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COMMUNICATION FROM

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Secretary General
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**MACHINERY FOR HANDLING HUMAN-RIGHTS MATTERS
THE CONCIL OF EUROPE PARLIAMENTARY ASSEMBLY**

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Communication by the Secretary General of the Council of Europe Parliamentary Assembly

Machinery for handling human-rights matters: the Council of Europe Parliamentary Assembly

1. **The Parliamentary Assembly's role in drawing up conventions on human-rights matters**

a. *The European Convention on Human Rights (ECHR)*

1. The proposal to draw up the European Convention on Human Rights came from the Parliamentary Assembly. The innovative feature of the Convention, adopted in November 1950, is that in addition to laying down rights, it created supranational machinery for protecting them which is operated by the European Court of Human Rights. Council of Europe members undertake to comply with final judgments of the Court in disputes to which they are party. Those judgments are binding and their execution is supervised by the Council of Europe Committee of Ministers. Since 1950 the Convention has been supplemented by 13 protocols, which have either added further rights or reinforced the protection machinery. The Assembly has played an instigative role in many of them.

b. *Development of human rights through other legal instruments*

2. Since 1950, and again at the Parliamentary Assembly's instigation, the body of Council of Europe conventions has been greatly enlarged by (among others) the following instruments.

- **The European Social Charter (1961):** in the face of governments' reluctance to include social and economic rights in the ECHR, the Assembly focused on drawing up a specific legal instrument, the European Social Charter, which was adopted in 1961. The Charter's main aims are to guarantee fair working conditions, decent pay, social security, social and medical assistance, and protection for children, the elderly, migrants, people with disabilities and families. The Assembly has since been active in making the Charter

supervisory system more effective. In particular it pushed for a system of collective complaints, which a protocol to the Charter brought into existence in 1995. The Assembly is likewise keen to ensure that all the member states ratify the 1996 Revised Social Charter.

- **The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)**: this was modelled on proposals put forward by the Assembly. The Committee of Ministers opened it for signature in 1987. The Convention and related monitoring work by the Assembly and other Council of Europe bodies have helped significantly improve detention conditions in European countries.

- **The Framework Convention for the Protection of National Minorities (1995)**: in co-operation with national parliaments concerned, the Assembly helped draw up the first legally binding international document on the rights of national minorities.

c. *Assembly commitment to new rights*

3. Responsiveness to the human-rights challenges thrown down by medical and biological progress is a permanent Assembly priority, as also is promoting children's rights and equality between women and men. The Assembly's autumn 2003 session will include a debate on research on human stem cells. The Assembly will also begin work on an opinion to the Committee of Ministers on a draft protocol (to the Convention on Biomedicine and Human Rights) on medical research.

4. Concerned about environmental deterioration and the health of the community, in June 2003 the Assembly recommended that the Committee of Ministers draw up a further protocol to the ECHR. The intention is that the protocol confer procedural rights on the individual in line with the 1988 United Nations Aarhus Convention so as to strengthen protection of the environment.

II. **The Parliamentary Assembly's role in the operation of Council of Europe human-rights protection machinery**

a. *Election of judges*

5. Under the ECHR the Assembly is responsible for electing judges of the European Court of Human Rights from lists of three candidates put forward by each Contracting Party. The Assembly, deriving as it does from Europe's national parliaments, confers democratic legitimacy on the election process. The Assembly is likewise active in reinforcing the judges' status and has just drawn up various requirements which member states must meet before putting forward lists of candidates for posts of judge at the Court.

b. *Execution of European Court of Human Rights judgments*

6. Since the 1990s the Court has had to deal with more cases with political implications and cases where a definitive solution to the problem requires general action by government. National compliance with judgments in such cases has sometimes proved extremely difficult. Full and scrupulous execution of the Court's judgments is nonetheless an absolute prerequisite for an effective and credible system.

7. In the Assembly's view, the European Court of Human Rights should be allowed, in those of its judgments which find a violation of the ECHR, to say what remedial measures it expects of the member states concerned

c. *Reform of the Court and the functioning of other Council of Europe human-rights protection machinery*

8. Since, in November 1998, Protocol No. 11 to the ECHR set up the new European Court of Human Rights, making it a permanent institution, the Assembly has paid particular attention to the overload caused by spiralling applications to the Court. In 1999 there were 8,400 applications, whereas in 2003 applications are expected to total in the region of 34,500. Both the Assembly and the intergovernmental sector produce proposals to enable the European Court to cope with the situation and devote more of its energies to those applications which raise fundamental issues.

9. The Assembly is also keeping a close eye on non-judicial Council of Europe human-rights machinery such as the Commissioner for Human Rights, the European Committee for the Prevention of Torture (CPT) and the European Commission against Racism and Intolerance. Whenever it considers it advisable, the Assembly makes proposals to the Committee of Ministers to boost the effectiveness of those bodies' working methods.

III. The Assembly's role in compliance with member states' human-rights obligations and undertakings

10. After the fall of the Berlin Wall, the Assembly set the geographical boundaries, the timetable and the conditions for Council of Europe enlargement. Since accession of the first central and eastern European countries, the Assembly's opinions to the Committee of Ministers on requests for Council of Europe membership have included lists of detailed obligations and undertakings, with particular emphasis on respect for human rights. In particular the Assembly has required that acceding states ratify the ECHR and its protocols as well as other Council of Europe human-rights treaties. These new political requirements are an energetic and innovative way of using accession to ensure that any new state immediately signs up to the body of Council of Europe human-rights law.

11. From 1993 onwards the Parliamentary Assembly, and then the Committee of Ministers and the Congress of Local and Regional Authorities of Europe, also set up monitoring arrangements to keep under review member states' compliance with the undertakings they gave on joining the Council.

APPENDIX 1

Replies to questions expected during the discussion

Question No.1: *Specific procedures for studying the impact of human-rights legislation*

As a traditional international parliamentary institution, the Assembly does not adopt legislation. However, it is entitled to submit draft conventions (multilateral treaties) to the Council of Europe's Committee of Ministers, as it has done with regard to all the major Council of Europe conventions in the area of human rights (ECHR, European Social Charter, European Charter for the Prevention of Torture and Inhuman or Degrading Treatment). The Assembly may recommend that the Committee of Ministers take any action to strengthen human rights protection within the Council of Europe, by guaranteeing new rights, improving procedures, or even by setting up new mechanisms. The Assembly closely monitors the activities of all Council of Europe structures working to promote human rights (Committee of Ministers, Secretary General, Steering Committees, Commissioner for Human Rights, etc.).

ad a) The Assembly's Committee on Legal Affairs and Human Rights has a general remit with regard to human rights. Social rights (the European Social Charter) comes under the jurisdiction of the Social, Health and Family Affairs Committee. The Committee on the Environment, Agriculture and Local and Regional Affairs, and the Committee on Culture, Science and Education are responsible, respectively, for environmental rights and cultural rights. The Monitoring Committee focuses on ensuring that undertakings given by member States in the area of human rights are honoured.

ad b) The authors of proposals for resolutions or recommendations, or of PACE reports on matters concerning human rights, are not subjected to particular requirements: They may draw inspiration, *inter alia*, from the reports by the Secretary General of the Council of Europe and the annual activity reports of the European Court of Human Rights, the Commissioner for Human Rights, the European Committee for the Prevention of Torture (CPT) and the European Commission against Racism and Intolerance.

ad c) In the event of disagreement between a rapporteur and the Assembly, it is highly unlikely that, during voting in the Assembly, the two-thirds majority required for the adoption of a recommendation or an opinion will be obtained, nor the simple majority needed for adoption of a resolution.

ad d) PACE reports take account of human-rights standards drawn up by other leading international organisations.

Question No.2: *Staff*

Question No.3: *Relations between independent national organisations for human rights and parliaments*

Due to the specific structures of an international organisation such as the Council of Europe, its Assembly has only limited relations with such national organisations.

The Committee on Legal Affairs and Human Rights has, on several occasions, organised conferences with the national ombudsmen. Equally, contacts with special national

independent human rights organisations occur when examining requests for accession to the Council of Europe and during procedures to monitor the obligations and commitments entered into.

Question No.4: *The courts' role in the application of human rights and the impact of their responsibility on Parliament and its right to legislate*

The Court does not rule on the validity of national legislation. However, the obligation on Council of Europe member States to implement judgments by the Court which find a breach of the rights guaranteed by the ECHR may imply the need to amend national legislation.

Question No.5: *Development of human rights – how do Parliaments react to the lobbies working in this area?*

Under Article 44.5 of the Assembly's Rules of Procedure, its committees may develop relations with NGOs which carry out activities in their area. The extent of these relations varies from one committee to another. The status of NGOs working with the Council of Europe is currently being revised, and the Assembly will adopt an opinion on this question during the autumn 2003 part-session.