The Role of a Political Body in Disseminating the European Convention on Human Rights Standards into the State Parties:
With Particular Focus on Follow-up Activity of the Committee of Ministers

Toru TAKEUCHI

Ⅰ. Introduction

Several human rights treaties have been concluded since the end of the World War II. One notable feature of human rights treaties is that they establish their own monitoring body (treaty body) composed of qualified experts who are independent from the State Parties[1)]. All "core international human rights

1) 申惠丰『国際人権法―国際基準のダイナミズムと国内法との協調』（信山社、2013 年）512-513 頁. [Hae Bong Shin, *International Human Rights Law: Dynamism*

treaties[2]" adopted by the United Nations have such a treaty body. As far as international implementation is concerned, it is therefore a trend that human rights treaties are implemented by decisions of independent experts. It should be noted in this respect that some scholars attempt to give certain legal effects to the interpretation of human rights treaties by a treaty body. Indeed, with regard to the International Covenant on Civil and Political Rights (hereafter, "the Covenant"), there is an argument that the interpretation by the Human Rights Committee, which is the treaty body of the Covenant, is authoritative and carries some weight with the State Parties[3]. From legal perspective, this attempt would be useful for disseminating the human rights standards required by a treaty body into the State Parties. However, it cannot be denied that the extent to which State Parties accept the interpretation by a treaty body, even if it is authoritative, depends on the will of the State Parties themselves, given that accepting the interpretation by a treaty body often requires efforts of the State Parties to modify domestic laws or practices. Therefore, the following question

---

of International Standards and Coordination with Domestic Law (Shinzansha, 2013), pp.512-513.]

2) International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention on the Rights of Persons with Disabilities; International Convention for the Protection of all Persons from Enforced Disappearance.

3) 岩沢雄司「自由権規約委員会の規約解釈の法的意義」世界法年報 29 号（2010 年）50 頁以下．[Yuji Iwasawa, Legal Significance of the Human Rights Committee's Interpretation of the ICCPR, *Yearbook of World Law*, No.29 (2010), p.50ff.] See also, 薬師寺公夫「日本における人権条約の解釈適用」ジュリスト 1387 号（2009 年）49 頁、坂元茂樹「日本の裁判所における国際人権規約の解釈適用――一般的意見と見解の法的地位をめぐって」芹田健太郎・戸波江二・棟居快行・薬師寺公夫・坂元茂樹編集代表『国際人権法の国内的実施』（信山社、2011 年）45 頁以下、申惠丰・前掲注（1）539-555 頁．[Kimio Yakushiji, Interpretation and Application of Human Rights Treaties in Japan, *Jurist*, No.1387 (2009), p.49; Shigeki Sakamoto, Interpretation and Application of the International Covenants on Human Rights by Japanese Courts: Legal Effects of General Comments and Views, Kentaro Serita, Koji Tonami, Toshiyuki Munesue, Kimio Yakushiji, Shigeki Sakamoto *et al* (eds.), *The Domestic Implementation of International Human Rights Law* (Shinzansha, 2011), p.45ff; Hae Bong Shin, *supra* note (1), pp.539-555.]

should be posed: How do we draw out the willingness of the State Parties?

With this question in mind, this paper focuses on the monitoring mechanisms under the European Convention on Human Rights (hereafter, "the Convention"). The Convention has established the European Court of Human Rights (hereafter, "the Court") as a monitoring body. The Court, which is composed of independent judges, receives applications from individuals and the State Parties and decides whether there is any violation of the Convention[4]. Accordingly, one may think that the Convention is implemented by the Court's judgments which are legally binding on the respondent States. Would such assertion be correct? At least it is possible to say that the Court is not the only monitoring body of the Convention. There is another monitoring body, the Committee of Ministers. The Committee of Ministers, which is a political body composed of the Ministers of Foreign Affairs of the State Parties, supervises the execution of the Court's judgments. This paper explores how the Court and the Committee of Ministers contribute to the dissemination into the State Parties of the human rights standards interpreted and developed by the Court. For this purpose, this paper pays particular attention to Article 13 of the Convention which provides the right to an effective domestic remedy. This is because both the Court and the Committee of Ministers have made a considerable effort to implement this article in recent years. Article 13 provides as follows:

> Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

4） For a detailed explanation of the monitoring mechanisms of the Convention, see, 戸波江二ほか編『ヨーロッパ人権裁判所の判例』（信山社、2008 年）10 頁以下（小畑郁執筆）. [Koji Tonami *et al* (eds.), *Essential Cases of the European Court of Human Rights* (Shinzansha, 2008), p.10ff.]

Ⅱ. The Court's activity mainly for standard-setting

1. Accumulation of jurisprudence of Article 13

The Court was once restrictive in finding violation of Article 13, and jurisprudence of this article had not been developed much for a long time. However, faced with the growing number of applications in the late 1990s, the Court had to change its attitude. It started to find violation of Article 13 frequently in order that victims would obtain effective remedies at domestic level and refrain from bringing their cases to the Court. A landmark judgment in this respect is the *Kudła* case of October 2000. In this case, the Court changed its case-law in order to expand the scope of application of Article 13 and showed its intention to apply this article actively[5]. As the chart below indicates, the number of judgments finding a violation of Article 13 has increased. Jurisprudence of Article 13 has been accumulated accordingly.

Year	1999	2000
[A] The number of judgments finding a violation of Art. 13[6]	5	18
[B] The number of judgments finding at least one violation of the Convention	131	442
[A] ／ [B] (%)	3.8	4.1

2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
19	21	29	54	138	341	164	153	170	178	143	123	113
720	664	549	629	1,038	1,451	1,419	1,453	1,563	1,354	1,063	1,039	893
2.6	3.2	5.3	8.6	13.3	23.5	11.6	10.5	10.9	13.1	13.5	11.8	12.7

5） *Kudła* v. *Poland* [Grand Chamber], Judgment of 26 October 2000, paras.146-156. For a review of this case, see, 戸波江二ほか編・前掲注（4）150 頁以下（申惠丰執筆）. [Koji Tonami *et al* (eds.), *supra* note (4), p.150ff.]

6） As far as the past few years are concerned, the Court published the number of judgments finding a violation of Article 13 and of judgments finding at least one violation of the Convention. However, this chart was made by the author by using HUDOC database of the Court. The numbers in the chart (both [A] and [B]) mean the number of judgments given in English. Although the Court's judgments are usually given both in English and French, some judgments are only available in English or French. The numbers in the chart do not count judgments given only in French. Besides this, there is some divergence between the numbers in the chart and the numbers published by the Court. However, the purpose of this chart is to grasp a general trend concerning Article 13. It would be safe to mention that the Court has found violation of Article 13 more frequently during the past 10 years.

2. Pilot judgment procedure

In addition to the accumulation of jurisprudence, it is notable that the Court has applied the "pilot judgment procedure" to Article 13. It is necessary to explain this procedure first. The State Parties may at times have some structural problems in their legal system which would give rise to many similar applications (these applications are called "repetitive cases") before the Court. In the pilot judgment procedure, the Court chooses one application among repetitive cases, identifies a structural problem which is the cause of violation of the Convention and indicates, in the operative provisions of the judgment, remedial measures which the respondent State should take in the execution of the judgment[7]. The pilot judgment procedure is different from the ordinary procedure in that the Court indicates remedial measures in order to urge the respondent States to resolve structural problems. The Court does not indicate remedial measures in the ordinary procedure.

The first case in which the Court applied the pilot judgment procedure to Article 13 is the *Burdov (no.2)* case of January 2009. In this case, the Court found a violation of Article 6 on account of the unreasonable delay in the execution of domestic courts' judgments and a violation of Article 13 on account of the absence of effective domestic remedies for delayed execution. After finding the structural nature of these violations, the Court ordered as follows:

> the respondent State must set up, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, an effective domestic remedy or combination of such remedies which secures adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judgments in line with the Convention principles as established in the Court's case-law[8]

7） Rule 61 of the Rules of Court.
8） *Burdov* v. *Russia (no.2)*, Judgment of 15 January 2009, point 6 of the operative provisions.

With regard to "the Convention principles as established in the Court's case-law", the Court presented the following guidance which a compensatory remedy for delayed execution must comply with:

An action for compensation must be heard within a reasonable time;
The compensation must be paid promptly and generally no later than six months from the date on which the decision awarding compensation becomes enforceable;
The procedural rules governing an action for compensation must conform to the principle of fairness guaranteed by Article 6 of the Convention;
The rules regarding legal costs must not place an excessive burden on litigants where their action is justified;
The level of compensation must not be unreasonable in comparison with the awards made by the Court in similar cases[9].

Accordingly, the Court obliged the respondent State (Russia) to set up effective domestic remedies which would fulfill these criteria. Applying the pilot judgment procedure to Article 13 has been firmly established since the *Burdov (no.2)* case. The Court has applied this procedure in several cases for the purpose of setting up effective domestic remedies[10].

3. Uncertainty in disseminating the standards

There is no doubt that the Court has contributed to standard-setting of Article

9） *Ibid*., para.99.
10） *Olaru and Others* v. *Moldova*, Judgment of 28 July 2009; *Yuriy Nikolayevich Ivanov* v. *Ukraine*, Judgment of 15 October 2009; *Rumpf* v. *Germany*, Judgment of 2 September 2010; *Vassilios Athanasiou and Others* v. *Greece*, Judgment of 21 December 2010; *Dimitrov and Hamanov* v. *Bulgaria*, Judgment of 10 May 2011; *Finger* v. *Bulgaria*, Judgment of 10 May 2011; *Ananyev and Others* v. *Russia*, Judgment of 10 January 2012; *Ümmühan Kaplan* v. *Turkey*, Judgment of 20 March 2012; *Michelioudakis* v. *Greece*, Judgment of 3 April 2012; *Glykantzi* v. *Greece*, Judgment of 30 December 2012; *Torreggiani and Others* v. *Italy*, Judgment of 8 January 2013. For an overview of these cases, see, Factsheet—Pilot judgments, October 2013, http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf, last visited on 18 July 2014.

13 through a vast number of judgments. However, the number of judgments itself does not guarantee that the standards set by the Court will be disseminated into the State Parties. Although the Court's judgments are legally binding on the respondent States according to Article 46 (1) of the Convention, this binding force is established on the international plane. Article 46 (1) does not guarantee that the Court's judgments have binding force inside the respondent States[11]. In addition, the Court does not indicate remedial measures in the ordinary procedure. It is said that even when the Court finds a violation of the Convention, for example, a violation of Article 13, it is the respondent State that decides what remedial measures are to be taken in order to execute the judgment.

The pilot judgment procedure is an exception in that the Court indicates remedial measures. In the *Burdov (no.2)* case, the Court ordered the Russian government to set up effective domestic remedies compatible with the guidance presented by the Court. The pilot judgment procedure in this respect has a certain level of influence not only on setting of the standards but also on dissemination of those standards into the respondent States. However, it should be noted that the Court has so far been careful in selecting appropriate cases for this procedure[12]. This is true for the *Burdov (no.2)* case. Before the *Burdov (no.2)* case, the Court had repeatedly found violations of Articles 6 and 13 against Russia on account of the unreasonable delay in the execution of domestic courts' judgments and the absence of effective domestic remedies for delayed execution in a large number of repetitive cases. The question is therefore why the Court decided to apply the pilot judgment procedure in the *Burdov (no.2)* case.

Having recognized the seriousness of the unreasonable delay in the execution and the absence of effective domestic remedies, the Supreme Court of Russia submitted to the State Duma a draft law on compensation of damage caused by

11）戸波江二ほか編・前掲注（4）15 頁（小畑郁執筆）. [Koji Tonami *et al* (eds.), *supra* note (4), p.15.]

12）For a detailed analysis, see, 竹内徹「ヨーロッパ人権条約による司法的規範統制の限界―パイロット判決手続を素材として」名古屋大学法政論集 253 号（2014 年）145 頁以下. [Toru Takeuchi, The Limits of Normative Control by the European Court of Human Rights: Through an Analysis of the Pilot Judgment Procedure, *Nagoya University Journal of Law and Politics*, No.253 (2014), p.145ff.]

delayed execution in September 2008[13]. In addition, in his address to the Federal Assembly in November 2008, the President of Russia emphasized the need to set up a compensatory remedy for delayed execution[14]. The European Court of Human Rights therefore applied the pilot judgment procedure in the *Burdov (no.2)* case when the Russian government's favorable response was expected. It is notable in this respect that according to one member of the Registry of the Court, the Court applies the pilot judgment procedure in the cases where the respondent States' positive attitude to resolving structural problems can be expected or some concrete steps toward resolving structural problems have already been taken by the respondent States[15]. In short, the Court recognizes that even if it indicates remedial measures, the respondent States may still choose not to implement them (promptly) in some controversial cases. In these cases, the Court would rather refrain from applying the pilot judgment procedure and prefer structural problems to be solved through the Committee of Ministers' supervision procedure which will be discussed below.

It follows that although the Court plays a role in standard-setting through its judgments, there is uncertainty in its role to promote the dissemination of those standards into the State Parties.

Ⅲ. The Committee of Ministers' activity for disseminating the standards set by the Court

1. Political support for strengthening the effects of Article 13

The Committee of Ministers has also been highly interested in the issue of setting up effective domestic remedies. It adopted the following recommendation in May 2004:

The Committee of Ministers, […]

13) *Burdov* v. *Russia (no.2)*, *supra* note (8), para.34.
14) *Ibid*., para.38.
15) Comment of John Darcy, *Third Informal Seminar for Government Agents and Other Institutions on Pilot Judgment Procedure in the European Court of Human Rights and the Future Development of Human Rights' Standards and Procedures, Warsaw, 14-15 May 2009* (Kontrast, 2009), p.134.

[…]

Emphasising that, as required by Article 13 of the Convention, member states undertake to ensure that any individual who has an arguable complaint concerning the violation of his rights and freedoms as set forth in the Convention has an effective remedy before a national authority;

[…]

RECOMMENDS that member states, […]

I. ascertain, through constant review, in the light of case-law of the Court, that domestic remedies exist for anyone with an arguable complaint of a violation of the Convention, and that these remedies are effective, in that they can result in a decision on the merits of the complaint and adequate redress for any violation found;

[II. …][16)]

The Committee of Ministers urged the State Parties to set up effective domestic remedies in this way. This demonstrates political support for strengthening the effects of Article 13. Therefore, this paper aims to examine the monitoring mechanisms of the Convention including the Committee of Ministers' activity.

2. Overcoming uncertainty in disseminating the standards

(1) Supervision of the execution of the Court's judgments

As stated above, there is uncertainty in disseminating the standards set by the Court into the State Parties in respect of the execution of the Court's judgments. According to Article 46 (2) of the Convention, the Committee of Ministers supervises the execution of the Court's judgments. This supervision was once rather formal. It was the practice of the Committee of Ministers to take note of remedial measures taken by the respondent States rather than examine in detail the adequacy of those measures[17)]. However, the supervision procedure by the

16） Recommendation Rec(2004)6 of the Committee of Ministers to member States on the improvement of domestic remedies, 12 May 2004.

17） Yvonne Klerk, Supervision of the Execution of the Judgments of the European Court

Committee of Ministers has been reinforced considerably during the past 10 years[18].

Supervision by the Committee of Ministers has been based on a twin-track system which is composed of the "enhanced procedure" and the "standard procedure" since 2011[19]. A common feature of both procedures is that supervision proceeds on the basis of an "action plan" which the respondent States should submit to the Committee of Ministers within six months after the judgments of the Court become final. Action plan is a document setting out remedial measures including a timetable which the respondent States intend to take in order to execute the judgments of the Court. It shall, if possible, set out all necessary remedial measures.

The types of cases which become the subject of the enhanced procedure include those where the pilot judgment procedure is applied or which disclose major structural and/or complex problems as identified by the Court and/or the Committee of Ministers. In the enhanced procedure, supervision proceeds with intensive participation of the Secretariat of the Committee of Ministers (hereafter, "the Secretariat") and the Department for the Execution of Judgments of the European Court of Human Rights (hereafter, "the Department"). The Department is a body which helps the Committee of Ministers in supervision. A

---

of Human Rights: The Committee of Ministers' Role under Article 54 of the European Convention on Human Rights, *Netherlands International Law Review*, Vol.45 (1998), pp.73-80.

18） The reform reinforcing the supervision procedure started in 2004. For details of this reform process, see, 徳川信治「欧州評議会閣僚委員会による判決執行監視手続き」松田竹男・田中則夫・薬師寺公夫・坂元茂樹編集代表『現代国際法の思想と構造Ⅰ歴史、国家、機構、条約、人権』（東信堂、2012 年）307 頁以下. [Shinji Tokugawa, The Supervision Procedure of the Execution of the European Court of Human Rights' Judgments by the Committee of Ministers of the Council of Europe, Takeo Matsuda, Norio Tanaka, Kimio Yakushiji, Shigeki Sakamoto *et al* (eds.), *The Thought and the Structure of Modern International Law I: History, State, Organization, Treaty and Human Rights* (Toshindo, 2012), p.307ff.]

19） For the twin-track system, see, CM/Inf/DH(2010)37, Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan—Modalities for a twin-track supervision system, 6 September 2010; CM/Inf/DH(2010)45final, Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan—Outstanding issues concerning the practical modalities of implementation of the new twin-track supervision system, 7 December 2010.

notable feature of this procedure is that the Secretariat and the Department cooperate with the respondent States intensively in preparation and implementation of an action plan.

On the other hand, cases which do not become the subject of the enhanced procedure are supervised under the standard procedure. In this procedure, upon receipt of an action plan, the Secretariat makes an assessment on remedial measures set out in the action plan and requires further information and clarification from the respondent States if necessary. When the Secretariat and the respondent States have different views regarding necessary remedial measures set out in the action plan and cannot reach an agreement, the cases in question can be transferred to the enhanced procedure. Also, when the respondent States persistently fail to submit an action plan or seriously delay in implementing remedial measures set out in the action plan, a transfer to the enhanced procedure is possible.

Pilot judgments and other judgments disclosing major structural and/or complex problems require, in the execution, a considerable effort of the respondent States including revision of the relevant domestic laws. The respondent States may be reluctant to revise their domestic laws or may take only insufficient measures. In these controversial cases, the Secretariat and the Department hold intensive consultations with the respondent States and seek to reach agreements in the enhanced procedure in order to determine the necessary remedial measures and to supervise the implementation of them. Straightforward cases would also be resolved under the enhanced procedure if difficulty, for example, persistent non-implementation of the action plan arises. The Committee of Ministers tries to ensure effective supervision in this way. With regard to the determination of remedial measures, the respondent States under this supervision must propose adequate remedial measures which satisfy the Secretariat and the Department. Therefore, it increasingly becomes a formal view that the respondent States decide what remedial measures are necessary in order to execute the Court's judgments. It is in substance the Committee of Ministers (the Secretariat and the Department) that decides remedial measures.

(2) Feedback of the Court's case-law

The Committee of Ministers does not confine its activity to supervising the execution of the Court's judgments. Based on the fact that jurisprudence of Article 13 had sufficiently developed, the Committee of Ministers decided in October 2008 to make a detailed recommendation to the State Parties[20]. Reference was particularly made to the accumulation of jurisprudence on effective domestic remedies for unreasonable length of proceedings of domestic courts[21]. The Committee of Ministers adopted the following recommendation in February 2010:

> The Committee of Ministers, […]
> […]
> RECOMMENDS that the governments of the member states:
> [1. …]
> 5. take all necessary steps to ensure that effective remedies before national authorities exist for all arguable claims of violation of the right to trial within a reasonable time;
> 6. ascertain that such remedies exist in respect of all stages of proceedings in which there may be determination of civil rights and obligations or of any criminal charge;
> 7. to this end, where proceedings have become excessively lengthy, ensure that the violation is acknowledged either expressly or in substance and that:
> a. the proceedings are expedited, where possible; or
> b. redress is afforded to the victims for any disadvantage they have suffered; or, preferably,
> c. allowance is made for a combination of the two measures;
> 8. ensure that requests for expediting proceedings or affording redress will be dealt with rapidly by the competent authority and that they represent an effective, adequate and accessible remedy;

20） CM/Notes/1037, 25 September 2008; CM/Del/Dec(2008)1039, 22 October 2008.
21） CM/Notes/1037, 25 September 2008.

9. ensure that amounts of compensation that may be awarded are reasonable and compatible with the case law of the Court and recognise, in this context, a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage;

[10. …][22)]

The source of this Recommendation is jurisprudence of Article 13 developed by the Court. Indeed, in the Guide to Good Practice attached to the Recommendation, extensive reference is made to the relevant Court's judgments in respect of each operative provision of the Recommendation[23)].

Although the Recommendation covers only unreasonable length of proceedings, the Court has developed jurisprudence of Article 13 in respect of other violations of the Convention as well. Based on this fact, the High Level Conference on the Future of the European Court of Human Rights which was held at Brighton, the United Kingdom, in April 2012 invited the Committee of Ministers to prepare a guideline on effective domestic remedies[24)]. According to this instruction, the Committee of Ministers adopted the "Guide to good practice in respect of domestic remedies" in September 2013[25)]. It covers domestic remedies for certain particular situations. They are as follows: deprivation of liberty; unsatisfactory condition of detention and ill-treatment during detention; torture and violation of the right to life; expulsion and extradition; non-execution or delayed execution of domestic courts' judgments. By extensively referring to the relevant judgments of the Court, it enumerates specific elements which effective domestic remedies for these situations should be equipped with.

22） Recommendation CM/Rec(2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings, 24 February 2010.

23） CM(2010)4add1, Draft Recommendation CM/Rec(2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings—Guide to Good Practice, 12 January 2010. The Committee of Ministers took note of this document on 24 February 2010.

24） Brighton Declaration, para.9 (f) (ii), The High Level Conference on the Future of the European Court of Human Rights, Brighton, 19-20 April 2012.

25） *Guide to good practice in respect of domestic remedies*, 18 September 2013, http://www.echr.coe.int/Documents/Pub_coe_domestics_remedies_ENG.pdf, last visited on 18 July 2014.

Although the Recommendation and the Guide are not legally binding, these instruments were drafted by the Steering Committee for Human Rights which is composed of government experts from the State Parties and finally adopted by the Committee of Ministers. Therefore, each instrument can be regarded as an expression of a collective will of the State Parties. It is inconsistent for the State Parties to fail to implement them on the grounds that they are not binding. It is rather reasonable to think that they are influential and likely to be accepted because they represent a collective will of the State Parties.

With this in mind, two notable features of the Recommendation and the Guide should be pointed out. Firstly, the Committee of Ministers has summed up enormous jurisprudence of Article 13 and fed it back to the State Parties. With regard to the binding force of the Court's judgments, only the respondent States in the proceedings are bound by the judgments. When the Court finds a violation of the Convention in respect of a certain situation of one State Party, the other State Parties which are in a similar situation do not have a legal obligation to change their own situation. Although there is a concept of case-law in the Convention, it is used with considerable ambiguity. If we understand a concept of case-law rigidly, it follows that the Convention as interpreted by the Court is legally binding on the State Parties because the interpretation by the Court is an integral part of the text of the Convention. However, it is not understood in this rigid sense. In practice, case-law means that it is desirable for the State Parties to respect it because the Court would find a violation of the Convention later if they do not respect it. Although the Recommendation and the Guide do not modify this principle on the binding force of the Court's judgments, the Committee of Ministers urges the State Parties to respect the interpretation by the Court. At least with regard to Article 13, the political demand becomes clearly stronger that the State Parties should modify their domestic laws or practices in line with the interpretation by the Court even if it was originally made against other State Parties.

Secondly, the Guide takes the view that in order for domestic remedies to be effective, it should be possible for victims to invoke the Convention before national authorities and national authorities should take the case-law of the

Court into consideration[26]. The Convention does not oblige the State Parties to provide for the possibility of invoking the Convention before national authorities, for example, before domestic courts. Also, there is no obligation for domestic courts to consider the case-law of the Court. Therefore, non-application of the Convention and non-consideration of the case-law of the Court by domestic courts do not necessarily lead to violation of Article 13. It is notable in this respect that the Court has obliged national authorities to consider its case-law by developing the interpretation of Article 13 in some cases[27]. However, the Court's attitude is rather lukewarm in that it does not mention that Article 13 imposes a general obligation on national authorities to consider its case-law, although it may be possible to think of such an obligation abstractly. In the Guide on the other hand, the Committee of Ministers urges national authorities to generally consider the case-law of the Court. This is an important step because the standards set by the Court concerning the rights other than Article 13 would be disseminated into the State Parties when the Convention is invoked before national authorities and national authorities take into consideration the case-law of the Court.

Ⅳ. Concluding remarks

There is no doubt that the Court plays a role in standard-setting through its judgments. However, the dissemination of those standards into the State Parties proceeds more at political level rather than legal or judicial level. That is to say, the Committee of Ministers tries to ensure the effective execution of the Court's judgments through intensive consultations with the respondent States and feeds

26） See, *ibid*., pp.51-59.

27） For this, see, 小畑郁「ヨーロッパ人権条約における『実効的な国内救済手段を得る権利』と条約上の権利の国内手続における援用可能性―条約一三条をめぐる人権裁判所判例の展開―」研究紀要（世界人権問題研究センター）3 号（1998 年 ） 65 頁 以 下. [Kaoru Obata, Applicability of the Convention Rights before the National Authorities under the Article 13 of the European Convention on Human Rights: Developments and Limits of the Jurisprudence by the European Court of Human Rights, *The Bulletin of Kyoto Human Rights Research Institute*, No.3 (1998), p.65ff.]

back accumulated jurisprudence to the State Parties. Thus the Committee of Ministers overcomes uncertainty surrounding the dissemination of the standards set by the Court. It follows that political efforts to draw out the willingness of the State Parties are indispensable for the Convention despite the fact that the Court gives legally binding judgments.

This conclusion concerning the Convention would be applicable as well to the core international human rights treaties adopted by the United Nations, given that they do not establish a court which gives legally binding judgments. With regard to the International Covenant on Civil and Political Rights, the Japanese government and courts are reluctant to accept the interpretation made by the Human Rights Committee in "concluding observations" and "general comments". One reason is that concluding observations and general comments are not binding on the State Parties[28]. Although one may suggest that the Japanese government should ratify the First Optional Protocol to the Covenant which enables the Human Rights Committee to receive communications from individuals, "views" which the Human Rights Committee adopts after the examination of those communications are not binding either. In this situation, it would be useful to examine legal effects of the interpretation by the Human Rights Committee[29] because the non-binding nature of concluding observations, general comments and views does not necessarily deny legal effects of the interpretation issued by the Human Rights Committee. However, what can be said from the above examination is that in order to disseminate the human rights standards as interpreted and developed by a treaty body, we do need mechanisms and efforts to draw out the will of the State Parties to accept decisions of a treaty body. Even though it is a trend that human rights treaties are implemented by decisions of independent experts who may issue authoritative interpretations, such mechanisms and efforts are indispensable.

28） For this, see, 坂元茂樹・前掲注（3）57-61 頁. [Shigeki Sakamoto, *supra* note (3), pp.57-61.]

29） See, *supra* note (3).