



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

September 2006

**Information document on the Court**

**I. History and development of the Convention system**

*A. A system in continuous evolution*

1. The Convention for the Protection of Human Rights and Fundamental Freedoms was drawn up within the Council of Europe. It was opened for signature in Rome on 4 November 1950 and entered into force in September 1953. Taking as their starting point the 1948 Universal Declaration of Human Rights, the framers of the Convention sought to pursue the aims of the Council of Europe through the maintenance and further realisation of human rights and fundamental freedoms. The Convention represented the first steps for the collective enforcement of certain of the rights set out in the Universal Declaration.

2. In addition to laying down a catalogue of civil and political rights and freedoms<sup>1</sup>, the Convention set up a mechanism for the enforcement of the obligations entered into by Contracting States. Three institutions were entrusted with this responsibility: the European Commission of Human Rights (set up in 1954), the European Court of Human Rights (set up in 1959) and the Committee of Ministers of the Council of Europe, the last of these being composed of the Ministers of Foreign Affairs of the member States or their representatives.

3. There are two types of application under the Convention, inter-State and individual. Applications of the first type have been rare. Prominent examples are the case taken by Ireland against the United Kingdom in the 1970s relating to security measures in Northern Ireland, and several cases taken by Cyprus against Turkey over the situation in northern Cyprus.

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<sup>1</sup> See Appendix I for the list of headings of substantive Articles.

4. The right of individual complaint, which is one of the essential features of the system today, was originally an option that Contracting States could recognise at their discretion. When the Convention entered into force, only three of the original ten Contracting States recognised this right. By 1990, all Contracting States (twenty-two at that date) had recognised the right, which was subsequently accepted by all the central and eastern European States that joined the Council of Europe and ratified the Convention after that date. When Protocol No. 11 took effect in 1998, recognition of the right of individual petition became compulsory. In the words of the Court, “individuals now enjoy at the international level a real right of action to assert the rights and freedoms to which they are directly entitled under the Convention”<sup>2</sup>. This right applies to natural and legal persons, groups of individuals and to non-governmental organisations.

5. The original procedure for handling complaints entailed a preliminary examination by the Commission, which determined their admissibility. Where an application was declared admissible, the Commission placed itself at the parties' disposal with a view to brokering a friendly settlement. If no settlement was forthcoming, it drew up a report establishing the facts and expressing an opinion on the merits of the case. The report was transmitted to the Committee of Ministers.

6. Where the respondent State had accepted the compulsory jurisdiction of the Court (this too being optional until Protocol No. 11), the Commission and/or any Contracting State concerned had a period of three months following the transmission of the report to the Committee of Ministers within which to bring the case before the Court for a final, binding adjudication including, where appropriate, an award of compensation. Individuals were not entitled to bring their cases before the Court until 1994, when Protocol No. 9 entered into force and amended the Convention so as to allow applicants submit their case to a screening panel composed of three judges, which decided whether the Court should take it up.

If a case was not referred to the Court, the Committee of Ministers decided whether there had been a violation of the Convention and, if appropriate, awarded “just satisfaction” to the victim. The Committee of Ministers also had responsibility for supervising the execution of the Court’s judgments.

### *The Protocols to the Convention*

7. Since the Convention’s entry into force fourteen Protocols have been adopted. Protocols Nos. 1, 4, 6, 7, 12<sup>3</sup> and 13 added further rights and liberties to those guaranteed by the Convention. Protocol No. 2 conferred on the Court the power to give advisory opinions, a little-used function that is now governed by Articles 47-49 of the Convention<sup>4</sup>. As noted above, Protocol No. 9 allowed individuals to seek referral of their case to the Court. Protocol No. 11 radically transformed the supervisory system, creating a single, full-time Court to which individuals can have direct recourse. Protocol No. 14, which was adopted in 2004 and is currently in the process of ratification, will introduce a number of institutional and procedural reforms, with the main objective being to expand the Court’s capacity to deal with clearly inadmissible complaints as well as admissible cases that can be resolved on the basis

<sup>2</sup> Judgment of the Grand Chamber in the case of *Mamatkulov and Askarov v. Turkey*, of 4 February 2005, paragraph 122.

<sup>3</sup> This is the most recent one to have entered into force, having taken effect in 2005.

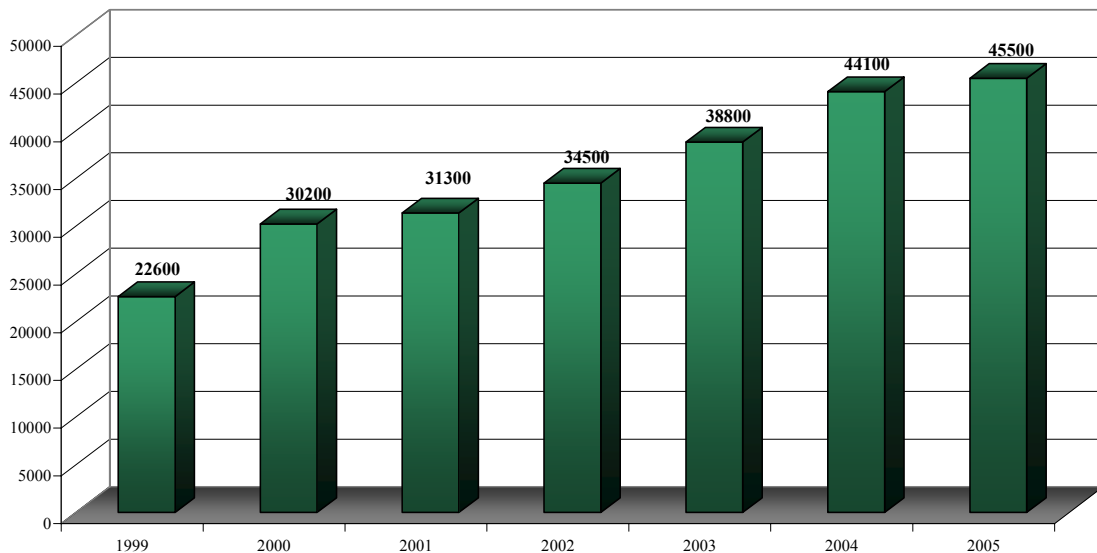
<sup>4</sup> There has just been one request by the Committee of Ministers for an advisory opinion, which the Court found to be inadmissible.

of well-established case law (see Part C below). The other Protocols, which concerned the organisation of and procedure before the Convention institutions, are of no practical importance today.

### *B. Mounting pressure on the Convention system*

8. In the early years of the Convention, the number of applications lodged with the Commission was comparatively small, and the number of cases decided by the Court was much lower again. This changed in the 1980s, by which time the steady growth in the number of cases brought before the Convention institutions made it increasingly difficult to keep the length of proceedings within acceptable limits. Adding to the problem was the rapid increase in the number of Contracting States from 1990 onwards, rising from twenty-two to the current total of forty-six. The number of applications registered annually with the Commission increased from 404 in 1981 to 4,750 in 1997, the last full year of operation of the original supervisory mechanism. By that same date, the number of unregistered or provisional files opened each year in the Commission had risen to over 12,000. Although on a much lower scale, the Court's statistics reflected a similar story, with the number of cases referred annually rising from 7 in 1981 to 119 in 1997<sup>5</sup>.

9. As the following table shows, the upward trend has continued since the new Court came into being:



<sup>5</sup> By 31 October 1998, the “old” Court had delivered a total of 837 judgments. The Commission received more than 128,000 applications during its lifetime (1955-1998). It continued to operate for a further twelve months to deal with cases already declared admissible before Protocol No. 11 entered into force.  
[#1762893]

By the end of 2005, there were 81,000 applications pending before the Court, approximately one-third of which had yet to be allocated to the appropriate judicial formation (Committee or Chamber).

The Court's capacity to handle applications has increased continuously since 1999. In 2005, it handed down 958 final judgments and disposed of more than 27,600 applications, which were either declared inadmissible or struck off for another reason. Applications can also be disposed of administratively, for example, if the applicant fails to follow up on their initial correspondence with the Court. In 2005, some 14,300 applications were disposed of in this way.

10. This enormous case load has raised concerns over the continuing effectiveness of the Convention system. Further changes to the system were agreed in 2004, when Protocol No. 14 was adopted and opened for signature (see below for details). By mid-2006, all but a handful of States had ratified it. Although Protocol No. 14 will allow the Court to deal more rapidly with certain types of case, it cannot lessen the flow of new applications. It is widely agreed that further adaptation of the system is necessary. At the Third Summit of the Council of Europe in Warsaw in May 2005, the Heads of State and Government present decided to convene the Group of Wise Persons, composed of eminent legal personalities, to consider the steps that might be taken to ensure the system's continuing viability and make proposals by the end of 2006.

## **II. The European Court of Human Rights**

### *A. Organisation of the Court*

11. The Court, as presently constituted, was brought into being by Protocol No. 11 on 1 November 1998. This amendment made the Convention process wholly judicial, as the Commission's function of screening applications was entrusted to the Court itself, whose jurisdiction became mandatory. The Committee of Ministers' adjudicative function was formally abolished.

12. The provisions governing the structure and procedure of the Court are to be found in Section II of the Convention (Articles 19-51). The Court is composed of a number of judges equal to that of the Contracting States (currently forty-five<sup>6</sup>). Judges are elected by the Parliamentary Assembly of the Council of Europe, which votes on a shortlist of three candidates put forward by Governments. The term of office is six years, and judges may be re-elected. Their terms of office expire when they reach the age of seventy, although they continue to deal with cases already under their consideration.

Judges sit on the Court in their individual capacity and do not represent any State. They cannot engage in any activity which is incompatible with their independence or impartiality or with the demands of full-time office.

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<sup>6</sup> See Appendix II for the list of judges. Biographical details and photographs of judges are to be found on the Court's internet site.  
[#1762893]

13. The Plenary Court has a number of functions that are stipulated in the Convention. It elects the office holders of the Court, i.e. the President, the two Vice-Presidents (who also preside over a Section) and the three other Section Presidents. In each case, the term of office is three years. The Plenary Court also elects the Registrar and Deputy Registrar. The Rules of Court are adopted and amended by the Plenary Court. It also determines the composition of the Sections.

14. Under the Rules of Court, every judge is assigned to one of the five Sections, whose composition is geographically and gender balanced and takes account of the different legal systems of the Contracting States. The composition of the Sections is varied every three years.

15. The great majority of the judgments of the Court are given by Chambers. These comprise seven judges and are constituted within each Section. The Section President and the judge elected in respect of the State concerned sit in each case. Where the latter is not a member of the Section, he or she sits as an *ex officio* member of the Chamber. If the respondent State in a case is that of the Section President, the Vice-President of the Section will preside. In every case that is decided by a Chamber, the remaining members of the Section who are not full members of that Chamber sit as substitute members.

16. Committees of three judges are set up within each Section for twelve-month periods. Their function is to dispose of applications that are clearly inadmissible.

17. The Grand Chamber of the Court is composed of seventeen judges, who include, as *ex officio* members, the President, Vice-Presidents and Section Presidents. The Grand Chamber deals with cases that raise a serious question of interpretation or application of the Convention, or a serious issue of general importance. A Chamber may relinquish jurisdiction in a case to the Grand Chamber at any stage in the procedure before judgment, as long as both parties consent. Where judgment has been delivered in a case, either party may, within a period of three months, request referral of the case to the Grand Chamber. Where a request is granted, the whole case is reheard.

18. The effect of Protocol No. 14 on the organisation of the Court is explained at part C below.

## *B. Procedure before the Court*

### **1. General**

19. Any Contracting State (State application) or individual claiming to be a victim of a violation of the Convention (individual application) may lodge directly with the Court in Strasbourg an application alleging a breach by a Contracting State of one of the Convention rights. A notice for the guidance of applicants and the official application form are available on the Court's internet site. They may also be obtained directly from the Registry.

20. The procedure before the European Court of Human Rights is adversarial and public. It is largely a written procedure. Hearings, which are held only in a very small minority of cases, are public, unless the Chamber/Grand Chamber decides otherwise on account of exceptional circumstances. Memorials and other documents filed with the Court's Registry by the parties are, in principle, accessible to the public.

21. Individual applicants may present their own cases, but they should be legally represented once the application has been communicated to the respondent Government (see [#1762893])

flow chart at Appendix III). The Council of Europe has set up a legal aid scheme for applicants who do not have sufficient means.

22. The official languages of the Court are English and French, but applications may be submitted in one of the official languages of the Contracting States. Once the application has been declared admissible, one of the Court's official languages must be used, unless the President of the Chamber/Grand Chamber authorises the continued use of the language of the application.

## **2. The handling of applications**

23. Each application is assigned to a Section, where it will be dealt with by a Committee or a Chamber.

An individual application that clearly fails to meet one of the admissibility criteria will be referred to a Committee, which will declare it inadmissible or strike it off. A unanimous vote is required, and the Committee's decision is final. All other individual applications, as well as inter-State applications are referred to a Chamber. One member of the Chamber will be designated to act as rapporteur for the case. The identity of the rapporteur is not divulged to the parties. The application will be communicated to the respondent State, which will be asked to address the issues of admissibility and merits that arise, as well as the applicant's claims for just satisfaction. The parties will also be invited to consider whether a friendly settlement is possible. The Registrar facilitates friendly settlement negotiations, which are confidential and without prejudice to the parties' positions.

24. The Chamber will determine both admissibility and merits. As a rule, both aspects are taken together in a single judgment, although the Chamber may take a separate decision on admissibility, where appropriate. Such decisions, which are taken by majority vote, must contain reasons and be made public.

25. The President of the Chamber may, in the interests of the proper administration of justice, invite or grant leave to any Contracting State which is not party to the proceedings, or any person concerned who is not the applicant, to submit written comments, and, in exceptional circumstances, to make representations at the hearing. A Contracting State whose national is an applicant in the case is entitled to intervene as of right.

26. Chambers decide by a majority vote. Any judge who has taken part in the consideration of the case is entitled to append to the judgment a separate opinion, either concurring or dissenting, or a bare statement of dissent.

27. A Chamber judgment becomes final three months after its delivery. Within that time, any party may request that the case be referred to the Grand Chamber if it raises a serious question of interpretation or application or a serious issue of general importance. If the parties declare that they will not make such a request, the judgment will become final immediately. Where a request for referral is made, it is examined by a panel of five judges composed of the President of the Court, two Section Presidents designated by rotation, and two more judges also designated by rotation. No judge who has considered the admissibility and/or merits of the case may be part of the panel that considers the request. If the panel rejects the request, the Chamber judgment becomes final immediately. A case that is accepted will be re-heard by the Grand Chamber. Its judgment is final.

28. All final judgments of the Court are binding on the respondent States concerned.

29. Responsibility for supervising the execution of judgments lies with the Committee of Ministers of the Council of Europe. The Committee of Ministers verifies whether the State in respect of which a violation of the Convention is found has taken adequate remedial measures, which may be specific and/or general, to comply with the Court's judgment.

30. The changes in procedure that Protocol No. 14 will bring about are described in the next part.

### *C. Protocol No. 14*

31. Protocol 14 will change the current organisation and procedure of the Court in a number of respects. When it takes effect, judges will be elected for a single term of nine years. The present judicial formations will be modified. The function discharged by a Committee will be taken on by a single judge, who cannot be the judge sitting in respect of the State concerned. The judge will be assisted by a new category of Court officers, to be known as rapporteurs. Committees will have the power to give judgment in cases to which well-established case law is applicable. The competence of Chambers will not change, although the Plenary Court may request the Committee of Ministers to reduce their size from seven members to five for a fixed period of time. The procedures before the Chambers and the Grand Chamber will remain as described above, although the Council of Europe Commissioner for Human Rights will be entitled to submit written comments and take part in the hearing in any case.

32. Protocol No. 14 will institute two new procedures regarding the execution phase. The Committee of Ministers will be able to request interpretation of a judgment of the Court. It will also be able to take proceedings in cases where, in its view, the respondent State refuses to comply with a judgment of the Court. In such proceedings, the Court will be asked to determine whether the State has respected its obligation under Article 46 to abide by a final judgment against it.

**APPENDIX I**

## Headings of substantive Articles of the European Convention

Convention of 1950

Article 2	Right to life
Article 3	Prohibition of torture
Article 4	Prohibition of slavery and forced labour
Article 5	Right to liberty and security
Article 6	Right to a fair trial
Article 7	No punishment without law
Article 8	Right to respect for private and family life
Article 9	Freedom of thought, conscience and religion
Article 10	Freedom of expression
Article 11	Freedom of assembly and association
Article 12	Right to marry
Article 13	Right to an effective remedy
Article 14	Prohibition of discrimination

Protocol No. 1

Article 1	Protection of property
Article 2	Right to education
Article 3	Right to free elections

Protocol No. 4

Article 1	Prohibition of imprisonment for debt
Article 2	Freedom of movement
Article 3	Prohibition of expulsion of nationals
Article 4	Prohibition of collective expulsion of aliens

Protocol No. 6

Article 1	Abolition of the death penalty
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Protocol No. 7

Article 1	Procedural safeguards relating to expulsion of aliens
Article 2	Right of appeal in criminal matters
Article 3	Compensation for wrongful conviction
Article 4	Right not to be tried or punished twice
Article 5	Equality between spouses

Protocol No. 12<sup>7</sup>

Article 1	General prohibition of discrimination
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Protocol No. 13

Article 1	Abolition of the death penalty (in all circumstances)
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<sup>7</sup> This Protocol will enter into force when ratified by ten Contracting States.

## APPENDIX II

## COMPOSITION OF THE COURT\*

(in order of precedence)

11/07/2007

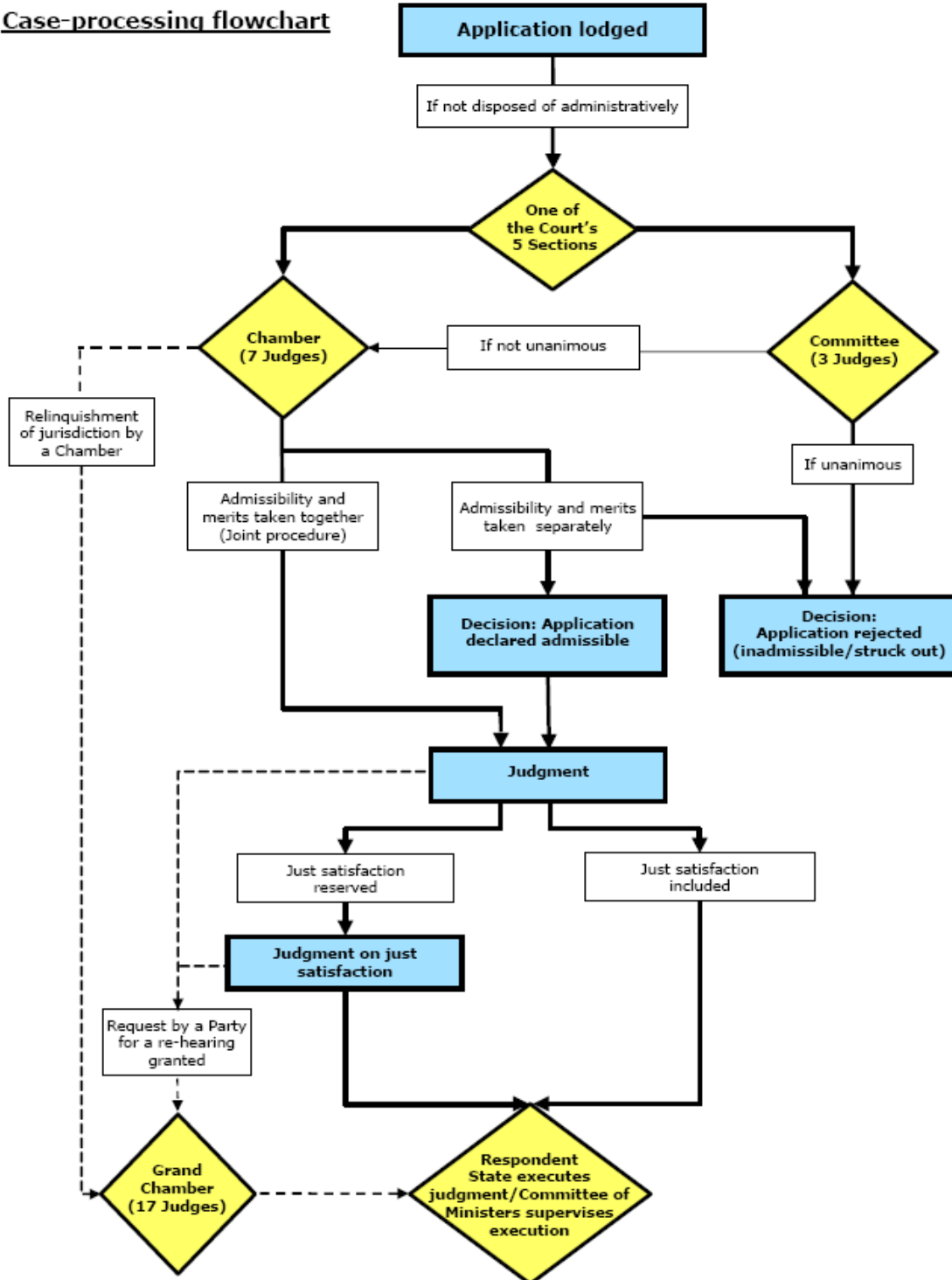
Jean-Paul Costa, President	(French)
Christos Rozakis, Vice-President	(Greek)
Nicolas Bratza, Vice-President	(British)
Boštjan Zupančič, Section President	(Slovenian)
Peer Lorenzen, Section President	(Danish)
Françoise Tulkens, Section President	(Belgian)
Giovanni Bonello	(Maltese)
Loukis Loucaides	(Cypriot)
Ireneu Cabral Barreto	(Portuguese)
Riza Türmen	(Turkish)
Corneliu Bîrsan	(Romanian)
Karel Jungwiert	(Czech)
Volodymyr Butkevych	(Ukrainian)
Josep Casadevall	(Andorran)
Nina Vajić	(Croatian)
Margarita Tsatsa-nikolovska	(citizen of the Former Yugoslav Republic of Macedonia)
András Baka	(Hungarian)
Rait Maruste	(Estonian)
Kristaq Traja	(Albanian)
Snejana Botoucharova	(Bulgarian)
Mindia Ugrekhelidze	(Georgian)
Anatoly Kovler	(Russian)
Vladimiro Zagrebelsky	(Italian)
Antonella Mularoni	(San Marinese)
Elisabeth Steiner	(Austrian)
Stanislav Pavlovski	(Moldovan)
Lech Garlicki	(Polish)
Javier Borrego Borrego	(Spanish)
Elisabet Fura-Sandström	(Swedish)
Alvina Gyulumyan	(Armenian)
Khanlar Hajiyev	(Azerbaijani)
Ljiljana Mijović	(citizen of Bosnia and Herzegovina)
Dean Spielmann	(Luxemburger)
Renate Jaeger	(German)
Egbert Myjer	(Dutch)
Sverre Erik Jebens	(Norwegian)
David Thór Björgvinsson	(Icelandic)
Danutė Jočienė	(Lithuanian)
Ján Šikuta	(Slovakian)
Dragoljub Popović	(Serbian)
Ineta Ziemele	(Latvian)
Mark Villiger	(Swiss)**
Isabelle Berro-Lefèvre	(Monegasque)
Päivi Hirvellä	(Finnish)
Giorgio Malinverni	(Swiss)
Erik Fribergh, Registrar	(Swedish)
Michael O'Boyle, Deputy Registrar	(Irish)

\* The seats of judges in respect of Ireland and Montenegro are currently vacant.

\*\* Elected as the judge in respect of Liechtenstein.

## APPENDIX III

EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

Case-processing flowchart

This flowchart indicates the progress of a case through the different judicial formations. In the interests of readability, it does not include certain stages in the procedure – such as communication of an application to the respondent State, consideration of a re-hearing request by the Panel of the Grand Chamber and friendly settlement negotiations.