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# Human rights information bulletin

**Continuing education**

The Council of Europe organises training courses for judges and other magistrates (cover photo taken in Albania) to help them meet the standards set out in the European Convention on Human Rights.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

No. 55, November 2001-February 2002

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# Human rights information bulletin, No. 55

**1 November 2001-28 February 2002**

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## News of the Convention

***More detailed information is available in the "Simplified chart of signatures and ratifications of European human rights treaties" in Appendix 2, or on the Treaty Office's web site, http://conventions.coe.int/.***

### New reservations and declarations

#### United Kingdom

*Declaration contained in a Note Verbale from the Permanent Representation of the United Kingdom, dated 18 December 2001, registered by the Secretariat General on 18 December 2001 – Or. Engl.*

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information in order to ensure compliance with the obligations of Her Majesty's Government in the United Kingdom under Article 15 (3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 5 November 1950.

##### Public emergency in the United Kingdom

The terrorist attacks in New York, Washington, DC and Pennsylvania on 11th September 2001 resulted in several thousand deaths, including many British victims and others from 70 different countries. In its resolutions 1368 (2001) and 1373 (2001), the United Nations Council recognised the attacks as a threat to international peace and security.

The threat from international terrorism is a continuing one. In its resolution 1373 (2001), the Security Council, acting under Chapter VII of the United Nations Charter, required all States to take measures to prevent the commission of terrorist attacks, including by denying safe haven to those who finance, plan, support or commit terrorist attacks.

There exists a terrorist threat to the United Kingdom from persons suspected of involvement in international terrorism. In particular, there are foreign nationals present in the United Kingdom who are suspected of being concerned in the commission, preparation or instigation of acts of international terrorism, of being members of organisations or groups which are so concerned or of having links with members of such organisations or groups, and who are a threat to the national security of the United Kingdom.

As a result, a public emergency, within the meaning of Article 15 (1) of the Convention, exists in the United Kingdom.

##### The Anti-terrorism, Crime and Security Act 2001

As a result of the public emergency, provision is made in the Anti-terrorism, Crime and Security Act 2001, inter alia, for an extended power to arrest and detain a foreign national which will apply where it is intended to remove or deport the person from the United Kingdom but where removal or deportation is not for the time being possible, with the consequence that the detention would be unlawful under existing domestic law powers. The extended power to arrest and detain will apply where the Secretary of State issues a certificate indicating his belief that the person's presence in the United Kingdom is a risk to national security and that he suspects the person of being an international terrorist. That certificate will be subject to an appeal to the Special Immigration Appeals Commission ("SIAC"), established under the Special Immigration Appeals Commission Act 1997, which will have power to cancel it if it considers that the certificate

should not have been issued. There will be an appeal on a point of law from a ruling by SIAC. In addition, the certificate will be reviewed by SIAC at regular intervals. SIAC will also be able to grant bail, where appropriate, subject to conditions. It will be open to a detainee to end his detention at any time by agreeing to leave the United Kingdom.

The extended power of arrest and detention in the Anti-terrorism, Crime and Security Act 2001 is a measure which is strictly required by the exigencies of the situation. It is a temporary provision which comes into force for an initial period of 15 months and then expires unless renewed by the Parliament. Thereafter, it is subject to annual renewal by Parliament. If, at any time, in the Governments' assessment, the public emergency no longer exists or the extended power is no longer strictly required by the exigencies of the situation, then the Secretary of State will, by Order, repeal the provision.

### Domestic law powers of detention (other than under the Anti-terrorism, Crime and Security Act 2001)

The Government has powers under the Immigration Act 1971 ("the 1971 Act") to remove or deport persons on the ground that their presence in the United Kingdom is not conducive to the public good on national security grounds. Persons can also be arrested and detained under Schedules 2 and 3 to the 1971 Act pending their removal or deportation. The courts in the United Kingdom have ruled that this power of detention can only be exercised during the period necessary, in all the circumstances of the particular case, to effect removal and that, if it becomes clear that removal is not going to be possible within a reasonable time, detention will be unlawful (R. v. Governor of Durham Prison, ex parte Singh [1984] All ER 983).

### Article 5 (1) (f) of the Convention

It is well established that Article 5 (1) (f) permits the detention of a person with a view to deportation only in circumstances where "action is being taken with a view to deportation" (Chahal v. the United Kingdom (1996) 23 EHRR 413 at paragraph 112). In that case the European Court of Human Rights indicated that detention will cease to be permissible under Article 5 (1) (f) if deportation proceedings are not prosecuted with due diligence and that it was necessary in such cases to determine whether the duration of the deportation proceedings was excessive (paragraph 113).

In some cases, where the intention remains to remove or deport a person on national security grounds, continued detention may not be consistent with Article 5 (1) (f) as interpreted by the Court in the Chahal case. This may be the case, for example, if the person has established that removal to their own country might result in treatment contrary to Article 3 of the Convention. In such circumstances, irrespective of the gravity of the threat to national security posed by the person concerned, it is well established that Article 3 prevents removal or deportation to a place where there is a real risk that the person will suffer treatment contrary to that article. If no alternative destination is immediately available then removal or deportation may not, for the time being, be possible even though the ultimate intention remains to remove or deport the person once satisfactory arrangements can be made. In addition, it may not be possible to prosecute the person for a criminal offence given the strict rules on the admissibility of evidence in the criminal justice system of the United Kingdom and the high standard of proof required.

### Derogation under Article 15 of the Convention

The Government has considered whether the exercise of the extended power to detain contained in the Anti-terrorism, Crime and Security Act 2001 may be inconsistent with the obligations under Article 5 (1) of the Convention. As indicated above, there may be cases where, notwithstanding a continuing intention to remove or deport a person who is being detained, it is not possible to say that "action is being taken with a view to deportation" within the meaning of Article 5 (1) (f) as interpreted by the Court in the Chahal case. To the extent, therefore, that the exercise of the extended power may be inconsistent with the United Kingdom's obligations under Article 5 (1), the Government has decided to avail itself of the right of derogation conferred by Article 15 (1) of the Convention and will continue to do so until further notice.

## Turkey

### Article 15

*By letter of 29 January 2002, the Turkish Government has withdrawn the following communication, dated 5 May 1992:*

I have the honour to refer to the Notice of Derogation and the Notice of Information made by the Republic of Turkey in conformity with Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms on August 6, 1990 and January 3, 1991, respectively.

As most of the measures described in the decrees which have the force of law nos. 425 and 430 that might result in derogating from rights guaranteed by Articles 5, 6, 8, 10, 11 and 13 of the Convention, are no longer being implemented, I hereby inform you that the Republic of Turkey limits henceforward the scope of its Notice of Derogation with respect to Article 5 of the Convention only. The Derogation with respect to Articles 6, 8, 10, 11 and 13 of the Convention is no longer in effect; consequently, the corresponding reference to these Articles is hereby deleted from the said Notice of Derogation.

*Note by the Secretariat: The withdrawal of the declaration of 5 May 1992 revokes de facto the communications of the Turkish Government dated 6 August 1990, 3 January 1991 and 6 April 1993. For details see the Treaty Office's Internet site.*

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

# European Court of Human Rights

## Introduction

Between 1 November 2001 and 28 February 2002, the Court dealt with 5 780 (4 170) cases:

– 4 801 (2 933) applications declared inadmissible
– 86 applications struck off the list
– 133 (73) applications declared admissible
– 321 (730) applications communicated to governments
– 439 (434) judgments delivered (provisional figures)

The difference between the first figure and the figure in parentheses is due to the fact that a judgment or decision may concern more than one application.

Owing to the large number of judgments delivered by the Court, only those delivered by the Grand Chamber or chamber judgments presenting a particular importance with regard to the Court's case-law or to the defending state are presented. They are followed by a table which gives succinct information about the judgments having given rise to a press release. The list of the judgments adopted and these of the key decisions, together with the full text, can be found on the Internet:

**http://www.echr.coe.int**

*The summaries have been prepared for the purposes of the present* Bulletin *and are not binding on the supervisory organs of the European Convention on Human Rights.*

## Judgments of the Grand Chamber

### McElhinney v. Ireland

**Judgment of 21 November 2001**

Alleged violations of: Articles 6 § 1 (access to court and fairness of the proceedings) and 14 (prohibition of discrimination) of the Convention

*Principal facts and complaints*

The applicant is a police officer (garda). In 1991, when crossing from Northern Ireland into Ireland, the applicant accidentally dragged a British soldier across the border on the tow-bar of his car, towing a van on a trailer at the time. The applicant alleges that the British soldier fired several shots at him. The Irish police arrested the applicant on suspicion of driving having consumed excess alcohol. The applicant was subsequently prosecuted and convicted for his refusal to provide blood and urine samples.

The applicant lodged an action in the Irish High Court against the individual soldier and the British Secretary of State for Northern Ireland (later substituted by the United Kingdom Secretary of State for Defence), claiming damages, including exemplary and punitive damages, in respect of his allegation that the soldier had wrongfully assaulted him. The Secretary of State for Northern Ireland, claiming sovereign immunity, applied for the summons to be set aside. The High Court granted the Secretary of State's request, on the ground that the applicant was not entitled to bring an action in the Irish courts against a member of a foreign sovereign government. The applicant appealed, arguing, first, that the doctrine of sovereign immunity did not apply to claims for damages for personal injury caused by torts taking place within the forum State's jurisdiction. Secondly, he submitted that the principle of reciprocity should apply to prevent the Irish court granting immunity to the United Kingdom in circumstances in which British courts, applying the State Immunity Act 1978, would not grant immunity to Ireland. Thirdly, he put forward the argument that, even if the doctrine of state immunity applied, it should yield in his case since he alleged an infringement of the constitutionally protected right to bodily integrity. The Supreme Court upheld the High Court's judgment.

The applicant claimed before the European Court of Human Rights that, by applying the doctrine of sovereign immunity, the Irish courts had denied him the right to a judicial determination of his compensation claim. He also alleged discrimination on the grounds that the British judicial authorities would not have applied the same theory in a case of trespass to the person inflicted by an Irish soldier in the United Kingdom (allegation subsequently dropped).

*Decision of the Court*

The Court considered that granting sovereign immunity to a State in civil proceedings pursued the legitimate aim of complying with international law to promote comity and good relations between States through the respect of another State's sovereignty. It further observed that the European Convention on Human Rights should so far as possible be interpreted in harmony with other rules of international law of which it formed part, including those relating to State immunity. It followed that measures which reflected generally recognised rules of public international law on State immunity could not in principle be regarded as imposing a disproportionate restriction on the right of access to a tribunal. The Court also noted that it would have been open to the applicant to bring an action in Northern Ireland against the United Kingdom Secretary of State for Defence. The Court recalled that it had held inadmissible, for non-exhaustion of domestic remedies, the applicant's complaint that it was not open to him to pursue an action against the United Kingdom in Northern Ireland. There had, therefore, been no violation of Article 6 § 1.

### Al-Adsani v. the United Kingdom

**Judgment of 21 November 2001**

Alleged violations of: Article 3 (prohibition of torture) in conjunction with Articles 1 (obligation to respect human rights) and 13 (right to effective remedy) and Article 6 § 1 (access to court and fairness of proceedings) of the Convention

*Principal facts and complaints*

The applicant, of both British and Kuwaiti nationality, went to Kuwait in 1991 and served as a member of the Kuwaiti Air Force during the Gulf War. After the war, he remained in Kuwait and during this period came into possession of sexual video tapes involving Sheikh Jaber Al-Sabah Al-Saud Al-Sabah ("the Sheikh"), who is related to the Emir of Kuwait. By some means these tapes entered general circulation, for which the Sheikh held the applicant responsible. The applicant alleged that the Sheikh and two others arrested him at his house and imprisoned him in the Kuwaiti State Security Prison, and later to the Emir of Kuwait's brother's palace, where he was tortured and suffered extensive burns. Upon his return to the United Kingdom, the

applicant spend six weeks in hospital for burns covering 25% of his body and suffered from a severe form of post-traumatic stress disorder, aggravated by the fact that, once in England, he received threats warning him not to take action or give publicity to his plight.

The applicant instituted civil proceedings in England for compensation against the Sheikh and the Government of Kuwait in respect of injury to his physical and mental health caused by torture in Kuwait and threats against his life and well-being made after his return to the United Kingdom. He obtained a default judgment against the Sheikh. The proceedings were re-issued after an amendment to include two named individuals as defendants. On 8 July 1993 a deputy High Court judge ex parte gave the applicant leave to serve the proceedings on the individual defendants. This decision was confirmed in chambers on 2 August 1993. He was not, however, granted leave to serve the writ on the Kuwaiti Government. The applicant submitted a renewed application to the Court of Appeal, which was heard ex parte on 21 January 1994. The court held, on the basis of the applicant's allegations, that there were three elements pointing towards governmental responsibility for the events in Kuwait: first, the applicant had been taken to a State prison; secondly, Government transport had been used; and, thirdly, in the prison he had been mistreated by public officials. It found that the applicant had established a good arguable case, based on principles of international law, that Kuwait should not be afforded immunity under the State Immunity Act 1978 in respect of acts of torture. In addition, there was medical evidence indicating that the applicant had suffered damage (post-traumatic stress) while in the United Kingdom. It followed that leave should be granted to serve the writ on the Kuwaiti Government.

The latter, after receiving the writ, sought an order striking out the proceedings. The application was examined inter partes by the High Court, which struck out the action on the grounds that the 1978 Act bestowed immunity upon sovereign States for acts committed outside the jurisdiction and that no implied exception for acts of torture could be allowed for. Moreover, the Court was not satisfied on the balance of probabilities that the Kuwaiti Government was responsible for the threats made to the applicant when he was in the United Kingdom. It followed that the action against the Government should be struck out. The applicant appealed and the Court of Appeal also rejected the claim. The applicant was furthermore refused leave to appeal by the House of Lords. His attempts to obtain compensation from the Kuwaiti authorities via diplomatic channels proved unsuccessful.

*Decision of the Court*
*- Article 3*

The applicant does not contend that the alleged torture took place within the jurisdiction of the United Kingdom or that the United Kingdom authorities had any causal connection with its occurrence. In these circumstances, it cannot be said that the High Contracting Party was under a duty to provide a civil remedy to the applicant in respect of torture allegedly carried out by the Kuwaiti authorities.

*- Article 6 § 1*

After recalling the principle of the sovereign immunity as resumed above in the case of McElhinney, the Court does not accordingly find it established that there is yet acceptance in international law of the proposition that States are not entitled to immunity in respect of civil claims for damages for alleged torture committed outside the forum State. The 1978 Act, which grants immunity to States in respect of personal injury claims unless the damage was caused within the United Kingdom, is not inconsistent with those limitations generally accepted by the community of nations as part of the doctrine of State immunity. In these circumstances, the application by the English courts of the provisions of the 1978 Act to uphold Kuwait's claim to immunity cannot be said to have amounted to an unjustified restriction on the applicant's access to court and there was no violation of Article 6 § 1 in this case.

## Fogarty v. the United Kingdom

**Judgment of 21 November 2001**

Alleged violations of: Article 6 § 1 (access to court and fairness of the proceedings) alone or in conjunction with Article 14 (prohibition of discrimination) of the Convention

*Principal facts and complaints*

After being dismissed in February 1995 from her employment as an administrative assistant at the United States Embassy in London, the applicant, of Irish nationality, issued proceedings against the United States Government for sex discrimination. She alleged in particular that she had suffered persistent sexual harassment from her supervisor and that working relationships had broken down in consequence. The United States Government defended the claim and did not, at any stage in these proceedings, claim State immunity. The Tribunal upheld the applicant's complaint and a compensation figure of GBP 12,000 was agreed between the parties. While her first claim in the Industrial Tribunal was still pending, the applicant applied for and obtained a fixed term contract in a section of the Embassy. The contract was due to expire in June 1996. In June 1996 and August 1996 (after the finding in her favour by the Industrial Tribunal), the applicant applied for two posts at the Embassy and on each occasion her application was unsuccessful. The applicant issued a second application before the Industrial Tribunal, claiming that the refusal of the Embassy to re-employ her in two of the above posts was a consequence of her previous successful sex discrimination claim, and accordingly constituted victimisation and discrimination within the meaning of the Sex Discrimination Act 1975. In this second action, solicitors acting for the United States notified the Industrial Tribunal by letter that the United States Government intended to claim immunity. They enclosed an affidavit sworn by the First Secretary at the Embassy, deposing to the fact that each of the posts for which the applicant had applied were part of the administrative and technical staff of the Embassy, and accordingly fell within the ambit of the immunity. The applicant received the advice of counsel, to the effect that she had no remedy in domestic law.

*Decision of the Court*
*– Article 6 § 1*

After recalling the principle of the sovereign immunity as resumed above in the cases of McElhinney and Al Adsani, the Court observed that there appears to be a trend in international and comparative law towards limiting State immunity in respect of employment-related disputes. However, where the proceedings relate to employment in a foreign mission or embassy, international practice is divided on the question whether State immunity continues to apply and, if it does so apply, whether it covers disputes relating to the contracts of all staff or only more senior members of the mission. Certainly, it cannot be said that the United Kingdom is alone in holding that immunity attaches to suits by employees at diplomatic missions or that, in affording such immunity, the United Kingdom falls outside any currently accepted international standards. The Court further observed that the proceedings which the applicant wished to bring did not concern the contractual rights of a current embassy employee, but instead related to alleged discrimination in the recruitment process. Questions relating to the recruitment of staff to missions and embassies may by their very nature involve sensitive and confidential issues, related, inter alia, to the diplomatic and organisational policy of a foreign State. The Court could not claim to be aware of any trend in international law towards a relaxation of the rule of State immunity as regards issues of recruitment to foreign missions.

In these circumstances, the Court considered that, in conferring immunity on the United States in the present case by virtue of the provisions of the 1978 Act, the

United Kingdom did not exceed the margin of appreciation allowed to States in limiting an individual's access to court.

*- Article 14*

The Court considered that the applicant was not victim of discriminatory restriction of her right to access to a tribunal in view of the fact that the immunity conferred to the United States applies in relation to all such employment-related disputes, irrespective of their subject-matter and of the sex, nationality, place of residence or other attributes of the complainant.

### Calvelli and Ciglio v. Italy

**Judgment of 17 January 2002**

Alleged violations of: Articles 2 (right to life) and 6 §1 (fair and public hearing in a reasonable time) of the Convention

*Principal facts and complaints*

In 1987, the applicants' newborn child died due to complications during childbirth. The applicants lodged a complaint and the public prosecutor's office started an investigation into the responsibility of E.C., the doctor responsible for delivering the baby and joint owner of the clinic where the birth took place. In December 1993, the Cosenza Criminal Court found the accused guilty in absentia of involuntary manslaughter for not having taken the necessary precautionary measures in a case regarded as high risk, and for having absented himself during the birth, when his presence might have saved the child from asphyxiation.

The Court nevertheless suspended the sentence of one year imprisonment and ordered that the conviction should not appear on E.C.'s criminal record. In addition, it dismissed the civil parties' application for a provisional award of compensation, which was to be calculated later. On 17 March 1994, E.C. appealed to the Catanzaro Court of Appeal, which declared the appeal inadmissible on procedural grounds. On 22 December 1994, the Court of Cassation overturned the decision of the Catanzaro Court of Appeal, to which it remitted the case for a retrial. In a judgment of 3 July 1995, the Catanzaro Court of Appeal ruled that the prosecution of the offence was time-barred as of 9 August 1994. In the meantime, the applicants, who had lodged civil proceedings against E.C., entered into an agreement with the insurers of the doctor and the clinic and failed to attend a civil court hearing, which resulted in the case being struck out of the court's list.

The applicants alleged violations of articles 2 and 6 § 1 of the Convention owing to the length of proceedings which resulted in the offence of which E.C. was accused being time-barred.

*Decision of the Court*
*- Article 2*

The Court considered that by entering into a settlement agreement with the doctor's and the clinic's insurers, the applicants voluntarily waived their right to pursue those proceedings, which could have led to an order against the doctor for the payment of damages and possibly to the publication of the judgment in the press or even to disciplinary action against the doctor. The Court accordingly considered that the applicants denied themselves access to the best means - and one that, in the special circumstances of the instant case, would have satisfied the positive obligations arising under Article 2 - of elucidating the extent of the doctor's responsibility for the death of their child. By accepting compensation in settlement of a civil claim based on medical negligence, the applicants could no longer claim to be victims. That conclusion made it unnecessary for the Court to examine, in the special circumstances of the instant case, whether the fact that a time-bar prevented the doctor being prosecuted for the alleged offence was compatible with Article 2. The Court therefore held that no violation of Article 2 has been established in the instant case.

*- Article 6 § 1*

The Court noted that there were no significant periods of inactivity attributable to the authorities and considered, regard being had to the complexity of the case over for four levels of jurisdiction, that the length of proceedings could not be regarded as unreasonable.

### Bankovic and others

The European Court of Human Rights has announced its decision on admissibility in the case Bankovic and Others v. Belgium and 16 Other Contracting States (application no. 52207/99), concerning the bombardment of the Radio-Television Serbia headquarters by NATO.

They claimed violations of Articles 2 (right to life), 10 (freedom of expression) and 13 (right to an effective remedy) of the European Convention on Human Rights.

The Court considered that the Convention was a multi-lateral treaty operating, subject to Article 56 (territorial application) of the Convention, in an essentially regional context and notably in the legal space of the Contracting States. The FRY clearly did not fall within this legal space. The Convention was not designed to be applied throughout the world, even in respect of the conduct of Contracting States.

The Court was not therefore persuaded that there was any jurisdictional link between the persons who were victims of the act complained of and the respondent States. Accordingly, it was not satisfied that the applicants and their deceased relatives were capable of coming within the jurisdiction of the respondent States on account of the extra-territorial act in question.

Accordingly, the Court concluded that the impugned action of the respondent States did not engage their Convention responsibility and that it was not therefore necessary to consider the other admissibility issues raised by the parties. The application had therefore to be declared inadmissible.

## Selected chamber judgments of the Court

### Laumont v. France

**Judgment of 8 November 2001**

Alleged violations and findings of the Court: Article 5 § 1 of the Convention (liberty and security of person): no violation

The applicant, who had been arrested and convicted of armed robbery, complained of unlawful detention - without valid order to this effect - from the expiry date of the last prolongation order for his detention pending trial and the date of indictment while further inquiries ordered by the Court of Appeal were being conducted.

*Decision of the Court*

The Court noted that the Indictments Chamber had handed down its decision within the two month period provided for in the Code of Criminal Procedure, but had only issued an order for further inquiry and did not rule on the applicant's indictment. However, the Court recalls that long-standing precedents of the Court of Cassation hold that an order for further inquiry meets the requirements of the Code of Criminal Procedure and that, in this case, a prolongation order is not mandatory. The previously issued detention order therefore remains in effect until the indictment has been ruled upon.

### Yagtzilar and others v. Greece

**Judgment of 6 December 2001**

Alleged violations and findings of the Court: Article 6 of the Convention (access to a tribunal and length of proceedings) and Article 1 of Protocol No. 1 (protection of property): violation

This case, brought by ten Turkish nationals, concerned an olive plantation in

Northern Greece which was taken over by Greece in 1925 in order to accommodate refugees from Asia Minor. Expropriation of the plantation was declared in 1933 and the procedure to allocate compensation began that same year. The Greek courts rejected several times the Government's submission that the applicants' compensation claim was out of time. However, on 17 July 1995 the Court of Appeal found that their claim had been out of time since at least 1971. The proceedings ended on 15 July 1997 with a judgment from the Court of Cassation confirming the Court of Appeal judgment. The applicants received no compensation.

They complained about the excessive length of the proceedings and maintained that, by deciding that their right to compensation was out of time, the Greek courts deprived them of their right to access to a court and of their right to property.

*Decision of the Court*

The Court noted that the Greek courts decided that the claim for compensation was out of time at an advanced stage of the proceedings, which the applicants had pursued diligently and in good faith. The Court also found that the Greek Government had not explained in a convincing manner why the applicants had received no compensation. The Court reserved the question of just satisfaction for a later date.

### Metropolitan Church of Bessarabia and Others v. Moldova

**Judgment of 13 December 2001**

Alleged violations and findings of the Court:
- Articles 9 (freedom of religion) and 13 (effective remedy) of the Convention: violation
- Article 14 (prohibition of discrimination) in conjunction with Articles 9, and Articles 6 (right to a fair trial) and 11 (freedom of assembly and association) of the Convention: not necessary to examine these complaints.

The Metropolitan Church of Bessarabia and eleven Moldovan nationals holding official positions in the applicant church lodged this application. The case concerns the refusal by the Moldovan authorities and the Supreme Court of Justice to recognise the applicant (Orthodox Christian) church. That court held that the question of recognition of the applicant church could be resolved only by the Metropolitan Church of Moldova, which had been recognised by the State and from which the applicant church had split, and that the adherents of the applicant church could freely practise their religion within the Metropolitan Church of Moldova.

The applicants complained about the Moldovan Government's refusal to recognise their church as such and about the internal legislative provisions which only authorise churches to operate in Moldova after the grant of official recognition by the authorities. They also alleged, amongst other claims, that this refusal on the part of the Moldovan authorities prevented the church from having legal personality and therefore from having access to a tribunal to have their grievances regarding its rights examined by a competent judicial authority.

*Decision of the Court*
*- Article 9*

The Court noted that as the applicant church had not been recognised it could not operate and it was not entitled to judicial protection of its assets. Accordingly, the Court took the view that the Moldovan Government's refusal to recognise the applicant church constituted interference with the right of that church and the other applicants to freedom of religion, but considered that in the present case the interference complained of pursued a legitimate aim for the purposes of Article 9 § 2, namely the protection of public order and public safety. However, the Court also held that in making the applicant church's recognition depend on the will of a recognised ecclesiastical authority - the Metropolitan Church of Moldova - the Government had failed to discharge their duty of neutrality and impartiality, especially in view of the fact that no justification had been put forward by the Moldovan government to justify the difference in the criteria applied in the recognition of the applicant church and in that of other cultural associations. In conclusion, the Court considered that the refusal to recognise the applicant church had such consequences for the applicants' freedom of religion that it could not be regarded as proportionate to the legitimate aim pursued. It had not therefore been necessary in a democratic society and there had been a violation of Article 9.

*- Article 13*

The Court accordingly took the view that the applicants had not been able to obtain redress before a national authority in respect of their complaint concerning their right to freedom of religion. There had therefore been a violation of Article 13.

### Gorzelik and others v. Poland

**Judgment of 20 December 2001**

Alleged violations and findings of the Court:
Article 11 (freedom of assembly and association) of the Convention: no violation

The applicants complained that the Polish authorities had arbitrarily refused to register their association under the name "Union of People of Silesian Nationality". The Polish authorities refused to register the association on the ground that both the intended name and certain provisions of the Union's memorandum of association, which characterised Silesians as a "national minority," implied that their real intention was to exploit provisions of the electoral law providing for exemption from the threshold of votes required to participate in the distribution of seats in Parliament and, on the other hand, to obtain unqualified and legally enforceable privileges automatically granted to minorities.

*Decision of the Court*
*- Article 11*

The Court considered that the applicants could easily have dispelled the doubts voiced by the authorities, in particular by slightly changing the name of their association and by sacrificing, or amending, a single provision of the memorandum of association. Considering that, in the absence of any compromise, the Polish authorities had acted reasonably, in order to protect the country's electoral system, the Court held that there had been no violation of Article 11.

### A. B. v. the Netherlands

**Judgment of 29 January 2002**

Alleged violations and findings of the Court:
- Articles 8 (respect of private correspondence) and 13 (effective remedy), the latter in conjunction with Articles 8 and 3 (prohibition of degrading treatment or punishment) of the Convention: violation

The applicant complained that, during his detention in the Netherlands Antilles, his correspondence with, among others, his lawyers and the European Commission of Human Rights, was opened and read by the prison authorities and that he was prevented from establishing satisfactory contacts outside prison. He also complained that there was no effective remedy concerning his rights.

*Decision of the Court*

The Court observed that while it may sometimes be necessary to screen the correspondence of detainees, it found no grounds for a complete ban. Given the absence of reasonable grounds for the interference in the applicant's correspondence with the Commission and his lawyer, the Court concluded therefore that there had been a violation of Article 8 of the Convention on this point, but not as regards the other claims put forward by the applicant concerning this Article.

In view of the inadequate implementation by the Netherlands Antilles authorities of judicial orders to repair the unacceptable shortcomings of penitentiary facilities, as well as the failure to implement the urgent recommendations of the European Committee for the Prevention of Torture, the Court found that the applicant did not have effective remedies for his complaints regarding his rights guaranteed by Articles 8 and 3 of the Convention.

The Court awarded the applicant non pecuniary damage.

### Conka v. Belgium

**Judgment of 5 February 2002**

Alleged violations and findings of the Court:
- Article 5 §§ 1 (right to liberty and security) and 4 (right to determine the lawfulness of detention) of the Convention: violation
- Article 5 § 2 of the Convention (right to be informed of the reasons for arrest): no violation
- Article 13 (right to effective remedy), in conjunction with Article 3 (prohibition of inhuman or degrading treatment) of the Convention: no violation
- Article 13 of the convention in conjunction with Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens): violation
- Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens): violation

The applicants, Slovakian nationals of Romany origin, left Slovakia in November 1998 for Belgium, where they requested political asylum on the ground that they had been violently assaulted on several occasions by skinheads in Slovakia. In June 1999, their applications for asylum were declared inadmissible and the applicants were required to leave the territory within five days. Their applications for legal aid, in connection with their application to the Conseil d'État for judicial review, was dismissed on the ground that they had not been accompanied by the requisite means certificate. In September 1999, a number of Slovakian Romany families, including the applicants, received notices requiring them to attend a police station on 1 October 1999. The notice stated that their attendance was required to enable the files concerning their applications for asylum to be completed. At the police station the applicants were served with a fresh order to leave the territory and a decision for their removal to Slovakia and their detention for that purpose. They were then taken to a closed transit centre and on 5 October 1999 they and some 70 other refugees of Romany origin were taken to a military airport, and put on a plane for Slovakia.

*Decision of the Court*
*- Article 5 § 1*

The Court considered that a conscious decision by the authorities to mislead aliens about the purpose of a notice within a planned expulsion operation was not compatible with Article 5.

*- Article 5 § 2*

The Court observed that the applicants had been informed of the reasons for their arrest and of the available remedies and that a Slovakian-speaking interpreter had also been present, thus satisfying the requirements of Article 5 § 2.

*- Article 5 § 4*

The applicants were informed as to the available remedies before their expulsion in a language they did not understand and only one interpreter was available, and only at the police station, to assist the large number of Romany families. Furthermore - and this factor was decisive in the eyes of the Court - the applicants' lawyer had only been informed of the events much later such that any appeal to the committals division would have been pointless. Consequently, there had been a violation of Article 5 § 4.

*- Article 4 of Protocol No. 4*

A number of factors lead to the conclusion that there had been a collective expulsion of aliens in violation of Article 4 of Protocol No. 4.

*- Article 13*

The implementation of the remedy, an application for a stay of execution, was too uncertain to enable the requirements of Article 13 to be satisfied. There was therefore violation of this Article.

The Court awarded the applicants non-pecuniary damages.

### Mikulic v. Croatia

**Judgment of 7 February 2002**

Alleged violations and findings of the Court:
Articles 6 § 1 (right to a fair hearing within a reasonable time), 8 (respect for private and family life) and 13 (right to effective remedy) of the Convention: violation

This case concerned the length of proceedings in a paternity suit - over four years - which had left the applicant uncertain about her personal identity. The applicant also complained that she had no means of speeding up the proceedings and that Croatian law does not oblige defendants in paternity suits to comply with a court order to undergo a DNA test.

*Decision of the Court*
*- Article 6 § 1*

The Court considered that the length of the proceedings to be taken into account failed to satisfy the reasonable-time requirement.

*- Article 8*

The Court recalled that the possibility of refusing to submit to DNA tests is not incompatible with Article 8, but that the judicial system must in such cases provide further means enabling an independent authority to determine the paternity claim within reasonable time in order to meet the applicants vital interest to uncover the truth about an important aspect of their personal identity. The Court found that the procedure available did not strike a fair balance between the right of the applicant to have her uncertainty as to her personal identity eliminated without unnecessary delay and that of her supposed father not to undergo DNA tests, thereby constituting a violation of Article 8.

*- Article 13*

The Court found that the lack of means to speed up proceedings constituted a violation of Article 13 in conjunction with Article 6 § 1 of the Convention.

The Court awarded the applicant non-pecuniary damages.

### Visser v. the Netherlands

**Judgment of 14 February 2002**

Alleged violations and findings of the Court:
Articles 6 §§ 1 and 3(d) (right to a fair hearing) of the Convention: violation

The applicant was convicted on the basis of an anonymous witness's statement. The Court examined the case to determine whether the anonymity granted the witness in question warranted the restriction of the applicant's rights. The Court found that the investigating judge, and then the Court of Appeal, failed to verify the well-foundedness of the reasons for the anonymity of the witness, and therefore concluded that there had been violation of Article 6. The applicant was awarded non-pecuniary damages.

### Kutzner v. Germany

**Judgment of 26 February 2002**

Alleged violations and findings of the Court:
Article 8 (right to respect for family life) of the Convention: violation

The case referred to the decision taken by the German authorities to withdraw the applicants' parental rights over their daughters, aged six and four at the time of events, on the grounds of their incapacity to bring up their children, due mainly to their lack of intellectual capacity and emotional underdevelopment. The children were placed with distinct, anonymous foster parents and visiting rights for the parents were severely restricted, no visits being permitted for the first six months, later one hour per month in the presence of third parties, and finally two hours per month.

*Decision of the Court*

The Court recognised that the authorities may have had legitimate concerns about the late development of the children noted by the various social services departments concerned and the psychologists. However, it found that both the order for placement in itself and, above all, its implementation were unsatisfactory. On the first point, it appeared that the children had benefited from educational support and the opinions of the psychologists were contradictory as regards their conclusions concerning the parents' incapacity to contribute to their children's personal development. On the second point, the

Court reiterated that a care order should be regarded as a temporary measure while awaiting proper measures towards the reunification of the family. In the case before the Court, the separation of the parents and their children, and of the children from each other, constituted serious interference in the applicants' family life disproportionate to the legitimate aims pursued. Consequently, there had been a violation of Article 8 of the Convention.

The applicants were awarded non-pecuniary damages.

### Magalhaes v. Portugal

**Judgment of 26 February 2002**

Alleged violations and findings of the Court:
- Article 5 § 4 (right to determine the lawfulness of detention, legal assistance) of the Convention: violation
-Article 5 § 1 of the Convention: not necessary to examine the complaints

The applicant was arrested on suspicion of fraud and held in custody pending trial, during which time he was given a psychiatric examination and found to be not criminally responsible by reason of insanity and dangerous. Consequently, the tribunal issued a hospital order for a maximum of eight years, starting in December 1996, with a first mandatory periodic review of the hospital order to take place in March 1998. In February 1997, the judge responsible for the execution of sentences requested an initial evaluation of the applicant's condition, which concluded that the applicant was "clinically compensated". Based on this favourable opinion, the applicant himself lodged an application for release in July 1997, to which the Institute of Forensic Medicine responded negatively in a report concluding that the applicant remained a danger to the public. The applicant lodged a further application for release on 2 June 1998, which was rejected by the tribunal responsible for the execution of sentences on 20 January 2000 on the basis of the same report from the Institute of Forensic Medicine. In January 2001, the public prosecutor's office lodged an application for the applicant's release. The judge dismissed the application and said he would review the situation on 20 January 2002, when the next periodic review was due. The public prosecutor's office appeal was dismissed.

The applicant complained that his confinement was unlawful. He also complained that he had been given no legal assistance and, lastly, that the national authorities had taken too long to examine the lawfulness of his continued confinement.

*Decision of the Court*
*- Article 5 § 4 - examination of the lawfulness of detention*

The Court noted that the first mandatory periodic review of the hospital order took place only after an unjustified delay. It furthermore noted that that the tribunal responsible for the execution of sentences had reached its decision on the basis of a medical report drafted a year and eight months previously. It therefore held that there had been a violation of Article 5 § 4.

*- Article 5 § 4 - legal assistance*

The Court observed that the lawyer designated to assist the applicant with his application for release played no role in the proceedings and that an official from the penal institution was finally appointed to act as the applicant's assigned lawyer. Even though that appointment appeared valid under domestic legislation, it could not be regarded as adequate representation for the applicant.

The Court awarded non-pecuniary damages.

### H.M. v. Switzerland

**Judgment of 26 February 2002**

Alleged violations and findings of the Court:
Articles 5 § 1 (right to liberty and security) of the Convention: no violation

The applicant was placed against her will for an unlimited time in a nursing home, on the ground of serious neglect and of senile dementia. After a certain time in the nursing home, the applicant agreed to stay willingly and the placement order was lifted.

She complained in particular that she was unlawfully deprived of her liberty.

*Decision of the Court*

The Court concluded that the applicant's placement in the nursing home was a responsible measure taken by the competent authorities in the applicant's own interests, in order to provide her with the necessary medical care and adequate living conditions and that she was able to maintain social contact with the outside world. It did not, therefore, find any deprivation of liberty within the meaning of Article 5 § 1 of the Convention.

### Morris v. the United Kingdom

**Judgment of 26 February 2002**

Alleged violations and findings of the Court:
Article 6 § 1 (right to a fair hearing) of the Convention: violation
Article 6 § 3(c) of the Convention: no violation

The applicant claimed he had become the target of bullying while serving in the Household Cavalry Mounted Regiment of the British Army. Fearing a further attack, he went absent without leave. He was arrested and remanded by his Commanding Officer for trial by district court martial. The applicant was refused free legal aid and was therefore represented during the court martial by a defending officer alone, appointed by his Commanding Officer from within his own unit. The court was comprised of a Permanent President of Courts Martial, two army Captains and a legally qualified civilian judge advocate. The applicant pleaded guilty on the council of the defending officer and was sentenced to dismissal from the army and nine month's detention. The defending officer erroneously advised him that if he appealed unsuccessfully he might face a longer period of detention. A few days later, the applicant instructed a solicitor, who lodged a petition with the Defence Council in its capacity as "reviewing authority" of all court martial convictions and sentences. The petition emphasised that the applicant had had no legal representation and that his allegations of assault had not been presented to the court. The defending officer provided a statement to the Defence Council explaining why he had advised the applicant to plead guilty. The petition was refused. The applicant's application for leave to appeal to the Court Martial Appeal Court was also refused.

The applicant complained about the structure of the court martial system in the United Kingdom, along with other specific complaints.

*Decision of the Court*
*- Regarding the applicant's general complaints about the structure of the court martial system*

The Court noted that the changes introduced by the Armed Forces Act 1996 had gone a long way towards meeting its concerns about the structure of the court martial system and that the complaints brought by the applicant did not constitute a violation of Article 6 § 1.

Turning to the question of whether or not the applicant's court martial collectively constituted an "independent and impartial tribunal" for the purposes of Article 6 § 1, the Court examined the composition of the tribunal and concluded that, despite the presence of certain safeguards, the risk of outside pressure being brought to bear on the two relatively junior serving officers who sat on the applicant's court martial could not be excluded. The Court also considered that the fact that the review was conducted by a non-judicial authority - the "reviewing authority" - was contrary to the requirements of Article 6 § 1. The Court was of the view that the fundamental flaws identified were not corrected by the applicant's subsequent appeal to the Court Martial Appeal Court, since that appeal did not involve any rehearing of the case but rather determined, in the form of a decision which ran effectively to two sentences, that leave to appeal against conviction and sentence should be refused. For all these reasons, the Court considered that the applicant's misgivings about the independ-

ence of the court martial and its status as a "tribunal" were objectively justified and that there had, therefore, been a violation of Article 6 § 1.

*- Regarding the applicant's specific complaints*

The Court noted that the applicant had been offered legal aid - which would have enabled the applicant to be represented by an independent legal representative - subject to a contribution which could not be regarded as unreasonable, bearing in mind the applicant's net salary levels at the time. It found that the defending officer had not failed adequately to advise or represent the applicant, save as regards the risks consequent to his appealing against the court martial's verdict.

The Court considered that the finding of the violation constituted in itself just satisfaction for the non-pecuniary damages suffered by the applicant.

### Dichand and others v. Austria

**Judgment of 26 February 2002**

Alleged violations and findings of the Court: Article 10 (freedom of expression) of the Convention: violation

The applicants, respectively editor and editor-in-chief of a newspaper, belong to a large media group, which, at the relevant time, was in strong competition with another media group represented by Michael Graff, both a lawyer and a politician who had represented the applicants' competitor in several proceedings concerning unfair competition against companies belonging to the applicants' media group. In his newspaper, the applicant criticised Mr Graff on three points, namely his simultaneous activities as lawyer and member of the government, his participation in the adoption of laws which brought about advantages for his clients and the presentation of his disreputable opinion on television. Mr Graff brought injunction proceedings against the applicants and the tribunal, finding that the statements in question were facts which had not been proven, ordered the applicants to retract the statements and not to repeat them in the future.

*Decision of the Court*

The Court closely examined the applicants' three statements and concluded that the first statement, extracted from a paragraph, was followed closely by second paragraph, which explained both Mr Graff's precise function and, in detail and accurately, the factual background for the concluding remark about him and that the second and third statements were based on an adequate factual basis and represented a fair comment on an issue of general public interest.

In any event, the Court considered that a politician being in a situation where his business and political activities overlapped might give rise to public discussion, even where no problem of incompatibility of office under domestic law arose.

The Court recalled that Article 10 protects freedom of expression also when it is exercised using harsh, polemical terms. In the present case, despite the fact that the applicants has published strong criticism based on a slim factual basis, restricting freedom of expression was a measure disproportionate to the aim pursued.

The Court awarded the applicants pecuniary damages.

### Unabhängige Initiative Informationsvielfalt v. Austria

**Judgment of 26 February 2002**

Alleged violations and findings of the Court: Article 10 (freedom of expression) of the Convention: violation

In early 1993, an opinion poll under the heading "Austria first", initiated by the FPÖ several months before, took place. The opinion poll concerned the issue of immigration with proposals to amend legislation and change administrative practices. It included proposals to amend the Federal Constitution by a provision stating that Austria was not a country of immigration; to create a separate border police; to limit the percentage of pupils whose mother tongue was not German; to require the immediate expulsion of and residence prohibition on foreign offenders.

In the 9 December 1992 issue of the "TATblatt", edited by the association, a leaflet had been published, including the following statement: "Racism has a name and address... let's call the FPÖ and tell them what we think of them and their policy. Or let's send them small gifts in response to their racist agitation." The text was followed by a list of addresses and telephone numbers of FPÖ members and offices.

The FPÖ leader Jörg Haider brought civil proceedings for an injunction against the applicant association, concerning the references to "racist agitation", sending gifts and the publication of the telephone numbers and addresses. The applicant association submitted that it had never identified itself with the leaflet at issue and had merely published it out of journalistic interest and in order to inform the public. Moreover, the expression "racist agitation" was not a statement of fact, but a value judgment, meant as a critical comment on the opinion poll. The tribunal granted the injunction, finding that the statements were presented as statements of fact, that they contained a reproach of a criminal offence, namely "incitement to hatred", would and therefore have to be proved. This judgment was confirmed in appeal.

*Decision of the Court*

The Court found that the impugned statement should be seen in the political context in which it was made, namely as a reaction to the opinion poll "Austria first" and that the impugned statement about "racist agitation" could be considered fair comment on a matter of public interest, that is, a value judgment, the truth of which was not susceptible to proof. Finding that the injunction was disproportionate to the aim pursued, The Court awarded pecuniary damages.

### Del Sol v. France

**Judgment of 26 February 2002**

Alleged violations and findings of the Court: Article 6 § 1 (access to a tribunal) of the Convention: no violation

The applicant complained that her application for legal aid with a view to lodge an appeal with the Court of Cassation was rejected on the ground that no serious means of cassation could be invoked to support the appeal.

*Decision of the Court*

The Court considered that the French judicial system offered substantial safeguards owing to the composition of the bureau for legal aid within the Court of Cassation and the existence of the possibility of review for decisions rejecting appeals, and that the rejection did not in itself constitute a violation of the applicant's right to access to a tribunal.

### Frette v. France

**Judgment of 26 February 2002**

Alleged violations and findings of the Court:
- Article 6 (right to a fair hearing) of the Convention: violation
- Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the Convention: no violation

The applicant's request for prior authorisation to adopt a child by the Paris Social Services, Youth and Health Department was refused on the ground that the applicant's "choice of lifestyle" did not appear to be such as to provide sufficient guarantees that he could give a child a suitable home from an educational, psychological and family perspective. The Paris Administrative Court set aside the decisions refusing the applicant authorisation, but the Paris Social Services appealed to the Conseil d'Etat, which set aside the Administrative Court's judgment and dismissed the applicant's request for prior authorisation.

The applicant complained that the decision dismissing his request for authorisation to adopt amounted to arbitrary interference with his private and family life

because it was based exclusively on unfavourable prejudice about his sexual orientation. He further complained that he had not been summoned to the hearing held by the Conseil d'Etat.

*Decision of the Court*
*- Article 14 taken together with Article 8*

The Court observed that the Convention did not guarantee, as such, the right to adopt and that it appeared the French authorities had refused the applicant's request for prior authorisation on the ground of his sexual orientation alone. The Court accordingly concluded that the complaint could be examined in light of Article 14.

Turning to the merits of the case, the Court noted that the decisions refusing authorisation pursued a legitimate aim, namely protecting the health and rights of children who might be concerned by an adoption procedure. In view of the limited number of scientific studies published to date on the possible consequences of children being brought up by one or more homosexual parents, of the wide differences of opinion, and of the low ratio of adoptable children to prospective adoptive parents, the national authorities could legitimately and reasonably have considered that the right to be able to adopt was circumscribed by the interests of adoptable children, notwithstanding the applicant's legitimate aspirations and without his personal choices being called into question.

*- Article 6*

The Court noted that the applicant was not represented at the hearing in the Conseil d'Etat and, in consequence, had not had the opportunity to have knowledge of the submissions of the Government commissioner. That had deprived him of the possibility of filing a rejoinder in the form of a note to the court at the deliberations stage. He had therefore been denied a fair hearing of his case in adversarial proceedings.

The Court awarded the applicant fees and expenses.

## Judgments of the Court between 1 November 2001 and 28 February 2002 for which a press release was issued

**Applicants** **I.I., A.S., B.E. and A.Ö.**
Defendant state Turkey
Articles concerned 2, 5 and 13
Date 06/11/01

**Applicant** **A.V.**
Defendant state Italy
Articles concerned 6 §1
Date 06/11/01

**Applicants** **Fermi and Others**
Defendant state Italy
Articles concerned 6 §1
Date 06/11/01

**Applicant** **Laumont**
Defendant state France
Articles concerned 5 §1
Date 08/11/01

**Applicants** **Tunkay and Özlem Kaya**
Defendant state Turkey
Articles concerned 5 §§3 and 4, 6 §§1 and 3
Date 08/11/01

**Applicant** **Sari**
Etats défendeurs Turkey and Denmark
Articles concerned 6 §1
Date 08/11/01

**Applicant** **Adolfas Šležević ius**
Defendant state Lithuania
Articles concerned 6 §1
Date 13/11/01

**Applicant** **Francisco**
Defendant state France
Articles concerned 6 §1
Date 13/11/01

**Applicant** **Durand, Durand (No. 2)**
Defendant state France
Articles concerned 6 §1
Date 13/11/01

**Applicant** **Iwanczuk**
Defendant state Poland
Articles concerned 3, 5 §3, 6 §1
Date 15/11/01

**Applicants** **Nemec and Others**
Defendant state Slovakia
Articles concerned 6 §1
Date 15/11/01

**Applicant** **Werner**
Defendant state Poland
Articles concerned 6 §1
Date 15/11/01

**Applicant** **Olstowski**
Defendant state Poland
Articles concerned 5 §3, 6 §1
Date 15/11/01

**Applicant** **Cerin**
Defendant state Croatia
Articles concerned 6 §1
Date 15/11/01

**Applicant** **Rizzi, Bertini, Bastreghi, Caramanti**
Defendant state Italy
Articles concerned 6 §1, 1 of Protocol No. 1
Date 03/12/01

**Applicant** **Yagtzilar**
Defendant state Greece
Articles concerned 6, 1 of Protocol No. 1
Date 06/12/01

**Applicant** **Tsironis**
Defendant state Greece
Articles concerned 6, 1 of Protocol No. 1
Date 06/12/01

**Applicants** **Troiani, Gattuso, Caracciolo, Murru, Besati, Mauti, Fiorenza, Cartoleria Poddighe s.n.c. c., Silvestri, Ferraresi, Delmonte and Badano, Centi (No. 1), Grassi, Bagnetti and Bellini, Gemignani, C.A.I.F., Grisi, Gatto, M.I. and E.I., Servillo and D'Ambrosio, D'Amore, Crotti Grimaldi, Palumbo, Mezzena, Provide S.r.l., Bonacci and Others, Steiner and Hassid Steiner, Bazzoni, Albertosi, Filosa, D'Arrigo, Capri, Onori, Guarnieri, Mazzacchera, Pedà**
Defendant state Italy
Articles concerned 6 §1
Date 06/12/01

**Applicant** **Martins Serra and Andrade Câncio**
Defendant state Portugal
Articles concerned 6 §1
Date 06/12/01

**Applicants** **Mazzoleni and Others, I.M.**
Defendant state Italy
Articles concerned 6 §1, 1 of Protocol No. 1
Date 11/12/01

**Applicant** **Selva**
Defendant state Italy
Articles concerned 6 §1, 13
Date 11/12/01

**Applicants** **Laganà, Romano, Armando Grasso, Gaspari, Camici, Molinaris, Allegri, Molek, F.CA, Mezzetta, Targi and Bianchi, Pastrello, Roccatagliata, Brivio, Beluzzi and Mangili, D'Apice, Villanova, Plebani, G.L., Bertot, Lopriore, Sordelli and C. S.n.c., Arrigoni, Tiozzo Peschiero, V.I., Ferfolja, Meneghini, Baioni and Badini, Cassin, Canapicchi, Butta, De Guz, P. and M.O., Bettella, Cappelletti and Dell'Agnese, Piccinin, O.M., Perico, Pelagagge, Carbone, Giacomo and Gianfranco Rota, Roberto**

**and Giuseppe Rota, Mannari, Vanzetti, Gianbattista Rossi, Spanu**
Defendant state Italy
Articles concerned 6 § 1
Date 11/12/01

**Applicant Palys**
Defendant state Poland
Articles concerned 6 § 1
Date 11/12/01

**Applicant Luksch**
Defendant state Austria
Articles concerned 6 § 1
Date 13/12/01

**Applicant Schreder**
Defendant state Austria
Articles concerned 6 § 1
Date 13/12/01

**Applicants Metropolitan Church of Bessarabia and Others**
Defendant state Moldova
Articles concerned 6 § 1, 11, 13, 9 (alone or taken together with Article 14)
Date 13/12/01

**Applicant Acar, Kemal Güngü**
Defendant state Turkey
Articles concerned 3, 5 § 3, 6 §§ 1 and 3c) (alone or taken together with Article 14), 13, 14 (taken together with Article 5 § 3)
Date 18/12/01

**Applicants Kuchar and Štis**
Defendant state Czech Republic
Articles concerned 6 § 1
Date 18/12/01

**Applicant SAPL**
Defendant state France
Articles concerned 6 § 1
Date 18/12/01

**Applicant R.D.**
Defendant state Poland
Articles concerned 6 § 1, 6 § 3 c)
Date 18/12/01

**Applicant Parcinski**
Defendant state Poland
Articles concerned 6 § 1
Date 18/12/01

**Applicant Gajdúšek**
Defendant state Slovakia
Articles concerned 6 § 1
Date 18/12/01

**Applicant Pupillo**
Defendant state Italy
Articles concerned 6 § 1
Date 18/12/01

**Applicant C.G.**
Defendant state United Kingdom
Articles concerned 6 §§ 1, 3 d)
Date 19/12/01

**Applicant Janssen**
Defendant state Germany
Articles concerned 6 § 1
Date 20/12/01

**Applicant F.L.**
Defendant state Italy
Articles concerned 6 § 1, 13, 1 of Protocol No. 1
Date 20/12/01

**Applicant Baischer**
Defendant state Austria
Articles concerned 6 § 1
Date 20/12/01

**Applicant Ludescher**
Defendant state Austria
Articles concerned 6 § 1
Date 20/12/01

**Applicant Lsi Information Technologies**
Defendant state Greece
Articles concerned 6 § 1
Date 20/12/01

**Applicant Normann**
Defendant state Denmark
Articles concerned 6 § 1
Date 20/12/01

**Applicant Fütterer**
Defendant state Croatia
Articles concerned 6 § 1
Date 20/12/01

**Applicant Eginlioglu**
Defendant state Turkey
Articles concerned 6 § 1
Date 20/12/01

**Applicant Buchberger**
Defendant state Austria
Articles concerned 6 § 1, 8
Date 20/12/01

**Applicant Weixelbraun**
Defendant state Austria
Articles concerned 6 § 2
Date 20/12/01

**Applicant P.S.**
Defendant state Germany
Articles concerned 6 §§1, 3 d)
Date 20/12/01

**Applicants Leray and Others**
Defendant state France
Articles concerned 6 § 1
Date 20/12/01

**Applicant Conceiçao Fernandes**
Defendant state Portugal
Articles concerned 6 § 1
Date 20/12/01

**Applicant Bayrak**
Defendant state Germany
Articles concerned 6 § 1
Date 20/12/01

**Applicant Zawadzki**
Defendant state Poland
Articles concerned 6 § 1
Date 20/12/01

**Applicants Gorzelik and Others**
Defendant state Poland
Articles concerned 11
Date 20/12/01

**Applicant Sen**
Defendant state the Netherlands
Articles concerned 8
Date 21/12/01

**Applicant K.K.C.**
Defendant state the Netherlands
Articles concerned 3
Date 21/12/01

**Applicant Maczynski**
Defendant state Poland
Articles concerned 6 § 1
Date 15/01/02

**Applicant Z.R.**
Defendant state Poland
Articles concerned 5 §§ 3, 4
Date 15/01/02

**Applicant Josef Fischer**
Defendant state Austria
Articles concerned 6 § 1
Date 17/01/02

**Applicant Laine**
Defendant state France
Articles concerned 6 § 1
Date 17/01/02

**Applicant Tsirikakis**
Defendant state Greece
Articles concerned 6 § 1, 1 of Protocol No. 1
Date 17/01/02

**Applicant Gollner**
Defendant state Austria
Articles concerned 6 § 1
Date 17/01/02

**Applicant Maurer**
Defendant state Austria
Articles concerned 6 § 1
Date 17/01/02

**Applicant Fielding**
Defendant state United Kingdom
Articles concerned 14
Date 29/01/02

**Applicant A.B.**
Defendant state the Netherlands
Articles concerned 8, 13
Date 29/01/02

**Applicant Lanz**
Defendant state Austria

Articles concerned 5 § 4, 6 § 1, 6 § 3 b) and c)
Date 31/01/02

**Applicant Özbey**
Defendant state Turkey
Articles concerned 3
Date 31/01/02

**Applicant Guerreiro**
Defendant state Portugal
Articles concerned 6 § 1
Date 31/01/02

**Applicants Conka and Others**
Defendant state Belgium
Articles concerned 5 §§ 1, 2, 4 and 13, 4 of Protocol No. 4
Date 05/02/02

**Applicants Yolcu**
Defendant state Turkey
Articles concerned 5 § 3, 6 § 3 c)
Date 05/02/02

**Applicant Matthies-Lenzen**
Defendant state Luxembourg
Articles concerned 6 § 1, 13
Date 05/02/02

**Applicant Meier**
Defendant state France
Articles concerned 5, 8, 10
Date 07/02/02

**Applicant Langlois**
Defendant state France
Articles concerned 6 § 1
Date 07/02/02

**Applicant L.L.**
Defendant state France
Articles concerned 6 § 1
Date 07/02/02

**Applicant H.L.**
Defendant state France
Articles concerned 6 § 1
Date 07/02/02

**Applicant Beljanski**
Defendant state France
Articles concerned 6 § 1
Date 07/02/02

**Applicant E.K.**
Defendant state Turkey
Articles concerned 6 § 1, 10 ?
Date 07/02/02

**Applicant Uygur, Dinleten, Metinoglu, Özcan, Saritaç, Zülal, Çilengir, Binbir**
Defendant state Turkey
Articles concerned 6 § 1
Date 07/02/02

**Applicant Mikulic**
Defendant state Croatia
Article concernés 6 § 1, 8, 13
Date 07/02/02

**Applicant Gawracz**
Defendant state Turkey
Articles concerned 6 § 1
Date 12/02/02

**Applicants V.P. and F.D.R., Ital Union Servizi S.a.s. (No. 1), E.M., Ital Union Servizi S.a.s. (No. 2), Ital Union Servizi S.a.s. (No. 3), Rapisarda, Bruno, Cazzato, Vincenza Ferrara, Serino, Scinto, Luciani, Francesco De Rosa, Damiano, Tommaso, De Santis (No. 3), Frattini and Others, D'Alfonso, Mostacciuolo, I.P.A. S.r.l., Francesco Lombardo, Sessa, Ventrone, Raffio, Zotti and Ferrara (No. 1), Zotti and Ferrara (No. 2), Vetrone, Zotti, Vaccarella, Del Bono and Others, Almanio Antonio Romano, Ciancetta and Mancini, R.L., Carmine Falzarano, Mattaliano, Beneventano, Gucci, Policriti and Gioffrè, Savona (No. 2), Di Niso, AN.M., Sciacchitano and Lo Sciuto, Seccia, Ge.Im.A. S.a.s., L.S., Barone, Maria Giovanna Rossi, Sirufo, Stabile, Cristina, Vazzana, L.B., It.R., Murru (No. 5), Bernardini, Calvagni and Formiconi, Società Croce Gialla Romana S.a.S., Sposito, Colasanti, Venturin, Pelagatti, Genovesi, Tor Di Valle Costruzioni S.p.A., Mesiti, Ciampaglia, Giovanni Bevilacqua, Cullari, Spinelli, Dell'Aquila**
Defendant state Italy
Articles concerned 6 § 1
Date 12/02/02

**Applicant Orak**
Defendant state Turkey
Articles concerned 2, 3, 5, 6, 13, 14 and 18
Date 14/02/02

**Applicant Jensen**
Defendant state Denmark
Articles concerned 6 § 1
Date 14/02/02

**Applicant Visser**
Defendant state the Netherlands
Articles concerned 6 §§ 1 and 3 d)
Date 14/02/02

**Applicant Tourtier**
Defendant state Portugal
Articles concerned 6 § 1
Date 14/02/02

**Applicant Amaral de Sousa**
Defendant state Portugal
Articles concerned 6 § 1
Date 14/02/02

**Applicants Caldeira and Gomes Faria**
Defendant state Portugal
Articles concerned 6 § 1
Date 14/02/02

**Applicant Sociedade Panificadora Bombarralense, Lda**
Defendant state Portugal
Articles concerned 6 § 1
Date 14/02/02

**Applicant Zaheg**
Defendant state France
Articles concerned 6 § 1
Date 19/02/02

**Applicant Boiseau**
Defendant state France
Articles concerned 6 § 1
Date 19/02/02

**Applicant Rodolfi, Sardo, Cornia, Ginocchio, Limatola, Dente, Colonnello and Others, Lugnan in Basile, Conte and Others, Giuseppe Napolitano, Folletti, Piacenti, Ripoli (No. 1), Ripoli (No. 2), De Cesaris, Stabile, Presel, Mastropasqua, Donato, Centis, Polcari, D'Amore, Di Pede (No. 2), Abate and Ferdinandi**
Defendant state Italy
Articles concerned 6 § 1
Date 19/02/02

**Applicant Ghidotti**
Defendant state Italy
Articles concerned 1 of Protocol No. 1
Date 21/02/02

**Applicants Lamperi Balenci, Guglielmi (No. 2), Pezza, Colucci, Celona, B. and F., De Filippis, Pane, Tiberio, Stoppini**
Defendant state Italy
Articles concerned 6§ 1, 1 of Protocol No. 1
Date 21/02/02
Représentant Matyar
Defendant state Turkey
Articles concerned 3, 6, 8, 13, 14, 18, 25, 1 of Protocol No. 1
Date 21/02/02

**Applicants Hasan Yilmaz and Others**
Defendant state Turkey
Articles concerned 3, 5 § 3
Date 21/02/02
Requéranst Marks and Ordinateur Express
Defendant state France

Articles concerned 6 § 1
Date 21/02/02

**Applicant Sipavicius**
Defendant state Lithuania
Articles concerned 6
Date 21/02/02

**Applicant Meleddu**
Defendant state Italy
Articles concerned 6 § 1
Date 21/02/02

**Applicant Ziegler**
Defendant state Switzerland
Articles concerned 6 § 1
Date 21/02/02

**Applicant Victorino d'Almeida**
Defendant state Portugal
Articles concerned 6 § 1
Date 21/02/02

**Applicant Kaplan**
Defendant state Turkey
Articles concerned 3, 5 § 3, 6 §§ 1 and 3 c), 13, 14
Date 26/02/02

**Applicant H.M.**
Defendant state Switzerland
Articles concerned 5 § 1 e)
Date 26/02/02

**Applicants Dichand and Others**
Defendant state Austria
Articles concerned 10
Date 26/02/02

**Applicant Unabhängige Initiative Informationsvielfalt**
Defendant state Austria
Articles concerned 10
Date 26/02/02

**Applicant Krone Verlag Gmbh & Co. KG**
Defendant state Autria
Articles concerned 10
Date 26/02/02

**Applicant Fretté**
Defendant state France
Articles concerned 6 § 1, 8, 14
Date 26/02/02

**Applicant Morris**
Defendant state United Kingdom
Articles concerned 6 §§ 1 and 3 c)
Date 26/02/02

**Applicants Del Sol, Essaadi**
Defendant state France
Articles concerned 6 § 1
Date 26/02/02

**Applicant Magalhães Pereira**
Defendant state Portugal
Articles concerned 5 §§ 1 and 4
Date 26/02/02

**Applicant Kutzner**
Defendant state Germany
Articles concerned 8
Date 26/02/02

**Applicants Angelo Giuseppe Guerrera, Gentile, La Torella, Mario Francesco Palmieri, Maddalena Palmieri, Porto, Petrillo, Uzzo, Anna Rita Del Vecchio, Vitelli, Ocone, Biondo, Aceto and Others, Francesco Armellino, Scaccianemici, Ferrara, Di Mezza, Lucia Armellino, Iacobucci and Lavorgna, Riccardi, Riccio and Others, Uccellini and Others, Giovanna De Rosa, Di Meo, Gaetana Lombardi, Maturo and Vegliante, Iesce and Others, Gattone and Others, Pacifico, Rinaldi, Restuccio, Salvatore Patuto, Maria Antonia Circelli, Concetta Pelosi, Paduano, Spagnoletti, Colella, Melillo, Lucia Esposito, Antonio Izzo, Pasquale Falzarano, Tarantino, Natalina De Rosa, Tudisco, De Filippo, Emilia Raccio, Carolla, Serafina Ferrara, Di Dio, Mazzone and Others, Di Maria, Zeolla, Moffa, Cristina Cardo, Palma Gaudino, Nazzaro, Nicola Del Grosso, Arturo Marotta, Pilla, Lombardi, Maria De Rosa, Formato, Donato Pepe, Carmine Fiorenza, Falluto, Elisa Cardo, Crisci, Gisondi, Cuozzo, Calabrese, Ruggiero, Tretola, Antonietta Iannotta, Francesco Cuozzo, Della Ratta, Fasulo, Di Resta, Meccariello, Alfonsina Grasso, Del Re, Gagliardi, Pengue, Michele D'Angelo, Crovella, Santina Pelosi, Mario Truocchio, Tommasina Matera, Martino, Alberto Marotta, Giovanni Izzo, Zuotto, Applicant Ciarmoli, Lagozzino, Pellegrino Bianco, Ciullo, Giuseppina Perna, Edmondo Truocchio, Tazza, Villari, Lavorgna and Iorio, Di Meo and Masotta, Zoccolillo and Others, Cimmino and Others, Biondi and Others, Urbano and Others, Meola, Mancino, Riccardi, Domenico Colangelo, Macolino, Romano and Others, Belviso and Others, Pucella and Others, Pascale, Mastrocinque, Petrillo and Petrucci, Pallotta, Giannotta and Iannella, Simone and Pontillo, Nero and Others, Santagata, Cerbo and Others, Tazza and Zullo, Pascale and Others, Tanzillo, Mario Mongillo, Panza, Elda Pascale, Franco and Basile, Rosa Romano, Mazzarelli, Di Meo, Viscuso**
Defendant state Italy
Articles concerned 6 § 1
Date 28/02/02

# The Committee of Ministers' actions under the European Convention on Human Rights

The Committee of Ministers acts to ensure the collective guarantee of the rights and fundamental freedoms contained in the Convention and its protocols under the following articles:

Under Article 32 of the former version of the Convention (see the transitional provisions in Protocol No. 11) it has responsibility for deciding, for cases that are not referred to the Court, whether or not there has been a violation of the Convention; and for awarding, where necessary, just satisfaction to the victims. The Committee of Ministers' decision concerning the violation – which can be equated with a judgment of the Court – may, since 1995, take one of two forms: an "interim" resolution, which at the same time makes public the Commission's report; or a "traditional" resolution (adopted after the complete execution of the judgment), in which case the Commission's report remains confidential for the entire period of the execution.

So in the same way as it supervises the execution of the Court's judgments, the Committee of Ministers is also responsible for supervising the execution of its own decisions; and its examination is not complete until all the measures for the execution of the judgment have been carried out. Where the Committee of Ministers decides to publish immediately its decision on the violation, a "final" resolution is adopted once all the measures required for its execution have been carried out.

The Committee of Ministers' decisions on just satisfaction are not published separately but appear as "traditional" or "final" resolutions.

Under Article 54 of the former version of the Convention, now Article 46 of the Convention as modified by Protocol No. 11, the Committee of Ministers has the responsibility for supervising the carrying out of the measures adopted by the defending states for the implementation of the Court's judgments. These may be measures that concern the applicant, such as payment of just satisfaction, reopening of proceedings at the origin of the violation, reversal of a judicial verdict or discontinuation of expulsion proceedings; or measures to prevent the repetition of the violation, such as changing legislation or case-law, appointing extra judges or magistrates to absorb a backlog of cases, building detention centres suitable for juvenile delinquents, introducing training for the police, or other similar steps.

Owing to the large number of resolutions adopted by the Committee of Ministers under these articles, they are included here in a "country-by-country" list, with only those which present a particular interest being summarised. Further information may be obtained from the Directorate General of Human Rights at the Council of Europe, or through the Committee of Ministers' Internet site at http://www.coe.int/cm/.

## Resolutions adopted

### Austria

**Edelmayer v. Austria**
Appl. No. 33979/96, Court judgment 19 December 2000
**Resolution ResDH (2001) 170, 17 December 2001**
Friendly settlement (alleged violation of Article 4 of Protocol No. 7)

**Freunberger v. Austria**
Appl. No. 34186/96, Court judgment 19 December 2000
**Resolution ResDH (2001) 171, 17 December 2001**
Friendly settlement (alleged violation of Article 4 of Protocol No. 7)

**Löffler v. Austria**
Appl. No. 30546/96, Court judgment 3 October 2000
**Resolution ResDH (2001) 163, 17 December 2001**
Violation of Article 6.1; pecuniary damage – claim rejected; non-pecuniary damage – financial award; costs and expenses partial award – Convention proceedings

**R v. Austria**
Appl. No. 32502/96, Court judgment 19 December 2000
**Resolution ResDH (2001) 173, 17 December 2001**
Friendly settlement (alleged violation of Article 4 of Protocol No. 7)

**S v. Austria**
Appl. No. 33732/96, Court judgment 19 December 2000
**Resolution ResDH (2001) 172, 17 December 2001**
Friendly settlement (alleged violation of Article 4 of Protocol No. 7)

### Belgium

**Coëme and Others v. Belgium**
Appl. Nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, Court judgment 22 June 2000
**Resolution ResDH (2001) 164, 17 December 2001**
Violation of Article 6.1 in respect of Mr Coëme (fairness of proceedings); not necessary to examine Articles 6.2 and 6.3; violation of Article 6.1 (tribunal "established by law"); not necessary to

examine Article 14; not necessary to examine the complaint of Messrs Mazy, Stalport, Hermanus and Javeau (fairness of proceedings); non-violation of Article 6.1 (access to a court); not necessary to examine Article 13; non-violation of Article 6.1 in respect of the allegation that the *Cour de cassation* did not constitute an independent and impartial tribunal; non-violation of Article 6.1 in respect of Mr Stalport's hearing; non-violation of Article 6.1 (reasonable time); non-violation of Article 7; pecuniary damage – claims rejected; non-pecuniary damage – financial award; costs and expenses partial award – domestic proceedings; costs and expenses partial award – Convention proceedings

## Resolution ResDH (2001) 164

*(Adopted by the Committee of Ministers on 17 December 2001 at the 775th meeting of the Ministers' Deputies)*

The Committee of Ministers,

…

Recalling that the case originated in five applications (Nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96) against Belgium, lodged with the European Commission of Human Rights respectively on 23 July 1996, 1 August 1996, 5 August 1996, 8 August 1996 and 31 July 1996 under former Article 25 of the Convention by Mr Guy Coëme, Mr Jean Louis Mazy, Mr Jean-Louis Stalport, Mr Auguste Merry Hermanus and Mr Camille Javeau, five Belgian nationals, and that the Court, seized of the case under Article 5, paragraph 2, of Protocol No. 11, declared admissible the complaint concerning:

– the lack of implementing legislation governing the procedure for examining the merits of the proceedings against ministers pursuant to section 103 of the Constitution and the difficulties which ensue for the applicants' defence,
– the application of section 21 of the law of 17 April 1978, as modified by under former Article 25 of the law of 24 December 1993,
– the sending of the four applicant, who had never exercised ministerial responsibility before the *Cour de cassation*,
– the refusal of the *Cour de cassation* to submit the preliminary questions concerning the connection rule and extension of the limitation period to the Administrative Jurisdiction and Procedure Court,
– the fact that the *Cour de cassation* had withheld certain statements made by Mr Stalport during his hearing on 16 March 1994, as a witness, as if they constituted a confession,
– the alleged excessive length of the criminal proceedings against Mr Hermanus,
– to the fact that the *Cour de cassation* would be structurally and traditionally under the influence of the prosecution;

Recalling that the third applicant, Mr Jean-Louis Stalport died in the course of the proceedings and that his heirs, his wife and his daughters, have expressed the wish to continue the proceedings;

Whereas in its judgment of 22 June 2000 the Court:

– held, unanimously, that there had been a violation of Article 6, paragraph 1, of the European Convention on Human Rights in respect of Mr Coëme, in that the lack of implementing legislation governing the procedure for the trial of ministers under Article 103 of the Constitution had deprived him of a fair trial;
– held, unanimously, that it was not necessary to examine the complaints raised on that account under paragraphs 2 and 3 of Article 6 of the Convention;
– held, unanimously, that there had been a violation of Article 6, paragraph 1, of the Convention in that the Court of Cassation had not been a tribunal "established by law" within the meaning of Article 6 of the Convention to try Mr Mazy, Mr Stalport, Mr Hermanus and Mr Javeau;
– held, unanimously, that it was not necessary to examine the complaint raised on that account under Article 14 of the Convention;
– held, unanimously, that it was not necessary to examine the complaint of Mr Mazy, Mr Stalport, Mr Hermanus and Mr Javeau that no law on procedure had been enacted pursuant to Article 103 of the Constitution;
– held, by four votes to three, that there had been no violation of Article 6, paragraph 1, of the Convention on account of the Court of Cassation's refusal to submit the preliminary questions concerning the connection rule and extension of the limitation period to the Administrative Jurisdiction and Procedure Court;
– held, unanimously, that it was not necessary to examine the complaint under Article 13 concerning the refusal to submit the preliminary questions to the Administrative Jurisdiction and Procedure Court;
– held, by four votes to three, that there had been no violation of Article 6, paragraph 1, of the Convention as regards the allegation that the Court of Cassation was not an independent and impartial tribunal;
– held, by four votes to three, that there had been no violation of Article 6, paragraph 1, of the Convention as regards the interview with Mr Stalport;
– held, unanimously, that there had been no violation of Article 6 § 1 of the Convention as regards the length of the criminal proceedings against Mr Hermanus;
– held, unanimously, that there had been no violation of Article 7 of the Convention;
– held, unanimously, that the respondent State was to pay, within three months from the date at which the judgment became final in accordance with Article 44 § 2 of the Convention, 300 000 Belgian francs, to Mr Mazy, to Mr Hermanus, to Mr Javeau and to the heirs of Mr Stalport;
– held, unanimously, that the respondent State was to pay, within the same time-limit of three months, for costs and expenses, 400 000 Belgian francs to Mr Coëme, and 760 000 Belgian francs to Mr Mazy, to Mr Hermanus, and to Mr Javeau and to the heirs of Mr Stalport;
– held, unanimously, that simple interest at an annual rate of 7% would be payable on those sums from the expiry of the above-mentioned three months until settlement;
– dismissed, unanimously, the remainder of the applicants' claim for just satisfaction;

…

Whereas during the examination of the case by the Committee of Ministers, the government of the respondent state recalled that, after the facts of the present case and before the Court had delivered its judgment, the legislation had been modified (see §§ 68 and 69, page 30 of the judgment) and that there is no risk of repetition of the violations found;

Whereas the government of the respondent state indicated that the Court's judgment in French, as well as a translation in Dutch and in German had been published on the Internet site of the Belgian Ministry of Justice (http://www.just.fgov.be) and sent out to the authorities directly concerned;

Having satisfied itself that on 18 and 19 January 2001, within the time-limit set, the government of the respondent state had paid the applicants the sums provided for in the judgment of 22 June 2000,

Declares, after having taken note of the information supplied by the Government of Belgium, that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case.

## Cyprus

### Marangos v. Cyprus

Appl. No. 31106/96, Interim Resolution DH (98) 312, 25 September 1998

**Final Resolution ResDH (2001) 153, 17 December 2001**

Violation of Article 8

#### Appendix to Final Resolution ResDH (2001) 153

*Information provided by the Government of Cyprus during the examination of the Marangos case by the Committee of Ministers*

Following the judgment of the European Court of Human Rights in this case, the text thereof was disseminated to all the courts and authorities concerned, in particular the prosecutor's office, in order to ensure as quickly as possible that the requirements of the Convention hence taken into account so as to prevent as far as possible new similar violations awaiting the necessary legislative changes.

A first law No. 40 (1) of 1998 was adopted on 21 May 1998 amending the impugned section 171 of the Cyprus Criminal code.

A further amendment to this section came into force on 16 June 2000 (under Amending Law 77 (1)/2000) notably introducing further clarifications as to the limits of the individual's private sphere. The new statutory definition given by the Criminal Code in section 171 now reads as follows:

(1) Sexual intercourse between males constitutes a felony punishable with five years imprisonment if it is performed in public, or, where one of the persons is under the age of eighteen, whatever the place of its performance;

(2) Sexual intercourse between males constitutes a felony punishable with imprisonment for seven years, if it is performed by abusing a relationship of dependency derived from any service, or by an adult seducing a person under the age of eighteen, or for the purposes of gain or by profession.

(3) For the purposes of this section the term "in public" means a place that can be viewed by the public or to which the public are entitled or permitted to have access with or without any condition.

The Government of the Republic of Cyprus considers that the measures taken will prevent the repetition of any new violations similar to that found in this case and that it has therefore fulfilled its obligations under former Article 53, of the Convention.

The government notes, however, the developments of the European Court of Human Rights' case-law in this area and the ongoing discussion in various fora, including the Parliamentary Assembly of the Council of Europe. As the Convention has to be interpreted in the light of current circumstances, the Government will keep the need for appropriate further developments under review.

### Modinos v. Cyprus

Appl. No. 15070/89, Court judgment 22 April 1993

**Resolution ResDH (2001) 152, 17 December 2001**

Violation of Article 8; non-pecuniary damage – finding of violation sufficient; costs and expenses partial award – Convention proceedings

Violation comparable to that found in the Marangos case, and requiring the same measures. See appendix to Resolution ResDH (2001) 153, above.

## Czech Republic

### Krčmář and Others v. the Czech Republic

Appl. No. 35376/97, Court judgment 3 March 2000

**Resolution ResDH (2001) 154, 17 December 2001**

Violation of Article 6.1; Pecuniary damage – financial award; Non-pecuniary damage – financial award; Costs and expenses partial award – Convention proceedings

#### Appendix to Resolution ResDH (2001) 154

*Information provided by the Government of the Czech Republic during the examination of the Krčmář and others case by the Committee of Ministers*

The Government recalls at the outset that the violation of Article 6§1 in the present case, which did not influence the outcome of the domestic proceedings to a decisive extent, was due to an exceptional incident deviating from the Constitutional Court's well-established practice of scrupulous respect for the right to fair trial, including the Court's obligation to communicate to the parties any evidence available for comments. This practice is based on national legislation, in particular on the Czech Charter of Human Rights and Fundamental Freedoms (Article 38§2), on the Constitutional Court Act No. 182/93 (Sections 32 and 48) and on the Code of Civil Procedure (Sections 122, 123 and 129).

Following the delivery of the European Court's judgment in the Krčmář and Others case, it was translated into Czech, disseminated to the Constitutional Court of the Czech Republic and published (in Czech translation) notably in the *Pravni Praxe* (No. 7/2000), a journal of Ministry of Justice widely disseminated in legal circles.

In the wake of these dissemination measures, the President of the Constitutional Court addressed the whole range of issues raised by the Krčmář and Others judgment at the Court's plenary meeting, including the Czech Republic's obligation to abide by the judgment (Article 46 of the Convention). The Constitutional Court furthermore expressed its regrets about the incident at the origin of the violation in the present case and reaffirmed that it scrupulously respects the European Court's judgments and fully takes them into account when interpreting the Constitution and the Convention, so as to avoid violations. In this last mentioned respect, the Government provided the Committee of Ministers with an example from the domestic case-law which, in its view, is indicative of Constitutional Court's willingness to ensure effective respect for requirements of Article 6 of the Convention, as they are set out in the judgments of the European Court (see the judgment of 13 July 2000 (3rd Chamber) §IIc). According to the Government, this attitude on the part of the Constitutional Court, as indeed of all courts, will play an important role in the effective prevention of violations of the Convention.

In view of the foregoing, the Government is of the opinion that the measures adopted following the Krčmář and Others judgment are sufficient to prevent new, similar violations of the Convention and that the Czech Republic has thus complied with its obligation under Article 46 § 1 of the Convention in the present case.

## France

### Bouriau v. France

Appl. No. 39523/98, Court judgment 28 November 2000

**Resolution ResDH (2001) 165, 17 December 2001**

Violation of Article 6.1; pecuniary damage – claim rejected; non-pecuniary damage – financial award; costs and expenses partial award – Convention proceedings

### Castell v. France

Appl. No. 38783/97, Court judgment 21 March 2000

**Resolution ResDH (2001) 167, 17 December 2001**

Violation of Article 6.1; non-pecuniary damage – financial award; costs and expenses partial award – Convention proceedings

### Cherakrak v. France

Appl. No. 34075/96, Court judgment 2 August 2000

**Resolution ResDH (2001) 169, 17 December 2001**

Violation of Article 6.1; non-pecuniary damage – finding of violation sufficient

### De Moucheron and Others v. France

Appl. No. 37051/97, Court judgment 17 October 2000

**Resolution ResDH (2001) 166, 17 December 2001**

Violation of Article 6.1; pecuniary damage – claim rejected; non-pecuniary damage – financial award; costs and expenses award – Convention proceedings

**Petit v. France**
Appl. No. 33929/96, Interim Resolution DH (99) 365 9 June 1999
**Final Resolution ResDH (2001) 168, 17 December 2001**

Violation of Article 6.1

## Germany

**Elsholz v. Germany**
Appl. No. 25735/94, Court judgment 13 July 2000
**Resolution ResDH (2001) 155, 17 December 2001**

Violation of Article 8; non-violation of Article 14+8; violation of Article 6.1; non-pecuniary damage – financial award; costs and expenses award – domestic proceedings; costs and expenses award – Convention proceedings

### Appendix to Resolution ResDH (2001) 155

*Information provided by the Government of Germany during the examination of the Elsholz case* by the Committee of Ministers

The Government of Germany has informed the Committee of Ministers that, as far as the legislation on family matters is concerned, the statutory provisions on custody and access, which are to be found in the German Civil Code (*Bürgerliches Gesetzbuch*), have been amended on several occasions and many were repealed by the amended Law on Family Matters (*Reform zum Kindschaftsrecht*) of 16 December 1997 (Federal Gazette (*Bundesgesetzblatt* – BGBl) 1997, p. 2942), which came into force on 1 July 1998.

Now, according to Article 1626 § 1, "the father and the mother have the right and the duty to exercise parental authority (*elterliche Sorge*) over a minor child. Parental authority includes the custody (*Personensorge*) and the administration of the child's property (*Vermögenssorge*)".

Pursuant to Article 1626a § 1, as amended, the parents of a minor child born out of wedlock jointly exercise custody if they make a declaration to that effect or if they marry. According to Article 1684, as amended, a child is entitled to have access to both parents: each parent is obliged to have contact with, and entitled to have access to, the child. Family courts can determine the scope of the right of access and prescribe more specific rules for its exercise, also with regard to third parties; and they may order the parties to fulfil their obligations towards the child. Family courts can, however, restrict or suspend that right if such a measure is necessary for the child's welfare. A decision restricting or suspending that right for a lengthy period or permanently may only be taken if the child's well-being would be endangered in the absence of such measures. The family courts may order that the right of access is exercised in the presence of a third party, such a Youth Office authority or an association.

Lastly, the Government of Germany has informed the Committee that the judgment of the European Court of Human Rights in this case has been published in number 32 of the current 2001 volume of the *Neue Juristische Wochenschrift*, pp. 2315 to 2319, and that it has also been transmitted to all authorities directly concerned.

The Government of Germany considers that the measures taken will prevent the repetition of any new violations similar to those found in this case and that it has therefore fulfilled its obligations under Article 46, paragraph 1, of the Convention.

## Hungary

**APEH Üldözötteinek Szövetsége, Iványi, Róth and Szerdahelyi v. Hungary**
Appl. No. 32367/96, Court judgment 5 October 2000
**Resolution ResDH (2001) 156, 17 December 2001**

Violation of Article 6.1; non-pecuniary damage – finding of violation sufficient

## Italy

**Interim Resolution ResDH (2001) 178 concerning monitoring of prisoners' correspondence in Italy – measures of a general character**
*(Adopted by the Committee of Ministers on 5 December 2001 at the 775th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgments delivered by the European Court of Human Rights in the Diana Calogero and Domenichini cases on 15 November 1996, in the Labita case on 6 April 2000, in the Messina Antonio case on 28 September 2000 (final on 28 December 2000), in the Rinzivillo case on 21 December 2000 (final on 21 March 2001) and in the Natoli case on 9 January 2001;

Recalling that in these cases the Court notably found violations of Article 8 and, in some cases, of Article 13 of the Convention on account of the lack of clarity of the Italian law on monitoring of prisoners' correspondence (Law No. 354/75), which leaves the public authorities too much discretion, particularly in respect of the duration of monitoring measures and the reasons justifying such measures, authorises the monitoring of correspondence with the organs of the European Convention on Human Rights and provides for no effective remedy against decisions ordering the monitoring of correspondence;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention, which also apply to cases brought before the Committee of Ministers prior to the entry into force of Protocol No. 11 to the Convention;

Having invited the government of the respondent state to inform it of the measures taken subsequent to the aforesaid judgments, bearing in mind Italy's obligation to abide by them under Article 46, paragraph 1, of the Convention;

Considering that the High Contracting Parties are required rapidly to take measures necessary to this end, in particular by preventing further violations of the Convention similar to those established by the Court in its judgments;

Considering that the Respondent Government have given the Committee of Ministers the information appended to the present resolution with regard to the measures taken so far for this purpose;

Notes with satisfaction the interim measures taken by the Government in order to prevent, as far as possible, new violations of the Convention awaiting the legislative amendments, the judgment of the Constitutional Court of 8-11 February 1999 confirming the necessity to change the legislation and the Presidential Decree of 30 June 2000 prohibiting the censorship of all correspondence addressed by a detainee to international organisations working for the protection of human rights;

Notes, however, that, in spite of the time that has lapsed, the shortcomings with regard to the clarity of the Italian law on the monitoring of prisoners' correspondence, including the absence of effective remedies, have still not been remedied as the draft law prepared to this effect could not be adopted before the change of the legislature in April 2001;

Notes nevertheless with satisfaction that the new Italian Government is preparing a new draft law and has undertaken to submit it rapidly to Parliament,

Urges the Italian authorities rapidly to adopt the legislative reform required to ensure fully that Italian law complies with the Convention on the points raised by the Court;

Decides to resume examination of these cases in the context of measures of a general character once the process of amending law No. 354/75 has been completed or, at the latest, at its first meeting in 2003.

### Appendix to Interim Resolution ResDH (2001) 178

*Information supplied by the Italian Government during the examination by the Committee of Ministers of the measures of a general character to be adopted in cases concerning the monitoring of prisoners' correspondence*

Considering that in the light of the nature of the violations found by the Court in the judgments here in question, these violations could not be remedied through a development of the case-law of the Italian

courts, the Italian Government engaged in 1997 a legislative reform. This reform aims at bringing Law No. 354/75 on prison administration in line with the Convention so as to solve the problem of the absence of a legal basis for the control of prisoners' correspondence in Italy and that of the absence of effective remedies against the control carried out.

The absence of remedies has, subsequently, also been held to be a violation of the Constitution of Italy by the Italian Constitutional Court in a judgment of 8-11 February 1999, No. 26, notably because of the inviolable character of human rights.

In 1999 the Government presented to Parliament a Bill (No. 4172/S) amending Articles 18 and 35 of Law No. 354/75 in order to circumscribe the power of control of prisoner's correspondence and to introduce effective remedies. These amendments could, however, not be adopted before the change of legislature in April 2001.

In order rapidly to ensure, in this situation, that Italy will respect its obligation under Article 46, paragraph 1, of the Convention, the new Government undertakes to submit a new Bill to Parliament as soon as possible. A draft bill is already prepared and is presently being examined by the Legislative Office of the Ministry of Justice.

In this context, the Government finds it important to point out that, in parallel with these legislative initiatives, interim measures were taken to inform the competent judicial and administrative authorities of the requirements of Article 8 of the Convention, as established in the case-law of the European Court of Human Rights, concerning the monitoring of prisoners' correspondence with a view to remedying at least in part the shortcomings in Italian law.

Thus, on 31 March 1999, the Penal Affairs Department of the Ministry of Justice adopted a circular letter to prison directors stipulating, *inter alia*, that requests for authorisation to monitor correspondence must be made for six-month periods, subject to renewal on request.

In addition, the Directorate of Criminal Affairs of the Ministry of Justice sent out a circular letter to the courts dated 26 April 1999 (No. 575), drawing attention to the importance of the judicial authorities responsible for the monitoring of prisoners' correspondence taking into account the principles laid down by the European Court of Human Rights in order to avoid further findings of violations against Italy. Particular attention was called to the need to provide adequate reasons when authorising the monitoring of correspondence and to ensure that measures be limited in time, in order to guarantee regular review of the need for monitoring.

Both of the above circulars also banned the censorship of correspondence sent by prisoners to the Convention organs, but this particular problem was subsequently resolved at the legislative level by the new regulations governing prison establishments which came into force on 6 September 2000 (Presidential decree – DPR – No. 230 of 30 June 2000, published in *Official Gazette* No. 131/L on 22 August 2000). Article 38§11 of the new regulations henceforth prohibits all censorship of correspondence sent by prisoners to international organisations working for the protection of human rights.

In order to facilitate the reforms necessary and the taking into account of the Court's judgments in the practice of the Italian courts and administrative authorities, the "law" part of the Domenichini judgment was translated and published already in 1997, notably in the Italian legal journal *Rivista internazionale dei diritti dell'uomo* (1997, vol. II, p. 119-124) and the Labita and Messina judgments were translated and published respectively in editions 1-2 and 6, 2000, of *Documenti Giustizia*, a legal journal published by the Ministry of Justice (also accessible on the Internet at the following address: www.ipzs.it/Pubblicazioni_ministeri/Min_giustizia/Documenti_giustizia/).

The Italian Government considers that, in view of these measures and decisions, Italy has partially and provisionally, complied with its obligations under Article 46, paragraph 2, of the Convention, and invites the Committee of Ministers to resume examination of these questions as soon as the process of amending law No. 354/75 has been completed or, at the latest, at the first meeting of the Committee of Ministers in 2003.

## Lithuania

### Raišelis v. Lithuania

Appl. No. 37195/97, Court judgment 29 February 2000

**Resolution ResDH (2001) 157, 17 December 2001**

Friendly settlement (legality of a detention challenged)

### Appendix to Resolution ResDH (2001) 157

*Information provided by the Government of Lithuania during the examination of the Raišelis case by the Committee of Ministers*

The Preventive Detention Act which was in force at the time of the facts of the present case was abolished by the Parliament on 30 June 1997, i.e. well before the friendly settlement concluded with the applicant. This legislative amendment clearly prevents new situations similar to that at the basis of the complaints here at issue, i.e. that persons are detained merely on the ground of suspicions that they could commit dangerous acts. The Court judgment in the Raišelis case was furthermore disseminated to the competent Lithuanian authorities and published (in Lithuanian translation) by the Ministry of Justice in a Collection of the European Court's decisions and judgments concerning Lithuania (edition Teisinės informacijos centras, 2001).

The Government accordingly considers that no further measures are required by Article 46, paragraph 1, of the Convention in the present case.

## Portugal

### Fernandes Magro v. Portugal

Appl. No. 36997/97, Court judgment 29 February 2000

**Resolution ResDH (2001) 159, 17 December 2001**

Violation of Article 6.1; non-pecuniary damage – financial award; costs and expenses partial award – Convention proceedings

### Fonseca Carreira v. Portugal

Appl. No. 42176/98, Court judgment 14 June 2001

**Resolution ResDH (2001) 174, 17 December 2001**

Friendly settlement (excessive length of civil proceedings)

### Themudo Barata v. Portugal

Appl. No. 43575/98, Court judgment 21 June 2001

**Resolution ResDH (2001) 175, 17 December 2001**

Friendly settlement (excessive length of civil proceedings)

## Spain

### Miragall Escolano and Others v. Spain

Appl. Nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, Court judgments 25 January 2000 and 25 May 2000

**Resolution ResDH (2001) 158, 17 December 2001**

Friendly settlement (violation of Article 6.1)

### Appendix to Resolution ResDH (2001) 158

*Information provided by the Government of Spain during the examination of the Miragall Escolano and Others case by the Committee of Ministers*

The Spanish Government has informed the Committee of Ministers that, given the adoption of the new *Ley de la jurisdicción Contencioso-Administrativa* (Law on Conflicts of Jurisdiction in Administrative Cases – Law 29/1998 of 13 July), the controversy concerning the identification of the first day of the time-limit allowed for lodging an appeal against judgments annulling general provisions (i.e., the date of notification or the date of publication) no longer arises.

Article 72, paragraph 2, of the new law provides that the annulment of a provision or an act shall have effect for all persons concerned. Final judgments annulling a general provision shall take effect from the date of their publication in the same official journal in which the annulled provision had been promulgated. Judgments without ap-

peal annulling administrative acts concerning many persons the number of which is indeterminate, shall also be published.

Lastly, the Spanish government has informed the Committee that the judgment of the European Court of Human Rights in this case has been published in the supplement no. 1891 of the Official Bulletin of the Ministry of Justice of 15 April 2001, pp. 20-25, and that it has also been transmitted to all authorities directly concerned.

The Government of Spain considers that the measures taken will prevent the repetition of any new violations similar to those found in this case and that it has therefore fulfilled its obligations under Article 46, paragraph 1, of the Convention.

## Turkey

### Civelek and Others v. Turkey

Appl. No. 37050/97, Court judgment 22 May 2001

**Resolution ResDH (2001) 176, 17 December 2001**

Friendly settlement (respect for property)

### Kisa and Others v. Turkey

Appl. No. 39328/98, Court judgment 22 May 2001

**Resolution ResDH (2001) 177, 17 December 2001**

Friendly settlement (respect for property)

## United Kingdom

### Oldham v. the United Kingdom

Appl. No. 36273/97, Court judgment 26 September 2000

**Resolution ResDH (2001) 160, 17 December 2001**

Violation of Article 5.4; pecuniary damage – claim rejected; non-pecuniary damage – financial award; costs and expenses partial award – Convention proceedings

### Watson David v. the United Kingdom

Appl. No. 21387/93, Interim Resolution DH (98) 316, 25 September 1998

**Final Resolution ResDH (2001) 161, 17 December 2001**

Violation of Article 5.4; violation of Article 5.5

### Wilkinson and Allen v. the United Kingdom

Appl. Nos. 31145/96 and 35580/97, Court judgment 6 February 2001

**Resolution ResDH (2001) 162, 17 December 2001**

Violation of Article 6.1; pecuniary damage – claim rejected; non-pecuniary damage – finding of violation sufficient; costs and expenses award – Convention proceedings

# Law and policy: intergovernmental co-operation in the human rights field

**One of the Council of Europe's vital tasks in the field of human rights is the creation of legal policies and instruments. In this, the Steering Committee on 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 expert committees.**

## Steering Committee on Human Rights (CDDH)

The CDDH, at its 52nd meeting (November 2001) focused its work on the follow-up to the texts adopted by the European Ministerial Conference on Human Rights held in Rome, 3 and 4 November 2000, on the occasion of the 50th anniversary of the European Convention on Human Rights. In the course of the meeting, the CDDH, inter alia: adopted draft Protocol No. 13 to the European Convention on Human Rights, concerning the abolition of the death penalty in all circumstances and the explanatory report thereto (see DH-DEV below); adopted a draft recommendation on access to official documents, and the explanatory memorandum thereto, prepared by its Group of Specialists on Access to Official Information (see DH-S-AC below); decided to set up a Working Group on Legal and Technical issues of possible EC/EU Accession to the European Convention on Human Rights (see GT-DH-EU below). Furthermore, in the aftermath of the events of 11 September 2001, the CDDH examined its contribution to the fight against international terrorism in the light of the terms of reference received from the Ministers' Deputies (see DH-S-TER below).

Moreover, the CDDH adopted, for the attention of the Committee of Ministers, its opinions concerning three recommendations of the Parliamentary Assembly on: the protection of the human rights and dignity of the terminally ill and the dying, the execution of judgments of the European Court of Human Rights and the rights of national minorities.

Finally, it adopted an activity report on additional rights for persons deprived of their liberty.

### The actors

**a steering committee**

The CDDH, Steering Committee for Human Rights, is the intergovernmental co-operation body in charge of the Committee of Ministers' policy implementation in the human rights field. It has a bureau, the CDDH-BU, a Reflection Group, the CDDH-GR, and smaller, more specialised sub-committees.

**the committees of experts**

Some of these sub-committees have long-term mandates which are regularly renewed. For example:

- the DH-DEV, Committee of Experts for the Development of Human Rights
- the DH-PR, Committee of Experts for the Improvement of Procedures for the Protection of Human Rights.

**the groups of specialists**

Other sub-committees are of a less permanent nature; they are dissolved once their particular function has been fulfilled. Ad hoc sub-committees:

- the DH-S-AC, Group of Specialists on Access to Official Information.

**working groups**

The CDDH also sets up working groups, mainly to advance work on a particular item of the agenda in the period between any two plenary meetings.

## Subordinate committees to the CDDH

### Committee of Experts for the Development of Human Rights (DH-DEV)

At its 52nd meeting (6-9 November 2001), the CDDH adopted draft Protocol No. 13 to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances, as well as an explanatory note thereto, based on the work done by the DH-DEV. The CDDH transmitted the draft Protocol to the Committee of Ministers for adoption and opening for signature and it requested that the explanatory report be declassified (see Committee of Ministers, p. 37).

## Reflection Group on the Reinforcement of the Human Rights Protection Mechanism (CDDH-GDR)

On 21 November 2001, the Ministers' Deputies adopted a number of decisions in follow-up to the report of its Evaluation Group, set up to examine possible means of guaranteeing the effectiveness of the European Court of Human Rights. Some of these decisions resulted in ad hoc terms of reference being given to the Steering Committee for Human Rights (CDDH), and in turn to its reflection group, the CDDH-GDR. At its last meeting the CDDH-GDR continued the examination of reform proposals for the human rights protection mechanism of the European Convention on Human Rights, notably on (a) the means of reinforcing interaction between the Strasbourg Court and national courts; (b) study of admissibility criteria and a mechanism whereby cases would be remitted back to national authorities and (c) a feasibility study on the most appropriate way of conducting the preliminary examination of applications. The CDDH-GDR also heard a presentation of recent internal reforms by the Registry of the European Court of Human Rights.

## Group of Specialists on access to official information (DH-S-AC)

In 2001, the DH-S-AC completed the preparation of a draft recommendation of the Committee of Ministers to member States on access to official documents. This text was adopted by the CDDH and transmitted to the Committee of Ministers for adoption.

## Working Group on legal and technical issues of possible EC/EU accession to the European Convention on Human Rights (GT-DH-EU)

The Ministers' Deputies decided to give ad hoc terms of reference to the CDDH to carry out "a study of the legal and technical issues that would have to be addressed by the Council of Europe in the event of possible accession by the European Communities/European Union to the European Convention on Human Rights, as well as of the other means to avoid any contradiction between the legal system of the European Communities/European Union and the system of the European Convention on Human Rights".

The CDDH therefore decided to set up a working group on legal and technical issues of possible EC/EU accession to the European Convention on Human Rights (GT-DH-EU). The Group held its first meeting from 30 January to 1 February 2002.

## Group of Specialists on human rights and the fight against terrorism (DH-S-TER)

Further to the decisions taken by the Ministers' Deputies in September 2001, the CDDH decided to set up a new Group of Specialists on human rights and the fight against terrorism (DH-S-TER). The DH-S-TER held its first meeting in November 2001, at which it drew up an interim activity report. This was forwarded as a contribution to the work of the Multidisciplinary Group on international action against terrorism (GMT) set up by the Committee of Ministers at its 109th session (7-8 November 2001). The task of the GMT is to improve the efficiency of the Council of Europe's existing instruments for combating terrorism, or of suggesting, if necessary, new instruments in this field.

At its second meeting, the DH-S-TER continued preparing the guidelines covered by its terms of reference. The Group also identified elements to be included in the explanatory memorandum accompanying the guidelines, held a hearing with national experts on issues linked to the fight against terrorism and took note of the ad hoc terms of reference assigned by the Ministers' Deputies to the CDDH to prepare an opinion on Parliamentary Assembly Recommendation 1550 (2002) on combating terrorism and respect for human rights.

# Other activities

## 7th Council of Europe Round Table with European Ombudsmen

A Seventh Round Table, held in Zurich in November 2001, addresses the following matters (i) key principles of good governance in the light of the case-law of the European Court of Human Rights, (ii) Respect of human rights by the police and other law enforcement officers and (iii) Co-operation and exchange of information between ombudsmen of member States and between them and the Council of Europe.

# European Social Charter

**The 1961 European Social Charter, supplemented by the 1996 revised Social Charter, is a complementary text to the European Convention on Human Rights in the field of social rights.**

Thirty-one member states are bound by either the Social Charter or the Revised Social Charter: Austria, Belgium, the Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Latvia Luxembourg, Malta, the Netherlands, Poland, Slovakia, Spain, Turkey, the United Kingdom, Bulgaria, Cyprus, Estonia, France, Ireland, Italy, Lithuania, Moldova, Norway, Portugal, Romania, Slovenia and Sweden.

Albania, Andorra, Armenia, Azerbaijan, Croatia, Georgia, Liechtenstein, the Russian Federation, San Marino, Switzerland, "the former Yugoslav Republic of Macedonia" and Ukraine have signed but not yet ratified the 1961 Charter or the 1996 revised Charter. For further information see the "Simplified chart of signatures and ratifications of European human rights treaties", in Appendix No. 2.

### Supervision and implementation of the Charter

– Firstly, states must submit **reports** on how they have applied the Charter. These reports are public and the social partners and NGOs may make observations on them.
– The **European Committee of Social Rights** (ECSR), composed of nine independent and impartial experts, assesses whether the states have respected their undertakings in ratifying one of the two treaties. Since the entry into force of the 1999 Protocol providing for a system of collective complaints, the ECSR also examines complaints submitted by trade unions, employers organisations or NGOs. The Committee then refers its conclusions to the Committee of Ministers, which adopts either a resolution or a recommendation to the attention of the state in question in order to ensure compliance with the Charter.
– The conclusions of the ECSR are transmitted to the **Governmental Committee**, composed of representatives of the states. In this committee the states represented ensure that each one of them takes the necessary measures to bring the situation into conformity with the Charter. It also determines whether a situation necessitates a recommendation by the Committee of Ministers.
– The **Committee of Ministers**, the decision-making body of the Council of Europe, adopts a resolution at the end of each supervision cycle. In the most serious cases, it makes recommendations to states that they change the legislation, regulations or practice not in conformity with the Charter's obligations.

## European Committee of Social Rights

### Examination of national reports

**Cycle XVI-1**: The ECSR continued its assessment of national reports under the first part of the new cycle which concerns employment rights , the right to organise, the right to collective bargaining, the right to social security, the right to social and medical assistance, the right of the family to legal protection, family benefits and adequate family benefit, and migrant workers' rights. The XVI-1 Conclusions will be published at the end of May 2002.

**Conclusions 2002 – revised Charter**: the ECSR also continued its assessment of the first national reports submitted by France, Italy, Romania, Slovenia and Sweden on the implementation of the revised Charter. The reports cover the above-mentioned articles as well as children's rights and the right to equal treatment and equal opportunities in matters of employment. The 2002 Conclusions will be published at the end of March 2002.

The text of the national reports can be found on the Social Charter Internet site.

**Social Charter Internet site: http://www.esc.coe.int**

### Collective complaints

On 12 February 2002, the Committee of Ministers adopted Resolution ResChS (2002) 2 concerning the case of **Tehy ry and STTK ry v. Finland** (Collective Complaint No. 10/2000). The Finnish Confederation of Salaried Employees and the Union of Health and Social Care Services in Finland complained that Finland fails to apply in a satisfactory manner Article 2 para. 4 of the European Social Charter, which provides "for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations", on the ground that hospital personnel who are engaged in occupations where they are exposed to ionising radiation are no longer entitled to additional paid leave. These activities were considered up until 1998 as dangerous and unhealthy.

The Committee of Ministers took note that the primary concern of the Finnish Government was to eliminate risks created by working with ionising radiation and recalled the impending ratification by Finland of the Revised Social Charter, including the revised Article 2, paragraph 4, which puts the emphasis on elimination of risks rather than on additional paid holidays or reduced working hours.

## Conferences, seminars, meetings, workshops, training programmes

- **Council of Europe/European Commission Joint Programme**

In the Framework of the Joint Programme, the following events were organised:

– A meeting in Brussels aimed at promoting the Social Charter in the candidate states to the European Union.
– A seminar in Ekaterinburg for NGOs in order to promote fundamental social rights in the Russian Federation.
– A conference in Moscow towards ratification of the revised Charter.

- **Information on drafting first national reports on the implementation of the revised Social Charter**

Seminars were held in Estonia and Bulgaria on drafting of the first national reports on the implementation of the revised Social Charter.

- **Seminars towards the ratification of the revised Social Charter**

Following upon the signature of one of treaties by Armenia, Azerbaijan, Georgia, Latvia and Ukraine, seminars were held in these countries to prepare the ratification process.

- **University of Limoges**

The University of Limoges organised a colloquium on judicial protection of social rights.

- **University of Paris II**

The University of Paris II organised a conference entitled "La Charte Social européenne, un défi pour les praticiens".

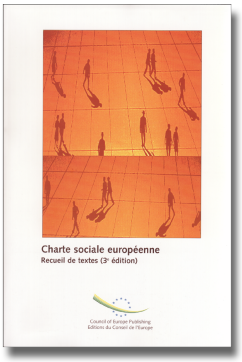
- **European Ombudsmen**

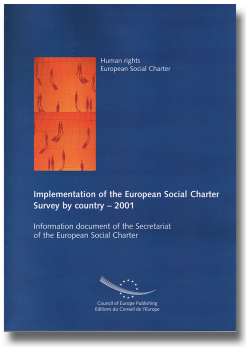
The 7th Round Table of the Council of Europe with the European Ombudsmen was held in Switzerland in co-operation with the Swiss Association of Ombudsmen.

## Publications

**The European Social Charter – A treaty of the Council of Europe that protects Human Rights**
(Available in Bulgarian, English, French, German, Greek, Italian, Portuguese and Russian)

**European Social Charter – Collected Texts (3rd edition)**
(available in English and French)
92-871-4718-3




**Implementation of the European Social Charter – Survey by country (2001). Information document of the Secretariat of the European Social Charter**
(available in English and French)
92-871-4716-7 and 92-871-4716-9

# European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

## Signatures and ratifications

On 21 December 2001, Azerbaijan signed the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It is now in force in 41 of the Council of Europe's member states and has been signed by the two remaining states (Armenia and Azerbaijan).

## European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was set up under the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It is composed of persons from a variety of backgrounds: lawyers, medical doctors, prison experts, persons with parliamentary experience, etc. The CPT's 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 in the circumstances (i.e. ad hoc visits). The CPT may formulate recommendations to strengthen, if necessary, the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment.

The details of the CPT's visits and published reports for the period 1 November 2001 to 28 February 2002 are given below.

### Visits

#### The Netherlands

*(17 to 26 February 2002)*

This was the CPT's third periodic visit to the Kingdom of the Netherlands and concerned establishments located both on the European continent and in the Kingdom of the Netherlands Antilles.

**Kingdom in Europe**

In the course of the visit, the delegation met the Minister of Justice, the Secretary General at the Ministry of Foreign Affairs, the Director General of the National Agency of Correctional Institutions, the Brigadier-General at the Royal Maréchaussée, the Chief Advocate General in Den Bosch, and numerous senior officials from the Ministries of Foreign Affairs, Justice, the Interior, Health and Defence. The delegation also held talks with the Ombudsman.

The CPT's delegation examined the measures taken by the Dutch authorities in response to the recommendations made by the Committee following its visits in 1992 and 1997, in particular those concerning the "Extra security institution" (EBI) in Vught. It also visited for the first time two establishments for the care of elderly persons in Amsterdam. Other questions of current importance were examined, such as the treatment of persons suspected of carrying drugs in corpore (body-packers).

**Netherlands Antilles**

In the course of this visit, the delegation met the Prime Minister, the Minister of Justice, the Secretary of State for Justice, the Director at the Department of Justice and the Acting Prosecutor-General.

The delegation examined the measures taken by the authorities of the Netherlands Antilles in response to the recommendations made by the Committee following its visits in 1994, 1997 and 1999, in particular those concerning Bon Futuro Prison (formerly known as Koraal Specht). It also visited for the first time Pointe Blanche Prison and Philipsburg Central Police Station.

#### United Kingdom

*(18 to 22 February 2002)*

The main purpose of this visit was to examine the treatment of persons certified by the UK's Secretary of State as being suspected international terrorists and detained pursuant to the provisions of the Anti-Terrorism, Crime and Security Act 2001.

The CPT's delegation interviewed, in private, all persons currently detained as a result of the provisions of the 2001 Act. It also examined their conditions of detention in Belmarsh Prison's high security unit and Highdown Prison.

#### Russian Federation (Chechen Republic)

*(31 January to 7 February 2002)*

The CPTvisited the Chechen Republic for the fourth time since the beginning of the current conflict.

The CPT's delegation reviewed the situation at SIZO No. 2 in Chernokozovo, which remains the main detention centre in the Chechen Republic. It also visited detention facilities in Grozny, Argun and Urus-Martan, and spoke in private with detainees held there.

Another issue pursued during the visit was the treatment of persons detained for screening during special operations conducted by the federal forces. At meetings with the Prosecutor of the Chechen Republic and other senior civilian and military prosecutors the delegation discussed the implementation of the order (No. 46) issued in July last year

by the Prosecutor General of the Russian Federation on reinforcing control over such operations.

The delegation also held talks with the Chairman of the Chechen Government and the Commander in Chief of the Allied Group of Armed Forces.

Upon its return to Moscow, the CPT's delegation discussed the main findings of the visit with Mr Kalamov, Special Representative of the President of the Russian Federation for ensuring human rights and civil rights and freedoms in the Chechen Republic.

### Denmark

*(28 January to 4 February)*

The CPT visited Denmark for the third time.

During this visit, the delegation met the Minister for Justice, the Director General of the Prison and Probation Service, the Assistant National Commissioner of Police, the Parliamentary Ombudsman, representatives of the State Prosecution Service and the Commissioner of the Copenhagen Police. It also held talks with senior officials from the Ministry of Internal Affairs and Health, the Ministry of Refugees, Immigration and Integration and European Affairs and the Ministry of Social Affairs.

The CPT's delegation reviewed measures taken by the Danish authorities in response to the Committee's recommendations made after its 1990 and 1996 visits, in particular as regards the safeguards offered to persons detained by the police, regimes for prisoners and the situation of immigration detainees. The CPT's delegation also examined in detail the question of deprivation of liberty and use of means of restraint in the field of psychiatry.

### Russian Federation

*(2 to 17 December 2001)*

A delegation of the CPT carried out a sixteen-day visit to the Russian Federation, thus completing the Committee's programme of periodic visits for the year 2001.

The visit focused the Khabarovsk and Primorskyi Territories. Places of detention visited included a medical-correctional establishment for drug addicts and a penal colony for women with a baby unit; this was the first time that a CPT delegation examined the treatment of persons held in such places in the Russian Federation. The delegation also visited a number of Militia establishments in Moscow.

### Belgium

*(25 November to 7 December 2001)*

During this visit, the CPT's delegation met the Minister of Consumer Protection, Public Health and Environment, the Minister of the Interior, the Minister of Justice, and the Minister of Health and Youth Aid of the Belgian French Community. It also held talks with the Permanent Control Committee of the Police Forces, the Inspector General of the Federal and Local Police Forces, the General Delegate of the French Community for the Rights of the Child, as well as representatives from the Ministry of Defence.

The CPT's delegation reviewed the measures taken by the Belgian authorities in response to the Committee's recommendations made after its 1993 and 1997 visits (in particular as regards the safeguards offered to persons deprived of their liberty by the law enforcement agencies, material conditions of detention in law enforcement establishments, prison overcrowding, medical and psychiatric care in prisons and psychiatric annexes, and the situation in social defence establishments). The CPT's delegation also examined in detail the procedures and means applied during the repatriation by air of foreign nationals, the implementation of the 1990 Law on the protection of the mentally ill and the situation in public establishments for youth protection.

## Publication of CPT reports

*Under Article 11 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the information gathered by the Committee in relation to a visit, its report and its consultations with the State concerned are confidential. However, the State may agree to lift the rule of confidentiality*.

The following govenments have agreed to the publication of CPT reports regarding visits listed below.

### CPT visit to Bulgaria, 25 April to 7 May 1999

The report assesses the treatment of people held in police stations, prisons and other places of detention in Bulgaria.

The Committee received numerous allegations of police ill-treatment: mainly slaps, punches, kicks and blows with a truncheon, but also electric shocks and beating on the soles of the feet. In some cases, medical evidence of such methods was gathered. In response to the CPT's recommendations, the Bulgarian authorities have taken measures to step up control of police activities and intensify police human rights training.

The report also severely criticises conditions in the country's investigation detention facilities. The Bulgarian authorities highlight legislative and practical changes made, such as the closing down of basement cells and the construction of new buildings with areas for outdoor exercise.

At Burgas Prison, the CPT's delegation was inundated with allegations of physical and verbal abuse of inmates by prison staff, and had the distinct impression that "the prison was run by fear". A subsequent investigation by the Bulgarian authorities confirmed the claims, and management changes were made which have proved positive.

A social institution for men with mental disorders in Terter, where conditions were of deep concern to the Committee, was closed down by the Bulgarian authorities after the 1999 visit, and the residents moved to a better facility.

The CPT plans to return to Bulgaria for another visit in 2002.

### CPT visit to Latvia, 24 January to 3 February 1999

This report and the Government of Latvia's responses concern the CPT's first visit to Latvia.

### CPT visit to Slovakia, 9 to 18 October 2000

This report and the Slovakian Government's response concern the CPT's second visit to Slovakia.

### CPT visits to Turkey

**Publication of the report on the CPT's visit to Turkey in July 2000 and of the Turkish Government's response**

One of the main purposes of this visit was to examine the steps being taken by the Turkish authorities to move away from the large dormitory system traditionally found in the country's prisons and to introduce smaller living units for prisoners. Particular attention was given to a new generation of prisons under construction - the F-types - which were designed to have living units for three prisoners as well as a certain number of individual units . The July 2000 visit also provided an opportunity to review the treatment of persons deprived of their liberty by the police, in particular in the Istanbul metropolitan area.

**Publication of report on the CPT's visits to Turkey in December 2000/January 2001 and April/May 2001 and of the Turkish Government's response**

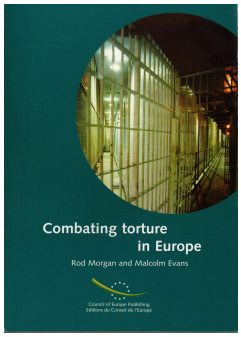
The CPT's visits were triggered by the hunger strike campaign which started in October 2000, as a protest against the F-type prison project. The visits began in early December 2000, at the request of the Turkish authorities, in order to contribute to efforts underway aimed at finding a solution capable of bringing the hunger strikes to an end. During the subsequent visits, the CPT gathered information on the interventions by security forces in December 2000 in those prisons where hunger strikes were taking place (in the course of which 32 persons died and a large number of persons were injured) and on related inquiries and investigations. The CPT also examined the situation in the establishments to which prisoners had been transferred after the interventions. Particular attention was given to the introduction of communal activity programmes in F-type prisons, in line with the amendments to Article 16 of the 1991 Law to Fight Terrorism.

**Publication of all CPT reports**

The Turkish Government has authorised the publication of all reports on visits by the CPT which have not yet been placed in the public domain. Seven visit reports are involved, which will be published together with the Turkish Government's responses. The publication of this material will provide a full picture of the evolution and impact of the CPT's work in Turkey over the last 12 years.

## New from Council of Europe Publishing

**"Combating torture in Europe" – the work and standards of the European Committee for the Prevention of Torture (CPT)**




Written by leading experts in the field, this book provides a clear and comprehensive insight into the valuable work carried out by one of the Council's highly influential yet – of necessity, given the confidentiality rule which applies to it – rather self-effacing, non-judicial mechanism, as well as an up-to-date account of the standards which have been developed during more than ten years of existence. It is of interest to all those who actively wish to prevent torture and ill-treatment, in particular NGO workers, legal practitioners, officials (police officers, prison administrators, immigration personnel, psychiatric hospital directors, etc.) and human rights campaigners.

92-871-4614-4

## Members of the CPT at 28 February 2002

Elections of CPT members were held between 1 November 2001 and 28 February 2002 in respect of the following states: **Turkey** and **France**.

A full list of members of the CPT is available on the Internet site.

**Internet site: http://www.cpt.coe.int/**

# Framework Convention for the Protection of National Minorities

## About the Framework Convention

The Framework Convention is the first legally binding multilateral instrument concerned with the protection of national minorities in general. Adopted by the Council of Europe in 1995, the Framework Convention entered into force on 1 February 1998. As at 28 February 2002, it had been signed by 39 of the 43 member states, 32 of which had also ratified it. Bosnia and Herzegovina and the Federal Republic of Yugoslavia, which are not Council of Europe member states, acceded to the Framework Convention in 2000 and 2001 respectively.

The Framework Convention's aim is to protect national minorities within the respective territories of the parties. The Convention seeks to promote the full and effective equality of national minorities by creating appropriate conditions enabling them to preserve and develop their culture and to retain their identity, whilst fully respecting the principles of territorial integrity and political independence of States. The principles contained in the Framework Convention have to be implemented through national legislation and appropriate governmental policies.

The Convention sets out principles to be respected as well as goals to be achieved by the Contracting Parties, in order to ensure the protection of persons belonging to national minorities. The substantive provisions of the Framework Convention cover a wide range of issues, *inter alia*: non-discrimination, the promotion of effective equality; the promotion of the conditions necessary for the preservation and development of the culture and preservation of religion, language and traditions; freedoms of assembly, association, expression, thought, conscience and religion; access to, and use of, media; freedoms relating to language, education and transfrontier contacts; participation in economic, cultural and social life; participation in public life and prohibition of forced assimilation.

Monitoring of the implementation of the Framework Convention takes place on the basis of state reports due every five years. The Committee of Ministers may in the interim also request *ad hoc* reports. State reports are made public by the Council of Europe upon receipt. They are examined first by the Advisory Committee of 18 independent experts, which may also receive information from other sources, as well as actively seek additional information and have meetings with governments and others.

The Advisory Committee adopts opinions on each of the state reports, which it transmits to the Committee of Ministers. The latter body takes the final decisions in the monitoring process in the form of country-specific conclusions and recommendations. Unless the Committee of Ministers decides otherwise in a particular case, the opinions, conclusions and recommendations are all published at the same time.

Nevertheless, state Parties may publish the opinion concerning them, together with their written comments if they so wish, even before adoption of the respective conclusions and possible recommendations by the Committee of Ministers.

As at 20 March 2002, the Advisory Committee had received 28 state reports and already adopted 13 opinions, the most recent concerning Germany, Moldova and Ukraine.

At the same date, the Committee of Ministers adopted and made public its conclusions and recommendations in respect of 11 States Parties.

## Stability Pact for South-Eastern Europe

Three projects concerning national minorities were launched towards the end of the year 2000. They covered the following topics: a) including the principle of non-discrimination in national legislation, policies and practice of the countries in question; b) accepting the implementation of existing standards in terms of national minorities; c) bilateral co-operation agreements, such as the mechanism for the promotion of good relations between ethnic groups.

Among the activities carried out in this field between 1 November 2001 and 28 February 2002 or to which support was given:

- Strasbourg, 22-23 November 2001, study visit of the Assistant to Federal Minister of Justice, Federal Republic of Yugoslavia, to the Secretariat of of the European Commission against Racism and Intolerance, to become better acquainted with issues concerning anti-discrimination legislation;
- Budapest, 6-7 December 2001, support to the International Conference on Equal Treatment between Persons and Prohibition of All Forms of Discrimination organised by the Office of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities of Hungary
- Priština, 12-13 December 2001, participation in a training course for Kosovo Ombudsman Officers on International Law and Minority Rights organised by ODHIR and the Kosovo Ombudsman Office
- Belgrade, 16-18 December 2001, participation in a workshop on minorities and the Council of Europe in the 4th NGO Conference organised by Civic Initiatives Belgrade

- Belgrade, 30-31 January 2002, seminar on the Framework Convention for the Protection of National Minorities, in co-operation with the Federal Ministry of National and Ethnic Communities of the Federal Republic of Yugoslavia
- Strasbourg, 18-19 February 2002, meeting on the issue of "Roma in Bilateral Agreements"

## Co-operation activities in the field of the protection of national minorities

- Daugavpils, Latvia, 1 to 4 November 2001, Support to a workshop organised by ECMI on "Minority Education in Latvia"
- Herlikovice, Czech Republic, 12 to 14 November 2001, Training seminar for Roma advisors on Council of Europe standards and policy in the field of the protection of national minorities, in co-operation with the Ministry of Interior of the Czech Republic
- Helsinki, Finland, 1 February 2002, Follow-up Seminar on the results on the monitoring of the Framework Convention for the Protection of National Minorities, in co-operation with the Advisory Board for International Human Rights Affairs of Finland
- Moscow, Russian Federation, 11 February 2002, Seminar on the Framework Convention for the Protection of National Minorities, in co-operation with the Centre for interethnic co-operation (see picture below).

For further information concerning signatures and ratifications related to the Framework Convention for the Protection of National Minorities see the "Simplified chart of signatures and ratifications of European human rights treaties", Appendix No. 2.

# Media

**At the heart of the Council of Europe's democratic construction lies freedom of expression, which forms an essential part of the structure. Responsibility for maintaining it is in the hands of the Steering Committee on the Mass Media (CDMM), which aims at promoting free, independent and pluralist media, so safeguarding the proper functioning of a democratic society.**

## Harmful and illegal content on the internet

Over a hundred participants attended a European Forum organised by the Steering Committee on the Mass Media (CDMM), on 28 November 2001 in Strasbourg, on the topic of harmful and illegal cyber content. The main objective was to provide an operational follow-up to the CDMM's work towards Recommendation (2001) 8 on self-regulation concerning cyber content. The event brought together renowned international experts in the field of Internet regulation and the fight against illegal content on the World Wide Web, representing inter alia public authorities, the Internet industry, the traditional media and non-governmental organisations.

In one working group, the participants took stock of existing experiences and initiatives at European and international level on different ways of regulating the Internet, in particular self-regulation by the industry and co-regulation, whereby public authorities and the private sector co-operate. The other working group looked at how users of the Internet can be empowered to protect themselves and their children against harmful and illegal content.

The Forum was transmitted live on a special web site dedicated to the event: www.coe.int/cyberforum/ which contains the programme, panel reports, the conclusions of the General Rapporteur and video extracts of speeches delivered during the opening session and in the working groups. This web site has been substantially developed since the Forum and provides a wide range of information on self-regulatory initiatives taken at the level of European intergovernmental and non-governmental organisations as well those existing at the national level in more than twenty countries.

## The future of the European Convention on Transfrontier Television

The standards in the European Convention on Transfrontier Television are widely accepted as being "universal" standards which contribute to quality broadcasting. Since the ongoing economic and technical changes in the television sector may have an impact on these standards, an expert Seminar was organised in Strasbourg on 6 December 2001, under the aegis of the Standing Committee on Transfrontier Television. The purpose of the seminar, entitled "Economic, technical and other developments in the television sector and their impact on the European Convention on Transfrontier Television", was to debate the possible options for adapting the Convention to an evolving broadcasting environment.

The exchange of views between the representatives of broadcasting organisations, governments, regulatory bodies and the advertising industry was structured around four different topics: the future of broadcasting in the digital era; the regulation of new advertising techniques; cultural objectives, and programme standards and human dignity. The ideas presented by the rapporteurs and participants during the seminar will be taken forward by the Standing Committee in its discussion on the review of the Convention. The full reports of the key-note speakers can be found on the web site of the Media Division.

## Co-operation programmes

Establishing a media system which satisfies all the requirements of a democratic society – especially in the new member states and in those that are candidates for membership – constitutes a priority among the initiatives undertaken by the Council of Europe to foster democratic security.

Co-operation programmes allow the Organisation to give support to member countries in the democratic reform of their media structures. Parallel information campaigns aim at creating awareness in such matters as the exercise of journalistic freedom, media action and racism, election coverage, the relationship between the media and the legal authorities, or the treatment of minorities.

## Activities for the development and consolidation of democratic stability

In the framework of the Joint Initiative between the European Union and the Council of Europe to assist the Montenegrin authorities with the adaptation of the legal framework in the media field in Montenegro, a written analysis of the draft Public Information Law was carried out at the beginning of December 2001. From 19 to 21 December, the Council of Europe experts visited Podgorica to discuss their proposed amendments with representatives of the Montenegrin authorities and the drafters of the legislation. The revised text, under the new title of draft Media Law, will be the subject of an additional expertise in the coming months.

In Serbia, between November 2001 and February 2002, three training seminars on Article 10 of the ECHR were organised for judges and prosecutors from Belgrade and other regions in co-operation with the Federal Ministry of Justice. At each seminar, the participants expressed their concern over the incompatibility of domestic laws with European standards and stressed that important changes in legislation, as well as further training, would need to be undertaken before these standards could be applied in the Federal Republic of Yugoslavia. Four more training seminars on Article 10 are foreseen before the completion, in June 2002, of the EU/Council of Europe Joint Initiative activities for Serbia.

Further information on the activities implemented in the framework of the above-mentioned programmes, as well as those carried out in other countries, can be found on the web site.

**Internet: http://www.humanrights.coe.int/media.**

## Key tools

**The European Convention on Human Rights.** Article 10 concerns freedom of expression, both to receive and to impart information and ideas. Article 8, closely linked to freedom of expression, deals with the right to privacy. It protects the individual against all types of interference, including intrusion by the media. National legislation must allow the balanced exercise of these two fundamental rights of equal value.

**The Declaration on Freedom of Expression and Information** (1982) of the Council of Europe sets forth a number of fundamental principles which the member states agree to uphold.

**The European Convention on Transfrontier Television**, which entered into force in 1993, supplies a legal framework intended to ensure the free reception and retransmission of television across national borders, subject to compliance with a set of common principles covering programming, the right of reply, advertising and sponsorship. To date, the Convention has been ratified by 23 of the 43 member states (see the "Simplified chart of signatures and ratifications of European human rights treaties").

**Recommendations or resolutions** to governments of member states suggest certain particular measures to regulate the media. Such texts are drawn up and refined by the CDMM before their adoption by the Committee of Ministers.

# European Commission against Racism and Intolerance (ECRI)

**The European Commission against Racism and Intolerance was born as a result of the first Summit of Heads of State and Government of the member states, in 1993, with a task: to combat racism, xenophobia, anti-Semitism and intolerance at European level and from the perspective of the protection of human rights.**

## Country-by-country

Final reports on Finland, Latvia, Malta and Ukraine were adopted at **ECRI's plenary** in March 2002. The draft report on Portugal was discussed at the same meeting, before transmission to the Portuguese authorities for a process of confidential dialogue.

These reports form part of ECRI's second round of monitoring member States' laws, policies and practices to combat racism and intolerance. The reports include a close examination of the situation concerning racism and intolerance in each country and suggestions and proposals intended to help governments overcome any problems identified.

In Spring 2002, contact visits to Liechtenstein, Azerbaijan, Sweden, Moldova, Lithuania and Andorra will take place, prior to the preparation of second reports on these countries. The aim of the contact visits is to obtain as detailed and complete a picture as possible of the situation regarding racism and intolerance in the respective countries. The visits provide an opportunity for ECRI's rapporteurs to meet officials from ministries and national public authorities, as well as representatives of NGOs and anyone concerned with issues within ECRI's remit.

An ad hoc working group is currently preparing the third round of ECRI's country-by-country work, which will begin in January 2003. It will continue the work of the second round, but with greater emphasis on implementation (ie, whether any action has been taken following the recommendations of ECRI's previous reports) and specialisation, focusing on issues of particular concern in the different countries.

## General themes

### ECRI general policy recommendations

Persistent racial discrimination at various levels remains a fundamental problem in Europe. It is closely linked to a lack of effective anti-discrimination legislative provisions in many member States, which do not all have comprehensive legislation to combat discrimination. This gap is a recurrent feature of ECRI's country-by-country analyses.

Therefore, in 2001, ECRI decided that its next general policy recommendation would be on national legislation against racism and racial discrimination and entrusted a

## ECRI's triple programme

### Country-by-country work

This approach consists of carrying out an in-depth analysis of the situation in each of the member countries in order to develop specific, concrete proposals, matched by follow-up.
· the first round of reports was conducted between 1997 and 1999, giving rise to the first reports.
· the second stage, from 1999 to 2002, is in progress with 11 second reports published.
· the third will begin in 2003.

### Activities in liason with the community

· awareness-raising and information sessions in the member states
· co-ordination with national and local NGOs
· communicating the anti-racist message and producing educational material.

### Work on general themes

· adoption of general policy recommendations addressed to the governments of the member States. To date ECRI has adopted six recommendations
· collection and circulation of examples of "good practice" on specific subjects, to illustrate ECRI's recommendations
· curbing the dissemination of racist and anti-Semitic materials over the Internet
· broadening the non-discrimination clause (Article 14) of the European Convention on Human Rights through Protocol No. 12 (containing a non-exhaustive list of discrimination grounds). ECRI has been closely following work on the protocol right up to the finalisation and will be calling for its swift ratification.
· contribution to the World Conference against racism, racial discrimination, xenophobia and related intolerance.

working group on anti-discrimination legislation with the task of preparing a draft recommendation listing the key elements of such legislation. The text will cover issues related to combating racism in a broad sense, such as racial discrimination, expressions of a racist nature, racist organisations, etc., and will cover all branches of the law, constitutional, civil, administrative and criminal.

## Relations with Civil Society

### Response to recent world events

The importance ECRI has always attached to relations with civil society has been highlighted by the terrorist attacks in the United States of 11 September 2001, and their aftermath.

ECRI has responded to these events by focusing its reaction on the impact of this situation on the fight against racism and intolerance, in order to contribute in the most practical and flexible manner possible to the general efforts being made by the Council of Europe, in particular by intensifying multicultural dialogue. It adopted a Declaration on these issues at its plenary meeting from 11 to 14 December 2001.

A working group on dialogue was set up to prepare an action programme focused on relations with civil society, with the aim of involving the various sectors of society in intercultural dialogue. This programme of action was submitted at ECRI's plenary meeting in March, with a view to its launching on 21 March 2002, on the occasion of the International Day for the Elimination of Racial Discrimination.

### Round Table on "Dialogue against violence"

To commemorate the International Day for the Elimination of Racial Discrimination (21 March 2002), ECRI organised a Round Table on "Dialogue against violence". A panel of personalities (from both the academic world and involved in work at grass roots level) was invited to speak on related themes, such as the role of NGOs in intercultural dialogue; universality of human rights and cultural diversity; how and why people turn to extremist movements; and intercultural dialogue as a means for combating racism and racial discrimination.


## Other Activities

### Follow up to the United Nations World Conference against racism, racial discrimination, xenophobia and related intolerance

ECRI was represented by its Chair in the Council of Europe delegation to the World Conference against racism, racial discrimination, xenophobia and related intolerance, which took place in Durban from 31 August to 8 September 2001. The Council of Europe had contributed to the World Conference by hosting the European regional preparation conference (European Conference against Racism "All different all equal: from principle to practice") held in Strasbourg in October 2000. The Council of Europe recalled in Durban its readiness to join collective efforts at the European level to ensure the action needed to implement the recommendations of the World Conference.

Since the Conferences, ECRI has been involved in ongoing work to prepare a strategy for implementation of the conclusions of the European and World Conferences.

## Publications

**Second report on the Netherlands**

(CRI (2001) 40)

**Second report on the Russian Federation**

(CRI (2001) 41)

**Practical examples in combating racism and intolerance against Roma/Gypsies**

(CRI (2001) 28)

**Activities of the Council of Europe with relevance to combating racism and intolerance**

(CRI (99) 56 final rev.)

*Please note the new website of ECRI.*

**Internet site : http://www.coe.int/ecri**

# Equality between women and men

**Since 1979, the Organisation has been promoting European co-operation to achieve real equality between the sexes. The Steering Committee for Equality between Women and Men (CDEG) has the responsability for co-ordinating these activities.**

## Co-operation activities in the field of equality between women and men

A seminar was held in Tbilisi, Georgia, on 14 and 15 December 2001 to take stock of the situation regarding gender equality in Georgia and to discuss the action plans on improving the condition of women and on gender-based violence.

The pilot project on "criminal law reform on trafficking in human beings in South Eastern Europe" continued with a second seminar in Chişinău, Moldova from 12 to 14 December 2001. This project forms part of the Council of Europe contribution to the Stability Pact Task Force on Trafficking as well as to the Stability Pact Initiative against Organised Crime (SPOC), and is organised by the Directorate General of Human Rights in partnership with the Directorate General of Legal Affairs. The project aims to contribute to the effective criminalisation of trafficking in human beings at regional level and to ensure protection of victims' rights in accordance with European and other international standards.

The Council of Europe also organised, under the Stability Pact Task Force on Trafficking, a regional training course on criminal law reform on trafficking in human beings in South Eastern Europe on 23 and 24 November 2001 in Belgrade. This training course aimed at establishing a framework for the necessary legislative reforms taking into account relevant international instruments. The main objective was to ensure that the preparation, adoption and implementation of comprehensive legislation cover all aspects of trafficking in human beings.

The third and final seminar of the pilot project on criminal law reform on trafficking in human beings in South-Eastern Europe took place in Strasbourg from 18 to 20 February 2002. It discussed the implementation of the recommendations adopted at the previous two seminars, the implementation of national action plans, the training needs of the different actors involved in combating trafficking in human beings and international co-operation. In view of its success, the project will continue on regional level and be extended to the whole of South-East Europe.

Further information concerning activities in the field of equality between women and men is available on the Equality Internet site.

**Internet site: http://www.humanrights.coe.int/equality/**

## Publications

**Council of Europe action in the field of equality between women and men – Annual Report for 2001**
(EG (2002) 1)

**List of documents in the field of equality between women and men**
(EG (2002) 2)

**Council of Europe action in the field of equality between women and men – information document**
(EG (2002) 3)

**Implementation of co-operation activities in the field of equality between women and men in 2001**
(EG (2001) 8)

**Proceedings of the international seminar on the participation of women in the prevention and resolution of conflicts, Strasbourg, 20-21 September 2001**
(EG/Sem/Peace (2001) 9)

**Inventory of initiatives and actions regarding women and peacebuilding in Europe**
(EG/Sem/Peace (2001) 2)

**Council of Europe contribution to the projects of the Stability Pact Gender Task Force, 2000-March 2001**
(EG/COOP (2001) 4)

# Human rights awareness

**In the field of human rights, the future presents many challenges for the Council of Europe. In response, it has set up co-operation programmes, with both new and old member states, non-governmental organisations and professional groups.**

## Internet Bridge with Moscow on human rights

On 12 February 2002 in Moscow, the Council of Europe's Directorate General of Human Rights and the European Court of Human Rights organised an Internet conference entitled "European Human Rights Standards: Access in Russia". Its aim was to raise awareness about the Strasbourg human rights protection mechanism and its implications at national level, given a steadily increasing number of applications against Russia before the European Court of Human Rights.


The conference coincided with the launch of a CD-Rom containing key judgments of the Court in Russian, published by the legal information company "Garant" with the Council of Europe's support. Ten-thousand copies of the CD-Rom have been distributed to key Russian federal and regional institutions and main public libraries. The CD-Rom contents are also available on the Internet site of "Garant" (www.garant.ru).

Among the Council of Europe participants in the Internet bridge were: Deputy Secretary General, Hans-Christian Krüger; President of the European Court of Human Rights, Luzius Wildhaber; Commissioner for Human Rights, Alvaro Gil-Robles; Russian judge of the Court, Anatoly Kovler; and legal officer from the Directorate General of Human Rights, Mikhail Lobov. On the Russian side, participants included the Representative of the Russian Federation in the European Court of Human Rights Mr Pavel Laptev as well as other government officials, representatives of the judiciary, parliamentarians, NGOs and the media.

307 Questions were sent to the participants and 8948 visits were made to a special website developed for the conference (in Russian only http://www.garweb.ru/conf/coe/20020212/index.asp).

## Parliamentarian conference on abolition of the death penalty in the Russian Federation

A conference on abolition of the death penalty was held on the Duma premises in Moscow on 10 and 11 November 2002. It was organised in co-operation with the Federal Commission on Human Rights and the Human Rights Institute, a Moscow-based NGO. The main topic of the discussion was the abolition of the death penalty in the Russian Federation. The participants examined a variety of arguments in favour of the abolition and adopted a declaration, addressing the State Duma, President Putin and the Prosecutor General with a request to remove provisions on the death penalty from the Criminal Code of the Russian Federation, as well as to take measures towards improving the effectiveness of the judiciary and the law enforcement agencies.

Among the participants were the Head of the Commission of the European Communities in Russia, the Chairman of the Russian President Human Rights Commission, the Chairman of the Public Associations and Religious Organisations of the State Duma, the Chairman of the International Affairs Committee of the Russian State Duma, academics, members of the HRI Board of Trustees, the Deputy Chairman of the Constitutional Court, members of the various committees of the State Duma, NGO representatives, human rights lawyers and journalists.

The conference was certainly not in a position to produce any binding effect on the policy of the Russian authorities, yet the high level of representation and the demonstrated commitment of the participants to death penalty abolition demonstrated that the issue is on the political agenda in the Russian Federation. Undoubtedly a timely and needed event, the conference, however, showed that the necessary consensus and good will among the majority of the Russian politicians to ratify Protocol No. 6 of the European Convention on Human Rights had yet to become a reality.

## The Council of Europe, OSCE and UN OHCHR supporting efforts to establish Ombudsman institutions in the Federal Republic of Yugoslavia

In December 2001, and more recently in February 2002, the Council of Europe, the OSCE and the UN OHCHR organised two workshops together on "The model of an Ombudsman Institution" in Serbia and Montenegro. The workshops were followed by expertises and round tables on the draft laws in co-operation with respective Ministries of Justice.

These activities were part of the Stability Pact Project on Independent National Human Rights Institutions, including Ombudsman, under the Stability Pact Project for South Eastern Europe. As Task Force Sponsor and Co-ordinator, the Council of Europe has been involved from the outset in the conceptualisation, programming and implementation of the project. It has striven to ensure a regular flow of information about the programme of activities between all institutions, countries and organisations, donors and beneficiaries concerned.

The project has focused on three main areas: (a) building political support and increasing knowledge about Ombudsman and related institutions; (b) enhancing the legal basis, functions, methods and capacity of the (existing) Ombudsmen and related institutions; (c) focusing on the specific roles of the Ombudsman and related institutions.

It is to be hoped that these joint and co-ordinated initiatives in both the constituent Republics of Yugoslavia will facilitate the creation of a single unified Ombudsman institution with a broad human rights model for protection and promotion of human rights. At the same time a clear message was sent to the respective governments that any posthaste establishment of a human rights/Ombudsman institution for political or other cosmetic purposes must be avoided.

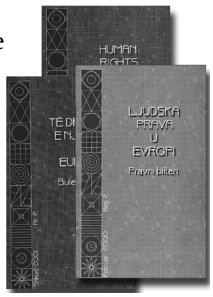
A number of Ombudsman Offices of South East Europe and the Ombudsman of the Netherlands have supported these joint initiatives.

More information about the Stability Pact is available at the site of the Special Co-ordinator of the Programme.

**Special Co-ordinator Website: http://www.stabilitypact.org**

## Bulletin on the ECHR case-law in Albanian and Serbian

A monthly bulletin containing relevant case law of the ECHR in Serbian language has been produced by the Aire Center in London with the support of the Council of Europe. It is distributed widely to judges and lawyers in the Federal Republic of Yugoslavia to help embed European human rights into the law and practice of the region. So far the twenty-one editions of the Bulletin provided to legal professionals and human rights activists in the FRY have contributed to a better understanding of European human rights standards and its relevance for the accession process of this country to the Council of Europe. The Bulletin is a key element of the Council of Europe overall awareness raising programme, which also includes seminars for judges, lawyers and other legal practitioners in Serbia and Montenegro. These seminars are jointly organised with the Aire Centre in London, the Belgrade Center for Human Rights in Serbia and CEDEM (Centre for Human Rights and Democracy) in Montenegro.




The monthly bulletin is also produced in Albanian since January 2001. In 2002 it will be extended to Kosovo and to Bosnia-Herzegovina (Serbian language version) with a special introductory chapter.

## Conference on "The Relationship between Ombudsmen and Judicial Bodies"

On12 and 13 November 2001, the Council of Europe, in co-operation with the Office of the Human Rights Ombudsman in the Republic of Slovenia, organised a conference on "The Relationship between Ombudsmen and Judicial Bodies" in Ljubljana. The meeting, attended by representatives of 13 Ombudsmen and similar non-judicial offices for the protection of Human rights from the region of South-Eastern Europe, was an occasion for an exchange of experiences and views on the role of the Ombudsman in relation to judicial bodies.

The Ombudsmen were of the opinion that both judicial and non-judicial organs were complimentary and that cooperation among them was essential for the effective protection of Human Rights. A document "Ljubljana Conclusions" was adopted at the end of the Conference, outlining the mutually agreed principles for the relationship between Ombudsmen and the judiciary.

## Compatibility studies

The main aim of these exercises is to review domestic law and practice with regard to their compatibility with the European Convention on Human Rights, and where necessary to reform them. A further goal and result of these exercises is the forming and training of a group of national experts who can be called upon subsequently for advice on specific pieces of legislation. In 2001, compatibility exercises were concluded and reports finalised on selected articles of the European Convention on Human Rights in respect of Albania, Georgia and Ukraine and are now available in English from the Human Rights Co-operation and Awareness Division (HRCAD). In 2002, similar exercises are expected to be completed in Azerbaijan and the Federal Republic of Yugoslavia and will begin in Bosnia-Herzegovina and in Moldova.

## Activities in support of the abolition of the death penalty

Abolition of the death penalty is a fundamental requirement of the Organisation. In 2001, an awareness raising campaign was carried out in Albania, Belarus, Federal Republic of Yugoslavia and the Russian Federation. In Albania, activities included a film production shown on national TV, an 8-month storyline for a popular radio soap opera "*Rruga me Pisha*" as well as a series of 24 public awareness seminars involving all groups of society throughout the country. Further, several high-profile conferences in Russia (see above),

an opinion survey in Serbia and numerous seminars on abolition, including three in Belarus, have been held. In addition to English and French, the brochure "Death is not justice" is now also available in Russian and Albanian.


## Three-year human rights training programme for Bosnia-Herzegovina

In May 2000, the Council of Europe initiated the implementation of an ambitious 3-year programme aimed at providing the legal professionals in Bosnia-Herzegovina with practical training on the European Convention on Human Rights and other European norms. In its structure the programme includes all major components relevant to ensure an efficient and effective training programme in the field of human rights as well as the development of training structures aimed to ensure monitoring of European standards regarding human rights and the rule of law within the Bosnia-Herzegovina judicial system. The training was conducted under the auspices of the Joint Interim Co-ordination Board for Training of Judges and Prosecutors, a body established in February 2000 to oversee the training activities of judges and prosecutors in Bosnia and Herzegovina.

Phase I of this programme – a series of 10 five-day practical workshops for 248 judges and prosecutors – was completed in June 2001. Each workshop combined presentations by international and local experts on specific articles of the European Convention on Human Rights with others on the human rights protection mechanisms in Bosnia-Herzegovina. A considerable period of questions and discussion was always included, followed by work in smaller groups on related case studies, with presentations and discussion of findings with the experts present. The overall aim was to illustrate in a practical way how the ECHR should be applied in the daily work of the participants. The four-and-a-half-day programme ended with a Moot Court session simulating a hearing and delivery of a judgment before the Human Rights Chamber of Bosnia-Herzegovina or the European Court of Human Rights.

Extensive documentation was prepared in the local language and distributed to participants both before, in preparation for, and during the workshops.

In order to retain their interest and involvement, all judges and prosecutors who did the training are supplied with summaries of the most recent case law of the European Court of Human Rights on a continuing, regular basis. The translation of some 93 key judgments of the European Court of Human Rights were published and distributed in Bosnia-Herzegovina by the end of 2001. Training handbooks on the application of specific articles of the Convention are also envisaged.

Phase II of the programme focuses on identifying and giving further in depth training to those who can themselves become trainers. A "train the trainers" course for the 15 most active participants took place in Strasbourg at the end of November/beginning of December 2001. As of February 2002, those so trained started conducting a series of 40 workshops to be held over two years throughout Bosnia-Herzegovina.

## "Train the trainers" course for police – 1st stage completed

Within the framework of the "Police and Human Rights – Beyond 2000" programme, the Council of Europe in co-operation with the European Commission, organised the first in a series of four "train the trainers" courses. The pilot course began in Turkey on 11 February 2002 and is aimed at developing professionalism and respect for human rights in the Turkish National Police and the Gendarmerie in its behaviour and relations with the public. The first stage of the course was successfully completed in Ankara, Turkey, in the second week of March 2002. The 18 participants have now been split up into three groups and will move on to the second stage entitled "Training abroad." They will travel to Denmark, Germany and the Netherlands where they will spend 17 days at national police schools learning how human rights are integrated into the training curricula in these countries.

**Internet sites**
**Awareness:** **http://www.humanrights.coe.int/aware**
**Police:** **http://www.humanrights.coe.int/police**

# Committee of Ministers

**The Committee of Ministers is the decision-making body of the Council of Europe, made up of the foreign ministers of the forty-one member states or their permanent representatives. The Committee meets twice a year at ministerial level, and once a week at the level of ministerial deputies. The human rights situation in member and non-member states features regularly on their agenda.**

## New treaties

### Audiovisual heritage

European Convention on the Protection of the Audiovisual Heritage and Additional Protocol on the Protection of Television Productions
Opened for signature on 8 November 2001

This Convention and its Protocol are the first binding international instruments in their field. They are based on the principle of a compulsory legal deposit of all moving-image material forming part of a state's audiovisual heritage.

Authorities are required not only to deposit a reference copy with an officially designated archive but also to maintain and conserve the material as well as make it available for consultation for academic or research purposes, subject to the international or national rules on copyright.

The Protocol makes it possible for the Parties to provide for a system of appraising, selecting or sampling television productions, notably for those which are similar or are part of a wider series of productions.

### Biomedicine

Additional Protocol to the Biomedicine Convention concerning Transplantation of Organs and Tissues of Human Origin
Adopted by the Committee of Ministers on 8 November 2001; opened for signature on 24 January 2002

This Protocol applies the principles set out in the biomedicine convention to the field of transplantation. It lays down general principles and specific provisions regarding the transplantation of organs and tissues of human origin for therapeutic purposes.

The general principles include equitable access to transplantation services for patients, transparent rules for organ allocation, health and safety standards and the prohibition of financial gain by donors.

The specific provisions cover the removal of organs from living and deceased persons, the use made of the organs and tissues removed, the prohibition of financial gain, confidentiality, sanctions and compensation.

## Adopted texts

They may take the form of:

**Treaties – or conventions** – are binding legal instruments for the states and other subjects of international law which are parties to them.

**Declaration**s are usually adopted only at the biannual ministerial sessions.

**Recommendations to member states** are for matters on which the Committee has agreed a common policy, but are not binding on member states. Since 1993, recommendations have also been adopted by the Committee in order to fulfil its functions under Article 29 of the European Social Charter.

**Resolutions** are mainly adopted by the Committee of Ministers in order to fulfil its functions under the European Convention on Human Rights, the European Code of Social Security, the European Social Charter and the Partial Agreement in the social and public health field. Other resolutions tend to concern administrative matters of the Council of Europe.

**Decisions of the Ministers' Deputies,** issued as public documents since November 1994, are taken with the full authority of the Committee of Ministers and are binding on all persons and bodies subject to its authority. They are an essential reference point for the Council of Europe's Secretariat. The adoption of conventions, recommendations, resolutions, the budget the Intergovernmental Programme of Activities and terms of reference of committees all take the form of decisions.

### Mutual assistance in criminal matters

2nd Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
Opened for signature on 8 November 2001

This Protocol is intended to improve states' ability to react to cross-border crime in the light of political and social as well as technological developments. It broadens the range of situations in which mutual assistance may be requested and makes the provision of assistance easier, quicker and more flexible. It also provides for direct communication

between judicial authorities, service of judicial Doc.s by post, hearing by video conferences, cross-border observations, controlled delivery, covert investigations and the setting up of joint investigation teams.

### Data protection

**Additional Protocol to the Data Protection Convention, regarding supervisory authorities and transborder data flows**

**Opened for signature on 8 November 2001**

This Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows, increases the protection of personal data and privacy by improving the 1981 Convention. It provides for independent national supervisory authorities and the transfer of data to third countries only if the recipient state or international organisation is able to afford an adequate level of protection.

### Cybercrime

**Convention on Cybercrime**

**Adopted by the Committee of Ministers 8 November 2001; opened for signature on 23 November 2001**

The Convention on Cybercrime, the first international treaty on criminal offences committed on the Internet and other computer networks, deals particularly with infringements of copyright, computer-related fraud, child pornography and violations of network security. It was opened for signature in Budapest on 23 November at an international conference on cybercrime.

### Death penalty

**Protocol No. 13 to the ECHR on the abolition of the death penalty in all circumstances**

**Adopted by the Committee of Ministers on 21 February 2002, to be opened for signature on 3 May 2002**

The Committee of Ministers has adopted a text banning the death penalty in all circumstances, including for crimes committed in times of war and imminent threat of war.

No derogation or reservation will be allowed to Protocol No. 13 to the European Convention on Human Rights.

The adoption of this Protocol is a strong political signal that the death penalty is unacceptable in all circumstances.

## Recommendations to member states

### Access to official documents

**Recommendation Rec (2002) 2, 21 February 2002**

This recommendation calls upon member states to guarantee the right to access, on request, official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.

## Replies by the Committee of Ministers to recommendations and written questions of the Parliamentary Assembly

*The Committee of Ministers informed the Parliamentary Assembly of the effect it gave, or intends to give, to the following recommendations or questions:*

### Georgia

**Reply to Assembly Recommendation 1533 (2001) on honouring of obligations and commitments by Georgia**

The Committee of Ministers takes note of the main conclusions and proposals for further action drawn up in the Secretariat's report, and will consider the proposal to increase co-ordination and implementation capacities in the field. Whilst recognising the progress achieved on important issues, the Committee is conscious that much remains to be done by the Georgian authorities to secure full and sustainable implementation of all the commitments and obligations subscribed by Georgia when joining the Council of Europe.

### "The former Yugoslav Republic of Macedonia"

**Reply to Assembly Recommendation 1537 (2001) on the situation in "The former Yugoslav Republic of Macedonia"**

The Committee of Ministers refers to the conclusions of the Committee of Ministers Chairman's visit to Skopje and highlights the Organisation's Confidence-Building Measures Programme. It furthermore states that the preparation of an international observation of the population census is being pursued and underlines continued support from the Council of Europe Development Bank for the area.

### Constitutional amendments in "The former Yugoslav Republic of Macedonia"

21 November 2001

The Committee of Ministers warmly congratulates the Parliament in Skopje on its historic decision of 16 November 2001 to adopt the constitutional amendments foreseen in the Framework Agreement of 13 August 2001. It further invites the government and all political parties to actively pursue the necessary legislative reforms to implement the Framework Agreement, in the same co-operative spirit as shown up to present. The Council of Europe will continue to actively contribute to this process in all its fields of competence, in close co-operation with the other relevant international organisations present in the country.

## Turkey

### Reply to Assembly Recommendation 1529 (2001) on the honouring of obligations and commitments by Turkey

The Committee of Ministers welcomes the political will behind the current reforms in Turkey in the honouring of their obligations.

While taking note of the moratorium on the death penalty in force since 1984, the Ministers firmly expect further progress in the near future towards *de jure* abolition of the death penalty and ratification of Protocol No. 6 to the European Convention on Human Rights. It welcomes the exclusion of the death penalty from the new draft Turkish Penal Code.

The Ministers have taken note of measures intended to eradicate torture and ill treatment, to sanction those responsible for such acts and to implement the recommendations of the Committee on Prevention of Torture (CPT).

It informs the Assembly that programmes aimed at Human Rights training for police and at prison system reforms, as well as the two-year "European Commission/ Council of Europe Joint Initiative with Turkey on Human Rights and the rule of law", are rapidly taking form.

### Reply to Written Question No. 402 on non-compliance of Turkey with European Court of Human Rights judgments

The Committee of Ministers has been informed of the recent amendments to the Turkish constitution and of their entry into force on 17 October 2001. One of the amendments limits to 4 days the maximum length of police custody before presenting a detainee before a judge. This new provision is already being applied by all police and prosecution authorities, which a number of domestic court decisions have confirmed. The Ministers have also been informed that the Code of Criminal Procedure will shortly be brought into line with the new constitutional provisions.

The Committee considers that these general measures constitute adequate safeguards against new similar violations of the Convention.

## Ukraine

### Reply to Assembly Recommendation 1538 (2001) on the honouring of obligations and commitments by Ukraine

The Committee of Ministers notes the substantial progress made by Ukraine towards the honouring of its obligations and commitments and welcomes in particular the adoption of the new Civil Code and the submission of the new electoral law to the Venice Commission.

## Terrorism

### Reply to Assembly Recommendation 1534 (2001) on democracies facing terrorism

The Committee of Ministers believes full use should be made of the legal framework established by the Council of Europe to combat terrorism and related forms of crime. To this end it urges member states to sign and ratify all the relevant conventions and to set up a Multidisciplinary Group on international action against terrorism (GMT).

It has furthermore decided to invite the observer states to accede to the European Convention on the Suppression of Terrorism and to intensify action to cut off sources of funding for terrorism, urging member states to criminalise the financing of terrorism. It has also adopted the Convention on Cybercrime.

## Csango minority

### Reply to Assembly Recommendation 1521 (2001) on the Csango minority culture in Romania

The Committee of Ministers agrees that diversity of cultures and languages is a valuable source of Europe's richness and the original feature of its cultural heritage and takes note of the significant progress made in recent years in strengthening the legal and institutional framework for the protection of national minorities in Romania.

## Conscientious objection

### Reply to Assembly Recommendation 1518 (2001) on the right to conscientious objection to military service

The Committee of Ministers expresses reserves concerning the granting of conscientious objector status to permanent members of the armed forces, enrolled on a voluntary basis and who are clearly in another category than conscripts. It furthermore underlines that the civilian service may in certain cases justify a longer duration than that of military service. It also stresses that access to such service should be non-discriminatory and non-punitive.

The Committee of Ministers considers that rather than amending the European Convention of Human Rights, as suggested by the Assembly, it is preferable to implement the existing 1987 recommendation on the matter.

## CPT

### Reply to Assembly Recommendation 1517 (2001) on the European Committee for the Prevention of Torture (CPT): working methods

The Committee of Ministers is determined to continue its efforts to enable the CPT to carry out effectively the task entrusted to it. It furthermore encourages the CPT's efforts to make the most effective use of its resources.

The Ministers take note of the CPT's opinion on the advantages of the confidentiality rule, which facilitates direct, fruitful dialogue with States on highly sensitive issues and shares the CPT's reservations with regard to the possible amendment of the Convention on this matter.

## Migrants, refugees and asylum-seekers

### Reply to Assembly Recommendation 1503 (2001) on health conditions of migrants and refugees in Europe

The Committee of Ministers recommends the introduction of a coherent and comprehensive policy framework

based on the principles of equity, human dignity and participation.

The Ministers also draw attention to the activities of Working Table II of the Stability Pact as part of the "Initiative for Social Cohesion" Working Group. The health component, called the "South-East Europe Strategic Review on Social Cohesion – Health Network", focuses on a survey to improve access to health care for vulnerable and marginalised persons.

As regards developing new policy guidelines on the health conditions of migrants and refugees in Europe, the Ministers are examining the possibility of launching a joint activity by the European Committee on Migration (CDMG) and the European Health Committee (CDSP).

### Reply to Assembly Recommendation 1489 (2001) on transit migration in central and eastern Europe

The Committee of Ministers notes the work undertaken at pan-European level to combat trafficking in human beings, particularly under the Stability Pact, at the international seminar on "Co-ordinated action against trafficking in human beings in south-eastern Europe: towards a regional action plan" (Athens, 29 June-1 July 2000).

The Ministers also draw attention to the pilot project entitled "Criminal law reform on trafficking in human beings in south-eastern Europe", currently implemented in Romania and Moldova under the direction of the Directorate General of Human Rights, in co-operation with the Directorate General of Legal Affairs.

The Committee of Ministers has communicated this Recommendation to the European Committee on Migration (CDMG), and fully endorses its opinion.

### Reply to Assembly Recommendation 1475 on the arrival of asylum-seekers at European airports

The Committee of Ministers informs the Assembly that the *ad hoc* Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) is enquiring as to the implementation of its recommendations on asylum matters.

The Ministers furthermore point out the importance of training for those officials who make the first contact with asylum seekers at border points and has brought Parliamentary Assembly Recommendation 1475 (2000) to the attention of the European Commission and the UNHCR.

## Children's rights

### Reply to Assembly Recommendation 1443 (2000) on international adoption: respecting children's rights

The Committee of Ministers, via the Forum for Children and the Family, has undertaken an activity focusing on the issue of children at risk and children placed in institutions. Work will focus on better co-ordination of prevention and social and educational work, as well as improved procedures for the placement of children. Priority is to be given to alternatives to institutional placement and to keeping children in, or returning them to, their families when possible.

The Committee of Ministers notes the Assembly's proposal concerning adopted children's right to learn of their origins and points out that substantive discussions are in progress on this question in several member states and that it has sometimes been deemed necessary to withhold some or all information about a child's origins (e.g. in cases of medically assisted procreation involving an anonymous sperm donor).

## Federal Republic of Yugoslavia

### Declaration on the Federal Republic of Yugoslavia, 21 February 2002

The Committee of Ministers expressed its support for the efforts of the European Union High Representative for Foreign and Security Policy, Javier Solana, to reach a political agreement between the authorities of the Federal Republic of Yugoslavia, Serbia and Montenegro on the future federal structure of Yugoslavia.

In this context it recalled its support "for a democratic Montenegro within a democratic Yugoslavia", as stated in the final communiqué of its 108th session in May 2001.

## European Court of Human Rights

### Declaration on the protection of human rights and the long-term effectiveness of the European Court of Human Rights
8 November 2001

The Committee of Ministers reaffirms its conviction that the European Convention on Human Rights must remain the essential reference point for Human Rights protection in Europe and urges all States Parties to ensure the existence of effective remedies at national level for the exercise of the rights and freedoms the Convention guarantees.

It also welcomes the Evaluation Group's report on possible means of ensuring the effectiveness of the European Court of Human Rights and has instructed the Ministers' Deputies to consider the recommendations concerning:

- the follow-up to the Rome Ministerial Conference, in particular improved national implementation of the Convention, teaching of its case-law, human rights awareness and training, the availability of effective domestic remedies and responses to slow execution or non-execution of judgments;
- the use of every means at their disposal to ensure the expeditious and effective execution of Court judgments;
- the material needs of the Court;
- measures involving amendment of the Convention.

## 109th Session of the Committee of Ministers, 8 November 2001

### International action against terrorism

Meeting on 8 November with Mr Ernst Walch, Minister of Foreign Affairs of Liechtenstein, in the Chair, with the participation of observer states, the Ministers devoted their discussions to strengthening international action against terrorism, which has taken on a new and monstrous dimension since the terrorist attacks on 11 September 2001.

Reiterating their condemnation expressed on 12 September, the Ministers welcomed the fact that a broad coalition had rapidly been formed against terrorism that knows no frontiers and is unlimited in its destructive intention. They expressed their support for the new dynamics of solidarity already manifested in international security systems.

Expressing a common democratic resolve, the Ministers made a commitment that the Council of Europe would contribute, within its areas of competence, to international action against terrorism in all its forms and manifestations and the factors likely to fuel it.

This contribution is designed to support and sustain, where appropriate in partnership with other international institutions, the international strategy to combat terrorism by taking full advantage of the Organisation's special assets and pan-European scope. It takes account, in particular, of United Nations Security Council Resolutions 1368 (2001) and 1373 (2001), which the Ministers welcome and which must be given full effect without delay. It draws on Parliamentary Assembly Recommendation 1534 (2001), and on Resolution No. 1 of the 24th Conference of European Ministers of Justice (Moscow, October 2001). This contribution has three cornerstones:

### Intensifying legal co-operation to combat terrorism

The Ministers emphasised that, alongside prevention of terrorism and eradication of its roots, one of the key objectives of action against terrorism is to bring the alleged perpetrators of the attacks to justice. This presupposes a legal framework permitting substantial international co-operation, *inter alia* between judicial authorities, such as that which only the Council of Europe has set up at pan-European level.

The Ministers therefore agreed to take steps rapidly to increase the effectiveness of the existing international instruments within the Council of Europe on the fight against terrorism, by:

- urging Member States to generalise their signature and ratification and to reconsider reservations;
- inviting the observer States to accede to the European Convention on the Suppression of Terrorism, hitherto open for signature to member States only;
- setting up a multidisciplinary group on international action against terrorism, to improve existing instruments.

The Ministers also decided to intensify action to cut off sources of funding for terrorism. To this end, they gave increased priority to the work of the Council of Europe Committee on mutual evaluation of anti-money-laundering measures and confirmed the activities to combat corruption, organised crime, drug trafficking, the traffic in human beings and cybercrime.

Referring to the FATF special recommendation on terrorist financing, the Ministers urged member States to criminalise the financing of terrorism, terrorist acts and terrorist organisations. States should ensure that such offences are designated as money laundering predicate offences.

### Safeguarding fundamental values

While stressing that terrorist acts are unjustifiable, the Ministers reaffirmed that measures for combating terrorism must remain consistent with the requirements of democracy, the rule of law and human rights.

The Ministers recognised the authority and expertise acquired by the Council of Europe in defending these values, particularly through its conventions and the case-law of the European Court of Human Rights and other human rights protection mechanisms.

The Ministers instructed the Steering Committee on Human Rights to finalise, as rapidly as possible, guidelines to help member states to face up to the movements which threaten the Council of Europe's fundamental principles and values.

### Investing in democracy

The Ministers considered that the in-depth work carried out by the Council of Europe to develop strong democracies that respected their diversity and fostered greater social justice contributed to weakening the factors on which terrorism fed.

On the basis of an inventory drawn up by the Secretary General, the Ministers noted that many activities currently under way were of a kind to reduce the risks of tension and radicalisation. They stressed the particular importance they attached to the implementation of programmes of regional co-operation, to the teaching of history, to the fight against intolerance in all its forms and against discrimination. These activities would be pursued and, wherever possible, intensified.

While stressing that terrorism was affecting a great number of countries and that it cannot be associated with any particular culture, the Ministers expressed their determination to promote a wide intercultural and inter-religious dialogue to permit our societies to find greater cohesion and reduce the risks of misunderstanding. They welcomed the initiatives already taken to intensify this dialogue.

The Ministers took note of new approaches suggested by the Secretary General, including proposals to open the North-South Centre for Global Interdependence and Solidarity to countries in the south, to make full use of the possibilities of the Development Bank and to enable the Organisation to contribute to the European Union's Barcelona process. They invited the Secretary General and the relevant organs and authorities to elaborate on these suggestions as soon as possible.

# Parliamentary Assembly

**"The Parliamentary Assembly is a unique institution, a gathering of parliamentarians, from more than forty countries, of all political persuasions, responsible not to governments, but to our own consensual concept of what is right to do" (Lord Russell-Johnston, former President of the Assembly).**

## Human rights situation in member and non-member states

### Ex-Yugoslavia and Federal Republic of Yugoslavia

**Slobodan Milosevic on trial – Statements by Assembly President, 12 and 15 February 2002**

The President declared that the Tribunal in The Hague was trying individuals, not peoples, and that its work was based on the rejection of the notion of collective responsibility for the crimes that had been committed. He expressed the hope that Milosevic's trial will demonstrate that an international court is able to administer justice in an equitable manner, regardless of the politicial status of the accused or the ethnic origin of the victims.

In another Declaration, objecting to statements by the Serbian Prime Minister, he recalled that the obligation to co-operate with the Tribunal was based on Federal Republic of Yugoslavia's membership of the United Nations, and that its honouring would be closely scrutinised when examining Yugoslavia's request for Council of Europe membership.

**Report on the Federal Republic of Yugoslavia's legal order and its conformity to Council of Europe standards**

**Document AS/Bur/Yugoslavia (2001) 1, 5 November 2001**

The Assembly made public a report on this subject. Drafted by a former President and a former judge of the European Court of Human Rights, it will serve as a basis for the Assembly's opinion on the country's application to join the Council of Europe.

According to the authors, "the legal order of Yugoslavia is not, at this stage, in conformity with Council of Europe standards, but the basis and the potential for meeting the requirements in respect of democracy, the rule of law and human rights are present". The difficulties making the reforms too slow are attributed mainly to internal political problems.

*In connection with the possible accession of the country to the Council of Europe, rapporteurs from the Assembly visited the Federal Republic of Yugoslavia. They held high-level meetings, and also encounters with representatives of minorities, local media, NGOs and other organisations.*

### Bosnia and Herzegovina's membership of the Council of Europe

**Report by the Political Affairs Committee, and Opinion by the Committee on Legal Affairs and Human Rights Document 9287 and Opinion No. 234, 22 January 2002**

The Assembly considers that Bosnia and Herzegovina recognises the principle of the rule of law and respect for human rights, and that it is able and willing to continue the democratic reforms embarked upon to bring its legislation and practice globally into conformity with Council of Europe principles and standards.

The country was asked to honour an extensive set of commitments dealing specifically with constitutional, legislative and judicial reforms, human rights and co-operation with the international community.

### Russian Federation: Chechen conflict

**Consultation on a peaceful solution to the conflict**

In November 2001, a group of some thirty Chechens, representing all parts of society, were invited by the Parliamentary Assembly's Joint Working Group on Chechnya to participate in a two-day consultation on a political solution to the conflict. A first such consultation had taken place in September 2001.

At the end of the meeting, they announced their decision to establish, under the aegis of the Duma/Assembly Joint Working Group, a broadly based consultative council for the purpose of developing recommendations and proposals pertaining first and foremost to demilitarisation and to the

### Texts adopted by the Assembly

**Recommendations** contain proposals, addressed to the Committee of Ministers, the implementation of which is within the competence of governments.

**Resolutions** embody decisions by the Assembly on questions which it is empowered to put into effect or expressions of view for which it alone is responsible.

**Opinions** are mostly expressed by the Assembly on questions put to it by the Committee of Ministers, such as the admission of new member states, draft conventions, implementation of the Social Charter.

**Orders** are generally instructions from the Assembly sto one or more of its committees.

establishment of conditions forgenerally accepted democratic procedures.

*Members of the Joint Working Group on Chechnya visited Chechnya and Ingushetia the week following this meeting, to discuss the proposals made at the consultation organised in November and assess the humanitarian situation in the region. This latter gave rise to pressing appeals by the Assembly's President to the Russian authorities, member states of the Council of Europe, and other relevant international organisations. Subsequently, the Assembly found some tangible improvements in camps for displaced persons.*

## Election of the new Parliamentary Assembly President

Peter Schieder (Austria, Soc) was unanimously elected on 21 January 2002.

His priorities as Assembly President are the enlargement of the 43-nation Organisation, reinforced procedures for monitoring of commitments undertaken by members upon accession, closer cooperation with other international organisations and the strengthening of the Organisation's public and political profile.

"There is no need to re-invent the Council of Europe as such. Its original mandate is still valid and has not yet been exhausted", he said in his inaugural speech, "but our attitudes and our commitments to values need to be refreshed".

### Resolution 1270 (2002) and Recommendation 1548 (2002) on the conflict in the Chechen Republic, 23 January 2002

The Assembly considers that the participation of Aslan Maskhadov, the last elected President of Chechnya, or his representatives, in peace negociations would enhance their prospects for success as peace would only be achieved through negotiations involving the widest possible representation of political and official elements in Chechen society.

The Assembly deplored the on-going serious human rights violations in the chechen Republic – unexplained disappearances, arbitrary arrest, illegal detention, torture and ill-treatment – and the lack of progress in investigating past and present crimes. It expressed also its deep concern about the humanitarian situation in the region and invited the Council of Europe member governments to make a speedy and generous response.

However, it noted positive changes of attitude in the Russian Federation concerning the way to deal with the conflict. It urged the Russian authorities to continue to cooperate with all Council of Europe bodies, including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The Council of Europe, which already sends experts to assist the Russian authorities in gathering information on human rights violations, should widen its activities, including establishing a long-term presence in the Chechen Republic and an information office in the North Caucasus, with the aim of strengthening democratic stability in the region.

## Russian Federation: Presidential Pardon Commissison

### Written Question No. 407

Recalling that, at the end of December 2001, the President of the Russian Federation dissolved the Presidential Pardon Commission by decree, ordering its replacement by regional commissions, which have, however, yet to be set up, the Question's author asks the Committee of Ministers how it views this development, which might deprive thousands of prisoners of the possibility to ask for clemency in the next few months, in the country with the highest incarceration rate in Europe.

## Latvia: Rights for Russian population

### Written Question No. 404

The Question's author asks the Committee of Ministers if it estimates that the Russians permanently residing in Latvia, who represent nearly 30% of the population, have the right to similar standards of democracy and human rights as those which were granted to the Albanians residing in Macedonia, who constitute 22.7% of this country's population.

## Macedonia: Threats to the Macedonian Helsinki Committee

### Written Question No. 405

The Question's author asks the Committee of Ministers what is its position towards the attacks on, and threats to, the Macedonian Helsinki Committee.

## Moldova: Suspension of the activities of a political party

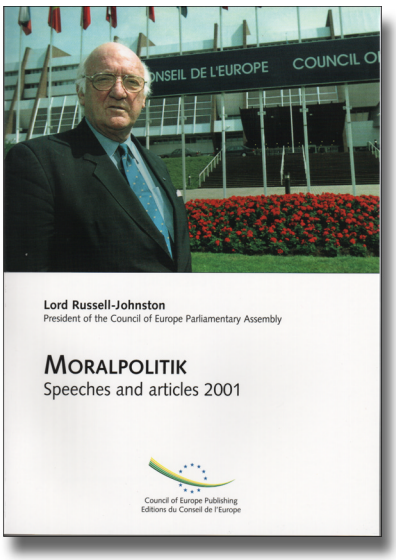
### Statement by the Assembly President

In a statement of 1 February 2002, the President judges that the suspension of the activities of the Christian Democratic Popular Party by the Minister of Justice constitutes an imminent threat to the principle of the rule of law. The Assembly will monitor the situation and, if necessary, consider further steps to ensure Moldova's compliance with commitments resulting from its Council of Europe membership.

## Political prisoners in Azerbaijan

### Resolution 1272 (2002), 24 January 2002

The Assembly reminded Azerbaijan that there can be no political prisoners in any member state of the Council of Europe, and that, on becoming a member of the Organisation, the country freely accepted the firm commitment to

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release or to grant a new trial to those prisoners who are regarded as political prisoners by human rights protection organisations.

Despite the release of some 220 presumed political prisoners, the Assembly reserves the right to take any appropriate measures at its disposal in order to persuade the Azerbaijani authorities to solve this problem. As an initial measure, it decided to hold information debates on the subject, and to offer interested media outlets the opportunity to broadcast these on television and radio throughout the country.

## Situation in Cyprus

### Resolution 1267, 22 January 2002

The Assembly considers the Cyprus dispute one of Europe's most sensitive and difficult to solve, though Cyprus's accession to the European Union may provide a window of opportunity.

It welcomes the efforts made by the United Nations to reach an agreement on the future of the island, and calls upon both sides to focus on finding a solution that could allow an historic reconciliation between the two communities.

## Turkey: Situation of hunger strike prisoners

### Written Question No. 406

The Question's author asks the Committee of Ministers whether it could contact Turkish authorities for asking them to accept the compromise reached by the hunger strikers – put forward by the chairpersons of Turkey's four principal Bars – about the isolation regime imposed on them.

## United Kingdom: Anti-terrorist legislation

### Statement by the Assembly President, 30 November 2001

The President declared himself pleased that the anti-terrorist Bill proposed by the British government was defeated in the House of Lords. He hopes that fighting terrorism will not undermine the system which has served justice and stability in Europe for the last five decades.

## Belgium: Protection of minorities

### Informal exchange of views, Brussels, 19 January 2002

This exchange of views, held in camera, aimed at helping the Belgian authorities to push ahead with an early ratification of the Framework Convention for the Protection of National Minorities.

## Denmark: Closing down of the Danish Centre for Human Rights

### Written Question No. 408

The Question's author, considering that the Council of Europe promotes the setting up of independent national human rights institutions in the member states, asks the Committee of Ministers whether it is concerned about the announcement of the Danish government's intention to close down the Centre.

# Democracy and legal development

## Sexual exploitation of children

### World Congress against sexual exploitation of children, Yokohama, 17-20 December 2001

In preparation for the Congress, the Council of Europe organised, in November 2001, in Budapest, a regional conference, at the end of which the 43 participating countries adopted a Commitment and Agenda for action.

The Council of Europe made two concrete contributions to the Congress: Recommendation 2001 (16) on the protection of children against sexual exploitation, setting out a detailed inventory of measures to be taken by the public authorities; and the Convention on Cybercrime, opened for signature in Budapest on 23 November 2001, which makes the production, possession and dissemination of child pornography's material criminal offences.

## Trafficking in women

### Recommendation 1545 (2002), 21 January 2002

As a money-earner, trafficking in women ranks behind only drugs and arms trafficking.

The Assembly estimates that this modern form of slavery affects the right to dignity of all human beings – the very foundations of human rights – and should be considered as a crime against humanity.

It urges members states to make trafficking in women a criminal offence in national law, together with sex tourism and any other activities, such as domestic slavery and "catalogue marriages" by Internet, which may cause trafficking, and recommends a series of measures on the short and the long term. Lastly, it recommends that the Committee of Ministers establish a European Observatory on trafficking in women and children, with particular responsibility for

conducting information and awareness campaigns, and draw up a draft Convention focusing on the protection of victims.

## Racism and xenophobia in cyberspace

### Recommendation 1543 (2001), 8 November 2001

The new Council of Europe Cybercrime Convention, which was adopted on 8 November 2001, should be supplemented as soon as possible by a protocol eliminating racist websites from the Internet and defining and criminalising hate-speech on computer networks, according to the Assembly. This protocol will have no effect unless every state hosting racist sites or messages is a party to it, and that is why the dialogue must be initiated with all service providers.

The Recommendation, says drafters of the future protocol, should consider ways of prevention "illegal hosting" – a practice whereby cyber-racists locate their servers in a country with less strict regulations in order to sidestep the law – and consider including in it measures to decode terrorist messages.

The Assembly also proposes that a consultation or joint regulation body could be set up within the Council of Europe to help preparing codes of conduct, serve as a mediator in specific disputes and function as a permanent observatory of racism and xenophobia on the Internet.

## Abolition of the death penalty in all circumstances

### Opinion No 233 (2002), 21 January 2002

The Assembly welcomed the decision by the Committee of Ministers to adopt a protocol to the European Convention on Human Rights abolishing the death penalty for acts committed in times of war or imminent threat of war. As soon as 1994, the Assembly asked for the suppression of this exception to the abolition of the death penalty.

## Asylum-seekers and refugees

### Expulsion procedures and human rights respect - Recommendation 1547 (2002) and Order No 579 (2002), 22 January 2002

The Assembly called for more humane treatment of foreigners being expelled from Council of Europe member states, including the banning of methods of restraint such as gags, gas or tranquillisers.

The Assembly says that forced expulsion should be used only as a last resort, and that those carrying it should be fully trained and assisted by medical and legal professionals, procedures be transparent, detention prior to expulsion minimal and not in a prison environment, and that people who felt they had been ill-treated during expulsion should be able to appeal on the territory of the expelling state.

In the Order, the Assembly, having noted with concern that persons were deported immediately on their arrival at the borders of certain Council of Europe's member states, asks two of its committees to conduct an in-depth study of the conditions for determining "admissibility" in Council of Europe member states.

### Obligatory residence permit in countries of the former Soviet Union

### Recommendation 1544 (2001), 8 November 2001

The Assembly notes with concern that respect for freedom of movement and the choice of a place of residence within a country raises specific problems in the countries of the former Soviet Union which have inherited the old system of control over population movements by means of the *propiska* – an obligatory residence permit. Despite progress on the way to abolishing the remains of the old system, many vestiges are present, which can lead to deprivation of social, economic and political rights.

The Assembly calls for international co-operation and assistance in this field with a view to accelerating the comprehensive reform of the system of registration of citizens' place of residence.

## Fight against terrorism and respect of human rights

### Resolution 1271 (2002) and Recommendation 1550 (2002), 24 January 2002

The Assembly calls for efforts to combat terrorism, following the events of 11 September 2001, to comply fully with national and international law and to respect human rights. It calls upon Council of Europe member states to refuse the extradition of suspected terrorists if the death penalty is sought, or if there is a risk of ill-treatment or unfair trials. It expresses its wish to see the Statute of the International Criminal Court rapidly ratified and its competence extended to acts of terrorism. Finally, it urges Council of Europe governments to step up their legal co-operation and presents a series of concrete recommendations in this respect.

# European Court of Human Rights and European Commission for Democracy through Law

## Implementation of decisions of the European Court of Human Rights

### Resolution 1268 (2002) and Recommendation 1546 (2002), 22 January 2002

Taking stock of one year's experience in its review mechanism of the execution of Court judgments, the Assembly decided to continue the exercise and invited national delegations to follow-up this question in their parliaments.

Considering the high number of decisions against Turkey that have not been implemented, it decided that a special report should be submitted to it, in June 2002, after a

special consultation procedure with the Turkish delegation and government.

In the recommendation it reiterates its recommendations to the Committee of Ministers: to amend the European Convention on Human Rights so as to give the Committee of Ministers the power to ask the Court for a clarifying interpretation of its judgments where necessary, and to introduce a system of *astreintes* (daily fines for delays in the performance of a legal obligation) to be imposed on states that persistently fail to execute a Court judgment.

## Hakkar case: Written Question No. 403

The Question's author asks the Committee of Ministers, *inter alia*: (i) on what legal grounds Mr Hakkar is still being kept in prison, although his trial has been declared unfair, and he has in the meantime served his 18-year sentence, (ii) whether it is true he is now being held, in solitary confinement, on the ground of evasion, and (iii) whether the Committee of Ministers is willing to reopen its consideration of the case, now that France has not complied with the commitment it took to retry Mr Hakkar by the end of spring 2001.

*The full version of the texts adopted by the Assembly is available on its Internet site.*

**Internet site: http://stars.coe.int/**

# International Human Rights Day

**Speaking on International Human Rights Day, 10 December 2001, Lord Russell-Johnston, then President of the Parliamentary Assembly, made the following declaration**

2001 was a bad year for human rights. Far too many people, around the world, continued to be oppressed, persecuted, jailed, tortured, killed.

2001 was a bad year in China, where capital punishment killed thousands, and in the United States, where it killed less, but still far too many.

It was a bad year in the Middle East, where terrorism and collective punishment were embraced in a destructive frenzy of violence, which has spun out of control.

It was a bad year in New York, Washington and Philadelphia, where thousands lost their lives, and no longer had any rights. In responding to terrorism, our societies need to fight wrong with right. They do not always seem to know how.

It was a year that started badly in Afghanistan, but is ending in a slim glimmer of hope that the years of death, destruction and oppression are coming to an end.

2001 was a bad year in Europe. In Chechnya, human lives continue to be cheap, and human rights even cheaper. Macedonia went to the brink of an ethnic war. In Kosovo, violence continued. In Serbia, justice is still less important than the nationalist narcissism of its leaders.

In the west, the collective anti-immigrant paranoia of Europe's rich has reached new heights. Elections are deteriorating into displays of intolerant political machism, in which competing with extremists is taking its toll on everyone's commitment to decency and humanity. We have kept all our old prejudices, and added new ones.

2001 was a bad year. We need to make 2002 a better one. Everywhere, and for everyone.

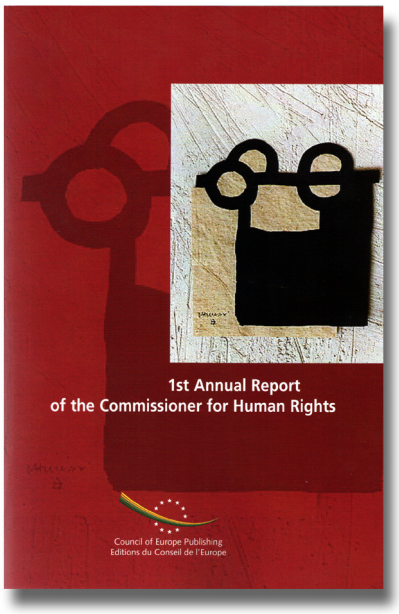
# Commissioner for Human Rights

**The Office of the Commissioner is an independent institution entrusted with the task of promoting both the notion of human rights and effective implementation and full enjoyment of those rights in the member states of the Council of Europe. The Commissioner publishes information on his activities by means of reports, recommendations and other documents.**

## Official visits

### Turkey, 3-6 December 2001

Given the proliferation of recent reports in circulation and monitoring procedures in place, the Commissioner's visit to Turkey was not undertaken with a view to making an in-depth assessment of the general situation regarding respect for human rights in the country. It was his intention rather to establish preliminary contacts with the Turkish authorities and representatives of its civil society in order to investigate ways in which he might be able to contribute to the effective respect for human rights in the country. The visit resulted in two proposals to this effect, both of which met with the acceptance of the Turkish authorities. The Commissioner suggested, first, the organisation of a round table uniting national non governmental organisations (NGOs) and the Turkish authorities to discuss ways in which the work of the former might be facilitated through improved relations with the latter. Secondly, the Commissioner proposed to hold a seminar on ombudsman institutions, uniting Council of Europe experts, existing European Ombudsmen and Turkish government and Parliamentary representatives with a view to assisting the Turkish authorities in its preparation of a bill on a national ombudsman. The first of these seminars will be held in May 2002 and the second towards the end of the year.




**1st Annual Report of the Commissioner for Human Rights**

Alvaro Gil-Robles

ISBN : 92-871-4705-1

Elected in September 1999 as the Council of Europe's first Commissioner for Human Rights, Mr Alvaro Gil-Robles took up his duties on 15 October 1999; this report describes his work and traces his official journeys from that date until 1 April 2001.

### Bulgaria, 17-20 December 2001

The Commissioner's visit to Bulgaria included, in addition to meetings with representatives of the government, the judiciary, its civil society and religious leaders, visits to an institution for the mentally ill, a refugee reception centre and the Roma/Gypsy quarter of Sofia. The Commissioner's subsequent report, based on his discussions and findings, covers his conclusions and a number of recommendations concerning judicial reform, the police service, the Roma/Gypsy community, the exercise of the freedom of religion, the rights of the mentally ill, and the situation of refugees. The Commissioner was also particularly keen that the Bulgarian Parliament set aside certain internal differences to push ahead with the establishment of a national ombudsmen institution.

## Seminars and Conferences

### Human rights protection in the Chechen Republic, Strasbourg, 26-27 November 2001

Following on from his two prior visits to Chechnya and a number of shorter visits to Moscow, the Commissioner organised a seminar entitled "The protection of and respect for human rights as the basis of the democratic reconstruction of the Republic of Chechnya".

The seminar, held in Strasbourg immediately prior to the Second Consultation on a political solution to the conflict in Chechnya organised by the Parliamentary Assembly of the Council of Europe and Duma joint working group, brought together high-ranking representatives from the Russian Interior and Justice Ministries, the prosecution services, the Chechen local administration and members of Chechen and Russian Human Rights NGOs working in the region. Evident tensions were to some extent set aside in the acknowledgement by all involved of ongoing human rights abuses on both

sides, the improved efforts of the prosecution services, the possibility of a constructive role for NGOs working in cooperation with the prosecution services and in the political and economic reconstruction of Chechnya generally, and the need for the continuation, in Moscow and in Chechnya, of the open dialogue contributed to in Strasbourg.

## Church-State Relations, Strasbourg, 10-11 December 2001

As part of the Commissioner's ongoing commitment to the promotion of dialogue with and between religious leaders, the Commissioner organised a seminar in Strasbourg uniting religious leaders, government officials and other experts to discuss the human rights related issues arising from Church-State relations. The participants arrived at unanimous conclusions which, without calling into question the special status of historically predominant religions in certain countries, emphasised, in particular, the importance of the non-discriminatory granting of legal status and financial benefits to religious communities willing to carry out their activities in accordance with the principles laid down in the European Convention on Human Rights.

## Meeting with leading international NGOs, Paris, 25 February 2002

The Commissioner invited representatives of leading international NGOs to an informal meeting to discuss ways in which his cooperation with them might be improved and to listen to such concerns as they wished to address him. The NGOs represented made several recommendations regarding the Commissioner's working methods and priorities. The possibility of the Commissioner's organising separate seminars on human rights in the armed forces and human rights in times of crisis was considered, with the NGOs represented expressing their interest in and support for these ideas.

**Internet site: http://www.commissioner.coe.int**

# Appendix 1
# 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

The member states of the Council of Europe signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

## Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

## Article 2 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

## Article 3 – Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

## Article 4 – Territorial application

1. Any state may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any state may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

## Article 5 – Relationship to the Convention

As between the states Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

## Article 6 – Signature and ratification

This Protocol shall be open for signature by member states of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member state of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

## Article 7 - Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member states of the Council of Europe have expressed their

consent to be bound by the Protocol in accordance with the provisions of Article 6.

2. In respect of any member state which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

## Article 8 – Depositary functions

The Secretary General of the Council of Europe shall notify all the member states of the Council of Europe of:

a. any signature;

b. the deposit of any instrument of ratification, acceptance or approval;

c. any date of entry into force of this Protocol in accordance with Articles 4 and 7;

d. any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at …, this …,* in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member state of the Council of Europe.

* Protocol to be opened for signature in Vilnius on 2-3 May 2002.

# Appendix 2
## Simplified chart of signatures and ratifications of European human rights treaties

| | European Convention on Human Rights | Protocol No. 1 | Protocol No. 4 | Protocol No. 6 | Protocol No. 7 | Protocol No. 12 | European Social Charter | Additional Protocol | Protocol amending the ESC | "Collective Complaints" Protocol | Revised Charter | European Convention for the Prevention of Torture | Protocol No. 1 | Protocol No. 2 | Framework Convention for the Protection of National Minorities* | European Convention on Transfrontier Television† |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Albania | ● | ● | ● | ● | ● | | ● | | | | ○ | ● | ● | ● | ● | ○ |
| Andorra | ● | | | ● | | | ● | | | | ○ | ● | ● | ● | | |
| Armenia | ○ | ○ | ○ | ○ | ○ | ○ | ● | ○ | | | ○ | ○ | ○ | ○ | ● | |
| Austria | ● | ● | ● | ● | ● | ○ | ● | ○ | ○ | ○ | ○ | ● | ● | ● | ● | ● |
| Azerbaijan | ○ | ○ | ○ | ○ | ○ | | ○ | | | | ○ | ○ | ○ | ○ | | |
| Belgium | ● | ● | ● | ● | | ○ | ● | ○ | ● | ○ | ○ | ● | ● | ● | ○ | ○ |
| Bulgaria | ● | ● | ● | ● | ● | | ● | ○ | | | ● | ● | ● | ● | ● | ● |
| Croatia | ● | ● | ● | ● | ● | | ○ | ○ | ○ | ○ | | ● | ● | ● | ● | ● |
| Cyprus | ● | ● | ● | ● | ● | ○ | ● | ○ | ● | ● | ● | ● | ● | ● | ● | ● |
| Czech Republic | ● | ● | ● | ● | ● | ○ | ● | ● | ● | ○ | ○ | ● | ● | ● | ● | ● |
| Denmark | ● | ● | ● | ● | ● | | ● | ● | | ○ | ○ | ● | ● | ● | ● | ● |
| Estonia | ● | ● | ● | ● | ● | ○ | ● | | | | ● | ● | ● | ● | ● | ● |
| Finland | ● | ● | ● | ● | ● | ○ | ● | ● | ● | ● | ○ | ● | ● | ● | ● | ● |
| France | ● | ● | ● | ● | ● | | ● | ○ | ● | ● | ● | ● | ● | ● | ● | ● |
| Georgia | ● | ○ | ● | ● | ● | ● | ● | | | | ○ | ● | ● | ● | ○ | ● |
| Germany | ● | ● | ● | ● | ○ | ○ | ● | ○ | | | | ● | ● | ● | ● | ● |
| Greece | ● | ● | | ● | ● | ○ | ● | ○ | | ● | ○ | ● | ● | ● | ○ | ● |
| Hungary | ● | ● | ● | ● | ● | ○ | ● | ● | ○ | | | ● | ● | ● | ● | ● |
| Iceland | ● | ● | ● | ● | ● | ○ | ● | ○ | ● | | ○ | ● | ● | ● | ○ | ● |
| Ireland | ● | ● | ● | ● | ● | ○ | ● | | ● | ● | ● | ● | ● | ● | ● | ● |
| Italy | ● | ● | ● | ● | ● | ○ | ● | ○ | ○ | ● | ● | ● | ● | ● | ● | ● |
| Latvia | ● | ● | ● | ● | ● | ○ | ○ | ○ | | | | ● | ● | ● | ○ | ● |
| Liechtenstein | ● | ● | ● | ● | | ○ | ○ | | | | | ● | ● | ● | ● | ● |
| Lithuania | ● | ● | ● | ● | ● | | | | | | ● | ● | ● | ● | ● | ● |

| | European Convention on Human Rights | Protocol No. 1 | Protocol No. 4 | Protocol No. 6 | Protocol No. 7 | Protocol No. 12 | European Social Charter | Additional Protocol | Protocol amending the ESC | "Collective Complaints" Protocol | Revised Charter | European Convention for the Prevention of Torture | Protocol No. 1 | Protocol No. 2 | Framework Convention for the Protection of National Minorities* | European Convention on Transfrontier Television† |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Luxembourg | ● | ● | ● | ● | ● | ○ | ● | ○ | ● | | ○ | ● | ● | ● | ○ | ○ |
| Malta | ● | ● | ● | ● | ● | | ● | | ● | | | ● | ● | ● | ● | ● |
| Moldova | ● | ● | ● | ● | ● | ○ | | | | | ● | ● | ● | ● | ○ | ○ |
| Netherlands | ● | ● | ● | ● | ○ | ○ | ● | ● | ● | | | ● | ● | ● | ○ | ○ |
| Norway | ● | ● | ● | ● | ● | | ● | ● | ● | | ● | ● | ● | ● | ● | ● |
| Poland | ● | ● | ● | ● | ○ | | ● | | ● | | | ● | ● | ● | ● | ● |
| Portugal | ● | ● | ● | ● | ○ | ○ | ● | ● | ● | ● | ○ | ● | ● | ● | ○ | ○ |
| Romania | ● | ● | ● | ● | ● | ○ | ○ | | | | ● | ● | ● | ● | ● | ● |
| Russia | ● | ● | ● | ○ | ● | ○ | | | | | ○ | ● | ● | ● | | |
| San Marino | ● | ● | ● | ● | ● | ○ | | | | | ○ | ● | ● | ● | ● | ● |
| Slovakia | ● | ● | ● | ● | ● | ○ | ● | ● | ○ | | ○ | ● | ● | ● | ● | ● |
| Slovenia | ● | ● | ● | ● | ● | ○ | ○ | ○ | ○ | | ● | ● | ● | ● | ● | ● |
| Spain | ● | ● | ○ | ● | ○ | | ● | ● | ● | | ○ | ● | ● | ● | ● | ● |
| Sweden | ● | ● | ● | ● | ● | | ● | ● | ● | ● | ● | ● | ● | ● | ○ | ● |
| Switzerland | ● | ○ | | ● | ● | | ○ | | | | | ● | ● | ● | ● | ● |
| "The former Yugoslav Republic of Macedonia" | ● | ● | ● | ● | ● | ○ | ○ | ○ | ○ | | | ● | ● | ● | | ○ |
| Turkey | ● | ● | ○ | | ○ | ○ | ● | ○ | | | | | ● | ● | | ● |
| Ukraine | ● | ● | ● | ● | ● | ○ | ○ | | | | ○ | | ● | ● | ○ | ● |
| United Kingdom | ● | ● | ○ | ● | | | ● | | ○ | | ○ | ● | ● | ● | ● | ● |

● =ratified ○ =signed **Full information on signatures and ratifications at http://conventions.coe.int/**

* Convention also ratified by Bosnia and Herzegovina and Yugoslavia

† Convention also ratified by the Holy See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