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## *Reform of the European Court of Human Rights*

*The United Kingdom organised, within the framework of the Chairmanship of the Council of Europe's Committee of Ministers, a high level conference on the future of the European Court of Human Rights in Brighton on 18-20 April 2012. The aim of the Brighton Conference was to agree on a package of concrete reforms to ensure that the Court can be most effective for all 800 million citizens of Council of Europe member States.*

*Pictured: Kenneth Clarke, Secretary of State for Justice, Thorbjørn Jagland, Secretary General of the Council of Europe.*

# Human Rights Information Bulletin

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

# Human rights information bulletin

## No. 85, 1 November 2011-30 April 2012

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The Convention was signed by Ukraine on 7 November 2011, Albania on 19 December 2011, Serbia on 4 April 2012. The Convention was ratified by Turkey on 14 March 2012.

**Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**

The Convention was ratified by Turkey on 7 December 2011, Bulgaria on 15 December 2011 and The Republic of Moldova on 12 March 2012.

**Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine: Convention on human rights and biomedicine**

France ratified the Convention on 13 December 2011.

**Additional Protocol to the Convention on Human Rights and biomedicine concerning transplantation of organs and tissues of human origin**

France signed the Additional Protocol on 13 December 2011.

**European Social Charter (Revised)**

"The former Yugoslav Republic of Macedonia" ratified the Charter on 6 January 2012

**European Agreement relating to persons participating in proceedings of the European Court of Human Rights**

Estonia ratified the Agreement on 9 January 2012

**Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances**

Latvia ratified the Protocol on 26 January 2012

**Convention on Action against Trafficking in Human Beings**

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**Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms**

Belgium ratified the Protocol on 13 April 2012.

***Internet: http://conventions.coe.int/***

# European Court of Human Rights

**The judgments summarised below constitute a small selection of those delivered by the Court. More extensive information can be found in the HUDOC database of the case-law of the European Convention on Human Rights.**

**The summaries of cases presented here are produced for the purposes of this *Bulletin*, and do not engage the responsibility of the Court.**

Court's case-load statistics (provisional) between 1 November 2011 and 30 April 2012:

- 755 (584) judgments delivered
- 780 (555) declared admissible, of which 767 (542) in a judgment on the merits and 13 (13) in a separate decision
- 30 704 (30 372) applications declared inadmissible
- 2 246 (1 350) applications struck off the list

The figure in parentheses indicates that a judgment/decision may concern more than one application.

***Internet: HUDOC database: http://hudoc.echr.coe.int/***

**The procedure of joint examination of admissibility and merits under Article 29 §3 of the Convention is now used frequently. Separate admissibility decisions are only adopted in more complex cases. This expedites the processing of applications, as one procedural step is done away with.**

## Grand Chamber judgments

*The Grand Chamber of 17 judges 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 a 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.*

### S. H. and Others v. Austria

*Austrian ban on using sperm and ova donation for in vitro fertilisation was not in breach of the Convention*

**Judgment of 3 November 2011**

#### Principal facts

The applicants, all Austrian nationals, are two married couples who live in Austria.

Suffering from infertility, they wished to use medically-assisted procreation techniques which are not allowed under Austrian law.

S.H. produces ova, but suffers from blocked fallopian tubes, which means that she cannot get pregnant naturally, and her husband D.H. is infertile. Owing to their medical conditions, only in vitro fertilisation with the use of sperm from a donor would allow them to have a child of whom one of them is the genetic parent. H.E.-G. suffers from agonadism, which means that she does not produce ova, while her husband M.G. can produce sperm fit for procreation. Only in vitro fertilisation with the use of ova from a donor would allow them to have a child of whom one of them is the genetic parent.

However, both of these possibilities are ruled out by the Austrian Artificial Procreation Act, which prohibits the use of sperm from a donor for in vitro fertilisation and ova donation in general. At the same time, the Act allows other assisted procreation techniques, in particular in vitro fertilisation with ova and sperm from the spouses or cohabitating partners themselves (homologous methods) and, in exceptional circumstances, donation of sperm when it is introduced into the reproductive organs of a woman.

In May 1998, S.H. and H.E.-G. lodged an application with the Austrian Constitutional Court for a

review of the relevant provisions of the Artificial Procreation Act. In October 1999, the Constitutional Court found that there was an interference with the applicants' right to respect for family life, but that it was justified, as the provisions were to avoid the forming of unusual personal relations, such as a child having more than one biological mother (a genetic one and one carrying the child). They were also to avoid the risk of exploitation of women, as pressure might be put on a woman from an economically disadvantaged background to donate ova, who otherwise would not be in a position to afford in vitro fertilisation in order to have a child of her own.

## Complaints

The applicants complained that the prohibition of sperm and ova donation for in vitro fertilisation violated their right to respect for family life under Article 8 (right to respect for private and family life), and that the difference in treatment compared to couples who wished to use medically-assisted procreation techniques, but did not need to use ova or sperm donation for in vitro fertilisation, amounted to a discriminatory treatment, in violation of Article 14 (prohibition of discrimination).

## Decision of the Court

### *Article 8*

There was no dispute between the parties as to the applicability of Article 8. The Court agreed, holding that the right of a couple to conceive a child and to make use of medically-assisted procreation for that purpose was protected by Article 8, as such a choice was an expression of private and family life.

The relevant provisions of the Austrian Artificial Procreation Act raised an issue as to whether there was a positive obligation on the state concerned to permit certain forms of artificial procreation. However, the Court found it reasonable to approach the case as one involving an interference by the state with the applicants' right to respect for their family life. They had been prevented from using certain techniques of artificial procreation by the application of the law that they unsuccessfully sought to challenge before the Austrian courts.

It was thus undisputed that the prohibition at issue was provided for by law. As regards the state's margin of appreciation in regulating matters of artificial procreation, the Court observed that there was today a clear trend in the legislation of Council of Europe member states towards allowing gamete donation for the purpose of in vitro fertilisation.

However, that emerging European consensus was not based on settled principles, but it reflected a stage of development within a particularly dynamic field of law and thus did not decisively narrow the margin of appreciation of the state. The Court therefore considered that the margin of appreciation to be given to Austria had to be a wide one, given that the use of in vitro fertilisation treatment gave rise – at the time of the Austrian court's decision, and continued to give rise today - to sensitive ethical issues against a background of fast-moving scientific developments.

The Court observed that the Austrian legislature had not completely ruled out artificial procreation, as it allowed the use of homologous techniques. According to the Austrian Constitutional Court's findings, the legislature had tried to reconcile the wish to make medically-assisted procreation available on the one hand and the existing unease among large sections of society as to the role and possibilities of modern reproductive medicine on the other.

The Austrian legislature could have enacted safeguards to reduce the risks attached to ovum donation; that it might lead to exploitation of women from an economically disadvantaged background and that women might be pressured into producing more ova than necessary. Furthermore, unusual family relations, which did not follow the typical parent-child relationship based on a direct biological link, were not unknown in the legal orders of the Council of Europe member states, and adoption was a satisfactory legal framework for such relations known in all those states.

However, the Court could not overlook the fact that the splitting of motherhood between a genetic mother and the one carrying the child differed significantly from adoptive parent-child relations. The legislature had thus been guided, in particular, by the aim of maintaining a basic principle of civil law, that the identity of the mother is always certain, and of avoiding the possibility that two women could claim to be the biological mother of the same child.

The Court further observed that all relevant legal instruments at European level were either silent on the question of ova donation or – in the case of the European Union Directive on safety standards for the donation of human cells – expressly left the decision on whether or not to use germ cells to the state concerned.

As regards the prohibition of sperm donation for in vitro fertilisation, it was true that that type of artificial procreation combined two techniques which, taken alone, were allowed under Austrian legislation. Furthermore, some of the Government's arguments in defence of the prohibition of gamete donation for in vitro fertilisation could only be applied to the prohibition of ovum donation. However, there remained the basic concerns that the donation of gametes involving the intervention of third persons in a highly technical medical process was a controversial issue in Austrian society, raising complex ethical questions on which there was not yet a consensus.

The fact that the Austrian legislature, when prohibiting the use of donated sperm or ova for in vitro fertilisation, did not at the same time rule out sperm donation for in vivo artificial insemination showed that it approached the matter carefully, seeking to reconcile social realities with its approach of principle. There was furthermore no prohibition under Austrian law on going abroad to seek treatment for infertility that used artificial procreation techniques not allowed in Austria.

The Court concluded that Austria had not, at the relevant time, exceeded the margin of appreciation afforded to it, neither as regards the prohibition of ovum donation for the purposes of artificial procreation nor as regards the prohibition of sperm donation for in vitro fertilisation. There had accordingly been no violation of Article 8 in the applicants' case.

At the same time, the Court pointed out that the Austrian Constitutional Court, in its 1999 decision upholding the prohibition in question, had held that the legal regime reflected the state of medical research and a consensus in society at the time. Those criteria might be subject to developments which the legislature, according to the domestic court's decision, would have to take into account in the future. The Austrian Government had given no indication that the authorities had

followed up that aspect of the ruling. While not finding a violation in the applicants' case, the Court underlined that the field of artificial procreation, being subject to a particularly dynamic development in science and law, had to be kept under review by the member states.

*Article 14 in conjunction with Article 8*

In view of its findings under Article 8, the Court did not consider it necessary to examine the complaint separately under Article 14 in conjunction with Article 8.

## Al-Khawaja and Tahery v. the United Kingdom

*European Court finds that use of hearsay evidence does not automatically prevent a fair trial*

**Judgment of 15 December 2011**

### Principal facts

#### Al-Khawaja

Imad Al-Khawaja is a British national who was born in 1956 and lives in Brighton (United Kingdom).

While working as a consultant physician he was charged on two counts of indecent assault on two female patients while they were allegedly under hypnosis. One of the complainants, ST, committed suicide (taken to be unrelated to the assault) before the trial. Prior to her death she had made a statement to the police.

At the trial it was decided that ST's statement should be read to the jury. The judge stated that the contents of the statement were crucial to the prosecution on count one as there was no other direct evidence of what had taken place. The defence accepted that if the statement were read to the jury at trial they would be in a position to rebut it through the cross-examination of other witnesses.

During the trial, the jury heard evidence from a number of different witnesses, including the other complainant and two of ST's friends in whom she had confided promptly after the incident. The defence was given the opportunity to cross-examine all the witnesses who gave live evidence. In his summing up, the trial judge reminded the jury that they had not seen ST give evidence or be cross-examined and that the allegations were denied.

Mr Al-Khawaja was convicted by a unanimous verdict on both counts of indecent assault.

He was sentenced to a 15-month custodial sentence on the first count and a 12-month custodial sentence on the second count, to run consecutively.

He appealed unsuccessfully. The Court of Appeal considered the trial judge's directions to be "adequate" and concluded that Mr Al-Khawaja's right to a fair trial under Article 6 (right to a fair trial) of the European Convention on Human Rights had not been breached. All his further appeals failed.

#### Tahery

Ali Tahery is an Iranian national who was born in Tehran in 1975 and lives in London.

On 19 May 2004 during a gang fight he allegedly stabbed another Iranian, S., three times in the back and was subsequently charged with wounding with intent and attempting to pervert the course of justice by telling the police that he had seen two black men carry out the stabbing.

When witnesses were questioned at the scene, no-one claimed to have seen the applicant stab S. Two days later however one of the witnesses, T., made a statement to the police that he had seen Mr Tahery stab S.

Mr Tahery was tried before Blackfriars Crown Court in April 2005. During the trial, the prosecution applied for leave to read T's statement on the ground that he was too frightened to appear in court. The trial judge, who heard evidence from both T and a police officer, found that T was afraid of giving evidence although his fear was not caused by Mr Tahery. The judge also found that special measures, such as testifying behind a screen, would not allay his fears and allowed his written statement to be admitted as evidence.

T's witness statement was then read to the jury in his absence. Mr Tahery also gave evidence. The judge, in his summing up, warned the jury about the danger of relying on T's evidence, as it had not been tested under cross-examination.

On 29 April 2005, the applicant was convicted by a majority verdict, principally of wounding with intent to cause grievous bodily harm, and later sentenced to 10 years and three months imprisonment.

Mr Tahery appealed, arguing that his right to a fair trial had been infringed because he was not able to have T cross-examined. The Court of Appeal acknowledged that the prospect of a conviction would have receded – and that of an acquittal advanced – had T's evidence not been admitted. It found nevertheless that any unfairness had been prevented by the cross-examination of other prosecution witnesses, the evidence from Mr Tahery himself and the possibility he had of calling bystanders. Furthermore, the trial judge had given the jury explicit directions on how to treat the statement in question.

Further leave to appeal was refused.

### Complaints

Relying on Article 6 §§ 1 and 3 (d) (right to obtain attendance and examination of witnesses), the applicants complained that their convictions had been based to a decisive degree on statements from witnesses who could not be cross examined in court and that they had therefore been denied a fair trial.

### Decision of the Court

The Court held that Article 6 mainly requires it to assess the overall fairness of criminal proceedings. The right to examine a witness contained in Article 6 § 3(d) is based on the principle that, before an accused can be convicted, all the evidence must normally be produced in his/her presence at a public hearing so that it can be challenged. Two requirements follow from that principle. First, there has to be a good reason for nonattendance of a witness. Second, a conviction based solely or decisively on the statement of an absent witness is generally considered to be incompatible with the requirements of fairness under Article 6 ("the sole or decisive rule").

For the second requirement the Court took the same same view as the British courts,[1] and found that the sole or decisive rule should not be applied in an inflexible way, ignoring the specificities of the particular legal system concerned. To do so would transform the rule into

a blunt and indiscriminate instrument that ran counter to the Court's traditional approach to the overall fairness of proceedings, namely to weigh in the balance the competing interests of the defence, the victim, and witnesses, and the public interest in the effective administration of justice.

Therefore, the Court found that if a conviction is based solely or decisively on the statement of an absent witness, counterbalancing factors must be in place, including strong procedural safeguards. However, the conviction would not automatically result in a breach of Article 6 § 1.

The Court considered three issues in each case: first, whether it had been necessary to admit the witness statements of ST or T; second, whether their untested evidence had been the sole or decisive basis for each applicant's conviction; and third, whether there had been sufficient counterbalancing factors including strong procedural safeguards to ensure that each trial had been fair.

1. In May and December 2009 the Court of Appeal and the Supreme Court of the United Kingdom considered the Chamber's judgment on the present cases when dismissing the appeals of four defendants who had been convicted on the basis of statements of absent victims read at trial (*R. v. Horncastle and others*).

### Al-Khawaja

It was not in dispute that ST's death had made it necessary to admit her statement, otherwise her evidence could not have been considered at all.

Furthermore, the judge who had admitted her statement had been quite clear about its significance ("no statement, no count one"). ST's statement had therefore been decisive.

It had not, however, been the sole evidence, as her friends as well as the other complainant had corroborated her allegations. Indeed, in a case of indecent assault by a doctor on his patient during a private consultation, it would be difficult to imagine stronger corroborative evidence, especially when each of the other witnesses had been called to give evidence at trial and their reliability had been tested by cross-examination.

Lastly, it had to have been clear from the direction to the jury that ST's statement should carry less weight because they had not seen, heard or cross-examined her.

In conclusion, the judge's direction as well as the evidence offered by the prosecution had enabled the jury to conduct a fair and proper assessment of the reliability of ST's allegations against Mr Al-Khawaja. The Court therefore held (by 15 votes to two) that, notwithstanding the dangers of admitting the statement as evidence and the difficulties caused to the defence, there had been sufficient counterbalancing factors to conclude that there had been no breach of Article 6 § 1 in conjunction with Article 6 § 3 (d).

### Tahery

T had been the only person who claimed to have seen the stabbing and his uncorroborated eyewitness statement had been, if not the sole, at least the decisive evidence against Mr Tahery. Without it, the chances of a conviction had been slim.

The Court found that neither the fact that Mr Tahery could challenge T's statement himself nor the trial judge's warning to the jury in his summing up sufficiently counterbalanced the difficulties caused to the defence by the admission of the untested evidence. Mr Tahery could not have T, the only witness willing to say what he had seen, cross-examined about the details of his statement or his motives for making it. Although the judge's warning was clearly and forcibly expressed, it was not sufficient to counterbalance the unfairness caused by allowing the untested statement of the only prosecution witness with the only direct evidence against Mr Tahery be read out in court.

The Court therefore concluded that there had not been sufficient counterbalancing factors to compensate for the difficulties caused to the defence by the admission of hearsay evidence and held unanimously that there had been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (d).

## Stanev v. Bulgaria

*Bulgaria breached human rights of man forced to live for years in inhuman conditions in psychiatric institution*

**Judgment of 17 January 2012**

### Principal facts

The applicant, Rusi Kosev Stanev, is a Bulgarian national who was born in 1956 and lives in Pastra in the municipality of Rila, south-western Bulgaria.

In 2000 and 2001 the Bulgarian courts found Mr Stanev to be partially incapacitated, on the ground that he had been suffering from schizophrenia since 1975 and was unable to manage his own affairs adequately or realise the consequences of his actions. In 2002 he was placed under the partial guardianship of a council officer as his family did not wish to take on guardianship responsibilities for him.

Without consulting or informing Mr Stanev, on 10 December 2002 his guardian had him placed in the Pastra social care home for men with psychiatric disorders, in a remote mountain location near the village of Pastra. He has lived there ever since. The director of the home subsequently became his guardian. Mr Stanev was only allowed to leave the institution with the director's permission. On one occasion, when he did not return from a period of organised leave, the director contacted the police, who located him. He was then returned by staff members.

Conditions in the institution, built in the 1920s, were considered to constitute inhuman and degrading treatment by Council of Europe's Committee for the Prevention of Torture and Degrading Treatment or Punishment (CPT) on its official visits in 2003 and 2004.

The CPT noted that the buildings were dilapidated, there was no running water in the buildings and the toilets were decrepit and in an execrable state in the yard. The available heating was inadequate, as was the residents' diet, which contained no milk or eggs and rarely fruit and vegetables. No therapeutic activities were provided and residents led passive, monotonous lives. In addition, the home did not return clothes to the same people after they were washed. Improve-

ments to the home were not carried out until 2009.

Mr Stanev tried to have his legal capacity restored in November 2004. In 2005 prosecutors refused to bring a case, finding that he could not cope alone and that the institution was the most suitable place for him, following a medical report of 15 June 2005 which stated that he showed signs of having schizophrenia.

Mr Stanev tried unsuccessfully to have his partial guardianship overturned by asking the Mayor of Rila to bring a court case. His application for judicial review of the mayor's refusal was rejected on the ground that an application could be made by his guardian.

Mr Stanev has made several oral requests to his guardian to apply for release which have all been refused.

On 31 August 2006 a private psychiatric report found that Mr Stanev had been incorrectly diagnosed as schizophrenic on 15 June 2005 but that he was prone to alcohol abuse, the symptoms of which could be confused with schizophrenia. It was also found that his mental health had improved and was not at risk of deteriorating and that the home's director thought he was capable of being reintegrated into society. On the other hand, his health was being damaged by his stay in the home, where he risked becoming institutionalised.

## Complaints

Under Article 3 and Article 13, Mr Stanev complained about the living conditions in the Pastra care home. He also complained, under Article 5 §§ 1, 4 and 5, that he was deprived of his liberty unlawfully and arbitrarily as a result of his placement in an institution against his will and that it was impossible under Bulgarian law to have the lawfulness of his deprivation of liberty examined or to seek compensation in court.

Relying on Article 6, he further complained that he could not apply to a court to seek release from partial guardianship. Lastly, he alleged that the restrictions resulting from the guardianship regime, including his placement in the institution, infringed his right to respect for his private life, relying on Article 8 (right to respect for private life) and Article 13.

## Decision of the Court

### *Article 5 § 1*

The Court observed that Mr Stanev's placement in the Pastra social care home was attributable to the Bulgarian authorities as it was a result of various steps taken by public authorities and institutions through their officials, from the initial request for his placement up until its implementation.

He was housed in a block which he was able to leave, but the time he spent away from the institution and the places where he could go were always subject to controls and restrictions. The Court considered that the system of leave of absence and the fact that management kept Mr Stanev's identity papers placed significant restrictions on his personal liberty. Although he was able to undertake certain journeys, he was under constant supervision and was not free to leave the home without permission whenever he wished. In addition, the Government had not shown that Mr Stanev's state of health put him at immediate risk or required the imposition of any special restrictions to protect him.

The duration of his placement in the Pastra social care home was not specified and was therefore indefinite, as he was listed in the municipal registers as being permanently resident there and is still living there today. As he had lived there for more than eight years, he must have felt the full adverse effects of the restrictions imposed on him.

Mr Stanev was not asked to give his opinion on his placement in the institution and never explicitly consented to it. Domestic law attached a certain weight to his wishes and it appeared that he was well aware of his situation. At least from 2004, he explicitly expressed his desire to leave the institution, both to psychiatrists and through his applications to the authorities to have his legal capacity restored. The Court was not convinced that he ever consented to the placement, even tacitly.

Taking into consideration the Bulgarian authorities involvement in the decision to place Mr Stanev in the institution, the rules on leave of absence, the duration of the placement and Mr Stanev's lack of consent, the Court concluded that Article 5 § 1 was applicable.

As the decision by Mr Stanev's guardian to place him in an institution for people with psychiatric disorders without having obtained his prior consent was invalid under Bulgarian law, his deprivation of liberty was in violation of Article 5.

In any event, that measure was unlawful within the meaning of Article 5 § 1 since none of the exceptions under that article applied, including Article 5 § 1 (e) – the lawful detention of a person of "unsound mind". The lack of a recent medical assessment alone would have been sufficient to conclude that his placement in the home was unlawful. In addition, it had not been established that he posed a danger to himself or to others. The Court also noted deficiencies in the assessment of whether he still suffered from a disorder warranting his confinement. Indeed, no provision was made for such an assessment under the relevant legislation.

The Court concluded that the applicant's placement in the home was unlawful and not justified by Article 5 § 1 (e) and the Bulgarian Government had not relied on any other exception in sub-paragraphs (a)-(f) of Article 5 § 1. There had therefore been a violation of Article 5 § 1.

### *Article 5 § 4*

The Court observed that the Bulgarian Government had not indicated any domestic remedy capable of giving Mr Stanev a direct opportunity to challenge the lawfulness of his placement in the institution and the continued implementation of that measure. It also noted that the Bulgarian courts were not involved at any time or in any way in the placement and that Bulgarian legislation did not provide for automatic periodic judicial review of the placement in a home for people with mental disorders. Furthermore, since Mr Stanev's placement in the institution was not recognised as a deprivation of liberty in Bulgarian law, there were no national legal remedies available to challenge its lawfulness. In addition, the Court noted that the validity of the placement agreement could have been challenged on the ground of lack of consent only on the guardian's initiative. There had therefore been a violation of Article 5 § 4.

### *Article 5 § 5*

The Court found that it had not been shown that Mr Stanev had or would have access either prior to today's judgment or subsequently to a right to compensation concerning his unlawful detention/loss of liberty, in violation of Article 5 § 5.

### *Article 3*

The Court observed that Article 3 prohibited the inhuman and degrading treatment of anyone in the

care of the authorities, whether detention ordered in the context of criminal proceedings or admission to an institution with the aim of protecting the life or health of the person concerned.

The Court noted that it was not disputed that the building in which Mr Stanev lives was renovated in late 2009, resulting in an improvement in his living conditions. The Court therefore considered that his complaint should cover the period between 2002 and 2009.

The Court found that the food was insufficient and of poor quality. The building was inadequately heated and in winter Mr Stanev had to sleep in his coat. He could shower only once a week in an unhygienic and dilapidated bathroom. The toilets were in an execrable state and access to them was dangerous, according to the findings by the CPT.

In addition, the home did not return clothes to the same people after they were washed, which was likely to arouse a feeling of inferiority in the residents.

Mr Stanev was also exposed to all those conditions for a considerable period – approximately seven years. The CPT, after visiting the home, had concluded that the living conditions there at the relevant time could be said to amount to inhuman and degrading treatment. Despite having been aware of those findings, during the period from 2002 to 2009 the Bulgarian Government did not act on their undertaking to close down the institution. The Court considered that the lack of financial resources cited by the Government was not a relevant argument to justify keeping Mr Stanev in the living conditions described.

Even though there was no suggestion that the Bulgarian authorities deliberately intended to treat Mr Stanev in a degrading way, taken as a whole, his living conditions for a period of approximately seven years amounted to degrading treatment, in violation of Article 3.

### *Article 13*

The Court observed that Mr Stanev's placement in the Pastra social care home was not regarded as detention under Bulgarian law. He would not therefore have been entitled to compensation for the poor living conditions in the institution, under section 1(1) of the State Responsibility for Damage Act 1988, which had been interpreted by the Bulgarian courts as being applicable to damage suffered by prisoners as a result of poor detention conditions. Moreover, that provision had never been found to apply to allegations of poor conditions in social care homes. The Court therefore concluded that the remedies in question were not effective within the meaning of Article 13. Also, even if Mr Stanev had been able to have his legal capacity restored and leave the institution, he would not have been awarded any compensation for his treatment during his placement there. There had therefore been a violation of Article 13, taken in conjunction with Article 3 concerning Mr Stanev's lack of access to compensation for his detention in degrading conditions.

### *Article 6 § 1*

The Court found that Mr Stanev was unable to apply for the restoration of his legal capacity other than through his guardian or one of the people listed in Article 277 of the Code of Criminal Procedure. It also noted that, under Bulgarian law, no legal distinction was made between those partially and fully deprived of legal capacity and that there was no possibility of automatic periodic review of whether the grounds for placing a person under guardianship remained valid. In addition, in Mr Stanev's case the measure in question was indefinite.

Although the right of access to the courts was not absolute and restrictions on a person's procedural rights, even where the person had been only partially deprived of legal capacity, might be justified, the right to ask a court to review a declaration of incapacity was one of the fundamental procedural rights for the protection of those who had been partially deprived of legal capacity. It followed that such people should in principle have direct access to the courts.

The Court observed that, according to a recent study,[2] 18 out of 20 national European legal systems allowed direct access to the courts for any partially incapacitated person wishing to have her or his status reviewed. In 17 countries such access was even open to those declared fully incapable. There was therefore a European trend towards granting legally incapacitated people direct access to the courts to seek restoration of their legal capacity. The Court also stressed the growing importance which international instruments for the protection of people with mental disorders were currently attaching to granting them as much legal autonomy as possible.[3]

Article 6 § 1 had therefore to be interpreted as guaranteeing in principle that anyone in Mr Stanev's position had direct access to a court to seek restoration of his or her legal capacity. As direct access of that kind was not guaranteed with a sufficient degree of certainty by the relevant Bulgarian legislation, there had been a violation of Article 6 § 1 regarding Mr Stanev.

### *Other Articles*

The Court considered that no separate issue arose under Article 8, taken alone and/or in conjunction with Article 13.

2. Anyone deprived of legal capacity can apply directly to their national courts for discontinuation of the measure in the vast majority of Council of Europe member states, according to a recent comparative study. This is the case in 17 of the 20 countries studied – Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Luxembourg, Monaco, Poland, Portugal, Romania, Slovakia, Sweden, Switzerland and Turkey – but not in Latvia or Ireland. In Ukraine, only those who had been declared fully incapable could not, although they could challenge before a court any measures taken by their guardian.

3. The United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities and Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults, which recommend that adequate procedural safeguards be put in place to protect legally incapacitated persons to the greatest extent possible, to ensure periodic reviews of their status and to make appropriate remedies available.

## Axel Springer AG v. Germany and Von Hannover v. Germany (No. 2)

*Media coverage of celebrities' private lives: acceptable if in the general interest and if in reasonable balance with the right to respect for private life*

**Judgment of 7 February 2012**

### Principal facts

#### Axel Springer AG

The applicant company, Axel Springer AG ("Springer"), is registered in Germany. It is the publisher of the Bild, a national daily newspaper with a large circulation.

In September 2004, the Bild published a front-page article about X, a well-known television actor, being arrested in a tent at the Munich beer festival for possession of cocaine. The article was supplemented by a more detailed article on another page and was illustrated by three pictures of X. It mentioned that X, who had played the role of a police superintendent in a popular TV series since 1998, had previously been given a suspended prison sentence for possession of drugs in July 2000. The newspaper published a second article in July 2005, which reported on X being convicted and fined for illegal possession of drugs after he had made a full confession.

Immediately after the first article appeared, X brought injunction proceedings against Springer with the Hamburg Regional Court, which granted his request and prohibited any further publication of the article and the photos. The prohibition to publish the article was eventually upheld by the court of appeal in June 2005, the judgment concerning the photos was not challenged by Springer.

In November 2005, Hamburg Regional Court prohibited any further publication of almost the entire article, on pain of penalty for non-compliance, and ordered Springer to pay an agreed penalty. The court held in particular that the right to protection of X's personality rights prevailed over the public's interest in being informed, even if the truth of the facts related by the daily had not been disputed. The case had not concerned a serious offence and there was no particular public interest in knowing about X's offence. The judgment was upheld by the Hamburg Court of Appeal and, in December 2006, by the Federal Court of Justice.

In another set of proceedings concerning the second article, about X's conviction, the Hamburg Regional Court granted his application on essentially the same grounds as those set out in its judgment on the first article. The judgment was upheld by the Hamburg Court of Appeal and, in June 2007, by the Federal Court of Justice.

In March 2008, the Federal Constitutional Court declined to consider constitutional appeals lodged by the applicant company against the decisions.

#### Von Hannover (no. 2)

The applicants are Princess Caroline von Hannover, daughter of the late Prince Rainier III of Monaco, and her husband Prince Ernst August von Hannover.

Since the early 1990s Princess Caroline has been trying to prevent the publication of photos of her private life in the press. Two series of photos, published in 1993 and 1997 respectively in German magazines had been the subject of three sets of proceedings before the German courts. In particular, leading judgments of the Federal Court of Justice of 1995 and of the Federal Constitutional Court of 1999 dismissed her claims.

Those proceedings were the subject of the European Court of Human Rights' judgment in *Caroline von Hannover v. Germany* (no. 59320/00) of 24 June 2004, in which the Court held that the court decisions had infringed Princess Caroline's right to respect for her private life under Article 8.

Relying on that judgment, Princess Caroline and Prince Ernst August subsequently brought several sets of proceedings before the civil courts seeking an injunction against the publication of further photos, showing them during a skiing holiday and taken without their consent, which had appeared in the German magazines *Frau im Spiegel* and *Frau Aktuell* between 2002 and 2004.

While the Federal Court of Justice granted Princess Caroline's claim as regards the publication of two of the photos in dispute in a judgment of 6 March 2007 (no. VI ZR 51/06) – stating that they did not contribute to a debate of general interest – it dismissed her claim as regards another photo which had appeared in February 2002 in *Frau im Spiegel*. It showed the couple taking a walk during their skiing holiday in St. Moritz and was accompanied by an article reporting, among other issues, on the poor health of Prince Rainier of Monaco. The Federal Court found that the reigning prince's poor health was a subject of general interest and that the press had been entitled to report on the manner in which his children reconciled their obligations of family solidarity with the legitimate needs of their private life, among which was the desire to go on holiday. In a judgment of 26 February 2008, the Federal Constitutional Court dismissed Princess Caroline's constitutional complaint, rejecting in particular the allegation that the

German courts had disregarded or taken insufficient account of the Court's case-law. On 16 June 2008, the Federal Constitutional Court declined, without giving reasons, to consider further constitutional complaints brought by the applicants concerning the same photo and a similar photo published in *Frau aktuell*.

## Complaints

Axel Springer AG complained, under Article 10, about the injunction prohibiting any further publication of the articles.

Princess Caroline von Hannover and Prince Ernst August von Hannover complained, under Article 8, of the German courts' refusal to prohibit any further publication of the photos in dispute. They alleged in particular that the courts had not taken sufficient account of the European Court of Human Rights' judgment in *Caroline von Hannover v. Germany* of 2004.

## Decision of the Court

### Axel Springer AG

It was undisputed between the parties that the German courts' decisions had constituted an interference with Springer's right to freedom of expression under Article 10. It was further common ground that the interference was prescribed by German law and that it had pursued a legitimate aim, namely the protection of the reputation of others.

As regards the question whether the interference had been necessary in a democratic society, the Court noted that the articles in question, about the arrest and conviction of the actor, concerned public judicial facts, of which the public had an interest in being informed. It was in principle for the national courts to assess how well known a person was, especially where that person, as the actor concerned, was mainly known at national level. The court of appeal had found that, having played the role of a police superintendent over a long period of time, the actor was well known and very popular.

The Court thus considered that he was sufficiently well known to qualify as a public figure, which reinforced the public's interest in being informed of his arrest and the proceedings against him.

While the Court could broadly agree with the German courts' assessment that Springer's interest in publishing the articles was solely due precisely to the fact that it was a well known actor who had committed an offence – which would not have been reported on if committed by a person unknown to the public – it underlined that the actor had been arrested in public at the Munich beer festival. The actor's expectation that his private life would be effectively protected had furthermore been reduced by the fact that he had previously revealed details about his private life in a number of interviews.

According to a statement by one of the journalists involved, the truth of which had not been contested by the German Government, the information published in the Bild in September 2004 about the actor's arrest had been obtained from the police and the Munich public prosecutor's office. It therefore had a sufficient factual basis, and the truth of the information related in both articles was not in dispute between the parties.

Nothing suggested that Springer had not undertaken a balancing exercise between its interest in publishing the information and the actor's right to respect for his private life.

Given that Springer had obtained confirmation of the information conveyed by the prosecuting authorities, it did not have sufficiently strong grounds for believing that it should preserve the actor's anonymity. It could therefore not be said to have acted in bad faith. In that context, the Court also noted that all the information revealed by Springer on the day on which the first article appeared was confirmed by the prosecutor to other magazines and to television channels.

The Court noted, moreover, that the articles had not revealed details about the actor's private life, but had mainly concerned the circumstances of his arrest and the outcome of the criminal proceedings against him. They contained no disparaging expression or unsubstantiated allegation, and the Government had not shown that the publication of the articles had resulted in serious consequences for the actor. While the sanctions imposed on Springer had been lenient, they were capable of having a chilling effect on the company. The Court concluded that the restrictions imposed on the company had not been reasonably proportionate to the legitimate aim of protecting the actor's private life.

There had accordingly been a violation of Article 10.

### Von Hannover (no. 2)

It was not the Court's task to examine whether Germany had satisfied its obligations in executing the Court's judgment in *Caroline von Hannover v. Germany* of 2004, as that task was the responsibility of the Council of Europe's Committee of Ministers.[4] Today's case only concerned the new proceedings brought by the applicants.

The Court observed that following its 2004 judgment in *Caroline von Hannover v. Germany*, the German Federal Court of Justice had made changes to its earlier case-law.

In particular, it had stated that it was significant whether a report in the media contributed to a factual debate and whether its contents went beyond a mere desire to satisfy public curiosity. The Federal Court of Justice had noted that the greater the information value for the public the more the interest of a person in being protected against its publication had to yield, and vice versa, and that the reader's interest in being entertained generally carried less weight than the interest in protecting the private sphere. The German Federal Constitutional Court had confirmed that approach.

The fact that the German Federal Court of Justice had assessed the information value of the photo in question – the only one against which it had not granted an injunction – in the light of the article that was published together with it could not be criticised under the Convention. The Court could accept that the photo, in the context of the article, did at least to some degree contribute to a debate of general interest. The German courts' characterisation of Prince Rainier's illness as an event of contemporary society could not be considered unreasonable. It was worth underlining that the German courts had granted the injunction prohibiting the publication of two other photos showing the applicants in similar circumstances, precisely on the grounds that they were being published for entertainment purposes alone.

4. In its resolution adopted on 31 October 2007 on the execution of the Court's judgment in *Caroline von Hannover v. Germany* of 2004, the Committee of Ministers declared that Germany had executed the judgment and decided to close the examination of the case.

Furthermore, irrespective of the question to what extent Caroline von Hannover assumed official functions on behalf of the Principality of Monaco, it could not be claimed that the applicants, who were undeniably very well known, were ordinary private individuals.

They had to be regarded as public figures.

The German courts had concluded that the applicants had not provided any evidence that the photos had been taken in a climate of general harassment, as they had alleged, or that they had been taken secretly. In the circumstances of the case, the question as to how the pictures had been taken had required no more detailed examination by the courts, as the applicants had not put forward any relevant arguments in that regard.

In conclusion, the German courts had carefully balanced the right of the publishing companies to freedom of expression against the right of the applicants to respect for their private life. In doing so, they had explicitly taken into account the Court's case-law, including its 2004 judgment in *Caroline von Hannover v. Germany*. There had accordingly been no violation of Article 8.

## Hirsi Jamaa and Others v. Italy

*Returning migrants to Libya without examining their case exposed them to a risk of ill-treatment and amounted to collective expulsion*

**Judgment of 23 February 2012**

### Principal facts

The applicants are 11 Somalian and 13 Eritrean nationals. They were part of a group of about 200 people who left Libya in 2009 on board three boats bound for Italy. On 6 May 2009, when the boats were 35 miles south of Lampedusa (Agrigento), within the maritime search and rescue region under the responsibility of Malta, they were intercepted by Italian Customs and Coastguard vessels. The passengers were transferred to the Italian military vessels and taken to Tripoli. The applicants say that during the journey the Italian authorities did not tell them where they were being taken, or check their identity. Once in Tripoli, after a 10-hour voyage, they were handed over to the Libyan authorities. At a press conference on 7 May 2009 the Italian Minister of the Interior said that the interception of the vessels on the high seas and the return of the migrants to Libya was in accordance with the bilateral agreements with Libya that had come into force on 4 February 2009, marking an important turning point in the fight against illegal immigration.

In a speech to the Senate on 25 May 2009 the Minister stated that between 6 and 10 May 2009 more than 471 clandestine migrants had been intercepted on the high seas and transferred to Libya in accordance with those bilateral agreements. In his view, that pushback policy discouraged criminal gangs involved in people smuggling and trafficking, helped save lives at sea and substantially reduced landings of clandestine migrants along the Italian coast. During the course of 2009 Italy conducted nine operations on the high seas to intercept clandestine migrants, in conformity with the bilateral agreements concluded with Libya. On 26 February 2011 the Italian Defence Minister declared that the bilateral agreements with Libya were suspended following the events in Libya.

According to information submitted to the Court by the applicants' representatives, two of the applicants had died in unknown circumstances. Between June and October 2009 fourteen of the applicants had been granted refugee status by the office of the UN High Commissioner for Refugees (UNHCR) in Tripoli. Following the revolution in Libya in February 2011 the quality of contact between the applicants and their representatives deteriorated. The lawyers are currently in contact with six of the applicants, four of whom live in Benin, Malta or Switzerland and some of whom are awaiting a response to their request for international protection. One of the applicants is in a refugee camp in Tunisia and is planning to return to Italy. In June 2011 refugee status was granted to one of the applicants in Italy after he had clandestinely returned there.

### Complaints

Relying on Article 3, the applicants submitted that the decision of the Italian authorities to send them back to Libya had exposed them to the risk of ill-treatment there, as well as to the risk of ill-treatment if they were sent back to their countries of origin (Somalia and Eritrea).

They also complained that they had been subjected to collective expulsion prohibited by Article 4 of Protocol No. 4. Relying, lastly, on Article 13, they complained that they had had no effective remedy in Italy against the alleged violations of Article 3 and of Article 4 of Protocol No. 4.

### Decision of the Court

#### *The question of jurisdiction under Article 1*

Only in exceptional cases did the Court accept that acts of the member states performed, or producing effects, outside their territories could constitute an exercise of jurisdiction by them.

Whenever the state, through its agents operating outside its territory, exercised control and authority over an individual, and thus its jurisdiction, the state was under an obligation to secure the rights under the Convention to that individual.

Italy did not dispute that the ships onto which the applicants had been embarked had been fully within Italian jurisdiction. The Court reiterated the principle of international law, enshrined in the Italian Navigation Code, that a vessel sailing on the high seas was subject to the exclusive jurisdiction of the state of the flag it was flying. The Court could not accept the Government's description of the operation as a "rescue operation on the high seas" or that Italy had exercised allegedly minimal control over the applicants. The events had taken place entirely on board ships of the Italian armed forces, the crews of which had been composed exclusively of Italian military personnel. In the period between boarding the ships and being handed over to the Libyan authorities, the applicants had been under the continuous and exclusive de jure and de facto control of the Italian authorities. Accordingly, the events giving rise to the alleged violations had fallen within Italy's jurisdiction within the meaning of Article 1.

*Article 3*

**Risk of suffering ill-treatment in Libya**

The Court was aware of the pressure on states resulting from the increasing influx of migrants, which was a particularly complex phenomenon when occurring by sea, but observed that this could not absolve a state of its obligation not to remove any person who would run the risk of being subjected to treatment prohibited under Article 3 in the receiving country. Noting that the situation in Libya had deteriorated after April 2010, the Court decided to confine its examination of the case to the situation prevailing in Libya at the material time. It noted that the disturbing conclusions of numerous organisations [5] regarding the treatment of clandestine immigrants were corroborated by the report of the Committee for the Prevention of Torture (CPT) of 2010.[6]

Irregular migrants and asylum seekers, between whom no distinction was made, had been systematically arrested and detained in conditions described as inhuman by observers,[7] who reported cases of torture among others. Clandestine migrants had been at risk of being returned to their countries of origin at any time and, if they managed to regain their freedom, had been subjected to particularly precarious living conditions and exposed to racist acts. The Italian Government had maintained that Libya was a safe destination for migrants and that Libya complied with its international commitments as regards asylum and the protection of refugees. The Court observed that the existence of domestic laws and the ratification of international treaties guaranteeing respect for fundamental rights were not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources had reported practices contrary to the principles of the Convention. Furthermore, Italy could not evade its responsibility under the Convention by referring to its subsequent obligations arising out of bilateral agreements with Libya. The Court noted, further, that the Office of the UNHCR in Tripoli had never been recognised by the Libyan Government. That situation had been well-known and easy to verify at the relevant time. The Court therefore considered that when the applicants had been removed, the Italian authorities had known or should have known that they would be exposed to treatment in breach of the Convention.

Furthermore, the fact that the applicants had not expressly applied for asylum had not exempted Italy from its responsibility. The Court reiterated the obligations on states arising out of international refugee law, including the "non-refoulement principle" also enshrined in the Charter of Fundamental Rights of the European Union. The Court attached particular weight in this regard to a letter of 15 May 2009 from Mr Jacques Barrot, Vice-President of the European Commission, in which he reiterated the importance of that principle.[8]

The Court, considering the fact that a large number of irregular immigrants in Libya had found themselves in the same situation as the applicants did not make the risk concerned any less individual, concluded that by transferring the applicants to Libya the Italian authorities had, in full knowledge of the facts, exposed them to treatment proscribed by the Convention. The Court thus concluded that there had been a violation of Article 3.

**Risk of suffering ill-treatment in the applicants' country of origin**

The indirect removal of an alien left the state's responsibility intact, and that state was required to ensure that the intermediary country offered sufficient guarantees against arbitrary refoulement particularly where that state was not a party to the Convention. The Court would determine whether there had been such guarantees in this case. All the information in the Court's possession showed prima facie that there was widespread insecurity in Somalia – see the Court's conclusions in the case of *Sufi and Elmi v. the United Kingdom*[9] – and in Eritrea – individuals faced being tortured and detained in inhuman conditions merely for having left the country irregularly. The applicants could therefore arguably claim that their repatriation would breach Article 3 of the Convention. The Court observed that Libya had not ratified the Geneva Convention and noted the absence of any form of asylum and protection procedure for refugees in the country. The Court could not therefore subscribe to the Government's argument that the UNHCR's activities in Tripoli represented a guarantee against arbitrary repatriation. Moreover, Human Rights Watch and the UNHCR had denounced several forced returns of asylum seekers and refugees to highrisk countries. Thus, the fact that some of the applicants had obtained refugee status in Libya, far from being reassuring, might actually have increased their vulnerability.

The Court concluded that when the applicants were transferred to Libya, the Italian authorities had known or should have known that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their countries of origin. That transfer accordingly violated Article 3.

*Article 4 of Protocol No.4*

**Admissibility of the complaint**

The Court was required, for the first time, to examine whether Article 4 of Protocol No. 4 applied to a case involving the removal of aliens to a third state carried out outside national territory. It had to ascertain whether the transfer of the applicants to Libya constituted a collective expulsion within the meaning of Article 4 of Protocol No. 4. The Court observed that neither the text nor the *travaux préparatoires* of the Convention precluded the extraterritorial application of that provision. Furthermore, were Article 4 of Protocol No. 4 to apply only to collective expulsions from the national territory of the member states, a significant component of contemporary migratory patterns would not fall within the ambit of that provision and migrants having taken to the sea, often risking their lives, and not having managed to reach the borders of a state, would not be entitled to an examination of their personal circumstances before being expelled, unlike those travelling by land. The notion of expulsion, like the concept of "jurisdiction", was clearly principally territorial. Where, however, the Court found that a state had, exceptionally, exercised its jurisdiction outside its national territory, it

5. International bodies and non-governmental organisations; see paragraphs 37 – 41 of the judgment
6. Report of 28 April 2010 of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe after a visit to Italy
7. The UNHCR, Human Rights Watch and Amnesty International
8. Paragraph 34 of the judgment
9. Judgment of 28 June 2011

could accept that the exercise of extraterritorial jurisdiction by that state had taken the form of collective expulsion. The Court also reiterated that the special nature of the maritime environment did not make it an area outside the law. It concluded that the complaint was admissible.

**Merits of the complaint**

The Court observed that, to date, the *Čonka v. Belgium*[10] case was the only one in which it had found a violation of Article 4 of Protocol No. 4. It reiterated that the fact that a number of aliens were subject to similar decisions did not in itself lead to the conclusion that there was a collective expulsion if the case of each person concerned had been duly examined. In the present case the transfer of the applicants to Libya had been carried out without any examination of each individual situation. No identification procedure had been carried out by the Italian authorities, which had merely embarked the applicants and then disembarked them in Libya. The Court concluded that the removal of the applicants had been of a collective nature, in breach of Article 4 of Protocol No. 4.

*Article 13 taken in conjunction with Article 3 and with Article 4 of Protocol No.4*

The Italian Government acknowledged it had not been possible to assess the applicants' personal circumstances on board the military ships. The applicants alleged that they had been given no information by the Italian military personnel, who had led them to believe that they were being taken to Italy and had not informed them as to the procedure to be followed to avoid being returned to Libya. That version of events, though disputed by the Government, was corroborated by a large number of witness statements gathered by the UNHCR, the CPT and Human Rights Watch. The applicants had thus been unable to lodge their complaints under Article 3 of the Convention and Article 4 of Protocol No. 4 with a competent authority and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced.

Even if a remedy under the criminal law against the military personnel on board the ship were accessible in practice, this did not satisfy the criterion of suspensive effect. The Court reiterated the requirement flowing from Article 13 that execution of a measure be stayed where the measure was contrary to the Convention and had potentially irreversible effects.

Having regard to the irreversible consequences if the risk of torture or ill-treatment materialised, the suspensive effect of an appeal should apply where an alien was returned to a state where there were serious grounds for believing that he or she faced a risk of that nature. The Court concluded that there had been a violation of Article 13 taken in conjunction with Article 3 and Article 4 of Protocol No. 4.

10. Judgment of 5 February 2002

## Creangă v. Romania

*Insufficient legal basis for depriving a police officer of his liberty in connection with an investigation into corruption*

**Judgment of 23 February 2012**

### Principal facts

The applicant, Sorin Creangă, is a Romanian national who was born in 1956 and lives in Bucharest (Romania). He was a police officer and in 1995 became an officer in the criminal investigation department of the Bucharest police.

On 16 July 2003 he was informed by his superior that he was required to go to the headquarters of the National Anti-Corruption Prosecution Service ("the NAP") for questioning. Mr Creangă and 25 of his colleagues were questioned by a military prosecutor about thefts of petroleum from pipelines on the outskirts of Bucharest.

According to the applicant, he was told at around midnight that a warrant had been issued for his temporary pre-trial detention for a period of three days, from 16 to 18 July 2003.

According to the Government, at about 12 noon on 16 July 2003 the prosecutor informed the police officers that a criminal investigation had been opened in respect of ten of them, including Mr Creangă, who then waited voluntarily in the NAP premises to have his legal situation clarified. At 10 p.m. the prosecutor charged Mr Creangă with accepting bribes, aiding and abetting aggravated theft and criminal conspiracy, and placed him in temporary pre-trial detention. During the night, he was transferred to Rahova Prison with 13 of his co-accused.

In an interlocutory judgment of 18 July 2003 the Military Court of Appeal granted a request by the prosecution service to extend the pre-trial detention of the applicant and the other co-accused by 27 days, finding that there was evidence in the case file to suggest that they had committed the offences with which they had been charged, and that their pre-trial detention was necessary on public-order grounds. It took into account the risk that they might influence witnesses, their attempts to evade criminal proceedings and the execution of the sentence, the complexity of the case, the large number of accused and the difficulty in obtaining evidence.

On 21 July 2003 the Supreme Court of Justice upheld an appeal by the applicant and his co-accused and ordered their release. In a final judgment of 25 July 2003 the Supreme Court of Justice upheld an application by the Procurator General of Romania to have the judgment of 21 July 2003 quashed and, on the merits, dismissed the applicant's appeal.

It held that the pre-trial detention of the accused was justified since there was sufficient evidence in the file to suggest that each of them could have committed the offences with which they had been charged.

On 25 July 2003 Mr Creangă was placed in pre-trial detention. By an interlocutory judgment of 29 June 2004 the territorial military court ordered his release, at the same time prohibiting him from leaving the country. In a judgment of 22 July 2010 Mr Creangă was sentenced to three years' imprisonment, suspended, for taking bribes and harbouring a criminal.

### Complaints

Relying on Article 5 § 1 (right to liberty and security), Mr Creangă submitted that his detention on 16 July 2003 and his placement in pre-

trial detention on 25 July 2003 had been unlawful.

### Decision of the Court

*Article 5 § 1*

**Deprivation of liberty from 9 a.m. to 10 p.m. on 16 July 2003**

In its Chamber judgment of 15 June 2010 the Court had concluded that Mr Creangă had been deprived of his liberty without any legal basis from 10 a.m. on 16 July 2003, when he had been questioned by the prosecutor.

The parties did not dispute that Mr Creangă had been summoned to appear before the NAP on 16 July 2003 and that he had entered the NAP headquarters at 9 a.m. to make a statement for the purpose of a criminal investigation. Although he had not been brought there under duress, Mr Creangă had been under the control of the authorities from that moment.

The large-scale criminal investigation which clearly formed the background to the events of 16 July 2003 had been aimed at dismantling a vast petroleum-trafficking network involving police officers and gendarmes. The opening of proceedings against Mr Creangă and his colleagues was therefore to be seen in this context, and the need to carry out a series of criminal investigation procedures on the same day tended to indicate that Mr Creangă had been obliged to comply. Seeing that the Government had been unable to show that the applicant had left the NAP headquarters or that he had been free to leave the premises after his initial statement, and having regard to the coherent nature of his account, the Court considered that he had indeed remained in the prosecution service premises and had been deprived of his liberty, at least from 12 noon to 10 p.m.

The Court had to determine whether Mr Creangă had been deprived of his liberty "in accordance with a procedure prescribed by law" within the meaning of Article 5 § 1.

Mr Creangă had been summoned to appear before the NAP to make a statement in the context of a criminal investigation, without having been given any further information. At 12 noon the prosecutor had informed him that criminal proceedings had been opened against him. The Court considered that, from that moment, the prosecutor had had sufficiently strong suspicions to justify depriving the applicant of his liberty for the purpose of the investigation and that Romanian law provided for the measures to be taken in that regard. However, the prosecutor had decided only at a very late stage, towards 10 p.m., to place him in pre-trial detention. Accordingly, Mr Creangă's deprivation of liberty on 16 July 2003, at least from 12 noon to 10 p.m., had had no basis in domestic law and had breached Article 5 § 1.

**Pre-trial detention from 10 p.m. on 16 July 2003 to 10 p.m. on 18 July 2003**

The Court observed that the suspicions against the applicant had been based on facts and evidence in the case file suggesting that he could have committed the offences in question. The risk that Mr Creangă, as a police officer, might exert an influence on individuals who were due to be questioned had been a relevant and sufficient reason to justify his pre-trial detention. Reiterating the reasons set out in the Chamber judgment, the Court considered that the deprivation of liberty had been justified and that there had therefore been no violation of Article 5 § 1.

**Placement in pre-trial detention from 25 July 2003**

In its Chamber judgment the Court had found that an application to have a decision quashed had been neither accessible nor foreseeable for the applicant. The remedy in question could be used only by the Procurator General, who was the hierarchical superior of the prosecutor who had ordered the applicant's detention and requested its extension.

The Court had also noted that the provision of the Code of Criminal Procedure by which an application to have a final decision quashed could be lodged where the decision was "contrary to the law" was too vague to be foreseeable. It had held that Mr Creangă's deprivation of liberty from 25 July 2003 had not had a sufficient basis in domestic law.

Reiterating that it was essential for the conditions for deprivation of liberty under domestic law to meet the standard of "lawfulness" set by the Convention, the Court agreed entirely with the conclusions of the Chamber judgment of 15 June 2010 and held that there had been a violation of Article 5 § 1.

## Sitaropoulos and Giakoumopoulos v. Greece

*The inability of Greeks living abroad to vote in parliamentary elections from their place of residence did not breach their human rights*

**Judgment of 15 March 2012**

### Principal facts

The applicants, Nikolaos Sitaropoulos and Christos Giakoumopoulos, are Greek nationals who were born in 1967 and 1958 respectively and live in Strasbourg (France). They are European civil servants.

On 10 September 2007 the applicants expressed their wish to vote from their country of residence in the parliamentary elections to be held in Greece on 16 September 2007.

Their request was turned down by the Greek Ambassador in France on the ground that no rules existed laying down practical arrangements for the exercise of voting rights by Greek voters who were outside the country.

### Complaints

Relying on Article 3 of Protocol No. 1 (right to free elections) to the Convention, the applicants alleged that the inability of Greek expatriates to vote from their place of residence amounted to disproportionate interference with the exercise of their voting rights.

### Decision of the Court

*Article 3 of Protocol No. 1*

In its Chamber judgment of 8 July 2010 the Court had held that the absence of measures to give effect to expatriates' voting rights, despite the fact that the Greek Constitution had, for 35 years, made provision for practical arrangements to be put in place enabling expatriates to vote, was likely to constitute unfair treatment of Greek citizens living abroad.

The Court pointed out that Article 3 of Protocol No. 1 not only imposed

an obligation on the High Contracting Parties to hold elections under conditions which ensured the free expression of the opinion of the people, but also implied individual rights including the right to vote.

The Court's task was therefore to satisfy itself that the conditions to which the right to vote was made subject did not curtail that right to such an extent as to impair its very essence and deprive it of its effectiveness.

The case concerned the applicants' complaint that the Greek legislature had not made the necessary arrangements enabling Greek citizens living abroad to vote in parliamentary elections from their place of residence. Hence, the complaint did not relate to the recognition of expatriates' right to vote as such, but rather to the conditions governing the exercise of that right. The question was therefore whether Article 3 of Protocol No. 1 placed states under an obligation to introduce a system enabling expatriate citizens to exercise their voting rights from abroad.

In order to do this, the Court interpreted the provisions of Article 3 of Protocol No. 1 in the light of the relevant international instruments, the practices of the Council of Europe member states and the provisions of Greek domestic law.

The Court noted that neither the relevant international and regional law nor the varying practices of the member states in this sphere revealed any obligation or consensus which would require states to make arrangements for the exercise of voting rights by citizens living abroad. While the Council of Europe had invited member states to enable their citizens living abroad to participate to the fullest extent possible in the electoral process, the Venice Commission had taken the view that facilitating the exercise of the right in question was desirable but not mandatory for states.

The Court observed that, while the great majority of Council of Europe member states allowed their citizens to vote from abroad, some did not. Furthermore, in those member states that did allow voting from abroad, the practical arrangements took a variety of forms.

The Court also noted that, although the Greek Constitution contained a provision encouraging the legislature to arrange for the exercise of expatriates' voting rights, it did not oblige it to do so. Observing that several attempts to enact legislation governing the exercise of voting rights by Greeks living abroad had failed to secure political agreement, the Court considered that it was not its place to indicate to the national authorities when and how to give effect to that provision.

Lastly, the Court found that the disruption to the applicants' financial, family and professional lives that would have been caused had they had to travel to Greece in order to vote did not appear to be disproportionate to the point of infringing the right in question. Accordingly, it held that there had been no violation of Article 3 of Protocol No. 1.

## Aksu v. Turkey

*A government-funded book and two dictionaries published in Turkey were not offensive to Roma*

**Judgment of 15 March 2012**

### Principal facts

The applicant, Mustafa Aksu, is a Turkish national who was born in 1931 and lives in Ankara. He is of Roma origin and alleges that three government-funded publications included remarks and expressions that reflected anti-Roma sentiment.

In June 2001, Mr Aksu filed a petition on behalf of the Turkish Gypsy associations with the Ministry of Culture, complaining that a book it had published, entitled "The Gypsies of Turkey", contained passages that humiliated Gypsies, as it depicted them as involved in criminal activities. In particular, the author had stated that some Gypsies made a living from "pickpocketing, stealing and selling narcotics". Mr Aksu therefore requested that the sale of the book be stopped and all copies seized.

Informed by the Ministry of Culture that, according to its publications advisory board, the book reflected scientific research, and that the author would not allow any amendments, Mr Aksu brought civil proceedings against the Ministry and the author of the book. He requested compensation and asked for the book to be confiscated and for its publication and distribution to be stopped. In September 2002, Ankara Civil Court dismissed the requests in so far as they concerned the author and decided that it lacked jurisdiction as regards the case against the Ministry. The Court of Cassation upheld the judgment and eventually dismissed Mr Aksu's request for rectification in December 2003. In April 2004 the administrative court dismissed the complaint subsequently lodged by Mr Aksu against the Ministry. Both the civil court and the administrative court held that the book was the result of academic research and that the passages in question were not insulting. The courts found in particular that the author had put effort into his work and that there had been no racist intent behind it.

The other publications, a dictionary for school pupils and an ordinary dictionary, were published in 1998 by a language association and had been funded by the Ministry of Culture. In both dictionaries the literal definition of the word "Gypsy" was given as well as a second meaning, "miserly", labelled as the metaphorical sense. In April 2002 Mr Aksu sent a letter to the language association on behalf of the Confederation of Gypsy Cultural Associations, complaining in particular that this entry was insulting and discriminatory against Gypsies. He asked the association to remove a number of expressions from the dictionary.

In April 2003 Mr Aksu also brought civil proceedings against the association, requesting compensation and that the expressions in question be removed. In July 2003, the civil court dismissed the case, holding that the definitions in the dictionaries were based on historical and sociological facts and that there had been no intention to humiliate or debase an ethnic group. It further noted that there were similar expressions in Turkish concerning other ethnic groups, which were also included in dictionaries. The judgment was upheld by the Court of Cassation in March 2004.

### Complaints

Mr Aksu lodged two applications with the European Court of Human Rights on, respectively, 23 January and 4 August 2004, arguing that the book and dictionaries contained passages and definitions which were an insult to the Roma community. He relied on Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination).

Nor had the authorities failed to take the necessary steps to protect Mr Aksu's private life. As to the dic-

tionaries, the Court observed that the expressions and definitions in question, prefaced with the comment that they were of a metaphorical nature, had not been discriminatory.

### Decision of the court

#### *Article 14*

The Court reiterated that discrimination within the meaning of Article 14 was to be understood as treating people in relevantly similar situations differently, without an objective or reasonable justification. However, Mr Aksu had not managed to build a case to prove that the publications had a discriminatory intent or effect. Mr Aksu's case did not therefore concern a difference of treatment and the Court decided to examine the case only under Article 8.

#### *Article 8*

The Court accepted that an individual's ethnic identity was an aspect of physical and social identity that came under the notion of "private life" under Article 8. Any negative stereotyping of such a group could affect their private life, meaning that it could have an impact on their sense of identity and feelings of self-worth. What was at stake therefore in this case were publications allegedly affecting the identity of a group to which Mr Aksu belonged, and thus his private life.

The main issue that the Court had to consider was not whether the authorities had directly interfered with Mr Aksu's private life but whether they had complied with their obligation under Article 8 to take the necessary measures to protect Mr Aksu's effective right to his private life.

The Turkish courts were therefore called upon to balance Mr Aksu's right to respect for his private life as a member of the Roma community against the public interest in protecting freedom of expression (under Article 10 of the Convention), such as for example the freedom of the author of the book "The Gypsies of Turkey" to carry out scientific research on a specific ethnic group and publish his findings.

As concerned the book, the Court found that the domestic courts' conclusions – that the book, based on scientific research, had neither been an insult to nor an attack on Roma identity – had been reasonable.

Written by an academic, whose research and publications should only be restricted after the most careful consideration, the book should be taken as a whole. The author had not made any negative remarks about the Roma in general, only referring to certain – not all – members of the Roma community's involvement in illegal activities. In the preface, introduction and conclusion, the author had emphasised his intention to shed light on the unknown world of the Turkish Roma community, which had been ostracised and vilified on account of prejudice. Furthermore, the author had explained his method of research which had involved living with the Roma community and collecting information from them, the local authorities and the police.

As concerned the dictionaries it would have been preferable to label the second meaning of the word "Gypsy" as "pejorative" or "insulting" rather than "methaphorical". Such a precaution would also have been in line with a general policy recommendation by the Council of Europe's European Commission against Racism and intolerance (ECRI) on combating racism and racial discrimination through education, notably by promoting critical thinking among pupils and equipping them with the necessary skills to react to stereotypes. However, this alone was insufficient for the Court to override the domestic courts' view on the case. Indeed, the dictionary for pupils was not actually a school textbook and was not distributed to schools or recommended by the Ministry of Education as part of the school curriculum.

Moreover, Mr Aksu had been able to bring both his cases before two levels of jurisdiction, showing that an effective legal system had been in place and available to him for the protection of his rights under Article 8.

Further agreeing with a report by ECRI,[11] the Court encouraged the Turkish Government to pursue their efforts in combating negative stereotyping of Roma and to give special consideration to their needs and lifestyle and held that, in both cases, the Turkish authorities had taken all necessary steps to comply with their obligation under Article 8 to protect Mr Aksu's effective right to respect for his private life. There had therefore been no violation of Article 8 as concerned the book "The Gypsies of Turkey" or the two dictionaries.

11. ECRI's fourth report on Turkey, CRI(2011)5, published on 8 February 2011

## Austin and Others v. the United Kingdom

*Containment within police cordon during violent demonstration did not amount to deprivation of liberty*

**Judgment of 15 March 2012**

### Principal facts

The four applicants are Lois Austin, a British national who was born in 1969 and lives in Basildon; George Black, a Greek and Australian national who was born in 1949 and lives in Melbourne; Bronwyn Lowenthal a British and Australian national who was born in 1972 and lives in London; and, Peter O'Shea, a British national who was born in 1963 and lives in Wembley.

The police became aware that on 1 May 2001 activists from environmentalist, anarchist and left-wing protest groups intended to stage various protests based on the locations from the Monopoly board game. The organisers of the "May Day Monopoly" protest did not make any contact with the police or attempt to seek authorisation for the demonstrations. By 2 p.m. on that day there were over 1,500 people in Oxford Circus and more were steadily joining them. The police, fearing public disorder, took the decision at approximately 2 p.m. to contain the crowd and cordon off Oxford Circus.

Controlled dispersal of the crowd was attempted throughout the afternoon but proved impossible as some members of the crowds both within and outside the cordon were very violent, breaking up paving slabs and throwing debris at the police. The dispersal was completed at around 9.30 p.m. Ms Austin, a member of the Socialist Party and a frequent participant in demonstrations, attended the protest on 1 May

2001 and was caught up in the Oxford Circus cordon.

Mr Black wanted to go to a bookshop on Oxford Street but, diverted by a police officer on account of the approaching demonstrators, met a wall of riot police and was forced into Oxford Circus where he remained until 9.20 p.m. Similarly, Ms Lowenthal and Mr O'Shea had no connection with the demonstration. Both on their lunch-break, they were held within the cordon until 9.35 p.m. and 8 p.m., respectively.

In April 2002 Ms Austin brought proceedings against the Commissioner of Police of the Metropolis, claiming damages for false imprisonment and for a breach of her rights under Article 5 (right to liberty and security) of the European Convention of Human Rights. In March 2005 her claims were dismissed. Her subsequent appeals were then also dismissed both by the Court of Appeal and finally in January 2009 by the House of Lords.

The House of Lords concluded that Ms Austin had not been deprived of her liberty and that Article 5 of the Convention did not therefore apply.

## Complaints

The applicants complained that they were deprived of their liberty without justification, in breach of Article 5 § 1.

## Decision of the Court

### *Article 5*

The Court observed that this was the first time it was called to consider the application of the Convention in respect of the "kettling" or containment of a group of people carried out by the police on public order grounds. In that connection, it first had to assess whether the applicants had been deprived of their liberty, within the meaning of Article 5 § 1.

In deciding whether there had been a "deprivation of liberty" within the meaning of Article 5 § 1, the Court referred to a number of general principles established in its case-law.

First, the Convention was a "living instrument", which had to be interpreted in the light of present day conditions. Even by 2001, advances in communications technology had made it possible to mobilise protesters rapidly and covertly on a hitherto unknown scale. Article 5 did not have to be construed in such a way as to make it impracticable for the police to fulfil their duties of maintaining order and protecting the public.

Secondly, the Convention had to be interpreted harmoniously, as a whole. It had to be taken into account that various Articles of the Convention placed a duty on the police to protect individuals from violence and physical injury. Thirdly, the context in which the measure in question had taken place was relevant. Members of the public were often required to endure temporary restrictions on freedom of movement in certain contexts, such as travel by public transport or on the motorway, or attendance at a football match.

The Court did not consider that such commonly occurring restrictions could properly be described as "deprivations of liberty" within the meaning of Article 5 § 1, so long as they were rendered unavoidable as a result of circumstances beyond the control of the authorities, were necessary to avert a real risk of serious injury or damage, and were kept to the minimum required for that purpose.

The Court further emphasised that, within the Convention system, it was for the domestic courts to establish the facts and the Court would generally follow the findings of facts reached by the domestic courts.

In this case, the Court based itself on the facts found by Mr Justice Tugendhat from the High Court, following a three week trial and the consideration of substantial evidence. It was established that the police had expected a hard core of between 500 and 1000 violent demonstrators to gather at Oxford Circus at around 4 p.m. The police had also anticipated a real risk of serious injury, even death, and damage to property if the crowds were not effectively controlled. Given that, about two hours earlier, over 1 500 people had already gathered there, the police had decided to impose an absolute cordon as the only way to prevent violence and the risk of injured people and damaged property.

There had been space within the cordon for people to walk about and there had been no crushing. However, the conditions had been uncomfortable with no shelter, food, water or toilet facilities.

Although the police had tried, continuously throughout the afternoon, to start releasing people, their attempts were repeatedly suspended because of the violent and uncooperative behaviour of a significant minority both within and outside the cordon. As a result, the police had only managed, at about 9.30 p.m., to complete the full dispersal of the people contained. Nonetheless, approximately 400 individuals who could clearly be identified as not involved in the demonstration or who had been seriously affected by being confined, had been allowed to leave before that time.

The Court found that the cordon was imposed to isolate and contain a large crowd in dangerous and volatile conditions. Given the circumstances that had existed at Oxford Circus on 1 May 2011, an absolute cordon had been the least intrusive and most effective means available to the police to protect the public, both within and outside the cordon, from violence.

In this context, the Court did not consider that the putting in place of the cordon had amounted to a "deprivation of liberty". Indeed, the applicants had not contended that, when it was first imposed, those within the cordon had been immediately deprived of their liberty.

Furthermore, the Court was unable to identify a moment when the containment could be considered to have changed from what had been, at most, a restriction on freedom of movement, to a deprivation of liberty. It was striking that some five minutes after an absolute cordon had been imposed, the police had been planning to start a controlled dispersal. Shortly afterwards, and fairly frequently thereafter, the police had made further attempts to start dispersing people and had kept the situation under permanent close review. As the same dangerous conditions at the origin of the absolute cordon had continued to exist throughout the afternoon and early evening, the Court found that the people within the cordon had not been deprived of their liberty within the meaning of Article 5 § 1.

Notwithstanding the above finding, the Court emphasised the fundamental importance of freedom of expression and assembly in all democratic societies and underlined that national authorities should not use measures of crowd control to stifle or discourage protest, but rather only when necessary to prevent serious injury or damage.

Since Article 5 did not apply, the Court held – by 14 votes to three - that there had been no violation of that provision.

# Konstantin Markin v. Russia

*Excluding military servicemen from entitlement to parental leave is discriminatory*

**Judgment of 22 March 2012**

## Principal facts

The applicant, Konstantin Markin, is a Russian national who was born in 1976 and lives in Velikiy Novgorod (Russia).

In 2004 he signed a military service contract according to which he undertook to "serve under the conditions provided for by law". He started serving as a radio intelligence operator and was often replaced in his duties by female military personnel.

Following his divorce with the mother of his three children, he was left to raise the children alone. He applied for three years' parental leave shortly after the birth of his third child. His request was rejected because, according to the law, parental leave of that duration could only be granted to female military personnel.

While initially he was allowed to take three months off work, he was called to duty a few weeks into his leave, which he challenged unsuccessfully in a military court.

In October 2006, his military unit issued an order granting him almost two-years' parental leave, until his youngest son turned three, as well as financial aid of about 5900 euros in total. The military court subsequently criticised the military unit for disregarding the Russian courts' judgments by having issued the order, drawing attention also to the unlawfulness of that order.

In January 2009, the Constitutional Court rejected Mr Markin's complaint about the inability of fathers to take three-year paternal leave, finding that the provisions of the Military Act Service concerning parental leave were compatible with the Constitution.

In March 2011, a military prosecutor visited Mr Markin's home. According to the Russian authorities, that was done in order to collect information about his family situation for the purpose of the Government's submissions to the Court. Upon consulting his lawyer by phone, Mr Markin refused to answer any questions or to produce any documents. He signed a written statement to that effect following which the prosecutor left his flat immediately. The prosecutor questioned Mr Markin's neighbours who testified that he and his ex-wife were living together.

According to the Government, their inquiry established that Mr Markin had remarried his ex-wife and mother of his children in April 2008 and that they had had together a fourth child in August 2010.

In December 2008, Mr Markin terminated his military service for health reasons. He and his wife were then living together with their fourth children and his parents-in-law.

## Complaints

Relying in particular on Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life) of the Convention, Mr Markin complained that the refusal to grant him parental leave had amounted to discrimination on account of sex.

## Decision of the Court

### *Admissibility (preliminary objections of Russian Government)*

#### Victim status

The Court held that in the absence of an acknowledgment, either expressly or in substance, by the national authorities of a breach of Mr Markin's rights under the Convention, he could claim to be a victim of an allegedly discriminatory treatment.

#### Striking out applications (Article 37)

The Court noted that Mr Markin had been unable to take care of his child during the first year of the child's life, when that was most needed, and had not received any compensation either for the delay in granting him parental leave or for the reduction of its duration. Consequently, the effects of a possible violation had not been sufficiently redressed at the national level and the Court found that the matter had therefore not been resolved.

Furthermore, the Court underlined that its judgments served not only to provide individual relief, but also to safeguard and develop the Convention rules, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention states.

Consequently, the alleged discrimination under Russian law against male military personnel as regards entitlement to parental leave involved an important question of general interest, not only for Russia but also for other States parties to the Convention, which the Court had not yet examined. Therefore, the Court decided that further examination of the present application would contribute to elucidating, safeguarding and developing the standards of protection under the Convention.

### *Alleged abuse of right of individual petition*

The issue of abuse of the right to an individual petition had been raised by the Government for the first time in their submissions before the Grand Chamber. As that related to events which had occurred before the application's submission before the Court, the Government should have raised it at an earlier stage, especially because there had been no exceptional circumstances justifying that delay.

Accordingly, the Court dismissed the Government's three preliminary objections.

### *Alleged discrimination (Article 14 in conjunction with Article 8)*

The Court noted that the advancement of gender equality was today a major goal in the member states of the Council of Europe, all parties to the Convention. Thus, very weighty reasons had to be put forward for such a difference of treatment to be regarded as compatible with the Convention. In particular, references to traditions, general assumptions or prevailing social attitudes in a given country were insufficient justification for a difference in treatment on the grounds of sex.

In the particular context of the army, its proper functioning was hardly imaginable without legal rules designed to prevent service personnel from undermining it. However, national authorities could not rely on such rules in order to frustrate the exercise by individual members of the armed forces of the right to respect for private life.

It was true that Article 8 did not include a right to parental lave nor did it impose an obligation on states to provide parental leave allow-

ances. However, parental leave and 4 related allowances fell within the scope of Article 8, given that they promoted family life and necessarily affected the way it was organised.

As parental leave was meant to enable parents to stay at home to look after an infant personally, for the purposes of parental leave, in contrast to maternity leave, Mr Markin, a serviceman, was in a similar situation to servicewomen.

However, in view of the special context concerning the armed forces, the Court had earlier accepted that the rights of military personnel could be restricted to a greater degree than those of civilians. At the same time, the Convention did not stop at the gates of army barracks; military personnel, like all other people in a Convention member state, were entitled to have their rights protected. For any restrictions to be imposed on their rights there had to be particularly serious reasons, such as a real threat to the armed forces operational effectiveness.

Looking at the situation across the Convention States, the Court noted that in the majority of European counties, including Russia itself, the laws allowed civilian men and women alike to take parental leave. In addition, in a significant number of states both servicemen and servicewomen were entitled to parental leave. Consequently, contemporary European societies had moved towards a more equal sharing between men and women of the responsibility for the upbringing of their children.

Furthermore, the Court did not accept that the difference in treatment of servicemen and service women was explained by a positive discrimination in favour of women. In fact, the Court found, such a different treatment had the effect of perpetuating gender stereotypes and was disadvantageous both to women's careers and to men's family life.

Similarly, the difference in treatment could not be justified by reference to prevailing traditions.

Nor was the Court persuaded that extending parental leave to servicemen would have a negative effect on the fighting power and operational effectiveness of the armed forces.

The Russian authorities had not made any expert study or research to evaluate the number of servicemen who would be able or willing to take three years' parental leave in order to assess how that could affect the operational effectiveness of the army. The Government's argument that all servicemen were of "childbearing age" was insufficient to justify the difference in treatment between men and women serving in the army.

In addition, the Court observed that the Russian law governing parental leave was quite rigid: male servicemen were not, under any circumstances, entitled to parental leave.

Moreover, the Government had presented no examples to show that a case-by-case assessment had been made or was indeed possible, and that servicemen were granted parental leave when their particular situation required.

Notwithstanding the above, the Court accepted that, given the importance of the army for the protection of national security, certain restrictions on the entitlement to parental leave could be justifiable provided they were not discriminatory. For example, military personnel, be it male or female, could be excluded from parental leave entitlement if they could not be easily replaced because of their particular hierarchical position, rare technical qualifications, or involvement in active military actions.

In Russia, by contrast, the entitlement to parental leave depended exclusively on the sex of the person. By excluding servicemen from that entitlement, the legal provision imposed a blanket restriction. The Court found that, as such a general and automatic restriction applied to a group of people on the basis of their sex, it fell outside of any acceptable margin of appreciation of the state.

Given that Mr Markin could easily have been replaced by servicewomen in his function as a radio operator, there had been no justification for excluding him from the entitlement to parental leave. He had, therefore, been subjected to discrimination on the grounds of sex. As to the Government's argument that by signing a contract with the military, he had voluntarily waved his right not to be discriminated, the Court held that no waiver of the right not to be subjected to discrimination could be accepted as it would be counter to an important public interest.

In view of all the above, the Court found that there had been a violation of Article 14 in conjunction with Article 8.

### *Right to individual petition (Article 34)*

The Court emphasised that it was, in principle, not appropriate for the authorities of a state against which there was a pending complaint before the Court, to enter into direct contact with an applicant in connection with that case.

As regards the prosecutor's visit to Mr Markin's home, there had been no evidence that it had been calculated to induce him to withdraw his complaint before the Court or to modify it, nor that it had in practice had that effect. Thus the authorities could not be held to have hindered Mr Markin in his exercise of his right to individual petition.

Accordingly, Russia has not breached its Article 34 obligation.

### *Just satisfaction (Article 41)*

The Court held that Russia was to pay Mr Markin 3000 euros in respect of nonpecuniary damage and 3150 euros for costs and expenses.

### *Separate opinions*

Judge Pinto de Albuquerque expressed a partly concurring and partly dissenting opinion. Judge Kalaydjieva expressed a partly dissenting opinion. Judges Nußberger and Fedorova expressed a joint partly dissenting opinion and Judge Popović expressed a dissenting opinion.

## Boulois v. Luxembourg

*Prison leave is not a right recognised and protected by the Convention*

**Judgment of 3 April 2012**

### Principal facts

The applicant, Thomas Boulois, is a French national who was born in 1972. On the date the application was lodged he was detained in Schrassig Prison (Luxembourg). He currently lives in Peppange (Luxembourg).

In 2001 the applicant was sentenced to 15 years' imprisonment, of which

three years were suspended, for assault occasioning actual bodily harm, rape and false imprisonment accompanied by acts of torture. While in prison he submitted requests for conditional release, transfer to Givenich semi-open prison and temporary leave of absence ("prison leave").

In October 2003 Mr Boulois lodged a first request with the Attorney General for one day's prison leave in order to have various administrative documents drawn up or renewed. The request was refused. In January 2004 he reiterated his request, giving the same reasons, and met with another refusal. On 25 May 2004 the applicant lodged an application for judicial review of both these decisions. The administrative courts declined jurisdiction, ruling that the decisions had been judicial rather than administrative in nature.

On 11 August 2004 the applicant lodged a third request for prison leave in order to attend classes with a view to obtaining qualifications. The request was rejected. Between October 2004 and May 2006 he had four further requests for prison leave turned down.

On 31 October 2008 the Prison Board granted the applicant one day's prison leave.

Between 12 December 2008 and 19 June 2009 Mr Boulois was granted five periods of prison leave of two days each. On 20 March 2009 his request for transfer to Givenich semi-open prison was granted. The same day, he obtained ten days' leave in order to look for work and complete various administrative formalities. A decision was also taken to place him under a semi-custodial regime once he had found work.

On 24 June 2009 Mr Boulois signed a vocational rehabilitation contract as a cook. Three months later he was granted conditional release. His sentence, which was due to run until 12 October 2010, was suspended on 15 July 2010 and he left Givenich Prison on that date.

## Complaints

Relying on Article 6 § 1, the applicant complained that he had been deprived of his right to a fair hearing and his right of access to a court in connection with the refusal of his requests for prison leave.

## Decision of the Court

### *Article 6 § 1*

In its judgment of 14 September 2010 the Chamber had held that Article 6 of the Convention was applicable and that there had been a violation of that provision, on the grounds that the Prison Board did not satisfy the requirements of a "tribunal" within the meaning of Article 6 § 1 and that the lack of any decision on the merits had nullified the effect of the administrative courts' review.

In order to ascertain whether Article 6 § 1 in its civil aspect was applicable to the proceedings concerning the applicant's requests for prison leave, the Court had to determine whether Mr Boulois had possessed a right within the meaning of that provision.

Article 6 § 1 did not guarantee any particular content for "civil rights and obligations" in the substantive law of the Contracting States. The Court could not create a substantive right which had no legal basis in the state concerned. The starting-point therefore had to be the provisions of the relevant domestic law and their interpretation by the domestic courts.

The Court noted at the outset that the dispute related to the actual existence of the "right to prison leave" claimed by Mr Boulois. It pointed out that, according to section 7 of the 1986 Law, prison leave was a "privilege [that] may be granted" to prisoners in certain circumstances. The Court considered that the characterisation as a "privilege" that "may be granted" had to be analysed in the light of the comments accompanying the relevant Bill, according to which the granting of measures relating to the means of executing a sentence "will never be automatic and will ultimately remain at the discretion of the post-sentencing authority". It was clear, in the Court's view, that the legislature had intended to create a privilege in respect of which no remedy was provided.

The Prison Board had a certain degree of discretion in deciding whether the prisoner concerned merited the privilege in question. The legislation laid down the arrangements governing prison leave and the circumstances in which it might be granted. It was within that legal framework that the Prison Board, each time a request was submitted to it, examined the report prepared by the "guidance committee" on the prisoner concerned.

The Board took into consideration the personality of the prisoner, his or her progress and the risk of a further offence. Hence, in Luxembourg, prisoners did not have a right to obtain prison leave, even if they formally met the required criteria.

The Court noted that the administrative courts had declined jurisdiction to examine Mr Boulois's application for judicial review, on the ground that the decisions contested by him had been judicial rather than administrative in nature. The parties had been unable to produce any other judicial or administrative decision determining an appeal against a decision refusing prison leave. It was therefore apparent from the terms of the legislation in Luxembourg and from the information provided to the Court that the applicant could not claim to possess a right recognised in the domestic legal system.

Lastly, although the Court had recognised the legitimate aim of a policy of social reintegration of persons sentenced to imprisonment, neither the Convention nor the Protocols thereto expressly provided for a right to prison leave. The right to prison leave was likewise not recognised under any principle of international law, nor did any consensus exist among the member states regarding the status of such leave and the arrangements for granting it.

The Court held that Article 6 of the Convention was not applicable. There had therefore been no violation of that provision.

## Van der Heijden v. the Netherlands

*States may decide whether a suspect's long-term partner is exempt from the duty to testify in criminal proceedings*

**Judgment of 3 April 2012**

### Principal facts

The applicant, Gina Gerdina van der Heijden, is a Dutch national who was born in 1969 and lives in 's-Hertogenbosch (the Netherlands).

In May 2004, Ms van der Heijden was summoned as a witness in criminal proceedings against her partner, Mr A., accused of shooting and killing a man in a café in 's-Hertogenbosch. She appeared but refused to testify before the investigating judge.

She explained that, although not married or in a registered partnership, she and Mr A. had been cohabiting for 18 years and had two children together, and that she should therefore be entitled to immunity from testifying (verschoningsrecht) under Article 217 § 3 of the Code of Criminal Procedure (the "CCP"), as spouses and registered partners would be.

On 2 June 2004 the national courts held that she was not entitled to immunity from testifying and that her personal interest in remaining at liberty were outweighed by the prosecution's interest in obtaining evidence. She was immediately taken into custody for failing to comply with a judicial order.

On 3 June her request to be released was rejected and on 4 June the courts ordered that she be detained for a further 12 days.

On 15 June 2004 the prosecution's request to extend her detention was rejected and she was released. The courts notably found that her personal interest in being released outweighed the prosecution's interest in finding out the truth.

Ultimately, in May 2005, the Supreme Court dismissed Ms van der Heijden's complaint that being denied immunity violated her right to respect for private and family life and discriminated against her, under Articles 8 (right to respect for private and family life and the home) and 14 (prohibition of discrimination) of the European Convention on Human Rights. The Supreme Court explained that Article 217 § 3 of the CCP sought to protect "family life" - within the meaning of Article 8 of the Convention - as it existed between spouses and registered partners. The difference in treatment between spouses/registered partners and other partners was justified because the duty to testify was statutory and exceptions to that duty (such as immunity granted to spouses and registered partners) were limited in a clear and workable manner to guarantee legal certainty. No further appeal lay against that ruling.

### Complaints

Ms van der Heijden notably alleged that respect for private life should not be dependent on a purely formal requirement such as a marriage licence. She argued that she should be entitled to the privilege of exemption from testifying as her relationship with her long-term partner was to all intents and purposes identical to marriage or a registered partnership. She relied on Article 8. Further relying on Article 14 (prohibition of discrimination), she also complained of discriminatory treatment between, on the one hand, spouses and formally registered partners and, on the other, couples who cohabit without being married or having a registered partnership.

### Decision of the Court

#### *Article 8 (family life)*

The fact that Ms van der Heijden had a "family life" with Mr A. was not in dispute: they had been in a relationship for 18 years, during which time they had lived as a couple – apart from a period when Mr A. had had to go to prison – and had two children together.

The Court found that the attempt to compel Ms van der Heijden to give evidence against her long-term partner had therefore "interfered" with her right to respect for her family life. That interference, provided for under the Netherlands Code of Criminal Procedure, had been "in accordance with law" and had pursued the "legitimate aim" of prosecuting crime.

First, the Court observed a wide variety of practices among Council of Europe member states concerning the testimonial privilege. This lack of common ground went in favour of allowing states wide discretion to strike the right balance between the competing interests at stake, namely balancing the public interest in prosecuting a serious crime against its interest in protecting family life from state interference.

The Netherlands was among the many Council of Europe member states that had opted for a statutory testimonial privilege for certain categories of witnesses. The Court considered that the right to be exempt from a normal civic duty such as giving evidence had to be made subject to certain conditions and formalities, with categories of its beneficiaries clearly set out. Indeed, as indicated by the Supreme Court, this had been done in a "clear and workable manner".

Moreover, the Court agreed that member states were entitled to set boundaries to the scope of the testimonial privilege and to draw the line at marriage or registered partnerships. It did not accept that Ms van der Heijden's relationship with Mr A., albeit equal to a marriage or a registered partnership in societal terms, could have the same legal consequences as formalised unions. The determining factor was not the length or supportive nature of the relationship but the existence of a public undertaking, carrying with it a body of rights and obligations of a contractual nature. The absence of this legally binding agreement made Ms van der Heijden's relationship with Mr A. fundamentally different from that of a married couple or a couple in a registered partnership.

Even though some member states, including the Netherlands, treated married couples and those in marriage-like relationships – such as the applicant – equally for other purposes, such as tenancy, social security and taxation, the Court found that this was governed by different considerations and had nothing to do with the important public interest of prosecuting serious crime.

Ms van der Heijden had not apparently been prevented from getting married or entering into a registered partnership with Mr A. She was not to be criticised in any way for choosing not to. However, having made that choice, she had to accept the legal consequences. Namely, she remained outside the scope of the "protected" family relationship which the Netherlands legislature had decided had the right to exemption from testifying.

Nor did the Court find that detaining Ms van der Heijden for 13 days had been disproportionate as the domestic legal provisions governing her detention had contained sufficient procedural safeguards.

The Court therefore held, by ten votes to seven, that there had been no violation of Article 8.

*Article 14 (discrimination)*

The Court found that it had already considered the essence of Ms van der Heijden's complaint about discrimination under Article 8 and therefore held, by ten votes to seven, that there was no need to examine it also under Article 14 in conjunction with Article 8.

## Kotov v. Russia

*State protection of creditor's property rights following collapse of bank was sufficient*

**Judgment of 3 April 2012**

### Principal facts

The applicant, Vladimir Mikhaylovich Kotov, is a Russian national who was born in 1948 and lives in Krasnodar (Russia).

In April 1994 he deposited a sum of money in a savings account with a commercial bank. In August the same year he sought to close his account after the bank had changed the interest rate. However, the bank informed him that, owing to a lack of funds, it could not return to him the original deposit and the interest due on it.

Mr Kotov brought proceedings against the bank. By two judgments (of 20 February 1995 and 5 April 1996) the Oktyabrskiy District Court of Krasnodar made an order fixing the sum owed to him by the bank at 17983 roubles (RUR).[12] In the meantime, and more specifically on 16 June 1995, the Krasnodar Regional Commercial Court had made a winding-up order in respect of the bank and had appointed a liquidator to oversee its liquidation.

The total of the bank's debts exceeded its available assets. The relevant legislation provided that in such situations the claims of individual deposit-holders – like Mr Kotov – had first priority. Despite that, the creditors' committee decided to give priority in sharing out the bank's assets to certain other categories of people. The liquidator implemented that decision which resulted in 700 individuals receiving full reimbursement. Mr Kotov was not one of them; he only received 140 roubles (0.78% of the amount owed to him, which in turn was equal to 0.78% of the bank's assets on liquidation).

In 1998 he successfully complained before the commercial courts, alleging a breach of the law according to which he was a first-ranking creditor and should therefore have been given priority when it came to payment. In particular, the commercial courts held that the liquidator had not applied the law correctly and directed the liquidator to remedy the situation. That decision remained unenforced as the bank had no remaining assets.

In 1999 the applicant initiated a new round of proceedings before the commercial courts, seeking reimbursement of the sum due to him by the bank out of the liquidator's own funds. However, on 9 June 1999 the Federal Commercial Court for the North Caucasus by a final judgment dismissed the applicant's claims against the liquidator referring mainly to the risk of double recovery of the same amount (from the liquidator and from the bank) if new assets of the bank were discovered during the liquidation procedure.

On 17 June 1999 the liquidation procedure was terminated for lack of any further assets to distribute and the bank was formally liquidated.

### Complaints

Relying on Article 1 of Protocol No. 1 to the Convention, Mr Kotov complained that, as a result of the unlawful distribution of the bank's assets, he had been unable to obtain effective repayment of the debt owed to him by the bank.

### Decision of the Court

*Admissibility*

**Temporal jurisdiction**

The Court observed that the distribution of the bank's assets was an instantaneous act which had taken place before April 1998, and was therefore outside the Court's temporal jurisdiction, given that the Convention entered in force in respect of Russia on 5 May 1998.

However, Mr Kotov had also complained about his inability to recover from the liquidator damages arising from the wrongful distribution of the bank's assets. This complaint concerned the proceedings which took place in 1999. The Court therefore held that it was competent to examine Mr Kotov's continued attempts to restore his rights after the Convention entered into force in respect of Russia.

*Article 1 of Protocol No. 1*

The Court noted that the parties agreed on the following points: the original court award made by the Oktyabrskiy District Court of Krasnodar against the bank could be considered Mr Kotov's "possession" within the meaning of the Convention; the liquidator had acted unlawfully by distributing the bank's assets to certain "privileged" creditors; and, Mr Kotov had received much less than what he could legitimately have expected to receive. It concluded that Mr Kotov had been deprived of his possessions by an unlawful act of the liquidator.

The Government, however, claimed that the liquidator was a private person and not a state agent, and, therefore, the Court had no jurisdiction (ratione personae) to examine the case. The Court recalled that, in accordance with its earlier case-law, states could not avoid responsibility by delegating their obligations to private parties. At the same time, states could not be held directly responsible for private wrongs. The Court noted that, under Russian law at the relevant time, the liquidator had not acted as a state agent. The liquidator had been operationally and institutionally independent from the state, he had been responsible for his acts before the creditors, state authorities could not instruct him and therefore could not interfere in the liquidation process. The courts could only examine the lawfulness of his actions once those had been completed. The state, therefore, could not be held directly responsible for the wrong done by the liquidator to the creditors of the bank.

Notwithstanding the above, the domestic courts had acknowledged that the liquidator's wrongdoings had been serious. Moreover, they had occurred in an area where the state's negligence in combating

12. Approximately 460 euros at present rate.

malfunctioning and fraud could have devastating effects on the state's economy, thereby affecting a large number of individual property rights.

The Court found that the state had therefore the duty to set up a minimum legislative framework making it possible for people to assert their property rights and to have them enforced. It then examined what remedial legal mechanisms had existed at the time in Russia for redressing the liquidator's unlawful actions, and why those mechanisms had not worked in Mr Kotov's case.

Mr Kotov had tried to have his rights restored in proceedings against the bank, which he had won but which had not been enforced due to the lack of available funds. The only remaining avenue to him at the time had been a tort action for damages against the liquidator.

The Government argued that Mr Kotov had failed to properly sue the liquidator: in particular, he had brought proceedings before the commercial courts instead of the courts of general jurisdiction, and he had done so prematurely, namely before the end of the insolvency procedure.

The Court found that, while domestic courts were in principle better placed to interpret national legislation, the Russian legal rules on jurisdiction at the time had been unclear.

Thus, while the Code of Civil Procedure stipulated that pecuniary disputes involving an individual had to be heard by a court of general jurisdiction, the Insolvency Acts of 1992 and 1998, as well as the Code of Commercial Procedure and the Banks Insolvency Act of 1999, established a different rule, namely that all disputes arising out of insolvency procedures fell within the commercial courts' jurisdiction.

The commercial courts had examined Mr Kotov's claim at three levels of domestic jurisdiction. In addition, the question of wrong jurisdiction had arisen only in 2001, that was after the Court had brought the case to the attention of the Russian Government.

Consequently, even if Mr Kotov had made a mistake by turning to the commercial courts, his mistake could not be held against him.

The above notwithstanding, the Court agreed with the Government's argument that, as a matter of principle, suing the liquidator before the end of the liquidation procedure created a danger of creditors being compensated twice for what was, essentially, the same financial loss. The second argument given by the Government (the risk of "the double recovery") was therefore reasonable. The Court thus found that an aggrieved creditor had to wait until the debtor company had ceased to exist before they could claim damages from the liquidator in person.

Mr Kotov had failed to sue the liquidator at that later moment, namely after the end of the liquidation proceedings. He had only been unable to bring proceedings against the liquidator while the liquidation procedure was still ongoing. The liquidation had been completed only several days after the delivery of the 9 June 1999 judgment dismissing Mr Kotov's claim against the liquidator. Consequently, the Court concluded that the temporary limitation of his capacity to have his pecuniary rights restored had not affected the essence of his rights under Article 1 of Protocol No. 1 and had remained within the state's discretion, known as the state's "margin of appreciation".

Consequently, the Russian legal framework had provided Mr Kotov with a mechanism to have his property rights protected. There had, therefore, been no violation of Article 1 of Protocol No 1.

## Gillberg v. Sweden

*Professor's criminal conviction for refusal to make research material available did not affect his Convention rights*

**Judgment of 3 April 2012**

### Principal facts

The applicant, Christopher Gillberg, is a Swedish national, who was born in 1950. He is a professor and Head of the Department of Child and Adolescent Psychiatry at the University of Gothenburg. For several years, he was responsible for a long-term research project on hyperactivity and attention-deficit disorders in children. Certain assurances were made to the children's parents, and later to the young people themselves, concerning confidentiality. According to Mr Gillberg, the university's ethics committee had made it a precondition for the project that sensitive information about the participants would be accessible only to him and his staff, and he had therefore promised absolute confidentiality to the patients and their parents.

In 2002, requests by a sociological researcher and a paediatrician to be granted access to the research material were refused by the University of Gothenburg. Both researchers appealed against the decisions and, in February 2003, the Administrative Court of Appeal found that they should be granted access to the material, as they had shown a legitimate interest and could be assumed to be well acquainted with the handling of confidential data. The university was to specify the conditions for access in order to protect the interests of the individuals concerned. In August 2003, the Administrative Court of Appeal lifted some of the conditions imposed by the university and subsequently a new list of conditions was set for each of the two researchers, which included restrictions on the use of the material and prohibited the removal of copies from the university premises.

Notified in August 2003 that the two researchers were entitled to immediate access by virtue of the judgments, Mr Gillberg refused to hand over the material. Following discussions about the matter, the university decided in January and February 2004 to refuse access to the sociological researcher and to impose a new condition on the paediatrician, asking him to demonstrate that his duties required access to the research material in question. Those university decisions were annulled by two judgments of the Administrative Court of Appeal on 4 May 2004. A few days later, colleagues of Mr Gillberg destroyed the research material.

In January 2005, the Swedish Parliamentary Ombudsman brought criminal proceedings against Mr Gillberg, and in June he was convicted of misuse of office. He was given a suspended sentence and a fine of the equivalent of 4000 euros. The university's vicechancellor and the officials who had destroyed the research material were also convicted.

Mr Gillberg's conviction was upheld in February 2006 by the Court of Appeal. In April 2006, leave to appeal to the Supreme Court was refused.

## Complaints

Mr Gillberg complained in particular that his criminal conviction breached his rights under Articles 8 and 10.

## Decision of the Court

The Court underlined that the Grand Chamber had jurisdiction to examine only the parts of the case that had been declared admissible by the Chamber judgment of 2 November 2010, namely the question whether Mr Gillberg's criminal conviction had infringed his rights under Article 8 and 10. His complaints concerning the outcome of the civil proceedings before the administrative courts could not be examined, as they had been declared inadmissible as being lodged out of time.

In its Chamber judgment, the Court had left open whether the complaint fell within the scope of Article 8 and Article 10, and whether there had been an interference with Mr Gillberg's right to respect for his private life and with his right to freedom of expression, because even assuming that there had been an interference with those rights, it had found that there had been no violation of Article 8 or Article 10.

### *Article 8*

The Court recalled that Mr Gillberg was not the children's doctor or psychiatrist, and that he did not represent the children or their parents. The issue for the Court to examine was whether his criminal conviction for misuse of office amounted to an interference with his "private life" under Article 8.

The Court noted that according to its case-law, Article 8 could not be relied on – as Mr Gillberg did - in order to complain of a loss of reputation which was the foreseeable consequence of one's own actions such as committing a criminal offence. Furthermore, there was no case-law in which the Court had accepted that a criminal conviction in itself – which might entail personal suffering – constituted an interference with the convict's right to respect for private life.

Mr Gillberg's conviction of misuse of office in his capacity as a public official under the penal code had not been the result of an unforeseeable application of the relevant provisions. The offence in question had no obvious bearing on his right to respect for private life, as it concerned professional acts and omissions by public officials in the exercise of their duties. Mr Gillberg had furthermore not pointed to any concrete repercussions on his private life directly linked to his conviction, nor had he defined the nature and extent of his suffering connected to it. However, he had pointed out that he had chosen to refuse to comply with the court rulings obliging him to grant access to the research material, with the risk that he would be convicted of misuse of office. His conviction and the suffering it might have entailed were therefore foreseeable consequences of his committing the criminal offence.

Likewise, the fact that Mr Gillberg might have lost income as a consequence of the criminal conviction, as he had argued, had been a foreseeable consequence of committing a criminal offence. In any event, he had not shown that there had been any causal link between his conviction and his dismissal by the Norwegian Institute of Public Health. His claim that he had lost income from at least five books he could have written during the time taken up by the court proceedings remained unsubstantiated. Finally, he had maintained his position as professor and head of Department at the University of Gothenburg, and according to his own statements he was supported by numerous renowned and highly respected scientists who agreed with his conduct. The repercussions of the conviction on his professional activities had thus not gone beyond the foreseeable consequences of the criminal offence for which had been convicted.

The Court therefore concluded that Mr Gillberg's rights under Article 8 had not been affected.

### *Article 10*

The Court did not rule out that a "negative" right to freedom of expression, as relied on by Mr Gillberg, was protected under Article 10. However, as regards the circumstances of his case, the Court noted that the material he had refused to make available belonged to the University of Gothenburg. It accordingly consisted of public documents subject to the principle of public access under the applicable Swedish legislation, namely the Freedom of the Press Act and the Secrecy Act. That entailed that secrecy could not be determined until a request for access was submitted, and it was impossible in advance for a public authority to enter into an agreement with a third party exempting certain official documents from the right to public access.

The Swedish courts convicting Mr Gillberg had held that the assurances of confidentiality given to the participants in the study had gone further than permitted by the Secrecy Act. Moreover, the criminal courts were bound by the administrative courts' judgments, which had settled the question of whether and on what conditions the documents were to be released to the two researchers. According to the Swedish courts, international declarations drawn up by the World Medical Association, on which Mr Gillberg relied in arguing that research ethics prevented him from disclosing the material, did not take precedence over Swedish law. In that context, the Court noted that Mr Gillberg was not bound by professional secrecy as if he had been the research participants' doctor or psychiatrist.

Furthermore, Mr Gillberg had not been prevented from complying with the administrative courts' judgments by any statutory duty of secrecy or any order from his public employer. He had not submitted any evidence to support his claim that his assurances of confidentiality to the research participants had been a requirement of the university's ethics committee.

The Court could not share Mr Gillberg's view that he had an independent "negative" right to freedom of expression, despite the fact that the research was owned by the university. Finding so would have run counter to the university's property rights. It would also have impinged on the two researchers' rights under Article 10 to receive information and on their rights under Article 6 of the Convention (right to a fair trial) to have the final judgments of the administrative courts implemented.

Finally, the Court found that Mr Gillberg's situation could not be compared to that of journalists protecting their sources or that of a lawyer bound by a duty vis-à-vis his clients. The information diffused by a journalist based on his or her source generally belonged to the journalist or the media, whereas in Mr Gillberg's case the research material was owned by the university

and thus in the public domain. Since he had not been mandated by the research participants he had no duty of professional secrecy towards them, as a lawyer would have.

The Court therefore concluded that Mr Gillberg's rights under Article 10 had not been affected.

## Selected Chamber judgments

### V.C. v. Slovakia

*Sterilisation of 20-year old Roma woman in a public hospital without her informed consent violated her human rights*

**Jugdgment of 8 November 2011**

#### Principal facts

The applicant, V.C., is a Slovakian national of Roma ethnic origin. She was born in 1980 and lives in Jarovnice (Slovakia).

On 23 August 2000 she was sterilised at the Hospital and Health Care Centre in Prešov (eastern Slovakia) – under the management of the Ministry of Health – during the delivery of her second child via Caesarean section. The sterilisation entailed tubal ligation, which consists of severing and sealing the Fallopian tubes in order to prevent fertilisation.

The applicant alleged that, in the last stages of labour, she was asked whether she wanted to have more children and told that, if she did have any more, either she or the baby would die. She submits that, in pain and scared, she signed the sterilisation consent form but that, at the time, she did not understand what sterilisation meant, the nature and consequences of the procedure, and in particular its irreversibility. She was not informed of any alternative methods. Her signature next to the typed words "Patient requests sterilisation" is shaky and her maiden name split into two words. She also claims that her Roma ethnicity – clearly stated in her medical record – played a decisive role in her sterilisation.

Prešov hospital's management state that the applicant's sterilisation was carried out on medical grounds – the risk of rupture of the uterus – and that she had given her authorisation after having being warned by doctors of the risks of a third pregnancy.

In January 2003 the Centre for Reproductive Rights and the Centre for Civil and Human Rights published a report "Body and Soul: Forced and Coercive Sterilisation and Other Assaults on Roma Reproductive Freedom in Slovakia" ("the Body and Soul Report"). A number of proceedings ensued: a general criminal investigation into the alleged unlawful sterilisation of various Roma women, which was ultimately discontinued on the ground that no offence had been committed; and, civil and constitutional proceedings brought by the applicant in which she alleged that the staff at Prešov hospital had misled her into being sterilised and in which she requested an apology and compensation. The civil complaint was ultimately dismissed on appeal by the Prešov Regional Court in May 2006, the courts finding that the sterilisation, a medical necessity, had been carried out in accordance with domestic legislation (the 1972 Sterilisation Regulation) in force and with the applicant's consent. The Constitutional complaint was also subsequently dismissed.

The applicant referred to a number of publications pointing to a history of forced sterilisation of Roma women which originated under the communist regime in Czechoslovakia in the early 1970s and which were allegedly designed to control the Roma population. In particular, she submitted that, according to one study, 60% of sterilisations carried out from 1986 to 1987 in the Prešov district had been on Roma women.

The Government submitted that health care in Slovakia was provided to all women equally and that, according to the conclusions of a group of government-appointed experts in a report issued in May 2003, all cases of sterilisations had been based on medical grounds. Indeed, the sterilisation rate of women in Slovakia (0.1% of women of reproductive age) was low in comparison to other European countries (where the rate was between 20 to 40%). Some shortcomings had, however, been found in domestic law and practice, with the experts noting that, in certain cases, patients were not on an equal footing with medical staff and their rights and responsibilities in matters of health care were limited. Special measures were recommended such as training medical staff on cultural differences as well as the setting up of a network of trained health care assistants who would operate in Roma settlements.

The applicant's sterilisation has had serious medical and psychological after-effects.

Notably in 2007/2008 she showed all the signs of being pregnant but was not (known as an "hysterical pregnancy"). Treated since 2008 by a psychiatrist, she continues to suffer from being sterilised. She has been ostracised by the Roma community. Now divorced from her husband, she cites her infertility as one of the reasons for their separation.

#### Complaints

The applicant complained that she had been sterilised without her full and informed consent and that the authorities' ensuing investigation into her sterilisation had not been thorough, fair or effective. She further alleged that her ethnic origin had played a decisive role in her sterilisation and should be seen in the context of the widespread practice – which originated under the communist regime – of sterilising Roma women as well as enduringly hostile attitudes towards people of Roma ethnic origin. She relied on Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life), 12 (right to found a family), 13 (right to an effective remedy) and 14 (prohibition of discrimination).

Third-party comments were received from the International Federation of Gynaecology and Obstetrics (FIGO).

#### Decision of the Court

##### *Article 3 (prohibition of inhuman or degrading treatment)*

###### Ill-treatment

The Court noted that sterilisation amounted to a major interference with a person's reproductive health

status and, involving manifold aspects of personal integrity (physical and mental well-being as well as emotional, spiritual and family life), required informed consent when the patient was an adult of sound mind. Moreover, informed consent as a prerequisite to sterilisation is laid down in a number of international documents, notably the Council of Europe's Convention on Human Rights and Biomedicine, as ratified by Slovakia in December 1999 and in force in the country at the time of the applicant's sterilisation.

However, from the documents submitted, the applicant – a mentally competent adult patient – had apparently not been fully informed about the status of her health, the proposed sterilisation and/or its alternatives. Instead, she had been asked to sign a typed record while she had still been in labour. Furthermore, she had been prompted to sign the document after being told by medical staff that if she had one more child, either she or the baby would die. The intervention had not therefore been an imminent medical necessity as any threat to her health was considered likely in the event of a future pregnancy. Indeed, sterilisation is not generally considered as life-saving surgery. The Court considered that the way in which the hospital staff had acted had been paternalistic, as she had not in practice had any other choice but to agree to the procedure, without having had time to reflect on its implications or to discuss it with her husband.

The applicant's sterilisation, as well as the way in which she had been requested to agree to it, must therefore have made her feel fear, anguish and inferiority. The suffering that entailed had had long-lasting and serious repercussions on her physical and psychological state of health as well as on her relationship with both her husband and the Roma community. Although there was no proof that the medical staff had intended to ill-treat the applicant, they had nevertheless acted with gross disregard to her right to autonomy and choice as a patient. The applicant's sterilisation had therefore been in violation of Article 3.

**Investigation into the ill-treatment**

The Court noted that the applicant had had an opportunity to have the actions of the hospital staff examined by the domestic authorities via civil and constitutional proceedings. The courts dealt with her civil case within two years and one month and with her constitutional case within 13 months, a period of time which was not open to particular criticism. She had not sought redress by requesting a criminal investigation into her case although that possibility was open to her. There had therefore been no violation of Article 3 as concerned the applicant's allegation that the investigation into her sterilisation had been inadequate.

*Article 8 (right to respect for private and family life)*

Given its earlier finding of a violation of Article 3, the Court did not consider it necessary to examine separately under Article 8 whether the applicant's sterilisation had breached her right to respect for her private and family life. It nevertheless found that Slovakia had failed to fulfil its obligation under Article 8 to respect private and family life in that it did not ensure that particular attention was paid to the reproductive health of the applicant as a Roma.

Both the Council of Europe's Commissioner for Human Rights and the European Commission against Racism and Intolerance (ECRI) had identified serious shortcomings in the legislation and practice relating to sterilisations in general in Slovakia and had stated that the Roma community, severely disadvantaged in most areas of life, were more likely to be affected by those shortcomings. Equally, the Slovak Government appointed experts – in their report of May 2003 – had identified shortcomings in health care and in compliance with regulations on sterilisation and had made specific recommendations about training of medical staff regarding Roma. As concerned the applicant in particular, the Court found that simply referring to her ethnic origin in her medical record without more information indicated a certain mindset on the part of the medical staff as to the manner in which the health of the applicant, as a Roma, should be managed.

New legislation – the Health Care Act 2004 – has been introduced to eliminate such shortcomings with prerequisities for sterilisation being spelled out (i.e. a written request and consent, as well as prior information about alternative methods of contraception, planned parenthood and the medical consequences) and the procedure only being allowed 30 days after informed consent. Those developments, although to be welcomed, did not affect the applicant as they had occurred after her sterilisation. There had therefore been a violation of Article 8 concerning the lack of legal safeguards at the time of the applicant's sterilisation giving special consideration to her reproductive health as a Roma.

*Article 13 (right to an effective remedy)*

The applicant had been able to have her case reviewed by the civil courts at two levels of jurisdiction and subsequently by the Constitutional Court. In addition, she could have but did not bring criminal proceedings. Lastly, Article 13 could not be interpreted as requiring a general remedy against a domestic law, to the extent that – as alleged by the applicant – the lack of appropriate safeguards in domestic law had been at the origin of her sterilisation and the subsequent dismissal of her claim. There had therefore been no violation of Article 13.

*Article 12 (right to found a family)*

Given the Court's finding that the applicant's sterilisation had had serious repercussions on her private and family life, the Court found that there was no need to examine whether the facts of the case also gave rise to a breach of her right to marry and to found a family. It therefore held, unanimously, that there was no need to examine separately the applicant's complaint under Article 12.

*Article 14 (prohibition of discrimination)*

The Court held, by six votes to one, that there was no need to examine separately the applicant's complaint under Article 14. The information available was not sufficient to prove that the doctors had acted in bad faith when sterilising the applicant, that their behaviour had been intentionally racially motivated or, indeed, that her sterilisation was part of a more general organised policy. The Court further noted that international bodies and domestic experts had pointed to serious shortcomings in the legislation and practice relating to sterilisations which were particularly liable to affect members of the Roma community and that, in that connection, it had found that Slovakia had not complied with its positive obli-

gation under Article 8 to sufficiently protect the applicant.

## Makharadze and Sikharulidze v. Georgia

*Georgian authorities failed to protect life of prisoner suffering from tuberculosis*

**Judgment 22 November 2011**

### Principal facts

The applicants are two Georgian nationals: Niko Makharadze, who died in 2009, aged 41, and his wife, Dali Sikharulidze, who pursued the proceedings on his behalf and in her own name.

Suffering from tuberculosis, Mr Makharadze was arrested in March 2006 on suspicion of possessing drugs and placed in detention pending trial. His appeal against the detention order, arguing that the pre-trial detention was an unjustifiably severe measure, given the poor conditions in the prison and his critical state of health, was dismissed. Following a drastic deterioration of his state of health, he was transferred to a prison hospital. In July 2006, Mr Makharadze was convicted as charged and sentenced to seven years in prison, the judgment being upheld by the Supreme Court in April 2007. Having regard to his diagnosis with multi-drug resistant tuberculosis which had been made during his detention, Mr Makharadze requested that his prison sentence be suspended on account of his state of health and the fact that he was not being provided with effective anti-tuberculosis drugs in prison. During the court proceedings, a prison representative stated that a more comprehensive system of multi-drug resistant forms of tuberculosis treatment would soon be introduced in Georgian prisons.

Mr Makharadze's request was dismissed by the Tbilisi City Court in July 2008.

During his detention, Mr Makharadze went on hunger strike, first to protest the non-enforcement of a court order of September 2008 for an additional medical examination, which was followed by the authorities only one month later. In a second hunger strike, he requested to be either provided with a particular drug to which his tuberculosis had not yet developed a resistance or to be transferred to a specialised hospital, in line with the medical recommendations of the National Forensic Office following his new examination. However, he remained in a prison hospital and, in December 2008, the European Court of Human Rights, partly granting a request by Mr Makharadze, indicated to Georgia under Rule 39 (interim measures) of its Rules of Court that he should be transferred to a specialised hospital capable of dispensing the appropriate anti-tuberculosis treatment. The Government refused as it considered such a measure unnecessary, Mr Makharadze already having been transferred to a new prison hospital where he had access to a programme for treating multidrug resistant forms of tuberculosis. Mr Makharadze's health drastically deteriorated during his detention and he died in the prison hospital in January 2009.

### Complaints

Relying on Article 2 and Article 3 (prohibition of inhuman or degrading treatment), the applicants alleged that Georgia had failed to take all reasonable steps to protect Mr Makharadze's health and life. Further relying on Article 34 (right to individual petitition), Mr Makharadze complained – and his wife maintained that complaint – that the Government had refused to transfer him to a specialised hospital despite the Court's interim measure.

### Decision of the Court

#### *Article 2*

The Court first observed that the Georgian authorities had not left Mr Makharadze unattended. His contamination with tuberculosis was not, as such, linked to his stay in prison, as he had already been suffering from the disease beforehand. Nor did the available medical documents suggest that the mutation of the ordinary tuberculosis bacillus to the multi-drug resistant form had occurred in prison. Mr Makharadze had been transferred to prison hospital following the deterioration of his health and he had regularly been examined and received a conventional anti-tuberculosis treatment.

However, the question remained whether the treatment had been adequate for his condition, namely multi-drug resistant tuberculosis, the very particular type of disease which had caused his death.

Although, according to the documents submitted by the Georgian Government, the relevant authorities had known at least by June 2006 that Mr Makharadze's bacillus proved to be resistant to conventional anti-tuberculosis drugs, the first laboratory test to verify the sensitivity of the bacillus to particular drugs to which his tuberculosis had not yet developed a resistance only took place more than a year later, according to his medical file. The Government had not provided any justification for that long delay. The significance of that test for beginning an effective treatment was even more crucial given that its results established the sensitivity of the bacillus to two such drugs. After those drugs had been prescribed, there had been a further delay of seven months before the treatment was started.

Furthermore, the medical staff supervising his treatment in the prison hospitals had not had the necessary expertise in the management of multi-drug resistant tuberculosis.

Such a special proficiency was another element constitutive of effective treatment, along with laboratories capable of conducting the relevant specific tests and with the availability of the relevant drugs, according to the World Health Organisation's guidelines for the management of multi-drug resistant tuberculosis. The Government had acknowledged that a programme providing for specific training in the treatment of multidrug resistant tuberculosis was only introduced in the prison hospital three months after Mr Makharadze's death.

The Court was satisfied that the doctors in the prison hospital had warned Mr Makharadze that his hunger strike could deteriorate his health. However, the Court could not discern from the medical file whether any specialists had ever attempted to enquire if his conduct might have been conditioned by side-effects from the drugs he was taking, thus necessitating the relevant psychological or psychiatric feedback. The Court further noted that the main reason for the hunger strikes had been the authorities' refusal to conduct the additional

medical examination ordered by the domestic courts and the authorities' failure to implement the medical recommendation to transfer him to a specialised hospital. At that time, according to the Government's submissions, only two civil hospitals in Georgia had been specialised in treatment of multi-drug resistant tuberculosis.

While Mr Makharadze's disease had not been an absolute ground for a release from prison, the Court noted that the domestic courts, in the proceedings concerning the suspension of his sentence, had turned a blind eye to the exceptional gravity of his condition which, according to the qualified medical experts, was deteriorating in prison conditions, and to the consequent fact that the medical assistance he had been given in prison had apparently been incapable of fighting his tuberculosis.

The Court was further concerned that no adequate enquiry had been conducted into the cause of Mr Makharadze's death. Despite the fact that he had died in the prison hospital, a public institution directly engaging the state's responsibility, the issue of the individual responsibility of the clinicians in charge of his treatment had, according to the case file, never been subjected to an independent, impartial and comprehensive enquiry. In addition to the deficiencies in his treatment, the state had thus also failed to sufficiently account for his death. The coexistence and cumulative effect of those factors were more than enough to conclude that the state had failed to protect Mr Makharadze's health and life in prison, in violation of Article 2.

The Court considered that it was not necessary to examine the complaint separately under Article 3.

### *Article 34*

Under Rule 39 of the Rules of Court, the Georgian Government had been asked to place Mr Makharadze in a specialised medical establishment capable of providing appropriate anti-tuberculosis treatment. As the Court had established, the prison hospital had not at the relevant time had the necessary laboratory equipment or the specific anti-tuberculosis drugs, and, most importantly, its medical staff had not had the necessary skills for the management of complex treatment of multi-drug resistant forms of tuberculosis. Those serious deficiencies of the prison hospital were or should have been known to the Government, as the qualified medical experts had denounced on several occasions the inadequacy of the treatment given to Mr Makharadze in prison. At the time the interim measure was indicated, two civil hospitals in Georgia had had the required medical equipment and specially trained clinicians for the treatment of multidrug resistant tuberculosis. It would thus have been possible to place Mr Makharadze in one of those hospitals, and the Government had not shown that there had been any objective impediment to complying with the interim measure. There had accordingly been a violation of Article 34.

## Finogenov and Others v. Russia

**Judgment of 20 December 2011**

*Use of gas against terrorists during the Moscow theatre siege was justified, but the rescue operation afterwards was poorly planned and implemented*

### Principal facts

The 64 applicants were hostages or relatives of those taken hostage on 23 October 2002 in a Moscow theatre (also known as the "Nord-Ost" or "Dubrovka" theatre) by a group of more than 40 terrorists belonging to the Chechen separatist movement. For the next three days more than 900 people were held at gunpoint in the theatre. The theatre was also booby-trapped and 18 suicide bombers were positioned among the hostages.

The terrorists demanded, among other things, the total withdrawal of Russian troops from the territory of Chechnya.

A crisis cell under the command of the Federal Security Service ("the FSB") was set up to conduct negotiations and liberate hostages. FSB designed a plan of liberation of the hostages by military force, in absolute secrecy; in addition, the crisis cell made preparations for the eventual mass evacuation of hostages and medical assistance to them. Those preparations were based on the assumption that in the event of escalation the hostages would be injured in an explosion or by gunshots.

Several rescue services were deployed on the site; in addition, certain city hospitals had their admission capacity increased and were given additional equipment; additional medics were mobilised; ambulance stations were warned about the possible mass deployment of ambulances; and the doctors received instructions on sorting the victims on the basis of the gravity of their condition.

In the meantime, negotiations were carried out with the terrorists. Several hostages were released and some food and drinking water accepted. Several people were killed by the terrorists during that period; it is not clear whether those shot were subjected to exemplary executions or killed for resisting the terrorists or because the terrorists thought they had infiltrated the theatre to spy on them.

In the applicants' opinion, the terrorists were prepared to negotiate further. However, the authorities considered that there was a real risk of the hostages being killed on mass either by execution or in an explosion. Therefore, in the early morning of 26 October at about 5 - 5.30 a.m., the Russian security forces pumped an unknown narcotic gas into the main auditorium through the building's ventilation system and the special squad stormed the building. All the terrorists were killed. While the majority of the hostages were liberated, 125 of them died either on the spot or in the city hospitals. Some of those who survived continue to suffer from serious health problems.

The applicants claimed that the rescue operation was chaotic on all fronts, starting with the evacuation of the hostages and their sorting, then during their transportation to the hospitals and, finally, on their arrival at the hospitals. In particular, unconscious hostages were piled up on the ground outside the building with some of them dying simply because they were laid on their backs and suffocated on their own vomit or tongues. According to the applicants, there were not enough ambulances, so the hostages were transported to hospitals in ordinary city buses without medical staff and without any assistance from traffic police to facili-

tate their quick arrival. The medical staff in the hospitals were not equipped to receive so many victims, had not been informed of the use of gas or its properties and did not have appropriate equipment.

Furthermore, the rescue teams, ambulances and hospitals had not had enough Nalaxone, the antidote to the gas, in stock. They also submitted a report by a microbiologist (an American university professor), which concluded that the authorities should have anticipated a significant number of deaths as well as the need for immediate medical intervention and that pre-existing illnesses would not have contributed significantly to the lethal effects of the gas. Press interviews with former hostages, rescue workers and bus drivers, and video recordings showing the evacuation were also produced to corroborate the applicants' allegations.

The Government submitted that the decision to storm the building had fully complied with domestic norms, as well as Russia's international obligations and had only been taken once negotiations had failed. Hostages themselves subsequently testified that they saw no other solution as the terrorists had told them that they were prepared to die.

Evacuation and transportation of hostages had been quick and well-organised and the hospitals had been ready and equipped to admit them. In general, the rescue operation had been carried out in the most efficient way possible, given the circumstances.

In the aftermath of the events the Moscow City Prosecution Office ("the MPO"), opened a criminal investigation. As to the terrorist act itself, the terrorists and their supporters were identified, and most of the circumstances of the hostage taking established. An accomplice to the terrorists outside the theatre was brought to trial and convicted. At the same time, the MPO repeatedly refused to investigate the actions of the authorities during the crisis. Thus, in October 2003 the investigation issued its intermediate conclusions and, relying on the autopsy results, found that the 125 hostages had died from a combination of individual weaknesses and chronic illnesses, exacerbated by the stress of three days of captivity, and that the gas used had at best had an "indirect effect" on their demise. The death of the hostages was therefore attributed to "natural" factors and not the use of the gas by the FSB. Further, relying on the reports of the public health officials and rescue structures, which generally described the rescue operation as successful, the MPO decided that there was no need to examine that issue further.

During the investigation a large number of other witnesses were also questioned. Many of them, in particular ordinary doctors and paramedics as well as rescue workers, described the rescue operation in a much more critical tone. In particular, they testified to:

- an absence of centralised co-ordination on the field as well as amongst various rescue and medical services;
- not knowing what kind of treatment the victims had already received (and notably confusion as to which hostages had received Nalaxone injections as those who had been injected had not been identified with a mark, resulting in some receiving two or three shots);
- heavy trucks and bulldozers blocking the circulation around the theatre;
- a lack of medical staff and equipment in buses transporting the victims;
- ambulance teams and bus drivers not knowing where to take the victims (which resulted in some hospitals receiving simultaneously far too many patients in a critical state)
- not having any information about the use of gas, let alone instructions as to how to deal with opiate poisoning; and,
- a shortage of the antidote.

In the following years the applicants and a group of Russian parliamentarians repeatedly tried to reopen the investigation into the alleged negligence of the authorities during the storming and the rescue operation. However, the MPO replied that there was no case to answer.

## Complaints

The applicants complained that the use of force by the security forces had been disproportionate, the use of gas having done more harm than good. They also complained that the rescue operation had been inadequately planned and carried out and that there had been a lack of medical assistance provided to the hostages. Lastly, they alleged that the criminal investigation had focused on the siege itself and had failed to effectively bring to light any inadequacies in the authorities' organisation of the rescue operation. They relied in particular on Article 2 (right to life).

## Decision of the Court

### *Whether the gas used by the authorities could be described as "lethal force"*

The authorities on numerous occasions declared that the gas had been harmless, and that according to the official medical examinations of the bodies, no direct causal link had existed between the use of the gas and the death of the hostages. The Court was not given an exact formula of the gas. It was prepared to accept that some of the victims had indeed died of pre-existing health problems. However, it is contrary to common sense to conclude that 125 people of different ages and physical conditions had died almost simultaneously and in the same place because of various illnesses, immobility, stress and lack of fresh air. Even if the gas had not been a "lethal force" but rather a "non-lethal incapacitating weapon", it had been dangerous and even potentially fatal for a weakened person, so the case clearly falls within the ambit of Article 2.

#### Decision to storm the theatre and use gas

More important than the question of the use of force during the storming of the theatre, which could be justified on the ground of "defending any person from unlawful violence" (Article 2 § 2 of the Convention), is the question of whether less drastic means could have been used to resolve the hostage crisis.

The Court stressed that in situations of such a scale and complexity, it was prepared to grant the domestic authorities a margin of appreciation, even if now, with hindsight, some of the decisions taken by the authorities could appear open to doubt. It was too speculative to assert that the terrorists would not carry out their threats: everything suggested the contrary. The situation – heavily armed, well-trained terrorists who were dedicated to their cause making unrealistic demands such as the withdrawal of Russian troops from Chechnya – had been alarming. The first days of negotiations had failed and the hostages were becoming more and more vulnerable both physically and psychologically. There had therefore been a real, serious and

immediate risk of mass human losses and the authorities had every reason to believe that a forced intervention had been "the lesser evil".

Although the solution, using a dangerous and even potentially lethal gas, had put at risk the lives of hostages and hostage-takers alike, it had left the hostages a high chance of survival. Indeed, the use of gas facilitated the liberation of the hostages and reduced the likelihood of an explosion.

The Court therefore concluded that, in the circumstances, the authorities' decision to end the negotiations and resolve the hostage crisis by force by using gas and storming the theatre had not been disproportionate and had not, as such, breached Article 2.

**Rescue operation – planning and implementation**

While the Court was prepared to give to the authorities some leeway insofar as the military aspects of the operation were concerned, the Court scrutinised more closely the evacuation and medical assistance to the hostages.

The Court stressed that the rescue operation had not been spontaneous. Even if the use of the gas was kept secret from the medics and the rescue services, the large number of people in need of medical assistance had come as no surprise, and some general preparations could have been made in advance.

Despite that, it was evident that the authorities had not been sufficiently prepared. The Government could provide no written documents with a comprehensive description of the evacuation plan. Indeed, the crisis cell ordered the deployment of hundreds of doctors, rescue workers and others to assist the hostages but it seemed that little had been done to co-ordinate the work of those services. That flaw was corroborated by many eyewitnesses and other evidence, namely several video recordings of the evacuation, showing that everyone seemed to have been working on their own initiative. Nor did the original evacuation plan provide instructions as to how information about victims and their condition was to be exchanged between the various rescue services. This had probably resulted in certain hostages having been injected more than once with the antidote, whereas others did not get their injections. Nor could any sorting be seen on the video: bodies had been placed haphazardly, and this had been confirmed by witnesses who testified to having seen dead bodies placed in the same buses as those who were still alive. Although mass transportation had been provided, many witnesses had also noted a lack of medical assistance in buses. Furthermore, there had been no clear plan for distribution of victims amongst the various hospitals. The hospitals' admission capacity had been increased, but, according to witness statements by doctors and paramedics, the ambulance teams and bus drivers had no idea where to take the victims: as a result, many ambulances and city buses transported victims to the closest hospitals thus creating bottlenecks and delaying medical assistance to the victims.

Moreover, the video recording showed how the hostages had been exposed to the gas for more than two hours, from 5.30 a.m., when the storming began, until at least 7.05 a.m., when the mass evacuation had started. It was not clear why the evacuation had started so late and why, if there had been at least 90 minutes between the gas dispersal and the mass evacuation, medics and rescue workers had not been informed of the use of gas. If they had had some kind of forewarning, perhaps the majority of the hostages would have been placed in the recovery position, instead of face-up with the increased risk of suffocation that it had involved.

Post-mortem reports showed that the majority of the hostages had died between 8 and 8.30 a.m., that is on their way to hospital or shortly after their arrival. Immediate medical assistance had therefore been crucial. However, little information is available as to what kind of care the hostages had received on the spot and many witnesses testified to a shortage of the antidote.

The Court therefore found that, on the whole, the Russian authorities had not taken all feasible precautions to minimise the loss of civilian life as the rescue operation had been inadequately prepared and carried out, in violation of Article 2.

*Investigation*

The Court noted that the investigation into the terrorist act itself had been quite ample and successful.

However, the investigation into the rescue operation had been manifestly incomplete. First and foremost, the formula of the gas has never been revealed. Next, the investigative team had made no attempt to question all the members of the crisis cell such as FSB officers who could have given more information about the planning of the operation as well as the decision to use gas and its dosage. Nor had the special squad been questioned or other chance witnesses, such as those who had helped the FSB to plant the gas recipients. It was indeed surprising that all of the crisis cell's working papers had been "destroyed". As a result, the Court cannot know when the decision to use the gas had been taken and by whom, how much time the authorities had had to evaluate the possible side-effects of the gas and why other services participating in the rescue operation had been informed about the use of gas with such delay. Other important information had not been established either such as: how many doctors had been on duty in the hospitals ready to admit victims and whether that number was sufficient; what instructions ambulances and city buses had been given as to where they were to transport victims; which officials had coordinated efforts on the spot and what instructions they had received; why it had taken an hour and a half to start the mass evacuation; and, how much time it had taken to kill the terrorists and neutralise the bombs.

Lastly, the investigative team, which included FSB representatives and experts in explosive devices directly responsible for the planning and carrying out of the storming and the rescue operation, had not been independent.

The Court concluded that the investigation into the authorities' alleged negligence during the rescue operation had been neither thorough nor independent and had not therefore been effective, in further violation of Article 2.

## Schwabe and M.G. v. Germany

*Five-day detention to prevent young men's participation in G8 summit demonstrations not justified*

**Judgment 1 December 2011**

### Principal facts

The applicants, Sven Schwabe and M.G., are German nationals who were both born in 1985 and live in Bad Bevensen and Berlin, respectively. In June 2007, they drove to Rostock in order to participate in demonstrations against the G8 summit. In the evening of 3 June, their identity was checked by the police in a car park in front of a prison near Rostock, where they were standing next to a van in the company of seven other people.

According to the police, one of the applicants physically resisted the identity check. The police found banners in the van with the inscriptions "freedom for all prisoners" and "free all now". The applicants were arrested. In the early morning of 4 June 2007, the Rostock District Court ordered the applicants' detention until 9 June 2007 at midday at the latest. Relying on the Public Security and Order Act of the *Land* of Mecklenburg Western-Pomerania, the court found that the applicants' detention was lawful in order to prevent their committing an offence. Given that banners calling for the liberation of prisoners had been discovered in the van, it had to be assumed that they had been about to commit, or aid and abet, a criminal offence.

On the same day, the Rostock Regional Court dismissed the applicants' appeals against those decisions. It concluded from the banners' inscriptions that the applicants had intended to incite others to free prisoners, which constituted an offence.

Subsequent appeals by the applicants - who argued that the slogans had been addressed to the police, urging them to end the numerous arrests and detentions of demonstrators, and had not been meant to call upon others to free prisoners by force - were dismissed by the Rostock Court of Appeal on 7 June. The court held that while the slogans on the banners could be understood in different ways, the police had been authorised, in view of the security situation in Rostock ahead of the G8 summit, to prevent ambiguous declarations leading to a risk to public security. They had been entitled to assume that the applicants intended to drive to Rostock and display the banners at the partly violent demonstrations there.

While in detention, the applicants also lodged a constitutional complaint with the Federal Constitutional Court and applied for an interim injunction ordering their immediate release. On 8 June, they were informed that the court would not take a decision on the request for an interim injunction. On 9 June, at midday, they were released. On 6 August 2007, the Federal Constitutional Court declined to consider their constitutional complaints.

Criminal proceedings, which had been instituted against the applicants for having obstructed public officers in the exercise of their duties, were subsequently discontinued.

### Complaints

The applicants complained about their detention for five-and-a-half days, relying in particular on Article 5 § 1 (right to liberty and security), Article 10 (freedom of expression), and Article 11 (freedom of assembly and association).

### Decision of the Court

#### *Article 5 § 1*

Having regard to the German Government's submissions, the Court first examined whether the applicants' detention had been justified under Article 5 § 1 (c) as detention reasonably considered necessary to prevent them committing an offence. It observed that the German courts had diverged on the specific offence the applicants were about to commit. While the district and regional courts had considered that they had intended to incite others to free by force prisoners detained in the prison in front of which the applicants were arrested, the appeal court had considered that their intention was to drive to Rostock and incite the crowd at the demonstrations there by displaying the banners.

The applicants had been detained for five-and-a-half days – a considerable time.

Moreover, the inscriptions on the banners could have been understood in different ways, as the appeal court had accepted. It was uncontested that the applicants had not carried any instruments which could have served to liberate prisoners in a violent manner. The Court was therefore not convinced that their continuing detention could have reasonably been considered necessary to prevent them from committing a sufficiently concrete and specific offence. It was further not convinced that the detention had been necessary at all, given that it would have been sufficient to seize the banners in order to prevent them from inciting others to liberate prisoners.

The Government had further argued that the detention had been justified, as the applicants would not have respected an order to report to a police station in their respective towns of residence at regular intervals or an order not to enter the area in which the G8-related demonstrations took place. However, the Court pointed out that the police had not ordered them to report to the police stations in their respective towns nor prohibited them from entering the area where the demonstrations took place. The duty not to commit a crime could finally not be considered as sufficiently concrete and specific to qualify, in accordance with the Court's case-law, as an "obligation prescribed by law" for the purpose of Article 5 § 1 (b) and thus justify the applicants' detention.

The German courts had not found the applicants guilty of any criminal offence, but had ordered their detention in order to prevent them from committing a potential future offence. While the Convention obliged state authorities to take reasonable steps to prevent criminal offences of which they had or ought to have had knowledge, it did not permit a state to protect individuals from criminal acts committed by a particular person by measures which were in breach of that person's Convention rights. There had accordingly been a violation of Article 5 § 1.

#### *Article 11*

The applicants' complaints under Articles 10 and 11 mostly concerned their right to freedom of assembly. The Court therefore decided to examine that part of the complaint under Article 11 alone. It was uncontested by the parties that the applicants' detention had interfered with their right to freedom of peaceful assembly, as they had been prevented from taking part in the demonstrations against the G8 summit.

The Court found that the authorities' aim in ordering the applicants' detention, namely to prevent them from committing a crime, was as such legitimate. It also accepted that guaranteeing the security of the participants and maintaining public order at the summit, with an expected 25000 demonstrators, including a considerable number of people prepared to use violence, was a considerable challenge for the authorities. However, as the Court found under Article 5, it was not established that the applicants had intended, by displaying the banners, to deliberately stir up other demonstrators prepared to use violence to liberate prisoners.

Moreover, the Court found that that, by taking part in the demonstrations against the G8 summit, the applicants had intended to participate in a debate on matters of public interest, namely the effects of globalisation on peoples' lives. By displaying the slogans on their banners, they had aimed to criticise the security measures taken by the police, in particular the high number of detentions. Depriving them of their liberty for several days for trying to display the impugned banners had had a chilling effect on the expression of such an opinion and restricted public debate on that issue. The Court concluded that no fair balance had been struck between the aims of securing public safety and prevention of crime on the one hand and the applicants' interest in freedom of assembly on the other. Furthermore, the Court was not convinced that less intrusive measures could not have been found to attain those aims in a proportionate manner, such as seizing the banners. There had accordingly been a violation of Article 11.

## Di Sarno and Others v. Italy

*Italy's prolonged inability to deal with "waste crisis" in Campania breached human rights of 18 people living and working in the region*

**Judgment of 10 January 2012**

### Principal facts

The applicants are 18 Italian nationals, 13 of whom live in – and the other five who work in – the municipality of Somma Vesuviana (Campania). From 11 February 1994 to 31 December 2009 a state of emergency was in place in the region of Campania, declared by the then Prime Minister on account of serious problems with the disposal of urban waste. The management of the state of emergency was initially entrusted to "deputy commissioners". On 9 June 1997 the President of the Region, acting as deputy commissioner, drew up a regional waste disposal plan which provided for the construction of five incinerators, five principal landfill sites and six secondary landfill sites. He issued an invitation to tender for a ten-year concession to operate the waste treatment and disposal service in the province of Naples. According to the specifications, the successful bidder would be required to ensure the proper reception of the collected waste, its sorting, conversion into refuse-derived fuel (RDF) and incineration. To that end, it was to construct and manage three waste sorting and fuel production facilities and set up an electric power plant using RDF, by 31 December 2000.

The concession was awarded to a consortium of five companies which undertook to build a total of three RDF production facilities and one incinerator.

On 22 April 1999 the same deputy commissioner launched an invitation to tender for a concession to operate the waste disposal service in Campania. The successful bidder was a consortium which set up the company FIBE Campania S.p.A. The company undertook to build and manage seven RDF production facilities and two incinerators. It was required to ensure the reception, sorting and treatment of waste in the Campania region. In January 2001 the closure of the Tufino landfill site resulted in the temporary suspension of waste disposal services in the province of Naples. The mayors of the other municipalities in the province authorised the storage of the waste in their respective landfill sites on a temporary basis.

On 22 May 2001 the collection and transport of waste in the municipality of Somma Vesuviana was entrusted to a consortium of several companies. Subsequently, on 26 October 2004, management of the service was handed over to a publicly-owned company. In 2003 the Naples public prosecutor's office opened a criminal investigation into the management of the waste disposal service in Campania. On 31 July 2007 the public prosecutor requested the committal for trial of the directors and certain employees of the companies operating the concession and of the deputy commissioner who had held office between 2000 and 2004 and several officials from his office, on charges of fraud, failure to perform public contracts, deception, interruption of a public service, abuse of office, misrepresentation of the facts in the performance of public duties and conducting unauthorised waste management operations.

A further crisis erupted at the end of 2007, during which tonnes of waste piled up in the streets of Naples and several other towns and cities in the province. On 11 January 2008 the Prime Minister appointed a senior police official as deputy commissioner, with responsibility for opening landfill sites and identifying new waste storage and disposal sites.

In the meantime, in 2006, another criminal investigation was opened, this time concerning the waste disposal operations carried out during the transitional phase following the termination of the first concession agreements. On 22 May 2008 the judge made compulsory residence orders in respect of the accused, who included directors, managers and employees of the waste disposal and treatment companies, persons in charge of waste recycling centres, managers of landfill sites, representatives of waste transport companies and officials from the office of the deputy commissioner. Those concerned were charged with conspiracy to conduct trafficking in waste, forging official documents, deception, misrepresentation of the facts in the performance of public duties and organised trafficking of waste.

### Complaints

Relying on Articles 2 (right to life) and 8 (right to respect for private and family life), the applicants complained that, by omitting to take the necessary measures to ensure the proper functioning of the public waste collection service and by implementing inappropriate legislative and administrative policies, the state had caused serious damage to the environment in their region and

placed their lives and health in jeopardy. They criticised the authorities for not informing those concerned of the risks entailed in living in a polluted area.

Relying on Articles 6 (right to a fair hearing) and 13 (right to an effective remedy), the applicants complained that the Italian authorities had taken no initiatives aimed at safeguarding the rights of members of the public, and criticised the Italian courts for delays in prosecuting those responsible.

## Decision of the Court

### *The Italian Government's preliminary objections*

The Italian Government argued that the applicants could not claim "victim" status. According to the Court's case-law, the crucial element in determining whether environmental pollution amounted to a violation of one of the rights safeguarded by Article 8 was the existence of a harmful effect on a person's private or family life and not simply the general deterioration of the environment. However, in today's case the Court considered that the environmental damage complained of by the applicants had been such as to directly affect their own well-being. Accordingly, it rejected the Government's preliminary objection concerning the applicants' victim status. The Government further alleged that the applicants had not exhausted domestic remedies, arguing that they could have brought an action for compensation against the agencies managing the collection, treatment and disposal of waste in order to seek redress for the damage sustained as a result of the malfunctioning of the service, as other inhabitants of the Campania region had done. As to the possibility for the applicants to bring an action for damages, the Court noted that that might theoretically have resulted in compensation for those concerned but would not have led to the removal of the rubbish from the streets and other public places. The Court further observed that the Government had not produced any civil court decision awarding damages to the residents of the areas concerned, or any administrative court decision awarding compensation for damage. Likewise, the Government had not cited any court rulings establishing that the residents of the areas affected by the "waste crisis" could have been joined as civil parties to criminal proceedings concerning offences against the public service and the environment. Lastly, as to the possibility of requesting the Environment Ministry to bring an action seeking compensation for environmental damage, the Court noted that only the Environment Ministry, and not the applicants themselves, could claim compensation. The only course of action open to the applicants would have been to ask the Ministry to apply to the judicial authorities. That could not be said to constitute an effective remedy for the purposes of Article 35 § 1 of the Convention. Accordingly, the Court rejected the Government's preliminary objection of failure to exhaust domestic remedies.

### *Article 8*

The Court pointed out that states had first and foremost a positive obligation, especially in relation to hazardous activities, to put in place regulations appropriate for the activity in question, particularly with regard to the level of the potential risk. Article 8 also required that members of the public should be able to receive information enabling them to assess the danger to which they were exposed.

The Court observed that the municipality of Somma Vesuviana, where the applicants lived or worked, had been affected by the "waste crisis". A state of emergency had been in place in Campania from 11 February 1994 to 31 December 2009 and the applicants had been forced, from the end of 2007 until May 2008, to live in an environment polluted by the piling-up of rubbish on the streets.

The Court noted that the applicants had not complained of any medical disorders linked to their exposure to the waste, and that the scientific studies produced by the parties had made conflicting findings as to the existence of a link between exposure to waste and an increased risk of cancer or congenital defects. Although the Court of Justice of the European Union, which had ruled on the issue of waste disposal in Campania, had taken the view that a significant accumulation of waste on public roads or in temporary storage sites was liable to expose the population to a health risk,[13] the applicants' lives and health had not been in danger.

13. Judgment of 4 March 2010 by the Court of Justice of the European Union (Case C-297/08).

The collection, treatment and disposal of waste were hazardous activities; as such, the state had been under a duty to adopt reasonable and appropriate measures capable of safeguarding the right of those concerned to a healthy and protected environment. It was true that the Italian State, from May 2008 onwards, had adopted several measures and launched a series of initiatives which made it possible to lift the state of emergency in Campania on 31 December 2009. However, the Court could not accept the Italian Government's argument that that state of crisis was attributable to *force majeure*. Even if one took the view, as the Government did, that the acute phase of the crisis had lasted only five months – from the end of 2007 until May 2008 – the fact remained that the Italian authorities had for a lengthy period been unable to ensure the proper functioning of the waste collection, treatment and disposal service, resulting in an infringement of the applicants' right to respect for their private lives and their homes.

The Court therefore held that there had been a violation of Article 8. On the other hand, the studies commissioned by the civil emergency planning department had been published by the Italian authorities in 2005 and 2008, in compliance with their obligation to inform the affected population. There had therefore been no violation of Article 8 concerning the provision of information to the public.

### *Articles 6 and 13*

As to the applicants' complaint concerning the opening of criminal proceedings, the Court reiterated that neither Articles 6 and 13 nor any other provision of the Convention guaranteed an applicant a right to secure the prosecution and conviction of a third party or a right to "private revenge".

However, in so far as the complaint related to the absence of effective remedies in the Italian legal system by which to obtain redress for the damage sustained, the Court considered that that complaint fell within the scope of Article 13.

In view of its findings as to the existence of relevant and effective remedies enabling the applicants to raise their complaints with the national authorities, the Court held that there had been a violation of Article 13.

# Othman (Abu Qatada) v. the United Kingdom

*Diplomatic assurances will protect Abu Qatada from torture but he cannot be deported to Jordan while there remains a real risk that evidence obtained by torture will be used against him.*

**Judgment of 17 January 2012**

This is the first time that the Court has found that an expulsion would be in violation of Article 6, which reflects the international consensus that the use of evidence obtained through torture makes a fair trial impossible.

## Principal facts

The applicant, Omar Othman (Abu Qatada), is a Jordanian national who was born in 1960 near Bethlehem, then part of Jordan. He is currently detained in Long Lartin prison, Worcestershire, England. He is suspected of having links with al-Qaeda.

Mr Othman arrived in the United Kingdom in September 1993 and made a successful application for asylum, in particular on the basis that he had been detained and tortured by the Jordanian authorities in 1988 and 1990-1. He was recognised as a refugee in 1994, being granted leave to remain until June 1998.

While his subsequent application for indefinite leave to remain was pending, he was detained in October 2002 under the Anti-Terrorism, Crime and Security Act. When that Act was repealed in March 2005, he was released on bail and made subject to a control order under the Prevention of Terrorism Act. While his appeal against the control order was still pending, in August 2005 he was served with a notice of intention to deport him to Jordan.

Mr Othman appealed against that decision. He had been convicted in Jordan, in his absence, of involvement in two terrorist conspiracies in 1999 and 2000. It was alleged by the Jordanian authorities that Mr Othman had sent encouragement from the UK to his followers in Jordan and that that had incited them to plant the bombs. Mr Othman claimed that, if deported, he would be retried, which would put him at risk of torture, lengthy pre-trial detention and a grossly unfair trial based on evidence obtained by the torture of his co-defendants.

The UK Special Immigration Appeals Commission (SIAC) dismissed his appeal, holding in particular that Mr Othman would be protected against torture and ill-treatment by the agreement negotiated between the UK and Jordan, which set out a detailed series of assurances. SIAC also found that the retrial would not be in total denial of his right to a fair trial.

The Court of Appeal partially granted Mr Othman's appeal. It found that there was a risk that torture evidence would be used against him if he were returned to Jordan and that that would violate the international prohibition on torture and would result in a flagrant denial of justice in breach of Article 6 of the European Convention on Human Rights.

On 18 February 2009 the House of Lords upheld SIAC's findings. They found that the diplomatic assurances would protect Mr Othman from being tortured. They also found that the risk that evidence obtained by torture would be used in the criminal proceedings in Jordan would not amount to a flagrant denial of justice.

## Complaints

The applicant alleged, in particular, that he would be at real risk of ill-treatment and a flagrant denial of justice if deported to Jordan. He relied on Articles 3, 5, 6 and 13.

## Decision of the Court

### *Article 3*

The Court noted that, in accordance with its well-established case-law, Mr Othman could not be deported to Jordan if there were a real risk that he would be tortured or subjected to inhuman or degrading treatment. The reports of United Nations bodies and human rights organisations showed that the Jordanian General Intelligence Directorate (GID) routinely used torture against suspected Islamist terrorists and that no protection against that was provided by the courts or any other body in Jordan. As a high-profile Islamist, Mr Othman belonged to a category of prisoners at risk of ill-treatment and he claimed already to have been tortured when he lived in Jordan.

The Court therefore had to decide whether the diplomatic assurances obtained by the UK Government from the Jordanian Government were sufficient to protect Mr Othman.

It found that the agreement between the two Governments was specific and comprehensive. The assurances were given in good faith by a Government whose bilateral relations with the United Kingdom had, historically, been strong. They had been approved at the highest levels of the Jordanian Government, with the express approval and support of the King himself. They also had the approval and support of senior GID officials. Mr Othman's high profile would make the Jordanian authorities careful to ensure he was properly treated; any ill-treatment would have serious consequences for Jordan's relationship with the UK. In addition, the assurances would be monitored by an independent human rights organisation in Jordan, which would have full access to Mr Othman in prison.

There would therefore be no risk of ill-treatment, and no violation of Article 3, if Mr Othman were deported to Jordan.

### *Article 13*

The Court considered that SIAC's procedures satisfied the requirements of Article 13. There had therefore been no violation of Article 13.

### *Article 5*

The Court noted that Jordan clearly intended to bring Mr Othman to trial and had to do so within 50 days of his detention. The Court held that 50 days' detention fell far short of the length of detention required for a flagrant breach of Article 5 and, consequently, that there would be no violation of Article 5 if he were deported to Jordan.

### *Article 6*

The European Court agreed with the English Court of Appeal that the use of evidence obtained by torture during a criminal trial would amount to a flagrant denial of justice.

Torture and the use of torture evidence were banned under international law. Allowing a criminal court to rely on torture evidence would legitimise the torture of witnesses and suspects pre-trial. Moreover, torture evidence was unreliable, because a person being tortured would say anything to make it stop.

The Court found that torture was widespread in Jordan, as was the use of torture evidence by the Jordanian courts. The Court also found that, in relation to each of the two terrorist conspiracies charged against Mr Othman, the evidence of his involvement had been obtained by torturing one of his co-defendants. When those two co-defendants stood trial, the Jordanian courts had not taken any action in relation to their complaints of torture. The Court agreed with SIAC that there was a high probability that the incriminating evidence would be admitted at Mr Othman's retrial and that it would be of considerable, perhaps decisive, importance.

In the absence of any assurance by Jordan that the torture evidence would not be used against Mr Othman, the Court therefore concluded that his deportation to Jordan to be retried would give rise to a flagrant denial of justice in violation of Article 6.

The Court did not consider it necessary to consider his other complaints under Article 6.

## Harkins and Edwards v. the United Kingdom

*Extraditing two men, risking life imprisonment for murder, to the United States would not breach their human rights*

**Judgment of 17 January 2012**

### Principal facts

The applicants, Phillip Harkins and Joshua Daniel Edwards, are respectively a British and a United States national, born in 1978 and 1987.

They were indicted in the United States, in 2000 and in 2006 respectively, for murder, among other offences. Mr Harkins was accused of having killed a man during an armed robbery attempt together with an accomplice. Mr Edwards was accused of having intentionally shot two people, killing one of them and injuring the other, who had allegedly made fun of his small stature and feminine appearance.

Both applicants were arrested in the United Kingdom, in 2003 and 2007 respectively. The US Government requested their extradition providing assurances that the death penalty would not be applied in their case and that the maximum sentence which they risked was life imprisonment.

In June 2006 and June 2007, the British Secretary of State ordered Mr Harkins' and Mr Edwards' extradition. They complained unsuccessfully before the British courts that, if extradited, they risked a sentence of life imprisonment without parole, in breach of Article 3 of the European Convention on Human Rights (prohibition of inhuman and degrading treatment).

Following their subsequent applications to the European Court of Human Rights, in which they asked it to prevent their extradition, the Court applied Rule 39 (Interim measures) of the Rules of Court, indicating that the UK Government should not extradite them until further notice.

### Complaints

Relying in particular on Article 3, both applicants complained that, if they were extradited to the United States, there would be a real risk that they would face the death penalty. They also complained about the possibility of receiving sentences of life imprisonment without parole.

### Decision of the Court

#### *Alleged risk of death penalty (Article 3)*

The Court considered that the diplomatic assurances, provided by the US to the British Government - that the death penalty would not be sought in respect of Mr Harkins or Mr Edwards – were clear and sufficient to remove any risk that either of the applicants could be sentenced to death if extradited, particularly as the US had a long history of respect for democracy, human rights and the rule of law. Therefore, the Court rejected the applicants' related complaints as inadmissible.

#### *Life imprisonment without parole (Article 3)*

In Mr Harkins' case, the Court was not persuaded that it would be grossly disproportionate for Mr Harkins to be given a mandatory life sentence in the US. He had been over 18 at the time of his alleged crime, had not been diagnosed with a psychiatric disorder, and the killing had been part of an armed robbery attempt - an aggravating factor. Further, he had not yet been convicted, and – even if he were convicted and given a mandatory life sentence – keeping him in prison might continue to be justified throughout his life time. And if that were not the case, the Governor of Florida and the Florida Board of Executive Clemency could, in principle, decide to reduce his sentence.

As regards Mr Edwards, he faced – at most – a discretionary life sentence without parole. Given that it could only be imposed after consideration by the trial judge of all relevant factors and only if Mr Edwards were convicted for a pre-meditated murder, the Court concluded that such a sentence would not be grossly disproportionate.

Consequently, there would be no violation of Article 3 if either Mr Harkins or Mr Edwards were extradited.

#### *Other articles*

The Court rejected Mr Edwards' related complaint under Article 5 as inadmissible.

#### *Interim measures (Rule 39)*

The Court held that the indication it had given to the British Government not to extradite the applicants until further notice had to remain in force until today' judgment became final or until the Court decided to accept a potential request by either or both parties for referral of the case to the Court's Grand Chamber.

## Vinter and Others v. the United Kingdom

*European Court finds three British murderers' imprisonment for life is not inhuman or degrading*

**Judgment of 17 January 2012**

### Principal facts

The applicants, Douglas Gary Vinter, Jeremy Neville Bamber and Peter Howard Moore, are British nationals who were born in 1969, 1961 and 1946 respectively. All three men are currently serving mandatory sentences of life imprisonment for murder. Mr Vinter was convicted of stabbing his wife in February 2008. While still on parole for a first murder offence (he killed a work colleague), he followed his wife – from whom he was estranged – to a public house, forced her into his car and drove off. When the police telephoned her, Mr Vinter forced her to tell them that she was fine. He also later called the police to tell them that she was alive and well. However, some hours later he gave himself up and confessed that he had killed her. The post-mortem revealed that his wife had a broken nose, strangulation marks around her neck and four stab wounds.

Mr Bamber was convicted of shooting and killing his adoptive sister and her two young children in August 1985. It was alleged that he had committed the murders for financial gain and had tried to make it look as if his adoptive sister had carried out the crime, then killed herself.

Mr Moore was convicted of stabbing four men with a large combat knife between September and December 1995. The four victims were all homosexuals and Mr Moore allegedly killed them for his own sexual gratification.

When convicted the applicants were given whole life orders, meaning they cannot be released other than at the discretion of the Secretary of State on compassionate grounds (for example, if they are terminally ill or seriously incapacitated). The power of the Secretary of State to release a prisoner is provided for in section 30(1) of the Crime (Sentences) Act 1997. Under this Act it was practice for the mandatory life sentence to be passed by the trial judge, who – along with the Lord Chief of Justice – then gave recommendations to the Secretary of State to decide the minimum term of imprisonment (the "tariff" part of the sentence) which the prisoner would have to serve to satisfy the requirements of retribution and deterrence and be eligible for early release on licence. In general, the Secretary of State reviewed a whole life tariff after 25 years' imprisonment. With the entry into force of the Criminal Justice Act 2003, all prisoners whose tariffs were set by the Secretary of State are now able to apply to the High Court for review of that tariff.

Mr Vinter's whole life order was made by the trial judge under the current practice. His appeal against his conviction was dismissed in June 2009. The Court of Appeal found that there was no reason to depart from the normal principle under schedule 21 to the 2003 Act that, where a murder was committed by someone who was already a convicted murderer, a whole life order was appropriate for punishment and deterrence.

Mr Bamber and Mr Moore, convicted and sentenced prior to the entry into force of the 2003 Act, both applied to the High Court for review of their whole life tariffs.

In the case of Mr Bamber, the High Court concluded that, given the number of murders involved, the presence of premeditation, the submissions by the victims' next-of-kin as well as reports on the behaviour and progress he had made in prison, there was no reason to depart from the view held in 1988 by the Lord Chief of Justice and the Secretary of State that he should never be released.

In the case of Mr Moore, the High Court found that the case involved the murder of two or more people, sexual or sadistic conduct and a substantial degree of premeditation and that there were no mitigating circumstances.

The High Court therefore considered that whole life orders were justified in respect of both men. The applicants' appeals were dismissed in 2009 and, shortly after, their applications to certify whether their cases ought to be considered by the House of Lords were also refused.

### Complaints

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), all three applicants complained that their imprisonment without hope of release was cruel and amounted to inhuman and degrading treatment.

### Decision of the Court

The Court held that in each case the High Court had decided that an all-life tariff was required, relatively recently and following a fair and detailed consideration. All three applicants had committed particularly brutal and callous murders. To date, Mr Vinter had only served three years of imprisonment, Mr Bamber 26 years and Mr Moore 16 years.

The Court did not consider that these sentences were grossly disproportionate or amounted to inhuman or degrading treatment.

There had therefore been no violation of Article 3 in the case of any of the applicants.

## Romet v. the Netherlands

*Failure to prevent abuse, by unknown third parties, of a driving license reported missing breached the Convention*

**Judgment of 14 February 2012**

### Principal facts

The applicant, Steven Benito Romet, is a Netherlands national who was born in 1968 and lives in Maastricht (the Netherlands).

On 3 November 1995 he reported to the police that his driving license had been stolen in September of that year. In March 1997, the authorities issued him with a new driving licence, shortly after he applied for it.

During the intervening period the relevant authorities registered 1737 motor vehicles in his name, without receiving his agreement beforehand. As a consequence, he was prosecuted on many occasions for various offences and accidents related to the cars and required to pay vehicle tax on them. He was also fined and detained for failure to comply with administrative orders

which were the result of offences not committed by him. He lost his welfare benefits too, as the authorities found that his financial means were ample given the large number of cars registered in his name.

In the course of 1996, Mr Romet turned to various authorities asking them to rectify the situation, to no avail. In 2004, he also appealed to the Amsterdam Court of Appeal seeking the prosecution of those responsible for the malicious vehicle registrations in his name. His appeal was dismissed, the Court finding that too much time had passed for a meaningful investigation to be possible.

Mr Romet challenged the registrations of the motor vehicles in his name, asking the Government Road Transport Agency to annul them retrospectively, but was met with a refusal.

### Complaints

Relying in particular on Article 8, he complained about the failure to invalidate his driving licence as soon as it was reported missing and that this had made it possible for others to abuse his identity.

### Decision of the Court

#### *Article 8*

The Court observed that the failure to invalidate Mr Romet's driving license as soon as he reported it missing, which made abuse of his identity by other people possible, was an "interference" with his private life which fell within the scope of Article 8.

Mr Romet had reported his driving license stolen on 3 November 1995. Yet, the authorities had invalidated it only in March 1997 when they had issued him with a replacement. After that date, apparently, no further vehicles had been unlawfully registered in his name.

Consequently, the authorities had not acted swiftly to deprive the driving license of its usefulness as an identity document. Neither had they satisfied the Court that they could not have done so immediately after Mr Romet had reported his driving license missing.

Accordingly, there had been a violation of Article 8.

#### *Other articles*

The Court rejected Mr Romet's remaining complaints.

## Vejdeland v. Sweden

*Criminal conviction for distributing leaflets offensive to homosexuals was not contrary to freedom of expression*

**Judgment of 9 February 2012**

### Principal facts

The applicants, Tor Fredrik Vejdeland, Mattias Harlin, Björn Täng and Niklas Lundström, are Swedish nationals who were born in 1978, 1981, 1987 and 1986 respectively. Mr Vejdeland lives in Gothenburg and the other applicants live in Sundsvall (Sweden). In December 2004 the applicants, together with three other persons, went to an upper secondary school and distributed approximately a hundred leaflets by an organisation called National Youth, by leaving them in or on the pupils' lockers. The school's principal intervened and made them leave the premises. The statements in the leaflets were, in particular, allegations that homosexuality was a "deviant sexual proclivity", had "a morally destructive effect on the substance of society" and was responsible for the development of HIV and AIDS.

The applicants claimed that they had not intended to express contempt for homosexuals as a group and stated that the purpose of their activity had been to start a debate about the lack of objectivity in the education in Swedish schools. The District Court found that the applicants' intention had been to express contempt for homosexuals and convicted them of agitation against a national or ethnic group. The charges against the applicants were rejected on appeal, on the ground that a conviction would amount to a violation of their right to freedom of expression as guaranteed by the European Convention on Human Rights.

On 6 July 2006 the Supreme Court convicted the applicants of agitation against a national or ethnic group. The majority of judges found in particular that the pupils had not had the possibility to refuse the leaflets and that the purpose of supplying the pupils with arguments for a debate could have been achieved without offensive statements to homosexuals as a group. The first three applicants were given suspended sentences combined with fines ranging from approximately 200 to 2000 euros and the fourth applicant was sentenced to probation.

### Complaints

The applicants alleged that the Supreme Court convicting them of agitation against a national or ethnic group had constituted a violation of their freedom of expression under Article 10 of the Convention. They further submitted that they had been punished without law in violation of Article 7.

INTERIGHTS (the International Centre for the Legal Protection of Human Rights) and the International Commission of Jurists submitted observations in their capacity as thirdparty interveners in the proceedings (Article 36 § 2 of the Convention). The observations are set out in the judgment (§§ 41-46).

### Decision of the Court

#### *Article 10*

The applicants were convicted of agitation against a national or ethnic group in accordance with the Swedish Penal Code. The Court therefore considered that the interference with their freedom of expression had been sufficiently clear and foreseeable and thus "prescribed by law" within the meaning of the Convention. The interference had served a legitimate aim, namely "the protection of the reputation and rights of others" (Article 10 § 2).

The Court agreed with the Supreme Court that, even if the applicants' objective to start a debate about the lack of objectivity of education in Swedish schools had been an acceptable aim, regard had to be paid to the wording of the leaflets. According to the leaflets, homosexuality was a "deviant sexual proclivity", had "a morally destructive effect" on society and was responsible for the development of HIV and AIDS. The leaflets further alleged that the "homosexual lobby" tried to play down paedophilia. These statements had constituted serious and prejudicial allegations, even if they had not been a direct call to hateful acts. The Court stressed that discrimination based on sexual orientation

was as serious as discrimination based on "race, origin or colour".

While acknowledging the applicants' right to express their ideas, the Supreme Court had found that the leaflets' statements had been unnecessarily offensive. It had further emphasised that the applicants had imposed the leaflets on the pupils by leaving them on or in their lockers. The Court noted that the pupils had been at an impressionable and sensitive age and that the distribution of the leaflets had taken place at a school which none of the applicants attended and to which they did not have free access.

Three of the applicants were given suspended sentences combined with fines ranging from approximately EUR 200 to EUR 2,000, and the fourth applicant was sentenced to probation. The Court did not find these penalties excessive in the circumstances as the crime of which they had been convicted had carried a penalty of up to two years' imprisonment.

The Court therefore considered that the interference with the applicants' exercise of their right to freedom of expression had reasonably been regarded by the Swedish authorities as necessary in a democratic society for the protection of the reputation and rights of others. The Court concluded that there had been no violation of Article 10.

*Article 7*

Having regard to the finding under Article 10 that the measure complained of was "prescribed by law" within the meaning of the Convention, the Court declared the applicants' complaint under Article 7 inadmissible as being manifestly ill-founded.

## A.M.M. v. Romania

*Romanian courts did not respect the right to respect for private and family life in paternity proceedings concerning a minor*

**Judgment of 14 February 2012**

### Principal facts

The applicant, A.M.M., is a Romanian national who was born in 2001 and lives in Pantelimon (Romania). He is a ten-year-old minor and was first represented by his mother and subsequently, since his mother suffered from a serious disability, by his maternal grandmother. Two medical reports concerning A.M.M. stated that he had symptoms of rickets, anaemia and delayed neuropsychological development and did not speak. As to his mother's health, she was placed under the care of the social welfare authorities as a severely disabled person.

A.M.M. was registered in his birth certificate as having a father of unknown identity. On 20 June 2001 his mother brought paternity proceedings against Z., claiming that the child had been conceived following intercourse with him. She relied on a handwritten statement signed by Z. in which he recognised paternity of the child and promised to pay maintenance.

In her application to the courts, the applicant's mother claimed that Z. had not kept his promise to pay maintenance. She requested that Z. be questioned, that evidence be taken from certain witnesses and that a paternity test be carried out.

In a judgment of 2 April 2002 the Bucharest Court of First Instance ordered a paternity test and instructed the parties to report to the Institute of Forensic Medicine. Only A.M.M. and his mother turned up for the appointment.

On 30 April 2002 the court noted that the applicant's mother had decided to forego the forensic tests and the taking of witness evidence. The court considered that the copy of Z.'s handwritten statement, the original of which had not been provided, was not admissible. A.M.M.'s mother appealed against that judgment. On 24 October 2002 the Bucharest County Court dismissed the appeal, upholding the reasoning of the Court of First Instance. On 29 January 2003 the Bucharest Court of Appeal allowed a further appeal lodged by the applicant and quashed the County Court judgment. The Court of Appeal noted that the County Court had not fulfilled the active role assigned to it in order to establish the facts and apply the law correctly, particularly since the claimant had not been represented by a lawyer.

The case was referred back to the County Court, which summoned A.M.M.'s mother and three witnesses for questioning. On 22 May 2003 the court observed that the presence of a representative of the public prosecutor's office was essential. On 5 and 19 June 2003 it noted the absence of two of the witnesses who had been called and issued summonses. However, these could not be enforced because the witnesses were not at the address provided by the claimant.

On 18 September 2003 the court ordered Z. to report to the Institute of Forensic Medicine in Bucharest for forensic tests with a view to the submission of an expert report at the hearing of 30 October 2003. Z. did not attend that hearing and it transpired that he had not reported to the Institute for the forensic tests. The representative of the municipal guardianship office and the public prosecutor, who had been given notice to appear, were also absent.

The applicant's mother stated that she no longer wished to have forensic tests carried out to establish A.M.M.'s paternity or to have any evidence taken. In a ruling given at the close of the hearing, the County Court dismissed the mother's claims as unsubstantiated. It found that Z.'s handwritten statement, even if the original were to be produced, would not prove that he was the child's father, as it was not corroborated by any other evidence apart from the subjective testimony of the child's maternal grandmother.

### Complaints

Relying on Articles 6 and 8 of the Convention, the applicant complained that the paternity proceedings had not satisfied the reasonable time requirement and that there had been an infringement of his right to private and family life.

### Decision of the Court

*Article 8*

The Court had to ascertain whether the state, in its conduct of the proceedings to establish A.M.M.'s paternity, had complied with its obligations under Article 8.

The Court observed that the guardianship office responsible for protecting the child's interests had not taken part in the proceedings as it was required to do, and that neither A.M.M. nor his mother had at any point been represented by a lawyer.

It was those shortcomings that had led the Bucharest Court of Appeal to allow the applicant's mother's first appeal. However, the same shortcomings had been repeated when the case was re-examined on appeal. No representative of the guardianship office had appeared at any of the hearings before the County Court. The court had not taken any procedural steps to secure the appearance of a representative, nor had it taken action on the child's behalf to compensate for that absence by appointing a lawyer or securing the participation of a member of the public prosecutor's office. Likewise, no steps had been taken by the authorities to contact the witnesses proposed by the child's mother, after the first attempt had failed.

Having regard to the child's best interests and the rules requiring the guardianship office or a representative of the public prosecutor's office to participate in paternity proceedings, the Court considered that it had been up to the authorities to act on behalf of the child whose paternity was to be established in order to compensate for the difficulties facing his mother and avoid his being left without protection. On an unspecified date, A.M.M.'s mother had been placed under the care of the social welfare authorities on account of her serious disability. The Court pointed out that it had previously held that, in the context of exhaustion of domestic remedies, consideration had to be given to the vulnerability of certain individuals and their inability in some cases to plead their case coherently or, indeed, at all.

The Court observed that domestic law did not provide for any measure by which a third party could be required to undergo a paternity test. This could reflect the need to protect third parties by ruling out the possibility of their being forced to undergo medical tests of whatever kind. In the Government's submission, the courts, in giving their decision, could take into account the fact that one of the parties had sought to prevent certain facts from being established. In the applicant's case the courts had not drawn any inferences from Z.'s refusal to cooperate.

The domestic courts had not struck a fair balance between the child's right to have his interests safeguarded in the paternity proceedings and the right of his putative father not to take part in the proceedings or to refuse to undergo a paternity test. The Court therefore held that there had been a violation of Article 8.

## Gas and Dubois v. France

*The refusal to allow a woman to adopt her same-sex partner's child was not discriminatory*

**Judgment of 15 March 2012**

### Principal facts

The applicants, Valérie Gas and Nathalie Dubois, are French nationals who were born in 1961 and 1965 respectively and live in Clamart (France). They have been cohabiting since 1989. In September 2000 Nathalie Dubois gave birth in France to a daughter, A., who had been conceived in Belgium by means of medically-assisted procreation with an anonymous donor. The child does not have an established parental tie with the father, in accordance with Belgian law. She has lived all her life in the applicants' shared home. In April 2002 Ms Gas and Ms Dubois entered into a civil partnership agreement.

On 3 March 2006 Ms Gas applied to the Nanterre *tribunal de grande instance* for a simple adoption order in respect of her partner's daughter; her partner had given her express consent before a notary. On 4 July 2006 the court observed that the statutory requirements for the adoption had been met and that it had been demonstrated that Ms Gas and Ms Dubois were actively and jointly involved in the child's upbringing, caring for and showing affection to her. However, it refused the application on the grounds that the adoption would have legal implications which ran counter to the applicants' intentions and the child's best interests. This finding was upheld by the Versailles Court of Appeal, which considered that, since the applicants would be unable to share parental responsibility as permitted by the Civil Code[14] in the case of adoption by the spouse of the child's biological mother or father, the adoption would deprive Ms Dubois of all rights in relation to her child. The applicants appealed on points of law but did not pursue the appeal to its conclusion.

### Complaints

The applicants complained of the refusal of Ms Gas's application to adopt Ms Dubois's child. They maintained that this decision had infringed their right to private and family life in a discriminatory manner, in breach of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life).

The International Federation for Human Rights (FIDH), the International Commission of Jurists (ICJ), the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), the British Association for Adoption and Fostering (BAAF) and the Network of European LGBT Families Associations (NELFA) were given leave to intervene as third parties in the proceedings (Article 36 § 2 of the Convention).

### Decision of the Court

#### *Article 14 in conjunction with Article 8*

The Court pointed out that, according to its settled case-law, a difference in treatment between persons in relevantly similar situations was discriminatory if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Court further reiterated that differences based on sexual orientation required particularly serious reasons by way of justification. In the case of *E.B. v. France*,[15] the Court had found that no such reasons had been advanced by the Government. It had taken the view that the refusal of E.B.'s adoption application had been based on discriminatory grounds since French law allowed single persons

14. Article 365 of the Civil Code governs the transfer of parental responsibility in the event of simple adoption. Parental responsibility is transferred to the adoptive parent; the biological parent or parents thus cease to exercise parental responsibility, except where the adoptee is the child of the husband or wife, in which case the couple share parental responsibility. This exception does not apply to the parties in a civil partnership.

15. Grand Chamber judgment of 22 January 2008.

to adopt a child, thereby opening up the possibility of adoption by a single homosexual like the applicant.

The present case was different, however. As the applicants were not married, they had been unable to exercise parental responsibility jointly as permitted by the Civil Code in the case of simple adoption by the spouse of the child's mother or father. In the context of simple adoption, the only exception to the transfer of parental responsibility to the adoptive parent – entailing the loss of parental responsibility on the part of the biological parent – was in cases where the adoptive parent was the biological parent's husband or wife. The French courts had taken the view that the consequences of the transfer of parental responsibility to Ms Gas – thereby depriving Ms Dubois of parental responsibility – would have been contrary to the child's interests.

With regard to the applicants' criticism of the legal implications of medically assisted procreation with an anonymous donor, the Court noted that, in France, this possibility was mainly confined to infertile opposite-sex couples, a situation that was not comparable to that of the applicants.

Ms Gas and Ms Dubois maintained that their right to private and family life had been infringed in a way which discriminated against them in comparison with opposite-sex couples, whether married or not. With regard to married couples, the Court considered that, in view of the social, personal and legal consequences of marriage, the applicants' legal situation could not be said to be comparable to that of married couples when it came to adoption by the second parent. The Court reiterated that the European Convention on Human Rights did not require member states' Governments to grant same-sex couples access to marriage. If a state chose to provide same-sex couples with an alternative means of recognition, it enjoyed a certain margin of appreciation regarding the exact status conferred. As to unmarried couples, the Court stressed that opposite-sex couples who had entered into a civil partnership were likewise prohibited from obtaining a simple adoption order. It therefore saw no evidence of a difference in treatment based on the applicants' sexual orientation. In reply to the applicants' argument that opposite-sex couples in a civil partnership could circumvent the aforementioned prohibition by marrying, the Court reiterated its findings regarding access to marriage for same-sex couples.

The Court therefore held that there had been no violation of Article 14 taken in conjunction with Article 8.

## Janowiec and Others v. Russia

*Russia should have cooperated with the Court and treated Katyń victims' relatives humanely*

**Judgment of 16 April 2012**

The Court found that it could not examine the applicants' complaint about the ineffective investigation into the Katyń massacre because it could not establish a genuine connection between the deaths of the victims and the entry into force of the Convention in Russia in 1998. However, it held that Russia had failed to co-operate with the Court by refusing to provide a copy of its decision to discontinue the investigation, and that its response to most victims' relatives' attempts to find out the truth about what happened had amounted to inhuman treatment.

### Principal facts

The applicants are 15 Polish nationals who are relatives of 12 victims of the Katyń massacre. The 12 victims were police and army officers, an army doctor and a primary school headmaster. Following the Red Army's invasion of the Republic of Poland in September 1939, they were taken to Soviet camps or prisons and were then killed by the Soviet secret police without trial, along with more than 21000 others, in April and May 1940. They were buried in mass graves in the Katyń forest near Smolensk, and also in the Pyatikhatki and Mednoye villages.

The investigations into the mass murders were started in 1990. The criminal proceedings lasted until 2004 when it was decided to discontinue the investigation. The text of the decision has remained classified to date and the applicants have not had access to it or to any other information about the Katyń criminal investigation. Their repeated requests to gain access to that decision and to declassify its top-secret label were continuously rejected by the Russian courts which found among other things that, as the applicants had not been recognised as victims, they had no right to access the case materials. The applicants' requests for rehabilitation of their relatives were also rejected by the Chief Military Prosecutor's Office and the courts alike.

On 26 November 2010 the Russian Duma adopted a statement about the "Katyń tragedy", in which it reiterated that the "mass extermination of Polish citizens on USSR territory during the Second World War" had been carried out on Stalin's orders and that it was necessary to continue "verifying the lists of victims, restoring the good names of those who perished in Katyń and other places, and uncovering the circumstances of the tragedy".

### Complaints

Relying in particular on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the Convention, the applicants complained that the Russian authorities had not carried out an effective investigation into the death of their relatives and had displayed a dismissive attitude to all their requests for information about the dead people's fate.

### Decision of the Court

#### *Article 38 (obligation to co-operate with the Court)*

The Court noted the Russian Government's continuous refusal to produce a copy of the 2004 decision to discontinue the investigation into the Katyń massacre. It emphasised in that connection that the obligation to deliver documents had to be enforced irrespective of any findings that could be made in the proceedings and of their eventual outcome. Given that the Court had absolute discretion to determine what documents it needed to see in its examination of any case before it, it did not accept the Russian authorities' argument that the 2004 decision to discontinue the investigation was not important.

Furthermore, the Government's contention that the document could not be produced – as domestic laws and regulations prevented the communication of classified documents – ran counter to the Vienna Convention on the Law of

Treaties, according to which national law could not be cited to justify a state's failure to comply with a treaty.

Finally, the Court could not see any legitimate security considerations which could have justified the keeping of that decision secret. It found that a public and transparent investigation into the crimes of the previous totalitarian regime could not have compromised the national security interests of contemporary democratic Russia, especially bearing in mind that the Soviet authorities' responsibility for that crime had been acknowledged at the highest political level.

Consequently, the Court concluded that Russia had breached its obligation under Article 38 on account of their failure to submit to the Court a copy of the 2004 decision to discontinue the investigation.

### *Article 2 (investigating deaths)*

The Court first held that this was not a disappearance case but a confirmed death case. In the absence of any evidence that the applicants' relatives, detained at the time at Soviet prison camps, could have somehow escaped the 1940 shooting, they had to be presumed dead.

The Court then recalled that states had an obligation, well-established under the Court's case-law, to investigate effectively unlawful or suspicious deaths. That obligation had evolved into a separate and autonomous duty even when the death had taken place before the Convention had entered into force in respect of that state.

Nonetheless, the Court could not consider open-ended investigations into events which had taken place before the Convention became applicable in a given state. First of all, it could only examine acts or omissions to act which had taken place after that date. Second, a genuine connection between the deaths and the entry into force of the Convention had to exist in order for the state to be obliged to investigate such deaths.

The Russian authorities had taken most of the investigative steps in the case before the date on which Russia ratified the Convention. There was no indication that any important procedural steps had taken place following the ratification. That in itself was an obstacle to the Court's assessing the efficiency of the investigation in its entirety and to it forming a view about Russia's compliance with its obligation to investigate under Article 2.

In addition, Russia had ratified the Convention 58 years after the killing of the applicants' relatives. That period was not only many times longer than the periods which had triggered the state's obligation to investigate in all earlier cases decided by the Court, but it was excessively long also in absolute terms. Therefore, it was not possible to establish a genuine connection between the deaths and the entry into force of the Convention in Russia.

The Court then examined whether the circumstances of the case could justify a connection between the deaths and the ratification on the basis of the need to ensure the effective protection of the Convention guarantees and values. It found that the mass murder of the Polish prisoners by the Soviet secret police had been a war crime, as the obligation to treat prisoners of war humanely and the prohibition to kill them had clearly been part of international customary law, which the Soviet authorities had had a duty to respect.

However, even taking into account that war crimes were not subject to a statute of limitations, no evidence raising new or wider issues had been discovered after the ratification, hence Russia's obligation to investigate could not be revived.

The Court concluded that there had been no elements capable of providing a bridge between the distant past and the recent post-ratification period, and that there had been no special circumstances justifying a connection between the death and the ratification.

Consequently, the Court held that it was not able to examine the merits of the applicants' complaint under Article 2.

### *Article 3 (prohibition of inhuman treatment)*

The Court emphasised the difference between Article 2 and Article 3: under the former the authorities were obliged to take specific action capable of leading to the identification and punishment of those responsible, while under the latter the authorities had to react to the plight of bereaved relatives in a humane and compassionate way. It then found that the Convention did not prevent it from examining a state's compliance with its obligation under Article 3 even in cases where the death itself could not be examined because it had taken place before the Convention had entered into force.

Looking into the situation of the different applicants, the Court found that those who had been the closest relatives of the Polish officers or state officials killed in 1940 could claim to be victims of an Article 3 violation. One of them was the widow, and nine – the victims' children who had been in their formative years at the time their fathers were killed. As for the other five applicants, they had never had personal contact with their missing fathers or other relatives, as a result of which the anguish they had experienced could not be examined under Article 3.

As regards the first group of 10 applicants, the Court found that they had suffered a double trauma: losing their relatives in the war and not being allowed to learn the truth about their death for more than 50 years because of the distortion of historical facts by the Soviet and Polish communist authorities. In the post-ratification period, they had not been given access to the investigation's materials, nor had they otherwise been involved in the proceedings or officially informed of the outcome of the investigation. What was more, they had been explicitly prohibited from seeing the 2004 decision to discontinue the investigation on account of their foreign nationality.

The Court was struck by the apparent reluctance of the Russian authorities to recognise the reality of the Katyń massacre. The approach chosen by the Russian military courts to maintain, to the applicants' face and contrary to the established historic facts, that their relatives had somehow vanished in the Soviet camps, demonstrated a callous disregard for the applicants' concerns and deliberate obfuscation of the circumstances of the Katyń massacre.

Furthermore, the Russian prosecutors had consistently rejected the applicants' requests for rehabilitation of their relatives, claiming that it was not possible to determine the specific legal basis for the repression against the Polish prisoners as the relevant files had disappeared. The Court found it hard to disagree with the applicants' argument that a denial of the reality of the mass murder, reinforced by the implied suggestion that the Polish prisoners might have been duly sentenced to death, demonstrated an attitude lacking in humanity.

Finally, the authorities' obligation to account for the fate of the missing people could not be reduced to a mere acknowledgment of their death. Under Article 3, the state had to account for the circumstances of the death and the location of the grave. However, the applicants had been left to bear the burden to uncover how their relatives had died, while the Russian authorities had not provided them with any official information about the circumstances surrounding the deaths, nor made any serious attempts to locate the burial sites of the relatives.

Accordingly, the Court held that there had been a violation of Article 3 in respect of the applicants Ms Wolk, Mr Janowiec, Ms Michalska, Mr Tomaszewski, Mr Wielebnowski, Mr Gustaw Erchard, Ms Irena Erchard, Mr Jerzy Karol Malewicz, the late Mr Krzysztof Jan Malewicz, and Ms Mieszczankowska, and that there had been no violation of Article 3 in respect of the other five applicants.

## Lagardère v. France

*A court cannot find an accused person guilty after his death and engage the liability of his successors*

**Judgment of 12 April 2012**

### Principal facts

The applicant, Arnaud Lagardère, is a French national who was born in 1961 and lives in Paris (France). His father, Jean-Luc Lagardère, was the chairman and managing director of Matra and Hachette.

On 29 December 1992 a company called Lambda, representing certain shareholders of Matra and Hachette, lodged a complaint for misappropriation of corporate assets and applied to join the criminal proceedings as a civil party.

Jean-Luc Lagardère was brought before the Paris Criminal Court for alleged fraudulent misuse of assets of the Matra and Hachette companies he managed, for his own benefit or that of another company in which he had an interest.

In a judgment of 22 June 2000 the Paris Criminal Court declared the prosecution timebarred.

Lambda and the public prosecutor appealed. On 25 January 2002 the Paris Court of Appeal upheld all the provisions of the judgment. Lambda appealed on points of law. Jean-Luc Lagardère died on 14 March 2003.

On 8 October 2003, after declaring that the prosecution had lapsed as a result of the accused's death, the Court of Cassation quashed and annulled the judgment of the Paris Court of Appeal, considering that the moment at which time had started to run for the purposes of limitation was the presentation of the auditors' special report to the general assemblies, which postdated the signature of the offending agreements. The case was sent before the Versailles Court of Appeal.

Jean-Luc Lagardère's heirs challenged that court's competence to judge the civil action against them.

In a judgment of 30 June 2005 the Versailles Court of Appeal dismissed that objection, considering that the civil action continued when the offender's death occurred after a decision on the criminal prosecution had been given. It declared some of the instances of misappropriation of corporate assets timebarred, but not those committed in the financial years 1989 to 1992. It accordingly considered that before ruling on the civil party's claims for damages, it had first to determine whether the misappropriation of corporate assets was established in respect of Arnaud Lagardère's father.

It concluded that the constituent elements of the offence of misappropriation of corporate assets were established, noted that the sums concerned had amounted to 94.1 million francs, or 14345452 euros, and accordingly ordered Arnaud Lagardère, as his father's successor, to pay that sum to the civil party. Arnaud Lagardère appealed on points of law, arguing that there had been a violation of Article 6 of the Convention because the criminal court had no authority to judge the matter after his father's death.

The Court of Cassation rejected the appeal on 25 October 2006, after noting that the Court of Appeal had "found Jean-Luc Lagardère guilty and held that trial courts before which action had been lawfully taken before the criminal prosecution lapsed continued to have jurisdiction in the civil proceedings".

### Complaints

Relying on Article 6 § 1, Arnaud Lagardère complained that he had been ordered, as his father's successor, to pay damages because of his father's criminal conduct even though it was only after his death that his father had first been found guilty by the Court of Appeal to which the case had been referred for retrial, when examining the civil action. Relying on Article 6 § 2, Arnaud Lagardère complained of a violation of his father's right to be presumed innocent.

### Decision of the Court

#### *Article 6 § 1*

The Court reiterated that the notion of a "fair trial" included compliance with the principle of equality of arms. This principle required a "fair balance between the parties": each party was to be afforded a reasonable opportunity to present his case under conditions that did not place him at a substantial disadvantage *vis-a-vis* his opponent.

Jean-Luc Lagardère had been prosecuted for misappropriation of corporate assets and had died while the criminal proceedings against him were still pending before the Court of Cassation. Prior to his death the Paris Criminal Court and Court of Appeal had declared the criminal prosecution time-barred. However, the Court of Cassation had quashed that judgment and referred the case back to the criminal court to rule on the civil claim.

The Court noted that the discussion between the parties had focused largely on whether a decision on the merits had been reached in the criminal proceedings while Jean-Luc Lagardère was still alive, which was a necessary condition for the criminal court to be able to rule on the civil action.

After having expressly stated that criminal proceedings were extinguished by the death of the person against whom they had been brought, the Versailles Court of Appeal had considered that the earlier decisions of the trial courts finding that the prosecution was time-barred permitted the civil proceedings to continue. It concluded that it had jurisdiction to determine whether the elements of the offence of misappropriation of corporate assets were established against the accused. Even though there had been no prior finding of guilt, the Versailles Court of Appeal had expressly found the elements of the offence established and declared

Jean-Luc Lagardère guilty, based on his actions and with specific reference to his criminal intent. This mention had even been included in the operative provisions of the judgment and the Court of Cassation had specifically noted that the Court of Appeal had found Jean-Luc Lagardère guilty.

In the Court's view the Court of Appeal had found the applicant's father guilty after his death. The Court referred to its case-law according to which a denial of justice occurred where a person convicted *in absentia* was unable subsequently to obtain a fresh determination of the merits of the charge from a court which had heard him: there was no doubt that this principle applied *a fortiori* when a person was convicted not in his absence but after his death.

The Court noted that the civil liability of Arnaud Lagardère as his father's successor was the direct result of the father's conviction after his death. He had therefore not been in a position to validly challenge the existence or the value of the sums involved, which depended on the findings made by the Court of Appeal in the criminal proceedings. Indeed, Arnaud Lagardère had been ordered to pay the exact equivalent of the damage resulting from the criminal offence as assessed by the experts and accepted by the Court of Appeal.

While reiterating that it was compatible with Article 6 for a criminal court to rule on the civil interests of the victim, the Court could not accept that criminal courts ruling on civil claims should pronounce the accused guilty of the criminal charges against him for the first time only after his death.

The Court considered that Arnaud Lagardère, as his father's heir, had not been able to defend his case in conditions compatible with the principle of fairness. He had not had an opportunity to challenge the merits of the case against him – that is, the criminal conviction of his father after his death – and he had been placed at a clear disadvantage compared with the opposing party.

### *Article 6 § 2*

Arnaud Lagardère maintained that in convicting his father although the criminal proceedings had lapsed and his father had not been found guilty prior to his death, the French courts had violated his right to the presumption of innocence.

The Court first noted that the applicant could claim to be a victim for the purposes of the Convention to complain of a violation of Article 6 § 2 on behalf of his late father.

The Court then reiterated that the presumption of innocence enshrined in Article 6 § 2 was one of the elements of a fair criminal trial. It meant that no representative of the state or a public authority should declare a person guilty of an offence before the person had been found guilty by a court.

The Court pointed out that the accused had died before his guilt had been legally established by a court, and that he had accordingly been presumed innocent while he was alive. The Court noted the existence of a link between the criminal proceedings and the claim for damages against the applicant, which made Article 6 § 2 applicable in this case. It was clear from the wording of the judgment of 30 June 2005 that the Versailles Court of Appeal had found the applicant's father guilty of the charges against him at a time when the proceedings had lapsed as a result of his death, and that his guilt had never been established by a court prior to his death. There had therefore been a violation of his right to be presumed innocent.

## Stübing v. Germany

*Man's criminal conviction for incestuous relationship with his younger sister did not violate his Convention rights*

**Judgment of 12 April 2012**

The Court held in particular that the German authorities had a wide margin of appreciation in confronting the issue, since there was no consensus between the Council of Europe member states as to whether consensual sexual acts between adult siblings constituted a crime. Furthermore, the German courts had carefully weighed the arguments when convicting the applicant.

### Principal facts

The applicant, Patrick Stübing, is a German national who was born in 1976 and lives in Leipzig. At the age of three, he was placed in a children's home and at the age of seven he was adopted by the foster family in whose care he had been placed. From his adoption on he did not have any contact with his family of origin. When he re-established contact with his family of origin in 2000, Mr Stübing learned that he had a biological sister, who had been born in 1984. Following their mother's death in December 2000, the relationship between the siblings intensified. As from January 2001, they had consensual sexual intercourse and lived together for several years. Between 2001 and 2005, four children were born to the couple.

After he had been convicted of incest under the Criminal Code a few times, the Leipzig District Court convicted Mr Stübing of two counts of incest and sentenced him to one year and two months' imprisonment in November 2005. Relying on an expert opinion, which found that his sister had a timid and withdrawn personality structure and was dependant on Mr Stübing, the court concluded that she was only partially liable for her actions, and did not impose a sentence on her. The judgment was upheld by the Dresden Court of Appeal. Mr Stübing lodged a constitutional complaint against his conviction.

On 26 February 2008, the Federal Constitutional Court, by a majority, rejected his complaint as being unfounded. It held in particular that the relevant provision of the Criminal Code did not infringe the core area of private life. The primary ground for punishment of sexual intercourse between biological siblings was the protection of marriage and the family, as incestuous relationships resulted in overlapping family roles.

The prohibition was further justified by the need to protect sexual self-determination and by the risk of significant damage to children born from such a relationship. The criminal provision in question was justified by the sum of the above-mentioned objectives set against the background of a common conviction that incest should be subject to criminal liability.

## Complaints

Relying on Article 8, Mr Stübing complained that his criminal conviction had violated his private and family life.

## Decision of the Court

The Court did not exclude that Mr Stübing's criminal conviction had had an impact on his family life. In any event, it was common ground between the parties that his conviction interfered with his right to respect for his private life under Article 8, which included his sexual life.

His conviction had been based on the German Criminal Code which prohibited consensual sexual intercourse between adult siblings and which was aimed at the protection of morals and of the rights of others. The conviction therefore pursued a legitimate aim for the purpose of Article 8.

The Court considered that the German authorities had a wide margin of appreciation in determining how to confront incestuous relationships between adult siblings. There was no consensus between the Council of Europe member states as to whether the consensual commitment of sexual acts between adult siblings should be criminally sanctioned. However, a majority of the states reviewed provided for criminal liability.

Moreover, all the legal systems reviewed, including those which did not impose criminal liability, prohibited siblings from getting married. There was therefore a broad consensus that sexual relationships between siblings were neither accepted by the legal order nor by society as a whole. Furthermore, there was not sufficient evidence to assume that there was a general trend towards decriminalisation of such acts. Finally, the Court took into consideration that the case concerned a question about the requirement of morals, in which, according to its case-law, states had a wide margin of appreciation if there was no consensus among the states.

The German Federal Constitutional Court had carefully analysed the arguments put forward in favour of and against criminal liability and had concluded that the conviction was justified by a combination of objectives, including the protection of the family, self-determination and public health, set against the background of a common conviction that incest should be subject to criminal liability. It had considered that sexual relationships between siblings could seriously damage family structures and, as a consequence, society as a whole. The careful consideration by the Federal Constitutional Court was further highlighted by the fact that a detailed dissenting opinion by one judge had been attached to its decision.

According to the findings of the German courts, Mr Stübing's sister had first entered into a sexual relationship with him, who was seven years older, at the age of 16, following their mother's death. She suffered from a personality disorder and was considerably dependent on him. The German courts had concluded that she was only partially liable for her actions. The Court considered that, in that light, the aims pursued by the German courts were not unreasonable.

The Court therefore concluded that the German courts had not overstepped their margin of appreciation when convicting Mr Stübing. There had accordingly been no violation of Article 8.

# Sessa v. Italy

*Refusal to adjourn a hearing listed on a Jewish holiday did not infringe lawyer's freedom of religion*

**Judgment of 3 April 2012**

## Principal facts

The applicant, Francesco Sessa, is an Italian national who was born in 1955 and lives in Naples (Italy). He is a member of the Jewish faith and a lawyer by profession. In his capacity as representative of one of the complainants in a case, he appeared before the Forli investigating judge at a hearing concerning the production of evidence. As the judge was prevented from sitting, his replacement invited the parties to choose between two dates for the adjourned hearing – 13 or 18 October 2005 – in accordance with the timetable already established by the investigating judge.

The applicant pointed out that both dates corresponded to Jewish holidays (Yom Kippur and Sukkoth) and that his religious obligations would prevent him from attending the hearing. The judge listed the hearing for 13 October 2005. The applicant lodged an application for an adjournment with the investigating judge in the case and a criminal complaint against him.

At the hearing on 13 October 2005 the judge noted Mr Sessa's absence for "personal reasons" and asked the parties to express their view regarding the request for an adjournment. The prosecution and counsel for the defendants objected to the application whilst counsel for the other complainant supported Mr Sessa's request. By a judgment of the same day, the judge rejected the request for an adjournment. He stated that, in accordance with the Code of Criminal Procedure, only the presence of the prosecution and counsel for the defendant was required at hearings concerning the immediate production of evidence, the presence of counsel for the complainant being optional.

Moreover, the Code of Criminal Procedure did not provide that the judge was obliged to adjourn a hearing where there were legitimate grounds for the complainant's counsel's inability to appear. Lastly, the judge stated that as a large number of people were involved in the proceedings (defendants, claimants, court-appointed experts, experts) and the court's heavy workload would mean postponing the hearing to 2006, the application had to be rejected in accordance with the principle that cases should be heard within a reasonable time. An appeal by the applicant was rejected in February 2008 on the ground that there was no evidence that there had been any intention to infringe his right to freely manifest his Jewish faith or to offend his dignity on grounds of his religious belief.

## Complaints

Relying in particular on Article 9 (freedom of thought, conscience and religion), the applicant complained that the judicial authority had refused to adjourn a hearing listed for the date of a Jewish holiday.

## Decision of the Court

### *Article 9*

The judge had refused to allow the applicant's request for an adjournment, basing his decision on the provision of the Code of Criminal

Procedure which provided that an adjournment of hearings concerning the immediate production of evidence was justified only where the prosecutor or counsel for the defendant was absent (the presence of counsel for the complainant not being necessary).

The Court was not convinced that holding the hearing in question on the date of a Jewish holiday and refusing to adjourn it to a later date amounted to a restriction on the applicant's right to freely manifest his faith. Firstly, it was not in dispute between the parties that he had been able to carry out his religious duties. Furthermore, he should have known that his request would be refused on the basis of the statutory provisions in force and could have arranged to be replaced at the hearing in order to comply with his professional obligations. The Court noted, lastly, that Mr Sessa had not shown that pressure had been exerted on him to change his religious beliefs or to prevent him from manifesting his religion or beliefs.

Even supposing that there had been an interference with the applicant's right under Article 9 § 1, the Court considered that such interference, prescribed by law, was justified on grounds of the protection of the rights and freedoms of others – and in particular the public's right to the proper administration of justice – and the principle that cases be heard within a reasonable time. The interference had observed a reasonable relationship of proportionality between the means employed and the aim pursued. The Court concluded that there had been no violation of Article 9.

*Other Articles*

The right to an effective remedy within the meaning Article 13 of the Convention could not be interpreted as a right to have an application decided in the way the applicant sought. In Mr Sessa's case the Court did not find any evidence on which to call into question the effectiveness of the criminal proceedings brought before the Italian courts.

This complaint under Article 13 was therefore rejected as manifestly ill-founded. Nor had the applicant in any way shown that he had been discriminated against as compared with persons in a similar situation to his. The complaint under Article 14 was therefore also rejected as manifestly ill-founded.

## Sašo Gorgiev v. "the former Yugoslav Republic of Macedonia"

*State was responsible for shooting of a waiter in a bar by a police reservist*

**Judgment of 19 April 2012**

### Principal facts

The applicant, Sašo Gorgiev, is a Macedonian national who was born in 1972 and lives in Skopje. He was shot in the chest by a police reservist, R.D., who was armed and in uniform and supposed to be on duty in the police station at that time of the night. At 1 a.m. on 6 January 2002, R.D. left the station without informing his superiors, and went to the bar where the applicant worked as a waiter. At 3.50 a.m. he fired a shot which hit Mr Gorgiev in the chest. The applicant sustained serious bodily injury with lifethreatening damage and lasting consequences.

In the criminal proceedings against him, R.D. was sentenced to two years' imprisonment suspended for four years. In the civil proceedings, Mr Gorgiev's claim that state responsibility be established for the damage suffered was dismissed on the ground that the state did not have the necessary standing to be sued as R.D. had acted in his capacity as a private individual.

### Complaints

Relying on Article 2 (right to life), the applicant complained that he had been a victim of a life-threatening action taken by a state official and, relying on Article 6 (right to a fair trial), that the domestic courts had failed to recognise the state's responsibility. Further relying on Article 6 (right to a fair trial within a reasonable time), he complained that the length of the civil proceedings, in which he had sought damages from the Ministry of Interior, had been excessive.

### Decision of the Court

*Article 2*

The Court considered that Mr Gorgiev's complaint concerning state's responsibility only raised an issue under Article 2. The parties had not contested R.D.'s flagrant noncompliance with the rules of work: he had left the police station during working hours without authorisation of his superiors and, while intoxicated, had put Mr Gorgiev's life at risk. He had been in uniform and had shot the applicant using his official gun. While accepting that the authorities could not have objectively foreseen R.D.'s behaviour, the Court underlined that the state had to put in place and rigorously apply a system of adequate and effective safeguards designed to prevent abuse of official weapons by its agents, in particular temporary mobilised reservists. Police officers in "the Former Yugoslav Republic of Macedonia" were however required to carry their weapons at all times, whether or not in duty, and the Government had neither provided it with information on regulations for the prevention of abuse of official weapons by its agents nor with information as to whether R.D. had been assessed to ensure that he was fit to be recruited and equipped with a weapon. The Court therefore considered that the state had been responsible for his life-threatening behaviour in the bar, in violation of Article 2.

*Article 6*

The Court considered on the whole that the proceedings in Mr Gorgiev's case, which had lasted three years and six months at three levels of jurisdiction, had been conducted within a reasonable time. It therefore rejected his complaint about their length as manifestly ill-founded.

# K.A.B. v. Spain

*Adoption of child following mother's deportation, despite father's opposition: authorities failed to act diligently*

**Judgment of 10 April 2012**

## Principal facts

The applicant, K.A.B., is a Nigerian national who was born in 1976 and lives in Barcelona. He emigrated in 2001 to Spain (Murcia) with his partner, C., a Nigerian national, and their son O., who was born in 2000. On 17 October 2001 C. was deported from Spain without being allowed to return for 10 years. Her lawyer had pleaded that she was the mother of a one-year-old baby but the order was nevertheless enforced. O. was taken in by friends of the couple, as the applicant (the father) was in Barcelona for work-related reasons. On 1 November 2001 an investigation was opened by the prosecutor responsible for minors. As the Child Protection Department had not succeeded in reuniting the child with its mother, O. was declared abandoned on 16 November 2001 and placed in a children's home.

On 30 November 2001 the applicant went to the Child Protection Department and, claiming to be the child's biological father, said that he disagreed with the placement. He expressed his intention to undergo a paternity test. In January 2002 the director of the children's home took O. for the test but it did not take place as the applicant had not made payment for it. In the absence of further news of K.A.B. the child was placed in a foster family. The family initiated an adoption procedure in respect of O., but it was suspended when K.A.B. brought an action to establish paternity on 20 November 2004.

After obtaining recognition of his paternity in November 2005, he started proceedings to challenge the adoption but was unsuccessful. The Family Court took the view that K.A.B.'s agreement to the adoption was not required because, as the applicant had not discharged the duties inherent in parental authority, a hearing was sufficient. That decision was upheld by the *Audiencia Provincial,* which pointed to the applicant's lack of interest and found in particular that he had confined himself to seeking the paternity test, "without conviction", before giving up on encountering the first difficulty and remaining passive for two years. The applicant's *amparo* appeal was declared inadmissible as being devoid of constitutional content. On 25 April 2007 O.'s adoption by his foster family was authorised by the Family Court. On an appeal by K.A.B. that decision was upheld by the Supreme Court.

## Complaints

Relying on Articles 6 (right to a fair hearing) and 8 (right to respect for private and family life), the applicant complained that he had been deprived of all contact with his son and that neither he nor the child's mother had been informed of the proposal to adopt the child. He also complained that the authorities had remained inactive regarding C.'s deportation and his attempts to prove his paternity

## Decision of the Court

### *Article 8*

The Court examined all of the applicant's complaints under Article 8 of the Convention.

It could not be excluded that the applicant's intention to regain contact with his son was covered by the protection of "family life". The inability to lead a family life was not attributable to K.A.B. himself. He had not seen his son since the mother's deportation. Twenty-two days later the Child Protection Department had taken over the child's guardianship and after another ten days he had been placed in a home, before being assigned to a foster family with a view to adoption, which had ultimately gone ahead despite the father's opposition. The formalities undertaken by the applicant, bearing in mind his precarious situation, were sufficient to show that he wanted to recover the child. In any event, the decisions of the Spanish courts, refusing any contact or possibility of reunion with his son, had constituted interference with his right to respect for, at least, his private life.

The Court noted that the administrative decisions concerning O. had been based on numerous reports by the social services and that the adoption procedure had been suspended during the paternity suit. In addition, during the judicial proceedings, the applicant had been able to defend his case and had been given access to the relevant information on which the courts had relied. The Court took the view, however, that the authorities' attitude had contributed in a decisive manner to preventing any reunion between father and son.

Firstly, between his mother's deportation and the declaration of his abandonment on 16 November 2001, the child had remained for almost one month in a state of legal limbo, which was particularly serious in view of his age. No steps had been taken by the authorities, neither when they were informed that the mother had a baby nor between the deportation and the opening of the investigation. The declaration of abandonment had triggered the subsequent proceedings leading to O.'s adoption, whereas that situation had at least partly been caused by the authorities themselves as they had deported the mother without prior verification.

Furthermore, the judgment of 13 July 2006 had established that the applicant had himself caused the child's abandonment by allegedly showing a lack of interest in the paternity suit. The Court noted that K.A.B. had not been informed of the payment that he was supposed to make for the test, that the Child Protection Department had not told him that the test could be covered the legal aid scheme and that the authorities had not tried to make contact with him even though they knew where to find him. When the applicant obtained confirmation of his paternity, three and a half years had already passed since the authorities had taken over O.'s guardianship. The passage of time, even though it was crucial to act swiftly in such cases, had had the effect of making permanent a situation of abandonment for which the applicant was not – at least not entirely – responsible. The Court found that responsibility for the child's abandonment had always been imputed to K.A.B. by the Spanish courts and that no suggestion of any responsibility on the part of the authorities had ever been raised.

Accordingly, the authorities' inaction, the deportation of the mother without prior verification, the failure to assist the applicant when his social and financial situation was most fragile, and the failure of the courts to give weight to any

other responsibility for the child's abandonment, had decisively contributed to preventing the possibility of reunion between father and son. As a result, the Court, whilst reiterating that it was for each state to choose how to ensure fulfilment of its obligations under Article 8, concluded that the Spanish authorities had not made appropriate or sufficient efforts to ensure respect for the applicant's right to be reunited with his son, thus breaching his right to respect for his private life, in violation of Article 8.

*Article 41*

Under Article 41 (just satisfaction) of the Convention, the Court held that Spain was to pay the applicant 8,000 euros in respect of non-pecuniary damage.

## Other relevant judgments

### Laduna v. Slovakia

**Judgment of 13 December 2011**

#### Principal facts

The applicant, Peter Laduna, is a Slovak national who was born in 1973. He is currently serving a life sentence in Leopoldov Prison (Slovakia). His case essentially concerned his complaint that, when detained on remand from September 2001 to February 2006, he had fewer rights than those who had been convicted and were serving prison terms. He notably complained that: his family were only allowed to visit him for 30 minutes once a month, whereas a convicted prisoner was allowed to receive visitors for two hours and, in prisons with the lowest security level, more frequently; and, that he was not allowed to watch television whereas convicted prisoners could watch television collectively in a specially designated room.

#### Complaints

He relied on Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination). Further relying on Article 1 of Protocol No. 1 (protection of property), he also complained that, if he had not used part of the money given to him from his family to pay back a debt to the state, he would not have been allowed to buy extra food and other items he needed in the prison shop. Lastly, he complained under Article 13 (right to an effective remedy) that he had no effective remedy as regards these complaints.

#### Decision of the Court

- violation of Article 14 in conjunction with Article 8
- no violation of Article 13
- no violation of Article 1 of Protocol No. 1

### Yoh-Ekale Mwanje v. Belgium

**Judgment of 20 December 2011**

#### Principal facts

The applicant, Khatherine Yoh-Ekale Mwanje, is a Cameroonian national who was born in 1971. She is HIV-positive and was detained for almost four months in the "127 bis" closed transit centre with a view to her deportation to her country of origin, having been illegally resident in Belgium.

#### Complaints

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, the applicant alleged that she would suffer a premature death if she were returned to her country of origin, as she would not have access to the antiretroviral drugs she needed. She maintained that her return would amount to a violation of Article 8 (right to respect for private and family life). She further alleged that she did not have an effective remedy by which to assert these complaints before the Belgian courts. Lastly, she submitted that her detention in a closed centre was unlawful and arbitrary, in breach of Article 5 § 1 (f) (right to liberty and security).

#### Decision of the Court

- no violation of Article 3 (in case of deportation)
- violation of Article 3 (conditions of detention)
- violation of Article 13 (right to an effective remedy) in conjunction with Article 3
- violation of Article 5 § 1 (f)

The Court decided to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to remove the applicant until the present judgment becomes final or further order.

### Arutyunyan v. Russia
### Vladimir Vasilyev v. Russia

**Judgments of 10 January 2012**

#### Principal facts

The applicants, Armen Arutyunyan and Vladimir Vasilyev, are Russian nationals who were born in 1970 and 1953, respectively. They are all currently in detention – for various criminal offences including in particular manslaughter, attempted rape and murder – while suffering from numerous health problems. Mr Arutyunyan, in a wheelchair, has very poor eyesight, a failing kidney transplant and suffers from obesity and a severe form of diabetes. Following frostbite Mr Vasilyev had to have a toe and part of his left foot amputated and also suffers from tuberculosis and diabetes.

#### Complaints

Relying on Article 3 (prohibition of inhuman or degrading treatment), both the applicants complained that they have been denied adequate medical care in detention. Mr Arutyunyan complained in particular that the conditions of his pretrial detention in a regular facility for almost 17 months were wholly

inadequate in view of his disability; he was for example placed in a cell on the fourth floor of a building with no lift when the medical facilities were all on the ground floor. He was also thereby denied outdoor exercise and fresh air. Mr Vasilyev complained about being denied essential care, despite doctors' recommendations (orthopaedic footwear for his injured feet). Mr Arutyunyan further complained under Article 5 §§ 1 and 3 (right to liberty and security) about the excessive length as well as unlawfulness of his pre-trial detention, and Mr Vasilyev under Article 6 § 1 (right to a fair trial) about the unfairness of civil proceedings he brought before the courts concerning damage to his health due to inadequate care in detention.

### Decision of the court

In the case of *Arutyunyan*, the European Court of Human Rights held that there had been

- violation of Article 3 (conditions of detention)
- violation of Article 5 § 1 (on account of the applicant's detention from 24 to 28 January 2010)
- no violation of Article 5 § 3

In the case of *Vladimir Vasilyev*, the European Court of Human Rights held that there had been

- violation of Article 3 (inadequate medical care in detention)
- violation of Article 6 § 1

## Gąsior v. Poland

**Judgment of 21 February 2012**

### Principal facts

The applicant, Wanda Gąsior, is a Polish national who was born in 1931 and lives in Kraków (Poland). In August 2006 she was found guilty of defamation, and ordered to publish an apology, because of having written two letters in which she complained that a prominent politician had not paid her son-in-law's company for the construction of his villa.

### Complaints

She relied on Article 10 (freedom of expression and information).

### Decision of the court

The European Court of Human Rights held that there had been no violation of Article 10

## Rangelov v. Germany

**Judgment of 22 March 2012**

### Principal facts

The applicant, Tsvetan Rangelov, is a Bulgarian national who was born in 1961 and is currently detained in Vratsa (Bulgaria). When lodging his application, he was detained in Straubing prison (Germany). Convicted in Germany a number of times, in particular of burglary, he was placed in preventive detention in 2003 – as ordered by the sentencing court – where he remained until his expulsion to Bulgaria in 2007.

### Complaints

He complained that the execution of the preventive detention order against him had violated Article 14 (prohibition of discrimination) taken together with Article 5 § 1 (right to liberty and security), because in view of his foreign nationality, he had been refused social therapy or relaxation of his detention conditions, which would have put him in a position to prove that he would not reoffend if released and that he was thus no longer dangerous to the public.

### Decision of the Court

The European Court of Human Rights held that there had been violation of Article 14 taken in conjunction with Article 5 § 1

# Publications

## Annual report 2011

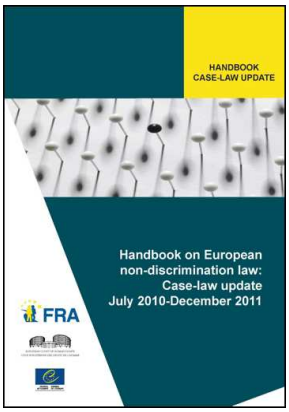
The Court has issued its Annual Report for 2011. It contains a wealth of statistical and substantive information, such as the Jurisconsult's short survey of the main judgments and decisions delivered by the Court in 2011, as well as a selection in list form of the most significant judgments, decisions and communicated cases. It is available in English and French on the Court's Internet site (www.echr.coe.int).

## Practical guide on admissibility criteria

Published in 2010 in English and French, to stem the flow of obviously inadmissible cases which were flooding the Court, and updated in 2011, this guide is now available in several non-official languages: Azerbaijani, Bulgarian, German, Greek, Italian, Romanian, Russian, Serbian, Spanish, Turkish and Ukrainian. The translations were produced under various partnership agreements, and more will follow.

The different language versions of the Practical Guide on Admissibility Criteria can be downloaded from the "case-law" section of the Court's Internet site. A printed version of the English and French editions will soon be available from Council of Europe Publishing and Wolf Legal Publishers. Price: 13 euros.

### Handbook on European non-discrimination law




This handbook, published jointly by the Court and the European Union Agency for Fundamental Rights (FRA) in 2011, is a comprehensive guide to European non-discrimination law. Initially published in English, French and German, it has now been translated into almost all the languages of the European Union: Bulgarian, Czech, Danish, Dutch, Estonian, Finnish, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Romanian, Slovakian, Slovenian, Spanish and Swedish. It has also been translated into Croatian, Catalan (at the initiative of Barcelona City Council) and Turkish (by the Court in co-operation with the Justice and Legal Co-operation Department of the Council of Europe's Human Rights and Rule of Law Directorate).

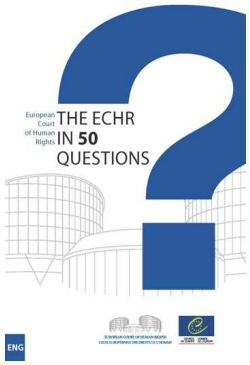
An update of the handbook, covering case-law for the period from July 2010 to December 2011, has just been published in English and will soon also be available in French.

All these publications can be downloaded from the "case-law" section of the Court's Internet site.

### "Human Rights" country profiles and factsheets on the Court's case-law

These factsheets contain useful information on the Court's case-law and pending cases, classified by country or by subject. The country profiles cover the 47 member states of the Council of Europe; the factsheets cover around thirty important topical issues. They are regularly updated and may be consulted in the "Press" section of the Court's Internet site.

### The European Court of Human Rights in 50 questions




The Court continues to develop the widest possible access to general information concerning its activities, for example by translating its publications into the official languages of the Council of Europe member states. Its brochure "The ECHR in 50 Questions" can now be downloaded in a dozen or so languages from the Court's Internet site. New language versions of this and other general information brochures will soon be available on line.

## Projects and multimedia tools

To increase public awareness of the Convention system the Court is developing new multimedia information tools.

At the end of January 2012 it launched a short video in English and French explaining the criteria for admissibility, produced with the support of the Principality of Monaco. The video, which is approximately three minutes long, is intended to remind members of the public wishing to apply to the Court that they must first satisfy certain criteria, failing which their application may be declared inadmissible. Other language versions will be made available this year.

In addition, the film on the Court entitled "The Conscience of Europe" has been re-mastered. This documentary, which shows specific examples of cases examined by the Court and considers its prospects and the challenges facing it over the coming years, is currently available in 24 official languages of the Council of Europe member states. As for the video presenting the Convention, it can now be viewed in 22 different languages. Aimed at a wide range of viewers, this video presents the main rights laid down in the Convention.

These videos can also be viewed on the Court's YouTube account.

### Handbook on the European case-law covering the fields of asylum, immigration and border control

The FRA and the Court have agreed to implement another joint project aimed at assisting EU member states in their efforts to apply EU law in the area of asylum, immigration and border control by identifying possible systemic problems while at the same time supporting the training of judges, prosecutors, lawyers and law enforcement officials, as carried out in particular by the Council of Europe. The project will result in the publication of a handbook, in select languages, which will highlight and summarise in a didactical way the key legal and jurisprudential principles of European law in these fields. It should be similar in style to the handbook on non-discrimination. Its publication is expected in the first half of 2013.

## "The Conscience of Europe: 50 Years of the European Court of Human Rights Совесть Европы: 50 лет Европейскому Суду по правам человека

A Russian version of the anniversary book published in 2011 to celebrate the Court's 50th anniversary will be published this summer. Its publication was made possible by co-operation between the Court, Third Millennium Publishing (who published the original English and French versions) and the Russian publishers iRGa 5 Publishing House Ltd.

## HRTF project "Bringing Convention standards closer to home: Translation and dissemination of key ECHR case-law in target languages"

This three-year project is supported by the Human Rights Trust Fund (www.coe.int/humanrightstrustfund). It started in May 2012 and will concern principally the following states: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, Serbia, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine. The objective of the project is to improve the understanding and domestic implementation of ECHR standards by commissioning key Court case-law translations into the languages of the beneficiary states and by ensuring their dissemination through the Court's database HUDOC as well as through the various Council of Europe entities and other operational project partners that organise training on Convention standards in the beneficiary states.

The material to be translated will consist of leading case-law (or extracts or legal summaries of such cases) which the Court's Jurisconsult deems to be of significant relevance to one or more of the beneficiary states. The case selection and the choice of target language(s) for each case will be carefully calibrated in order to maximise impact and minimise the risk of overlap with translations that may already have been commissioned or are under way within the beneficiary state(s).

The Registry is looking to form partnerships with entities (universities, judicial training academies, NGOs, etc.) which are currently commissioning translations of ECHR case-law at national level. In particular, and so as to avoid overlap, the Registry would like to be informed of any cases or case summaries that have already been translated or earmarked for translation by such an entity. Partners at national level are also invited to suggest cases for translation within the context of this project.

The Registry is also looking for translators or lawyers with prior experience of translating this type of texts (from English or French into one or more of the beneficiary languages). A roster of translators will be established following a selection procedure.

Prospective partners and legal translators are invited to send their contact details to Mr. Leif Berg, Head of the Case-Law Information and Publications Division (publishing@echr.coe.int).

***Internet: http://hudoc.echr.coe.int/***

# Execution of the Court's judgments

**The Committee of Ministers supervises the execution of the Court's final judgments by ensuring that all the necessary measures are adopted by the respondent states in order to redress the consequences of the violation of the Convention for the victim and to prevent similar violations in the future.**

The Convention (Article 46, paragraph 2) entrusts the Committee of Ministers with the supervision of the execution of the judgments of the European Court of Human Rights (the Court) and, since 1 June 2010, decisions acknowledging friendly settlements under Article 39. The measures to be adopted by the respondent state in order to comply with this obligation vary from case to case in accordance with the conclusions contained in the judgments and the undertakings contained in friendly settlements.

### The applicant's individual situation

With regard to the applicant's individual situation, the measures comprise notably the effective payment of any just satisfaction awarded by the Court or agreed between the parties (including interests in case of late payment). Where such just satisfaction is not sufficient to redress the violation found, the Committee of Ministers ensures, in addition, that specific measures are taken in favour of the applicant. These measures may, for example, consist in granting of a residence permit, reopening of criminal proceedings and/or striking out of convictions from the criminal records.

### The prevention of new violations

The obligation to abide by the judgments of the Court also comprises a duty of preventing new violations of the same kind as that or those found in the judgment. General measures, which may be required, include notably constitutional or legislative amendments, changes of the national courts' case-law (through the direct effect granted to the Court's judgments by domestic courts in their interpretation of the domestic law and of the Convention), as well as practical measures such as the recruitment of judges or the construction of adequate detention centres, etc.

In view of the large number of cases reviewed by the CM, only a thematic selection of those appearing on the agenda of the 1128th and 1136th Human Rights (HR) meeting[16] (29 November – 2 December 2011, and 6-8 March 2012) is presented here.

Further information on the cases mentioned below as well as the others is available, in particular, on the website of the Department for the Execution of Judgments of the European Court of Human Rights. This site presents, *inter alia*, the state of progress of the adoption of the execution measures required, including the decisions taken at HR meetings as well as the information submitted by states in action plans and action reports or the comments submitted by the applicants or NGOs (see the Rules for the application of Article 46§2 of the Convention, as amended in 2006[17]).

Interim and final resolutions are accessible on the HUDOC database: select "Resolutions" on the left of the screen and search by application number and/or by the name of the case, and/or by the resolution serial number (use this option in particular for resolutions referring to grouped cases).

- Website of the Department for the Execution of Judgments: http://www.coe.int/execution/
- Website of the Committee of Ministers: http://www.coe.int/cm/ (select "Human Rights meetings" in the left hand column)
- HUDOC database: http://hudoc.echr.coe.int/.

16. Meeting specially devoted to the supervision of the execution of judgments
17. Replacing the Rules adopted in 2001.

## 1128th and 1136th HR meetings – General Information

During the 1128th meeting (29 November - 2 December 2011) and 1136th (and 6-8 March 2012), the CM started examining respectively 453 (1128th meeting) and 365 (1136th meeting) new cases and considered draft final resolutions concluding, in 324 (1128th meeting) and 348 (1136th meeting) cases, that states had complied with the ECtHR's judgments.

### Main public information documents

**CM/Inf/DH(2011)46F** **2 November 2011**

- Supervision of the execution of the judgment in the case of Oršuš and others against Croatia

**2 November 2011** **CM/Inf/DH(2011)45E**

- Group of cases Kehayov against Bulgaria – 18 cases mainly concerning the conditions of detention in prisons and investigative detention facilities

**24 February 2012** **CM/Inf/DH(2011)45E**

- Group of cases Al-Nashif against Bulgaria – 10 cases concerning expulsion of aliens on national security grounds

## Selection of decisions adopted

*Following the entry into force of the new working methods, as from 1 January 2011, all cases are placed on the agenda of each DH meeting of the Committee of Ministers without the need for any individualised decision to this effect until all execution obligations have been fulfilled. In some cases, however, the Committee of Ministers has adopted a special decision, containing its assessment of the situation. A selection of these decisions is presented below, according to the alphabetical order of the member state concerned.*

*Only the references of Interim Resolutions adopted – if any – are indicated below. All other relevant documents available – action plans and reports, memoranda, communications on behalf of the authorities, of the applicant parties and of NGOs – can be found on the website.*

### Caka and other similar cases v. Albania

**44023/02, judgment of 8 December 2009, final on 8 March 2010**

Unfairness of criminal proceedings due notably to the failure to secure the appearance at the applicants' trials of certain witnesses and to the first instance court's failure to have due regard to testimonies given in the applicant's favour – Caka case (violation of Article 6 § 1 combined with Article 6 § 3 (d) ); the lack of an identification parade of persons and items and the lack of convincing evidence in the domestic court's judgments justifying the applicant's conviction – Berhani case (violation of Article 6§1) and failure to remedy irregularities at the applicants' trial, which occurred at the investigation stage and which were related to the identification of the suspects – Laska and Lika case (violation of article 6§1).

1128th meeting

The Deputies,

1 took note of the revised action plans provided by the Albanian authorities on 12 October 2011;

2 recalled that the European Court found that the most appropriate form of redress would be a trial de novo or the reopening of the proceedings – if requested by the applicants – in due course and in accordance with the requirements of Article 6 of the Convention;

3 noted that following the Constitutional Court judgment of 1 June 2011, the applicants Caka, Laska, Lika and Berhani requested the reopening of their cases before the Supreme Court, that their applications have been registered and that the President of the Supreme Court confirmed that the Supreme Court would deal with these cases as a matter of priority;

4 consequently, whilst recalling the urgency of remedying the situation of the applicants, invited the respondent state to keep the Committee informed on the follow-up of these proceedings before the Supreme Court;

5 more generally, invited the respondent state to continue informing the Committee of developments on the legislative process concerning the introduction of a possibility of reopening proceedings following a judgment of the European Court in the Code of Criminal Procedure and recalled that further information is also awaited on the adoption of general measures.

### Xheraj v. Albania

**37959/02, judgment of 29 July 2008, final on 1 December 2008**

Violation of the applicant's right to a fair trial and infringement of the principle of legal certainty on account of the quashing in 1999 of a final judgment acquitting him of charges of murder, and reopening of the case, without substantial and compelling grounds, as the prosecutor could have appealed within the period prescribed by law (violation of Article 6§1).

1128th meeting

The Deputies,

1 took note of the revised action plan provided by the Albanian authorities on 12 October 2011;

2 noted with satisfaction that, pending legislative changes announced by the authorities during the previous examination of these issues, the Constitutional Court, in its decision No. 20 of 1 June 2011 in the case of Xheraj, considered that Articles 10 and 450 (a) of the Code of Criminal Procedure, as inter-

preted in the light of the European Convention which is directly applicable in Albanian law, provide a legal basis for the reopening of criminal proceedings following a judgment of the European Court, and remitted the case before the Supreme Court to decide on its reopening; further noting that the case has been registered by the Supreme Court and that the latter decided to deal with it as a matter of priority;

3 consequently, whilst recalling the urgency of remedying the situation of the applicant, i.e. to obtain confirmation of his acquittal and the deletion of the conviction from his criminal record with effect from the day of his acquittal (§82 of the judgment), invited the respondent state to keep the Committee informed on the follow-up of these proceedings before the Supreme Court;

4 more generally, invited the respondent state to continue informing the Committee of developments in the legislative process concerning the introduction in the Code of Criminal Procedure of a possibility of reopening proceedings following a judgment of the European Court, and recalled that further information is also awaited on the adoption of general measures.

## Mahmudov and Agazade and other similar cases v. Azerbaijan; Fatullayev v. Azerbaijan

**35877/04, judgment of 18 December 2008, final on 18 March 2009**
**40984/07, judgment of 22 April 2010, final on 4 October 2010**

Serious infringement of journalists' right to freedom of expression on account of use of imprisonment as sanction for defamation, although it was not justified by special circumstances such as the incitement to violence or racial hatred; arbitrary application of anti-terror legislation to sanction other subsequent statements (violations of Art. 10); violation of the right to a fair hearing: the criminal case for defamation was heard by the same judge who had previously examined a civil action concerning the same allegations and involving the assessment of similar evidentiary material (violation of Art. 6§1; ), also violation of the right to presumption of innocence on account of statements made by the Prosecutor General before the applicant's conviction (violation of Art. 6§2).

1128th meeting

The Deputies,

1 recalled that this group of cases concerns mainly violations of the applicant journalists' right to freedom of expression (the Fatullayev case also concerns violations of the right to a fair trial);

2 noted the action plan in these cases, transmitted by the authorities on 28 November 2011;

*Individual measures:*

3 considered that, in the Mahmudov and Agazade case, in the light of the actions taken, namely exemption from serving the sentence, absence of the mention of the sentence in the criminal records, payment within the time limit of the amount of just satisfaction awarded by the Court, the situation of the applicants does not call for other individual measures;

4 as concerns the Fatullayev case and the different questions related to the erasure of the consequences of the violations, in particular linked to the immediate release of the applicant, recalled their former decisions in that respect and noted the summary of the measures taken as presented in the action plan transmitted by the Azerbaijani authorities on 28 November 2011;

5 noted in particular with satisfaction that, over and above the important measures already taken and recorded in their earlier decisions, the applicant has been able since the last examination of the case (June 2011) to take possession, on 25 July 2011, of the sums awarded as just satisfaction by the Court and that the Azerbaijani authorities have taken the necessary measures to erase the convictions criticised by the Court from the applicant's criminal records;

6 considered that the situation of the applicant does not call for other individual measures;

*General measures:*

7 invited the Azerbaijani authorities to complete the information provided in their action plan and to closely co-operate with the Secretariat in that respect;

8 decided to put the examination of the question regarding general measures raised in this group of cases, in light of the action plan as completed, on the order of business of the 1136th meeting (March 2012) (DH).

1136th meeting

The Deputies,

9 noted with satisfaction that, on 27 December 2011, the President of Azerbaijan signed an order approving "the National Programme for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms" which contains provisions aimed at enhancing the effective execution of the European Court's judgments in general and of the present judgments in particular;

10 noted further that, according to the National Programme, the Presidential Administration was given the task of elaborating "proposals on improving the legislation in order to decriminalise defamation" within 2012 (item 1.2.7);

11 invited the Azerbaijani authorities to provide the Committee with information on:

- the time table foreseen for the adoption of the legislation on defamation and its content;

- legislative changes envisaged to align the provisions of the Criminal Code (other than defamation on the basis of which the applicants in these judgments were convicted) with the Convention's requirements;

- measures envisaged to prevent arbitrary application of these provisions;

- measures envisaged to prevent violations of Articles 6§1 and 6§2 similar to those found in the case of Fatullayev;

12 noted that bilateral consultations between the authorities and the Secretariat will be held in Baku in April 2012 and instructed the Secretariat to raise the questions above in this context;

13 decided to examine these cases in light of the information to be provided by the Azerbaijani authorities on the above questions at their 1144th meeting (June 2012) (DH).

## Sejdic and Finci v. Bosnia and Herzegovina

**27996/06, judgment of 22 December 2009, judgment of 22 December 2009, final on 22 December 2009**

Discriminatory infringement of the right of the applicants, who declared themselves to be a Rom and a Jew respectively, to free elections and to the general prohibition of discrimination in that it was impossible for them to stand for election to the upper chamber and to the Presidency of the country, the constitution reserving this right for only those persons who declared themselves to belong to one of the three constituent peoples (Bosniacs, Croats and Serbs) (violation of Art. 14 in conjunction with Art. 3 of Prot. No. 1 concerning legislative elections; violation of Art. 1 of Prot. No. 12 concerning elections to the Presidency).

1136th meeting

The Deputies,

1 expressed their concern about the lack of progress in implementing the judgment;

2 invited the authorities of Bosnia and Herzegovina to provide information on recent relevant developments at their 1137th meeting (14 March 2012) in order to allow the Committee of Ministers to assess any possible further progress.

## Karanovic and other similar cases v. Bosnia and Herzegovina

**39462/03, judgment of 20 November 2007, final on 20 February 2008**

Failure of the authorities to enforce domestic binding decisions ordering transfer of pension entitlements to the Pension Fund of the Federation of Bosnia and Herzegovina (violation of Art. 6§1 and of Art. 1 of Prot. No. 1); *Šekerović and Pašalić* – unjustified discriminatory treatment in pension rights of persons returning to the Federation of Bosnia and Herzegovina from the nowadays Republika Srpska, after being internally displaced there during the armed conflict, as they are not entitled to pension rights under the Federation Pension Fund, generally more favourable than those they have under the Republika Srpska fund (violation of Art. 14 in conjunction with Art. 1 of the Prot. No.1).

1128th meeting

The Deputies,

1 noted the structural nature of the problem disclosed in the present cases, which requires specific amendments to be introduced in the relevant legislation;

2 stressed in this respect that the Court held in the Šekerović and Pašalić judgment that Bosnia and Herzegovina should secure, within six months from the date the judgment became final, the amendment of the relevant legislation in order to render the applicants and others who are in the same situation eligible to apply, if they so wish, for Federation Fund pensions;

3 invited the authorities of Bosnia and Herzegovina to secure the amendment of the relevant legislation with a view to resolving this structural problem within the deadline set by the Court (15 March 2012).

1136th meeting

The Deputies

4 noted with satisfaction that on 28 February 2012 the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina adopted the amendment of the relevant legislation to render the applicants and others in the same situation eligible to apply, if they so wish, for Federation Pension Fund pensions;

5 invited the authorities of Bosnia and Herzegovina to bring the legislative process to an end before the expiry of the deadline set by the Court (15 March 2012).

## Al-Nashif and others and other similar cases v. Bulgaria

**50963/99, judgment of 20 June 2002, final on 20 September 2002**

Violations of the right to family life, and lack of adequate safeguards against arbitrariness in expulsion proceedings or orders to leave the territory on grounds of national security (violations of Art. 8, Art. 13 and Art. 1 of Prot. No. 7); risk of ill-treatment if the expulsion order was put into effect, as no guarantees were provided that before expulsion the authorities have examined the applicant's claims under Article 3 with rigorous scrutiny (violations of Arts. 3 and 13). Violations related to the applicants' detention pending enforcement of such measures (violations of Art. 5§§ 1f), 2, 4).

1136th meeting

The Deputies,

1 having examined the information submitted by the Bulgarian authorities and the assessment of the status of execution of these cases presented by the Secretariat (document CM/Inf/DH(2012)3rev),

*Concerning the individual measures*

2 noted that in the case of Raza where the applicant has not been expelled the order for his expulsion has been quashed, and that in the case of Bashir and others the applicants have not sought the quashing of the impugned measures; thus considered that no further individual measures are required in those two cases;

3 expressed their serious concern with regard to the applicants' situation in the cases of M. and others and Auad and called on the Bulgarian authorities to ensure that those applicants will not be expelled without having benefitted from a fresh judicial review of the expulsion orders in accordance with the requirements of the Convention;

4 encouraged the Bulgarian authorities to provide clarifications on the applicants' situation in the remaining cases of this group, in reply to the questions raised by the Secretariat, and to keep the Committee informed of the relevant developments in that respect;

*Concerning the general measures*

5 noted with satisfaction the evolution of the domestic courts' practice and the legislative amend-

ments introducing judicial review of expulsion orders based on considerations of national security and reforming the system of detention pending such expulsion;

6 noted, however, that outstanding issues remain in this area, as indicated by the Court in the recent judgments of M. and others and Auad, and invited the Bulgarian authorities to present to the Committee a revised action plan covering the outstanding issues identified with a view to a detailed examination of the matter at one of the Committee's forthcoming meetings;

7 decided to declassify the Memorandum CM/Inf/DH(2012)3rev.

## Kashavelov v. Bulgaria

Systematic handcuffing of a life prisoner when taken out of his cell, without sufficient justification (violation of Art. 3); excessive length of criminal proceedings and lack of effective remedies in that regard (violations of Arts. 6§1 and 13).

**891/05, judgment of 20 January 2011, final on 20 April 2011**

1136th meeting

The Deputies,

1 took note of the action plan submitted by the authorities on 17 February 2012, containing information on the applicant's individual situation and the general measures in the case;

2 invited the Secretariat to prepare a detailed assessment of that information, in co-operation with the authorities, for their 1144th meeting (June 2012);

3 decided to declassify the Memorandum CM/Inf/DH(2011)45.

## Kehayov and other similar cases v. Bulgaria

Inhuman and degrading treatment on account of poor conditions of detention in investigative detention facilities and in prisons owing in particular to overcrowding, irregular access to running water, inadequate medical care (Shishmanov), difficulties in adaptation of a foreign prisoner (Işyar) (violations of Art. 3). Ineffectiveness of remedies available under the legislation in force, notably on account of the formalistic approach of the domestic courts when deciding on claims for damages in respect of poor conditions of detention; unavailability of a remedy which would improve the detention conditions (violations of Art. 13 combined with Art. 3). Some of the cases concern violations of Articles 5, 6 §§ 1 and 3, of Art. 8 and 13.

**41035/98, judgment of 18 January 2005, final on 18 April 2005**

1128th meeting

The Deputies,

1 recalled that these cases raise complex issues, related in particular to the structural problem of prison overcrowding in Bulgaria and to the conditions of detention in prisons and investigation detention facilities;

2 took note of the action report provided by the authorities on 2 March 2011 and the additional information submitted on 16 June 2011 concerning the renovation and other works carried out in the places of detention;

3 noted with interest the adoption by the government on 8 September 2010 of a Programme for improving living conditions in places of detention and an action plan for its implementation for the period of 2011-2013;

4 invited the authorities to provide information on the impact of the measures already adopted in respect of the shortcomings identified in the judgments of the European Court and on the measures planned and the time-table for their implementation;

5 moreover invited the Bulgarian authorities to provide further information on the outstanding questions identified in Memorandum CM/Inf/DH(2011)45, in particular as regards the existing compensatory remedy and the need for the introduction of a remedy capable of bringing about specific improvements of conditions of detention in cases where the applicant is still detained;

6 recalled that additional information is needed as regards the individual measures in several cases in this group, as identified in the Memorandum;

7 invited the authorities to provide urgently additional information on the outstanding questions identified in the Memorandum as regards the individual situation of the applicant in the Kashavelov case;

8 recalled that an action plan or report is awaited as regards the general measures in respect of the specific issues raised in the Shishmanov, Işyar and Kashavelov cases;

9 decided to resume consideration:

- of this group of cases at the latest at their June 2012 meeting, on the basis of a revised action plan to be provided by the authorities;
- of the Kashavelov case at the latest at their March 2012 meeting, considering that additional information is urgently needed on the individual measures.

## Kitov and other similar cases v. Bulgaria; Djangozov and other similar cases v. Bulgaria; Dimitrov and Hamanov v. Bulgaria; Finger v. Bulgaria

**37104/97, 45950/99, 48059/06, 37346/05**
**Judgments of 3 April 2003, 8 July 2004, 10 May 2011 and 10 May 2011**
**Final on 3 July 2003, 8 October 2004, 10 August 2011 and 10 August 2011**

Structural problem identified by the European Court on account of excessively lengthy criminal and civil proceedings and the lack of an effective remedy in that regard (violations of Art. 6§1 and of Art. 13);b several cases concern violations related to the applicants' detention between 1993 and 2003 (violations of Articles 5 §§ 1, 3, 5 and 5).

1128th meeting

The Deputies,

1 took note of the information submitted by the Bulgarian authorities on the measures taken with a view to remedying the systemic problem of excessive length of proceedings, in reply to the Interim Resolution adopted by the Committee of Ministers in December 2010 and the two recent pilot judgments given by the European Court;

2 stressed in this context that the time-limit set in these pilot judgments for the adoption of an effective domestic remedy or a combination of effective remedies expires on 10 August 2012 and considered it a matter of concern in this connection that the authorities have not yet provided a time-frame indicating that they would be able to comply with that time-limit;

3 therefore urged the Bulgarian authorities to provide rapidly information on the matter; recalled equally that they had requested the authorities' evaluation of the impact of the reforms undertaken with a view to reducing the length of proceedings and information on the individual measures in a number of cases;

4 given the urgency of achieving concrete results in these groups of cases, decided to resume consideration of the above questions, on the basis of a detailed action plan to be submitted by the authorities, at the 1136th meeting (March 2012) (DH).

1136th meeting

The Deputies

5 recalled that these cases concern the systemic problem of excessive length of judicial proceedings in Bulgaria and that, faced with that problem, generating numerous repetitive cases, in May 2011 the European Court adopted two pilot judgments requiring the introduction, within a time-limit expiring on 10 August 2012, of an effective domestic remedy or a combination of effective remedies against the length of proceedings;

6 took note of the information submitted by the Bulgarian authorities on the measures aimed at introducing remedies to implement the pilot judgments and of their strong commitment to respect the deadline fixed by the European Court;

7 expressed their concern however at the fact that the time-frame submitted with their action plans envisages at this stage preparatory steps only and invited the authorities to provide them, before their 1144th meeting (June 2012), with an interim report presenting the state of play of the ongoing work aimed at implementing the pilot judgments;

8 took note of the information also submitted in the action plans of 17 February 2012 concerning the impact of the reforms undertaken with a view to reducing the length of proceedings and noted that this information remained to be assessed in detail; encouraged the authorities to continue their efforts in this field and to keep the Committee informed of the relevant developments;

9 also took note of the recent information on the individual measures in certain cases and invited the authorities to keep the Committee informed of the progress of the domestic proceedings still pending in the case of Kavalovi;

10 given the importance of ensuring the effective execution of the pilot judgments of the European Court, decided to resume consideration of in these cases, at the latest, at their 1150th meeting (September 2012) (DH).

## Orsus and others v. Croatia

**15766/03, judgment of 17 July 2008, final on 16 March 2010**

Discrimination against Roma children in primary education due to the lack of objective or reasonable justification for their placement in Roma-only classes allegedly based on their inadequate command of the Croatian language (violation of Art. 14 in conjunction with Art. 2 of Prot. No. 1). Excessive length of proceedings before the Constitutional Court (violation of Art. 6§1).

1128th meeting

The Deputies,

1 noted with satisfaction the measures taken by the Croatian authorities to abolish separate classes for Roma children and integrating them into mainstream education;

2 noted with particular interest that the Croatian authorities are in the process of introducing complementary classes and specific programmes designed to raise the language competence of Roma children;

3 invited the Croatian authorities to keep the Committee of Ministers informed of the concrete results obtained in abolishing "Roma-only" classes;

4 considered however that further efforts are needed to address the problem of poor school attendance and the high drop-out rate of Roma children;

5 consequently invited the Croatian authorities to clarify the measures taken or envisaged to combat high drop-out rates of Roma children in primary schools, including the active involvement of social services in ensuring their school attendance;

6 further invited the Croatian authorities to provide information on the measures taken or envisaged to prevent excessive length of proceedings before the Constitutional Court;

7 decided to declassify Memorandum CM/Inf/DH(2011)46.

1136th meeting

The Deputies

8 noted with satisfaction that, in response to the decision adopted at their 1128th meeting (December 2011), the Croatian authorities have taken a number of measures to address the problem of poor school attendance and the high drop-out rate of Roma children;

9 noted that the measures taken mainly concerned the active involvement of the relevant social services with parents with a view to raising their awareness of the importance of education;

10 welcomed the new working methods adopted by the Croatian Constitutional Court which are expected to reduce the excessive length of proceedings before that court;

11 decided, in the light of these developments, to continue their supervision of this case under the standard procedure with a view to assessing the impact of the measures that are currently being taken by the Croatian authorities, including the concrete results obtained in abolishing "Roma-only" classes at a later stage.

## Rantsev v. Cyprus and Russian Federation

*Violations found against Cyprus*: Failure by the authorities to conduct an effective investigation into the death of the applicant's daughter in 2001, who travelled from the Russian Federation to Cyprus on an "artiste" visa and died there in ambiguous circumstances (violation of Art. 2, procedural aspect); failure by the authorities in their positive obligation to set up an appropriate legislative and administrative framework to combat trafficking and exploitation resulting from the "artistes" visa system and police failure to take adequate specific measures to protect the applicant's daughter (violation of Art. 4); arbitrary and unlawful detention of the applicant's daughter by the police with no basis in domestic law, and acquiescence in her subsequent arbitrary and unlawful confinement in a private apartment (violation of Art. 5§1).
*Violation found against Russian Federation*: Failure by the authorities to conduct an effective investigation into the recruitment of the applicant's daughter in Russia (violation of Art. 4, procedural aspect).

**25965/04, judgment of 7 January 2010, final on 10 May 2010**

1136th meeting

The Deputies

1 noted that the investigation file was transferred to the Attorney General of the Republic of Cyprus and that he requested the investigators to carry out additional investigative steps and appointed two additional investigators;

2 strongly encouraged the Cypriot authorities to ensure that the investigators have all necessary means to conduct an effective investigation and to complete it without further delay;

3 reiterated the particular importance for the applicant to be involved in the investigation and took note of the Cypriot authorities' continued efforts and commitment to do everything possible in this respect;

4 noted that the investigation carried out by the Russian authorities was suspended but may be reopened following the Cypriot authorities' response to the Russian authorities' request for legal assistance;

5 stressed again the critical importance of close co-operation between the Cypriot and Russian authorities and invited the authorities of both states to keep the Committee updated of the developments in their investigations;.

6 decided to resume consideration of general measures at their 1144th meeting (June 2012) (DH) and of individual measures at the latest at their 1150th meeting (September 2012) (DH).

## D.H. and others v. Czech Republic

Discrimination in the enjoyment of the right to education of Roma children on account of their assignment between 1996 and 1999 to special schools (schools for children with special needs including those (Violation of Art. 14 in conjunction with Art. 2 of Prot. No. 1).

**57325/00, judgment of 7 February 2006, final on 13 November 2007**

1128th meeting

The Deputies,

1 welcomed the information provided by the Czech authorities on the Anti-Discrimination Act, which provides a procedural safeguard against discrimination in the area of education;

2 noted that amended Decrees 72/2005 and 73/2005 came into force on 1 September 2011 ahead of the new school year and that these Decrees appear to be an important step in the implementation of the action plan (NAPIV) which aims at inclusion of Roma children in the education system, in a non-discriminatory manner (see DH-DD(2011)1064);

3 also noted with interest that the Ministry of Education, Youth and Sport is currently preparing a number of legislative changes for the purpose of enhancing an inclusive environment and in this connection, is considering the removal of the provision giving rise to concern set out in amended Decree 73/2005 which provides that pupils without disabilities may still be educated in a school, class or study group established for children with disabilities, albeit in limited circumstances (see DH-DD(2011)1064);

4 welcomed the intention of the authorities to monitor the impact of the amended Decrees and encouraged them to make a detailed assessment that might be taken into account in the current legislative preparations and, to ensure that the anticipated effects of the legal framework are fully realised;

5 encouraged the authorities to pursue their efforts in the concrete implementation of the action plan and invited them to keep the Committee up to date in detail of all developments in this respect, including on the impact of the two amended decrees on the current school year, the developments made in the

legislative preparations, the conclusions of the ongoing reflection and the actual results achieved on the ground;

6 recalled the decision adopted in this case at the 1115th meeting (June 2011) (DH) and decided to hold a debate on this case at the latest at 1144th meeting (June 2012) (DH).

## Pandjikidze et autres affaires similaires v. Georgia

**30323/02, judgment of 27 October 2009, final on 27 January 2010**

Unfairness of criminal proceedings brought against the applicants in that they were tried between 2001 and 2003 by a court "not established by law", in as much as two of the three judges of the bench were not professional judges and their activity was not governed by any law (violations of Art. 6§1); *Gorquiladze*: also inhuman and degrading conditions of detention between 2003-2005 (violation of Art. 3).

1128th meeting

The Deputies,

1 welcomed the measures taken by the Georgian authorities with a view to the adoption of the legislative amendment to the code of criminal proceedings (Article 310 "e") allowing, as of 1 January 2012, the reopening of criminal proceedings following a judgment of the European Court of Human Rights as well as the transitional provisions allowing applicants concerned by judgments of the Court before that date to request the reopening of proceedings before 1 July 2012;

2 took note of the information provided during the meeting and invited the authorities to keep them informed of the entry into force of the said legislative amendment;

3 invited the Georgian authorities to inform the Committee whether the applicants in the cases concerned have used the possibility of re-examination of their cases pursuant to these provisions and on the outcome of these proceedings.

## M. and other similar cases v. Germany

**40107/02, judgment of 10 February 2011, final on 10 May 2011**

Violation of the right to liberty and security and of the principle "no punishment without law" on account of retroactive application of legislation on the duration of preventive detention of dangerous criminals after they served the punitive part of their sentences (violation of Art. 5§1 and of Art. 7§1).

1136th meeting

The Deputies

1 welcomed the measures already taken to ensure that preventive detention of persons in the applicants' situation is terminated, without excluding continued detention on other grounds in conformity with the Convention's requirements (e.g. mental illness);

2 welcomed in particular the judgment of the Federal Constitutional Court which has settled outstanding issues and ensured that new, similar violations can no longer take place;

3 noted with interest the efforts to develop a new legal framework for preventive detention fully in line with the Convention;

4 encouraged the German authorities to pursue the timely implementation of the measures envisaged;

5 invited the German authorities to keep the Committee of Ministers informed of the progress achieved, including as regards the implementation of preventive detention in practice;

6 recalled that updated information is also awaited on the individual measures outstanding.

## Rumpf and other similar cases v. Germany

**46344/06, judgment of 2 September 2010, final on 2 December 2010**

Excessively lengthy judicial proceedings and lack of an effective remedy in that respect (violations of Arts. 6§1 and 13).

1128th meeting

The Deputies,

1 welcomed the fact that the law providing for a remedy against excessive length of proceedings was published on 2 December 2011 in the Federal Law Gazette and will enter into force on 3 December 2011;

2 decided to transfer the Rumpf group of cases for the Committee's examination under the standard procedure.

## Bekir-Ousta and other similar cases v. Greece

**35151/05, judgment of 11 October 2007, final on 11 January 2008**

Violation of the right to freedom of association on account of the refusal to register or dissolve associations because of their aim to promote the idea of the existence of an ethnic minority in Greece as opposed to the religious minority provided by the 1923 Lausanne Treaty (violation of Art. 11); Tourkiki Enosi Xanthis: also excessively lengthy civil proceedings relate to the dissolution of the association (violation of Art. 6§1).

1128th meeting

The Deputies,

1 recalled that at their 1100th meeting (November-December 2010) (DH) they had decided to resume the examination of these cases in the light of the developments with regard to the proceedings pending before the Court of Cassation which concern the request of the applicants regarding the revocation of the judgment of the Court of Appeal of

Thrace ordering the dissolution of the association in the case of Tourkiki Enosi Xanthis;

2 took note of the information provided by the Greek authorities and the applicants, that all the applications lodged by the applicant associations requesting the revocation of the decisions of national courts rendered prior to the judgments of the European Court had been rejected at the second level of jurisdiction;

3 noted that a hearing took place on 7 October 2011 before the Court of Cassation in the case of Tourkiki Enosi Xanthis;

4 recalled in this respect that they had noted at the same meeting that "the recent case-law of the Court of Cassation could lead to an examination on the merits of the applicants' request";

5 recalled the firm commitment of the Greek authorities to implementing fully and completely the judgments under consideration without excluding any avenue in that respect;

6 invited the authorities to keep them informed on the outcome of the proceedings pending before the Court of Cassation.

## Vassilios Athanasiou and others v. Greece; Manios and other similar cases v. Greece

Excessive length of proceedings before administrative courts and the Council of State and lack of an effective remedy in this respect (violations of Articles 6 §1 and 13).

**50973/08 and 70626/01 Judgments of 11 March 2004, final on 21 March 2011 and 11 June 2004**

1136th meeting

The Deputies

1 welcomed the adoption on 6 March 2012 by the Greek Parliament of the law establishing a compensatory remedy in cases of excessive length of proceedings before the administrative courts and the Council of State, before the expiry of the deadline set by the Court (21 March 2012) in the Vassilios Athanasiou pilot judgment;

2 encouraged the Greek authorities to ensure that the new remedy be implemented in compliance with the requirements of the Convention and invited them to keep the Committee informed of the developments in the domestic case-law in this field;

3 took note with interest of the intention of the Greek authorities to follow the implementation of the compensatory remedy and to explore if necessary, in the light of its functioning, the opportunity for possible adjustments;

4 also noted with interest the information presented by the Greek authorities on the measures introduced in Law No. 3900/2010 aimed at reducing the length of proceedings before the ordinary administrative courts and the Council of State as well as on the additional measures introduced by the new law and invited the authorities to keep the Committee regularly informed of the impact of this package of measures.

## Timar and other similar cases v. Hungary

Excessive length of civil and criminal proceedings and lack of an effective remedy in this respect (violations of Articles 6 §1 and 13).

**36186/97, judgment of 25 February 2003, final on 9 July 2003**

1136th meeting

The Deputies

1 noted with concern that, despite the measures taken by the Hungarian authorities, the situation as regards excessive length of judicial proceedings does not appear to have improved in Hungary as evidenced by the statistical data provided by the Hungarian authorities and the large number of similar cases pending before the European Court;

2 invited the Hungarian authorities to take measures to reduce the excessive length of domestic proceedings and to introduce effective domestic remedies in compliance with the Convention's standards as set out in the European Court's case-law;

3 recalled in this respect the Committee of Ministers' Recommendation CM/Rec(2010)3 encouraging states to introduce remedies making it possible both to expedite proceedings and to award compensation to interested parties for damage suffered and emphasising the importance of this question where judgments reveal structural problems likely to give rise to a large number of further similar violations;

4 invited the Hungarian authorities to inform the Committee of Ministers of the measures taken to accelerate the proceedings in the present group of cases if those proceedings are still pending at the domestic level;

5 decided to transfer these cases for the Committee's examination under the enhanced procedure given the structural nature of the problem they reveal.

## A. B. and C. v. Ireland

Authorities' failure to their positive obligation to ensure the effective respect of the applicant's privacy, in the absence of any legislative or regulatory regime providing an accessible and effective procedure by which the applicant, who had a rare form of cancer, could have established whether she qualified for a lawful abortion in Ireland on the basis that her life was at risk (violation of Art. 8).

**25579/05, judgment of 16 December 2010, final on 16 December 2010**

1136th meeting

The Deputies

1 noted that the expert group tasked with recommending a series of options to the Irish authorities on how to implement the judgment had been established, that the timetable had been fixed for the group and that the group had met twice and established sub-groups on medical and legal affairs;

2 expressed concern regarding the situation of women who believe their life may be at risk due to their

pregnancy in circumstances similar to those experienced by the third applicant;

3 welcomed the commitment of the Irish authorities to the expeditious implementation of the judgment, strongly encouraged the authorities to ensure that the expert group completes its work as quickly as possible and invited the authorities to keep the Committee regularly updated on the group's progress and to inform it of the substantive measures that the authorities plan to take as soon as possible.

## Ceteroni and other similar cases v. Italy

**22461/93, judgment of 15 November 1996, final on 15 November 1996 CM/ResDH(2010)224; CM/ResDH(2009)42; CM/ResDH(2007)2; ResDH(2005)114; ResDH(2000)135; DH(99)437; DH(99)436; DH(97)336**

Excessive length of judicial proceedings since the 1990s (violations of Art. 6§1).

1128th meeting

The Deputies,

1 reiterated that excessive delays in the administration of justice constitute a serious danger for the respect of the rule of law, resulting in a denial of rights enshrined in the Convention;

2 took note of the developments as regards length of civil proceedings, which registered for the first time ever a slight decrease in the backlog (-4%) in 2010;

3 expressed once more their utmost concern as regards the repetitive delays in paying the sums awarded by national courts under the "Pinto Act", as also highlighted by the Court in the quasi-pilot judgment Gaglione and others;

4 underlined that the effectiveness of the remedy provided by the "Pinto Act" is currently at risk, as domestic judicial decisions awarding damages for lengthy proceedings cannot be executed within a reasonable time due to a lack of sufficient budgetary resources;

5 considered that this situation creates a serious threat to the effectiveness of the system of the Convention and of the European Court;

6 recalled in this respect that the obligation to abide by the judgments of the Court under Article 46 of the Convention and the principle of subsidiarity which are enshrined therein, entail the obligation for the government to find appropriate means to execute domestic judicial decisions and urged the authorities to find without further delay an immediate solution to the issue related to the "Pinto proceedings";

7 urged the Italian authorities to follow closely the situation in the field of civil justice and to update without delay their action plan with reference to criminal, administrative and bankruptcy proceedings;

8 decided, in the light of the seriousness of the issues raised by these group of cases, to resume their consideration at the 1136th meeting (March 2012) (DH).

1136th meeting

The Deputies

9 noted that, in the light of the information submitted by the Italian authorities, apart from a slight decrease of the length of the bankruptcy proceedings and in the backlog of civil proceedings, the situation concerning the excessive length of proceedings and the malfunction of the existing remedy relating thereto remains deeply worrying and demanded that additional large-scale measures are adopted as a matter of urgency to remedy the problem;

10 recalled their previous decisions underlying that this situation constitutes a serious danger for the respect of the rule of law, resulting in a denial of rights enshrined in the Convention, and creates a serious threat to the effectiveness of the system of the Convention;

11 recalled the letter of 14 December 2011 sent by the Registrar of the European Court (upon instruction of the Court's Bureau) to the Chair of the Committee of Ministers, conveying the concerns of the Court's Bureau, also drawing the Committee's attention to the seriousness of the situation in view of the significant number of cases which continue to pour in the Court, and inviting the Committee to submit comments to the Registrar in relation to this;

12 welcomed the strong and renewed commitment expressed by the Italian authorities towards adopting further measures and monitoring the effects of those already adopted concerning excessively lengthy proceedings, as well as towards finding a solution to delays in payment of the amounts awarded under the Pinto law, both domestically and for cases already pending before the Court, including possible modifications to the Pinto remedy;

13 welcomed also the commitment expressed by the Italian authorities to further strengthen co-operation with the Committee of Ministers, as well as with the Court, on these issues;

14 strongly invited the Italian authorities to submit concrete proposals in an action plan with a calendar aimed at closely monitoring the effects of the measures already adopted and at adopting the other measures envisaged;

15 asked the Secretary of the Committee of Ministers to respond to the said letter of the Registrar of the Court on the basis of the discussions held on this question and decided to resume consideration of these items at their next meeting, in the light of the action plan awaited from the Italian authorities.

## Luordo and other similar cases v. Italy

**32190/96, judgment of 17 July 2003, final on 17 October 2003**

Restrictions of the applicants' individual rights following bankruptcy proceedings and, in certain cases, excessive length of judicial proceedings since the 1990s (violations of Arts. 6§1, 8, 13, of Art. 1 and 3 of Prot. No. 1, and of Art.2 of Prot. No. 4).

**1128th meeting**

The Deputies,

1 reiterated that excessive delays in the administration of justice constitute a serious danger for the respect

of the rule of law, resulting in a denial of rights enshrined in the Convention;

2 took note of the developments as regards length of civil proceedings, which registered for the first time ever a slight decrease in the backlog (-4%) in 2010;

3 expressed once more their utmost concern as regards the repetitive delays in paying the sums awarded by national courts under the "Pinto Act", as also highlighted by the Court in the quasi-pilot judgment Gaglione and others;

4 underlined that the effectiveness of the remedy provided by the "Pinto Act" is currently at risk, as domestic judicial decisions awarding damages for lengthy proceedings cannot be executed within a reasonable time due to a lack of sufficient budgetary resources;

5 considered that this situation creates a serious threat to the effectiveness of the system of the Convention and of the European Court;

6 recalled in this respect that the obligation to abide by the judgments of the Court under Article 46 of the Convention and the principle of subsidiarity which are enshrined therein, entail the obligation for the government to find appropriate means to execute domestic judicial decisions and urged the authorities to find without further delay an immediate solution to the issue related to the "Pinto proceedings";

7 urged the Italian authorities to follow closely the situation in the field of civil justice and to update without delay their action plan with reference to criminal, administrative and bankruptcy proceedings;

8 decided, in the light of the seriousness of the issues raised by these group of cases, to resume their consideration at the 1136th meeting (March 2012) (DH).

1136th meeting

The Deputies

9 noted that, in the light of the information submitted by the Italian authorities, apart from a slight decrease of the length of the bankruptcy proceedings and in the backlog of civil proceedings, the situation concerning the excessive length of proceedings and the malfunction of the existing remedy relating thereto remains deeply worrying and demanded that additional large-scale measures are adopted as a matter of urgency to remedy the problem;

10 recalled their previous decisions underlying that this situation constitutes a serious danger for the respect of the rule of law, resulting in a denial of rights enshrined in the Convention, and creates a serious threat to the effectiveness of the system of the Convention;

11 recalled the letter of 14 December 2011 sent by the Registrar of the European Court (upon instruction of the Court's Bureau) to the Chair of the Committee of Ministers, conveying the concerns of the Court's Bureau, also drawing the Committee's attention to the seriousness of the situation in view of the significant number of cases which continue to pour in the Court, and inviting the Committee to submit comments to the Registrar in relation to this;

12 welcomed the strong and renewed commitment expressed by the Italian authorities towards adopting further measures and monitoring the effects of those already adopted concerning excessively lengthy proceedings, as well as towards finding a solution to delays in payment of the amounts awarded under the Pinto law, both domestically and for cases already pending before the Court, including possible modifications to the Pinto remedy;

13 welcomed also the commitment expressed by the Italian authorities to further strengthen co-operation with the Committee of Ministers, as well as with the Court, on these issues;

14 strongly invited the Italian authorities to submit concrete proposals in an action plan with a calendar aimed at closely monitoring the effects of the measures already adopted and at adopting the other measures envisaged;

15 asked the Secretary of the Committee of Ministers to respond to the said letter of the Registrar of the Court on the basis of the discussions held on this question and decided to resume consideration of these items at their next meeting, in the light of the action plan awaited from the Italian authorities.

## Mostacciuolo Giuseppe (I) and other similar cases v. Italy; Gaglione and others and other similar cases v. Italy

**64705/01, judgment of 29 March 2006, final on 29 March 2006**
**45867/07, judgment of 20 June 2011, final on 20 June 2011**
**CM/ResDH(2010)224; CM/ResDH(2009)42; CM/ResDH(2007)2**

Insufficient amount and delay in payment of awards made in the context of a compensatory remedy available to victims of excessively lengthy proceedings, since 2002 (violation of Art. 6§1).

**1128th meeting**

The Deputies,

1 reiterated that excessive delays in the administration of justice constitute a serious danger for the respect of the rule of law, resulting in a denial of rights enshrined in the Convention;

2 took note of the developments as regards length of civil proceedings, which registered for the first time ever a slight decrease in the backlog (-4%) in 2010;

3 expressed once more their utmost concern as regards the repetitive delays in paying the sums awarded by national courts under the "Pinto Act", as also highlighted by the Court in the quasi-pilot judgment Gaglione and others;

4 underlined that the effectiveness of the remedy provided by the "Pinto Act" is currently at risk, as domestic judicial decisions awarding damages for lengthy proceedings cannot be executed within a reasonable time due to a lack of sufficient budgetary resources;

5 considered that this situation creates a serious threat to the effectiveness of the system of the Convention and of the European Court;

6 recalled in this respect that the obligation to abide by the judgments of the Court under Article 46 of the Convention and the principle of subsidiarity which are enshrined therein, entail the obligation for the government to find appropriate means to execute domestic judicial decisions and urged the authorities to find without further delay an imme-

diate solution to the issue related to the "Pinto proceedings";

7 urged the Italian authorities to follow closely the situation in the field of civil justice and to update without delay their action plan with reference to criminal, administrative and bankruptcy proceedings;

8 decided, in the light of the seriousness of the issues raised by these group of cases, to resume their consideration at the 1136th meeting (March 2012) (DH).

1136th meeting

The Deputies

9 noted that, in the light of the information submitted by the Italian authorities, apart from a slight decrease of the length of the bankruptcy proceedings and in the backlog of civil proceedings, the situation concerning the excessive length of proceedings and the malfunction of the existing remedy relating thereto remains deeply worrying and demanded that additional large-scale measures are adopted as a matter of urgency to remedy the problem;

10 recalled their previous decisions underlying that this situation constitutes a serious danger for the respect of the rule of law, resulting in a denial of rights enshrined in the Convention, and creates a serious threat to the effectiveness of the system of the Convention;

11 recalled the letter of 14 December 2011 sent by the Registrar of the European Court (upon instruction of the Court's Bureau) to the Chair of the Committee of Ministers, conveying the concerns of the Court's Bureau, also drawing the Committee's attention to the seriousness of the situation in view of the significant number of cases which continue to pour in the Court, and inviting the Committee to submit comments to the Registrar in relation to this;

12 welcomed the strong and renewed commitment expressed by the Italian authorities towards adopting further measures and monitoring the effects of those already adopted concerning excessively lengthy proceedings, as well as towards finding a solution to delays in payment of the amounts awarded under the Pinto law, both domestically and for cases already pending before the Court, including possible modifications to the Pinto remedy;

13 welcomed also the commitment expressed by the Italian authorities to further strengthen co-operation with the Committee of Ministers, as well as with the Court, on these issues;

14 strongly invited the Italian authorities to submit concrete proposals in an action plan with a calendar aimed at closely monitoring the effects of the measures already adopted and at adopting the other measures envisaged;

15 asked the Secretary of the Committee of Ministers to respond to the said letter of the Registrar of the Court on the basis of the discussions held on this question and decided to resume consideration of these items at their next meeting, in the light of the action plan awaited from the Italian authorities.

## Sulejmanovic v. Italy

**22635/03, judgment of 16 July 2009, final on 6 November 2009**

Degrading treatment suffered by the applicant on account of the conditions of his detention in prison, notably due to overcrowding (violation of Art. 3).

1136th meeting

The Deputies

1 underlined the adverse effects of prison overcrowding on the conditions of detention and noted with interest the measures taken and foreseen by the authorities, as presented in their action plan;

2 noted in particular the development of a penitentiary policy aiming at promoting better conditions of detention and measures alternative to detention, as well as the expected construction of new facilities (Piano Carceri) and invited the authorities to specify the impact awaited or noted of these measures;

3 noted also the judicial recognition of the right to compensation for detention in an overcrowded cell;

4 recalled that an effective remedy in case of improper detention conditions cannot be solely of a compensatory nature but has also to be capable of bringing about improvements of detention conditions in cases where the applicant is still detained; invited the Italian authorities to indicate whether the Italian judicial system provides for this;

5 decided to reconsider this case at the latest at their 1150th meeting (September 2012), on the basis of a revised action plan to be provided by the authorities.

## Olaru and others and other similar cases v. Republic of Moldova

**476/07, judgment of 28 July 2009, final on 28 October 2009**

Structural problem of violations of the applicants' right of access to a court and right to peaceful enjoyment of their possessions on account of the state's failure to enforce final domestic judgments awarding them housing rights or monetary compensation in lieu of housing (violations of Art. 6 and Art. 1 of Prot. No. 1).

1136th meeting

The Deputies

1 recalled that a domestic remedy in cases of excessive length of judicial and enforcement proceedings was introduced with effect from 1 July 2011;

2 noted that in its inadmissibility decision of 24 January 2012 in the case of Balan, the Court found it "significant that the Moldovan Government has passed the legal reform introducing the new domestic remedy in response to the Olaru pilot judgment under the supervision of the Committee of Ministers" and accepted that this remedy "was designed, in principle, to address the issue of delayed enforcement of judgments in an effective and meaningful manner, taking account of the Convention requirements";

3 encouraged the Moldovan authorities to ensure that the new remedy is implemented in compliance with the Convention's requirements and invited them to

keep the Committee informed on the development of the domestic case-law;

4 noted the progress made in the *ad hoc* settlement of applications communicated by the Court in the context of the pilot judgment and invited the Moldovan authorities to enhance their efforts to settle the remaining applications;

5 invited the Moldovan authorities to take the necessary measures to ensure that the remaining judicial decisions granting social housing are enforced in order to prevent a new influx of repetitive applications to the Court;

6 decided to transfer the Olaru group of cases for the Committee's examination under the standard procedure.

## Kudla and other similar cases v. Poland; Podbielski and other similar cases v. Poland; Fuchs and other similar cases v. Poland

**Excessive length of criminal, civil and administrative proceedings and lack of an effective remedy in this respect (violation of Art. 6 §1 and of art. 13).**

**30210/96, judgment of 26 October 2000, final on 26 October 2000**
**27916/95, judgment of 30 October 1998, final on 30 October 1998**
**33870/96, judgment of 11 May 2003, final on 11 May 2003**
**CM/ResDH(2007)28**

1128th meeting

The Deputies,

1 noted with interest the action plans submitted on 22 and 23 November 2011 and the significant number of measures taken to address the systemic problem of excessive length of proceedings (notably computerisation of proceedings, further legal amendments aimed at the acceleration of proceedings), as well as the regular monitoring of courts' caseloads ensured by the authorities and the comprehensive statistics submitted;

2 noted the commitment of the Polish authorities to monitor closely the implementation and the impact of these measures with a view to assessing their effectiveness, in particular with regard to the functioning of the domestic remedy;

3 instructed the Secretariat to make a detailed assessment of the action plans recently provided with a view to their substantive examination and invited the authorities to keep the Committee informed of the outcome of their assessments and any further measures that may be considered necessary.

## Trzaska and other similar cases v. Poland

Excessive length of pre-trial detention and deficiencies in the procedure for reviewing the lawfulness of pre-trial detention (violations of Arts. 5 §3 and 5 §4); excessive length of criminal proceedings (violation of Art. 6 §1); interferences with the right to private life on account of non-respect of the right to correspondence, unjustified restriction to visits (violations of Art. 8).

**25792/94, judgment of 11 July 2000, final on 11 July 2000**
**CM/ResDH(2007)75**

1128th meeting

The Deputies,

1 recalled that on 27 November 2009 the Polish authorities presented detailed information concerning amendments to the Code of Criminal Procedure and other general measures taken or envisaged for this group of cases but that additional information was deemed necessary to allow a full assessment of the measures envisaged;

2 also recalled the exchanges which took place in Warsaw in March 2010 between the Secretariat and the authorities on the questions raised by these judgments, following which the authorities undertook to provide further information to the Committee, in particular on the monitoring by the authorities of developments in the situation concerning the length of detention, together with available statistical information;

3 noted that the information awaited was provided by the authorities on 21 November 2011 in the form of an action plan and invited the Secretariat to make a detailed assessment of the action plan with a view to its substantive examination at the 1136th meeting (March 2012) (DH).

1136th meeting

The Deputies

4 noted with satisfaction the progress achieved by the Polish authorities, reflected in the positive trends visible in the recent statistics and the increased application of measures alternative to detention by Polish courts;

5 welcomed the commitment of the authorities, as evidenced by the continued monitoring of the length and grounds for pre-trial detentions, as well as by the training activities for judges and prosecutors;

6 invited the authorities to continue their efforts in relation to training and awareness-raising measures, in particular as regards the promotion of measures alternative to detention and the further reduction of medium- and long-term detentions;

7 decided, in the light of the significant progress achieved and the commitment of the authorities, to continue the supervision of the execution of this group of cases under the standard procedure.

## Association "21 decembrie 1989" and Maries v. Romania

Ineffectiveness of the criminal investigations into the violent crackdown on the December 1989 anti-governmental protests, during which the applicants' son was killed (violation of Article 2, procedural aspect); lack of safeguards in legislation on secret surveillance measures in cases of alleged threat to the national security, in particular as regards the collecting and storing of personal data by the Romanian Intelligence Service (violation of Art. 8).

**33810/07, judgment of 24 May 2011, final on 28 November 2011**

1136th meeting

The Deputies

1 noted that the present case raises complex problems related, first to the ineffectiveness of the criminal investigations into the crackdown on the anti-government protests of December 1989 in Bucharest and other cities of Romania and secondly to the lack of statutory safeguards for the protection of private life in the field of secret surveillance measures in cases of alleged threat to national security;

2 took note of the action plan provided by the Romanian authorities on 19 January 2012, which indicates that the prosecutor's office shall finalise the investigations at issue in this judgment at the earliest opportunity;

3 took note with interest of the information provided during the meeting by the authorities, according to which a draft law repealing the statutory limitation, in particular in respect of intentional offences against life, was recently adopted by the Romanian Parliament;

4 underlined, regardless of the application of these provisions to the facts at the origin of this case, the need for the Romanian authorities to adopt without delay the measures that are necessary to ensure that the investigations at issue are carried out with the required speed and diligence;

5 invited the Romanian authorities to keep the Committee of Ministers informed of the progress in the investigations into the events of December 1989 and of the measures taken to expedite them;

6 decided to grant the Romanian authorities' request for confidentiality of the document DH-DD(2012)98addF and to resume the examination of all the questions raised in this case in the light of a revised action plan to be provided by the Romanian authorities.

## Nicolau and other similar cases v. Romania; Stoianova and Nedelciu and other similar cases v. Romania

**1295/02, judgment of 3 July 2006, final on 3 July 2006**
**77517/01, judgment of 4 November 2005, final on 4 November 2005**

Cases mainly concerning the excessive length of civil and criminal and the lack of an effective remedy in this respect (violations of Arts. 6§1 and 13); lack of effective means to obtain payment of compensation awarded due to the excessive length of proceedings for the actualisation of this compensation (violation of Art. 1 of Prot. No. 1); unfairness of proceedings due to the failure to give a specific response to the applicant's claims (violation of Art. 6 §1); lack of access to court due to excessive court fees required to bring proceedings (violation of Art. 6§1); delayed enforcement of a final court decision (violations of Art. 6 §1 and of Art. 1 of Prot. No. 1).

1128th meeting

The Deputies,

1 noted that the numerous violations found by the Court due to excessive length of civil and criminal proceedings in Romania reveal structural problems in the administration of justice at the time of the relevant facts;

*As regards the excessive length of proceedings*

2 noted with satisfaction the action plan for the execution of these judgments, provided on 10 October 2011 and the large-scale legislative measures taken by the Romanian authorities with a view to remedying the problems at the origin of these cases, in particular the adoption of the new Codes of Civil and Criminal Procedure;

3 considered that a certain period of time is necessary for the effectiveness of the reforms to be assessed; called on the authorities to monitor the effects of these reforms as they proceed and to present to the Committee, as soon as possible, their assessment of the achieved results;

4 invited the authorities to keep the Committee informed on the entry into force of the new Codes of Civil and Criminal Procedure, as well as on the consequences of the concrete measures proposed by the Superior Council of Magistracy;

*As regards the effective remedies required in this field*

5 recalled Committee of Ministers' Recommendation Rec(2010)3 encouraging states to introduce remedies making it possible both to expedite proceedings and to award compensation to interested parties for damage suffered and emphasising the importance of this question where judgments reveal structural problems likely to give rise to a large number of further similar violations;

6 noted with interest, in this respect, the developments of the case-law of the domestic courts which have begun to decide, on the basis of the direct application of the Convention, on claims for compensation for damages caused by the excessive length of proceedings as well as on complaints aimed at accelerating proceedings;

7 invited the authorities to provide clarification on this case-law, in particular on the procedural rules followed (especially the number of degrees), on the concrete results achieved following the proceedings concerning the acceleration of proceedings and on whether the decisions submitted became final;

8 noted with interest that the new Code of Civil Procedure provides the introduction of a remedy aimed at accelerating civil proceedings; invited the authorities to submit a summary of the relevant provisions and to indicate if they also intend to introduce a remedy aimed at accelerating criminal proceedings and a compensatory remedy;

9 regarding individual measures, called on the authorities to expedite as much as possible the pending proceedings in four cases and to keep the Committee informed of their progress.

## Strain and other similar cases v. Romania; Maria Atanasiu and others v. Romania

Violations originating in an important systemic problem connected with the ineffectiveness of the mechanism set up in Romania after 1989 to afford restitution or compensation for properties nationalised during the communist period (violations of Art. 1 of Prot. No. 1).

1128th meeting

The Deputies,

1 recalled that the questions raised in these cases concern a large-scale systemic problem, due to the dysfunctions of the Romanian system of restitution or compensation in respect of property nationalised during the Communist period;

2 took note of the revised action plan provided by the Romanian authorities on 10 November 2011 and noted with interest the proposals of legislative amendments drawn up by an interministerial group with a view to making the restitution and compensation process more effective, as well as the corresponding calendar;

3 invited the Romanian authorities to present to them, as soon as possible, a copy of the draft law drawn up in this context, to specify the scheduled date for the entry into force of the envisaged reform and to clarify the data concerning the progress of the compensation and restitution process;

4 decided, given the importance of these questions and the time-limit set by the European Court in the Maria Atanasiu and others pilot judgment (which expires on 12 July 2012), to resume consideration of this group of cases at the 1136th meeting (March 2012) (DH).

1136th meeting

The Deputies

5 recalled that the issues raised in these cases concern a large-scale systemic problem, due to the dysfunctions of the Romanian system of restitution or compensation in respect of property nationalised during the Communist period;

6 took note of the commitment on the part of the Romanian authorities to adopt, before the expiry of the deadline set by the European Court in the pilot judgment of Maria Atanasiu and others (12 July 2012), the draft law prepared in this context; invited therefore the authorities to present to the Committee of Ministers a revised calendar for the adoption and coming into force of this draft law;

7 reiterated their request to the authorities to provide the Committee of Ministers, as soon as possible, with a copy of the draft law;

8 noted with interest the preliminary data on the progress in the compensation and restitution process provided by the authorities on 2 March 2012 and invited the authorities to finalise without delay the transmission of comprehensive consolidated data in this respect;

9 decided, given the urgency to make progress in the implementation of this group of cases, to continue its examination at their 1144th meeting (June 2012).

## Garabayev and other similar cases v. Russia

**38411/02, judgment of 7 June 2007, final on 30 January 2008**

Absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to extradition and setting time-limits for such detention (violations of Art. 5§1); lack of possibility for detained persons to initiate judicial review of the lawfulness of the detention with a view to extradition (violations of Art. 5§4); lack of rigorous examination by the domestic courts of the applicants' allegations of the risk to be subject to ill-treatment if extradited (violations of Art. 13); Iskandarov case: unreported and arbitrary arrest of the applicant in 2005 by allegedly unknown persons whom the European Court found to be Russian State agents, after the official refusal of request for his extradition (violation of Art. 5 §1) and his forcible transfer to Tajikistan in circumstances in which the authorities must have been aware that the applicant faced a real risk of ill-treatment (Art. 3).

1136th meeting

The Deputies,

1 noted that the Russian Constitutional Court, Supreme Court and Prosecutor General Office promptly reacted to the judgments of the European Court by issuing guidelines and instructions;

2 noted further with satisfaction that the need for legislative amendments of the relevant provisions of the Code of Criminal procedure was recognised by the Russian authorities and that the Ministry of Justice should finalise a draft law in this respect before the end of 2012;

3 invited the Russian authorities to keep the Committee regularly informed of the progress of the reform;

4 as regards the Iskandarov case, recalled that the violations of the Convention in this case were due to the applicant's kidnapping by unknown persons, whom the Court found to be Russian State agents, and his forcible transfer to Tajikistan after his extradition had been refused by the Russian authorities;

5 noted with profound concern the indication by the Court that repeated incidents of this kind have recently taken place in respect of four other applicants whose cases are pending before the Court where it applied interim measures to prevent their extradition on account of the imminent risk of grave violations of the Convention faced by them;

6 took note of the Russian authorities' position that this situation constitutes a source of great concern for them;

7 noted further that the Russian authorities are currently addressing these incidents and are committed to present the results of the follow-up given to them in Russia to the Court in the framework of its examination of the cases concerned and to the Committee with regard to the Iskandarov case;

8 urged the Russian authorities to continue to take all necessary steps to shade light on the circumstances of Mr. Iskandarov's kidnapping and to ensure that similar incidents are not likely to occur in the future and to inform the Committee of Ministers thereof;

9 took note of the information provided during the meeting on the applicants' current situation in the Iskandarov and Muminov cases and invited the Russian authorities to provide this information in writing for its assessment;

10 decided to resume consideration of these cases at its 1144th (June 2012) DH meeting.

## Cyprus v. Turkey

**25781/94, judgment of 10 May 2001, final on 10 May 2001**
**ResDH(2005)44 and CM/ResDH(2007)25**

Fourteen violations in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in July and August 1974 concerning:
- Greek-Cypriot missing persons and their relatives (violations of Arts. 2, 3 and 5)
- Home and property of displaced persons (violations of Arts. 8 and 13 and of the Art. 1 of Prot. No. 1)
- Living conditions of Greek Cypriots in Karpas region of the northern part of Cyprus (violation of Arts. 3, 8, 9, 10 and 13 and of Arts. 1 and 2 of Prot; No. 1)
- Rights of Turkish Cypriots living in northern part of Cyprus (violations of Art. 6).

1128th meeting

The Deputies,

1 in respect of the question of the homes and property of displaced Greek Cypriots, took note of the request of the Cypriot delegation to the Committee of Ministers, to suspend its examination of this question until the Court has pronounced itself on their recent application under Article 41 of the Convention;

2 decided to continue their discussion on this question, along with that related to the property rights of enclaved persons at their 1136th meeting (March 2012)DH;

3 in respect of the question of missing persons, renewed with insistence their calls on the Turkish authorities to ensure the CMP's access to all relevant information and places without impeding the confidentiality essential to the carrying-out of its mandate, to inform the Committee of the measures envisaged in the continuity of the CMP's work with a view to the effective investigations required by the judgment and to provide responses to the questions posed by the Committee;

4 deeply regretted the refusal of Turkey to participate in the discussions and called on the defendant state to fully co-operate with the Committee;

5 decided to take up this question again at their 1136th meeting (March 2012) (DH).

1136th meeting

The Deputies

*Concerning questions regarding the property rights of displaced persons*

6 recalled that the Court had been seised of a request under Article 41 of the Convention in this case;

7 decided to resume consideration of these questions at their 1144th meeting (June 2012);

*Concerning questions regarding the property of enclaved persons*

8 took note of the detailed information provided by the Cyprus delegation on 1 and 2 March 2012 and the detailed clarification provided by the Turkish delegation during the debate and invited the latter to provide them in writing;

9 invited the Secretariat to prepare a synthesis of this information with a view to examining the matter if possible at their 1150th meeting (September 2012);

*Concerning questions regarding missing persons*

10 recalled the decisions they had adopted since the exchange of views with the members of the CMP in March 2009;

11 reiterated their call to the Turkish authorities to give the CMP access to all relevant information and places and to take concrete measures with a view to effective investigations;

12 in this context, took note with interest of the information provided by the Turkish delegation during the debate;

13 considered that the information provided called for in-depth assessment;

14 invited the authorities to provide them in writing, together with any other relevant information on these issues;

15 decided to resume consideration of this question at their 1144th meeting (June 2012)

## Hulki Gunes and other similar cases v. Turkey

Unfairness of criminal proceedings (final judgments of 1994-1999) culminating in the sentencing of the applicants to long prison terms (on the basis of statements made by gendarmes or other persons who never appeared in court or on the basis of statements obtained under duress and in the absence of a lawyer); ill-treatment of the applicants while in police custody, lack of independence and impartiality of state security courts; excessive length of criminal proceedings; absence of an effective remedy (violations of Articles 6 §§ 1 and 3, 3 and 13).

1128th meeting

The Deputies,

1 took note with satisfaction the political will and determination of the Turkish authorities expressed at the highest political level to take the necessary measures not only to execute the judgments in the Hulki Güneş group of cases and in the case of Ülke, but also in other cases against Turkey that are examined by the Committee of Ministers;

2 strongly encouraged the Turkish authorities to transfer this political will and determination into concrete action, in particular with regard to the execution of the above-mentioned cases;

3 noted, however, with regret that no concrete information has been provided by the Turkish authorities on the questions raised at the September DH meeting, in particular, as to whether the draft law allowing the reopening of proceedings in the applicants' cases in the Hulki Güneş group is still pending before the Turkish Parliament for adoption and as to whether there is still an arrest warrant against the applicant in the case of Ülke and, if so, whether the Turkish authorities intend to withdraw it;

4 reiterated their call on the Turkish authorities to take concrete action and provide tangible information to the Committee of Ministers, in time for the 1136th meeting (March 2012) (DH), on these questions with a clear time-table for the necessary measures to be taken in the form of an action plan.

1136th meeting

The Deputies

5 recalled the political will and determination of the Turkish authorities, expressed at the highest political level, to take all the necessary measures to execute these judgments;

6 stressed once again the obligation under Article 46, paragraph 2, of the Convention of the respondent state to execute these judgments;

7 noted that in response to the question raised at the 1128th meeting (December 2011) (DH), the Turkish authorities stated that although extensive work is being carried out at the national level to facilitate the adoption of the necessary legislation, the draft law allowing the reopening of proceedings in the applicants' cases has not been sent to Parliament;

8 strongly urged the Turkish authorities to translate their political will and determination into concrete action and to inform the Committee on the content of the legislative amendment announced in 2009 and to provide a clear time-table for its adoption.

## Ulke v. Turkey

Degrading treatment as a result of the applicant's repetitive convictions between 1996 and 1999 and imprisonment for having refused to perform compulsory military service on account of his convictions as a pacifist and conscientious objector (substantive violation of Art. 3).

**39437/98, judgment of 24 January 2006, final on 24 April 2006**
**CM/ResDH(2007)109; CM/ResDH(2009)45**

1128th meeting

The Deputies,

1 took note with satisfaction the political will and determination of the Turkish authorities expressed at the highest political level to take the necessary measures not only to execute the judgments in the Hulki Güneş group of cases and in the case of Ülke, but also in other cases against Turkey that are examined by the Committee of Ministers;

2 strongly encouraged the Turkish authorities to transfer this political will and determination into concrete action, in particular with regard to the execution of the above-mentioned cases;

3 noted, however, with regret that no concrete information has been provided by the Turkish authorities on the questions raised at the September DH meeting, in particular, as to whether the draft law allowing the reopening of proceedings in the applicants' cases in the Hulki Güneş group is still pending before the Turkish Parliament for adoption and as to whether there is still an arrest warrant against the applicant in the case of Ülke and, if so, whether the Turkish authorities intend to withdraw it;

4 reiterated their call on the Turkish authorities to take concrete action and provide tangible information to the Committee of Ministers, in time for the 1136th meeting (March 2012) (DH), on these questions with a clear time-table for the necessary measures to be taken in the form of an action plan.

1136th meeting

The Deputies

5 noted that, in response to the question raised by the Committee at the 1128th meeting (December 2011) (DH), the Turkish authorities stated that there was a valid arrest warrant against the applicant for desertion;

6 noting that the Court's judgment leaves no scope for any new arrest of the applicant related to issues that have been dealt with in the judgment, strongly urged the Turkish authorities to withdraw the arrest warrant or in the alternative to find another solution in order to erase the consequences of the violation for the applicant;

7 noted with concern that no information had been provided with regard to the general measures required to execute this judgment;

8 strongly urged the Turkish authorities to provide information to the Committee in writing and in good time before the 1144th meeting (June 2012) (DH) regarding the withdrawal of the applicant's arrest warrant or an alternative solution allowing the erasure of the consequences of the violation, and a clear time-table for the adoption of the general measures envisaged to execute the judgment.

## Kharchenko and other similar cases v. Ukraine

Structural problem of violations of the right to liberty and security on account of unlawful detention on remand, absence of relevant and sufficient grounds for ordering and extending detention, lack of effective judicial remedies to obtain prompt and duly examination of the lawfulness of detention on remand (violation of Articles 5§§1, 3 and 4); poor conditions in Kyiv pre-trial detention facility in 2001-2003 (violation of Art. 3).

**40107/02, judgment of 10 February 2011, final on 10 May 2011**

1128th meeting

The Deputies,

1 recalled that in the Kharchenko judgment, the European Court requested the Ukrainian authorities to present, by 10 November 2011, a strategy aimed at resolving the problems of unlawfulness and excessive length of detention on remand as well as the lack of judicial review of the lawfulness of detention;

2 noted with satisfaction that the strategy requested in the Kharchenko judgment was provided by the Ukrainian authorities within the time-limit set by the Court;

3 encouraged the Ukrainian authorities to implement rapidly the measures envisaged in the strategy and in particular to adopt the new Code of Criminal Procedure, having due regard to the Council of Europe's expert study which will be provided to the authorities;

4 invited the Ukrainian authorities to provide information on the measures taken or planned to resolve the remaining problems highlighted in other cases of this group.

## Svetlana Naumenko and other similar cases v. Ukraine; Merit and other similar cases v. Ukraine

**41984/98 and 66561/01 Judgments of 9 November 2004 and 30 March 2004, final on 30 March 2005 and 30 June 2004**

Excessive length of civil (the Svetlana Naumenko group) and criminal (the Merit group) proceedings and the lack of effective remedies (violations of Articles 6§1 and 13); also: failure to enforce a domestic court decision (violation of Art. 6§1 and Art. 1 of Prot. No. 1); lack of a fair trial due to the application of the supervisory review procedure (violation of Art. 6§1); lack of relevant and sufficient grounds for the continued detention on remand of the applicant (violation of Art. 5§3).

1136th meeting

The Deputies

1 noted that the numerous violations found by the Court due to excessive length of civil and criminal proceedings in Ukraine reveal the existence of structural problems in the administration of justice;

2 expressed their concern that, since the first judgment delivered by the Court in 2004, no tangible progress has been achieved in introducing an effective remedy against excessive length of judicial proceedings and that this situation has resulted in a massive influx of repetitive applications lodged with the Court;

3 further noted with concern that the Ukrainian authorities have not provided the Committee of Ministers with substantial information on other measures taken or envisaged to reduce the length of judicial proceedings;

4 urged the Ukrainian authorities to take concrete measures to solve the structural problem at issue and recalled in this respect the Committee of Ministers' Recommendation CM/Rec(2010)3 encouraging states to introduce remedies making it possible both to expedite proceedings and to award compensation to interested parties for damage suffered and emphasising the importance of this question where judgments reveal structural problems likely to give rise to a large number of further similar violations;

5 invited the Ukrainian authorities to inform the Committee of Ministers of the measures taken or envisaged in this respect, as well as of the measures taken to accelerate those proceedings which were still pending at the domestic level.

## Yuriy Nikolayevich Ivanov v. Ukraine; Zhovner and other similar cases v. Ukraine

**56848/00, judgment of 15 October 2009, final on 29 September 2004 40450/04, judgment of 29 June 2004, Final on 15 January 2010 CM/ResDH(2008)1, CM/ ResDH(2009)159, CM/ ResDH(2010)222, CM/ ResDH(2011)184**

Structural problem of failure or serious delay by the administration or state companies in abiding by final domestic judgments (violation of Art. 6§1); absence of effective remedies to secure compliance (violation of Art. 13); violation of the applicants' right to protection of their property (violations of Art. 1 of Prot. No. 1).

1128th meeting

The Deputies,

1 expressed their deep regret that the necessary measures are still to be taken to execute the pilot judgment, despite the repeated calls of the Committee of Ministers to this end;

2 recalled that the obligation to abide by the judgments of the Court under Article 46 of the Convention and the principle of subsidiarity which are enshrined therein, entail the obligation for the state to find appropriate means to resolve the problem of non-enforcement of domestic judicial decisions;

3 noted with concern that the present situation creates a serious threat to the effectiveness of the Convention and of the European Court;

4 invited the Ukrainian authorities to provide the Committee of Ministers urgently with an alternative strategy with a view to fully executing the pilot judgment, should the draft law in question not be adopted in the nearest future;

5 strongly encouraged the Ukrainian authorities to resolve without further delay the remaining similar individual cases lodged with the Court prior to the delivery of the pilot judgment and to enforce the domestic judicial decisions from the Zhovner group which should still be enforced.

1136th meeting

The Deputies,

6 expressed their concern, as underlined in their decision adopted at their 1128th meeting (December 2011) (DH), that the present situation, in which the pilot judgment still remains to be fully executed creates a serious threat to the effectiveness of the Convention system;

7 regretted in this respect that the draft law "On state guarantees concerning execution of judicial decisions", which according to the authorities is the most appropriate solution to the problem, has still not been adopted by the Ukrainian parliament;

8 noted that the Ukrainian authorities indicated that the recent decisions of the Constitutional Court of Ukraine are expected to facilitate the adoption of this draft law;

9 took note of the decision of the European Court of 28 February 2012 to resume the examination of applications raising similar issues and of the information provided by the Court that about 1 000 new similar applications have been lodged since 1 January 2011;

10 called again upon the Ukrainian authorities urgently to adopt the effective remedy required by the pilot judgment and invited them to provide the revised version of the draft law mentioned above and a timetable for its adoption;

11 strongly encouraged the Ukrainian authorities to enforce without further delay the domestic judicial decisions in the Zhovner group of cases which still remain unenforced.

# Interim resolutions (extracts)

*During the period concerned, the Committee of Ministers encouraged by different means the adoption of many reforms and also adopted an interim resolution. This kind of resolution may notably provide information on adopted interim measures and planned further reforms, it may encourage the authorities of the state concerned to make further progress in the adoption of relevant execution measures, or provide indications on the measures to be taken. Interim Resolutions may also express the Committee of Ministers' concern as to adequacy of measures undertaken or failure to provide relevant information on measures undertaken, they may urge states to comply with their obligation to respect the Convention and to abide by the judgments of the Court or even conclude that the respondent state has not complied with the Court's judgment.*

*An extract from these interim resolutions adopted is presented below. The full text of the resolutions is available on the website.*

## Interim Resolution CM/ResDH(2011)291
## Sejdić and Finci against Bosnia and Herzegovina

**27996/06, judgment of 22 December 2009 – Grand Chamber**

Discriminatory infringement of the applicant's right to free elections and general discrimination against the applicants, citizens of Bosnia and Herzegovina of Roma and Jewish origin, in that it was impossible for them to stand for election to the House of Peoples of Bosnia and Herzegovina (the upper chamber of Parliament) and to the Presidency of the country, the constitution reserving this right only for "constituent people" (Bosniacs, Croats or Serbs) (violation of Art. 14 taken in conjunction with Art. 3 of Prot. No. 1 concerning legislative elections; violation of Art. 1 of Prot. No. 12 concerning elections to the Presidency).

In its resolution the Committee of Ministers [...]

Reiterated its call on the authorities and political leaders of Bosnia and Herzegovina to take the necessary measures aimed at eliminating discrimination against those who are not affiliated with a constituent people in standing for election to the House of Peoples and the Presidency of Bosnia and Herzegovina and to bring its constitution and electoral legislation in conformity with the Convention requirements without any further delay;

Encouraged the Joint Interim Commission to make tangible progress in its work and present amendments to the Constitution and to the electoral law, taking into consideration the relevant opinions of the Venice Commission in this regard;

Invited the authorities of Bosnia and Herzegovina to inform the Committee regularly of the progress achieved in the Constitutional reform, as well as the change of relevant electoral legislation.

## Interim Resolution CM/ResDH(2011)292
## In 154 cases against the Russian Federation concerning actions of the security forces in the Chechen Republic of the Russian Federation

Action of the Russian security forces during anti-terrorist operations in Chechnya between 1999 and 2006: liability of the state for homicides, disappearances, ill-treatment, illegal searches and destruction of property; failure in the duty to take measures to protect the right to life; failure to investigate the abuses properly, and absence of effective remedies; ill-treatment inflicted on the applicants' relatives owing to the attitude of the investigating authorities (violation of Arts. 2, 3, 5, 8 and 13, and of Art. 1 of Prot. No. 1). Lack of co-operation with the ECHR bodies, contrary to Article 38 ECHR, in several cases.

In its resolution the Committee of Ministers [...]:

noted with satisfaction the continuous improvement of the institutional, legal and regulatory framework for domestic investigations in order to bring it in line with the requirements of the Convention and the Russian authorities' efforts aimed at remedying the shortcomings of initial investigations and ensuring their effectiveness;

expressed however deep concern that notwithstanding the measures adopted, no decisive progress has been made in domestic investigations carried out in respect of the grave human rights' violations identified in the judgments in the vast majority of cases;

urged the Russian authorities to enhance their efforts so that independent and thorough investigations into all abuses found in the Court's judgments are conducted, in particular by ensuring that the investigating authorities use all means and powers at their disposal to the fullest extent possible and by guaranteeing effective and unconditional co-operation of all law-enforcement and military bodies in such investigations;

strongly urged the Russian authorities to take rapidly the necessary measures aimed at intensifying the search for disappeared persons;

encouraged the Russian authorities to continue their efforts to secure participation of victims in investigations and at increasing the effectiveness of the remedies available to them under the domestic legislation;

encouraged the Russian authorities to take all necessary measures to ensure that the statutes of limitation do not

negatively impact on the full implementation of the court's judgments.

Invited the authorities to keep the Committee of Ministers informed of the progress made in the domestic investigations in particular in individual cases identified by the Committe as well as in the implementation of the necessary general measures required by these judgments.

### Interim Resolution CM/ResDH(2011)293 Burdov No. 2 against the Russian Federation

**Application No. 33509/4, judgment of 15 January 2009, final on 4 May 2009**

Structural problem due to the failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities ordering to pay certain compensation and allowances (with subsequent indexation) for health damage sustained during emergency and rescue operations at the Chernobyl nuclear plant and damages for their delayed enforcement (violation of Art. 6§1 and of Art. 1 of Prot. No. 1, and of Art. 13).

In its resolution the Committee of Ministers […]:

Decided to close the examination of the issue relating to the introduction of an effective domestic remedy in case of non-enforcement or lengthy enforcement of domestic judicial decisions providing for the state's payment obligations;

Decided to pursue the examination of the other general measures within the context of the Timofeyev group of cases[18] and consequently to join the present case to this group.

18. This group of cases concerns non-enforcement or delayed enforcement of domestic judicial decisions and lack of an effective remedy in this respect.

## Selection of final resolutions (extracts)

*Once the Committee of Ministers has ascertained that the necessary measures have been taken by the respondent state, it closes the case by a resolution in which it takes note of the overall measures taken to comply with the judgment. Some examples of extracts from the resolutions adopted follow, in their chronological order.*

**Resolution CM/ResDH(2011)185 – Paykar Yev Haghtanak v. Armenia**

Application No. 21638/03, judgment of 20 December 2007, final on 2 June 2008

**Resolution CM/ResDH(2011)188 – Achleitner and other similar cases v. Austria**

Application No. 53911/00, judgment of 23 October 2003, final on 23 January 2004

**Resolution CM/ResDH(2011)189 – Oval and other cases v. Belgium**

Application No. 49794/99, judgment of 15 November 2002, final on 15 February 2003

**Resolution CM/ResDH(2011)190 – Stratégies et Communications and Dumoulin against Belgium and Garsoux and Massenet v. Belgium**

Application No. 37370/97, judgment of 15 July 2002, final on 15 October 2002, and
Application No. 27072/05, judgment of 13 May 2008, final on 13 August 2008

**Resolution CM/ResDH(2011)191 – Čonka v. Belgium**

Application No. 51564/99, judgment of 5 February 2002, final on 5 May 2002

**Resolution CM/ResDH(2011)193 – Hasan and Chaush and Supreme Holy Council of the Muslim Community v. Bulgaria**

Hasan and Chaush, application No. 30985/96, judgment of 26 October 2000, Grand Chamber

Supreme Holy Council, application No. 39023/97, judgment of 16 December 2004, final on 16 March 2005

**Resolution CM/ResDH(2011)202 – Juppala v. Finland**

Application No. 18620/03, judgment of 2 December 2008, final on 2 March 2009

**Resolution CM/ResDH(2011)206 – Natunen v. Finland**

Application No. 21022/04, judgment of 31 March 2009 – Final on 30 June 2009

**Resolution CM/ResDH(2011)210 – Siliadin v. France**

Application No. 73316/01, judgment of 26 July 2005, final on 26 October 2005

**Resolution CM/ResDH(2011)213 – Haase v. Germany**

Application No. 11057/02, judgment of 8 April 2004, final on 8 July 2004

**Resolution CM/ResDH(2011)216 – Mooren v. Germany**

Application No. 11364/03, judgment of 9 July 2009, Grand Chamber

**Resolution CM/ResDH(2011)217 – Azas and other similar cases v. Greece**

Application No.50824/99, judgment of 19 September 2002, final on 21 May 2003

**Resolution CM/ResDH(2011)218 – Ouranio Toxo and others v. Greece**

Application No. 74989/01, judgment of 20 October 2005, final on 20 January 2006

**Resolution CM/ResDH(2011)224 – Doran and other similar cases v. Ireland**

Application No. 50389/99, judgment of 31 July 2003, final on 31 October 2003

**Resolution CM/ResDH(2011)231 – Ramanauskas and Malininas v. Lithuania**

Applications No. 74420/01, judgment of 5 February 2008 – Grand Chamber

Applications No. 10071/04, judgment of 1 July 2008, final on 1 October 2008

**Resolution CM/ResDH(2011)232 – Micallef v. Malta**

Application No. 17056/06, Grand Chamber judgment of 15 October 2009

**Resolution CM/ResDH(2011) – TV Vest As and Rogaland Pensjonistparti v. Norway**

Application No. 21132/05, judgment of 11 December 2008, final on 11 March 2009

**Resolution CM/ResDH(2011)235 Hammern v. Norway**

Application No. 30287/96, judgment of 11 February 2003, final on 11 May 2003

**Resolution CM/ResDH(2011)237 – Folgerø and others v. Norway**

Application No. 15472/02, judgment of 29 June 2007, Grand Chamber

**Resolution CM/ResDH(2011)239 – Tabor and 6 other cases v. Poland**

Application No. 12825/02, judgment of 27 June 2006, final on 27 September 2006

**Resolution CM/ResDH(2011)250 – Dragotoniu and Militaru-Pidhorni v. Romania**

Applications Nos. 77193/01 and 77196/01, judgment of 24 May 2007, final on 24 August 2007

**Resolution CM/ResDH(2011)253 – Deak v. Romania**

Application No. 42790/02, judgment of 4 November 2008, final on 6 April 2009

**Resolution CM/ResDH(2011)254 – Iosif and others v. Romania**

Application No. 10443/03, judgment of 20 December 2007, final on 20 March 2008

**Resolution CM/ResDH(2011)261 – Vanessa Tierce v. San Marino**

Application No. 69700/01, judgment of 17 June 2003, final on 31 December 2003

**Resolution CM/ResDH(2011)266 – Iribarren Pinillos v. Spain**

Application No. 36777/03, judgment of 8 January 2009, final on 8 April 2009

**Resolution CM/ResDH(2011)269 – Ziegler v. Switzerland**

Application No. 33499/96, judgment of 21 February 2002, final on 21 May 2002

**Resolution CM/ResDH(2011)270 – Scavuzzo-Hager and others v. Switzerland**

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**Resolution CM/ResDH(2012)61 – Gsell v. Switzerland**

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**Resolution CM/ResDH(2012)62 – Paşaoğlu v. Turkey**

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**Resolution CM/ResDH(2012)65 – M.A.K and R.K v. United Kingdom**

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**Resolution CM/ResDH(2012)66 – A.D and O.D v. United Kingdom**

Application No. 28680/06, judgment of 16 March 2010, final on 16 June 2010

**Resolution CM/ResDH(2012)68 – Al-Saadoon and Mufdhi v. United Kingdom**

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***Internet: http://www.coe.int/execution/***

# Committee of Ministers

**The Council of Europe's decision-making body comprises the foreign ministers of all the member states, who are represented – outside the annual ministerial sessions – by their deputies in Strasbourg, the permanent representatives to the Council of Europe.**

**It is both a governmental body, where national approaches to problems facing European society can be discussed on an equal footing, and a collective forum, where Europe-wide responses to such challenges are formulated. In collaboration with the Parliamentary Assembly, it is the guardian of the Council's fundamental values, and monitors member states' compliance with their undertakings.**

## Committee of Ministers chairmanship transfers from Ukraine to the United Kingdom

On 7 November 2011, the Committee of Ministers chairmanship transferred from Ukraine to the United Kingdom. The meeting of the Ministers' Deputies reviewed the Ukrainian chairmanship and looked at United Kingdom priorities for the coming six months.

The overarching theme of the UK Chairmanship was the promotion and protection of human rights, with a particular focus on reform of the European Court of Human Rights and strengthening implementation of the European Convention on Human Rights. The United Kingdom will also support Secretary General Thorbjørn Jagland's programme of reform of the Council of Europe as an organisation. Priorities in thematic areas include strengthening the rule of law; internet governance, including freedom of expression on the internet; combating discrimination on the grounds of sexual orientation and gender identity; and streamlining the Council of Europe's activities in support of local and regional democracy.

### High Level Conference on the Future of the European Court of Human Rights

**Brighton, 18-20 April 2012**

The United Kingdom organised, within the framework of the Chairmanship of the Council of Europe's Committee of Ministers, a high level conference on the future of the European Court of Human Rights in Brighton on 18-20 April 2012.

The United Kingdom Chairmanship's work to reform the European Court of Human Rights brought to a conclusion the process begun under the Swiss Chairmanship at the Interlaken conference and taken forward by the Turkish Chairmanship at the Izmir conference. The excellent work of our predecessors culminated in the Brighton Declaration, agreed on 20 April. The United Kingdom's Attorney General also chaired a useful discussion on national implementation at the Brighton conference.

The Declaration, a step towards strengthening the Convention system, followed two months of challenging negotiation. In the Declaration, member states re-affirmed their commitment to the European Convention on Human Rights. And they expressed their shared commitment to the right of individual petition, as well as to the primary responsibility of the States Parties for the implementation of the Convention.

The Declaration contains a range of measures to secure the future of the Court and the Convention. It is important that these measures are implemented quickly and effectively. Those in-

volved in the process must continue to work together in a spirit of co-operation to ensure that the necessary amendments to the Convention are adopted by the end of 2013; and that the further consideration of important subjects called for in the Declaration is also carried out effectively.

The Declaration can be downloaded at the following address: www.coe.int/brighton.

## Texts adopted by the Committee of Ministers in the field of human rights

### Recommendation on the protection of human rights with regard to social networking services

**Adopted on 4 April 2012 at the 1139th meeting of the Ministers' Deputies**

In this Recommendation services, the Committee of Ministers' calls on states to work with operators to raise users´ awareness of their rights and the challenges to them, by using clear and understandable language. It also recommends helping users understand the default settings of their profiles - which should be privacy-friendly – and make informed choices about their online identity.

The Recommendation contains a number of actions to protect children and young people against harmful content and behaviour, such as the setting up of easily accessible mechanisms for reporting inappropriate or apparently illegal content or behaviour.

### Recommendation on the protection of human rights with regard to search engines

**Adopted on 4 April 2012 at the 1139th meeting of the Ministers' Deputies**

In this Recommendation, the Committee of Ministers invites states to engage with search engine providers to increase transparency in the way access to information is provided, in particular the criteria used to select, rank or remove search results.

The Committee calls for more transparency and respect for users' rights in the processing of personal data – for example of cookies, IP addresses and individual search histories.

### Recommendation on public service media governance

**Adopted on 15 February 2012 at the 1134th meeting of the Ministers' Deputies**

The Committee of Ministers urges member states to renew and adapt the governance framework for public service media to the modern communication environment, where the relationship with the public is based on transparency, openness and dialogue.

According to the Recommendation, some media still need to complete the transition from state broadcasters – with strong links to, and control by, government – to genuine public service media.

The Recommendation proposes guiding principles that public service media organisations should apply in order to update their system of governance: independence, accountability, effective management, responsiveness, responsibility, transparency and openness.

The Council of Europe supports public service broadcasting as an integral part of a vibrant media landscape in a democracy, alongside commercial and community media. In 2011, the Council of Europe signed a memorandum of understanding with the European Broadcasting Union, to strengthen cooperation between the two organisations.

### Recommendations on children's rights adopted by the Committee of Ministers

- Recommendation on the participation of children and young people under the age of 18 (adopted on 28 March 2012 at the 1138th meeting of the Ministers' Deputies)
- Recommendation on children's rights and social services friendly to children and families (Adopted on 16 November 2011 at the 1126th meeting of the Ministers' Deputies)

For more information on both these recommendations, see chapter "Children's Rights" page 134.

## Internet governance strategy

On 15 March 2012, the 47 Council of Europe member states adopted an Internet governance strategy to protect and promote human rights, the rule of law and democracy online.

The strategy, which is one of the priorities of the Council of Europe United Kingdom's Chairmanship, contains more than 40 lines of action structured around six areas (Internet's openness, the rights of users, data protection, cybercrime, democracy and culture, and children and young people).

It will be implemented over a period of four years, from 2012 to 2015, in close co-operation with partners from all sectors of society, including the private sector and civil society.

The text of the Internet governance strategy can be downloaded at the following address: www.coe.int/informationsociety.

## New strategy to implement fundamental standards to protect and promote children's rights

The Council of Europe adopted on 15 February 2012 a new strategy to implement fundamental standards to protect and promote children's rights. It will provide guidance, advice and support to its 47 member states on how best to bridge gaps between standards and practice.

The strategy will focus on four main objectives:

- promoting child-friendly services and systems (in the areas of justice, health and social services);
- eliminating all forms of violence against children (including sexual violence, trafficking, corporal punishment and violence in schools);
- guaranteeing the rights of children in vulnerable situations (such as those with disabilities, in detention, in alternative care, migrant or Roma children)
- promoting child participation.

In fulfilling these objectives, the Council of Europe will continue to act as the leading organisation in the field of children's rights.

For more information : www.coe.int/children

## Declarations by the Committee of Ministers and its Chairperson

### Declaration of the Committee of Ministers on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers

**Declaration of the Committee of Ministers adopted by the Committee of Ministers on 7 December 2011 at the 1129th meeting of the Ministers' Deputies**

1. Freedom of expression and the right to receive and impart information and its corollary, freedom of the media, are indispensable for genuine democracy and democratic processes. Through their scrutiny and in the exercise of their watchdog role, the media provide checks and balances to the exercise of authority. The right to freedom of expression and information as well as freedom of the media must be guaranteed in full respect of Article 10 of the European Convention on Human Rights (ETS No. 5, hereinafter "the Convention"). The right to freedom of assembly and association is equally essential for people's participation in the public debate and their exercise of democratic citizenship, and it must be guaranteed in full respect of Article 11 of the Convention. All Council of Europe member states have undertaken, in Article 1 of the Convention, to "secure to everyone within their jurisdiction the rights and freedoms" protected by the Convention (without any online/offline distinction).

2. People, notably civil society representatives, whistleblowers and human rights defenders, increasingly rely on social networks, blogging websites and other means of mass communication in aggregate to access and exchange information, publish content, interact, communicate and associate with each other. These platforms are becoming an integral part of the new media ecosystem. Although privately operated, they are a significant part of the public sphere through facilitating debate on issues of public interest; in some cases, they can fulfil, similar to traditional media, the role of a social "watchdog" and have demonstrated their usefulness in bringing positive real-life change.

3. In addition to opportunities, there are challenges to the effective exercise of freedom of expression and to the right to impart and receive

information in the new media ecosystem. Direct or indirect political influence or pressure on new media actors may lead to interference with the exercise of freedom of expression, access to information and transparency, not only at a national level but, given their global reach, also in a broader international context. Decisions concerning content can also impinge on the right to freedom of assembly and association.

4. Distributed denial-of-service attacks against websites of independent media, human rights defenders, dissidents, whistleblowers and other new media actors are also a matter of growing concern. These attacks represent an interference with freedom of expression and the right to impart and receive information and, in certain cases, with the right to freedom of association. Companies that provide web hosting services lack the incentive to continue hosting those websites if they fear that the latter will come under attack or if their content may be regarded as sensitive. Furthermore, the companies concerned are not immune to undue interference; their decisions sometimes stem from direct political pressure or from politically motivated economic compulsion, invoking justification on the basis of compliance with their terms of service.

5. These developments illustrate that free speech online is challenged in new ways and may fall victim to action taken by privately owned Internet platforms and online service providers. It is therefore necessary to affirm the role of these actors as facilitators of the exercise of the right to freedom of expression and the right to freedom of assembly and association.

6. Interference with content that is released into the public domain through these means or attempts to make entire websites inaccessible should be judged against international standards designed to secure the protection of freedom of expression and the right to impart and receive information, in particular the provisions of Article 10 of the Convention and the related case-law of the European Court of Human Rights. Furthermore, impediments to interactions of specific interest communities should be measured against international standards on the right to freedom of assembly and association, in particular the provisions of Article 11 of the Convention and the related case-law of the European Court of Human Rights.

7. The Committee of Ministers, therefore:

– alerts member states to the gravity of violations of Articles 10 and 11 of the European Convention on Human Rights which might result from politically motivated pressure exerted on privately operated Internet platforms and online service providers, and of other attacks against websites of independent media, human rights defenders, dissidents, whistleblowers and new media actors;
– underlines, in this context, the necessity to reinforce policies that uphold freedom of expression and the right to impart and receive information, as well as the right to freedom of assembly and association, having regard to the provisions of Articles 10 and 11 of the Convention and the related case law of the European Court of Human Rights;
– confirms its commitment to continue to work to address the challenges that these matters pose for the protection of freedom of expression and access to information.

## Declaration of the Committee of Ministers on the Rise of Anti-Gypsyism and Racist Violence against Roma in Europe

**Declaration of the Committee of Ministers adopted on 1 February 2012 at the 1132nd meeting of the Ministers' Deputies**

1. In many countries, Roma are subject to racist violence directed against their persons and property. These attacks have sometimes resulted in serious injuries and deaths. This violence is not a new phenomenon and has been prevalent in Europe for centuries. However, there has been a notable increase of serious incidents in a number of member states, including serious cases of racist violence, stigmatising anti-Roma rhetoric, and generalisations about criminal behaviour.

2. Such incidents have been publicly condemned by, *inter alia,* the Secretary General of the Council of Europe and his Special Representative for Roma issues, the Commissioner for Human Rights, the Parliamentary Assembly, the Congress of Local and Regional Authorities of the Council of Europe, the Council of Europe Group of Eminent Persons, the European Commission against Racism and Intolerance (ECRI), as well as various international governmental and non-governmental organisations.

3. The Committee of Ministers recalls the priorities agreed by member states in the Strasbourg Declaration on Roma, adopted at the high-level

meeting on 20 October 2010, which include ensuring the timely and effective investigation of racially motivated crime and strengthening efforts to combat hate speech and stigmatisation.

4. In its General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma, ECRI recalls that anti-Gypsyism is "a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination." As such, anti-Gypsyism is one the most powerful mechanisms of Roma exclusion.

5. The effectiveness of strategies, programmes or action plans aimed at improving the situation and the integration of the Roma at international, national or local level, can be significantly reinforced by resolute action to combat anti-Gypsyism and action to improve the trust between Roma and the wider community, where appropriate building on ECRI's guidelines. Such documents should make clear that attitudes among the non-Roma population are a crucial factor that needs to be addressed. Roma integration measures should include both measures targeted at the Roma population (in particular positive measures) and measures targeted at the non-Roma population, notably to combat anti-Gypsyism and discrimination.

6. Against this background, the Committee of Ministers of the Council of Europe:

i. expresses its deep concern about the rise of anti-Gypsyism, anti-Roma rhetoric and violent attacks against Roma which are incompatible with standards and values of the Council of Europe and constitute a major obstacle to successful social inclusion of Roma and full respect of their human rights;

ii. draws the attention of governments of member states to ECRI's General Policy Recommendation No. 13, in particular its paragraph 8 which contains useful guidelines on combating racist violence and crimes against Roma;

iii. calls on governments and public authorities at all levels and the media to refrain from using anti-Roma rhetoric, in particular during electoral campaigns, and to condemn vigorously, swiftly and in public, all acts of racist violence against Roma, including threats and intimidation, as well as hate speech directed against them;

iv. calls on governments and public authorities at all levels to be vigilant not to use Roma as easy targets and scapegoats, in particular in times of economic crisis, and to conduct in a speedy and effective manner the requisite investigations of all crimes committed against Roma and identify any racist motives for such acts, so that the perpetrators do not go unpunished and escalation of ethnic tensions is avoided;

v. welcomes the existing examples of swift reaction from state and local authorities to hate crime and anti-Roma incidents, including legal responses (e.g. amendments of national legislation to protect Roma from harassment and intimidation; prosecution and conviction by national courts of persons committing such crimes, including through the Internet and other media, preventing and condemning extremist organisations inciting or committing such crimes). It stresses the need for effective action to record racist crimes, support victims and encourage the latter to report such racist incidents;

vi. recognises the interdependence of inclusion and anti-discrimination; therefore, any strategy, programme or policy developed to improve the situation and integration of Roma should include, in addition to measures promoting the social and economic inclusion of Roma in areas such as education, health, employment and housing, measures combating discrimination and addressing anti-Gypsyism, in line with its Recommendation CM/Rec(2008)5 on Policies for Roma and/or Travellers in Europe. Such measures could include research on the phenomenon and awareness-raising activities among the non-Roma population, conducted in co-operation with Roma organisations, with a view to addressing stereotypes and prejudice towards Roma. In this respect, it underlines the role and responsibility of media and journalists. It also recalls that the Council of Europe *Dosta!* campaign is one of the tools at the disposal of member states and encourages them to use it;

vii. underlines the need for all member states to adopt specific and comprehensive anti-discrimination legislation in line with international and European standards; to set up anti-discrimination bodies equipped to promote equal treatment and to assist victims of discrimination; and to ensure that this legislation is effectively implemented.

## Declaration of the Committee of Ministers following the execution of Dimitry Konovalov and Vladislav Kovalev

**Declaration of the Committee of Ministers adopted on 22 March 2012 at the 1137bis meeting of the Ministers' Deputies**

The Committee of Ministers, which had firmly condemned the terrorist attack in the Minsk Metro on 11 April 2011, deplores that the Belarusian authorities despite the numerous calls for clemency from the international community, including the Committee of Ministers' own statement of 7 December 2011, executed Dimitry Konovalov and Vladislav Kovalev, following their sentencing to death.

The Committee of Ministers reiterates its position that justice cannot be achieved through the death of further human beings. In proceeding with these executions – a punishment which is irreversible and irreparable – the Belarusian authorities ignored one of the basic values of the Council of Europe, the respect for human life. Such actions run counter to our common objective to bring Belarus closer to the Council of Europe.

The Committee of Ministers strongly urges Belarus to establish a formal moratorium on executions as a first step towards abolition of the death penalty.

## Statement of the Committee of Ministers on the recent executions in Japan

**Statement of the Committee of Ministers adopted on 4 April 2012 at the 1139th meeting of the Ministers' Deputies**

The Committee of Ministers deplores the three executions which took place on 29 March 2012 in Japan, an observer State to the Council of Europe.

These executions go counter to the growing trend against the death penalty at the international level.

The Committee of Ministers reaffirms its unequivocal opposition to the death penalty in all circumstances. It remains determined to continue its efforts for the global abolition of the death penalty. It calls on the Japanese authorities to put an end to this practice.

## International Day for the Elimination of Racial Discrimination – Statement by the Chair of the Committee of Ministers of the Council of Europe

**21 March 2012**

"As member states of the Council of Europe we must challenge all acts of intolerance and discrimination, which run counter to our shared values of human rights, democracy and the rule of law," declared William Hague, Chair of the Committee of Ministers of the Council of Europe, on the occasion of the International Day for the Elimination of Racial Discrimination.

"We must challenge those who threaten these values and ensure that everyone can go about their lives free from discrimination, hostility and harassment.

The Council of Europe has an important role to play in supporting member states in fighting racism, discrimination and intolerance."

## Declaration of the Chairman of the Committee of Ministers of the Council of Europe on the Sejdic & Finci case

**25 April 2012**

The Chairman of the Committee of Ministers of the Council of Europe, and the United Kingdom Minister of Foreign Affairs, William Hague, published on 25 April 2012 the following statement:

"As member states of the Council of Europe, it is for us to ensure that Bosnia and Herzegovina gives proper effect to the 2009 judgment of the European Court of Human Rights in the case of *Sejdic-Finci v. Bosnia and Herzegovina*.

As required by the Court's judgment, Bosnia and Herzegovina must adjust its constitution so that no individual is barred from standing for political office on the basis of their national or ethnic origin.

I regret that the Joint Interim Commission of the BiH Parliament has not yet made sufficient progress towards full implementation of this judgment. As the European Council of the European Union made clear in March last year, until a credible effort is made to accomplish this, the European Union will be unable to bring into force its Stabilisation and Association Agreement with Bosnia and Herzegovina. I therefore hope to see significant and tangible progress towards full implementation by June, when the next Human Rights meeting of the Committee of Ministers will be held. I call on Bosnia and Herzegovina's political leaders to make a determined effort to bring their long-

standing discussion on this issue to an early conclusion, in line with the ECHR's judgment. I understand well that securing agreement on constitutional reform is no easy task in any country, and particularly not in Bosnia and Herzegovina. I also acknowledge that this particular problem arises from the Constitution put in place by the Dayton Peace Agreement. Nonetheless, Bosnia and Herzegovina is not the first state that has been required to change its constitution to meet European standards and I urge its leaders to act without further delay, not least to ensure that the country does not slip further behind its neighbours on the road to EU membership."

***Internet : http://www.coe.int/cm/***

# Parliamentary Assembly

**The national representatives who make up the Parliamentary Assembly of the Council of Europe come from the parliaments of the Organisation's 47 member states. They meet four times a year to discuss topical issues, and ask European governments to take initiatives and report back. These parliamentarians are there to represent the 800 million Europeans who elected them. They determine their own agenda, and the governments of European countries – which are represented at the Council of Europe by the Committee of Ministers – are obliged to respond. They are greater Europe's democratic conscience.**

## Human rights situation in member states

### Fresh impetus for the protection of women's rights

The Assembly called for renewed impetus to be given to the promotion, protection and effective implementation of women's rights worldwide, and for periodic evaluation of those rights.

The report prepared by Lydie Err (Luxembourg, SOC) points out that, all over the world, violence disproportionately affects women: one women in three has, at some point in her life, been beaten, coerced into sex, or abused in some other way. One woman in three can neither read nor write in a world where literacy is an essential key to empowerment. Only 19% of the members of the world's parliaments are female.

The resolution adopted urges political decision-makers to take account of the gender dimension in all policies and legislation and of gender budgeting methods. It expresses concern about a possible worsening of inequalities as a result of the differing impact of the economic and financial crisis on women and men, and it calls for appropriate remedial measures.

Governments should ensure balanced representation of women in political decision-making bodies and should consider bringing the principle of equality into the European Convention on Human Rights system, through the drafting of a new protocol.

The resolution calls on the Council of Europe member states to ensure that comprehensive reproductive health programmes receive adequate funding, and to lift limitations on access to reproductive health services both domestically and within development co-operation, within the framework of the law.

### The entry into force of the Convention on preventing violence against women must be speeded up

In a resolution adopted 26 January, PACE called on the member states which have not yet done so to sign the Istanbul Convention and rapidly proceed to ratification. This convention – which provides a comprehensive framework for preventing violence against women, protecting its victims and prosecuting the perpetrators – cannot come into force until it has been signed and ratified by a sufficient number of member states (minimum of ten, including eight member states). On the basis of the report by José Mendes Bota (Portugal, EPP/CD), the Assembly therefore asked member states to take a series of measures to promote the convention and facilitate its signature and ratification.

To increase the impact of the convention beyond the Council of Europe member states, PACE also encouraged UN Women and the IPU to promote it. "I welcome the prospect of co-

operation on a more formal footing between UN Women and the Council of Europe, which will increase the effectiveness of our work in the field of gender equality and in our joint fight against all forms of discrimination and violence against women," said Jean-Claude Mignon at the opening of the debate, which also featured a statement by Michelle Bachelet, United Nations Under-Secretary-General and Executive Director of UN Women.

Parliaments should also urge their governments to sign and ratify the convention and conduct activities to raise awareness amongst the general public, practitioners and NGOs.

PACE also welcomes the decision taken by the Committee on Equality and Non-Discrimination to appoint a general rapporteur on violence against women and believes that this would contribute to enhancing the visibility and relevance of the Assembly's work in this area.

## European parliamentarians "deeply concerned" at national moves to block EU accession to the European Convention on Human Rights

Representatives of the the Parliamentary Assembly of the 47-nation Council of Europe (PACE) and the European Parliament have urged national governments – notably the UK and France – not to stand in the way of the EU signing up to the European Convention on Human Rights.

On 25 January 2012, Kerstin Lundgren (Sweden, ALDE), PACE rapporteur on the impact of the Lisbon Treaty on the Council of Europe, and Barbara Lochbihler MEP, Chair of the European Parliament Sub-Committee on Human Rights, issued the following statement:

"EU accession to the European Convention on Human Rights will close a gaping hole in European human rights protection as, for the first time, the laws and actions of the EU itself will be subject to the same external scrutiny as those of 47 countries across Europe – including all of the EU member states.

The Lisbon Treaty has significantly increased the scope for EU action in areas which directly or indirectly affect human rights. With this increased responsibility, it is only right that there should also be increased accountability.

EU accession to the convention is also needed to fully ensure consistency in the work of the Strasbourg and Luxembourg courts. This is a vital first step towards creating a "common European space" for human rights, and has the full backing of both the European Parliament and the Parliamentary Assembly of the Council of Europe.

We are therefore deeply concerned that the accession process – which is a legal obligation for the EU under the Lisbon Treaty – is currently being sidetracked by political objections from the UK, and to a lesser extent France.

We cannot risk this process being derailed, as failure to fully incorporate the EU could serve to weaken the existing European system for human rights protection which has been put in place by the Council of Europe over the last 60 years and is envied worldwide.

Intense negotiations since June 2010 show that the complex technical and legal issues involved in this process can be resolved. What is needed now is clear and unequivocal political commitment on the part of all 27 EU member states."

## "Fighting discrimination against LGBT is at the heart of the our mission", PACE General Rapporteur says

"Fighting discrimination against LGBT people is at the heart of the Council of Europe's mission", Håkon Haugli (Norway, SOC), PACE General Rapporteur on the rights of LGBTs said when presenting the priorities of his mandate.

"LGBTs should enjoy all human rights, and not different or lesser rights as other people. In my capacity as General Rapporteur, I have set myself the objectives of pushing for the effective protection of fundamental rights and freedoms for LGBTs, giving more visibility to the need to tackle discrimination against them and raising awareness that this is a human rights issue, especially among legislators. I will focus my activities on freedom of expression, freedom of association and peaceful assembly, and the fight against hate crimes and hate speech", he added.

The Committee on Equality and Non-Discrimination held a hearing on the rights of LGBT people, with the participation of Maud de Boer Buquicchio, Deputy Secretary General of the Council of Europe, Evelyne Paradis, Executive Director of ILGA Europe, the International lesbian, gay, bisexual, trans and intersex association and Kate Jones, Deputy permanent

Representative of the United Kingdom to the Council of Europe.

The hearing highlighted worrying trends, such as the increase of bullism on the basis of sexual orientation in schools and the adoption by a number of local and regional authorities in some Council of Europe member states of legislation against "the promotion of homosexuality", which not only runs against freedom of expression but also risks creating a climate of stigmatisation and intolerance.

## States, not Strasbourg Court, are primarily responsible for protecting human rights in Europe, says PACE

**24 January 2012**

The European Court of Human Rights should be "subsidiary" to national authorities – governments, courts and parliaments – who must play the fundamental role in guaranteeing and protecting human rights across Europe, according to the Parliamentary Assembly.

In a resolution unanimously adopted on the eve of a major address to the Assembly by British Prime Minister David Cameron on reform of the Court, the Assembly said priority should be given to difficulties encountered in states which do not appropriately implement Convention standards.

Presenting the report, Klaas de Vries (Netherlands, SOC) pointed out that 70 per cent of pending applications before the Court came from only six countries: Italy, Poland, Romania, Russia, Turkey and Ukraine. Structural deficiencies in these countries were perpetuating the Court's backlog, he said, and not enough was being done to remedy these deficiencies.

The Assembly also pointed out that national parliaments should play a key role in stemming the flood of applications submerging the Court by, for instance, carefully examining whether draft laws are compatible with Convention requirements and by ensuring that states promptly and fully comply with the Court's judgments.

## UK's Cameron makes case for reform of the European Court of Human Rights

On 25 January 2012, British Prime Minister David Cameron told the Assembly that the 47 countries of the Council of Europe had a "once in a generation" chance to improve the cause of human rights, freedom and dignity. "For the sake of the 800 million people the Court serves, we need to reform it so that it is true to its original purpose," Mr Cameron told the Assembly. "Already 47 members are agreed on this, and great work has been done. Now we would like to use our Chairmanship to help progress that work. This is the right moment for reform – reforms that are practical, sensible and that enhance the reputation of the Court."


## Political commitment is needed to combat sexual violence against children

"In the field of action to combat sexual violence against children, preventive measures and investment in training for educational staff, health professionals and social workers are essential, so that the signs of violence can de detected at the earliest possible stage," said Thomas Hammarberg, Council of Europe Commissioner for Human Rights, speaking on 25 January 2012 at the 6th meeting of the network of contact parliamentarians for the Campaign to stop sexual violence against children. "Impunity is inconceivable and tougher legislation should be introduced in the member states; a real "political" commitment is needed to eliminate this threat, hence the importance of the campaign's parliamentary dimension," he added.

Eric Ruelle, judge and Chairperson of the Committee of the Parties to the Lanzarote Convention, stressed the major role played by the convention's monitoring machinery in its implementation by the States Parties, in the collection, analysis and exchange of information, and in the sharing of experience and good practices between states.

Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, presented the results and prospects of the Council of Europe's ONE in FIVE Campaign, noting an increased political commitment since the start of the campaign.

Jean-Claude Frécon, President of the Chamber of Local Authorities of the Congress of Local and Regional Authorities, spoke about the activities undertaken by the Congress as part of the ONE in FIVE Campaign.

## PACE post-election delegation urges Russia's political parties to embrace change

A post-election delegation of the Parliamentary Assembly ending a two-day visit to Moscow, has welcomed widespread indications – from across the political spectrum – of the need for political change in Russia, and called for this change to be substantial and sustainable. It should not be a survival mechanism, the delegation said.

The delegation, said that Russian voters, whatever their political views, were making increasingly clear their preference for elections that are conducted fairly, and called on the politicians to respond to this need as an urgent priority. Recent mass demonstrations throughout Russia had acted as a wake-up call, it pointed out.

The delegation also welcomed possibilities for greater dialogue between the authorities and civil society, as well as evidence of rudimentary political alliances, which it said were encouraging advances in Russia's political culture. It called on Russia's political players to rise to the challenge of serving their country and their people by vigorously debating their differing visions within a robust democratic framework.

In particular, the delegation noted the declared readiness of the ruling United Russia party to remedy at least some of the shortcomings that marred December's Duma elections. In a joint statement, international observers said these had been marked by a convergence of the state and the governing party, limited political competition and a lack of fairness. The delegation expects the authorities to translate these promises into action.

## Commissioner Hammarberg: "From rhetoric to enforcement of human rights standards"

"Europe must move with more determination from rhetoric to enforcement of human rights standards" stated the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, when presenting his last annual report of his mandate during the Parliamentary session in January 2012.

The report identifies fields in which stronger political action is required. One concern is the justice system which is dysfunctional in several member states. "Corruption, political interference and lack of resources erode the independence and credibility of the judiciary. Strengthening the rule of law is essential to rebuild public confidence in the justice system."

The Commissioner also regrets the increased pressure on the media, which hamper their independence and pluralism. Persons with disabilities remain largely excluded from key sectors of life, Roma people still live in abject misery and suffer alienation in many European countries and marginalisation and stigmatisation deeply impinge on the everyday life of lesbian, gay, bisexual and transgender (LGBT) persons in some countries.

The Commissioner observes that attitudes towards asylum-seekers and migrants have gradually become more negative and, despite some progress in awareness and legal protection, discrimination against women persists in employment, education and political participation. Finally, the Commissioner stresses that the living conditions of older persons are a major concern.

Commissioner Hammarberg's six-year mandate came to an end March 31. The newly elected Commissioner, Nils Muižnieks, took up his functions on April 1.

## Hungary: as part of investigation, parliamentarians request expert legal opinion on five more laws

The Monitoring Committee of the Parliamentary Assembly has requested an opinion from the Venice Commission, the Council's group of independent legal experts, on whether another five laws recently adopted in Hungary are in line with the Council's standards. This is in addition to an opinion on three laws which has already been requested by the Hungarian authorities.

The request comes as part of an ongoing investigation by the committee – launched in the spring of 2011 – into whether or not to open a "monitoring procedure" in respect of Hungary after 24 members of the Assembly raised "serious concern" about developments there in four areas related to human rights, the rule of law and the functioning of democratic institutions.

The new laws to be assessed are those on Freedom of Information, the Constitutional Court, the Prosecution, Nationalities and Family Protection. The Venice Commission is already preparing an opinion on Hungary's laws on the judiciary, freedom of religion and parliamentary elections, following a request from the Hungarian authorities.

Ten of the Council of Europe's 47 member states are currently subject to the Assembly's monitoring, which involves dialogue with the authorities of a member state over its obligations as a member state of the Organisation.

## Zero tolerance for so-called "honour crimes"

"Governments must apply zero tolerance to so-called 'honour crimes', which must be punished by exemplary sentences to show total rejection of this practice", said Jacqueline Thibault, President of the Foundation "Surgir" (Switzerland), speaking at a hearing organised by the PACE network of contact parliamentarians committed to combating violence against women, opened by José Mendes Bota (Portugal, EPP/CD). "Europe is likely to be increasingly confronted with this problem because of migratory movements", she added, while reviewing the situation in eight European countries, only four of which currently have national plans in operation.

Hannana Siddiqui, Policy and Research Officer at the NGO Southall Black Sisters (United Kingdom), described the situation in the United Kingdom, where, according to police estimates, twelve women and girls are victims of "honour crimes" every year. Rising religious fundamentalism and a growing tendency for minority communities to assert their distinctive identities have increased pressure on women belonging to those communities. Ms Siddiqui also outlined the strategies adopted by the public authorities to combat this threat.

Ms Liri Kopaçi-Di Michele, Head of Division in the Council of Europe's Justice and Human Dignity Directorate, discussed so-called "honour crimes" in the light of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). "The drafters of the Convention did not make these acts a separate criminal offence but agreed to prohibit all attempts to justify them on the basis of culture, custom, religion or tradition", she said.

## PACE calls on member states to ensure freedom of expression and information on the internet and online media

In a resolution adopted on 25 April 2012 PACE asked member states to "ensure respect for freedom of expression and information on the internet and online media by public as well as private entities". The Assembly considers that member states should also encourage intermediaries of media based on new information and communication technologies – such as Internet service or access providers and telecommunications or mobile phone companies – "to set up self-regulatory codes of conduct for the respect of their users' right to freedom of expression and information", while ensuring the jurisdiction of domestic courts in case of violations.

Following the conclusions of the rapporteur, Zaruhi Postanjyan (Armenia, EPP/CD), the adopted text spells out that, at the same time, these intermediaries must be held responsible for unlawful content, with particular attention being paid to child pornography and content which incites xenophobic and racist discrimination, hatred, violence or terrorism.

Referring to the wide concerns raised regarding the Anti-Counterfeiting Trade Agreement (ACTA) – in particular the possibility of obliging an online service provider to disclose infor-

mation allowing the identification of a subscriber whose account has allegedly been used to infringe copyright – the Assembly also invited member states to pursue public consultations about future domestic legislation resulting from the ACTA. Such legislation must in particular respect Articles 6, 8 and 10 of the European Convention on Human Rights and Article 1 of its first Protocol as well as the Convention on Cybercrime and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

## Situation of human rights in non-member states

### Belarus authorities are "deliberately turning their back on Europe and its values"

The Parliamentary Assembly expressed on 25 April 2012 its deep concern at the deteriorating situation of human rights and civil and political liberties in Belarus and condemned the increasingly repressive approach to any attempt to express dissent. "The authorities in Minsk are deliberately turning their back on Europe and the values it uphold", the Assembly said.

The adopted text, based on the report by Andres Herkel (Estonia, EPP/CD), condemns the continuous persecution of members of the opposition and the harassment of civil society activists, independent media and human rights defenders and expresses concern about the conditions of detention of political prisoners, "held incommunicado and running a serious risk of torture and other forms of ill-treatment". It deplores the sentencing of Ales Bialiatski to four and a half years of imprisonment for alleged tax evasion and considers this is "tantamount to judicial harassment".

As regards the death penalty, the Assembly expresses dismay at the execution of the death sentences against Aleh Hryshkautsou and Andrei Burdyka, and deplores the death sentences handed down against Dmitry Konovalov and Vladislav Kovalev, following an investigation and trial "marred by serious human rights abuses".

The Assembly gives full backing to the EU's targeted sanctions, which should be maintained and even strengthened, and invites all Council of Europe member states to align with them until the release and full rehabilitation of all political prisoners and the end of the crackdown on political opponents, civil society representatives and human rights defenders.

It also proposes to step up the Assembly's engagement with representatives of civil society, independent media and opposition forces as well as independent professional associations, and to increase support for their development.

The Assembly keeps on hold its activities involving high-level contacts with the authorities and maintaining the suspension of the special guest status of the Parliament of Belarus "until a moratorium on the execution of the death penalty has been decreed" and "until there is substantial, tangible and verifiable progress in terms of respect for the democratic values and principles upheld by the Council of Europe".

### Arab Spring: the need to go even further in the promotion of gender equality

In a resolution adopted on 24 April 2012, PACE invites countries in the southern Mediterranean that have recently moved towards democracy to introduce reforms "to enhance the status of women and eradicate all forms of discrimination against them", and to promote women's representation in elected public bodies. According to the Assembly, such countries should also bring legislation in the area of family and personal status law into line with international human rights standards, and introduce a legal framework to prevent and prosecute all forms of violence against women.

As proposed by the rapporteur, Fatiha Saïdi (Belgium, SOC), the PACE also invites the countries of the region "to consider the prospects for parliamentary dialogue offered by the status of Partner for Democracy", the Moroccan parliament having been the first to be granted this status in June 2011.

Lastly, the Assembly welcomes the initiatives taken by the Secretary General and a number of Council of Europe bodies to establish closer dialogue with the countries of the region, especially Morocco and Tunisia. It calls on the Committee of Ministers to pursue this course of action through political dialogue and country-specific action plans – drawn up in consultation with the authorities of the countries concerned – whilst ensuring that gender equality and the enhancement of the status of women are high priorities.

### PACE hearing: after the revolutions in the Arab world, what next for women's rights?

"We must all encourage women to continue and increase their participation in democratic movements: there can be no democracy without respect for women's rights," said the PACE President, speaking on 24 April 2012 at the opening of a hearing on women's contribution to the Arab Spring and the outlook for the status of women.

At this hearing, organised by PACE's Committee on Equality and Non-Discrimination and the Committee on Political Affairs and Democracy, women activists spoke about the role of women in the protest movements in Egypt, Libya, Syria and Yemen. These "agents of change", who participated in the political and social demonstrations and revolutions in their respective countries, described their struggle to secure the respect and promotion of women's rights, a year after the Arab Spring.

"We cannot contemplate political life without full political power sharing, from which women must on no account be excluded," said the Moroccan Minister of Solidarity, Women, the Family and Social Development, Bassima Hakkaoui, who was taking part in the discussion. "I hope that the rewards of the Arab Spring will be reaped by Tunisian women, as citizens who have the same rights as men, and as a force for generating new ideas," said Meherzia Labidi Maïza, First Vice-Speaker of the National Constituent Assembly of Tunisia.

The same day, parliamentarians held a plenary debate on "Equality between women and men: a condition for the success of the Arab Spring", based on a report prepared by Fatiha Saïdi (Belgium, SOC).

### Syria: PACE welcomes the emergence of a common position within the international community

On 26 April 2012, following an urgent debate on the situation in Syria, the Parliamentary Assembly firmly condemned the gross human rights violations committed by Syrian military and security forces. It also expressed regret at the continuing violations of the ceasefire implemented under Kofi Annan's peace plan and the increasing number of deaths. PACE equally condemned the human rights violations committed by some armed groups combating the regime.

At the same time the Assembly expressed satisfaction that a "common position is gradually emerging" within the international community with the unanimous adoption of two United Nations resolutions on 14 and 21 April 2012, authorising the deployment of unarmed UN military observers to Syria to report on the implementation of a full cessation of armed violence. PACE underlined that, for more than a year, the international community, which has a heavy responsibility, had failed to agree on action regarding Syria - with two draft UN resolutions having been vetoed by Russia and China in October 2011 and March 2012.

The parliamentarians also stressed that the implementation of Kofi Annan's peace plan and the total cessation of violence should ultimately guarantee democratic change in Syria, gradually creating conditions allowing for a "Syrian-led political process" and eventually for free and fair elections.

Moreover, in line with the conclusions of the rapporteur on this issue, Pietro Marcenaro (Italy, SOC), PACE called on the domestic opposition groups "to unite in order to be considered as a legitimate alternative offering all Syrian citizens, irrespective of their ethnic origin, culture or religion, the prospect of a democratic and pluralist Syria." It underlined that effective respect for human and minority rights is a prerequisite for uniting and strengthening the opposition.

## Election of Commissioner for Human Rights

On 24 January 2012 Nils Muižnieks (Latvia) was elected third Council of Europe Commissioner for Human Rights by the Parliamentary Assembly at its plenary session in Strasbourg.

Mr Muižnieks was elected for a non-renewable term of six years starting on 1 April 2012.

Mr Muižnieks obtained 120 of the votes cast in the first round, an absolute majority. Frans Timmermans (Netherlands) obtained 92 votes and Pierre-Yves Monette (Belgium) 27.

The Office of the Council of Europe Commissioner for Human Rights is an independent, non-judicial institution within the Council of Europe; its function is to foster greater awareness of human rights, support national human rights institutions, identify shortcomings in

law and practice concerning human rights and promote full enjoyment of human rights in all forty-seven member states of the Council of Europe.

The Commissioner makes regular visits to the member states to engage in dialogue with governments and civil society and draw up reports on issues falling within his mandate.

## Election of judges to the Court of human rights

### PACE elects Paul Lemmens judge of the European Court of Human Rights in respect of Belgium

On 24 April 2012, the Parliamentary Assembly elected Paul Lemmens as judge to the European Court of Human Rights in respect of Belgium for a term of office of 9 years starting on 12 September 2012.

Judges are elected by PACE from a list of three candidates nominated by each state which has ratified the European Convention on Human Rights.

***Internet: http://assembly.coe.int/***

# Commissioner for Human Rights

**The Commissioner for Human Rights is an independent and impartial non-judicial institution within the Council of Europe whose role is to promote awareness of and respect for human rights in the 47 member states of the Organisation. His activities focus on three major and closely related areas:**

**– system of country visits and dialogue with the authorities and civil society;**

**– thematic reporting and advising on human rights systematic implementation;**

**– awareness-raising activities.**

## Election of new Commissioner

**On 24 January 2012, the Parliamentary Assembly of the Council of Europe elected Nils Muižnieks as new Commissioner for Human Rights. He took up his function on 1 April 2012, succeeding Thomas Hammarberg (2006-2012) and Alvaro Gil-Robles (1999-2006).**

## Country monitoring

*The Commissioner carries out visits to all member states to monitor and evaluate the human rights situation. In the course of such visits, he meets with the highest representatives of government, parliament, and the judiciary, as well as civil society and national human rights structures. He also talks to ordinary people with human rights concerns, and visits places of human rights relevance, including prisons, psychiatric hospitals, centres for asylum seekers, schools, orphanages and settlements populated by vulnerable groups. Following each visit, a report or a letter may be addressed to the authorities of the country concerned containing an assessment of the human rights situation and recommendations on how to overcome possible shortcomings in law and practice. The Commissioner also has the right to intervene as a third party in the proceedings of the European Court of Human Rights, either by submitting written information or by taking part in its hearings.*

### Visits

**Ukraine, 19-26 November 2011**

The Commissioner visited **Ukraine**, in particular Kyiv and Simferopol, from 19 to 26 November 2011, with a view to assessing the situation of the administration of justice and the level of protection of human rights in the justice system. The discussions specifically focused on the ongoing reforms in the criminal justice system, the independence and effective functioning of the judiciary, detention on remand and the observance of the rights to a fair trial during judicial proceedings. Further issues discussed included the situation of national minorities, freedom of assembly (see also below, section "Reports and continuous dialogue").

**United Kingdom, 8-14 December 2011**

From 8 to 14 December 2011, the Commissioner was in the United Kingdom, in particular in London and Belfast, to discuss various human rights issues and participate in several public events. The visit focused mainly on the protection of the human rights of Roma and Travel-

lers, children, and migrants and asylum seekers. Other issues covered were the follow-up given by the United Kingdom authorities to the Commissioner's 2008 memoranda on asylum and immigration, juvenile justice and corporal punishment, and the interaction of the European Convention on Human Rights and the Court with the United Kingdom's domestic legal system.

**Republic of Moldova, 17 January 2012**

On 17 January 2012, the Commissioner carried out his first visit to the Transnistrian region of the Republic of Moldova. The purpose was to discuss pressing issues affecting the protection of the rights of the people living in the region with the de facto authorities, including the new leader Mr Yevgeny Shevchuk, representatives of human rights structures and of the civil society organisations operating there.

The Commissioner was informed by his interlocutors in Tiraspol about several important measures they intend to implement with regard to the functioning of the local court system, the police and the penitentiary institutions. These measures will include, *inter alia*, granting in the course of 2012 of an amnesty to prisoners serving sentences for less severe crimes; introducing lighter punishment for crimes which pose no threat to the life or health of the victims; a wider use of alternatives to imprisonment; and a more resolute fight against corruption.

The de facto officials underlined the need to improve the conditions in prisons and requested international assistance to prevent the epidemics of tuberculosis and HIV from spreading among the prison population. They also pledged their commitment to reviewing and changing the rules and regulations governing the media landscape, with an ultimate goal of establishing a public broadcasting service in the region.

The Commissioner highlighted the importance of developing a genuine dialogue with the non-governmental organisations, stressing the positive role they play in protecting and promoting the rights of the most vulnerable groups in the society. He encouraged his interlocutors to improve the framework regulating the work of the local public associations.

**Iceland 8-9 February 2012**

During his visit to Iceland, on 8-9 February 2012, Thomas Hammarberg recommended that Iceland adopt comprehensive equal treatment legislation and set up an effective and independent national equality body to promote its implementation. He also noted that violence against women remains an enduring problem in Iceland. For the Commissioner, the police, the prosecution service and the courts all have a central role to play in enforcing the current legislation against gender-based violence and bringing perpetrators to justice. After visiting the women's shelter and the centre for victims of sexual violence in Reykjavik, the Commissioner noted the steady progress achieved in providing support services to victims of violence. He further recommended focused measures to prevent poverty among vulnerable groups and welcomed the establishment of the "Welfare watch", a monitoring process with broad participation set up to protect the interests of categories such as persons with disabilities, single-parent families, older persons and immigrants.

**Andorra 16-17 February 2012**

The Commissioner visited Andorra on 16-17 February 2012. He recommended that the authorities continue to give priority to extending assistance to victims of domestic violence and to allow longer stays in the shelter. He also called for an explicit prohibition of corporal punishment of children.

Some of the officials met by the Commissioner stressed the need to conduct an evaluation to ensure the proper implementation and effectiveness of social assistance programmes. As concerns monitoring of human rights standards by independent national bodies, the Commissioner considered it necessary to reinforce the national system in order to ensure that the country has a national mechanism for the prevention of torture.

**Switzerland 20-23 February 2012**

The Commissioner visited Switzerland from 20 to 23 February 2012, where he underlined that certain popular initiatives, such as those concerning the ban of minarets and the automatic expulsion of migrants having committed a certain crime would target and stigmatise migrant communities. They also raise serious issues of compatibility with human rights standards, notably those of the European Convention on Human Rights. At the same time, the positive efforts undertaken or envisaged in the field of migrants' integration, such as the establishment of the Advisory Council of Foreigners in the city of Zurich, demonstrate a clear determination to tackle these challenges.

The Commissioner noted that there is a clear need for a new, comprehensive anti-discrimination law, coupled with an independent and effective mechanism of supervision, redress and prevention of human rights violations. The Commissioner stressed that the naturalisation of persons of immigrant origin is of crucial importance for their full integration and requires the authorities' particular attention.

**Liechtenstein**
**24 February 2012**

The Commissioner visited Liechtenstein on 24 February 2012. He recommended the establishment of an Ombudsman office with a broad mandate which would address the rights of children, women, persons with disabilities, and the elderly, as well as refugees and other foreigners. The Commissioner also recommended the introduction of comprehensive anti-discrimination legislation and to allocate adequate resources to the Ombudsman for Children and Young People so as to enable the institution to fulfil its important functions.

Following Liechtenstein's accession to EU regulations on asylum, including the Dublin II Regulation, the number of asylum applications to be assessed on their merits will be reduced to a minimum. However, it must be borne in mind that the possibility to send back asylum seekers to the country of first entry within the EU or Schengen area cannot be automatic as there is a need to ensure that no one will be returned to a country where they may be at risk of persecution or torture. In addition, having regard to the declining numbers of asylum cases, the Commissioner called upon the authorities to consider accepting more refugees who are recognised by UNHCR as having protection needs.

**Luxembourg**
**11-12 March**

On 11-12 March, Commissioner Hammarberg visited Luxembourg, recommending improving the material conditions of the reception facilities for asylum seekers, including in relation to the respect of the privacy of families and access to psychological support, especially for vulnerable persons.

As for juvenile justice, the Commissioner noted that the ongoing reform of the penitentiary administration introduces the principle that no minor is to be put in an adult prison unless they are over 16 and have committed a serious offence. In this connection, the Commissioner recalled that the UN Convention on the Rights of the Child provides that the detention of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.

## Reports and continuous dialogue

*The reports mentioned in this section are all available on the Commissioner's website, together with comments from the relevant authorities.*

**Slovakia**

On 20 December 2011, Thomas Hammarberg published a report on the protection of the human rights of Roma and persons with disabilities following his visit to Slovakia from 26 to 27 September 2011. On the same day, he also published a letter to the Deputy Prime Minister for Human Rights and National Minorities of Slovakia, Mr Rudolf Chmel, on the protection of the human rights of national minorities.

In his report, the Commissioner called for further efforts to prevent the spreading of prejudice against Roma, including through self-regulation within political parties and the media, and to ensure better implementation of the criminal provisions establishing racial motivation as an aggravating circumstance in respect of all crimes. The Slovak authorities are also called upon to ensure that the anti-discrimination framework in place includes an independent and adequately resourced equality body mandated notably to assist the implementation of antidiscrimination legislation. The establishment of an independent body entrusted with the investigation of, *inter alia*, alleged cases of racial discrimination and racially-motivated misconduct by the police is another measure that should be considered by the Slovak authorities.

In his letter to Deputy Prime Minister Chmel, the Commissioner called for further efforts to achieve a fair balance between the promotion of the state language and the protection and promotion of national minority languages, in line with the recommendations of the Venice Commission and the Advisory Committee on the Framework Convention on the Protection of National Minorities. In particular, the Commissioner recommended that the Slovak authorities consider abolishing the punitive provisions in all legislation regulating the use of languages.

**Turkey**

On 10 January 2012, Thomas Hammarberg published a report following his visit to Turkey from 10-14 October 2011, which covers the impact of the administration of justice on the protection of human rights in Turkey. The Commissioner underlined that despite serious reforms undertaken and the progress achieved by Turkey in tackling some of the major obstacles in recent years, its law and practice is still not in line with the case-law of the European Court of Human Rights.

He welcomed important progress made in combating impunity for serious human rights violations, in particular in connection with torture and ill-treatment, but considered that problems remain. The need to obtain prior administrative authorisation for investigating cases not relating to torture, short prescription periods, and lack of statistics concerning the fight against impunity are the main factors of concern.

The Commissioner encouraged the establishment of an effective police complaints mechanism and the mandatory recording of all interrogations. He further expressed his concern about the way certain offences relating to terrorism and membership of a criminal organisation are defined in Turkish legislation, leaving room for a very wide interpretation by courts. He also encouraged the authorities to review the need for assize courts with special powers, owing to the severe restrictions to the rights of defence before these courts, by derogation from normal procedural guarantees.

**Republic of Moldova**

On 11 January 2012, Commissioner Hammarberg published a letter addressed to the Prime Minister of the Republic of Moldova, Mr Vladimir Filat, following up on discussions the Commissioner had during his visit to the country on 19-22 October 2011.

The Commissioner stressed that addressing the remaining human rights consequences of the violent events of April 2009 is a pressing need for Republic of Moldova. He noted with concern the unjustifiable leniency from which those responsible for acts of violence against protesters have benefitted.

He spotlighted the issue of discrimination in the Republic of Moldova. As regards persons with disabilities, he recommended improving their access to education, employment, communication and information. He urged a thorough overhaul of the current legal framework with a view to establishing on a firm basis the presumption of legal capacity for adult persons with mental health or intellectual disabilities. At the same time, he encouraged further steps towards the deinstitutionalisation of children with disabilities.

As concerns the Roma community, he encouraged the authorities to increase human rights awareness among the population, professionals and state officials in order to eradicate all forms of discrimination.

**Hungary**

On 12 January 2012, the Commissioner published a letter addressed to Mr János Martonyi, the Hungarian Minister for Foreign Affairs about the new Law on the Right to Freedom of Conscience and Religion, which deprives a great number of religious denominations of their church status.

The letter followed previous concerns expressed by the Commissioner about the adoption of a set of laws, introduced by the Hungarian authorities between June and December 2010, affecting media freedom and pluralism. The Commissioner made reference to an Opinion he published in February 2011 drawing attention to the wide range of problematic provisions in Hungary's media legislation, including content prescriptions; the imposition of sanctions on the media; the establishment of a politically unbalanced regulatory machinery with disproportionate powers and lack of full judicial supervision; threats to the independence of public-service broadcast media; and erosion of the protection of journalists' sources. Despite amendments to the laws adopted in March 2011, the Commissioner noted with regret that these concerns remain.

Commissioner Hammarberg called upon the Hungarian authorities to take resolute measures to uphold the independence of the judiciary, as well as to fully respect the freedoms of expression and religion, which are among the pillars of a democratic society.

**Bulgaria**

On 22 February 2012, Thomas Hammarberg published his observations addressed to the government of Bulgaria. He stressed that, in spite of some progress, the plans to phase out the system of institutional care of children should be pursued as a matter of priority. He also affirmed that the discussion on a draft Child Protection Act is an opportunity to ensure a rights-based policy for the protection of all children in the country.

The Commissioner underlined that the new 2012-2020 National Strategy for Roma Integra-

tion should be given full implementation, including by achieving short-term goals, such as the improvement of housing and health conditions of many Roma living in settlements without a regular water supply, electricity, gas and heating. He reiterated his recommendation to establish an independent police complaints mechanism for the impartial investigation of alleged police misconduct.

Finally, as regards the outstanding issues relating to the past practice of forced assimilation of Bulgarian citizens of Turkish origin, the Commissioner welcomed the declaration adopted by the Bulgarian Parliament on 11 January 2012 condemning the assimilation process against the Muslim minority. The Commissioner recommended that a just solution for the victims of this practice be found.

**Ukraine**

On 23 February 2012, Commissioner Hammarberg published a report and a letter following his visit to Ukraine from 16-19 November 2011. The report covers administration of justice and protection of human rights in the justice system in Ukraine. The Commissioner recommended simplifying the overall organisation of the judiciary and clarifying fully the respective roles and jurisdiction of different levels in the court system, in particular at the cassation level. Concrete measures are also needed to increase the transparency of the judicial system and make it more open to public scrutiny.

The Commissioner called upon the Ukrainian authorities to establish fair procedures and criteria related to the appointment and dismissal of judges, as well as the application of disciplinary measures. He also recommended changes in the composition of the High Council of Justice, which presently does not correspond to international standards, and the provision of quality on-going training for judges, including on the case-law of the European Court of Human Rights.

The Commissioner underlined that it is important to ensure that the new Criminal Procedure Code will re-balance the system by providing for increased defence rights. Vigorous efforts are needed to ensure that fair trial as well as the principle of equality of arms are respected. He further stressed that the ongoing reform of the criminal justice system represents a unique opportunity to address a number of structural problems, including excessively lengthy judicial proceedings, non-enforcement of domestic judicial rulings and the abusive use of remand in custody.

Finally, the Commissioner recommended stronger efforts to end impunity for ill-treatment by law enforcement officials. The authorities should take urgent measures to prevent cases of ill-treatment by police officers and ensure their accountability for any criminal acts.

Together with the report, the Commissioner also made public a letter addressed to the Prime Minister of the Autonomous Republic of Crimea, Anatolii Mohyliov, in which he recommended concrete measures to better protect the rights of ethnic groups living in the Republic, in particular as concerns the preservation of language diversity and equal opportunities in accessing employment, decent housing and social protection.

**United Kingdom**

On 29 February 2012, the Commissioner published a letter addressed to the Rt Hon Eric Pickles, Secretary of State for Communities and Local Government in the United Kingdom in which he regretted the dismantling of the system which required local authorities to carry out assessments concerning the accommodation needs of Gypsies and Travellers and to present a strategy to meet these needs.

Commissioner Hammarberg called on the Secretary of State to deploy all efforts to raise awareness among local authorities about the UK obligation to respect the right to adequate housing for all, including Gypsies and Travellers, and to adopt concerted and sustainable solutions, respectful of cultural diversity.

On 15 March 2012, Thomas Hammarberg released a letter addressed to the UK Lord Chancellor and Secretary of State for Justice, Kenneth Clarke, concerning the system of juvenile justice in the United Kingdom. He stressed that alternatives to imprisonment should be sought in order to improve the response to juvenile crime and violence. He referred to some promising developments mentioned in the Lord Chancellor's reply to his letter and encouraged the authorities to continue their efforts to improve this situation. He further recommended that the Government considerably increase the age of criminal responsibility to bring it to a minimum of 15 years, which is the average level in the rest of Europe.

**The Balkans**

During his meetings with Presidents of countries in the Balkans on 19-22 March 2012 on the occasion of the launching of an issue paper on post-war justice in the region, the Commissioner expressed his support to the Croatian President's efforts to end impunity in the Balkans. He welcomed President Josipović's request to the Constitutional Court of Croatia for a review of the constitutionality of the law adopted by the Croatian Parliament in October 2011 proclaiming null and void all legal acts relating to the 1991-1995 war in which Croatian nationals are suspected, indicted or sentenced for war crimes.

**Switzerland**

On 28 March 2012, Thomas Hammarberg released a letter addressed to Federal Councillor Didier Burkhalter, Head of the Swiss Federal Department of Foreign Affairs, expressing concerns about the disturbing political campaigns with aggressive, insulting slogans against foreigners. He stressed that to fully meet European and international human rights standards, Switzerland needs to strengthen its anti-discrimination legislation. A comprehensive law against discrimination would help overcome the persisting deficiencies, not only when it comes to the rights of non-nationals but also for the protection and promotion of gender equality, the rights of disabled persons and of lesbian, gay, bisexual and transgender persons.

He welcomed the intention by the authorities to shorten the unduly lengthy asylum procedures, and introduce a comprehensive system of legal aid in order to safeguard fairness in asylum procedures. At the same time, the authorities were urged to make sure that no asylum seekers are transferred to Greece by virtue of the "Dublin Regulation", in compliance with the European Court of Human Rights' case-law that has made clear that asylum seeking and protection in Greece is currently impossible.

Lastly, Commissioner Hammarberg underlined the need for independent and effective mechanisms of supervision, redress and prevention of human rights violations at all levels of the federal system.

## Thematic reporting and advising on human rights systematic implementation

*The Commissioner conducts thematic work on subjects central to the protection of human rights in Europe. He also provides advice and information on the prevention of human rights violations and releases opinions, issue papers and reports.*

**Media freedom publication**

On 8 December 2011, the media freedom publication "Human rights and a changing media landscape" was launched in London, in the premises of the NGO Article 19. The publication is the outcome of the six Media Freedom Lectures, which were held during 2011. In six chapters, eight international experts have contributed their personal assessments of trends and problems concerning one of the six topics and its relation to human rights: ethical journalism, access to official documents, and protection of journalists from violence, public service media, social media and media pluralism. In his foreword the Commissioner gives an overview of the situation regarding media freedom in Europe today.

**Last annual report**

On 26 January 2012, during the PACE winter session, Commissioner Hammarberg presented the last annual report of his mandate. He stressed that Europe must move with more determination from rhetoric to enforcement of human rights standards and identified fields in which stronger political action is required, with a particular focus on the justice system which is dysfunctional in several member states.

**Issue Paper**

On 20 February 2012, Commissioner Hammarberg published an Issue Paper ("Who Gets to Decide?") on the right to legal capacity for persons with intellectual and psychosocial disabilities. It emphasises that legal capacity is the precondition to taking control over one's life as it enables us to make decisions in key areas such as our health, finance, voting and where and with whom we live. The Commissioner's Recommendations include: the ratification by member states of the UNCRPD and its Optional Protocol; a review of legislation in force on legal capacity; the ending of "voluntary" placements of persons in closed wards and social care homes against the person's will but with the consent of guardians or legal representatives; and the active involvement of persons with intellectual and psychosocial disabilities and the organisations representing them in the process of reforming legislation on

legal capacity and developing supported decision-making alternatives.

**Report on Human Rights of Roma and Travellers in Europe**

The Commissioner published on 27 February 2012 a report on "Human rights of Roma and Travellers in Europe", which was presented in Brussels. It is the first comprehensive overview of the human rights situation of Roma and Travellers in all 47 member states of the Council of Europe. It focuses on specific themes, such as anti-Gypsyism; racially motivated violence; conduct of law enforcement and judicial authorities; forced sterilisations, removal of children from the care of their biological parents; economic and social rights; statelessness, and freedom of movement. The report also highlights the importance of increasing the participation of Roma and Travellers in public life and decision-making processes.

**Right of people with disabilities**

On 13 March 2012, the Commissioner published another Issue Paper on the right of people with disabilities to live independently and be included in the community. This paper describes the challenges faced by Council of Europe member states in complying with this right.

**Post-war justice and durable peace in the former Yugoslavia**

On 19 March 2012, Commissioner Hammarberg launched in Sarajevo an issue paper on post-war justice and durable peace in the former Yugoslavia. This paper focuses on four major challenges and components of post-war justice in the region: the elimination of impunity; the provision of adequate and effective reparation to all war victims; the need to establish and recognise the truth concerning the gross human rights violations and serious violations of international humanitarian law that occurred; and the need for institutional reforms to prevent any repetition of past events. The paper concludes with a number of recommendations addressed primarily to the states in the region concerned. A thematic webpage was published on this issue on 16 February 2012.

**High Level Conference**

In his speech given on 19 April 2012, at the High Level Conference on the Future of the European Court of Human Rights, in Brighton (United Kingdom), Commissioner Muižnieks affirmed that he intends to contribute to a better protection of human rights at national level by supporting the implementation of the European Convention standards by member states. He stressed that the Convention system is essential to many individuals who feel that their rights have not been protected; he further added that he will address the systematic failure to implement the Convention, particularly the shortcomings within national judicial systems. In this endeavour, the Commissioner said that he will engage not only with governments, but also with parliaments, judiciaries, national human rights structures and civil society organisations.

## Awareness-raising activities

*Extensive work with the media continued, in particular through interviews and opinion editorial.*

On 14 November 2011, during the Forum for Human Rights in Stockholm – MR-dagarna – the Swedish version of the collection of the Commissioner's Viewpoints "Retoriken och verkligheten" (published by Atlas förlag) was launched.

The Turkish-language version of the collection of Viewpoints, "Human rights in Europe: no grounds for complacency" (Avrupa'da İnsan Haklari) was launched in Istanbul, during the Commissioner's visit to Turkey, from 18 to 19 January 2012. Presenting the book, he referred to the main human rights challenges currently facing Europe, some of which also constitute important challenges in Turkey.

Commissioner Hammarberg also published several human rights comments on topical issues, such as:

- Only genuine justice can ensure durable peace in the Balkans (3 November 2011)
- Ethical journalism: self-regulation protects the independence of media (8 November 2011)
- The right to leave one's country should be applied without discrimination (22 November 2011)
- Politically-motivated murders are not effectively investigated – this feeds a culture of impunity (29 November 2011)

- Public service media needed to strengthen pluralism (6 December 2011)
- Discriminatory policies towards elderly people must stop (19 January 2012)
- The right to conscientious objection to military service should be guaranteed in all parts of Europe (2 February 2012)
- Persons with intellectual and psycho-social disabilities must not be deprived of their individual rights (20 February 2012)
- Persons with disabilities have a right to be included in the community – and others must respect this principle (13 March 2012)
- Government leaders distort justice when they interfere in individual court cases (20 March 2012).

***Internet: http://www.coe.int/commissioner/***

# Venice Commission

**The European Commission for Democracy through Law, better known as the Venice Commission, is the Council of Europe's advisory body on constitutional matters. Established in 1990, the Commission has played a leading role in the adoption of constitutions that conform to the standards of Europe's constitutional heritage.**
**It contributes to the dissemination of the European constitutional heritage, based on the continent's fundamental legal values while continuing to provide "constitutional first-aid" to individual states. The Venice Commission also plays a unique and unrivalled role in crisis management and conflict prevention through constitution building and advice.**

## Freedom of association

A conference was organised, on 17-18 April in Baku, Azerbaijan, in order to present to the civil society an opinion adopted, in 2011, by the Venice Commission on the compatibility with Human Rights standards of the legislation of Azerbaijan on Non-Governmental Organisations.

The opinion considered that the 2009 amended version of the Law on NGOs and the 2011 Decree had added further complications to an already complicated and lengthy procedure with regard to registration of NGOs. Moreover, the requirement for international NGOs to create branches and representatives and have them registered was in itself problematic. As far as the liability and dissolutions of NGOs were concerned, the Law on NGOs posed problems of compatibility with Article 11 of the ECHR. The Venice Commission also recalled that the way in which the national legislation enshrines freedom of association and its practical application by the authorities reveals the state of the democracy of the country concerned.

These conclusions coincided with the Recommendations adopted by the INGO Conference, co-organiser of the Conference.

## Freedom of assembly

*At its last plenary session (16-17 March 2012), the Venice Commission adopted two opinions related to freedom of assembly.*

**Opinion on the Federal Law of the Russian Federation on meetings, rallies, marches and pickets.**

At its March Plenary session (16-17 March 2012), the Venice Commission adopted two opinions related to freedom of assembly.

One opinion concerned the Federal Law of the Russian Federation on meetings, rallies, marches and pickets.

The law under consideration, despite certain positive features, presented a major shortcoming in relation to the regime of notification: while in principle it did not require demonstrations to be "authorised", it *de facto* enabled the authorities to do so. The problem stemmed, in the absence of recognition of the essential principles of presumption in favour of holding assemblies, proportionality and non-discrimination, from the power of the executive authorities to alter the format of a public event even when there were no compelling reasons to do so, coupled with the obligation for the organisers to accept such changes lest the demonstration would not be legal and would thus be dispersed. The law further contained excessive blanket prohibitions and did

not allow for spontaneous assemblies, simultaneous assemblies or counter-demonstrations.

**Opinion on the law on mass events in the Republic of Belarus**

The other opinion concerned the Law on mass events in the Republic of Belarus.

It was a joint opinion by the Venice Commission and the OSCE/ODHIR on the compatibility with universal Human Rights standards of this text.

This opinion, had been prepared in the context of three previous opinions of the Venice Commission, which found in all cases the Republic of Belarus in breach of its legally binding obligations to respect and protect the fundamental civil and political rights of freedom of association and expression.

The Law on Mass Events is characterised by a detailed over-regulation of the procedural aspects of holding assemblies, a complicated procedure of compliance with a rigid and difficult authorisation procedure, while at the same time leaving administrative authorities with a very wide discretion on how to apply the Law. This procedure does not reflect the positive obligation of the state to ensure and facilitate the exercise of freedom of peaceful assembly and freedom of expression. The Law also fails to envisage adequate mechanisms and procedures to ensure that these freedoms were practically enjoyed and not subject to undue bureaucratic regulation. Such over-regulation was likely to restrict excessively the exercise of the freedom of assembly and of freedom of speech.

In order to bring the Law into compliance with international standards, the opinion listed twelve key recommendations which should be followed.

## Freedom of conscience and religion

**Opinion on Act CCVI of 2011 on Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary**

At its 90th Plenary session ( 16-17 March 2012), the Venice Commission adopted an opinion on Act CCVI of 2011 on Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary.

The opinion recalled that states benefit from a large margin of appreciation with regard to the relationship between the church and the state and with regard to the choice of their policies and regulation in this field.

The Act constitutes a liberal and generous framework for the freedom of religion. However, although few in number, some important issues remained problematic and fell short of international standards.

The Act set out a range of requirements that were excessive and based on arbitrary criteria with regard to the recognition of a church. In particular, the requirement related to the national and international duration of a religious community and the recognition procedure, based on a political decision, should be reviewed.

The Act had led to the deregistration process of hundreds of previously lawfully recognised churches, that could hardly be considered in line with international standards. Finally, the Act introduced, to some extent, an unequal and even discriminatory treatment of religious beliefs and communities, depending on whether they were recognised or not.

***Internet: http://venice.coe.int/***

# European Social Charter

**The European Social Charter sets out rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by the States Parties. This legal instrument was revised in 1996 and the revised European Social Charter, which came into force in 1999, is gradually replacing the initial 1961 treaty.**

## Signatures and ratifications

On 6 January 2012, "the former Yugoslav Republic of Macedonia" ratified the Revised Social Charter.

On 4 April 2012, the Czech Republic ratified the Additional Protocol to the Social Charter providing for a System of Collective Complaints.

To date 43 member states have ratified the Charter: 32 are bound by the Revised Charter and 11 by the 1961 Charter.

15 states have accepted the procedure of collective complaints.

The remaining four states which have not yet ratified either instrument are: Liechtenstein, Monaco, San Marino and Switzerland.

All 47 Council of Europe member states have signed the Charter: 45 states have signed the Revised Charter and only 2 have signed the 1961 Charter (Liechtenstein and Switzerland).

Four ratifications are still necessary for the entry into force of the 1991 Amending Protocol: Denmark, Germany, Luxembourg and the United Kingdom.

## About the Charter

### The rights guaranteed

The European Social Charter guarantees rights in a variety of areas, such as housing, health, education, employment, legal and social protection, movement of persons, and non-discrimination.

### National reports

The States Parties submit a yearly report indicating how they implement the Charter in law and in practice.

On the basis of these reports, the European Committee of Social Rights – comprising fifteen members elected by the Council of Europe's Committee of Ministers – decides, in "conclusions", whether or not the states have complied with their obligations. If a state is found not to have complied, and if it takes no action on a decision of non-conformity, the Committee of Ministers adopts a recommendation asking it to change the situation.

### Collective Complaints

Under a protocol opened for signature in 1995 and which came into force in 1998, complaints of violations of the charter may be lodged with the European Committee of Social Rights by certain organisations. The Committee's decision is forwarded to the parties concerned and to the Committee of Ministers, which adopts a resolution in which it may recommend that the state concerned takes specific measures to bring the situation into line with the charter.

## Conclusions of the European Committee of Social Rights

In December 2011, Conclusions 2011 (for the States having ratified the Revised Social Charter) and Conclusions XIX-4 (for the states bound by the 1961 Charter) were adopted by the Committee. They are related to the application by all Parties to the Charter of the accepted

provisions of the 4th Thematic Group "Children, families, migrants":

- right of children and young persons to protection (Article 7),
- right to maternity protection (Article 8), - right of the family to social, legal and economic protection (Article 16),
- right of children and young persons to social, legal and economic protection (Article 17),
- right of migrant workers and their families to protection and assistance (Article 19),
- right of workers with family responsibilities to equal opportunity and treatment (Article 27)
- right to housing (Article 31).

These Conclusions were made public in January 2012: http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex_en.asp

In January 2012, the Committee also began the examination of national reports relating to the accepted provisions of the 1st thematiq Group "Employment, training and equal opportunities":

- right to work (Article 1);
- right to vocational guidance (Article 9),
- right to vocational training (Article 10);
- right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15);
- right to engage in a gainful occupation in the territory of other Parties (Article 18);
- right to equal opportunities between women and men (Article 20);
- right to protection in cases of termination of employment (Article 24);
- right of workers to the protection of their claims in the event of the insolvency of their employer (Article 25).

## Activity Report 2011

In May 2012 the Committee published its Activity Report 2011 summarizing all its achievements, not only on the reporting procedure and the collective complaints, but also on the events organised on the occasion of the 50th anniversary of the Charter which raised the awareness of national and regional authorities, international bodies, civil society and the general public on the value of this legal instrument. This activity report also presents the stocktaking of the 50 years of the Social Charter.

It exists:

- in an electronic version: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ActivityReport2011_en.pdf
- and on paper.

## Governmental Committee

In the framework of the Council of Europe reform process, the new name of the Governmental Committee is:

"Governmental Committee of the European Social Charter and the European Code of Social Security".

This Committee held its 125th meeting in March 2012 and adopted its new Rules of procedure. It then began the examination of Conclusions 2011 and XIX-4, as well as the supervision of the application of the European Code of Social Security; it discussed and approved the draft resolutions on the application of the Code and its additional Protocol for the period 1 July 2010 to 30 June 2011.

Following the proposal by the Governmental Committee, on 15 February, at the 1134th Session of the Ministers' Deputies, the Committee of Ministers adopted:

- a Resolution on the implementation of the European Social Charter (revised) (Conclusions 2010, provisions related to "Labour rights"): CM/ResChS(2012)2
- a Resolution on the implementation of the 1961 Social Charter (Conclusions XIX-3 (2010), provisions related to "Labour rights"): CM/ResChS(2012)1

## Collective complaints: latest developments

### Decisions on the merits

Two decisions on the merits became public:

*European Trade Union Confederation (ETUC)/Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/ Confédération des Syndicats chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium* (No. 59/2009)

The complainant organisations alleged that the situation in Belgium is not in conformity with the rights laid down in Article 6§4 (right to strike) of the Social Charter. They claimed that judicial intervention in social conflicts in Belgium, in particular concerning restrictions imposed on the activity of strike pickets, are in violation of this provision.

The Committee concluded by 8 votes against 4 that the restrictions on the right to strike constitute a violation of Article 6§4 on the ground that they do not fall within the scope of Article G, as they are neither prescribed by law nor in keeping with what is necessary to pursue one of the aims set out in Article G of the Revised Social Charter. The decision became public on 8 February 2011.

*European Council of Police Trade Unions (CESP) v. Portugal* (No. 60/2010)

The complainant organisation claimed that the method for calculating remuneration for overtime work performed by criminal investigation officers in the Portuguese Criminal Police Force, which is contained in Regulation No. 18/2002 of 5 April 2002, infringes Article 4§2 of the Revised Charter, because the assessment of remuneration for overtime work is based on a rate which is below the normal hourly rate for police officers, and with a per diem limit. The CESP also contended that in Portugal police officers do not enjoy, in practice, the right to bargain collectively (Articles 6 §§1 and 2 of the Charter) and the right to take part in the determination and improvement of the working conditions and working environment (Article 22 of the Charter).

The Committee concluded by 13 votes against 1, that there was a violation of Article 4§2 (right to increased rate of remuneration for overtime work) of the Revised Charter on the grounds that police officers on active prevention duties (*prevenção activa*) and shift duties (*serviço de piquete*) do not receive increased remuneration for overtime. The Committee also concluded unanimously that there was no violation of Article 6 §§ 1 and 2 nor of Article 22 of the Charter.

## Decisions on admissibility

Twelve complants were declared admissible:

*Defence for children International (DCI) v. Belgium* (No. 69/2011)

The complainant organisation alleges that foreign children living accompanied or not, either as illegal residents or asylum seekers in Belgium, are currently excluded from social assistance in breach of Articles 7§10 (special protection against physical and moral dangers), 11 (right to health), 13 (right to social and medical assistance), 16 (right to appropriate social, legal and economic protection for the family), 17 (right of children and young persons to appropriate social, legal and economic protection) and 30 (right to protection against poverty and social exclusion) alone or read in conjunction with Article E (non-discrimination) of the Revised Social Charter).

*Association of Care Giving Relatives and Friends v. Finland* (No. 70/2011)

The complainant organisation alleges that the Finnish system of financial support for family and friend caregivers is not equal, as it varies according to their place of residence in Finland. According to this organisation, the situation is not in conformity with Article 23 (right of elderly persons to social protection) of the Revised Social Charter.

*Association of Care Giving Relatives and Friends v. Finland* (No. 71/2011)

The complainant organisation alleges that by failing to lay down rules with regard to the cost of caring for the elderly in municipal nursing homes, Finland is in breach of provisions of Articles 13 (right to social and medical assistance), 14 (right to benefit from social welfare services), 16 (right to appropriate social, legal and economic protection for the family) and 23 (right of elderly persons to social protection) of the Revised Social Charter.

*International Federation for Human Rights (FIDH) v. Greece* (No. 72/2011)

This complaint concerns the effects of massive environmental pollution on the health of persons living near the Asopos river and in proximity to the industrial zone of Inofyta, located 50 km north of Athens. The complainant organisation alleges that the state has not taken adequate measures to eliminate or reduce these dangerous effects and to ensure the right to health protection, in violation of Article 11 (right to health) of the 1961 Charter.

*Syndicat de Défense des Fonctionnaires* v. *France* (No. 73/2011)

This complaint concerns the situation of so-called "redeployed" civil servants, employed by France Télécom and La Poste, who have remained at the grades of the former Post and Telecommunications service. The complainant trade union alleges failure to acknowledge discrimination, breach of the right to information, denial of the right to career development and of the right to social security for this category of employee within the above-mentioned companies, in violation of Articles 2 (the right to just conditions of work), 12 (the right to social security), 20 (right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex) and E (non discrimination) of the Revised Social Charter.

*Fellesforbundet for Sjøfolk (FFFS) v. Norway* (No. 74/2011)

This complaint concerns the compulsory retirement of seamen in Norway. The complainant trade union considers that the upper age limit of 62 years in the Norwegian Seamen's Act in reality implies an unjustified work ban and is thus a discriminatory withdrawal of seamen's rights to work as seamen, in breach of Articles 1 §§ 1 and 2 (right to work) and 24 (Right to protection in case of dismissal), read alone or in conjunction with Article E (non-discrimination) of the Revised Social Charter.

*International Federation of Human Rights (FIDH) v. Belgium* (No. 75/2011)

This complaint concerns the situation of highly dependent disabled adults in need of reception facilities and accommodation, and their relatives. The complainant organisation alleges that Belgium has not taken adequate measures to comply with Articles 13 (right to social and medical assistance), 14 (right to benefit from social welfare services), 15 (the right of persons with disabilities), 16 (right to appropriate social, legal and economic protection for the family), taken alone or in combination with Article E (non discrimination) of the Revised Social Charter.

*– Federation of employed pensioners of Greece (IKA –ETAM) v. Greece* (No. 76/2012)
*– Panhellenic Federation of Public Service Pensioners v. Greece* (No. 77/2012)
*– Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece* (No. 78/2012)
*– Panhellenic Federation of pensioners of the public electricity corporation (POS-DEI) v.Greece* (No. 79/2012)
*– Pensioner's Union of the Agricultural Bank of Greece (ATE) v. Greece* (No. 80/2012)

The five complaints mentioned above, lodged against Greece, concern the same matter: they are related to recent legislation passed in Greece (Law No. 3845 of 6 May 2010, Law No. 3847 of 11 May 2010, Law No. 3863 of 15 July 2010, Law No. 3865 of 21 July 2010, Law No.3896 of 1 July 2011 and Law No. 4024 of 27 October 2011) imposing a reduction in pension schemes, both in the private and public sectors. Each complainant trade union alleges that these laws were adopted in violation of Articles 12§3 (right to social security) and 31§1 (right to housing) of the 1961 Charter.

## Registration of complaints

Two complaints were recently registered:

*Action européenne des handicapés (AEH) v. France* (No. 81/2012)

This complaint concerns the problems regarding access of autistic children and adolescents to education and access of young adults with autism to vocational training. The complainant organisation alleges that France does not comply with its obligations under Articles 10 (right to vocational training), 15 (right of persons with disabilities to independence, social integration and participation in the life of the community), taken alone or in combination with Article E (non discrimination) of the Revised Social Charter.

*Comité européen d'action spécialisée pour l'Enfant et la Famille dans leur milieu de vie (EUROCEF) v. France* (No. 82/2012)

This complaint concerns the suspension of family allowances in cases of truancy, in application of the laws of 28 September 2010 and 24March 2011. The complainant organisation alleges that France does not comply with its obligations under Articles 16 (right to appropriate social, legal and economic protection for the family) and 30 (right to protection against poverty and social exclusion), taken alone or in combination with Article E (non discrimination) of the Revised Social Charter.

For more information on complaints:
http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.pdf

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## Internal publication

The last issue (No.7) of the electronic Newsletter on the Social Charter was published in March 2012: http://www.coe.int/t/dghl/monitoring/socialcharter/Newsletter/NewsletterNo7Feb2012_en.

***Internet: http://www.coe.int/socialcharter/***

# Convention for the Prevention of Torture

**Article 3 of the European Convention on Human Rights provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". This article inspired the drafting of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Co-operation with national authorities is at the heart of the Convention, given that its aim is to protect persons deprived of their liberty rather than to condemn states for abuses.**

**The European Committee for the Prevention of Torture (CPT) was set up under the Convention and its task is to examine the treatment of persons deprived of their liberty. For this purpose, it is entitled to visit any place where such persons are held by a public authority. Apart from periodic visits, the Committee also organises visits which it considers necessary (ad hoc visits). The number of ad hoc visits is constantly increasing and now exceeds that of periodic visits.**

## Periodic visits

### Andorra

**Visit from 28 November to 1 December 2011**

The CPT's delegation examined the measures taken by the Andorran authorities in response to the recommendations made following its previous visit (in 2004); in particular, attention was paid to the safeguards afforded to persons detained by the police following recent legislative reforms and to the conditions of detention in the new prison establishment of La Comella (as well as the conditions of hospitalisation of prisoners at the Hospital of Nostra Senyora de Meritxell). It also examined the treatment of persons suffering from mental health problems.

During the visit, the CPT's delegation held discussions with Marc Vila, Minister for Justice and Interior, and Cristina Rodriguez, Minister for Health and Welfare, as well as with senior officials from these Ministries. It also met Alfons Alberca, General Prosecutor (Fiscal General) and Josep Rodriguez Gutierrez, Ombudsman (Raonador del Ciutadà).

### Azerbaijan

**Visit from 5 to 15 December 2011**

The CPT's delegation assessed progress made since previous visits and the extent to which the Committee's recommendations have been implemented, in particular as regards police custody, imprisonment – including inmates sentenced to life imprisonment – and legal safeguards for patients in psychiatric institutions. Further, it visited for the first time a psychoneurological boarding home.

In the course of the visit, the delegation met Fikrat Mammadov, Minister of Justice, Madat Guliyev, Deputy Minister of Justice and Director of the Penitentiary Services, and Oruj Zalov, Deputy Minister of Internal Affairs, as well as other senior officials from the Ministries of Internal Affairs, Justice, Health, and Labour and Social Protection, and from the Prosecutor General's Office. In addition, the delegation met Elmira Suleymanova, Human Rights Commissioner (Ombudsman). Meetings were also held with representatives of the ICRC and OSCE as well as with members of non-

governmental organisations active in areas of interest to the CPT.

At the end of the visit, the delegation presented its preliminary observations to the Azerbaijani authorities.

### Slovenia

**Visit from 31 January to 6 February 2012**

During the visit, the CPT's delegation assessed progress made since previous visits and in particular the extent to which the Committee's recommendations have been implemented in the areas of police custody, imprisonment and involuntary placement in psychiatric establishments.

In the course of the visit, the delegation held consultations with Mr Aleš Zalar, Minister of Justice and Acting Minister of the Interior. It also met senior officials from the Ministries of the Interior, Justice, Health, Labour, Family and Social Affairs, Defence and Foreign Affairs.

The delegation had discussions with Ms Zdenka Čebašek – Travnik, Ombudsman, together with other representatives of the national preventive mechanism established under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Meetings were also held with members of non-governmental organisations active in areas of concern to the CPT.

At the end of the visit, the delegation presented its preliminary observations to the Slovenian authorities, in the presence of representatives of the national preventive mechanism.

### Portugal

**Visit from 7 to 17 February 2012**

During the visit, the CPT's delegation reviewed the treatment of persons detained by various police services (Judicial Police, Public Security Police and Republican National Guard). Particular attention was given to the application in practice of safeguards against ill-treatment. The delegation also visited a number of prisons, focusing on various categories of prisoners, notably those in disciplinary segregation and in high security units as well as juveniles and those held on remand. In addition, the delegation examined the treatment and legal safeguards afforded to patients in several psychiatric institutions. It also visited a social care home for children.

In the course of the visit, the delegation held consultations with Fernando Santo, State Secretary of the Ministry of Justice, Juvenal Peneda, State Secretary of the Ministry of Interior, Leal da Costa, State Secretary of the Ministry of Health, Marco António Costa, Secretary of State for Solidarity and Social Security, and Rui Sá Gomes, Head of the Portuguese Prison Service, as well as with other senior officials from the relevant Ministries. Discussions were also held with Mário Manuel Varges Gomes, Inspector-General of Internal Administration, and Manuel Eduardo Matos Santa, Inspector-General of Justice Services. The delegation also met Alfredo José de Sousa, Ombudsman, and representatives of non-governmental organisations active in areas of concern to the CPT.

At the end of the visit, the delegation presented its preliminary observations to the Portuguese authorities.

## Ad hoc visits

### "The former Yugoslav Republic of Macedonia"

**Visit from 21 to 24 November 2011**

The main objective of the visit was to examine the current treatment and conditions of detention of persons held in Idrizovo Prison, having regard to the recommendations made by the CPT in the report on its September/October 2010 periodic visit. The delegation also carried out targeted follow-up visits to Skopje Remand Prison and the remand section of Tetovo Prison; particular attention was paid to the conditions of detention of juveniles held on remand. A short visit was also undertaken to the "Tetovo" Educational-Correctional Institution, which is currently located in Veles.

In the course of the visit, the CPT's delegation met Blerim Bexheti, the Minister of Justice, Lidija Gavriloska, the Director of the Directorate for the Execution of Sanctions, and other officials from relevant Ministries. It also held

talks with the Sector for Internal Control and Professional Standards of the Ministry of Interior. In addition, it had meetings with the Ombudsman, Ixhet Memeti, and representatives of the OSCE.

At the end of the visit the delegation presented its preliminary observations to the authorities.

### Ukraine

**Visit from 29 November to 6 December 2011**

Visiting police and pre-trial establishments from 29 November to 6 December 2011, the CPT delegation received numerous allegations from detained persons (including women and juveniles) that they had been subjected to physical ill-treatment at the time of arrest or during subsequent questioning by police officers. In a number of cases, the ill-treatment alleged was of such a severity that it could be considered to amount to torture.

The CPT delegation examined the health care being provided to certain persons held at the Kyiv SIZO at the time of the visit, including Valeriy Ivashenko, Yuriy Lutsenko and Yulia Tymoshenko. The delegation has in particular expressed concern about the considerable delays observed in arranging specialised medical examinations outside the SIZO. The possible need for additional interventions to be explored in a hospital setting has also been flagged by the delegation.

### Armenia

**Visit from 5 to 7 December 2011**

The purpose of the visit was to review progress made in the light of the recommendations contained in the report on the CPT's visit to Armenia in 2010, in particular as regards the treatment of prisoners sentenced to life imprisonment. The CPT's delegation visited Yerevan-Kentron Prison and carried out a targeted visit to the unit for lifers and the disciplinary unit of Nubarashen Prison.

The delegation held consultations with Emil Babayan, Deputy Minister of Justice, Nicolay Arustamyan, Advisor to the Minister of Justice, and Rafael Hovannisyan, Acting Head of the Criminal Executive Department, as well as with other senior officials from the Ministry of Justice.

At the end of the visit, the delegation presented its preliminary observations to the Armenian authorities.

### Belgium

**Visit from 23 to 27 April 2012**

The main purpose of the visit was to review the current situation in the Belgian prison system, in particular the conditions of detention in establishments for prisoners awaiting trial and issues connected to strikes by prison staff and other industrial action resulting in a reduced work rate within prisons. The CPT's delegation visited Forest Prison for the first time. The delegation also carried out a short follow-up visit to Andenne Prison and examined Wing B of St. Gilles Prison, which is due to be opened shortly.

The delegation held consultations with Jan Poels and Cédric Visart de Bocarmé, respectively Head of the Private Office of the Minister of Justice and of the Minister of the Interior, Hans Meurisse, Director General of the Prison Administration and Laurent Vrijdaghs, Administrator General of the Buildings Agency, as well as many senior officials of the ministries concerned. The delegation also held a lengthy discussion with Magda de Galan, Mayor of Forest.

At the end of the visit, the delegation presented its preliminary observations to the Belgian authorities.

## Reports to governments following visits

### Norway

**Report on the visit to Norway (May 2011)**

During the visit, the CPT followed up a number of issues examined during previous visits, including the fundamental safeguards offered to persons deprived of their liberty by the police and the conditions of detention of immigration detainees. In this connection, the Com-

mittee carried out a follow-up visit to Trandum Aliens Holding Centre.

As regards prisons, particular attention was paid to the situation of persons subject to preventive detention (forvaring) and to juvenile prisoners. For the first time in Norway, the CPT visited a prison for women (Bredtveit Prison). In addition, a visit was carried out to the Dikemark Regional Department of Forensic and High-Security Psychiatry.

## Greece

**Report on the visit to Greece (January 2011)**

The 2011 ad hoc visit was carried out to assess the concrete steps taken by the Greek authorities to implement long-standing recommendations made by the CPT, in particular those contained in the reports on the Committee's visits of September 2005, February 2007, September 2008 and September 2009.

In the course of the visit, the CPT's delegation reviewed the treatment and conditions of detention of migrants held in aliens detention centres and in police and border guard stations, particularly in the Attica and Evros regions. The delegation also examined in depth the situation in several prison establishments, including the provision of health care and the regime offered to inmates.

In the light of the findings made during the visit, the CPT issued a public statement on 15 March 2011 as regards the treatment and conditions of detention of irregular migrants and in respect of the state of the prison system. The report published today provides greater detail on the findings during the 2011 ad hoc visit in relation to these two issues, and puts forward a series of recommendations aimed at improving the situation. The treatment of criminal suspects detained by the police is also addressed.

In their detailed response to the CPT's visit report, the Greek authorities demonstrate their willingness to co-operate with the Committee in order to improve the treatment of persons deprived of their liberty in Greece. The response provides information on the measures being taken to address the concerns raised by the Committee, notwithstanding the very difficult economic situation faced by the country.

## The republic of Moldova

**Report on the visit to The Republic of Moldova (June 2011)**

In its report, the CPT notes that a significant proportion of detained persons interviewed by its delegation complained of police ill-treatment during the months preceding the visit. Consequently, the Committee recommends that the Moldovan authorities continue to implement anti-torture measures with determination. The Committee also recommends reinforcing the mechanisms for the investigation of alleged ill-treatment.

The CPT makes a generally positive assessment of the conditions of detention at the temporary placement centre for foreign nationals in Chișinău, but recommends that the Moldovan authorities resolutely pursue the nationwide scheme to renovate police temporary detention facilities.

As regards prisons, in the light of allegations received by its delegation, the CPT recommends that the Moldovan authorities exercise greater vigilance vis-à-vis the behaviour of staff at Penitentiary establishments No. 11 in Bălți and No. 17 in Rezina towards prisoners who have been segregated for their own safety. Alleged beatings of inmates by other prisoners belonging to an informal hierarchy within the prison population were another subject of concern, and the Committee recommends that efforts to counter inter-prisoner violence and intimidation be stepped up. As for conditions of detention, the CPT notes with satisfaction that, in the light of the delegation's preliminary observations at the end of the visit, an action plan was immediately drawn up to combat overcrowding and improve material conditions in prisons.

In the fields of psychiatry and social care, the delegation found no evidence of ill-treatment of patients by staff. On the contrary, the patients interviewed spoke positively of the staff at the establishments visited. The report contains recommendations aimed at improving living conditions in Orhei psychiatric hospital and in the secure ward of Chișinău psychiatric hospital. At Orhei Psychoneurological Home for boys, the living conditions were satisfactory. That said, the CPT stresses that, as a rule, children should be accommodated separately from adults.

## "The former Yugoslav Republic of Macedonia"

**Report on the visit to "The former Yugoslav Republic of Macedonia"**

The CPT's report states that a significant number of persons alleged ill-treatment by police officers and recommends national authorities to continue to take action to combat ill-treatment by police, including an effective investigation into every allegation .

In response, the national authorities provide information on the investigations into the cases raised by the Committee and on action to promote respect for human rights by the police.

The report also states that fundamental change is required to address challenges facing the prison system, and is particularly critical of the lack of a professional management approach , low staffing ratios and an absence of accountability and clear rules. At Idrizovo Prison, the country's largest establishment, a number of credible allegations of ill-treatment of prisoners by staff were received and inter-prisoner violence remained a significant problem. Many inmates were being held in deplorable living conditions, crammed together in a dilapidated, unsafe and unhygienic environment and most prisoners were offered no activities and locked in their units for up to 23 hours a day.

In the remand sections of Skopje and Tetovo Prisons, inmates were offered no organised activities of any sort and less than one hour of daily outdoor exercise, if any. The report also details the overcrowding and poor material conditions in which remand prisoners were kept. The CPT is particularly critical of the treatment of juveniles held on remand and recommends that action be taken to offer them educational and recreational activities and to ensure that they are never held in a situation of de facto solitary confinement.

The national authorities state that measures are being taken to improve the conditions of detention in the prisons, particularly at Idrizovo Prison, with the support of a Council of Europe Development Bank loan. The response also provides information on steps taken to combat ill-treatment by prison officers and, more specifically, to improve security at Idrizovo Prison. A new Rulebook has also been adopted aimed at offering all prisoners on remand a range of activities as well as the legal requirement of two hours of daily outdoor exercise.

As regards the three psychiatric hospitals visited, the CPT's report refers to consistent allegations of ill-treatment of patients by staff, as well as of inter-patient violence, in particular at Demir Hisar Psychiatric Hospital. Recommendations are made on measures to put an end to this situation, including through a policy of zero-tolerance, improved staffing levels and professionalism and putting in place an independent system for complaints and inspections. Recommendations also include calls for the authorities to improve living conditions in the hospitals visited.

National authorities respond that protocols are being adopted to ensure proper conduct by medical staff towards patients and ongoing training for orderlies and nurses. Information is also provided on measures to improve living conditions.

At the Demir Kapija Special Institution for mentally disabled persons, the CPT observed relaxed, positive relations between staff and residents. However, concerns were raised that the health-care needs of residents were not being adequately met. The national authorities responded that the quality of care to residents has improved following the recruitment of additional staff.

Both documents have been made public at the request of the national authorities.

## Germany

**Report on the most recent visit to Germany (November/December 2010)**

The CPT heard no allegations of recent ill-treatment during custody in police establishments. However, a few allegations were received from detained persons (including juveniles) that they had been subjected to excessive use of force by police officers at the time of apprehension (in particular, punches and kicks). As to the continued use of four-point Fixierung (the physical fixing to a bed or mattress) of agitated and/or violent detained persons in police establishments, the Committee has recommended that the authorities put an end to this practice. In their response, the German authorities state that the practice of Fixierung in a police context has been abolished in many of the Länder, but continues to be applied in some Länder in rare, exceptional cases.

One of the objectives of the visit was to examine in detail the conditions of detention in units for immigration detainees in prisons. In this connection, the CPT was particularly

concerned about the situation found at Munich-Stadelheim Prison, where immigration detainees were subjected to severe restrictions regarding visits and access to the telephone. In their response, the German authorities state that immigration detainees in Munich-Stadelheim Prison have now been granted more frequent access to the telephone and at least one visit of one hour per week. They further informed the Committee that renovation work has been carried out in the unit for male immigration detainees.

The CPT received several allegations of inter-prisoner violence (beatings, threats and extortion), mainly from juveniles at Cologne, Herford and Leipzig Prisons. The Committee noted that efforts were being made to counter this phenomenon and has invited the authorities to remain vigilant in this regard. The Committee also criticised the fact that prisoners, including juveniles, were occasionally subjected to means of physical restraint (Fixierung) for prolonged periods, and has reiterated the safeguards that should surround any application of Fixierung in the context of prisons. The Committee has also stressed that the aim should be to abandon the resort to Fixierung in non-medical settings.

Particular attention was paid to the situation of persons subject to preventive detention (Sicherungsverwahrung) at Burg, Freiburg and Schwäbisch Gmünd Prisons. The visits took place at a time when the entire system of preventive detention in Germany was undergoing a major reform, in the light of recent judgments of the European Court of Human Rights. The CPT found that the differentiation between preventive detention and prison sentences (Abstandsgebot) was not always effectively implemented and that there was a shortage of psychological care and therapeutic activities. However, the Committee has welcomed the concrete measures being taken to improve the situation, notably at Freiburg Prison; namely, the transfer of persons in preventive detention to a new building with a less carceral infrastructure, the significant increase of staff as well as newly developed special "motivation programmes" and therapeutic activities.

At the Rheine Forensic Psychiatric Clinic, the CPT gained a generally favourable impression of the living conditions and treatment provided to patients.

The CPT report also notes that surgical castration is applied in a few German Länder in rare, isolated cases. The Committee makes clear its fundamental objections to the use of surgical castration as a means of treatment of sexual offenders and has recommended that it be discontinued. In their response, the German authorities state that they are currently reviewing the matter.

Both documents have been made public at the request of the German Government.

## Bulgaria

**Report on visit to Bulgaria in October 2010**

The majority of the persons interviewed by the CPT's delegation said that they had been correctly treated by the police. Nevertheless, a considerable number of persons alleged physical ill-treatment at the time of their apprehension. In a few isolated cases, the delegation heard allegations of the infliction of electric shocks.

The CPT welcomed an instruction aiming at setting up special police rooms equipped for making full electronic recording of questioning. However, the Committee also recommended that police officers are trained in acceptable interviewing techniques and that a code of conduct of police interviews be drawn up. It also reiterated the need to improve the screening for injuries and their reporting to the competent authorities.

The Committee's delegation received no allegations of recent physical ill-treatment of detained foreign nationals by police staff working at the Special Home for Temporary Placement of Foreign Nationals in Busmantsi, which is an improvement compared to the situation in 2008. However, there were no signs of improvement as to material conditions.

The CPT noted an increase in the number of persons held in investigation detention facilities since 2008. Further, the positive trend observed in 2006 and 2008 of a reduction in the proportion of persons held in them for long periods of time had not been maintained.

At Plovdiv Prison, the CPT's delegation received a number of allegations of physical ill-treatment of prisoners by staff, and at Varna Prison some allegations of staff assaulting prisoners who were disruptive or disobeyed orders. Inter-prisoner violence was rife at both prisons; the CPT considered this to be the result of the combination of overcrowding with reduced prison staffing, and recommended vigorous action to combat this phenomenon.

The Committee heard no allegations of deliberate physical ill-treatment of patients by staff at Karvuna State Psychiatric Hospital. However, at the forensic ward of Lovech State Psychiatric Hospital there were several allegations of physical ill-treatment of patients, and of rude behaviour and the use of insulting language by certain orderlies. In their response, the Bulgarian authorities informed the CPT that an internal investigation had been carried out, which had led to the dismissal of one orderly and a warning to a security officer.

Inter-patient violence also occasionally occurred at the hospitals visited. The CPT noted that this stemmed from an insufficient staff presence, as well as a lack of alternative therapeutic approaches. The CPT recommended measures to ensure an adequate staff presence and supervision, as well as proper training of staff in handling challenging situations.

Despite certain improvements since the previous visit, the Committee concluded that at the Home for men with psychiatric disorders in Pastra, living conditions for half of its residents, namely those in Building 3, remained unacceptable. In their response, the Bulgarian authorities informed the CPT that the residents accommodated in Building 3 had been moved to other premises.

The CPT's visit report and the response of the Bulgarian Government have been made public at the request of the Bulgarian authorities.

## Albania

**Report on the visit to Albania in May 2010**

The majority of the persons interviewed by the CPT delegation stated that they had been correctly treated by the police. However, a significant number of persons (including many juveniles) claimed that they had been subjected to ill-treatment (e.g. slaps, punches, kicks or truncheon blows) at the time of their apprehension or during questioning by police officers.

Material conditions of detention were poor in most of the police establishments visited (dilapidated cells, very limited or no access to natural light, dim artificial lighting and poor ventilation). In their response, the Albanian authorities indicate that various police detention facilities were being renovated or completely reconstructed.

In prisons, staff-prisoner relations appeared on the whole to be quite relaxed and inter-prisoner violence did not seem to be a major problem. At Korca Prison, Tirana Prison No. 313 and the Durres Pre-Trial Detention Centre, some prisoners claimed that they had been ill-treated by members of the establishments' special intervention groups.

Conditions were appalling at the Kukes Pre-Trial Detention Centre (damp and filthy cells in a poor state of repair, with limited access to natural light and inadequately ventilated). Some units at Prison No. 313 in Tirana were severely overcrowded. In their response, the authorities said that a new pre-trial detention centre in Kukes and a new remand prison in Tirana would soon be built. Material conditions in many cells at Burrel Prison and at the Shkodra Psychiatric Hospital were also generally poor.

In contrast, the CPT found satisfactory material conditions of juveniles at the newly-constructed Kavaja Juvenile Reintegration Centre and at the recently opened Fushe Kruja and Korca Prisons, the Durres Pre-Trial Detention Centre and the Supported Homes for psychiatric patients in Elbasan and Shkodra.

At the Prison Hospital in Tirana conditions have clearly improved. However, the CPT expressed concern about the use of metal chains to restrain suicidal or agitated patients to their beds. In their response, the Albanian authorities state that in future leather belts would be used.

## France

**Report on visit to France (November/December 2010)**

In its visit report, the CPT notes a number of positive developments. Legal reforms had been adopted or initiated in several fields of considerable interest to the Committee (e.g. police custody, prison matters and psychiatric care). However, some of the CPT's long-standing concerns had only been partly met by the action taken by the French authorities.

During the 2010 visit, the CPT's delegation heard some allegations of excessive use of force by police officers at the time of apprehension and of blows inflicted shortly after apprehension. In its report, the Committee recommends that a message of "zero tolerance of ill-treatment" be delivered regularly to officers of the National Police Service and that legal safe-

guards against ill-treatment be further reinforced. It also makes a number of recommendations to improve conditions of detention in police and gendarmerie cells as well as in administrative holding centres for foreign nationals. In their response, the French authorities provide information on measures taken before and after the visit to reduce the risk of police ill-treatment. They also inform the Committee of steps taken or envisaged to improve conditions of detention in police cells and in administrative holding centres.

As regards prison-related matters, the CPT's delegation received no allegations of deliberate ill-treatment of inmates by prison staff in Le Havre and Poissy Prisons. Nevertheless, at Le Havre, some cases of excessive use of force by staff when dealing with incidents were reported to the delegation; the delegation also noted that there was an appreciable risk of inter-prisoner violence in that establishment. Further, the conditions under which prisoners are transferred to local health-care establishments and receive medical treatment continue to be of concern to the Committee. In response, the French Government refers to training for junior prison staff at Le Havre Prison on the appropriate use of force. It also informs the Committee of the work of Health-Justice co-ordination bodies in relation to transfers of prisoners to local health-care facilities. As regards prison overcrowding, another issue raised by the CPT in the report, the French authorities provide details on action taken to develop non-custodial measures and plans to increase the overall capacity of the prison system.

In the field of psychiatry, patients generally spoke positively about the manner in which they were treated by hospital staff. Nevertheless, the delegation did receive a few allegations of ill-treatment of patients by certain members of the nursing staff of Paul Guiraud hospital complex and the Val de Lys-Artois public mental health establishment. The CPT also stresses that interventions by custodial staff in the care zone of the specially adapted psychiatric hospital unit for prisoners (UHSA) should be exceptional and proportionate. Further, the Commitee recommends urgent action in respect of persons awaiting placement in units for difficult patients and prisoners suffering from psychiatric disorders requiring hospital care; it emerged that such patients were generally kept for prolonged periods, often under restraint, in seclusion rooms in general psychiatry departments. The Government response refers to action taken in order to prevent ill-treatment and develop good treatment practices in the establishments visited and highlights the reduction in the number of custodial staff interventions in the care zone of the UHSA after the CPT's visit. The French Government also informs the Committee of the envisaged setting-up of psychiatric intensive care units at Paul Guiraud hospital complex and of the planned increase of the number of places available in units for difficult patients in order to better meet the needs of the patients concerned. The French authorities indicate that, pending the construction of further psychiatric hospital units for prisoners, a document is under preparation with a view to preventing abusive resort to isolation and to restraint vis-à-vis prisoners hospitalised in general psychiatry departments and that the necessary adjustments to the current organisation of care are under consideration.

## Bosnia and Herzegovina

**Report on visit to Bosnia and Herzegovina in April 2011**

The CPT's delegation received a considerable number of credible allegations of severe physical ill-treatment by the police. The alleged ill-treatment mostly concerned kicks and punches to the body and blows with batons; however, detailed allegations were also received of handcuffing in stress positions, the placing of plastic bags over the heads of suspects and the infliction of electric shocks. The majority of the allegations concerned the time when suspects were being questioned by crime inspectors in their offices, and the information gathered indicates that the infliction of ill-treatment is a frequent practice at Banja Luka Central Police Station. The CPT emphasises in its report that all means should be explored to ensure that a message of zero tolerance of ill-treatment reaches law enforcement officials at all levels. It recommends that an independent inquiry be carried out into the methods used by crime inspectors at Banja Luka Central Police Station.

In the authorities' response, information is given on steps taken to examine allegations of ill-treatment. Notably, reference is made to ongoing criminal proceedings in relation to two cases raised in the report and to the fact that the Professional Standards Unit of the Ministry of Interior of Republika Srpska has been tasked to investigate whether disciplinary

or criminal proceedings need to be instituted against any officers.

Hardly any allegations of ill-treatment of inmates by staff were received in the prisons visited, with the exception of Banja Luka Prison. The delegation also found that significant steps had been taken to reduce inter-prisoner violence, particularly at Zenica Prison. In their response, the authorities state that internal investigations had shown that all use of means applied by prison officers at Banja Luka Prison was proportionate and in accordance with the law.

The situation of prisoners placed in high security units is commented on in the report, notably as regards the lack of activities and the inadequate safeguards surrounding their placement. The CPT is also critical of the impoverished regime of remand prisoners, who are confined to their cells for 22 hours a day for months on end. The authorities provide information on the range of activities now provided to inmates, in particular in the high security units, while pointing out the difficulties in permitting remand prisoners more out-of-cell time.

The CPT's delegation found that overcrowding in Sokolac Psychiatric Clinic, the psychiatric annexe in Zenica and Drin Social Care Home continued to impact negatively on living conditions. The report also highlights ongoing concerns about the safeguards surrounding placement in these institutions as well as insufficient staffing levels. In their response, the authorities describe action being taken to address these issues, including steps towards the opening of a state-wide forensic psychiatric institution.

Conditions in the Lukavica Immigration Detention Centre were found to be generally satisfactory, although steps need to be taken to provide more purposeful activities to detainees held for prolonged periods. In their response, the authorities comment that this matter is being addressed.

***Internet: http://www.cpt.coe.int/***

# Action against trafficking in human beings

**While other international instruments already exist in the area of combating human trafficking, the Council of Europe Convention on Action against Trafficking in Human Beings is the first comprehensive European treaty in this field. The main added value of the Convention is its human rights perspective and focus on victim protection. The Convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being. It provides for the setting-up of the Group of Experts on Action against Trafficking in Human Beings (GRETA), which is currently the only independent human rights mechanism monitoring the implementation of a binding international instrument imposing strict legal obligations on countries in the field of action against trafficking in human beings. As of 30 May 2012, the Convention has been ratified by 36 Council of Europe member states and has been signed by a further seven.**

## First-evaluation round

The first evaluation round (2010-2013) was initiated by addressing a questionnaire to the first 10 countries which became Parties to the Convention (Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Moldova, Romania, and the Slovak Republic) in February 2010. Following the receipt of the replies to the questionnaire, GRETA visited these countries, to prepare evaluation reports by supplementing the information provided in the questionnaires. The visits allowed for meetings with relevant actors (governmental and non-governmental) and were an opportunity for GRETA to visit facilities where assistance and protection are provided to victims of trafficking.

The evaluation of the second group of 10 Parties to the Convention (Armenia, Bosnia and Herzegovina, France, Latvia, Malta, Montenegro, Norway, Poland, Portugal and the United Kingdom) was launched in February 2011. Visits to these countries were organised between October 2011 and May 2012.

The third group of countries (Azerbaijan, Belgium, Ireland, Luxembourg, the Netherlands, Serbia, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia") were sent the questionnaires in February 2012, and replies are expected in June 2012.

## Country-by-country monitoring

*GRETA's reports are drawn up in a co-operative spirit, and are intended to assist the states in their efforts. GRETA first examines a draft report on each Party. The report is then sent to the relevant government for comments, which are taken into account by GRETA when establishing its final report. This final report is adopted by GRETA and transmitted to the country concerned, which is invited to submit any final comments. The report and conclusions by GRETA, together with comments made by the national authorities, are made public. On the basis of the report, the Committee of the Parties, the political pillar of the monitoring system, may adopt recommendations concerning the measures to be taken to implement GRETA's conclusions.*

*Since the last Human Rights Information Bulletin, the evaluation reports on seven more countries have been published.*

## Albania

In its report on Albania, GRETA recognises the important measures taken to combat trafficking in human beings (THB). It highlights the establishment of several anti-trafficking bodies which have reinforced the co-ordination of all relevant actors. Particular efforts have been made to prevent trafficking in children and to ensure proper training in identifying victims for relevant officials.

However, improved measures of prevention are needed, focussing on changing the public mentality towards trafficking, raising awareness of gender equality and non-discrimination, and fostering access to education and jobs for groups vulnerable to THB. The recording of all children in the civil status register would contribute to protecting them from being trafficked. GRETA urges the authorities to improve co-operation with destination countries, in particular regarding Albanian children taken to Kosovo.[19]

GRETA reports that the Albanian authorities should reinforce action against trafficking in men, national trafficking and the transit of trafficked foreign nationals through Albania, in particular by improving identification. In addition, appropriate financing is necessary to ensure that assistance measures are provided, particularly for social re-integration of victims who were trafficked for sexual exploitation. Access to compensation and free legal assistance should be improved, along with protection for victims and witnesses from traffickers during legal proceedings.

GRETA urges the authorities to address the lack of harmonisation between legal provisions and the confusion between concepts such as prostitution and trafficking for sexual exploitation. They should ensure that the principle of non-punishment of victims is effectively implemented. Training of police officers, prosecutors and judges should be reinforced to increase prosecution rates.

19. All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and the ruling of the International Court of Justice on Kosovo declaration of independence and without prejudice to the status of Kosovo.

## Bulgaria

GRETA reports that the legal and institutional framework for combating THB in Bulgaria is comprehensive and provides a good basis for tackling THB from a human-rights perspective. A specific law on combating THB has been adopted and the use of services of victims of trafficking has been criminalised. Further, efforts are being made at both national and local levels to strengthen co-operation between state actors and civil society.

Prevention has been a major part of Bulgarian measures, in partnership with NGOs and international organisations, for example through the appointment of "labour attachees" in countries where Bulgarians seek employment. Nonetheless, GRETA urges the authorities to strengthen prevention through social and economic empowerment of groups vulnerable to THB, in particular the Roma community.

In addition, GRETA concludes that the current identification system is not sufficiently effective, as it risks excluding those who do not want to co-operate in judicial proceedings. Persons detained as irregular migrants should be a priority for identification.

GRETA notes that the necessary levels of funding are not in place and there is a considerable reliance on external funding. In this context, GRETA stresses that, even when services are provided by NGOs, the state has an obligation to provide adequate financing and to ensure the quality of the services. Further, GRETA stresses the need to establish sufficient, good quality shelters and to provide victims with vocation training and access to the labour market. While the co-ordination mechanism for referral, care and protection of repatriated unaccompanied minors is praised, suitable crisis accommodation and medium to long-term support programmes need to be improved.

The right to compensation for victims remains largely unused, despite the existence of legal possibilities. Efforts should be increased to ensure that victims are informed of their right to compensation and ways to access it, and have access to legal aid. In addition, improvements should be made in the area of non-punishment of victims and for their protection during investigations and during and after court proceedings.

## Croatia

The Croatian authorities have taken commendable measures to prevent and combat THB and to provide assistance and protection to victims of trafficking. The establishment of several co-ordinating bodies has brought together relevant actors, including NGOs, and several legislative provisions have been introduced.

GRETA suggests that the area of identification needs strengthening, and encourages the public bodies responsible to take a proactive approach and to involve NGOs more actively. Increased efforts in the identification of male victims and victims of labour exploitation are especially necessary.

More robust and systematic preventative measures are also needed, reflecting a gender-sensitive approach, with a view of increasing public awareness and understanding of THB. Research should be carried out on trafficking trends (including national trafficking) and further measures should be adopted to ensure compensation for all victims.

GRETA notes that the offence of THB has been integrated into Croatian legislation, but that conducts relating to travel or identity documents are yet to be criminalised. Training for judges, prosecutors and other related professionals should be improved, to achieve better protection of victims of trafficking during legal proceedings. In addition, a periodic independent evaluation of the anti-trafficking measures would greatly facilitate the identification of possible problems and the finding of their solutions.

## Denmark

The Danish authorities have taken a number of important steps to combat THB. Multi-annual national action plans are adopted, and their implementation is co-ordinated by the Inter-Ministerial Working Group on Human Trafficking. The Danish Centre against Human Trafficking (CMM) works to improve social assistance for victims, to ensure co-operation among relevant governmental and non-governmental actors, and to collect information in the field of THB. Despite this, GRETA notes that the co-ordination, co-operation and partnerships among governmental departments, the CMM, the police, NGOs and other members of Danish civil society should be improved.

GRETA stresses the need to develop preventive measures and to step up proactive investigations with regard to trafficking for labour exploitation and trafficking in children, rather than just focusing on sexual exploitation. The scope of identification of victims also needs to be broadened, as an illegal immigration focused approach has so far prevailed, which often results in potential victims being treated as offenders rather than persons who have been exposed to human rights violations. The Danish authorities should ensure that all relevant officials are systematically trained in the identification of victims, and should provide victims with an adequate recovery and reflection period.

All victims should be informed of their legal rights (including to compensation) and the services and assistance measures available. In addition, as few victims of trafficking have received residence permits or accepted the offer of assisted return, Denmark should review its systems in these areas.

GRETA notes that crimes committed under coercion by victims of trafficking are not considered as a special category exempting them from punishment, and urges Danish authorities to address this, in addition to ensuring that potential victims of trafficking are not prosecuted while their identification is ongoing.

## Georgia

GRETA reports that **Georgian** authorities have taken a number of important legal and institutional measures to combat THB. A specific law to combat THB has been introduced, an Inter-agency Co-ordination Council against THB and a State Fund for the protection and assistance of victims has been established and bi-annual national plans have been adopted. In addition, state financial resources for assistance to victims have increased, and several new legal provisions introduced.

The efforts of the Georgian authorities to strengthen awareness raising and education measures are positive, but action must be increased to address the socio-economic vulnerability of internally-displaced persons, potential migrants and children. THB for labour exploitation and trafficking within Georgia also needs more attention, both in terms of awareness raising and identification. GRETA urges the authorities to generally improve proactive detection and identification of victims, including through more advanced training of professionals.

The Georgian authorities should ensure that all victims are informed of, and effectively granted, the reflection period and access to compensation and legal aid. To protect and

safeguard the best interests of child victims, legal guardianship, appropriate accommodation, education and specific support programmes should be guaranteed. GRETA notes with interest the proposed amendments to the anti-trafficking law regarding the protection and assistance of child victims of trafficking and welcomes the adoption of a new protection programme for those participating in criminal cases.

While GRETA praises the application of the non-punishment principle it notes with concern the significant reduction of prosecutions and convictions of traffickers since 2010.

## Republic of Moldova

GRETA welcomes the importance given to action against THB in the Republic of Moldova, as a political priority, and the efforts to strengthen the institutional and legal framework for preventing and combating THB. The national anti-trafficking framework ensures the involvement of relevant public bodies, international organisations and NGOs.

Awareness raising and education have had a key role in the action taken by the Moldovan authorities, in partnership with international organisations and NGOs. However, social and economic measures should be increased, along with preventative measures for groups particularly vulnerable to trafficking. Attention should also be paid to such groups when identifying victims and potential victims of trafficking, for example women from socially disadvantaged families, women subjected to domestic violence, children without parental care and children in state institutions. Efforts should also be increased to identify THB within Moldova. Regular training should be provided to all relevant professionals, to aid with all stages of the process, from identification to prosecution.

GRETA considers the need for further measures for assistance to victims, such as adequate human and financial resources for involved agencies and the effective participation of local authorities in the National Referral System. Further, the Moldovan authorities should consider establishing a State compensation scheme and should provide better information to victims in this regard.

The investigation of trafficking cases should be improved to ensure effective prosecution and proportionate and dissuasive sanctions. In particular, GRETA recommends that attention be paid to cases of THB allegedly involving public officials. Better protection and assistance should also be provided to victims and witnesses during criminal proceedings.

## Romania

In its report on **Romania**, GRETA notes that the Romanian authorities have taken commendable steps to prevent and combat human trafficking, through the adoption and periodic updating of anti-trafficking legislation, the establishment of the institutional framework for action against trafficking and the introduction of a national identification and referral mechanism. Nevertheless, GRETA stresses the urgency of adopting a new national strategy and ensuring that all relevant professionals are trained to identify victims of trafficking and to assist and protect them.

Substantial efforts have been made in the area of prevention. That said, measures to combat stereotypes and prejudices towards victims of trafficking, in particular, women and Roma, and long-term initiatives tackling the root causes of trafficking, should be strengthened.

GRETA is concerned that access to assistance, such as safe accommodation and health care, hinges on victims' co-operation with law enforcement agencies. The Romanian authorities are urged to provide adequate financing for assistance measures and to ensure the quality of the services provided. The authorities should also take additional steps to ensure the safe and dignified repatriation and return of victims of trafficking, taking into consideration the best interests of child victims.

As regards investigation and prosecution, while noting some positive results, GRETA urges the Romanian authorities to step up proactive investigations into trafficking for the purpose of labour exploitations and to investigate any report of alleged involvement of public officials in offences related to human trafficking.

***Internet: http://www.coe.int/trafficking/***

# European Commission against Racism and Intolerance

**The European Commission against Racism and Intolerance (ECRI) is an independent human rights monitoring body specialised in issues related to combating racism, racial discrimination (understood as discrimination on grounds of ethnic origin, colour, citizenship, religion and language), xenophobia, antisemitism and intolerance in the 47 member states of the Council of Europe.**

**In March 2012, ECRI elected a new Chair, Mr Jenö Kaltenbach, ECRI's member in respect of Hungary.**

**ECRI's statutory activities are country-by-country monitoring work; work on general themes; relations with civil society.**

## Country-by-country monitoring

*ECRI closely examines the state of affairs in each of the 47 member states of the Council of Europe. On the basis of its analysis of the situation, ECRI makes suggestions and proposals to governments as to how the problems of racism, racial discrimination, xenophobia, antisemitism and intolerance identified in each country might be overcome, in the form of a country report.*

ECRI's country-by-country approach concerns all Council of Europe member states on an equal footing and covers 9 to 10 countries per year. A contact visit takes place in each country prior to the preparation of the relevant country report.

At the beginning of 2008, ECRI started a fourth monitoring cycle (2008-2012). The fourth-round country monitoring reports focus on the implementation of the principal recommendations addressed to governments in the third round. They examine whether and how ECRI's recommendations have been followed up by the authorities. They evaluate the effectiveness of government policies and analyse new developments. The fourth monitoring cycle includes a new follow-up mechanism, whereby ECRI requests priority implementation of three specific recommendations and asks the member states concerned to provide information in this connection within two years from the publication of the report.

On 21 February 2012, ECRI published reports on Iceland; Italy; Latvia; Luxembourg; Montenegro and Ukraine. The reports note improvements in certain areas in all six Council of Europe member states, but also detail continuing grounds for concern. For example, while there have been positive developments in **Iceland**, issues of concern remain, such as the delay in granting permission for Muslim communities to build mosques and some gaps in the anti-discrimination legislation, including the lack of an anti-racism body. Progress has been made in some areas in **Italy,** but there is significant room for improvement in combating hate speech and protecting Roma and migrants from violence and discrimination. ECRI also notes positive developments **Latvia,** but issues of concern remain: firstly important budget cuts affecting the Ombudsman and secondly the situation of the Roma. In **Luxembourg**, while there have been positive developments, issues of concern persist. For example inequalities in employment remain and the Centre for Equal Treatment (Centre

pour l'égalité de traitement – CET) should be strengthened. In **Montenegro,** while there are positive developments, there are also issues of concern, such as the extreme poverty and hardship faced by a substantial part of the Roma, Ashkali and Egyptian population and the legal status of "displaced" and "internally displaced" persons. Some improvements have been noted in **Ukraine**, but there are still concerns in most areas covered by the ECRI's mandate.

The publication of ECRI's reports is an important stage in the development of an ongoing, active dialogue between ECRI and the authorities of member states with a view to identifying solutions to the problems of racism and intolerance with which the latter are confronted. The input of non-governmental organisations and other bodies or individuals active in this field is a welcome part of this process, and should ensure that ECRI's contribution is as constructive and useful as possible.

ECRI carried out contact visits to Croatia in November 2011 and Finland, Ireland (jointly with the Advisory Committee of the Framework Convention for the Protection of National Minorities), Liechtenstein, Malta, the Russian Federation and San Marino in Spring 2012, before drafting reports on these countries. The aim of ECRI's contact visits is to obtain as detailed and complete a picture as possible of the situation regarding racism and intolerance in the respective countries, prior to the elaboration of the country reports. The visits provide an opportunity for ECRI's Rapporteurs to meet officials from ministries and public authorities, as well as representatives of NGOs working in the field and any other persons concerned by the fight against racism and intolerance.

## Work on general themes

*ECRI's work on general themes covers important areas of current concern in the fight against racism and intolerance, frequently identified in the course of ECRI's country monitoring work. In this framework, ECRI adopts General Policy Recommendations addressed to the governments of member States, intended to serve as guidelines for policy makers.*

### General Policy Recommendations

ECRI continued work on its future General Policy Recommendation on combating racism and racial discrimination in employment. The draft text was sent to ECRI's partners for a written consultation.

For reference, ECRI has adopted to date 13 general policy recommendations, covering some very important themes, including key elements of national legislation to combat racism and racial discrimination; the creation of national specialised bodies to combat racism and racial discrimination; combating Islamophobia in Europe; combating racism on the Internet; combating racism while fighting terrorism; combating antisemitism; combating racism and racial discrimination in and through school education; combating racism and racial discrimination in policing; combating racism and racial discrimination in the field of sport and combating anti-Gypsyism and discrimination against Roma.

## ECRI's round table in Serbia

**Belgrade, 16 November 2011**

On 16 November 2011, ECRI organised a national round table in Belgrade, in co-operation with the Protector of Citizens (National Ombudsman) and the Commissioner for the Protection of Equality of Serbia.

Participants discussed the follow-up given to the recommendations contained in ECRI's 2011 report on Serbia concerning a number of themes divided into four sessions: the general situation in Serbia as reflected in ECRI's report; the legislative and institutional framework for combating racial discrimination; religious freedom and the integration of Roma.

The round table brought together representatives of the authorities, the Parliament, the justice system, academia, representatives of international organisations and of the Roma communities, as well as NGOs and religious representatives. The event was opened by Milan Marković, Minister for Human and Minority Rights, Public Administration and Local Self Government, and Winnie Sorgdrager, member of ECRI. Opening speeches were given

by Saša Janković, National Ombudsman, and Nevena Petrušić, Commissioner for the Protection of Equality. Gün Kut, member of ECRI, presented ECRI's last report on Serbia.

## Publications

- ECRI Report on Iceland, 21 February 2012, CRI(2012)1
- ECRI Report on Italy, 21 February 2012, CRI(2012)2
- ECRI Report on Latvia, 21 February 2012, CRI(2012)3
- ECRI Report on Luxembourg, 21 February 2012, CRI(2012)4
- ECRI Report on Montenegro, 21 February 2012, CRI(2012)5
- ECRI Report on Ukraine, 21 February 2012, CRI(2012)6

***Internet : http://www.coe.int/ecri/***

# Law and policy

## Intergovernmental co-operation in the human rights field

**One of the Council of Europe's key tasks in the field of human rights is the creation of legal policies and instruments. In this, the Steering Committee for Human Rights (CDDH) plays an important role. The CDDH is the principal intergovernmental organ answerable to the Committee of Ministers in this area, and to its different committees. At present, reform of the European Court of Human Rights and accession of the European Union to the European Convention on Human Rights constitute two principal activities of the CDDH and its subordinate bodies.**

## National procedures for the selection of candidates for the post of judge at the Court

The Group on national procedures for the selection of candidates for the post of judge at the European Court of Human Rights (CDDH-SC) held its second and final meeting in Strasbourg from 11-13 January 2012, during which it finalised the draft guidelines, as well as a draft explanatory memorandum accompanying them. These texts are intended to apply to selection procedures at national level for candidates for the post of judge at the Court, before a High Contracting Party's list of candidates is transmitted to the Advisory Panel and thereafter the Parliamentary Assembly of the Council of Europe. The CDDH considered and adopted the draft guidelines and explanatory memorandum accompanying it at its 74th meeting (7-10 February 2012), for transmission to the Committee of Ministers.

The Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights were adopted by the Committee of Ministers on 28 March 2012, at the 1138th meeting of the Ministers' Deputies.

## Reform of the European Court of Human Rights

At its 1st plenary meeting (17-20 January 2012), the Committee of experts on the reform of the Court (DH-GDR) adopted, for transmission to the Steering Committee for Human Rights (CDDH), a draft CDDH Final Report on measures requiring amendment of the Convention and a draft CDDH Contribution to the High Level Conference on the Future of the Court organised by the UK Chairmanship of the Committee of Ministers (Brighton, 18-20 April 2012).

The Committee furthermore agreed on the organisation of future work. It thus charged its Drafting Group "A" on the reform of the Court (GT-GDR-A) to conduct preparatory work on (i) a draft report for the Committee of Ministers containing elements to contribute to the evaluation of the effects of Protocol No. 14 to the Convention and the implementation of the Interlaken and Izmir Declarations on the Court's situation, and (ii) a draft report for the Committee of Ministers containing an analysis of the responses given by member states in their national reports on measures taken to implement the relevant parts of the Interlaken Declaration and recommendations for follow-up. Group "B" on the reform of the Court (GT-GDR-B) would conduct preparatory work on draft legal instruments to implement decisions

to be taken by the Committee of Ministers following the Brighton Conference.

At its 74th meeting (7-10 February 2012), the Steering Committee for Human Rights (CDDH) thus adopted, for transmission to the Committee of Ministers:

(i) its Final Report on measures requiring amendment of the Convention, including, in appendix, reports on:

- measures to regulate access to the Court;
- measures to address the number of applications pending before the Court;
- measures to enhance relations between the Court and national courts.

(ii) its Contribution to the Brighton Conference structured around the following five themes:

- national implementation of the Convention, including execution of Court judgments;
- the role of the Court and its relations with national authorities, to strengthen subsidiarity;
- the clarity and consistency of Court judgments and the nomination of candidates for judge at the Court;
- the efficiency and effectiveness of the Court;
- long-term thinking on the Court and the Convention.

The Committee also exchanged views with the President of the European Court of Human Rights, Sir Nicolas BRATZA.

Drafting Group "A" on the reform of the Court held its 1st meeting from 14 - 16 March 2012. It started the examination of the national reports on measures taken to implement relevant parts of the Interlaken Declaration.

## Human rights and the environment

At its 73rd meeting (6-9 December 2011), the Steering Committee for Human Rights (CDDH) adopted the revised text of the Manual on Human Rights and the Environment prepared by the DH-DEV Working Group on Environment. The CDDH authorised its publication and transmitted it to the Committee of Ministers for information. This new version comes in the form of a revision of the manual of 2006 on human rights and the environment in light of the recent relevant case-law of the European Court of Human Rights including other international and European standards, namely the relevant decisions of the European Committee of Social Rights, and national good practices.

## Future work of the CDDH related to the development and the promotion of human rights

The Steering Committee for Human Rights (CDDH) had an exchange of views on its work during the biennium 2012-2013 at its 73rd meeting (6-9 December 2011). Regarding the development and the promotion of human rights, its future work will focus on the following areas:

- Elaboration of a non-binding instrument on the promotion of the rights and dignity of the elderly ;
- Conduct of studies to examine the feasibility and added value of standard-setting work regarding human rights in culturally diverse societies and corporate social responsibility in the human rights field;
- Conduct of a study to identify possible other priority areas for development and promotion of human rights in the Council of Europe and formulation of proposals for specific activities as appropriate.

## The Human rights of older persons

At its 74th meeting (7-10 February 2012), the Steering Committee for Human Rights (CDDH) gave terms of reference to a new drafting group on the rights of elderly persons (CDDH-AGE) in view of elaborating a non-binding instrument on the human rights of older persons. At its 1st meeting, on 21-23 March 2012, the group discussed the nature, scope and content of the future instrument. The group, which will report back to the CDDH at its 75th meeting (19-22 June 2012), considered that the future instrument would provide a great added value if it allowed not only to present in a systematic way the outstanding

human rights issues, but also to propose practical measures based on existing good practices in the member states.

***Internet : http://coe.int/CDDH***

***Internet : http://coe.int/hrlawpolicy/***

# Human rights capacity building

**The Legal and Human Rights Capacity Building Department (LHRCB) is responsible for co-operation programmes in the field of human rights and the rule of law. It provides advice and assistance to Council of Europe member states in areas where the Council of Europe's monitoring mechanisms have revealed a need for new measure or a change in approach. The specific themes addressed under the projects are: support for judicial reform, implementation of the Court at the national level, support for national human rights structures, support for police and prison reform and training of professional groups.**

## "Judicial reform and human rights capacity building"

The Justice and Legal Co-operation Department is responsible for the Steering Committee on Legal Co-operation and for the Council of Europe's justice committees, that is the CEPEJ, the CCJE and the CCPE. Alongside this standard-setting and advisory work, the Department provides concrete assistance to national authorities and relevant institutions and bodies in the fields of independence and efficiency of justice, human rights, and criminal justice reform. In the human rights field, the training of professional groups on the ECHR is a particular priority and the HELP Programme, also run by the Department, is the primary vehicle for this. The project work is still mainly carried out in Council of Europe member states but the Council of Europe's expertise is increasingly being solicited in the so-called neighborhood countries where the focus is on efficiency of justice and legislative expertise.

## Armenia

### The Joint Programme between the European Union and the Council of Europe entitled "Support to Access to Justice in Armenia"

Strengthening the lawyers' profession, *inter alia*, through the establishment of a School of Advocates, is one of the Project key objectives. In December 2011, the law on Advocacy was adopted by the Armenian Parliament. The law formally establishes the School of Advocates as the national training institution in charge of initial and continuous training for advocates. This is a major development within the Armenian justice system and is a result of the Project continued assistance over the past years. The Project contributed to the preparation of the Law on Advocacy, in line with European standards.

The Project will continue to provide support to the School of Advocates with the development of other key documents for its functioning, such as the strategy plan for 2012-2013. 2012 will be a very important year for the School as entry exams for future candidates.

In addition, a pool of national trainers on methodology, deontology, management of law office, and another pool of trainers on trial advocacy skills were set up. The School of Advocates is also supported in fulfilling the mandatory requirement of continuous legal education by providing continuous training to lawyers on a monthly basis.

More limited progress was observed as regards initial training for judges, due to the lack of agreement among the different players on the contents of the future law on the Justice Academy. In 2012, the development of a general

module is supported within the framework of initial training (i.e. deontology, human rights, legal reasoning, case management, communication/PR, psychology, legal writing).

A manual on training methodology for judges, which was developed with the contribution of local and international experts, is being finalised. The manual includes CoE recommendations for initial and continuous training of judges. It is an inseparable part of the training curriculum package. It should serve as a reference book for all current and future trainers of the Judicial School. The manual prioritises three main directions: adult learning approach, phases of the training cycle management process and annexes: templates, forms and case studies.

"The opinions of the European Court of Human Rights" were compiled with a view of their publication and distribution in 750 copies, made available to Armenian judges.

The development of the e-notary system in Armenia will be promoted. The system aims to increase the security of real estate documents and transactions, protect property rights, decrease the overload of courts, and enhance the quality of Notaries' services. Moreover, the draft law on notary will be reviewed.

The revision work of the civil and civil procedure codes of Armenia are being initiated.

## Turkey

### The Joint Programme between the European Union and the Council of Europe entitled "Strengthening the Court Management System in Turkey (COMASYT)"

The overall objective of the Joint Programme between the European Union and the Council of Europe entitled "Strengthening the Court Management System" (JP COMASYT) is to support the development of an independent, accessible, and efficient judiciary in Turkey. The programme facilitates the development and establishment of a modern court administration system by introducing new court management practices in 20 pilot courts.

The JP COMASYT is supporting the preparation of legal amendments which are needed to make the pilot changes sustainable and in line with Turkey's commitments to ensure an efficient judicial system. Moreover, it addresses civil procedure, in line with the project's objectives to simplify and speed up the court proceedings.

The project has won acclaim among the decision-makers of the Turkish judiciary and was referred to in relation to further actions to reform the judicial system carried out by the Ministry of Justice itself or in co-operation with other international actors.

In early 2012, the Ministry of Justice requested to include new courthouses (Istanbul Anatolian Side, Ankara and Bursa Courts) into the project which shows the growing success of the project and the potential for smooth and prompt dissemination of European standards in courts throughout the country.

After one year of implementation, some results are already visible in the pilot courts. Some court houses have successfully initiated the front office and information desk practices without any financial or training support from the project; other courthouses achieved the separation of offices of the judges and prosecutors by placing them on separate floors. The capacity-building of the staff in charge of implementing the new court management system is under way.

The JP COMASYT enjoys a highly supportive and co-operative approach from all stakeholders. This is the result of structural changes in some of them, such as the High Council of Judges and Prosecutors, as well as the positive relations developed with high-level officials.

### The Joint Programme between the European Union and the Council of Europe entitled "Enhancing the role of the supreme judicial authorities in respect of European standards"

The Council of Europe is enjoying an excellent co-operation with the Ministry of Justice of Turkey, the Constitutional Court and the Court of Cassation in the implementation of the project on "Enhancing the role of the Supreme Judicial authorities in respect of European Standards" (also called the "High Courts project"). This co-operation has significantly developed the capacity of the national judicial, prosecutorial, law enforcement and public administration systems to effectively implement European standards in the field of the judiciary, European Court of Human Rights

case-law, as well as the recommendations of the Council of Europe monitoring bodies.

The Project is already showing some concrete results owned by the beneficiaries. All institutions reiterated their support to it.

A major milestone of the project has been achieved by the significant increase of inter-institutional and professional contacts between the Turkish institutions and their European partners. This positively influenced the understanding of the decision making principles of the latter, and developing the judicial practices in Turkey. This was achieved through study visits of delegations of the Turkish High Courts, headed by their respective Presidents, to European institutions in Brussels and The Hague, during which they learned of their functions and policies, working methods and recent developments.

Furthermore, the project succeeded in setting-up international discussion platforms for the beneficiary institutions in conferences in which various internal difficulties were exposed, such as the workload of the courts, the use of ECHR-based arguments and access of citizens to the high courts. The discussions enabled the members of the Turkish High Courts to gain a better understanding of the case-law of the European Court of Human Rights, and it is hoped that this will in turn ultimately lead to frequent and correct use of the Convention in the cases handled by these judges and, by extension, to a decrease in the number of cases against Turkey being taken to the Strasbourg court.

The Project started to implement a component of long-term placements to the European Court of Human Rights that was introduced by the addendum at the end of 2011. It aimed at providing an on-job training for the judges from the beneficiary institutions, and at enabling them to transfer the acquired skills to their peers in Turkey. Six reporter judges from the Constitutional Court completed a six-month placement at the European Court of Human Rights Registry and five other reporters (from the CC and 1 from the MoJ) succeeded to them. Those who completed their placement expressed a high satisfaction with the experience gained at the Court, especially in view of the introduction of individual applications before the Turkish CC next September.

The beneficiaries started to collaborate on issues such as the establishment of the system of Courts of Appeal in the country, and began to explore the experience and good practices of the other countries and introduce procedural and structural changes.

The CC is also paying close attention to the preparatory phase of the procedure of the individual complaints that will commence in September 2012. A series of monthly (sometimes bi-monthly) Round Tables was carried out, covering some procedural aspects and various Articles of the ECHR, as well as a comparison with the provisions on human rights in the domestic Constitution. Those Round Tables, as well as the various systems observed through study visits (IT Department and filtering sections of the European Court, Spanish CC) have contributed to the preparation of a first draft of the new internal rules of the CC, in close co-operation with the Council of Europe.

Four other Round Tables at the Constitutional Court are planned until the end of June 2012 (Art. 8, 12 and Art. 2 Protocol No. 1, Art. 9, 10, 11, Art. 1 Protocol No. 1 and on Drafting decisions), as well as two other study visits (to the CC of Germany and the European Court), which will take place before the key date of 23 September 2012.

## Multilateral

### The Joint Programme between the European Union and the Council of Europe entitled "Reinforcing the Fight against Ill-Treatment and Impunity"

The follow-up Joint Programme between the European Union and the Council of Europe entitled "Reinforcing the Fight against Ill-Treatment and Impunity" launched in July 2011, continued working on several key components in Armenia, Azerbaijan, Georgia, Moldova and Ukraine. Even though the first project for combating ill-treatment resulted in an increase in domestic court verdicts based on the European Convention on Human Rights (ECHR) and in improvements as regards internal regulatory mechanisms for the effective investigation of ill-treatment inflicted by police, it showed that combating ill-treatment required continued sustainable efforts and a policy of zero tolerance. Structural/legislative changes, and, in particular, the establishment of separate inves-

tigative mechanisms, had proven to be a more challenging task in the long-term.

The current project addressed the relevant issues in a targeted manner. The partnerships with national authorities and other stakeholders established in the course of the first project have proven very important in creating the conditions needed for this sensitive work. A number of agreements have been reached on further improvement of regulatory framework and capacity building campaign, as well as on following up on its results, and monitoring the judicial and prosecutorial practices vis-à-vis their conformity to the recommendations of the Country Reports.

The project has started research and preparation of the statistical review of judicial cases on ill-treatment in all five beneficiary countries. A stock-taking analysis of the implementation of the recommendations of the Country Reports has also started, along with the training for judges, prosecutors, lawyers, law enforcement and penitentiary officials.

A major success has been achieved in Ukraine as regards the adoption of the Criminal Procedure Code. The Council of Europe has been working with the Ukrainian authorities on the draft of this Code since August 2011. A series of expert assessments were provided and meetings organised, resulting in a substantially amended draft. After the adoption of the Code by the Parliament of Ukraine in the final reading on 13 April 2012, the Council of Europe expert team analysed the extent to which the Code's final text incorporated the recommendations made in the Council of Europe expert assessments. The expert team emphasised that, prior to the submission of the draft Code to the Parliament of Ukraine, it had already been substantially improved in line with the Council of Europe recommendations, and it had given effect to a great deal of the requirements of European standards governing the criminal process.

Furthermore, the amendments, introduced to the draft Code during its consideration and adoption by the Parliament, have further considerably improved the draft that was already highly satisfactory. These amendments have in fact mainly been ones that addressed the remaining recommendations made in the course of the expertise, reflecting the positive engagement throughout the drafting process of the Ukrainian authorities with the Council of Europe.

Following the release of this latest assessment, the President of Ukraine signed the adopted the Code on 14 May 2012. The Presidential Administration publicly expressed its gratitude to the Council of Europe.

Such example of successful co-operation is followed in other beneficiary countries of the project, which are, except Georgia, also in need of substantial reform of the criminal justice system. Furthermore, for this comprehensive task, the project developed synergy with other donors, as well as other funding instruments of the EU, which might step in and provide additional resources, notably in Moldova and Ukraine, and possibly in other countries as well. The Ukrainian experience will be discussed in the forthcoming Steering Committee Meeting of the project, which will be attended by the Presidential Administration of Ukraine which drafted the Code.

Since the project is regional, and its Steering Committee meetings are attended by delegations of five beneficiary countries, this has always resulted in a healthy competition among them. It is hoped that a transfer of the Ukrainian experience will take place in this context, and the project will create a momentum for criminal justice reforms in Armenia, Azerbaijan and Moldova.

In terms of structural developments, in Armenia, in January 2012, the President signed a Decree to set up a Commission on Ethics of the High Level Officials for improving the activities of the officials and the state institutions, including thorough introduction and implementation of the anti-corruption measures. The Commission's work might have a positive effect in combating ill-treatment. Therefore, the Project started exploring ways of co-operation with this Commission.

Improvement of legislative framework, along with intensive capacity building and awareness, creates the potential for a significant decrease in the number of the complaints from the beneficiary countries to the European Court of Human Rights, especially as regards repetitive cases on violations of Article 3 of the ECHR, of which there have been many, particularly in Ukraine. Indeed, as a result of continued capacity building for judges, prosecutors, lawyers, law enforcement and penitentiary officials in all beneficiary countries, the number of ECHR-based national judgments continued increasing. This is a positive trend which will hopefully turn around the increasing number of complaints to the European

Court of Human Rights, not least due to this project's, as well as other donors' contributions to combating ill-treatment. Furthermore, as a result of improvements of the criminal justice system in general, the number of cases in the European Court on Articles 5 and 6 of the ECHR should also begin to decrease.

## The Joint Programme between the European Union and the Council of Europe entitled "Enhancing Judicial Reform in the Eastern Partnership countries"

The overall objective of the project is to support and enhance the on-going process of reform of the judiciary in six beneficiary Eastern Partnership (EaP) countries, namely Armenia, Azerbaijan, Georgia, Moldova, Ukraine and Belarus through intensive information exchange and sharing best practices.

The sharing of information and best practice among the participants enabled to exchange on how best to tackle certain problems and deal with challenges arising in the field of judicial reform successfully. Three in-depth and solid outputs were published: the report on Judicial Self-Governing Bodies and Judges' Career and the reports on the Profession of Lawyer and Training of Judges.

The reports provide a comprehensive analysis of the participating countries legislation and practice with regards to issues of institutional independence of the judiciary and the independence of the individual judge; the role of the Bar, access to the profession of lawyer and training, ethical standards; system of disciplinary proceedings against lawyers; system of educating and training of judges, etc vis-à-vis relevant European standards. They include recommendations both at country and regional level, and provide examples of best practices from the participating countries. The reports also contain the up-to-date country sheets and the relevant legislation of the participating countries.

Furthermore preparatory work on the Efficiency of Justice has started in 2012, relying on the expertise of the Council of Europe European Commission for the Efficiency of Justice (CEPEJ). CEPEJ data on the functioning of judicial systems will be used as a basis for a more thorough analysis of the situation in the beneficiary countries as regards the court funding, in particular the management of funding within courts, and case flow and judicial time management.

The beneficiary states will be supported in the concrete implementation of the recommendations.

## Strengthening professional training on the European Convention on Human Rights (ECHR) – European Programme for Human Rights Education for Legal Professionals (the HELP Programme)

The HELP Programme, funded by the Human Rights Trust Fund (HRTF), supports the 47 Council of Europe member states in implementing the European Convention on Human Rights at the national level, in accordance with the 2010 Interlaken Declaration, by enhancing the capacity of judges, lawyers and prosecutors to apply the ECHR in their daily work.

In the first months of 2012, National Training Institutions (NTIs) and Bar Associations (Bas) from the majority of member states have already joined the HELP Programme. A large peer-to-peer European Human Rights Training Network among NTIs and BAs has therefore been created, also in co-operation with international associations of judges and the Council of Bars and Law Societies of Europe, with the aim to encourage and facilitate multilateral meetings, the identification of the most urgent training needs for legal professionals, the sharing of best practice and the knowledge of different national jurisprudence based on the ECHR.

A conference of the HELP Network will be held in Strasbourg on 5 and 6 June 2012, for the first time bringing together representatives of NTIs and BAs. The conference will provide a unique forum for discussing the importance of continuous training on human rights for judges, prosecutors and lawyers, and on the role of NTIs and BAs in integrating the HELP training resources in their initial and professional education programmes at national level.

Further ECHR training materials and tools have been developed in the last months, for face-to-face and distance training and self-learning.

A working group of internationally recognised experts has completed the drafting of a distance-learning course on Family Law and Human Rights, which will be part of pilot courses for national judges. New similar working groups will be created in the next months

to draft curricula on Court management and on Criminal Law and the ECHR: alternatives to imprisonment, community sanctions and measures as an answer to the problems concerning prison overcrowding.

A new website (http://www.coe.int/help), online since 28 November 2011, ensures the full availability of tools and materials needed for professional training on the ECHR.

Focal points composed by national experts have been created in a group of ten pilot countries (Albania, Armenia, Croatia, Georgia, Republic of Moldova, Poland, Russian Federation, Serbia, Turkey and Ukraine), to cooperate with the NTIs and BAs, providing all necessary information on the HELP resources. The proposed pilot countries have been selected taking into account different criteria: size of the country; number of legal professionals; previous successful partnership with the Council of Europe; number of European Court judgments finding a violation and pending allocated cases per country. Funding will also be set up in other countries in order to establish focal points.

Training-of-trainers courses, seminars, study visits and other training initiatives on the ECHR have been regularly organised, using HELP methodology and resources.

In the framework of the HELP Programme a separate project has been developed on Enhancing the capacity of lawyers to comply with the admissibility criteria in applications submitted to the European Court of Human Rights. This project, currently limited to a group of six pilot countries (Albania, Bulgaria, Czech Republic, Lithuania, the Russian Federation and Turkey) is also funded by the HRTF. Its objective is to reduce the number of inadmissible applications submitted to the European Court by improving the knowledge by lawyers of the admissibility requirements for cases to be brought to the European Court.

Info points, composed by national experts, have been created in the target countries with the purpose of providing information on admissibility criteria and screening applications to the European Court.

A working group composed by representatives of the six countries and three international experts is developing updated curriculum on admissibility criteria and country-specific guidelines.

## Publications

Three new human rights handbooks have been published.[20]

- Protecting the right to freedom of thought, conscience and religion under the European Convention on Human Rights
- Protecting the right to respect for private and family life under the European Convention on Human Rights
- Protecting the right to a fair trial under the European Convention on Human Rights

20. Only in English.

***Internet : http://www.coe.int/capacitybuilding/***

# Gender equality and violence against women

## The Istanbul Convention: A year on

A year has gone by since the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) opened for signature on 11 May 2011.

Representing the culmination of almost two years of negotiations, the Istanbul Convention is the first European legally-binding instrument specifically devoted to violence against women and an important step towards greater gender equality. It contains an all-encompassing definition of violence against women that includes offences such as domestic violence, physical, psychological and sexual violence, stalking, sexual harassment, forced marriage, female genital mutilation and forced abortion and sterilisation. In order to combat this complex human rights violation, ratifying states will need to tackle violence against women in a comprehensive manner. Through its series of measures in the areas of prevention, protection, prosecution and the implementation of integrated policies, the Convention fills a significant gap in Europe and has been praised by both member states and the NGO community as the most far-reaching instrument in this field.

Since its opening for signature in May 2011, the Istanbul Convention has been signed by 19 member states: Albania, Austria, Finland, France, Germany, Greece, Iceland, Luxembourg, Malta, Montenegro, Norway, Portugal, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", and Ukraine. The Convention has also been ratified by one member state: Turkey. Once the Convention enters into force, it will greatly increase the standards of protection for women across Europe, give greater support for victims and – crucially – bring many more perpetrators to justice.

***Internet: www.coe.int/equality***

# Children's rights

## Protecting children's rights

### Council of Europe Strategy for the Rights of the Child (2012-2015)

The Committee of Ministers adopted the Council of Europe Strategy on the Rights of the Child for 2012-2015 in February 2012 putting a strong emphasis on the real need to implement children's rights standards.

The Council of Europe transversal programme "Building a Europe for and with children" was launched in 2006 in response to a mandate resulting from the Third Summit of the Heads of State and Government of the Council of Europe (Warsaw 2005).

The 2012-2015 strategy proposes a vision for the Council of Europe's role and action in this field, taking into account the progress achieved during the two previous policy cycles (the latest one referred to as the Stockholm Strategy), the needs expressed by governments and the challenges identified by the international community at a High Level Conference organised in Monaco in November 2011. The strategy is the result of extensive consultations with governments, parliamentarians, key international organisations and civil society representatives and all sectors of the Council of Europe. It is also based on an analysis of surveys and consultations with children.

In fulfilling its role as a catalyst for the implementation of the United Nations Convention on the Rights of the Child in Europe, the overarching goal of the organisation for the years to come is to achieve effective implementation of existing children's rights standards. To that end, the programme "Building a Europe for and with Children" sets out to provide policy guidance and support to the member states in implementing United Nations and Council of Europe standards on children's rights, promote a holistic and an integrated approach to children's rights, and identify measures that will tackle old and new challenges in this field.

Challenges remain in the following four fields:

1. **Prevention:** there are not enough actions at the national level targeting prevention policies, training professionals and raising public awareness of children as genuine rights holders. Decision makers have not accorded enough importance to collecting the comprehensive data needed to successfully manage and implement various policies and services at national and local level.
2. **Protection:** millions of children in Europe are still in need of protection: children continue to be victims of abuse, exploitation, neglect, exclusion and discrimination. Some forms of violence (such as corporal punishment) are still legally and socially tolerated and widespread. Although many countries deploy important means to protect children, national and local authorities need to undertake actions that are more thoroughly anchored in human rights, are sustainable and based on a clear vision.
3. **Provision:** service provision to children and their families does not always match their needs. Certain categories of children have very limited access to education, health care, justice, social protection and to a nurturing and caring environment. Economic, social and technological developments have resulted in new challenges that children, their families and the professionals working with them are not sufficiently equipped or trained to handle. Integrated local, regional and national strategies are crucial to strengthen local, regional and national governments' ability to respond to existing and emerging challenges in a cost-efficient manner.
4. **Participation:** children's participatory rights are not respected: children have little access to information and their views in public and

private life are rarely sought or given due consideration.

The Strategy calls for the need to bridge the gap between standards and practice – to move from de jure to de facto – by providing guidance, advice and support to member states on how to best implement these standards.

Concrete actions are proposed such as:

- **Promoting a holistic approach**: support member states in observing the four principles of the UN Convention on the Rights of the Child: non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child as well as the interdependence and indivisibility of children's rights;
- **Information, awareness-raising and capacity-building**: improve the access to information of all stakeholders – including authorities, professionals, children and young people – on standards, monitoring reports, campaign and training materials and any other relevant tools and provide professionals with training;
- **Mainstreaming and monitoring**: sustain and develop a child-rights perspective in all Council of Europe activities, in particular those of its monitoring bodies, as well as maintain and develop spaces for exchanging information and good practices and debating on current and emerging issues.

The Programme's four strategic objectives (below) build on the achievements of the programme's previous cycles and respond to the needs identified by all the programme's partners. They take into account the child-rights dimension of four other transversal Council of Europe programmes, which deal with the information society; Roma[21] and Travellers; equality and diversity (including gender and children with disabilities); and migration, including unaccompanied minors.

## Strategic objective 1: promoting child-friendly services and systems

Children and young people have the legal right to equal access to and adequate treatment in healthcare, social, justice, family, education systems and services as well as sport, culture, youth work and other recreational activities aimed at young people under the age of 18. The Council of Europe will support the development of child-friendly services and systems that are respectful, responsive, reliable and responsible, with a particular focus on children in vulnerable situations.

## Strategic objective 2: eliminating all forms of violence against children

Children and young people are legally entitled to be protected from all forms of violence. But despite positive steps in this direction, children continue to suffer violence in all spheres of life – in their home, in school, while practising their activities, in residential institutions and detention, in the community, and in the media.

The Council of Europe will continue to act as a regional initiator and co-ordinator of initiatives to eliminate all violence against children in Europe. As the European forum for follow-up to the recommendations of the UN Secretary General's Study on Violence against Children (2006), it will continue to support the mandate of the Special Representative of the UN Secretary General on Violence against Children as well as the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography. To this end, the Organisation will adopt a two-pronged approach to:

- support the adoption and implementation of integrated national strategies to protect children from violence. These will include legislative, policy and institutional reforms and a focus on prevention;[22]
- promote zero tolerance for all forms of violence by raising awareness and taking action to address specific types of violence and focus on settings in which violence occurs.

21. The term "Roma" used at the Council of Europe refers to Roma, Sinti, Kale, and related groups in Europe, including Travellers and Eastern groups (Dom and Lom), and covers the wide diversity of groups concerned, including persons who identify themselves as "Gypsies".
22. In line with the Committee of Ministers' Recommendation CM/Rec(2009)10 on integrated national strategies for the protection of children from violence

## Strategic objective 3: guaranteeing the rights of children in vulnerable situations

Children are legally entitled to equal enjoyment of their rights, yet in practice, some children are particularly exposed to rights violations, and need special attention and measures to protect them as well as measures to empower them, in particular through access to citizenship and human rights education. The Council of Europe is committed to eliminating discrimination against children in vulnerable situations, through stepped up co-operation with UNICEF, the EU and civil society. Besides the groups of children mentioned below, the Council of Europe will continue to protect the rights of other children in vulnerable situations, such as those from national minorities; living in poverty; children raised in social isolation; child victims of discrimination based on race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status such as sexual orientation or gender identity. While implementing this objective, the Council of Europe will take into account that children are often exposed to multiple forms of discrimination.

## Strategic objective 4: promoting child participation

All children have the legal right to be heard and taken seriously in all matters affecting them, whether in the family or alternative care environments; day-care; schools; local communities; health care, justice and social services; sport, culture, youth work and other recreational activities aimed at young people under the age of 18; and policy-making at domestic, European and international levels. A major obstacle to effective child participation can be attributed to adult attitudes. The Council of Europe and its member states are responsible for reversing this situation and establishing a culture of respect for children's views.

Children's participation is a cross-cutting approach throughout the whole strategy. The Organisation will continue to mainstream child participation as a working method and an attitude into its own standard-setting, monitoring and co-operation activities. This objective will be mainstreamed in particular in the Council of Europe sectors working on youth, on education and on media and information society.

The programme will continue to mobilise and co-ordinate the contribution of all Council of Europe bodies and institutions, mainstreaming children's rights into its monitoring bodies and human rights mechanisms, as well as into all of its policy areas and activities. Furthermore, the programme will co-ordinate and consolidate partnerships with other international organisations, professional networks and civil society at large.

## Recommendation CM/Rec(2011)12 on children's rights and social services for children and families

Social services play a key role in providing support for children and families, in particular children and families in difficulty. This new legal instrument adopted on 16 November 2011 calls upon member states to design social services in a way that they match the needs of children and families as closely as possible. The best interests of children, their rights and safety should be the primary consideration in social services' work. The participation of children and families in all decisions concerning them is highlighted as being essential. This recommendation provides, for the first time, a definition of child and family friendly social services. By making the best interests of children, their rights and safety the cornerstone of the social services' work, it lays down the fundamental principles on which such work should be based and the specific features of child and family friendly services. The importance of appropriate training for staff and of co-operation between social services and other sectors involved in protecting children are highlighted.

The 47 member states of the Council of Europe are called upon to review domestic legislation and policies and practices to ensure the implementation of this recommendation. Member states are invited to ensure that the recommendation is widely disseminated among the relevant authorities, service providers, groups representing the interests of children and families but also among children themselves, in a child-friendly language and form.

By adding this Recommendation to the Guidelines on child-friendly justice (2010) and the Guidelines on child-friendly health care (2011), the Council of Europe now has a full range of

instruments covering the most important sectors relating to the protection of children.

### Recommendation CM/Rec(2012)2 on the participation of children and young people under the age of 18

On 28 March 2012 the Council of Europe adopted a recommendation on the participation of children and young people under the age of 18 in decision-making, in keeping with Article 12 of the UN Convention on the Rights of the Child. It was developed following comprehensive reviews of the reality of child participation in several member states and with the direct involvement of children in the work of the drafting Committee. Policy reviews were carried out in Finland, Republic of Moldova and Slovakia with the input of children and young people.

The recommendation covers the rights of children and young people to be heard in all settings, including in schools, in communities and in the family as well as at the national and European level. Member states are asked to take the necessary steps to implement the recommendation in law and in practice.

The Council of Europe strategy for the rights of the child (2012-2015) will build on developing child participation actions through its strategic objective No. 4 on promoting child participation.

## Lanzarote Convention and Committee

### About the Lanzarote Convention

The Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (also known as "the Lanzarote Convention") is the first international treaty which defines and criminalises sexual abuse of children in such a broad manner to ensure that all sexual offences against minors are specifically criminalised, including child prostitution, pedopornography, grooming and corruption of children through exposure to sexual content and activities. It covers abuse within the victim's family or close social surroundings and acts committed for commercial or profit-making purposes. In this regard, it provides that states in Europe and beyond establish specific legislation and pragmatic measures with an emphasis on keeping the best interest of children at the forefront to prevent sexual violence but also to protect child victims and prosecute perpetrators. It also promotes international co-operation to achieve the same objectives.

The Convention provides for the setting-up of a specific monitoring mechanism to ensure its long-term effective implementation.

#### Signatures and ratifications

The Lanzarote Convention was opened for signature on 25 October 2007 in Lanzarote, Spain, and entered into force on 1 July 2010.

To date, the Convention has been signed by 43 Council of Europe member states and ratified by 18: Albania, Austria, Bulgaria, Croatia, Denmark, Finland, France, Greece, Luxemburg, Malta, Republic of Moldova, Montenegro, the Netherlands, Romania, San Marino, Serbia, Spain and Turkey.

It should be underlined that any non-member state of the Council of Europe may, subject to a specific procedure provided for by the Convention, become a Party to the Convention.

### About the Lanzarote Committee

The Committee of the Parties (also known as "the Lanzarote Committee") is the body established to monitor implementation of the Convention in member states. It is also mandated to facilitate the collection, analysis and exchange of information, experience and good practice between states to improve their capacity to prevent and combat sexual exploitation and sexual abuse of children.

The members of the Lanzarote Committee are representatives of the Parties to the Convention. The meetings of the Committee are also open to all Council of Europe member states, the non-member states which participated in the elaboration of the Convention and the Eu-

ropean Union as they may become Parties to the Convention. The meetings are also open to civil society representatives and representatives of Council of Europe bodies and international organisations working in the area of protection of children against sexual exploitation and sexual abuse.

The Lanzarote Committee has met twice (at the end of September 2011 and March 2012): these meetings were dedicated to the adoption of its Rules of Procedure.

According to the Rules of Procedure, following ratification, every Party to the Convention shall be required to reply to a questionnaire aimed at providing the Lanzarote Committee with a general overview of the legislation, institutional framework and policies for the implementation of the Convention at the national, regional and local levels. Monitoring will then take place on a thematic basis covering a variety of topics, starting with the examination of the situation in states with regard to sexual abuse in the circle of trust.

## Council of Europe ONE in FIVE Campaign to stop sexual violence against children

Available data and research suggest that about 1 out of 5 children in Europe are victims of some form of sexual violence. It is estimated that in 70 to 85% of cases, the perpetrator is known to the victim.

Child sexual violence can take many forms: sexual abuse within the family circle, child pornography and prostitution, corruption, solicitation via Internet (grooming) and sexual assault by peers.

Combating sexual violence against children through specific legal instruments and comprehensive awareness-raising actions are two of the strategic objectives of the programme "Building a Europe for and with children".

To combat sexual violence against children in the Council of Europe member states and beyond, the programme launched a campaign to stop sexual violence against children, holding the official launching event on 29 and 30 November 2010 in Rome, Italy, using the ratio ONE in FIVE to highlight the urgent need for campaigning.

The main goals of the campaign are to:

- achieve further signature, ratification and implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention);
- equip children, their families/carers and societies at large with knowledge and tools to prevent and report sexual violence against children, thereby raising awareness of its extent.

The Lanzarote Convention contains all the measures needed to prevent sexual violence, to protect children and to prosecute abusers. It is the main legal text to combat sexual violence against children complementing all the UN instruments. It is also the first universal convention to criminalise all forms of sexual violence against children, regardless of whether commercial or not.

Two other key Council of Europe Conventions contain important provisions to combat specific forms of sexual violence against children: The Convention on Action against Trafficking in Human Beings and the Convention on Cybercrime. The Council of Europe Guidelines on Child Friendly Justice adopted on 17 November 2010 also provide guidance on how to secure access and participation of children in judicial procedures, be it administrative, criminal or civil.

Active campaigning by different actors, in different settings and using different tools can make a great impression on increasing awareness and changing attitudes for prevention and protection of children. There are now campaign partners throughout Europe as well as in Mexico: campaigns have been launched by a variety of partners including ministries, NGOs, parliamentarians, as follows:

- 13 campaigns have been launched to date (Croatia, Cyprus, the Czech Republic, Greece, Italy, Monaco, Mexico, the Russian Federation, Serbia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia")
- 10 Campaigns are to be launched soon (Armenia, Azerbaijan, Finland, Georgia, Luxembourg, Malta, Montenegro, San Marino, Turkey, Ukraine)
- 32 member states have officially expressed their interest in campaigning (e.g. Lithuania: Lanzarote working group)

There is also support from international organisations such as UN agencies, EU bodies and the European Law Students Association (ELSA), NGOs such as Child Rights Informational Network (CRIN), End Child Prostitution, Child Pornography and Trafficking of Children

for Sexual Purposes (ECPAT) and Eurochild, as well as from the private sector (Air France, Aegean Airlines) and the sports sector (Real Madrid, Spain and Omonia football team, Cyprus).

A wide range of campaign tools is available to facilitate campaigning, either in the form of online information, media dissemination or material publications. One set of awareness raising and empowerment tools "The Underwear Rule" is specifically designed to help parents and carers to talk to children in a positive and child-friendly manner about their right to define their personal boundaries and their right to say no if they are unhappy about being touched. The Underwear Rule web page is available in 8 languages: French, English, Spanish, Czech, Italian, Dutch, Russian, and Serbian. The materials available (a children's book, parent's guide, posters, postcards) featuring Kiko and the Hand have been translated into 28 European languages, and the TV Spot has been adapted in 13 languages: Armenian, Croatian, Czech, Dutch, English, French, Georgian, Greek, Italian, Ukrainian, Serbian, Spanish, Russian.

There are currently two additional key dimensions to campaigning:

### Parliamentary dimension

The Parliamentary Assembly of the Council of Europe has been very active in developing its dimension and has produced a handbook for parliamentarians aimed at facilitating the promotion of the Lanzarote Convention at national level, and a network of contact parliamentarians in the Council of Europe member states has been set up (currently 46 members) which meets during each of the four yearly part-sessions of the Assembly in Strasbourg and holds one external meeting per year.

At their 5th, 6th and 7th Network meetings, in November 2011, January and April 2012 discussions were held on the issue of preventing sexual violence against children, on the means to redress and eliminate sexual violence against children, and on the obligation to report suspected sexual violence against children respectively. The upcoming 8th meeting to be held in Strasbourg on 27 June will deal with the issue of young sex offenders.

### Congress dimension

The Congress of Local and Regional Authorities has adopted a Strategic Action Plan to address the local and regional dimensions of the Campaign. The overall aims of the Action Plan are to associate Congress members, local and regional authorities and their associations, as well as other partners (NGOs, civil society organisations, officials, professionals, decision-makers, media) with the promotion of the ONE in FIVE Campaign, and to raise awareness on the Lanzarote Convention. As part of its contribution, the Congress organised a seminar on 9 February 2012 which brought together a panel of experts, grassroots professionals and local and regional elected representatives working to fight sexual violence and abuse against children. The challenge to local and regional authorities is to develop and implement community-based action plans and strategies, and to invest in better services that respect children's rights in order to deliver locally what children and families need, to stop sexual violence and to bring perpetrators to justice. The Congress will work to help local and regional authorities meet this challenge by raising awareness on the issue and proposing model structures to be set up at these levels to prevent the sexual exploitation of children and to protect and support victims and their families.

***Internet: www.coe.int/children***

# Information society, media and data protection

**With Article 10 of the European Convention on Human Rights at its source, the Council of Europe strives to defend and promote freedom of expression and freedom of the media in all aspects of the information society, in all the media – traditional media as well as emerging media. Among the essential conditions for the effective exercise of other human rights and fundamental freedoms, the protection of personal data is also of primary importance. The Council of Europe is addressing these issues boldly with innovative and participative working methods. Fundamental rights apply online as well as offline. The objective is to secure a maximum of rights and freedoms, subject to minimum restriction, whilst guaranteeing a level of security to which people are entitled.**

## Texts and instruments

### Declarations

- Declaration of the Committee of Ministers on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers (adopted by the Committee of Ministers on 7 December 2011)
- Declaration of the Committee of Ministers on Public Service Media Governance (adopted by the Committee of Ministers on 15 February 2012)

For more information see chapter "Committee of Ministers", page 78.

### Recommendations

- Recommendation CM/Rec(2012)1 of the Committee of Ministers to member states on public service media governance (adopted by the Committee of Ministers on 15 February 2012)
- Recommendation CM/Rec(2012)3 of the Committee of Ministers to member states on the protection of human rights with regard to search engines (adopted by the Committee of Ministers on 4 April 2012)
- Recommendation CM/Rec(2012)4 of the Committee of Ministers to member states on the protection of human rights with regard to social networking services (adopted by the Committee of Ministers on 4 April 2012)

For more information see chapter "Committee of Ministers", page 77.

### The Council of Europe puts users' rights at heart of Internet

The 47 Council of Europe member states adopted an Internet governance strategy featuring 40 lines of action structured around six areas (Internet's openness, the rights of users, data protection, cybercrime, democracy and culture, and children and young people). It will be implemented over a period of four years, from 2012 to 2015, in close co-operation with partners from all sectors of society, including the private sector and civil society.

# Meetings of conventional committees, expert committees and groups of specialists

## 15th meeting of the Steering Committee on Media and New Communication Services (CDMC)

**Strasbourg, 29 November – 2 December 2011**

At its 15th – and last – meeting, the CDMC finalised three important standard setting texts: two draft recommendations, respectively on the protection of human rights with regard to search engines and on the protection of human rights with regard to social networking services (both adopted on 4th April 2012 by the Committee of Ministers) and a draft declaration on libel tourism (pending before the Committee of Ministers). To conclude its mandate, the CDMC took stock of the work accomplished during its seven years of existence and addressed the work of its successor the Steering Committee on Media and Information Society (CDMSI). This move should enable the Council of Europe to keep pace with the changes occurring in the media and the information society. It will thus embrace the forward looking dimension of the Recommendation on a new notion of media, adopted by the Committee of Ministers in 2011, in its standard setting work, still pursuing the multistakeholder approach adopted by the CDMC.

## 1st meeting of the Steering Committee on Media and Information Society (CDMSI)

**Strasbourg, 27-30 March 2012**

On 1 January 2012, the Steering Committee on Media and New Communication Services (CDMC) was replaced by the new Steering Committee on Media and Information Society (CDMSI). That first meeting was mainly devoted to mapping out the work that will enable it to deliver its mandate.

# Main events

## Perspectives for the future

### Task force on freedom of expression and media

Freedom of expression and freedom of the media have implications on various sectors of the society such as, *inter alia*, justice or education. The Council of Europe has therefore decided to engage all its sectors of activities in a transversal effort towards the promotion and application of Article 10 of the European Convention of Human Rights under the leadership of the Media Division. This is one of several initiatives of the Secretary general of the Council of Europe in response to a Committee of Ministers declaration calling for, *inter alia*, improved co-operation and sharing of information within the Council of Europe.

### Rights of Internet users

The growing use of Internet and Internet-based services raise the issue of the users' rights. Various initiatives are underway in different international fora and Internet communities on an enhanced understanding of rights of Internet users. The Council of Europe, which has been putting human rights at the forefront of Internet governance over the past years, has undertaken to address this issue in the course of 2012.

### Media and gender – how do media take account of gender equality

The Steering Committee on Media and Information Society is convinced that gender equality is an essential component of human rights and a fundamental criterion for democracy. The active contribution of media is very important in shaping and mirroring gender roles and in preventing gender-based stereotyping and discrimination. Therefore, it will address this issue, in the next eighteen months.

## Co-operation and assistance

In the field of media and freedom of expression, three co-operation and assistance projects are underway.

### Promoting freedom, professionalism and pluralism of the media in the South Caucasus and Moldova (European Union/Council of Europe joint

**programme, 2011-2012, cost 1 200 000 euros)**

The overall objective of the project is to support the development of legal and institutional guarantees for freedom of expression, higher quality journalism and a pluralistic media landscape in Armenia, Azerbaijan, Georgia and Moldova, in line with Council of Europe standards and as regards both traditional and new media. It is directed to public officials, media professionals, journalism educators and civil society.

**Promotion of European Standards in the Ukrainian Media Environment (European Union/Council of Europe joint programme 2008-2012, cost 2 488 000 euros)**

The overall objective of the project is to raise standards of journalism with a view to ensuring that the Ukrainian public is better informed about political and social processes in Ukraine. In order to achieve this, the project provides continuing support for enhancing the legislative framework for media and for raising the ethical standards in the journalism profession. It also provides assistance for enhancing the legal framework on protection of personal data. Finally, the project supports an on-going dialogue between the media, civil society and the state administration at the regional level, aiming ultimately to generate recommendations for enhanced co-operation at the central level. It involves the National Council for Television and Radio Broadcasting, the Committee on Freedom of Speech and Information of the Verkhovna Rada, the Ministry of Justice, the State Service for Protection of Personal Data, editors, journalists, officials of regional and local administrations and civil society representatives.

**Promoting professionalism and tolerance in the media in Bosnia and Herzegovina (2012-2013, funded by Ireland and Norway)**

The overall objective of the project is to promote professional and responsible journalism in line with Council of Europe standards.

***Internet: http://www.coe.int/media/***

# Recent titles


**Human rights of Roma and Travellers in Europe** (2012)
ISBN 978-92-871-7200-6, €15/US$30

In many European countries, the Roma and Traveller populations are still denied basic human rights and suffer blatant racism. This report aims to encourage a constructive discussion about policies towards Roma and Travellers in Europe today, focusing on what must be done in order to put an end to the discrimination and marginalisation they suffer.


**Human rights and a changing media landscape** (2012)
ISBN 978-92-871-7198-6, €15/US$30

Free, independent and pluralistic media are a core element of any democracy. However, there is a need for stronger protection of media freedom and freedom of expression in Europe today. This publication contributes to a more thorough discussion on media developments and their impact on human rights in a constantly changing media landscape.


**Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice** (2012)
ISBN 978-92-871-7274-7, €15/US$30

Based on existing international and European standards, in particular the United Nations Convention on the Rights of the Child and the European Convention on Human Rights, the guidelines are designed to guarantee children's effective access to and adequate treatment in justice, recalling and promoting the principles of the best interests of the child, care and respect, participation, equal treatment and the rule of law.

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