may give rise to a number of well-founded applications being filed with the Court. We note that the Group of Wise Persons encourages the Court to use this procedure "as far as possible in future".
31. We welcome Rule 4 of Rules of the Committee of Ministers for the supervision of the execution of Judgments and the Terms of Friendly Settlements, adopted on 10 May 2006.²⁴ This rule requires the Committee of Ministers to prioritize the supervision of the execution of judgments where the Court has identified a systemic problem, in a manner which is not to the detriment of other priority cases, notably those where the violation established has caused grave consequences for the injured party. We consider that this will facilitate the rapid and effective implementation of such judgments. The rule should take into account the effects of the suspension of proceedings in similar cases pending before the Court.

²² *Review of the Working Methods of the European Court of Human Rights*, The Right Honourable Lord Woolf, December 2005. "The Court could, if it considered that this was necessary in the interests of justice, suspend time on receipt of the initial correspondence, and pending receipt of the properly completed application form. Such an extension would be as a matter of grace." (p. 22). Lord Woolf was invited by the Secretary General of the Council of Europe and the President of the European Court of Human Rights to make recommendations on steps that could be taken by the European Court of Human Rights to deal effectively and efficiently with its current and projected caseload.

²³ See further: *NGO Comments on the Group of Wise Persons' Interim Report – Further Observations on the Enforcement of European Court Judgments and Just satisfaction*, European Human Rights Advocacy Centre, Interights and the AIRE Centre, July 28, 2006.

²⁴ CM/Del/Dec(2006)963/4.1b, CM(2006)39 Addendum, available at <https://wed.coe.int/ViewDoc.jsp?id=999007&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

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32. Because the suspension of the cases of similarly situated applicants can prejudice those applicants, we consider that it will be necessary for the Committee of Ministers not only to ensure the rapid execution of “pilot judgments”, but also to take all possible measures to guarantee that the manner of implementation genuinely affords an effective remedy for similarly situated persons. In considering the effectiveness of the remedy, the state concerned and the Committee of Ministers should examine not only whether the measures proposed afford just compensation, but also whether such measures effectively address the systemic problem. In length of proceedings cases, for example this would likely include not only providing financial compensation to those whose rights have been violated *but also* include reviewing domestic structures for the administration of justice or enhancing judicial capacity and resources.
33. We welcome the fact that the Group of Wise Persons has recommended that time limits should be laid down, to be supervised by the Court, to ensure that “victims who have already applied to the Court, [whose applications remain “frozen” while the pilot case is heard and the resulting judgment implemented] do not have to wait indefinitely for just satisfaction”.²⁵
34. We would go further than the Group of Wise Persons’ recommendations on “pilot judgments.” Because the procedure is in its earliest stages, we strongly recommend that the Council of Europe should carry out comprehensive monitoring on the adequacy and timeliness of compliance with “pilot judgments.” It should include consideration of the steps taken by the Committee of Ministers under its “priority supervision”²⁶ and those taken by the respondent state, as well as the impact of such judgments.
35. The monitoring process should seek to answer the following questions:
- In what circumstances will the Court issue a “pilot judgment”?
 - What steps can be taken by a respondent state to implement a “pilot judgment”?
 - To what extent has a respondent state introduced measures that effectively address the systemic problem, as well as providing a remedy for the applicant?
 - What is the effect on similarly situated persons who have already lodged applications with the Court?
 - Within the domestic arena, what obstacles exist which may hamper effective implementation?
 - What measures can be taken by the Committee of Ministers to encourage or facilitate implementation of “pilot judgments”?
 - What assistance can be provided by other Council of Europe bodies, such as the Council of Europe’s Commissioner for Human Rights and the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE)?

²⁵ Paragraph 105 of the Report of the Group of Wise Persons, 15 November 2006.

²⁶ Rule 4 of the Rules of the Committee of Ministers for the supervision of the execution of Judgments and the Terms of Friendly Settlements, adopted on 10 May 2006.

- What are the appropriate time limits for implementing “pilot judgments”?

Awards of Just Satisfaction

36. We oppose the proposal of the Group of Wise Persons to refer decisions on awards of compensation back to the state concerned.²⁷
37. We consider that this approach:
- (a) increases the likelihood of further and lengthy delay in the determination of compensation decisions. This would be particularly regrettable given that the individuals effected would already have had to wait a number of years for a judgment acknowledging a violation of their human rights;
 - (b) increases the risk of sharply differing standards being applied to awards of just satisfaction in different Council of Europe member states; and
 - (c) potentially places an additional monetary burden on victims of violations of the ECHR, who might be required to pay filing fees and lawyers' fees, as well as other costs incurred in such proceedings. We believe that it would inappropriate to ask a successful applicant, in respect of whom the Court has established a violation of the Convention, to bear any further expenses in determining the amount of compensation for violations committed by the state concerned.
38. We also note that implementation of this proposal would require each member state to adopt the necessary laws and procedures which would grant national courts jurisdiction to consider such cases. The information provided to date by member states related to the implementation of Recommendation (2002) 2 indicates, that not all member states have procedures for the reopening or re-examination of all cases (civil and criminal), even following a judgment of the Court.²⁸
39. We remain, however, strongly supportive of the proposal made by Lord Woolf to establish a just satisfaction unit within the Court's Registry which would carry out the task of assessing just satisfaction claims.²⁹ We believe that in this way, the Court would be able to rapidly develop the expertise to deal with such claims in an expeditious and logically consistent manner.

²⁷ Paragraph 96 of the Report of the Group of Wise Persons, 15 November 2006.

²⁸ See CDDH (2006) 008 at pages 13-14.

²⁹ Review of the Working Methods of the European Court of Human Rights, December 2005, at page 40. This report is available by a link on the Court's web site <http://www.echr.coe.int/ECHR/>

Advisory Opinions

40. We note the Group of Wise Persons' proposal to empower the Court to give Advisory Opinions at the request of national courts.³⁰ We consider that this has the potential to assist national courts in ensuring better implementation of the ECHR at the national level and reducing the number of applications submitted to the Court on the issue concerned. While our commentary on the Group of Wise Persons' Interim Report endorsed the proposal, on further reflection we consider that the concept raises a number of important issues that require its further elaboration and development. First, it is currently unclear in what circumstances an Advisory Opinion could be sought. Second, we suggest that the questions posed by the referring court must be sufficiently precise to ensure that the process of giving an Advisory Opinion is meaningful and consistent with the overall approach of the Court. Third, it is vital that would-be applicants would be able to participate effectively in the process of seeking an Advisory Opinion. We would therefore propose that legal aid should be available to would-be applicants whose cases are submitted to the Court for such an Opinion. Fourth, we also consider that it would be necessary to ensure that third parties are allowed to intervene in such cases, whether or not they had previously intervened in the domestic proceedings. Fifth, we would recommend that an Advisory Opinion should be binding as to the interpretation of the Convention on all member states. Otherwise there is a substantial risk that member states might choose not to follow the Court's opinion and thereby undermine its authority. Finally, we would be concerned if the new admissibility criteria set out in Protocol 14 to the ECHR were to be applied to any applications arising following a national court's receipt of such an Advisory Opinion; we would consider that such applications would merit a full review by the Court of the manner in which the national court had applied the Advisory Opinion in the case at issue.

IV. Concerning the institutional status of the Court and the judges

Nomination and Election of Judges

41. We welcome proposals of the Group of Wise Persons to enhance the reputation of the Court by strengthening the process by which judges of the Court are nominated and elected.
42. We consider that changes should be made to the nomination process in many states (including ensuring that they are open and transparent) and to enhance the Parliamentary Assembly's election process. Doing so would enhance the credibility and effectiveness of the Court, and improve public confidence in Europe's primary institution for the protection of human rights.

³⁰ Paragraphs 81-86 of the Report of the Group of Wise Persons, 15 November 2006.

43. We *endorse* in particular the proposals to require that the professional qualifications and knowledge of languages of candidates are taken into consideration during the election of judges by the Parliamentary Assembly of the Council of Europe (PACE).³¹ We also consider that knowledge and experience in the application of international human rights law should be taken into account.
44. We welcome the proposal of the Group of Wise Persons for the establishment of a mechanism whereby PACE would consider, during the election process, the opinion of a committee of prominent persons on the suitability of candidate judges for the Court.³² More detailed recommendations in regard to the nomination and election of judges to the Court are set out in **Annex B**, attached.
45. Efforts should be taken to encourage a gender balance and diversity at the Court at all stages of the nomination and election process.

Budget

46. We consider that the Court has been hampered by a lack of sufficient human and financial resources. This is true despite the fact that “no other international court is confronted with a workload of such magnitude while having at the same time such a demanding responsibility for setting the standard of conduct required to comply with the Convention.”³³ While we note that the budget of the Court has been increased, we are concerned that this sum was taken from the existing budget of the Council of Europe which reportedly had zero real growth in recent years. This has meant that the increase of the Court’s budget has come at the expense of funding for other Council of Europe activities, including inter-governmental and targeted cooperation activities. We consider that implementing cuts in one part of the Council of Europe’s human rights budget to finance improvements in the performance of the Court is short-sighted, since a reduction on other human rights activities (for example awareness raising, etc.) is likely to increase the burden on the Court in the long run. We therefore call on the Council of Europe member states to increase the budget of the Council of Europe overall, including the budget allocated to the Court.

Making the System more flexible as regards the conditions for reforming it – Establishing a Statute for the Court

47. We welcome in principle, but with some reservations, the proposal to empower the Council of Europe’s Committee of Ministers to amend certain “Operating Procedures” of the Court, so as to obviate the need for the time consuming process of drafting, adoption

³¹ Paragraphs 117-118 of the Report of the Group of Wise Persons, 15 November 2006.

³² It is proposed that the Committee would be composed of former members of the Court, current and former members of national supreme or constitutional courts and lawyers with acknowledged competence.

³³ Paragraph 37 of the Report of the Group of Wise Persons, 15 November 2006.

and ratification of additional Protocols for such purposes. We consider that this could provide more flexibility.

48. However, we would underscore that, if this proposal were to be further considered, a precise agreement of the contents of the Statute would have to be agreed in a transparent process. We agree with the Group of Wise Persons on the list of matters, now determined in provisions of the ECHR, that should be explicitly excluded from inclusion within any instrument that could be modified by any "simplified amendment procedure."³⁴ In addition, if Protocol 14 were to enter into force, we consider in addition that the new Article 27 (as would be amended by Article 7 of Protocol 14) and the new Article 28 (as would be amended by Article 8 of Protocol 14) should also be excluded from any simplified amendment procedure since, it is at this stage of the scrutiny of applications, that vulnerable applicants may risk losing the protection of the Convention organs if the rigour of the single judge and Committee procedures were to be significantly reduced.
49. Furthermore, the granting of such a power to the Committee of Ministers should be accompanied by provisions requiring transparency and consultation with key stakeholders including the views of Court users, civil society and National Institutions for the Promotion and Protection of Human Rights, before amendments to operating procedures are agreed. We also endorse the *caveat* proposed by the Group of Wise Persons that any such changes should be solely at the Court's own initiative.³⁵

V. Consultation

50. We consider it incumbent on the Council of Europe and each of the 46 member states to ensure that the public (and in particular Court users, civil society and national human rights institutions) is informed about the on-going discussions on reform of the Court. Past and future applicants to the Court have an interest in ensuring its future at least equal to that of member states. Representatives of civil society across the Council of Europe region should be consulted, and their views taken into account before any further reforms to the Court are made.

Amnesty International

European Human Rights Advocacy Centre (EHRAC)

Human Rights Watch

INTERIGHTS

Justice

Liberty

Redress

The AIRE Centre

³⁴ The suggested list of exclusions is set out in Paragraph 49 of the Report of the Group of Wise Persons, 15 November 2006.

³⁵ Paragraph 48 of the Report of the Group of Wise Persons, 15 November 2006.