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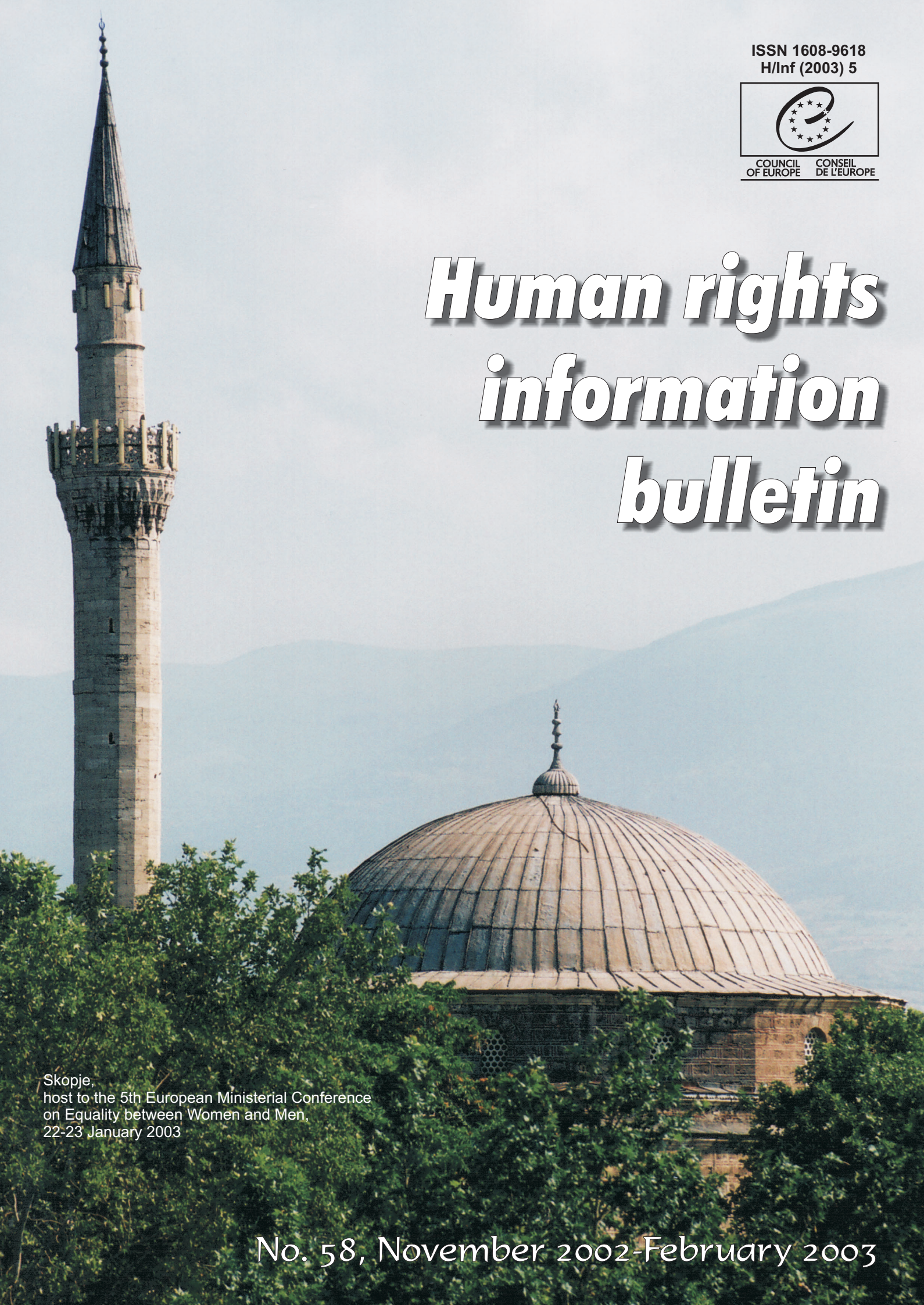
Human rights information bulletin



Skopje,
host to the 5th European Ministerial Conference
on Equality between Women and Men,
22-23 January 2003

No. 58, November 2002-February 2003

Contents

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1 November 2002-28 February 2003

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European Convention on Human Rights

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

Signatures and ratifications

Bulgaria

Bulgaria signed (21 November 2002) and ratified (13 February 2003) Protocol No. 13 to the European Convention on Human Rights.

Croatia

On 3 February 2003 Croatia ratified Protocols Nos. 12 and 13 to the European Convention on Human Rights.

Cyprus

On 12 February 2003 Cyprus ratified Protocol No. 13 to the European Convention on Human Rights.

Denmark

On 28 November 2003 Denmark ratified Protocol No. 13 to the European Convention on Human Rights.

Liechtenstein

On 5 December 2002 Liechtenstein ratified Protocol No. 13 to the European Convention on Human Rights.

Norway

On 15 January 2003 Norway ratified Protocol No. 12 to the European Convention on Human Rights.

Poland

On 4 December 2002 Poland ratified Protocol No. 7 to the European Convention on Human Rights.

Reservations and declarations

Denmark

Declaration contained in a letter from the Minister of Foreign Affairs of Denmark deposited with the instrument of ratification, on 28 November 2002 – Or. Engl.
In connection with the deposit of Denmark's instrument of ratification of the Protocol, the Government of Denmark declares that until further notice Protocol No. 13 shall not apply to the Faroe Islands and Greenland.

European Court of Human Rights

Introduction

Between 1 November 2002 and 28 February 2003 the Court dealt with 6881 (7031) cases:
– 5745 (5750) applications declared inadmissible
– 214 (216) applications struck off the list
– 127 (135) applications declared admissible
– 543 (670) applications communicated to governments
– 252 (260) 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 on other decisions of the Court, presented according to principal complaint. The list of the judgments adopted and 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 by the Court's Registry and are not binding on the supervisory organs of the European Convention on Human Rights.

Judgments of the Grand Chamber

Former King of Greece and Others v. Greece

Appl. No. 25701/94
Judgment of 28 November 2002
Violation of Article 1 of Protocol No. 1 (protection of property). Judgment under Article 41 concerning just satisfaction. See judgment on the merits of the case, 23 November 2000, *Bulletin* No. 52, p. 5.

Principal facts and complaints

The applicants are: the former King of Greece, his sister, the Princess Irene, and his aunt, the Princess Ekaterini. The first applicant lives in London, the second in Madrid and the third in Buckinghamshire.

The case concerns the ownership status of the Greek Royal property. The applicants' complaints arise out of Law No. 2215/1994, which was passed by the Greek State on 16 April 1994 and came into force on 11 May 1994. By virtue of Article 2 of this Law, the Greek State became the owner of the applicants' moveable and immoveable property. There is no provision for compensation in this Law. On 25 June 1997 the Supreme Special Court held that Law No. 2215/1994 is constitutional, which renders ineffective any further attempt by the applicants to seek judicial protection of their property rights.

Before the European Court of Human Rights, the applicants complained that their right to the peaceful enjoyment of their possessions and their right not to be subjected to discrimination, guaranteed under Article 1 of Protocol No. 1 and Article 14, had been violated.

Decision of the Court

In its principal judgment (delivered on 23 November 2000) the Court found that the applicants owned the properties in question – the *Tatoi*, the *Polydendri* and the *Mon Repos* estates – as private individuals rather than in their capacity as members of the royal family. The expropriation of these properties would have been legitimate, however, had the Greek State paid the applicants compensation. The Court held, by 15 votes to two, that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights and, unanimously, that it was not necessary to examine the applicants' complaint under Article 14 (prohibition of discrimination) taken together with Article 1 of Protocol No. 1.

The Court observed that the compensation to be fixed did not need to reflect the idea of wiping out all the consequences of the interference in question. As the lack of any compensation, rather than the inherent illegality of the taking, was the basis of the violation found, the compensation did not need necessarily to reflect the full value of the properties.

The Court also considered that less than full compensation might be called for where the taking of property was resorted to with a view to completing fundamental changes to a country's constitutional system such as the transition from a monarchy to a republic.

In conclusion, the Court deemed it appropriate to fix a lump sum based, as far as possible, on an amount "reasonably related" to the value of the property taken, i.e. an amount which the Court would have found acceptable under Article 1 of Protocol No. 1, had the Greek State compensated the applicants. In determining the amount the Court took into account the claims of each applicant, the question of the movable property, the valuations submitted by the parties and the possible options for calculating the pecuniary damage, as well as the lapse of time between the dispossession and the present judgment.

The Court decided, unanimously, to award, for pecuniary damage:
– 12 000 000 euros to former King Constantine of Greece;
– 900 000 euros to Princess Irene;
– 300 000 euros to Princess Ekaterini.

The Court also awarded 500 000 euros jointly to the three applicants for costs and expenses.

N.C. v. Italy

Appl. No. 24952/94
Judgment of 18 December 2002
Alleged violation of Article 5.5 (right to liberty and security)

Principal facts and complaints

The applicant, an Italian national, was suspected of having committed the offences of abuse of official authority and

corruption in the performance of his duties as technical director, technical and economic adviser and special representative and agent of a company, X. He was arrested on 3 November 1993. In a decision of 13 November 1993 Brindisi District Court dismissed an application by the applicant for his release, holding that there was "substantial evidence" of his guilt; however, noting that he had no criminal record, the court allowed the request he had made in the alternative and placed him under house arrest. The applicant applied to have the order placing him under house arrest revoked as he had resigned from his post as technical director of the X company, and on 20 December 1993 Brindisi District Court ordered his immediate release.

In a judgment of 15 April 1999 the Brindisi District Court acquitted the applicant on the ground that the alleged facts had never occurred. That judgment became final on 14 October 1999.

Relying on Article 5 (5) of the Convention, the applicant complained that he had not been entitled under Italian law to claim compensation for the damage sustained on account of his pre-trial detention, which, in his view, had not complied with Article 5 (1) (c) and 3 of the Convention.

Decision of the Court

The Court reiterated that the right to compensation set forth in Article 5 (5) presupposed that a violation of one of the other paragraphs of Article 5 had been established by a domestic authority or by the Convention institutions. In the case in question the national authorities had not held that the applicant's pre-trial detention or house arrest had been unlawful or contrary to Article 5 of the Convention. Although the applicant had submitted to the Court numerous arguments to show that the measures depriving him of his liberty had contravened Article 5 (1) (c) and 3, the Court did not consider it necessary to examine whether those provisions had been infringed because, even supposing that they had been, there was no appearance of a violation of Article 5 (5) in the applicant's case.

The Court observed that Article 314 of the Italian Code of Criminal Procedure ("the CCP") provided for the possibility of a claim for compensation by anyone who had been acquitted on the grounds that the alleged facts had never occurred, he had not committed the offence, no criminal offence had been committed or the facts alleged did not amount to an offence in law. In the present case the applicant could have made a claim under Article 314 of the CCP from the moment at which his acquittal had become final – that is, on 14 October 1999. The Italian legal system had therefore afforded him, with a sufficient degree of certainty, the right to compensation in respect of his detention pending trial.

The Court noted that, following his acquittal, the applicant had had the possibility of applying for compensation for having been held in pre-trial detention, without having to prove that the detention had been illegal or excessively long. In awarding compensation the national courts could have based their assessment on the fact that the applicant's acquittal had rendered his pre-trial detention "unjust" independently of any consideration of illegality. The Court considered that in those circumstances the compensation due to the applicant under the Italian CCP was indissociable from any compensation he might have been entitled to under Article 5 (5) of the Convention. In that connection, it observed that Article 314 of the CCP made no distinction between the amount of compensation payable following an acquittal and the amount payable for unlawful pre-trial detention. The Court therefore held that there had been no violation of Article 5 (5) of the Convention.

Odièvre v. France

Appl. No. 42326/98
Judgment of 13 February 2003

No violation of Article 8 (right to respect for private and family life)
No violation of Article 14 (prohibition of discrimination)

Principal facts and complaints

The application concerns the rules governing confidentiality on birth, which have prevented the applicant from obtaining information about her natural family.

She was born on 23 March 1965 in Paris. Her mother requested that the birth be kept secret and completed a form at the Health and Social Security Department abandoning her rights to her child. The applicant was placed in the care of the Children's Welfare and Youth-Protection Service and registered as being in State care. She was subsequently fully adopted by Mr and Mrs Odièvre, whose surname she continues to use.

The applicant consulted her file at the Children's Welfare Service of the *département* of Seine in 1990 and was able to obtain non-identifying information about her natural family. On 27 January 1998 she applied to the Paris tribunal de grande instance for an order "for disclosure of confidential information concerning her birth and permission to obtain copies of any documents, public records or full birth certificates". She explained to the court that she had learnt that her natural parents had had a son in 1963 and two other sons after 1965. However, the Children's Welfare Service had refused to provide her with details regarding her brothers' identity on the ground that it would entail a breach of confidence. She submitted that having discovered the existence of her brothers, her application for disclosure of information about her birth was well-founded.

On 2 February 1998 the court registrar returned the case file to the applicant's lawyer stating "… it appears that the applicant should perhaps apply to the administrative court to obtain, if possible, an order requiring the authorities to disclose the information, although such an order would in any event contravene the Law of 8 January 1993". (The statute lays down that an application for disclosure of details identifying the natural mother is inadmissible if confidentiality was agreed at birth).

The applicant complained that she had been unable to obtain details identifying her natural family, contrary to Article 8 (right to respect for private and family life) of the European Convention on Human Rights. She said that her inability to do so was highly damaging to her as it deprived her of the chance of reconstituting her life history. She further submitted that the French rules on confidentiality governing birth amounted to discrimination on the ground of birth, contrary to Article 14 (prohibition of discrimination).

Decision of the Court
Article 8 of the Convention

Applicability of Article 8

The Court considered it necessary to examine the case from the perspective of private life, not family life, since the applicant's claim to be entitled, in the name of biological truth, to know her personal history was based on her inability to gain access to information about her origin and to related identifying data.

The Court reiterated that Article 8 protected, among other interests, the right to personal development. Matters of relevance to personal development included details of a person's identity as a human being and the vital interest protected by the Convention in obtaining information necessary to discover the truth concerning important aspects of one's personal identity. Birth, and in particular the circumstances in which a child was born, formed part of a child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention. That provision was therefore applicable in the instant case.

Compliance with Article 8

The applicant had complained that France had failed to ensure respect for her private life by its legal system, which totally precluded an action being brought to establish maternity if the natural mother had requested confidentiality and which, above all, prohibited access being given to information identifying her.

The Court observed that there were two competing interests in the case before it: on the one hand, the right to know one's origins and the child's vital interest in its personal development and, on the other, a woman's interest in remaining anonymous in order to protect her health by giving birth in appropriate medical conditions. Those interests were not easily reconciled,

as they concerned two adults, each endowed with free will.

In addition, the problem of anonymous births could not be dealt with in isolation from the issue of the protection of third parties, essentially the adoptive parents, the father and the other members of the natural family.

The general interest was also at stake, as French legislation aimed to protect the mother's and child's health at the birth and to avoid abortions, in particular illegal abortions, and children being abandoned other than under the proper procedure. The right to respect for life was thus one of the aims pursued by the French system.

The Court reiterated that the Contracting States had a margin of appreciation in the choice of measures for securing compliance with Article 8 in the sphere of relations between individuals. Most of the Contracting States did not have legislation comparable to that applicable in France, which prevented parental ties ever being established with the natural mother if she refused to disclose her identity. However, it noted that some countries did not impose a duty on natural parents to declare their identities on the birth of their children and that there had been cases of child abandonment in various other countries that had given rise to a debate about the right to give birth anonymously. In the light of the diversity of practice to be found among the legal systems and traditions and of the fact that children were being abandoned, the Court considered that States had to be afforded a margin of appreciation to decide which measures were apt to ensure that the rights guaranteed by the Convention were secured.

The Court observed that the applicant had been given access to non-identifying information about her mother and natural family that had enabled her to trace some of her roots, while ensuring the protection of third-party interests. In addition, while preserving the principle that mothers were entitled to give birth anonymously, the law of 22 of January 2002 facilitated searches for information about a person's biological origins by setting up a National Council on Access to Information about Personal Origins. The legislation was already in force and the applicant could use it to request disclosure of her mother's identity, subject to the latter's consent being obtained.

French legislation thus sought to strike a balance and to ensure sufficient proportion between the competing interests. Consequently, France had not overstepped the margin of appreciation which it had to be afforded in view of the complex and sensitive nature of the issue of access to information about one's origins, an issue that concerned the right to know one's personal history, the choice of the natural parents, the existing family ties and the adoptive parents. Consequently, there had been no violation of Article 8 of the Convention.

Article 14 of the Convention, taken together with Article 8

The Court observed that the applicant had complained that restrictions had been imposed on her ability to receive property from her natural mother. The Court noted that the applicant's complaint under Article 14 of the Convention concerned her inability to find out her origins, not a desire to establish a parental tie that would enable her to claim an inheritance. It considered that, though presented from a different perspective, that complaint was in practice the same as the complaint it had already examined under Article 8 of the Convention. In summary, the Court considered that the applicant had suffered no discrimination with regard to her filiation, as she had parental ties with her adoptive parents and a prospective interest in their property and estate and, furthermore, could not claim that her situation with regard to her natural mother was comparable to that of children who enjoyed established parental ties with their natural mother. Consequently, the Court held that there had been no violation of Article 14 of the Convention, taken together with Article 8.

Refah Partisi (the Welfare Party) and Others v. Turkey

Appl. Nos. 41340/98, 41342/98, 41343/98 and 41344/98

Judgment of 13 February 2003

No violation of Article 11 (freedom of assembly and association)

Principal facts and complaints

The first applicant, Refah Partisi (the Welfare Party, hereafter the "RP") was a political party founded in July 1983. It was represented by its Chairman, Necmettin Erbakan. He is the second applicant and was a Member of Parliament at the material time. The third and fourth applicants, Sevket Kazan and Ahmet Tekdal, are politicians and lawyers and were at the material time Members of Parliament and Vice-Chairmen of the RP.

On 21 May 1997 the Principal State Counsel at the Court of Cassation brought proceedings in the Turkish Constitutional Court seeking the dissolution of the RP, on the ground that it had become a "centre of activities inimical to the principle of secularism". In support of his application, he relied on various writings and declarations made by leaders and members of the RP which he said indicated that some of the party's objectives, such as the institution of Sharia law and a theocratic regime, were incompatible with the requirements of a democratic society.

Before the Constitutional Court the applicant's representatives argued that the prosecution had relied on mere extracts from the speeches concerned, thereby altering their meaning and without looking at the documents as a whole. They also maintained that the RP, which at the material time had been in power for a year as part of a coalition, had consistently observed the principle of secularism and respected all religious beliefs and consequently was not to be confused with political parties that sought the establishment of a totalitarian regime. They added that some of the RP's leaders had only become aware of certain of the remarks impugned in the case after the Principal State Counsel's application for the dissolution of the party was served on them and that they had nonetheless expelled those responsible from the party to avoid the RP being seen as a "centre" of illegal activities for the purposes of the law on the regulation of political parties.

On 16 January 1998 the Constitutional Court made an order dissolving the RP. It also declared that the RP's assets were to be transferred by operation of law to the Treasury. The Constitutional Court further held that the public declarations of the RP's leaders, and in particular Necmettin Erbakan, Sevket Kazan and Ahmet Tekdal, had a direct bearing on the constitutionality of the RP's activities. Consequently, it imposed a further sanction in the form of a ban on their sitting in Parliament or holding certain other forms of political office for a period of five years.

The applicants complained of a violation of Articles 9 (freedom of thought), 10 (freedom of expression), 11 (freedom of association), 14 (prohibition of discrimination), 17 (prohibition of abuse of rights) and 18 (limitations on use of restrictions on rights) of the European Convention on Human Rights, and of Article 1 (protection of property) and 3 (right to free elections) of Protocol No. 1.

Decision of the Court

The Court considered that, when campaigning for changes in legislation or to the legal or constitutional structures of the State, political parties continued to enjoy the protection of the provisions of the Convention and of Article 11 in particular provided they complied with two conditions: (1) the means used to those ends had to be lawful and democratic from all standpoints and (2) the proposed changes had to be compatible with fundamental democratic principles. It necessarily followed that political parties whose leaders incited others to use violence and/or supported political aims that were inconsistent with one or more rules of democracy or sought the destruction of democracy and the suppression of the rights and freedoms it recognised could not rely on the Convention to protect them from sanctions imposed as a result.

The Court held that the sanctions imposed on the applicants could reasonably be considered to meet a pressing social need for the protection of democratic society, since, on the pretext of giving a different meaning to the principle of secularism,

the leaders of the Refah Partisi had declared their intention to establish a plurality of legal systems based on differences in religious belief, to institute Islamic law (the Sharia), a system of law that was in marked contrast to the values embodied in the Convention. They had also left in doubt their position regarding recourse to force in order to come to power and, more particularly, to retain power.

The Court considered that even if States' margin of appreciation was narrow in the area of the dissolution of political parties, since pluralism of ideas and parties was an inherent element of democracy, the State concerned could reasonably prevent the implementation of such a political programme, which was incompatible with Convention norms, before it was given effect through specific acts that might jeopardise civil peace and the country's democratic regime.

Selected chamber judgments of the Court

Demuth v. Switzerland

Appl. No. 38743/97

Judgment of 5 November 2002

No violation of Article 10 (freedom of expression)

Principal facts and complaints

On 10 August 1995, the applicant, a Swiss national, filed a request, in the name of the company Car Tv AG, for a licence to broadcast a television programme, to be produced in close co-operation with industry, automobile associations and the specialised media. The programme, to last two hours initially, would include news on cars, car accessories, traffic and energy policies, traffic security, tourism and relations between the railways and road traffic and environmental issues. It was to be distributed on cable television in German in the German-speaking areas of Switzerland, and in French in the French-speaking areas.

The Federal Office for Communication replied on 16 August 1995, pointing out the lack of prospects of success of such a request. By letter of 7 September 1995 the applicant informed the Federal Office that he wished to pursue his request, while submitting further documents, stating that Car Tv AG would now include in its programme matters concerning the traffic needs of non-motorists and set up an independent programme commission. On 16 June 1996 the Swiss Federal Council dismissed the request. The Federal Council noted that there was no right, either under Swiss law or Article 10 of the European Convention on Human Rights, to obtain a broadcasting licence.

The applicant complained, under Article 10 (freedom of expression), of the authorities' refusal to authorise him to broadcast a programme on cars on cable television.

Decision of the Court

The Court observed that the Federal Council's decision of 16 June 1996 was not categorical and did not definitively exclude the possibility of providing a broadcasting licence for the programme if certain modifications were made to the programme contents. The Court also noted the Swiss Government's assurance before the Court that a licence would be granted to Car Tv AG if the programme included, among other things, cultural elements. It could not, therefore, be said that the Federal Council's decision – guided by the policy that television programmes should to a certain extent also serve the public interest – went beyond the margin of appreciation left to the national authorities in such matters. The Court therefore held, by six votes to one, that there had been no violation of Article 10.

Allan v. the United Kingdom

Appl. No. 48539/99

Judgment of 5 November 2002

Violations of Articles 8 (right to respect for private and family life), 6 (right to a fair trial), and 13 (right to an effective remedy)

Principal facts and complaints

Richard Roy Allan is a United Kingdom national. On or about 20 February 1995, an anonymous informant told the police that Mr Allan had been involved in the murder of David Beesley, a store manager, who was shot dead in a Kwik-Save supermarket in Greater Manchester on 3 February 1995.

On 8 March 1995 the applicant was arrested for the murder. In the police interviews which followed, the applicant availed himself of his right to remain silent.

Around this time, recordings were made of the applicant's conversations with his female friend while in the prison visiting area and with his co-accused in the prison cell they shared.

On 23 March 1995, H., a long-standing police informant with a criminal record, was placed in the applicant's cell for the purpose of eliciting information from the applicant. The applicant maintains that H. had every incentive to inform on him. Telephone conversations between H. and the police included comments by the police instructing H. to "push him for what you can" and disclosed evidence of concerted police coaching. After 20 April 1995, he associated regularly with the applicant, who was remanded at Strangeways Prison.

On 25 July 1995, in a 59-60 page witness statement, H. claimed that the applicant had admitted his presence at the murder scene. This asserted admission was not part of the recorded interview and was disputed. No evidence, other than the alleged admissions, connected the applicant with the killing of Mr Beesley.

On 17 February 1998 the applicant was convicted of murder before the Crown Court at Manchester by a 10-2 majority and sentenced to life imprisonment. He appealed unsuccessfully.

The applicant complained of the use of covert audio and video surveillance within his cell, the prison visiting area and upon a fellow prisoner and of the use of materials gained by these means at his trial. He relied on Articles 6 (right to a fair trial), 8 (right to respect for private life) and 13 (right to an effective remedy).

Decision of the Court

Recalling that, at the relevant time, there existed no statutory system to regulate the use of covert recording devices by the police, the European Court of Human Rights held, unanimously, that there had been violations of Article 8 concerning the use of these devices.

The Government having accepted that the applicant did not enjoy an effective remedy in domestic law at the relevant time in respect of the violations of his right to private life under Article 8, the Court also held, unanimously, that there had been a violation of Article 13.

Concerning the complaint under Article 6, the Court noted that, in his interviews with the police following his arrest, the applicant had, on the advice of his solicitor, consistently availed himself of his right to silence.

H., who was a longstanding police informer, had been placed in the applicant's cell and later at the same prison for the specific purpose of eliciting from the applicant information implicating him in the offences of which he was suspected. The evidence adduced at the applicant's trial showed that the police had coached H. The admissions allegedly made by the applicant to H. were not spontaneous and unprompted statements volunteered by the applicant, but were induced by the persistent questioning of H., who, at the instance of the police, had channelled their conversations into discussions of the murder in circumstances which could be regarded as the functional equivalent of interrogation, without any of the safeguards of a formal police interview, including the attendance of a solicitor and the issuing of the usual caution.

The Court considered that the applicant would have been subject to psychological pressures which impinged on the "voluntariness" of the disclosures that he had allegedly made to H.: he was a suspect in a murder case, in detention and under direct pressure from the police in interrogations about the murder, and would have been susceptible to persuasion to take H., with whom he shared a cell for some weeks, into his confidence. In those circumstances, the information gained by the use of H. in

this way might be regarded as having been obtained in defiance of the will of the applicant and its use at trial to have impinged on the applicant's right to silence and privilege against self-incrimination. The Court, therefore, held, unanimously, that there had been a violation of Article 6 concerning the admission at the applicant's trial of the evidence obtained through the informer H.

The Court awarded the applicant 1 642 euros for non-pecuniary damage and 12 800 euros for costs and expenses.

Mouisel v. France

Appl. No. 67263/01
Judgment of 14 November 2002
Violation of Article 3 (prohibition of inhuman or degrading treatment)

Principal facts and complaints

On 12 June 1996, the applicant was sentenced to fifteen years' imprisonment for armed robbery, kidnapping and fraud. A medical certificate dated 8 January 1999 showed that the applicant was suffering from chronic lymphatic leukaemia. When his conditions worsened, he had chemotherapy sessions at hospital in the daytime. The applicant was put in chains during the journeys to the hospital and claims that during the chemotherapy sessions his feet were chained and one of his wrists attached to the bed. He decided to stop his medical treatment in June 2000, complaining of these conditions and of the guards' aggressive behaviour towards him.

In order to determine whether the applicant's state of health was compatible with his continued detention, a medical report was drawn up on 28 June 2000. It concluded that the applicant should be treated in a specialised clinic. On 19 July 2000 he was transferred to Muret Prison as a matter of urgency so that he could be near Toulouse Hospital. He was released on licence on 22 March 2001 subject to an obligation to undergo medical treatment or care.

Relying on Article 3 of the Convention, the applicant complained that he had been kept in detention despite being seriously ill and of the conditions of his detention.

Decision of the Court

The Court noted that the period to be taken into consideration in the case began on the date of the first medical report diagnosing the applicant's condition, 8 January 1999, and ended with his release on licence on 22 March 2001.

The Court observed that a prisoner's state of health, age or serious physical disability were factors that had to be taken into account under Article 3 of the Convention with regard to custodial sentences. Although there was no general obligation to release prisoners suffering from ill health, Article 3 required States to protect the physical integrity of persons who had been deprived of their liberty, notably by providing them with any necessary medical assistance. The Court also reiterated that the method of execution of the measure should not subject the person detained to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

As to whether the applicant's condition was incompatible with his continued detention, the Court noted that the authorities were permitted by French law to intervene in cases where prisoners were seriously ill. Under the Law of 15 June 2000, prisoners could be released on licence when they needed to receive treatment. Furthermore, by virtue of the Law of 4 March 2002 on the Rights of the Sick, prisoners' sentences could be suspended if they were critically ill or suffering from a chronic condition that was incompatible with their continued detention. The Court thus noted that prisoners' health was now a factor to be taken into account in determining how a prison sentence was to be served, notably regarding its length. However, it accepted that, in the case before it, neither remedy had been available to the applicant during the period concerned, as he did not satisfy the conditions required to obtain release on licence and the law allowing sentences to be suspended had not by that stage been passed.

As to the consequences of continued detention and the conditions in which the applicant was held, the Court found that although his condition had become increasingly incompatible with his continued detention as his illness progressed, the prison authorities had failed to take any special measures. Furthermore, although it had not been proved that the applicant was held in chains when he received treatment, there was no doubt that he was handcuffed on journeys to and from hospital. In view of his condition, the fact that he had been admitted to hospital, the nature of the treatment and the applicant's frailty, the Court considered that that measure was disproportionate to the security risk posed. It noted that there was nothing to suggest that there was any significant risk of his absconding or resorting to violence. Lastly, the Court observed that the aforementioned treatment on transfers fell foul of the recommendations of the European Committee for the Prevention of Torture regarding the conditions in which prisoners are transferred and medically examined.

In the Court's view, the national authorities failed to have sufficient regard to the applicant's condition. His continued detention, especially from June 2000 onwards, undermined his dignity and constituted particularly acute hardship that caused suffering beyond that which was inevitable with a prison sentence or treatment for cancer. Consequently, the Court held that the applicant's continued detention amounted to inhuman and degrading treatment.

Berger v. France

Appl. No. 48221/99
Judgment of 3 December 2002
Violation of Article 6.1 (right to a fair trial)

Principal facts and complaints

On 30 September 1991 the applicant signed a leasing arrangement with a company called SOFEBAIL for the renovation of a holiday centre which she wanted to run as a going concern. When the company failed to complete the renovation works within the time-period stipulated in the contract, the applicant lodged a criminal complaint and application to join the proceedings as a civil party seeking damages for fraud, theft and fraudulent breach of trust. The investigating judge, who considered that the case did not fall within the ambit of the criminal law but was clearly a civil or commercial case, made an order on 5 May 1997 discontinuing the proceedings.

After Colmar Court of Appeal had dismissed an appeal lodged by the applicant, she appealed to the Court of Cassation. The reporting judge's report (containing a statement of the facts, the procedure and the grounds of appeal, a legal analysis of the case and an opinion on the merits of the appeal) was sent to the Advocate-General before the hearing, but not to the applicant. In a judgment of 24 September 1998 the Court of Cassation declared the appeal inadmissible on the ground that, in the absence of an appeal on points of law by State Counsel's office, it was incumbent on the applicant to show that she satisfied the conditions for lodging such an appeal laid down in Article 575 of the Code of Criminal Procedure.

In the meantime the applicant had instituted civil proceedings challenging the termination of the lease by SOFEBAIL. Her action was dismissed by the tribunals of fact. Those proceedings are currently pending before the Court of Cassation.

Relying on Article 6 (right to a fair trial), the applicant complained that the criminal proceedings in which she had been a civil party had been unfair. She submitted that the Court of Cassation's judgment had infringed her right of access to a court. She further alleged that there had been a breach of the principle of equality of arms because the reporting judge's report had not been sent to her lawyer.

Decision of the Court

As regards the inadmissibility of the applicant's appeal on points of law, the Court noted that the applicant could have discovered the rules governing appeals to the Court of Cassation by reading Article 575 of the Code of Criminal Procedure, which laid down seven cases in which it was possible for civil parties to lodge such an appeal alone in the absence of an appeal by State Counsel's office. The resulting restriction was necessitated by the very nature of

the judgments given by investigating judicial bodies and by the role accorded to civil actions within criminal trials. The Court could not accept that civil parties should have an unlimited right to appeal on points of law against judgments upholding discontinuation orders.

The Court further noted that the cassation proceedings followed examination of the applicant's case first by the investigating judge and then by the Indictment Division of the Court of Appeal. Moreover, while declaring the appeal inadmissible, the Court of Cassation had examined it to review the lawfulness of the impugned decision. Lastly, the Court noted that the applicant had been able to seek compensation for her alleged loss through the civil courts. Consequently, the Court considered that the applicant had not suffered any restriction of her right of access to a court. It could not agree that the principle of equality of arms had been infringed, regard being had to the role accorded to civil actions within criminal trials and to the complementary interests of civil parties and State Counsel's office. In that connection, the Court accepted that a civil party could not be considered either the opponent or ally of the prosecution, their roles and objectives being clearly different. The Court therefore held unanimously that there had been no violation of Article 6.1 on account of the ruling that the appeal on points of law was inadmissible.

As regards the complaint that the reporting judge's report had not been sent to the applicant, the Court observed that because of the report's importance, the role of the Advocate-General and the consequences of the outcome of the proceedings for the applicant, the resulting imbalance infringed the principles of adversarial procedure and equality of arms. It accordingly held unanimously that there had been a violation of Article 6 § 1 in that respect. It considered that the finding of a violation in itself constituted sufficient just satisfaction and awarded the applicant 300 euros for costs and expenses.

Wittek v. Germany

Appl. No. 37290/97
Judgment of 12 December 2002

No violation of Article 1 of Protocol No. 1 (protection of property)

Principal facts and complaints

In May 1986, the applicants, two German nationals, bought a house in Leipzig, in the German Democratic Republic (GDR), for 56 000 GDR marks. The house had been built on land belonging to the State over which they acquired a life interest (by virtue of Articles 287 *et seq*. of the Civil Code).

The applicants stated that the Internal Affairs Department of Leipzig City Council had informed them that if they wished to leave the GDR for good they had to transfer the property by sale or by gift. On 8 December 1989 they made an official gift in notarial form to a couple, although in reality the latter paid them 55 000 German marks (DEM) into a Swiss bank account. The applicants alleged that the house and land were now worth DEM 600 000, which the Government denied as the applicants possessed only a life interest in the land.

After German reunification the applicants sought to recover the house and the life interest directly from the purchasers. They subsequently brought an action in the civil courts. The Federal Court of Justice ruled that the dispute came within the jurisdiction of the administrative courts as the Law of 23 September 1990 on the Resolution of Outstanding Property Issues – Law of Property was applicable. That law provides former citizens of the GDR with a right to restitution of their land if they were forced to transfer it in order to be permitted to leave the country legally.

The applicants brought proceedings in the administrative courts. The Federal Administrative Court found that the conditions set out in section 1 (3) of the Law of Property were not satisfied, as the applicants had been under no obligation to make the gift in order to leave the GDR following the reopening of the border on 9 November 1989, and had not shown that they had been induced to make the transfer by deception or unfair practices. By two decisions of 22 January 1997 the Federal Constitutional Court dismissed the applicants' appeals against the decisions of the civil and administrative courts.

The applicants complained under Article 1 of Protocol No. 1 that the refusal of the German courts to order the return of their property in the former GDR constituted an interference with their right to the peaceful enjoyment of their possessions.

Decision of the Court

The Court noted that the Federal Court of Justice had ruled that the transfer of the applicants' property at the time of the GDR was null and void. As the applicants could not subsequently rely on their right to restitution before the German courts, the Court considered that there had been an interference with their right to peaceful enjoyment of their possessions and that this interference had been based on the provisions of the Law of Property. As that Law was designed to resolve property disputes following German reunification by seeking to establish a socially-acceptable balance between diverging interests, the Court held that the interference had pursued an aim that was in the general interest. With regard to the issue whether that interference had been proportionate, the Court noted that Leipzig Administrative Court had concluded that there had not been any unfair practices in the present case within the meaning of section 1(3) of the Law of Property. The applicants had indeed transferred their property nearly one month after the border had been reopened and had therefore been able to leave their country freely without being obliged to transfer it. The Court found that analysis by the German Administrative Court to be well-founded, even if the period between the reopening of the border on 9 November 1989 and German reunification on 3 October 1990 had been marked by much uncertainty, in particular as far as legal matters were concerned.

Furthermore, the applicants had only had a life interest in the land, so would not have been able to retain title to it even if they had moved within the GDR. Lastly, the Court noted above all that they had purchased the house for 56 000 GDR marks in May 1986 and that in December 1989 the purchasers of the property had paid them DEM 55 000, which was the equivalent at the material time of 220 000 GDR marks for transactions between private individuals. Accordingly, even if the value of the property had since increased, the applicants could not be deemed to have had to bear a "disproportionate burden".

Having regard to the above factors and to the exceptional circumstances of German reunification, the Court found that Germany had not exceeded its margin of appreciation and that, given the legitimate objective, had not failed to strike a "fair balance" between the interests of the applicants and the general interest of German society. Consequently, the Court held unanimously that there had not been a violation of Article 1 of Protocol No. 1.

Venema v. the Netherlands

Appl. No. 35731/97
Judgment of 17 December 2002

Violation of Article 8 (right to respect for family life)

Principal facts and complaints

Dirk Venema, Wubbechien Venema-Huiting and Kimberly Venema are Netherlands nationals living in Alphen aan den Rijn (the Netherlands). Mr Venema and Mrs Venema-Huiting, born in 1964 and 1967 respectively, are the parents of Kimberly, born on 14 February 1994.

In July and August 1994 Kimberly was taken into hospital because her breathing sometimes stopped and her heart beat too fast. The doctors found nothing physically wrong and began to suspect that Kimberly was healthy and that Mrs Venema might be suffering from Münchhausen by Proxy syndrome. The Venema family was kept under medical observation but the doctors did not discuss their suspicions with Mr and Mrs Venema.

Kimberly was again taken into hospital on 14 December 1994, following an incident two days earlier.

The doctors held a meeting with a representative of the Child Welfare Board on 20 December 1994 to discuss Kimberly's case without involving or informing Mr and Mrs Venema. On 3 January 1995 the doctors sent a report to the Child Welfare Board stating that it was believed that Kimberly's life was at risk and that urgent action was required. The report expressed the opinion that it was not possible to discuss the matter with Mr and Mrs Venema, there being a danger that they might react unpredictably.

On 4 January 1995 the juvenile judge made a provisional supervision order, without hearing Mr and Mrs Venema, at the same time ordering Kimberly to be placed away from her family. Mr and Mrs Venema were only informed of the decision on 6 January 1995 on arriving at the hospital to collect Kimberly, when they were denied access to her. The same day the juvenile judge issued a further order, again without hearing Mr and Mrs Venema, for Kimberly to be taken to a foster home, the name and address of which were withheld from them. This order was carried out the same day.

On 10 January 1995 Mr and Mrs Venema were heard by the juvenile judge, who decided that the provisional supervision order should remain in force, but that further opinions should be obtained as soon as possible both from a psychiatrist and a child psychiatrist. Mr and Mrs Venema were allowed to see Kimberly once every two weeks under an access arrangement.

The psychiatrist's report concluded that there were no indications that Mr and Mrs Venema posed any danger to Kimberly, although it could "not be entirely ruled out" that Mrs Venema was suffering from Münchhausen by Proxy Syndrome.

Mr and Mrs Venema appealed, submitting various medical accounts supporting their case, including statements from three psychiatrists who recommended that Kimberly be returned to them as she would be in no apparent danger. On 15 March 1995 the Court of Appeal dismissed the appeal.

On 22 May 1995, following a hearing in camera, the juvenile judge rescinded the provisional supervision order and the placement order, at the same time refusing to replace the provisional supervision order with a permanent one. Kimberly was handed back to Mr and Mrs Venema.

The case led to questions in Parliament and a complaint to the Deputy Minister of Justice, who ordered an official enquiry. The report of the official inquiry concluded, among other things, that although the Child Welfare Board had no doubt sought in good faith to protect Kimberly's interests, it might with advantage "have displayed more creativity in seeking a solution that did more justice to the parents' interests".

The applicants alleged, in particular, that their rights under Articles 6 and 8 had been violated through the separation of their family, which was not justified on medical grounds and was not discontinued as soon as this became apparent, and in that Mr Venema and Mrs Venema-Huiting had not been involved in the decision-making process that led to the separation.

Decision of the Court

Article 8

The Court accepted that, when action had to be taken to protect a child in an emergency, it might not always be possible, because of the urgency of the situation, to associate in the decision-making process those having custody of the child. Nor might it even be desirable to do so if those having custody of the child were seen as the source of an immediate threat to the child.

However, the Court had to be satisfied that the national authorities were entitled to consider that there existed circumstances justifying the abrupt removal of a child from the care of its parents without any prior contact or consultation. In particular, it had to be established that a careful assessment of the impact of the proposed care measure on the parents and the child, and the possible alternatives, had been carried out prior to the implementation of a care measure.

The Court found that it had not been explained to its satisfaction why the doctors involved in the case or the Child Welfare Board could not have made arrangements to discuss their concerns with the applicants and to give them an opportunity to dispel those concerns, if need be with reference to their own medical experts' opinions. The Court was not persuaded that the applicants might have reacted unpredictably if the matter was discussed with them. In the Court's opinion, that justification, while it might be relevant, could not of itself be considered sufficient to exclude Kimberly's parents from a procedure of immense personal importance to them, the less so having regard to the fact that Kimberly was in perfect safety (in hospital) in the days preceding the making of the provisional order.

The applicants were at no stage able to influence the outcome of the procedure by, for example, contesting the reliability of the information compiled in their case or adding information from their own sources to the file. It was not before 10 January 1995, when the hearing before the juvenile judge took place, that Kimberly's parents could express their views. This was six days after the juvenile judge, on the basis of the untested fears of the Child Welfare Board, had issued the provisional supervision order and an order for Kimberley to be placed away from her family and four days after the juvenile judge had issued an order to have Kimberly placed in a foster home. Before Kimberly's parents were heard and given a chance to dispute the validity of the Child Welfare Board's fears, measures had already been taken which, because of their immediate impact and Kimberly's age, were difficult to redress.

For the Court, it was crucial for the parents to be able to put forward their own point of view at some stage before the making of the provisional order. The unjustified failure to allow them to participate in the decision-making process leading to the making of the provisional order denied them the requisite protection of their interests under Article 8 of the Convention including their right to challenge the necessity for the measure sought by the Child Welfare Board. That measure, it had to be noted, formed the basis of the regrettable separation of the applicants and their daughter for a period of five months and 18 days. Finding that the competent authorities had presented the applicants with *faits accomplis* without sufficient justification, the Court held that there had been a violation of Article 8.

Article 6.1

Considering that the applicants' complaints under Article 6 (as declared admissible) largely coincided with their complaints under Article 8, the Court found that no separate issue arose under Article 6.1.

It awarded the applicants 15 000 euros for non-pecuniary damage and 22 475 euros for costs and expenses.

A. v. the United Kingdom

Appl. No. 35373/97

Judgment of 17 December 2002

No violation of Articles 6.1 (right to a fair hearing), 8 (right to respect for private life), 14 (prohibition of discrimination) taken in conjunction with Article 6, and 13 (right to an effective remedy)

Principal facts and complaints

A. is a young black woman with two children.

During a parliamentary debate on municipal housing policy in July 1996, A.'s Member of Parliament (MP) named her, stated that her brother was in prison, gave her precise address and made derogatory remarks about the behaviour of both her and her children. He mentioned verbal abuse, truancy, vandalism and drug activity and called the family the "neighbours from hell", a phrase which was subsequently quoted in local and national newspapers.

A. states that none of the allegations referred to by her MP had ever been substantiated or upheld by the investigating authorities and that many of them came from neighbours motivated by racism and spite. Following the MP's speech and the ensuing adverse publicity, she received racist hate-mail. The housing association responsible was advised that she and her children should be moved as a matter of urgency three weeks after the speech was given. They were eventually re-housed in

October 1996 and the children were obliged to change schools.

The MP's statement was protected by absolute parliamentary privilege under Article 9 of the Bill of Rights 1689. The press reports, to the extent that they reported the parliamentary debate, were protected by qualified privilege. This privilege requires the reports to be fair and accurate and is only lost if they are published for improper motives or with "reckless indifference" to the truth.

A. complained, under Article 6.1 of the Convention, that, given the absolute nature of parliamentary privilege, she was denied access to a court to defend her reputation and that legal aid was not available for defamation proceedings. She also relied on Articles 8, 13 and 14 in that she was disadvantaged, compared to a person about whom equivalent statements had been made in an unprivileged context.

Decision of the Court

Article 6.1

Parliamentary immunity

The Court observed that the parliamentary immunity enjoyed by the MP in the present case pursued the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary.

The Court maintained that a rule of parliamentary immunity, which was consistent with and reflected generally recognised rules within member states of the Council of Europe and the European Union, could not in principle be regarded as imposing a disproportionate restriction on the right of access to court as embodied in Article 6.1. Just as the right of access to court was an inherent part of the fair trial guarantee in that article, so some restrictions on access had likewise to be regarded as inherent.

The immunity afforded to MPs in the United Kingdom appeared to be in several respects narrower than that afforded to members of legislatures in certain other European states. In particular, the immunity concerned only statements made in the course of parliamentary debates on the floor of the House of Commons or House of Lords and not to statements made outside Parliament, even if they amounted to a repetition of statements made during the course of parliamentary debates on matters of public interest. Nor did any immunity attach to an MP's press statements published prior to parliamentary debates, even if their contents were repeated subsequently in the debate itself.

The absolute immunity enjoyed by MPs was moreover designed to protect the interests of Parliament as a whole as opposed to those of individual MPs, as illustrated by the fact that the immunity did not apply outside Parliament. In contrast, the immunity which protected those engaged in the reporting of parliamentary proceedings, and that enjoyed by elected representatives in local government, were qualified in nature.

The Court observed that victims of defamatory mis-statement in Parliament were not entirely without means of redress. In particular, they could, where their own MP had made the offending remarks, petition the House through any other MP with a view to securing a retraction. In extreme cases, deliberately misleading statements might be punishable by Parliament as a contempt. General control was exercised over debates by the Speaker of each House. The Court considered all these factors to be of relevance to the question of proportionality of the immunity enjoyed by the MP in the present case.

It followed that the application of a rule of absolute parliamentary immunity could not be said to exceed the margin of appreciation allowed to states in limiting an individual's right of access to court.

The Court agreed with the applicant's submissions to the effect that the allegations made about her in the MP's speech were extremely serious and clearly unnecessary in the context of a debate about municipal housing policy. The MP's repeated reference to her name and address was particularly regrettable. The Court considered that the unfortunate consequences of the MP's comments for the lives of the applicant and her children were entirely foreseeable. However, those factors could not alter the Court's conclusion as to the proportionality of the parliamentary immunity at issue, since the creation of exceptions to that immunity, the application of which depended upon the individual facts of any particular case, would seriously undermine the legitimate aims pursued. There had, accordingly, been no violation of Article 6.1 regarding the parliamentary immunity enjoyed by the MP.

Legal aid

The Court noted that the applicant was entitled to an initial two hours' free legal advice under the "Green Form" scheme and, after July 1998, could have engaged a solicitor under conditional fee arrangements. Although she would have remained exposed to a potential costs order in the event that any legal proceedings were unsuccessful, she would have been able to evaluate the risks in an informed manner before deciding whether or not to proceed had she taken advantage of the "Green Form" scheme. The Court concluded that the unavailability of legal aid for the purposes of bringing defamation proceedings in respect of the unprivileged press statement did not prevent the applicant from having effective access to court. There had, therefore, been no violation of Article 6.1 regarding the unavailability of legal aid.

Article 8

Having found that the central issues that arose in relation to the applicant's Article 8 complaint were the same as those arising in relation to her Article 6.1 complaint about the parliamentary immunity enjoyed by the MP, the Court found no violation of Article 8.

Article 14

The Court considered that the applicant's Article 14 complaint raised issues which were identical to those already examined in relation to Article 6.1. In any event, no analogy could be drawn between what was said in parliamentary debates and what was said in ordinary speech so as to engage Article 14. There had therefore been no violation of Article 14.

Article 13

The Court recalled that Article 13 did not go so far as to guarantee a remedy allowing a Contracting State's primary legislation to be challenged before a national authority on grounds that it was contrary to the Convention. The Court therefore held that there had been no violation of Article 13.

L. and V. v. Austria
S.L v. Austria

Appl. Nos. 39392/98, 39829/98 and 45330/99
Judgment of 9 January 2003

Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private life)

Principal facts and complaints

G.L., A.V., and S.L., are all Austrian nationals.

G.L. was convicted on 8 February 1996 by Vienna Regional Criminal Court of homosexual acts with adolescents under Article 209 of the Criminal Code, which penalises homosexual acts of adult men with consenting adolescents aged between 14 and 18. He was sentenced to one year's imprisonment, suspended on probation for three years. Relying mainly on his diary, in which he had made entries about his sexual encounters, the court found it established that between 1989 and 1994 he had had, in Austria and in a number of other countries, homosexual relations either by way of oral sex or masturbation with numerous unidentified young men aged 14 to 18.

The judgment regarding the offences committed abroad was later quashed and the applicant's sentence reduced to 11 months' imprisonment suspended on probation for three years. On appeal the sentence was further reduced to eight months.

On 27 May 1997 the Supreme Court dismissed G.L.'s plea of nullity in which he had complained that the application of Article 209 violated his right to respect for his private life and his right to non-discrimination. He had also asked for a review of the constitutionality of Article 209.

A.V. was convicted on 21 February 1997 by Vienna Regional Criminal Court under Article 209 of homosexual acts with adolescents, and on one minor count of misappropriation. He was sentenced to six months' imprisonment suspended on probation for three years. The Court found it established that on one occasion A.V. had had oral sex with a 15-year-old.

On 22 May 1997 Vienna Court of Appeal dismissed his appeal on points of law. It also dismissed his appeal against sentence.

S.L. began to be aware of his sexual orientation aged about 11 or 12. While other boys were attracted by women, he realised that he was emotionally and sexually attracted by men, in particular by men who were older than himself. Aged 15, he was sure of his homosexuality.

S.L. submitted that he lived in a rural area where homosexuality was still taboo. He suffered from the fact that he had to hide his homosexuality and that – before the age of 18 – he could not enter into any fulfilling sexual relationship with an adult partner for fear of exposing that person to criminal prosecution under Article 209, of being obliged to testify as a witness on the most intimate aspects of his private life and of being stigmatised by society should his sexual orientation become known.

The applicants alleged, in particular, that the maintenance in force of Article 209 – as well (in the case L. and V. only) as their convictions under that provision – violated their right to respect for their private lives and were discriminatory. They relied on Articles 8 and 14 of the Convention.

Decision of the Court

Articles 8 and 14

The Court noted that, following the Constitutional Court's judgment of 21 June 2002, Article 209 of the Austrian Criminal Code was repealed on 10 July 2002. The amendment in question entered into force on 14 August 2002. Nonetheless, in L. and V., the applicants were convicted under the contested provision and their respective convictions remain unaffected by the change in the law. In S.L., the Court recalled that the applicant was prevented by Article 209 from entering into any sexual relationship corresponding to his disposition. Accordingly, it found that he was directly affected by the maintenance in force of Article 209 before the age of 18. The Court considered that the Constitutional Court's judgment had not acknowledged let alone afforded redress for the alleged breaches of the Convention. Nor had it resolved the issue in question.

The Court observed that, in previous cases relied on by the Austrian Government relating to Article 209, the European Commission of Human Rights had found no violation of Articles 8 or 14. However, the Court had frequently held that the Convention was a living instrument, which had to be interpreted in the light of present-day conditions. What was decisive, was whether there was an objective and reasonable justification why young men in the 14- to 18-year age bracket needed protection against any sexual relationship with adult men, while young women in the same age bracket did not need such protection against relations with either adult men or women. In this connection the Court reiterated that the scope of the margin of appreciation left to the country concerned would vary according to the circumstances. One of the relevant factors might be the existence or non-existence of common ground between the laws of the countries which had ratified the Convention. In that respect, there was, the Court observed, an ever-growing European consensus that equal ages of consent should apply to heterosexual, lesbian and homosexual relations.

The Government relied on the Constitutional Court's judgment of 3 October 1989, which had considered Article 209 necessary to avoid "a dangerous strain" being "placed by homosexual experiences upon the sexual development of young males". However, during the 1995 Parliamentary debate on a possible repeal of Article 209, the vast majority of experts heard in Parliament clearly supported an equal age of consent, finding in particular that sexual orientation was in most cases established before the age of puberty, thus disproving the theory that male adolescents were "recruited" into homosexuality. Notwithstanding its knowledge of these changes in the scientific approach to the issue, Parliament decided in November 1996, shortly before the convictions of L. and V., to keep Article 209 on the statute book.

To the extent that Article 209 embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority, these negative attitudes could not of themselves be considered by the Court to amount to sufficient justification for the differential treatment any more than similar negative attitudes towards those of a different race, origin or colour.

Finding that the Austrian Government had not offered convincing and weighty reasons justifying the maintenance in force of Article 209 or, in L. and V., the applicants' convictions, the Court held that there had been, in both cases, a violation of Article 14 taken in conjunction with Article 8. The Court did not consider it necessary to rule on the question of whether there had been a violation of Article 8 taken alone.

It awarded (i) in L. and V.: 15,000 euros to each of the appplicants for non-pecuniary damage and 10,633.53 euros to L. and 6,500 euros to V. for costs and expenses; (ii) in S.L.: 5,000 euros to the applicant for non-pecuniary damage and 5,000 euros for costs and expenses.

Veeber v. Estonia (no. 2)

Appl. No. 45771/99

Judgment of 21 January 2003

Violation of Article 7.1 (no punishment without law)

Principal facts and complaints

On 7 October 1996 the applicant, who was the owner and chairman of two companies, was charged, under Article 148-1 § 7 of the Criminal Code, of various tax offences committed between 1993 and May 1995.

On 13 October 1997 the applicant was found guilty as charged and given a suspended prison sentence of three years and six months. In convicting the applicant of tax evasion under Article 148-1 §7 of the Criminal Code, the court observed that the criminal acts started in the third quarter of 1993 and that the last act began on 12 May 1995. It considered that the acts constituted an ongoing crime. The applicant was ordered to pay the city tax authorities 853 550 Estonian kroons.

The applicant appealed, arguing that Article 148-1 §7 had been applied retroactively, as it only entered into force on 13 January 1995. Prior to that date, conviction under Article 148-1 could follow only if the person concerned had been subjected to an administrative sanction for the same action or had a previous criminal conviction for the same offence. His appeals were rejected.

The applicant alleged, in particular, that his conviction amounted to retrospective application of criminal law in breach of Article 7.1 (no punishment without law) of the European Convention on Human Rights.

Decision of the Court

The Court observed that a considerable number of the acts of which the applicant was convicted fell exclusively within the period prior to January 1995 and that the sentence imposed took into account the acts committed both before and after January 1995.

The Court noted the Estonian Government's argument that the jurisprudence of the Supreme Court on the application and interpretation of the 1995 version of Article 148-1 of the Criminal Code made the risk of criminal punishment foreseeable to the applicant. However, the Supreme Court decisions in question were handed down only in April 1997 and January 1998. The applicant's complaint concerned acts committed between 1993 and 1994, when he could not have expected that, at the first discovery of his activity, he would risk criminal conviction, considering the terms of the criminal law in force during that period.

Finding that the Estonian courts applied retrospectively the 1995 law to behaviour which previously did not constitute a criminal offence, the European Court of Human Rights held, unanimously, that there had been a violation of Article 7.1 and

awarded the applicant 2 000 euros for non-pecuniary damage and 840.90 euros for costs and expenses.

Peck v. the United Kingdom

Appl. No. 44647/98
Judgment of 28 January 2003

Violation of Article 8 (right to respect for private life) and Article 13 (right to an effective remedy) taken in conjunction with Article 8

Principal facts and complaints

On the evening of 20 August 1995, at a time when he was suffering from depression, the applicant walked alone down Brentwood High Street, with a kitchen knife in his hand, and attempted suicide by cutting his wrists. He was unaware that he had been filmed by a closed-circuit television (CCTV) camera installed by Brentwood Borough Council.

The CCTV footage did not show the applicant cutting his wrists; the operator was solely alerted to an individual in possession of a knife. The police were notified and arrived at the scene, where they took the knife, gave the applicant medical assistance and brought him to the police station, where he was detained under the Mental Health Act 1983. He was examined and treated by a doctor, after which he was released without charge and taken home by police officers.

On 9 October 1995 the Council issued two photographs taken from the CCTV footage with an article entitled "Defused – the partnership between CCTV and the police prevents a potentially dangerous situation". The applicant's face was not specifically masked.

Two local newspapers also published photographs, and a local television broadcast included footage of the incident, with partial masking.

The CCTV footage was also supplied to the producers of *Crime Beat*, a BBC series on national television with an average of 9.2 million viewers. The Council imposed orally a number of conditions, including that no one should be identifiable in the footage and that all faces should be masked. However, in the trailers for an episode of the series, the applicant's image was not masked at all. After being told by friends that they had seen him on 9 March 1996 in the trailers, the applicant complained to the Council about the forthcoming programme. The Council contacted the producers who confirmed that his image had been masked in the main programme. On 11 March the CCTV footage was shown on *Crime Beat*. However, although the applicant's image was masked in the main programme, he was recognised by friends and family.

Mr Peck made a number of media appearances thereafter to speak out against the publication of the footage and photographs.

On 25 April 1996 he complained to the Broadcasting Standards Commission (BSC) in relation to, among other things, the *Crime Beat* programme, alleging an unwarranted infringement of his privacy and that he had received unjust and unfair treatment. On 13 June 1997 the BSC upheld both complaints. On 1 May 1996 the applicant complained to the ITC concerning the Anglia Television (the local broadcast). The ITC found that the applicant's identity was not adequately obscured and that the ITC code had been breached. Given an admission and apology by Anglia Television, however, no further action was taken. On 17 May 1996 the applicant complained unsuccessfully to the Press Complaints Commission concerning the articles in the *Yellow Advertiser*, one of the two local newspapers.

On 23 May 1996 he applied to the High Court for leave to apply for judicial review concerning the Council's disclosure of the CCTV material. His request and a further request for leave to appeal to the Court of Appeal were both rejected.

The applicant complained about the disclosure of the CCTV footage to the media, which resulted in images of himself being published and broadcast widely, and about a lack of an effective domestic remedy. He relied on Articles 8 and 13 of the Convention.

Decision of the Court

Article 8

The Court observed that, following the disclosure of the CCTV footage, the applicant's actions were seen to an extent which far exceeded any exposure to a passer-by or to security observation and to a degree surpassing that which the applicant could possibly have foreseen. The disclosure by the Council of the relevant footage therefore constituted a serious interference with the applicant's right to respect for his private life.

The Court did not find that there were relevant or sufficient reasons which would justify the direct disclosure by the Council to the public of stills of the applicant in *CCTV News*, without the Council having obtained the applicant's consent or masking his identity, or which would justify its disclosures to the media without the Council taking steps to ensure so far as possible that his identity would be masked. Particular scrutiny and care was needed given the crime prevention objective and context of the disclosures.

Neither did the Court find that the applicant's later voluntary media appearances diminished the serious nature of the interference and nor did these appearances reduce the need for care concerning disclosures. The applicant was the victim of a serious interference with his right to privacy involving national and local media coverage: it could not therefore be held against him that he tried afterwards to expose and complain about that wrongdoing through the media.

Accordingly, the Court considered that the disclosures by the Council of the CCTV material in *CCTV News* and to the *Yellow Advertiser*, Anglia Television and the BBC were not accompanied by sufficient safeguards and, therefore, constituted a disproportionate and unjustified interference with the applicant's private life and a violation of Article 8.

In the light of this finding, the Court did not consider it necessary to consider separately the applicant's other complaints under Article 8.

Article 13 in conjunction with Article 8

The Court found that judicial review did not provide the applicant with an effective remedy in relation to the violation of his right to respect for his private life.

In addition, the lack of legal power of the BSC and ITC to award damages to the applicant meant that those bodies could not provide an effective remedy to him. The ITC's power to impose a fine on the relevant television company did not amount to an award of damages to the applicant. And, although the applicant was aware of the Council's disclosures prior to the *Yellow Advertiser* article of February 1996 and the BBC broadcasts, neither the BSC nor the PCC had the power to prevent such publications or broadcasts.

The Court further found that the applicant did not have an actionable remedy for breach of confidence at the relevant time.

Finding, therefore, that the applicant had no effective remedy in relation to the violation of his right to respect for his private life, the Court concluded that there had been a violation of Article 13.

It awarded the applicant 11,800 euros for non pecuniary damage and 18,075 euros for costs and expenses.

Cordova v. Italy

Appl. Nos. 40877/98 and 45649/99
Judgment of 30 January 2003

Violation of Article 6.1 (right of access to a court)

Principal facts and complaints

Agostino Cordova is an Italian national. At the material time he was a public prosecutor in Palmi.

Cordova (No. 1) (Appl. No. 40877/98)

The application concerns events which occurred in 1993 during an investigation conducted by the applicant as part of his duties. The person under investigation had had dealings with Francesco Cossiga, a former President of Italy who had become a "senator for life". Mr Cossiga sent the applicant a number of sarcastic letters and various presents in the form of toys. The applicant considered that his honour and

reputation had been injured and lodged a criminal complaint against Mr Cossiga, who was prosecuted for insulting a public official. The applicant applied to join the proceedings as a civil party in June 1997.

The Senate considered that the acts of which Mr Cossiga was accused were covered by the immunity provided for in Article 68 §1 of the Italian Constitution, as his opinions had been expressed in the performance of his parliamentary duties. In accordance with that provision, the Messina magistrate held that the accused had no case to answer. The applicant asked the public prosecutor to appeal against that judgment, but his request was refused on the ground that the reasons given by the Senate were neither illogical nor manifestly arbitrary.

Cordova (No. 2) (Appl. No. 45649/99)

The application concerns comments made at two election rallies in 1994 by Vittorio Sgarbi, a member of the Italian parliament. While speaking at the rallies, Mr Sgarbi launched a personal attack on the applicant in offensive terms. The applicant lodged a criminal complaint alleging aggravated defamation and applied to join the proceedings as a civil party.

Mr Sgarbi was sentenced to two months' imprisonment and ordered to pay damages. The magistrate held that his comments had not been made in the performance of his parliamentary duties and were therefore not covered by the parliamentary immunity provided for in Article 68 §1 of the Constitution. The accused appealed unsuccessfully against that judgment. He then appealed to the Court of Cassation, which directed that the proceedings should be stayed and the matter referred to the Chamber of Deputies. The Chamber of Deputies expressed the view that Mr Sgarbi had been acting in the performance of his duties. On 6 May 1998 the Court of Cassation quashed the trial and appeal courts' decisions, holding that the Chamber of Deputies' broad interpretation of the concept of "parliamentary duties", encompassing all acts of a political nature, even outside Parliament, was not manifestly at variance with the spirit of the Constitution.

In its decisions of 13 June 2002 as to admissibility the Chamber took the view that the principal question raised by the applications was whether the applicant had enjoyed the right of access to a court as guaranteed by Article 6.1 of the Convention.

Relying on Article 6.1 (right to a fair hearing) and Article 13 (right to an effective remedy), the applicant complained that the proceedings before the Messina magistrate and the Court of Cassation had been unfair. He also complained under Article 14 (prohibition of discrimination) of the degree of freedom of expression enjoyed by Mr Cossiga and Mr Sgarbi.

Decision of the Court

Article 6.1

The Court observed that the applicant had lodged a complaint, alleging defamation, against two members of parliament and had applied to join the subsequent criminal proceedings as a civil party. The proceedings had therefore concerned a civil right which the applicant was entitled to claim, namely the right to enjoy a good reputation.

Following debates in the Senate (in the case of Mr Cossiga) and in the Chamber of Deputies (in the case of Mr Sgarbi), the impugned statements had been found to be covered by parliamentary immunity. The resolutions passed to that effect had made it impossible to continue the proceedings that were under way and had deprived the applicant of the opportunity to seek compensation for the damage he had sustained. The Court noted that the legitimacy of the resolutions had been reviewed by the Messina magistrate in the first case and by the Court of Cassation in the second. However, an assessment of that kind could not be likened to a decision on the applicant's right to enjoy a good reputation; nor could it be maintained that the applicant's degree of access to a court – which had been limited to the opportunity to raise a preliminary issue – had been sufficient to secure him the "right to a court". The applicant had been denied the opportunity to seek compensation for the alleged damage as a result both of the resolutions passed by the Senate and the Chamber of Deputies and of the refusal by the Messina magistrate and the Court of Cassation to refer a jurisdictional dispute to the Constitutional Court. Accordingly, the Court considered that there had been an interference with the applicant's right of access to a court.

The Court noted that parliamentary immunities constituted a long-standing practice designed to ensure freedom of expression among representatives of the people and to prevent the possibility of politically motivated prosecutions interfering with the performance of parliamentary duties. The Court consequently held that the interference in question, which was provided for in Article 68 §1 of the Constitution, had pursued the legitimate aims of protecting free speech in parliament and maintaining the separation of powers between the legislature and the judiciary.

As to whether the interference had been proportionate, the Court observed that where a State afforded immunity to members of its parliament, the protection of fundamental rights might be affected as a consequence. It reiterated that, in principle, the recognition of parliamentary immunity did not in itself place a disproportionate restriction on the right of access to a court as enshrined in Article 6.1 of the Convention.

The Court noted in both cases that the statements that had given rise to proceedings had not related to the performance of parliamentary duties in the strict sense, but appeared to have been made in the context of personal disputes. A denial of access to a court could not be justified solely on the ground that the dispute might be of a political nature or might relate to a political activity. In the Court's opinion, the absence of an obvious link with any kind of parliamentary activity meant that the notion of proportionality between the aim pursued and the means employed had to be interpreted narrowly. That was particularly true where restrictions on the right of access had resulted from a resolution passed by a political body. To conclude otherwise would amount to restricting, in a manner incompatible with Article 6.1 of the Convention, the right of individuals to apply to a court in any case where the comments in issue had been made by a member of parliament.

That being so, the Court considered that the ruling that Mr Cossiga had no case to answer and the judgment quashing the decisions against Mr Sgarbi had upset the fair balance that should be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The Court also attached importance to the fact that, after the resolutions had been passed by the Senate and the Chamber of Deputies, the applicant had had no other reasonable alternative means available for the effective protection of his rights under the Convention. The Court accordingly held that there had been a violation of Article 6.1 of the Convention.

Article 13

The Court noted that the applicant's complaint under this provision concerned the same facts which it had already examined under Article 6.1 of the Convention. It also pointed out that, where the issue raised was one of access to a court, the requirements of Article 13 were absorbed by those of Article 6.1. The Court therefore considered that it was not necessary to examine whether there had been a violation of Article 13 of the Convention.

Article 14

In the light of the conclusion it had reached in respect of Article 6.1, the Court considered that it was not necessary to conduct a separate examination of the applicant's complaint under Article 14 of the Convention.

In each case the Court awarded the applicant 8 000 euros for non-pecuniary damage and, for costs and expenses, 8 745 euros for the first application and 5 000 euros for the second.

Van der Ven v. the Netherlands
Lorsé and others v. the Netherlands

Appl. Nos. 50901/99 and 52750/99
Judgments of 4 February 2003

Violations of Article 3 (prohibition of inhuman or degrading treatment or punishment)

No violation of Article 8 (right to respect for private and family life)

Principal facts and complaints

The applicants, all Netherlands nationals, are: Franciscus Cornelis van der Ven, Jacobus Lorsé, Mr Lorsé's wife Everdina Lorsé-Quint, their three children and four other children born to the applicant from previous relationships.

The cases concerned the treatment of Mr van der Ven and Mr Lorsé while being detained in extra-security institutions (*Extra Beveiligde Inrichting* – EBI) within the Nieuw Vosseveld Penitentiary Complex in Vught, the Netherlands. Mr Lorsé was the longest-serving prisoner in a maximum-security regime in the Netherlands.

Mr van der Ven was detained on remand on 11 September 1995 and, on 29 October 1997, transferred to the EBI. Mr Lorsé was taken into police custody on 24 July 1994 and subsequently placed in detention on remand. On 27 September 1994 he was detained in the temporary EBI and, after 30 June 1998, the EBI.

The applicants complained, in particular, about the lack of human contact in the EBI. Among other things, visits were generally only authorised with a glass partition in place. Visits without the partition ("open visits") were allowed only once monthly with spouses, parents and children and the only physical contact permitted was a handshake at the beginning and end of the visit.

Inmates were also strip-searched prior to open visits as well as visits to the clinic, hairdresser or dentist and subjected to strip search once a week, including an anal inspection, even where they had had no contact with the outside world in the previous week.

The applicants alleged that this regime had a negative effect on their psychological stability. Mr van der Ven was deemed by psychologists to be "capable of acts of desperation" and found to have serious difficulties coping. It was noted that his behaviour improved dramatically during a brief stay in a psychiatric observation clinic. A psychological report found indications that Mr Lorsé was "suffering under the protracted isolation" describing "memory and orientation disorders" as well as "signs of depersonalisation".

The criminal proceedings against Mr van der Ven, on charges including murder, manslaughter/grievous bodily harm, rape and narcotics offences, ended on 26 March 2002. He was sentenced to 15 years' imprisonment.

Mr Lorsé was convicted of drugs and firearms offences and sentenced to 12 years' imprisonment and a fine of one million Netherlands guilders. His conviction and sentence became final on 30 June 1998. On appeal the prison term was increased to 15 years. It also appears that he has been sentenced in Belgium to a six-year prison sentence for drugs-related crimes but that the proceedings there are still pending.

The applicants alleged that the detention regime to which they (or their husband/father) were subjected in a maximum security prison breached Article 3 and Article 8. The applicants in Lorsé and others also relied on Article 13.

Decision of the Court

Article 3

The Court observed that, throughout their detention in the EBI, Mr van der Ven and Mr Lorsé were subjected to very stringent security measures. The Court further considered that their social contacts were strictly limited. However, the Court could not find that they were subjected either to sensory isolation or to total social isolation.

The applicants were placed in the EBI because they were considered by the domestic courts to be extremely likely to attempt to escape from detention facilities with a less strict regime, and because, if they were to escape, they would pose an unacceptable risk to society in terms of again committing serious violent crimes. Having regard to the very serious offences of which the applicants stood accused and were subsequently convicted, the Court accepted this assessment.

The Court took note of psychological reports submitted by the applicants and of a report from the Committee for the Prevention of Torture, following a visit to the prison complex in question in November 1997, which concluded that "the regime being applied in the (T) EBI and EBI could be considered to amount to inhuman treatment. To subject prisoners classified as dangerous to such a regime could well render them more dangerous still". The Court did not diverge from this view that the situation in the EBI was problematic and gave cause for concern, particularly where detainees were subjected to the EBI regime for protracted periods of time.

The Court was struck by the fact that the applicants were submitted to weekly strip-searches in addition to all the other strict security measures within the EBI. In view of the fact that the domestic authorities were well aware that the applicants were experiencing serious difficulties coping with the regime, and bearing in mind that at no time during the applicants' stay in the EBI did it appear that anything untoward was found in the course of a strip-search, the Court was of the view that the systematic strip-searching of the applicants required more justification than had been put forward by the Government.

The Court considered that in the situation where the applicants were already subjected to a great number of control measures, and in the absence of convincing security needs, the practice of weekly strip-searches that was applied for a period of approximately three-and-a-half years (for Mr van der Ven) and more than six years (for Mr Lorsé) diminished their human dignity and must have given rise to feelings of anguish and inferiority capable of humiliating and debasing them.

Accordingly, the Court concluded that the combination of routine strip-searching with the other stringent security measures in the EBI amounted to inhuman or degrading treatment, in violation of Article 3, in respect of Mr van der Ven and Mr Lorsé.

While the Court accepted that the conditions under which the visits from the other applicants to Mr Lorsé took place must have caused them emotional distress, it considered that the circumstances complained of did not attain the threshold of inhuman or degrading treatment within the meaning of Article 3 and that there had, therefore, been no violation of Article 3 concerning the other applicants.

Article 8

The Court observed that the applicants were placed in the EBI because the authorities thought it likely that they might attempt to escape. The Court accepted that the authorities were entitled to consider that an escape by the applicants would have posed a serious risk to society. The security measures were established in order to prevent escapes. Finding that the restrictions of the applicants' right to respect for their private and family life did not go beyond what was necessary in a democratic society to attain the legitimate aims intended, the Court found no violation of Article 8 in either case.

Article 13 (in the case of Lorsé and others only)

The Court observed that the decision to detain Mr Lorsé in the EBI was reviewed every six months. It appeared from the file that prior to a decision on prolongation of that detention being taken, advice was sought, at least on a number of occasions, from the Penitentiary Selection Centre as to the psychological aspects of a prolongation. Mr Lorsé was able to appeal against the decision to prolong his detention. It appeared from the decisions reached by the Appeals Board in his case that this Board not only assessed the risk and consequences of an escape by him, but that it also examined whether there were any indications or circumstances militating against an extension of his placement in the EBI and that it carried out a balancing exercise of all the interests involved. The interests of Mr

Lorsé's family members had therefore been taken into account in the proceedings. The Appeals Board stated explicitly in its decision of 16 March 2000 that it also had regard to Mr Lorsé's psychological condition. The Court was satisfied that the Board did in fact address and rule on the complaints relating to the allegedly harmful effects – on Mr Lorsé as well as on the other applicants – of the continued detention of Mr Lorsé in the EBI.

The Court further observed that the Appeals Board was competent to take binding decisions: if it had found that Mr Lorsé's placement ought not to have been extended, it had the power to quash the decision in question, following which a new decision would have had to have been taken – which was in fact what the Appeals Board did. Alternatively, the Appeals Board could have annulled the decision or ruled that its decision was to take the place of the decision appealed against.

In addition, it had been open to the applicants to institute interim injunction proceedings if they wished to obtain a judicial ruling on the compatibility with Article 3 of the regime as such. Such proceedings might have resulted in an interim injunction being issued to the effect that the regime in the EBI be modified in respect of Mr Lorsé.

Given that the word *remedy* within the meaning of Article 13 did not mean a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint, the Court considered that the proceedings before the Appeals Board and the possibility of interim injunction proceedings taken together provided the applicants with an effective remedy. Accordingly, there had been no violation of Article 13.

It awarded Mr Van der Ven 3 000 euros and Mr Lorsé 453.78 euros for non-pecuniary damage, and 2 195 euros to Mr Lorsé for costs and expenses.

Mamatkulov and Abdurasulovic v. Turkey

Appl. Nos. 46827/99 and 46951/99

Judgment of 6 February 2003

No violation of Article 3 (prohibition of torture)

Violation of Article 34 (right of individual application)

Principal facts and complaints

The case concerns two applications lodged by two Uzbek nationals, Rustam Mamatkulov and Askarov Abdurasulovic, members of the ERK Party (an opposition party in Uzbekistan). They were extradited from Turkey to Uzbekistan on 27 March 1999 and are understood to be currently in custody there.

Mamatkulov v. Turkey

On 3 March 1999 the applicant arrived in Istanbul from Alma-Ata (Kazakhstan) on a tourist visa. He was arrested by Turkish police at Atatürk Airport (Istanbul) under an international arrest warrant and taken into police custody on suspicion of homicide, causing injuries by the explosion of a bomb in Uzbekistan and the attempted terrorist attack on the President of Uzbekistan. Uzbekistan requested the applicant's extradition under a bilateral treaty with Turkey.

On 11 March 1999 the applicant was interviewed by the judge of Bakirköy Criminal Court. An order made by the judge on the same day under the urgent procedure mentioned the charges against the applicant and noted that the offences concerned were not political or military in nature but ordinary criminal offences. The judge also remanded the applicant in custody pending his extradition.

Abdurasulovic v. Turkey

The applicant entered Turkey on 13 December 1998 on a false passport. On 5 March 1999, following an extradition request made by the Republic of Uzbekistan, the Turkish police arrested him and took him into police custody. He was suspected of homicide, causing injuries by the explosion of a bomb in Uzbekistan and an attempted terrorist attack on the President of Uzbekistan.

On 7 March 1999 the applicant was brought before a judge, who remanded him in custody. On 15 March 1999 Fatih Criminal Court (Istanbul) determined his nationality and ruled on the nature of the offence, under Article 9 of the Turkish Criminal Code. It held that the offences with which the applicant had been charged were not political or military in nature but ordinary criminal offences. The court also remanded the applicant in custody pending his extradition.

On 18 March 1999 the European Court of Human Rights indicated to the Government of Turkey under Rule 39 of the Rules of Court (interim measures) that it was desirable in the interest of the parties and the proper conduct of the proceedings before the Court not to extradite the applicant to Uzbekistan until the Court had had an opportunity to examine the application further at its forthcoming session on 23 March 1999. On 19 March 1999 the Turkish Cabinet issued a decree for the applicants' extradition. On 23 March 1999, the Court decided to extend the interim measure until further notice.

On 27 March 1999 the applicants were handed over to the Uzbek authorities. In a judgment of 28 June 1999, the High Court of the Republic of Uzbekistan found the applicants guilty as charged and sentenced them to 20 and 11 years' imprisonment respectively.

Their representatives say that they have had no news of the applicants since their extradition.

The applicants complained that following their extradition their lives were at risk and they were in danger of being subjected to torture, contrary to the provisions of Articles 2 (right to life) and 3 of the Convention.

They further complained of the unfairness of the extradition procedure in Turkey and of the criminal proceedings against them in Uzbekistan.

Pointing out that the applicants had in fact been extradited, their representatives alleged that Turkey had failed to discharge its obligations under the Convention by not acting in accordance with the indications given by the Court under Rule 39 (interim measures) of its Rules of Court.

Decision of the Court

Articles 2 and 3

The Court considered that the complaint should be examined under Article 3.

It reiterated that Contracting States had the right to control the entry, residence and expulsion of aliens. There was no right to political asylum in the Convention or its Protocols. However, State responsibility might be engaged where substantial grounds existed for believing that a person would face a real risk of being subjected to treatment contrary to Article 3 if extradited.

The Court noted that the applicants' representatives had cited in support of their allegations the reports of international investigative bodies working in the field of human rights which had condemned an administrative practice of torture and other forms of ill-treatment of opposition-party supporters. However, the Court considered that despite the serious concerns to which those reports gave rise, they only described the general situation in Uzbekistan. They did not confirm the specific allegations made by the applicants, which had to be corroborated by other evidence. It was not possible to make conclusive factual findings in the case, as the applicants had been denied an opportunity to request that certain inquiries be made to obtain evidence supporting their allegations.

The Court noted that the Turkish Government maintained that the request for extradition had been granted after guarantees had been obtained from the Uzbek Government, including an assurance that the applicants would not be subjected to torture or capital punishment. The Court noted the terms of the diplomatic notes from the Uzbek authorities that had been produced by the Turkish Government and of the judgment sentencing the applicants to prison. In addition, it noted that the applicants' representatives' allegations that the applicants had been subjected to treatment contrary to Article 3 were not corroborated by medical examinations that had been conducted by doctors in the prisons where the applicants were being held. In the light of

the circumstances of the case and of the material before it, the Court found that there was insufficient evidence to warrant a finding a violation of Article 3 of the Convention.

Article 6

As regards the extradition proceedings in Turkey, the Court reiterated that Article 6.1 of the Convention was not applicable to decisions relating to the entry, residence and expulsion of aliens, as such decisions did not concern the determination of civil rights and obligations or of any criminal charge against the person concerned.

As to the criminal proceedings in Uzbekistan, the Court referred to its findings under Article 3 and held that the evidence before it did not establish that the applicants had suffered a denial of justice. Therefore, no issue arose on that point under Article 6.1 of the Convention.

Article 34

The Court noted that the fact that Turkey had extradited the applicants without complying with the interim measures indicated under Rule 39 of the Rules of Court raised the issue whether, in view of the special nature of Article 3, there had been a violation of Article 34 of the Convention. It reiterated that implicit in the notion of the effective exercise of the right of individual application was the observance of the principle of equality of arms and the provision of sufficient time and proper facilities to applicants in which to prepare their case. In the case before it, the applicants' representatives had been unable, despite their efforts, to contact the applicants, who had thus been deprived of the possibility of having further inquiries carried out to obtain evidence in support of their allegations.

The Court noted that, in the light of the general principles of international law, the law of treaties and international case-law, the interpretation of the scope of interim measures could not be dissociated from the proceedings to which they related or the decision on the merits they sought to safeguard. It emphasised that the right to individual application was one of the cornerstones of the machinery for protecting the rights and freedoms set out in the Convention.

Under Article 34, applicants were entitled to exercise their right to individual application effectively, which meant that Contracting States should not prevent the Court from carrying out an effective examination of applications. Further, an applicant who complained of a violation of Article 3 was entitled to an effective examination of an allegation that a proposed extradition or expulsion would entail a violation of Article 3. Indications given by the Court under Rule 39 of the Rules of Court were intended to permit it to carry out an effective examination of the application and to ensure that the protection afforded by the Convention was effective. They also subsequently allowed the Committee of Ministers to supervise execution of the final judgment. Interim measures thus enabled the State concerned to discharge its obligation to comply with the final judgment of the Court, as it was legally bound to do by Article 46 (binding force and execution of judgments) of the Convention.

In the case before the Court, compliance with the indications would undoubtedly have helped the applicants to present their application. The fact that they had been unable to take part in the proceedings or to speak to their representatives had hindered them in contesting the Government's arguments on the factual issues and in obtaining evidence. In view of the duty of all State Parties to the Convention to refrain from any act or omission that might adversely affect the cohesion and effectiveness of the final judgment (see Article 46) and in view of the foregoing, the Court found that the extradition of Mr Mamatkulov and Mr Abdurasulovic, in disregard of the indication that had been given under Rule 39, rendered nugatory the applicants' right to individual application.

The Court concluded that any State Party to the Convention to which interim measures had been indicated in order to avoid irreparable harm being caused to the victim of an alleged violation had to comply with those measures and refrain from any act or omission that might adversely affect the cohesion and effectiveness of the final judgment. Accordingly, by failing to comply with the interim measures indicated by the Court, Turkey was in breach of its obligations under Article 34 of the Convention.

It held that the finding of a violation was in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants. It awarded them 10 000 euros for costs and expenses (less 905 euros which had been paid by the Council of Europe in legal aid).

O v. Norway
Hammern v. Norway
Ringvold v. Norway
Y v. Norway

Appl. Nos. 29327/95, 30287/96, 34964/97 and 56568/00

Judgments of 11 February 2003

Violation of Article 6.2 (presumption of innocence)

Principal facts and complaints

The cases were brought by four Norwegian nationals. The first three applicants were acquitted, on appeal, of sexual abuse of minors and the fourth of violent sexual assault and manslaughter, after a jury had answered all the questions put to it in the negative.

Following their acquittal, the applicants in O and Hammern brought compensation claims for inconvenience suffered as a result of the criminal proceedings. In Ringvold and Y the victim and the victim's parents lodged civil compensation claims against the applicants.

– O is a Norwegian citizen, born in 1955 and living in Norway. He and his father were charged with having sexually abused over a number of years the applicant's daughter, L, born on 18 October 1981. The applicant was acquitted in June 1994 by Eidsivating High Court.

On 29 August 1994 the applicant and his father filed for compensation under Articles 444-446 of the Code of Criminal Procedure. On 25 January 1995 the High Court rejected the applicant's claim. Considering the case as a whole the High Court did not find it shown, on the balance of probabilities, that the applicant did not have sexual intercourse with his daughter.

– Ulf Hammern is a Norwegian citizen, born in 1949 and living in Bjugn, Norway. On 10 March 1992 the local police received reports that the applicant had sexually abused one or more children at Botngård kindergarten, where he worked as an assistant. On 13 March 1992 he was suspended from his post.

On 9 January 1993 the applicant was formally charged with having sexually abused 36 named children and an unknown number of children at the kindergarten. On 22 September 1993 he was formally charged with having sexually abused ten children at the kindergarten. He was acquitted by Frostating High Court on 31 January 1994.

The applicant filed for compensation and was awarded NOK 170 000. However, the Court rejected his claim for supplementary compensation under Article 444, it not having been shown probable that he did not perform the acts which were the basis of the charge.

– Ivar Ringvold is a Norwegian citizen, born in 1965 and living in Oslo. On 24 June 1993 he was charged with the sexual abuse of a minor, G, born in December 1979, during the period from 1986 to 1990. At the time, G's father was cohabiting with the applicant's mother. The alleged offences were said to have occurred in the applicant's home when the child visited her father.

On 18 February 1994 Eidsivating High Court acquitted the applicant of the charges and rejected G's civil compensation claim for non-pecuniary damage. G subsequently appealed to the Supreme Court which awarded her compensation, finding that, on the balance of probabilities, it was clear that she had been sexually abused by the applicant.

– Y is a Norwegian national, born in 1977. On 1 October 1997 he was charged with sexually assaulting his cousin Ms T (aged 17) and, among other things, hitting her with a 23kg stone and fracturing her cranium. Ms T later died of the head injuries.

Karmsund District Court convicted the applicant of the charges and sentenced him to 14 years' imprisonment, and ordered

him to pay NOK 100 000 in compensation to Ms T's parents. Gulating High Court acquitted the applicant but upheld the award of compensation to Ms T.'s parents.

All four applicants appealed unsuccessfully.

The applicants all complained that decisions taken by the Norwegian courts concerning the compensation claims in question were based on reasoning which contained assumptions of criminal guilt despite their acquittal, in violation of Article 6.2 of the Convention.

Decisions of the Court

Article 6.2

O v. Norway and Hammern v. Norway (concerning compensation claims made by the acquitted)

The Court noted that the outcome of the criminal proceedings in both O and Hammern was decisive; compensation claims could only be made by a person who had been acquitted or where the criminal proceedings in question had been discontinued.

The Court also found that the issue of compensation overlapped to a very large extent with the issues decided in the applicants' criminal trials. The issue of compensation was determined on the basis of evidence from these trials by the same courts, sitting in the same – or largely the same – formation, in accordance with the requirements of Article 447 of the Code of Criminal Procedure. The compensation claims not only followed the criminal proceedings in time, but were also tied to those proceedings in legislation and practice, with regard to both jurisdiction and subject-matter. Their object was to establish whether the State had a financial obligation to compensate the applicants for the burden created by the prosecution engaged against them. Although the applicants were not "charged with a criminal offence", the Court considered that, as the conditions for obtaining compensation were linked to the issue of criminal responsibility, Article 6.2 was applicable.

The Court reiterated that Article 6.2 embodied a general rule that, following a final acquittal, even the voicing of suspicions regarding an accused's innocence was no longer admissible.

The Court observed that, in O, the High Court had found it probable that the applicant's daughter had been subjected to sexual abuse and, "considering the case as a whole, ... [did] not find it shown on the balance of probabilities that [he] did not engage in sexual intercourse with [her]". In Hammern the High Court had reiterated the conclusions of the medical experts, "imply[ing] a very high degree of probability that the 10 children referred to in the indictment have been exposed to sexual abuse" and summarised at length the different types of evidence pointing to Mr Hammern as the perpetrator of the acts described. The High Court had reached the conclusion that the applicant had failed to show that it was probable that he had not perpetrated the acts which formed the basis of the charges.

In both O and Hammern, the Court concluded that the High Court's reasoning clearly amounted to the voicing of suspicion against both applicants with respect to the charges of sexual abuse for which they had been acquitted. Despite the fact that the Appeals Selection Committee of the Supreme Court had restated its view in each case that the refusal of a compensation claim did not undermine or cast doubt on a prior acquittal, the Court was not convinced that the impugned affirmations were not capable of calling into doubt the correctness of the applicants' acquittals, in a manner incompatible with the presumption of innocence. There had, therefore, been a violation of Article 6.2 in O v. Norway and Hammern v. Norway.

Y v. Norway and Ringvold v. Norway (concerning compensation claims made by the victim or the victim's parents)

In Y and Ringvold the Court noted that criminal liability was not a prerequisite for liability to pay compensation and that the compensation claims in question were not viewed as a "criminal charge" under Norwegian law.

The Court further observed that, while the conditions for civil liability could in certain respects overlap with those for criminal liability, the civil claim was nevertheless to be determined on the basis of principles that belonged to the civil law of tort. The outcome of the criminal proceedings was not decisive for the compensation case. The victim had a right to claim compensation regardless of whether the defendant was convicted or acquitted, and the compensation issue was to be the subject of a separate legal assessment based on criteria and evidentiary standards which in several important respects differed from those applied to criminal liability.

In the view of the Court, the fact that an act that might give rise to a civil compensation claim under the law of tort was also covered by the objective constitutive elements of a criminal offence did not mean that the person allegedly responsible for the act in the context of a tort case had been "charged with a criminal offence". Nor could the use of evidence from the criminal trial to determine the civil law consequences of the act warrant such a characterisation. Otherwise Article 6.2 would give a criminal acquittal the undesirable effect of pre-empting the victim's possibilities of claiming compensation under the civil law of tort. This again could give an acquitted perpetrator the undue advantage of avoiding any responsibility for his or her actions. Such an extensive interpretation would not be supported either by the wording of Article 6.2 or any common ground in the national legal systems of the countries which had ratified the European Convention on Human Rights. On the contrary, in a significant number of those countries, an acquittal did not preclude establishing civil liability in relation to the same facts.

The Court therefore considered that, while the acquittal from criminal liability ought to be maintained in the compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof. However, Article 6.2 would come into play if the decision on compensation included a statement imputing criminal liability.

In Ringvold, the ruling on compensation did not state that all the conditions were fulfilled for holding the applicant criminally liable for charges of which he had been acquitted. The ensuing civil proceedings were not incompatible with, and did not "set aside", that acquittal. Furthermore, the purpose of establishing civil liability to pay compensation was, unlike that of criminal liability, primarily to remedy the injury and suffering caused to the victim. The amount of the award could be considered justified on account of the damage caused. Neither the purpose of the award nor its size constituted a penal sanction. The Court did not therefore find that the compensation claim amounted to the bringing of another "criminal charge" against the applicant after his acquittal.

Considering further whether there were links between the criminal case and the ensuing compensation case which justified extending the scope of the application of Article 6.2, the Court reiterated that the outcome of the criminal proceedings was not decisive for the compensation issue. Despite the applicant's acquittal it was legally feasible to award compensation. Regardless of the conclusion reached in the criminal trial against the applicant, the compensation case was thus not a direct sequel to the former. Article 6.2 was therefore inapplicable in the case Ringvold v. Norway and there had, therefore, been no violation of Article 6.2.

In Y, the Court observed that the High Court opened its judgment with the following finding: "Considering the evidence adduced in the case as a whole, the High Court finds it clearly probable that [the applicant] has committed the offences against Ms T. with which he was charged and that an award of compensation to her parents should be made under Article 3-5 (2) of the Damage Compensation Act. ..." The judgment was upheld by the majority of the Supreme Court, albeit using more careful language.

The Court took account of the fact that the domestic courts noted that the applicant had been acquitted of the criminal charges. However, in seeking to protect the legitimate interests of the victim, the Court considered that the language employed by the High Court, upheld by the Supreme

Court, overstepped the limits of the civil proceedings, casting doubt on the correctness of that acquittal. Accordingly, there was a link to the earlier criminal proceedings which was incompatible with the presumption of innocence. The Court therefore found that Article 6.2 was applicable and that there had been a violation of Article 6.2 in the case Y.

It awarded the applicant (i) in O, 5 000 euros for non-pecuniary damage and 2 900 euros (less 2 848 euros paid by the Council of Europe in legal aid) for costs and expenses ; (ii) In Y, 20 000 euros for non-pecuniary damage and 4 500 euros for costs and expenses

Hutchison Reid v. the United Kingdom

Appl. No. 50272/99
Judgment of 20 February 2003
Violation of Article 5.4
No violation of Article 5.1

Principal facts and complaints

Alexander Lewis Hutchison Reid, a United Kingdom national, was born in 1950 and is currently detained in Carstairs Hospital, Lanarkshire.

On 8 September 1967, the applicant, aged 17, was convicted, after a guilty plea, of culpable homicide. The court found that the applicant was suffering from "mental deficiency" warranting his detention. It ordered that he be detained in a mental hospital under a hospital order and made an order restricting his discharge from detention without limit of time.

From no later than 1980, the applicant has not been considered to suffer from a mental deficiency; the sole basis for his detention being a diagnosis of anti-social personality or psychopathic disorder.

Following the introduction of the Mental Health (Scotland) Act 1984 (the 1984 Act), Section 17, a person suffering from a psychopathic or anti-social personality disorder could only be detained where medical treatment was likely to alleviate or prevent a deterioration of his condition. The Sheriff was required to release a restricted patient who was not suffering from a mental disorder making it appropriate for him to be detained in a hospital for medical treatment, or if it was not necessary for the health and safety of the patient or the protection of others that he receive such treatment.

In 1985, the applicant was transferred to an open hospital. On 6 August 1986, he re-offended, was arrested and remanded to prison. He was charged on a summary complaint with the assault and attempted abduction of an eight-year-old child. Psychiatric reports found the applicant to have a personality disorder, but that he was, nonetheless, sane and fit to plead. Accordingly, on conviction of assault and attempted abduction by a Sheriff on 26 September 1986, he was sentenced to three months' imprisonment.

On completion of his sentence in prison, the applicant was recalled to the State Hospital on the recommendation of a consultant psychiatrist, who found that the incident with the child raised grave doubts concerning the safety to other people of allowing the applicant to be released from institutional care.

The applicant applied unsuccessfully to be discharged from hospital on a number of occasions. Between February 1987 and June 1994 he obtained some 18 reports from six psychiatrists, the majority of which concluded that he did not suffer from a mental disorder justifying his continued detention, as he was not treatable. Between August 1986 and May 1994 further psychiatric reports provided varying opinions as to the applicant's susceptibility to treatment.

On 19 July 1994 the Sheriff refused to discharge the applicant, finding that, if released, there was a very high risk of the applicant re-offending and that any such offence was likely to have a sexual connotation. He noted that the applicant's disorder was severe and that it was appropriate for him to be detained in a hospital for medical treatment. No appeal against the Sheriff's decision was possible.

On 21 February 1996, the applicant lodged a petition in the Outer House of the Court of Session for judicial review of the Sheriff's decision, which was dismissed. On 14 June 1996, the applicant renewed his application to the Inner House of the Court of Session, which allowed the appeal and quashed the Sheriff's decision. They held that the discharge criteria under the 1984 Act required that, for a person suffering from a mental disorder manifested only by abnormally aggressive or seriously irresponsible conduct, the medical treatment must be likely to alleviate or prevent a deterioration in his condition. The Sheriff had, therefore, been obliged to discharge a restricted psychopathic patient who was not treatable.

The Secretary of State appealed to the House of Lords which allowed the appeal on 3 December 1998. In their judgment, their Lordships held that treatment which alleviated the symptoms and manifestations of the underlying medical disorder of a psychopath was treatment within the meaning of section 17 (1), even if the treatment did not cure the disorder itself. Lord Hutton noted the danger which could arise if the Sheriff were obliged to release an untreatable psychopath who might well harm members of the public. The balancing of the protection of the public as against the claim of a psychopath convicted many years ago that he should not continue to be detained in hospital when medical treatment would not improve his condition was an issue for Parliament to decide, not the judges.

The applicant alleged that he was wrongly detained in a mental hospital and that he was not provided with a prompt or adequate review of the continued lawfulness of his detention.

Decision of the Court

The Court was not persuaded that there was anything arbitrary in the decision not to release the applicant in 1994. The unanimous medical evidence was that he suffered from a mental disorder of a psychopathic type manifesting itself in abnormally aggressive behaviour. In the light of the Sheriff's finding that there was a high risk of his re-offending if released, such offending being likely to have a sexual connotation, the decision not to release could be regarded as justified.

Furthermore, the Court did not consider any issues of arbitrariness to be disclosed by the fact that the grounds on which detention in hospital might be ordered in domestic law had altered over the period during which the applicant had been detained. Since he was first detained in 1967, considerable time had elapsed and medical, psychiatric and legal developments had, inevitably, occurred. Most recently, the Court noted that the law had been amended to make it clear in cases such as the applicant's that the fact that the mental disorder was not treatable in clinical terms did not require release where a risk to the public remained.

Nor did the Court consider that the detention of the applicant in a mental hospital offended the spirit of Article 5; it would be unacceptable not to detain a mentally-ill person in a suitable therapeutic environment. The Sheriff found on the basis of the evidence before him that the applicant benefited from the hospital environment. The Court therefore concluded, unanimously, that there had been no breach of Article 5.1 (right to liberty and security).

The Court further found that, insofar as the burden of proof was placed on the applicant in his appeal to establish that his continued detention did not satisfy the conditions of lawfulness, it was not compatible with Article 5.4 (right to have lawfulness of detention decided speedily by a court). The Court also found no exceptional grounds justifying the delay in determining the applicant's application for release. It concluded, unanimously, that there had, therefore, been a violation of Article 5.4 in respect of both the burden of proof imposed on the applicant and the delay in the proceedings for release.

The Court found that it was not necessary to consider the applicant's complaint under Article 13 (right to an effective remedy).

The applicant was awarded 2 000 euros for non-pecuniary damage and 3 218 euros for costs and expenses.

Djavit An v. Turkey

Appl. No. 20652/92

Judgment of 20 February 2003

Violation of Article 11 (freedom of assembly) and Article 13 (right to an effective remedy)

Principal facts and complaints

The applicant, a Cypriot national of Turkish origin, is a paediatrician living in Nicosia, north of the "green line".

A critic of the Turkish Cypriot authorities and of the Turkish military presence in the northern part of Cyprus, which he defines as an "occupation", the applicant is also the Turkish Cypriot co-ordinator of the Movement for an Independent and Federal Cyprus, an unregistered association of Turkish and Greek Cypriots founded in 1989 in Nicosia. The movement aims to develop close relations between the two communities and organises political, cultural, medical and social meetings.

The applicant is normally unable to obtain a permit from the Turkish and Turkish Cypriot authorities to visit the "buffer zone" or the southern part of the island in order to participate in various of these bi-communal meetings. Between 8 March 1992 and 14 April 1998 only six out of 46 requests for such permits were granted.

The applicant claimed that the Cabinet of the "Turkish Republic of Northern Cyprus" ("TRNC") adopted a decision prohibiting him from contacting Greek Cypriots. Reference to this decision was allegedly made in a letter dated 3 February 1992 from the "TRNC" Health Minister to the applicant. On 7 May 1992 the applicant wrote to the "TRNC" Prime Minister asking for information concerning the content of the Cabinet decision, but received no reply. He also sent a letter of protest to the Foreign Minister of Turkey, which had also remained unanswered. On 18 May 1994 the "TRNC" Directorate of Consular and Minority Affairs of the Ministry of Foreign Affairs and Defence informed the applicant that permission had been refused "for security reasons, in the public interest and because [the applicant] made propaganda against the state".

On 24 May 1994 the applicant wrote to the "TRNC" Deputy Prime Minister, asking if the previous decision of the Cabinet was still in force since he was not allowed to visit the buffer zone or cross over into Nicosia. He received no answer.

The applicant complained that the refusals by the Turkish and Turkish Cypriot authorities to allow him to cross the "green line" into southern Cyprus and participate in bi-communal meetings breached Articles 10, 11 and 13 of the Convention.

Decision of the Court

Turkey's responsibility concerning the alleged violations

Turkey disputed its liability under the Convention for the allegations set out in the application, which, it claimed, were imputable exclusively to the "TRNC", an independent and sovereign State established by the Turkish Cypriot community in the exercise of its right to self-determination. In particular, Turkey submitted that the control and day-to-day administration of the designated crossing points and the issuing of permits were within the exclusive jurisdiction and/or responsibility of the "TRNC" authorities and not of Turkey.

The Court recalled that States which had ratified the European Convention on Human Rights could be held responsible for acts and omissions of their authorities which produced effects outside their own territory. Such responsibility could also arise when, as a consequence of military action, the State concerned exercised effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derived from the fact of such control, whether it be exercised directly, through its armed forces, or through a subordinate local administration. It was not necessary to determine whether Turkey actually exercised detailed control over the policies and actions of the "TRNC" authorities; it was obvious from the large number of troops engaged in active duties in northern Cyprus that the Turkish army exercised effective control over that part of the island. Such control entailed her responsibility for the policies and actions of the "TRNC". Those affected by such policies or actions therefore came within the "jurisdiction" of Turkey.

The Court therefore concluded that the matters complained of in the case fell within the "jurisdiction" of Turkey and entailed Turkey's responsibility under the Convention.

Exhaustion of domestic remedies

The Court dismissed the Turkish Government's argument that domestic remedies had not been exhausted, finding that the government had not shown that any of the remedies it had suggested would have afforded redress in any way whatsoever to the applicant.

The Court emphasised that its ruling was not to be interpreted as a general statement that remedies were ineffective in the "TRNC" or that applicants were absolved from having normal recourse to remedies that were available and functioning.

Article 10

The Court noted that the question of freedom of expression in the case could not be separated from that of freedom of assembly. The protection of personal opinions was one of the objectives of freedom of peaceful assembly as enshrined in Article 11. It was therefore unnecessary to examine the issue under Article 10 separately. The Court decided, however, to consider Article 10 when examining and interpreting Article 11.

Article 11

The Court noted that it could take into account only the period from 8 March 1992 until 14 April 1998, a period of six years and one month. During that period the Turkish Government refused to grant a substantial number of permits to the applicant. In some cases, permits were granted to other people who had submitted requests, but not to the applicant. Between 2 February 1996 and 14 April 1998 the applicant was refused all permits requested to attend bi-communal meetings in southern Cyprus (10 in total).

The Court considered that all the meetings the applicant wished to attend were designed to promote dialogue and an exchange of ideas and opinions between Turkish Cypriots living in the north and Greek Cypriots living in the south, with the hope of securing peace on the island. The refusals to grant these permits to the applicant in effect barred his participation in bi-communal meetings, preventing him from peacefully assembling with people from both communities. Accordingly, the Court concluded that there had been an interference with the applicant's rights to freedom of peaceful assembly.

As there seemed to be no law regulating the issuing of permits to Turkish Cypriots living in northern Cyprus to cross the "green line" into southern Cyprus to assemble peacefully with Greek Cypriots, the manner in which restrictions were imposed on the applicant's exercise of his freedom of assembly was not "prescribed by law". There had, therefore, been a violation of Article 11.

Article 13

The Court observed that, as the Turkish Government had failed to show that any of the domestic remedies available would have been effective, there had been a violation of Article 13.

It awarded the applicant 15 000 euros for non pecuniary damage and 4 715 euros for costs and expenses.

Roemen and Schmit v. Luxembourg

Appl. No. 51772/99

Judgment of 25 February 2003

Violation of Article 10 (freedom of expression) in respect of the first applicant
Violation of Article 8 (right to respect for private and family life) in respect of the second applicant

Principal facts and complaints

Robert Roemen is a Luxembourg journalist. Anne-Marie Schmit, a Luxembourg national, was his lawyer in the domestic proceedings.

On 21 July 1998 the daily newspaper *Lëtzëbuerger Journal* published an article by the first applicant entitled "Minister W. convicted of tax evasion". The article reported that the Minister had been ordered to pay a tax fine of 100 000 Luxembourg francs (nearly 2 500 euros) for tax evasion and observed that such conduct was all the more shameful coming from a person in the public eye who should set an example. The facts in question were also the subject of comment in other newspapers.

On 4 August 1998 the Minister lodged a criminal complaint, and an investigation was opened in respect of the first applicant for making use of information obtained through a breach of professional confidence and in respect of a person or persons unknown for breach of professional confidence. The prosecutor's application specified that the investigation and inquiry to be conducted should identify the civil servant or servants in the Land Registry and State Property Office who had handled the file and had had access to the documents.

On 19 October 1998, on the instructions of the investigating judge, searches were carried out at the first applicant's home and place of work to "discover and seize all objects, documents, effects and/or other things which might either help to reveal the truth about the offences mentioned or be used to hinder the satisfactory progress of the investigation". The searches revealed nothing. Considering, among other things, that there had been an infringement of his right as a journalist to protect his sources, the first applicant lodged several applications to set aside the search warrants. Those applications were dismissed, as were the appeals he lodged.

On 19 October 1998 the investigating judge also ordered a search of the first applicant's lawyer's office. A letter seized there had been sent to the Prime Minister by the Director of the Land Registry and State Property Office and bore the handwritten note: "To heads of departments. Confidential information for your guidance". The second applicant lodged an application to set aside the search warrant. Because the report on the search and seizure did not contain the observations of the Vice-Chairman of the Bar, who had been present while they were being carried out, the Committals Division of the District Court declared the seizure void and ordered the letter to be returned to the first applicant. On the day the letter was returned to her a new search was carried out and the letter was seized again. Submitting, in particular, that there had been a breach of the principle that a lawyer's place of work and the secrecy of communications between a lawyer and his or her client were inviolable, the second applicant lodged an application to set aside the search warrant. Her application was dismissed at first instance and on appeal.

On 30 November 2001 the first applicant was charged with "making use of information obtained through a breach of professional confidence". In January 2003 the investigating judge told him that the judicial investigation had just been closed.

Relying on Article 10 (freedom of expression), the first applicant complained that his right as a journalist to protect his sources had been infringed by the various searches. Relying on Article 8 (right to respect for private and family life), the second applicant complained of unjustified interference with her right to respect for her home on account of the search carried out at her office.

Decision of the Court

Article 10

The Court considered that the searches carried out at the first applicant's home and place of work had indisputably amounted to interference with his right to freedom of expression. The interference, prescribed by Articles 65 and 66 of the Code of Criminal Procedure, had pursued the "legitimate aim" of maintaining public order and preventing crime.

The Court noted that the purpose of the searches in issue had been to find evidence of any persons who might have committed a breach of professional confidence, and of any illegal act subsequently carried out by the first applicant in the performance of his duties. The measures therefore undoubtedly fell within the ambit of the protection of journalists' sources.

In the present case, the first applicant's article had concerned an established fact relating to a penalty imposed on a minister for a tax offence. There was no doubt that the article had discussed a matter of general interest and that an interference could not be compatible with Article 10 of the Convention unless it was justified by an overriding requirement in the public interest. The Court agreed with the first applicant's statement – which, moreover, had not been disputed by the Government – that measures other than searching his home and place of work (such as interviewing civil servants from the Land Registry and State Property Office) could have enabled the investigating judge to identify persons who might have committed the offences referred to in the prosecutor's application. In the Court's view, investigating officers who, armed with a search warrant, burst in on a journalist at his place of work had very wide powers because, by definition, they had access to all the documents in his possession.

In the light of the foregoing, the Court considered that the Government had not shown that the balance between the interests at stake, namely the protection of sources on the one hand and the prevention and punishment of crime on the other, had been preserved. The reasons adduced by the national authorities could indeed be regarded as "relevant", but not as "sufficient" to justify the searches of the first applicant's home and place of work. The Court therefore held that the measures in issue had been disproportionate and had infringed the first applicant's right to freedom of expression.

Article 8

The Court considered that the search carried out at the second applicant's office and the seizure of the letter had amounted to interference with her right to respect for her private life. The interference had been in accordance with Articles 65 and 66 of the Code of Criminal Procedure, which dealt with searches and seizures in general, and also with section 35 (3) of the Law of 10 August 1991, which laid down the procedure for carrying out searches and/or seizures at a lawyer's office. Furthermore, the interference had pursued the legitimate aim of maintaining public order and preventing crime.

As to whether the interference had been necessary, the Court noted that the search had been accompanied by special procedural safeguards. However, it observed that the search warrant had been worded in broad terms, thereby conferring wide powers on the investigating officers. Further, and above all, the Court considered that the purpose of the search had ultimately been to discover the journalist's source through the intermediary of his lawyer. The search carried out at Ms Schmit's office had therefore had repercussions on Mr Roemen's rights under Article 10 of the Convention. The Court further held that the search of the second applicant's office had been disproportionate to the aim pursued, particularly in view of the rapidity with which it had been carried out. Accordingly, the Court held that there had been a violation of Article 8 of the Convention.

It awarded each applicant 4 000 euros for non-pecuniary damage and Mr Roemen 11 629.41 euros for costs and expenses.

Six complaints against Russia concerning events in Chechnya declared admissible

On 16 January 2003, in three separate decisions, the European Court of Human Rights (First Section) declared admissible the applications lodged in the cases of *Khashiyev v. Russia* (Appl. No. 57942/00), *Akayeva v. Russia* (Appl. No. 57945/00), *Isayeva v. Russia* (Appl. No. 57947/00), *Yusupova v. Russia* (Appl. No. 57948/00), *Bazayeva v. Russia* (Appl. No. 57949/00) and *Isayeva v. Russia* (Appl. No. 57950/00).

The Court decided in addition that the Government's preliminary objection that the applicants had failed to exhaust their domestic remedies was closely linked to the merits of the complaints and should therefore be considered together with the merits at the next stage of the proceedings.

The applicants allege violation of their rights by the Russian military in Chechnya in 1999-2000. In a Chamber decision, notified to the parties on 16 January, the Court declared admissible the applicants' complaints under Article 2 (right to life), Article 3 (prohibition of torture and inhuman or degrading treatment), Article 13 (right to an effective remedy) of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention (protection of property).

The applicants

All the applicants are Russian nationals, residents of Chechnya. They were residents of Grozny up to 1999, and are currently staying in Ingushetia. Isayeva Zara Adamovna lived in Katyr-Yurt, Chechnya, up to 2000, when she also moved to Ingushetia.

Summary of the facts

Applications Nos. 57942/00 and 57945/00, which were joined by the Court on 11 July 2000, concern allegations of torture and extra-judicial executions of the applicants' relatives by the members of the Russian army in Grozny at the end of January 2000. The bodies of the first applicant's brother, sister and two of the latter's sons and the second applicant's brother were found with numerous gunshot wounds. A criminal investigation, opened in May 2000, was suspended and reopened several times, but the culprits were never identified.

Applications Nos. 57947/00, 57948/00 and 57949/00, joined by the Court on 11 July 2000, concern allegations of indiscriminate bombing on 29 October 1999 by Russian military planes of civilians leaving Grozny. As a result of the bombing, the first applicant was wounded, her two children and daughter-in-law were killed, the second applicant was wounded and the third applicant's car containing the family's possessions was destroyed. A criminal investigation into the bombardment was opened in May 2000, but was later closed. Appeal proceedings against the decision to close the investigation are pending before a military court in Rostov-on-Don.

Application No. 57950/00 concerns allegations of indiscriminate bombing by the Russian military of the village of Katyr-Yurt on 4 February 2000. As a result of the bombing, the applicant's son and her three nieces were killed. Following the communication of the complaint to the Russian Government, a criminal investigation was opened in September 2000, but later closed. Appeal proceedings against this decision are pending before a military court in Rostov-on-Don.

Complaints

Khashiyev Magomed and Akayeva Roza complain that their relatives were tortured and murdered by members of the Russian army. They also complain that the investigation into their deaths has been ineffective and that they have had no access to effective remedies at national level. They invoke Articles 2, 3 and 13 of the European Convention on Human Rights.

Isayeva Medka, Yusupova Zina and Bazayeva Libkan complain that their relatives' and their own rights to life and to protection from inhuman and degrading treatment were violated. Bazayeva Libkan, in addition, complains that the destruction of her car containing the family's belonging constituted an infringement of her property rights. The applicants also complain that the investigation was ineffective and that they had no access to effective remedies on the national level. They invoke Articles 2, 3 and 13 of the Convention and Article 1 of Protocol No. 1.

Isayeva Zara complains that her relatives' right to life was violated. She also complains that the investigation was ineffective and that she had no access to effective remedies. She invokes Articles 2 and 13 of the Convention.

New Spanish judge elected

On 29 January 2003 Mr Francisco Javier Borrego Borrego was elected judge with respect to Spain. Mr Borrego Borrego will replace Mr Antonio Pastor Ridruejo, who has reached the age-limit laid down in Article 23.6 of the Convention. As Mr Pastor Ridruejo was re-elected in 2001 for a new six-year term of office, Mr Borrego Borrego will serve until 31 October 2007.

Mr Borrego Borrego, who was born in Seville (Spain) in 1949, is a member of the Council of Europe's Steering Committee for Human Rights (CDDH) and Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR). He has been the Spanish Government's Agent *vis-à-vis* the European Court of Human Rights since 1990.

Other selected judgments

Judgments of the Court delivered between 1 November 2002 and 28 February 2003 for which a press release was issued

Applicant	**Pietiläinen**
Defendant state	Finland
Articles concerned	6 § 1 (decision on just satisfaction)
Date	5/11/2002

Applicants	**Pisaniello and others**
Defendant state	Italy
Articles concerned	6 § 1
Date	5/11/2002

Applicant	**Lisiak**
Defendant state	Poland
Articles concerned	6 § 1 (decision on just satisfaction)
Date	5/11/2002

Applicant	**Demir**
Defendant state	Austria
Articles concerned	6 § 2 (decision on just satisfaction)
Date	5/11/2002

Applicants	**Serghides and Christoforou**
Defendant state	Cyprus
Articles concerned	6 § 1, 1 of Protocol No. 1
Date	5/11/2002

Applicant **Yousef**
Defendant state Netherlands
Articles concerned 8 §§ 1 and 2
Date 5/11/2002

Applicant **Wynen**
Defendant state Belgium
Articles concerned 6 § 1 (decision on just satisfaction)
Date 5/11/2002

Applicants **Pincová and Pinc**
Defendant state The Czech Republic
Articles concerned 1 of Protocol No. 1 (decision on just satisfaction)
Date 5/11/2002

Applicant **Laidin**
Defendant state France
Articles concerned 5 § 4 (decision on just satisfaction)
Date 5/11/2002

Applicants **Radoš and others**
Defendant state Croatia
Articles concerned 6 § 1, 13 (decision on just satisfaction)
Date 7/11/2002

Applicant **Veeber**
Defendant state Estonia (No. 1)
Articles concerned 6 § 1, 8, 13 (decision on just satisfaction)
Date 7/11/2002

Applicant **Franceschetti**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 7/11/2002

Applicant **Ciccone**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 7/11/2002

Applicant **C. Srl**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 7/11/2002

Applicant **Visca**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 7/11/2002

Applicant **Özel**
Defendant state Turkey
Articles concerned 6 § 1 (decision on just satisfaction)
Date 7/11/2002

Applicant **Benzan**
Defendant state Croatia
Articles concerned 3 (struck out, friendly settlement)
Date 8/11/2002

Applicants **Sulejmanovic and others and Sejdovic and Sulejmanovic**
Defendant state Italy
Articles concerned 3, 13, 4 of Protocol No. 4 (struck out, friendly settlement)
Date 8/11/2002

Applicant **Płoski**
Defendant state Poland
Articles concerned 8 §§ 1 and 2 (decision on just satisfaction)
Date 12/11/2002

Applicant **Wessels-Bergervoet**
Defendant state Netherlands
Articles concerned 14, 1 of Protocol No. 1(decision on just satisfaction, struck out, friendly settlement)
Date 12/11/2002

Applicant **Lundevall**
Defendant state Sweden
Articles concerned 6 § 1 (decision on just satisfaction)
Date 12/11/2002

Applicant **Salomonsson**
Defendant state Sweden
Articles concerned 6 § 1 (decision on just satisfaction)
Date 12/11/2002

Applicant **Döry**
Defendant state Sweden
Articles concerned 6 § 1 (decision on just satisfaction)
Date 12/11/2002

Applicant **Baková**
Defendant state Slovakia
Articles concerned 6 § 1 (decision on just satisfaction)
Date 12/11/2002

Applicants **Zvolský and Zvolská**
Defendant state Czech Republic
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 12/11/2002

Applicants **Bělěs and others**
Defendant state Czech Republic
Articles concerned 6 § 1 (decision on just satisfaction)
Date 12/11/2002

Applicant **Luciano Rossi**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicant **Ciliberti**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicant **V.T.**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicant **T.C.U.**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicants **Gnecchi and Barigazzi**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicants **L. and P.**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicant **L.B.**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicant **Folli Carè**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicant **D.V.**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicant **Maltoni**
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicant **Merico**
Defendant state Italy

Articles concerned 1 of Protocol No. 1 (decision on just satisfaction)
Date 15/11/2002

Applicant Tosi
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicant Tona
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicant Fabbrini
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 15/11/2002

Applicant Cau
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 15/11/2002

Applicants Kınay and Kınay
Defendant state Turkey
Articles concerned 3, 5, 6 § 1, 8, 13, 14 (struck out, friendly settlement)
Date 26/11/2002

Applicant Yakar
Defendant state Turkey
Articles concerned 13 (struck out, friendly settlement)
Date 26/11/2002

Applicant Keçeci
Defendant state Turkey
Articles concerned 3 (struck out, friendly settlement)
Date 26/11/2002

Applicant Končeк
Defendant state Slovakia
Articles concerned 6 § 1, 13 (struck out, friendly settlement)
Date 26/11/2002

Applicant Varga
Defendant state Slovakia
Articles concerned 6 § 1 (struck out, friendly settlement)
Date 26/11/2002

Applicants E. and others
Defendant state United Kingdom
Articles concerned 3, 8, 13 (decision on just satisfaction)
Date 26/11/2002

Applicant Özkan Kiliç
Defendant state Turkey
Articles concerned 6 § 1, 10 (struck out, friendly settlement)
Date 26/11/2002

Applicant Nagy
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 26/11/2002

Applicant Dragnescu
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 26/11/2002

Applicant Gavruş
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 26/11/2002

Applicants Moşteanu and others
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1, (decision on just satisfaction)
Date 26/11/2002

Applicant Kuray
Defendant state Turkey
Articles concerned 5 § 3 (struck out, friendly settlement)
Date 26/11/2002

Applicant Bucheň
Defendant state The Czech Republic
Articles concerned 14 together with 1 of Protocol No. 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 26/11/2002

Applicant Walter
Defendant state Austria
Articles concerned 6 § 1 (struck out, friendly settlement)
Date 28/11/2002

Applicant Radaj
Defendant state Poland
Articles concerned 8 §§ 1 and 2 (decision on just satisfaction)
Date 28/11/2002

Applicant Informationsverein Lentia
Defendant state Austria
Articles concerned 10 (struck out, friendly settlement)
Date 28/11/2002

Applicant A.M.M.
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 28/11/2002

Applicant Virgulti
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 28/11/2002

Applicant F.M.
Defendant state Italy
Articles concerned 6 § 1 (decision on just satisfaction)
Date 28/11/2002

Applicant Massimo Pugliese
Defendant state Italy
Articles concerned 6 § 1 (decision on just satisfaction)
Date 28/11/2002

Applicant Marziano
Defendant state Italy
Articles concerned 6 §§ 1 and 2
Date 28/11/2002

Applicant Lavents
Defendant state Latvia
Articles concerned 5 §§ 1, 3 and 4, 6 §§ 1 and 2, 8 (decision on just satisfaction)
Date 28/11/2002

Applicant Nowicka
Defendant state Poland
Articles concerned 5 § 1 b), 8 (decision on just satisfaction)
Date 03/12/2002

Applicant Smoleanu
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 03/12/2002

Applicants Lindner and Hammermayer
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1, 2 § 2 of Protocol No. 4 (decision on just satisfaction)
Date 03/12/2002

Applicant Debbasch
Defendant state France
Articles concerned 6 § 1
Date 03/12/2002

Applicant Hoppe
Defendant state Germany
Articles concerned 6 § 1, 8 §§ 1 and 2, 14 together with 8
Date 5/12/2002

Applicant Dalkılıç
Defendant state Turkey

Articles concerned 5 §§ 3, 4 and 5 (decision on just satisfaction)
Date 5/12/2002

Applicant Yalcin Küçük
Defendant state Turkey
Articles concerned 10 (decision on just satisfaction)
Date 5/12/2002

Applicant Mahmut Demir
Defendant state Turkey
Articles concerned 2, 3, 5, 6, 8, 13, 14 (struck out, friendly settlement)
Date 5/12/2002

Applicant Craxi (No. 2)
Defendant state Italy
Articles concerned 6 §§ 1, 3 b) and 3 d) (decision on just satisfaction)
Date 5/12/2002

Applicant Dicle For The Democratic Party (DEP) Of Turkey
Defendant state Turkey
Articles concerned 6 § 1, 9, 10, 11 §§ 1 and 2, 14 (decision on just satisfaction)
Date 10/12/2002

Applicant Waite
Defendant state United Kingdom
Articles concerned 5 §§ 1, 4 and 5, 13, 14 (decision on just satisfaction)
Date 10/12/2002

Applicant Çallı
Defendant state Turkey
Articles concerned 1 of Protocol No. 1 (struck out, friendly settlement)
Date 12/12/2002

Applicant Adalı
Defendant state Turkey
Articles concerned 2 (struck out, friendly settlement)
Date 12/12/2002

Applicant Yalcın
Defendant state Turkey
Articles concerned 2 (struck out, friendly settlement)
Date 12/12/2002

Applicant Soğukpınar
Defendant state Turkey
Articles concerned 2 (struck out, friendly settlement)
Date 12/12/2002

Applicant Sen
Defendant state Turkey
Articles concerned 2 (struck out, friendly settlement)
Date 12/12/2002

Applicants Mitchell and Holloway
Defendant state United Kingdom
Articles concerned 6 § 1 (decision on just satisfaction)
Date 17/12/2002

Applicant Golea
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 17/12/2002

Applicant Gheorghiu
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 17/12/2002

Applicant Segal
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 17/12/2002

Applicant Boc
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 17/12/2002

Applicant Savulescu
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 17/12/2002

Applicant Paola Esposito
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicant Savio
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicants Giagnoni and Finotello
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicant M.P.
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicants Guidi and others
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicant M.C.
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicant Sanella
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicant Geni Srl
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicant Immobiliare Sole Srl
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicant Scurci Chimenti
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicant Folliero
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicants L. and P.
Defendant state Italy
Articles concerned 6 § 1 (decision on just satisfaction)
Date 19/12/2002

Applicant Fiorani
Defendant state Italy
Articles concerned 6 § 1 (decision on just satisfaction)
Date 19/12/2002

Applicant Fleres
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicant Zazzeri
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)

Date 19/12/2002

Applicant Auditore
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 19/12/2002

Applicant Lógica, Móveis De Organização, Lda.
Defendant state Portugal
Articles concerned 6 § 1 (struck out, friendly settlement)
Date 19/12/2002

Applicant Salapa
Defendant state Poland
Articles concerned 5 §§ 3 and 4, 6 § 1, 8, 8 § 2 (decision on just satisfaction)
Date 19/12/2002

Applicant Korellis
Defendant state Cyprus
Articles concerned 6 § 1
Date 7/1/2003

Applicant Žiačik
Defendant state Slovakia
Articles concerned 6 § 1, 13 (decision on just satisfaction)
Date 7/1/2003

Applicant Kopecký
Defendant state Slovakia
Articles concerned 1 of Protocol No. 1 (decision on just satisfaction)
Date 7/1/2003

Applicant Popescu Nasta
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 7/1/2003

Applicant C.D.
Defendant state France
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 7/1/2003

Applicant Laidin (No. 2)
Defendant state France
Articles concerned 6 § 1 (decision on just satisfaction)
Date 7/1/2003

Applicant Mac Gee
Defendant state France
Articles concerned 6 § 1 (decision on just satisfaction)
Date 7/1/2003

Applicant Tamer
Defendant state Turkey
Articles concerned 6 § 1 (struck out, friendly settlement)
Date 9/1/2003

Applicant Ciccariello
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 9/1/2003

Applicant Di Tullio
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 9/1/2003

Applicant Cecchi
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 9/1/2003

Applicant E.P.
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 9/1/2003

Applicant Marini
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 9/1/2003

Applicant C.T.
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 9/1/2003

Applicant Tolomei
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 9/1/2003

Applicants Carloni and Bruni
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 9/1/2003

Applicant Ioannis Papadopoulos
Defendant state Greece
Articles concerned 6 § 1 (decision on just satisfaction)
Date 9/1/2003

Applicant Kadem
Defendant state Malta
Articles concerned 5 § 4 (decision on just satisfaction)
Date 9/1/2003

Applicant Shishkov
Defendant state Bulgaria
Articles concerned 5 §§ 1, 3 and 4 (decision on just satisfaction)
Date 9/1/2003

Applicant Oprescu
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1, 2 § 2 of Protocol No. 4 (decision on just satisfaction)
Date 14/1/2003

Applicants H.K. and others
Defendant state Turkey
Articles concerned 2, 3, 5 (struck out, friendly settlement)
Date 14/1/2003

Applicant Lagerblom
Defendant state Sweden
Articles concerned 6 §§ 1, 3 c) and 3 e)
Date 14/1/2003

Applicant K.A.
Defendant state Finland
Articles concerned 8 (decision on just satisfaction)
Date 14/1/2003

Applicants Karagiannis and others
Defendant state Greece
Articles concerned 6 § 1, 1 of Protocol No. 1
Date 16/1/2003

Applicant Nastou
Defendant state Greece
Articles concerned 6 § 1, 1 of Protocol No. 1
Date 16/1/2003

Applicant Papazafiris
Defendant state Greece
Articles concerned 6 § 1 (decision on just satisfaction)
Date 23/1/2003

Applicant Tsirikakis
Defendant state Greece
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 23/1/2003

Applicants Richen and Gaucher
Defendant state France
Articles concerned 6 § 1 (decision on just satisfaction)
Date 23/1/2003

Applicant Kienast
Defendant state Austria
Articles concerned 6 § 1, 13, 1 of Protocol No. 1
Date 23/1/2003

Applicant Demirel
Defendant state Turkey
Articles concerned 5 § 3, 6 § 1 (decision on just satisfaction)

Date 28/1/2003

Applicant Candela
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 30/1/2003

Applicant Ahmet Acar
Defendant state Turkey
Articles concerned 1 of Protocol No. 1 (decision on just satisfaction)
Date 30/1/2003

Applicant N.K.
Defendant state Turkey
Articles concerned 6 §§ 1 and 3 c) (decision on just satisfaction)
Date 30/1/2003

Applicant Nikolov
Defendant state Bulgaria
Articles concerned 5 §§ 1, 3 and 4 (decision on just satisfaction)
Date 30/1/2003

Applicant Cordova
Defendant state Italy (No. 2)
Articles concerned 6 § 1, 13, 14 (decision on just satisfaction)
Date 30/1/2003

Applicant Zeynep Avcı
Defendant state Turkey
Articles concerned 3, 5 §§ 1, 3 and 4, 13 (decision on just satisfaction)
Date 6/2/2003

Applicant Gramiccia
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 6/2/2003

Applicants Atça and others
Defendant state Turkey
Articles concerned 6 §§ 1 and 3 c) (decision on just satisfaction)
Date 6/2/2003

Applicant Özdemir
Defendant state Turkey
Articles concerned 6 §§ 1 and 3 c) (decision on just satisfaction)
Date 6/2/2003

Applicant Jakupovic
Defendant state Austria
Articles concerned 8 (decision on just satisfaction)
Date 6/2/2003

Applicants State and others
Defendant state Romania
Articles concerned 1 of Protocol No. 1 (decision on just satisfaction)
Date 11/2/2003

Applicant Grigore
Defendant state Romania
Articles concerned 1 of Protocol No. 1 (decision on just satisfaction)
Date 11/2/2003

Applicant Tărbăşanu
Defendant state Romania
Articles concerned 6 § 1, 13, 1 of Protocol No. 1 (decision on just satisfaction)
Date 11/2/2003

Applicants Cetin and others
Defendant state Turkey
Articles concerned 10 §§ 1 and 2 (decision on just satisfaction)
Date 13/2/2003

Applicant Erkanlı
Defendant state Turkey
Articles concerned 10 (struck out, friendly settlement)
Date 13/2/2003

Applicant Louerat
Defendant state France
Articles concerned 6 § 1 (decision on just satisfaction)
Date 13/2/2003

Applicant Bertuzzi
Defendant state France
Articles concerned 6 § 1 (decision on just satisfaction)
Date 13/2/2003

Applicant Schaal
Defendant state Luxembourg
Articles concerned 6 § 1, 8 (decision on just satisfaction)
Date 18/2/2003

Applicant Prado Bugallo
Defendant state Spain
Articles concerned 8 (decision on just satisfaction)
Date 18/2/2003

Applicant Mentis
Defendant state Greece
Articles concerned 6 § 1 (struck out, friendly settlement)
Date 20/2/2003

Applicant Bologna
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 20/2/2003

Applicant G.G.
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 20/2/2003

Applicant Savarese
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out, friendly settlement)
Date 20/2/2003

Applicant Forrer-Niedenthal
Defendant state Germany
Articles concerned 6 § 1, 1 of Protocol No. 1
Date 20/2/2003

Applicant Kroenitz
Defendant state Poland
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 25/2/2003

Applicants Szava and others
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1 (struck out)
Date 25/2/2003

Applicant Popovăţ
Defendant state Romania
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 25/2/2003

Applicants Axen and others
Defendant state Germany
Articles concerned 6 § 1 (struck out, friendly settlement)
Date 27/2/2003

Applicant Textile Traders, Limited
Defendant state Portugal
Articles concerned 6 § 1 (decision on just satisfaction)
Date 27/2/2003

Applicants G. and M.
Defendant state Italy
Articles concerned 6 § 1, 1 of Protocol No. 1 (decision on just satisfaction)
Date 27/2/2003

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 had responsibility for deciding, for cases that were not referred to the Court, whether or not there had 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 could be equated with a judgment of the Court – took, as from 1995, one of two forms: an "interim" resolution, which at the same time made public the Commission's report; or a "traditional" resolution (adopted after the complete execution of the judgment), in which case the Commission's report remained confidential for the entire period of the execution.

In the same way as it supervises the execution of the Court's judgments, the Committee of Ministers also continues to supervise 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. As of 1 January 2003, there were almost 1,500 such cases still pending before the Committee of Ministers for control of execution.

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/.

Austria

Riepan v. Austria
Appl. No. 35115/97
Court judgment 14 November 2000
Resolution ResDH (2003) 1, 24 February 2003
Article 6.1 (public hearing)

The Court had held that there had been a violation of Article 6, paragraph 1, in the case of a prisoner who was indicted for threatening behaviour on account of incidents in prison and who did not have a public hearing as the trial had taken place in the "closed area" of the prison.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sums provided for in respect of costs and expenses. It took note of the following information supplied by the Austrian authorities concerning the measures taken to prevent new violations of the same kind as that found in the present case:

Appendix to Resolution ResDH (2002) 99

Information provided by the Government of Austria during the examination of the Riepan *case by the Committee of Ministers*

"The Government reiterates that the violation found by the European Court of Human Rights in this case resulted from the fact that, although the hearing at first instance was theoretically public, the specific conditions under which it took place (in prison, in a very small room, etc.) were such as to discourage the presence of the public, and were not justified by any consideration of security. Furthermore, no adequate compensatory measures (separate announcement, information about how to reach the prison with a clear indication of the access conditions) were adopted in order to counterbalance the detrimental effect which the holding of the applicant's trial in the closed area of the prison had on its public character (paragraph 27-31 of the judgment of the European Court). In addition, the holding of a public hearing before the Court of Appeal was not a way of making up for this shortcoming, since the proceedings before that Court, which involved neither the consideration of evidence nor the testimony of witnesses, were very limited in scope (paragraph 41 of the judgment of the European Court).

In order to ensure awareness of the judgment of the European Court and to draw, in particular, the attention of the legal community to Austria's obligations under it, the judgment was published in translation in three Austrian legal journals (*Newsletter* 6/2000, *Österreichische Juristenzeitschrift* 2000, p. 357 and *ÖAMTC – LSK* 2001/112). It was also sent accompanied by a circular letter from the Ministry of Justice to all Presidents of Higher Regional Courts and the State Attorneys General in Vienna, Graz, Linz and Innsbruck in order to be distributed to all state attorneys and judges dealing with criminal cases.

According to the above-mentioned circular letter, whenever a hearing is to take place anywhere else than on the premises of a regular court, especially in places to which the public normally does not have access, the notice-board of the court should indicate the place of the hearing and the means and conditions of access. This special form of announcement would have to be ordered by the competent judge at the very moment of issuing the convocation to the hearing. Furthermore, the circular letter drew the judges' and state attorneys' attention to paragraph 27-41 of the judgment of the European Court and invited them to apply the requirements of the Court concerning the public character of the hearings by taking adequate specific measures [...]".

Biegler Bau GesmbH v. Austria
Appl. No. 32097/96
Court judgment 11 July 2002
Resolution ResDH (2003) 29, 24 February 2003

Article 6.1 (length of civil proceedings)
Case struck off the list following a friendly settlement

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant company the sum provided for in the friendly settlement, and that no other measure was required in the present case to conform to the Court's judgment.

Croatia

Majstorovic v. Croatia
Appl. No. 53227/99
Court judgment 6 June 2002
Resolution ResDH (2003) 30, 24 February 2003

Article 6.1 (length of civil proceedings and lack of effective remedy)
Case struck off the list following a friendly settlement

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant company the sum provided for in the friendly settlement and that no other measure was required in the present case to conform to the Court's judgment.

Cyprus

Georgiadis v. Cyprus
Appl. No. 50516/99
Court judgment 14 May 2002
Resolution ResDH (2003) 11, 24 February 2003

Article 6.1 (length of penal proceedings)

The Committee of Ministers satisfied itself that the government of the respondent state had paid the sums provided in respect of pecuniary and non pecuniary damage and costs and expenses. It took note of the information that the Court's judgment had been sent out to the authorities directly concerned.

France

Delgado v. France
Chapus v. France
Vallar v. France
Appl. Nos. 38437/97, 46693/99 and 42406/98
Court judgments 14 November 2000, 24 October 2000 and 19 March 2002
Resolutions ResDH (2002) 148, and (2003) 14 and 15, 17 December 2002 and 24 February 2003

Article 6.1 (length of proceedings concerning civil rights and obligations before the labour courts)

In these three cases, the Committee of Ministers satisfied itself that the government of the respondent state had paid the applicants the sums provided for. It took note of the information that the Court's judgments had been sent out to the authorities directly concerned.

Guelfucci v. France
Appl. No. 49352/99
Court judgment 30 October 2001
Resolution ResDH (2002) 153, 17 December 2002

Article 6.1 (length of penal proceedings)
Case struck off the list following a friendly settlement

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant company the sum provided for in the friendly settlement and that no other measure was required in the present case to conform to the Court's judgment,

Brochu v. France
Joly v. France
Appl. Nos. 41333/98 and 43713/98
Court judgments 12 June 2001 and 27 March 2001
Resolutions ResDH (2003) 12 and 13, 24 February 2003

Article 6.1 (length of civil proceedings)

In the two cases, the Committee of Ministers satisfied itself that the government of the respondent state had paid the sums provided for the non pecuniary damage and in respect of costs and expenses. It took note of the information that the Court's judgments had been sent out to the authorities directly concerned.

Germany

H.T. v. Germany
Appl. No. 38073/97
Court judgment 11 October 2001
Resolution ResDH (2002) 149, 17 December 2002

Article 6.1 (length of proceedings concerning civil rights and obligations before the social courts)

The Committee of Ministers satisfied itself that the government of the respondent state had paid the sums provided for the non pecuniary damage and in respect of costs and expenses. It took note of the information that the Court's judgment had been sent out to the authorities directly concerned.

Volkwein v. Germany
Appl. No. 45181/99
Court judgment 4 April 2002
Resolution ResDH (2002) 150, 17 December 2002

Article 6.1 (length of civil proceedings)

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicants the sums provided in respect of non pecuniary damage and costs and expenses. It took note of the information that the Court's judgments had been sent out to the authorities directly concerned.

Kalantari v. Germany
Appl. No. 51342/99
Court judgment 11 October 2001
Resolution ResDH (2002) 154, 17 December 2002

Article 3 (prohibition of inhuman and degrading treatment)
Case struck off the list following a friendly settlement

The case concerned the threat of the applicant's expulsion to Iran, which could have resulted in his subjection to inhuman or degrading treatment.

The German authorities having annulled the expulsion order, the Court struck the case off the list.

The Committe of Ministers satisfied itself that the government of the respondent state had paid the applicant the sum provided for in respect of costs and expenses.

Garcia Alva v. Germany
Lietzow c/ Allemagne
Schöps c/ Allemagne
Appls. Nos. 23541/94, 24479/94 et 25119/94
Court judgments 13 February 2001
Resolutions ResDH (2003) 2, 3 et 4, 24 February 2003

Article 5.4 (rigth to adversarial trial)

The cases concerned the proceedings to review the applicants' detention on remand, in which their defence counsels were denied an opportunity to question the reliability or conclusiveness of witness statements.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicants the sums provided for in respect of costs and expenses. It took note of the following information supplied by the German authorities concerning the measures taken to prevent new violations of the same kind as that found in the present cases:

Appendix to Resolution ResDH (2003) 2

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

"According to Section 147, paragraph 1, of the Code of Criminal Procedure (*Strafprozessordnung*), defence counsel is entitled to consult the files which have been presented to the trial court, or which would have to be presented to the trial court in case of an indictment, and to inspect the exhibits.

As from 1 November 2000, section 147, paragraph 5, sentence 2, of the Code of Criminal Procedure (*Strafverfahrensänderungsgesetz* 1999, BGBI. 2000, part I, p. 1253) has been amended to the effect, *inter alia*, that an accused who is in detention is now entitled to ask for judicial review of the decision of the Public Prosecutor's Office denying access to the file. The Government considers that, taking into account the direct effect given to judgments of the European Court of Human Rights (see the case of *Vogt v. Germany*, Resolution DH (97) 12) by German courts, this new review will efficiently prevent new similar violations of the Convention.

To facilitate this development, the judgment of the European Court has been circulated to the justice administrations in the Federal States (*Landesjustizverwaltungen*), the Federal Public Prosecutor General (*Generalbundesanwalt*) and to the Federal Court of Justice (*Bundesgerichtshof*). Furthermore, the judgment has been published in No. 28 of the *Neue Juristiche Wochenschrift* 2002, pp. 2018-2020 [...]."

[Same text for Appendices to Resolutions ResDh (2003) 3 and 4]

Greece

Zohiou v. Greece

Appl. No. 40428/98
Court judgment 29 March 2001
Resolution ResDH (2002) 155, 17 December 2002

Article 6.1 (length of civil proceedings)
Case struck off the list following a friendly settlement

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sum provided for in the friendly settlement, and that no other measure was required in the present case to conform to the Court's judgment.

Examiliotis v. Greece

Appl. No. 52538/99
Court judgment 18 April 2002
Resolution ResDH (2002) 156, 17 December 2002

Article 6.1 (length of proceedings concerning civil rights and obligations before the administrative courts)
Case struck off the list following a friendly settlement

The Committee of Ministers satisfied itself, on the one hand, that the government of the respondent state had paid the applicant the sum provided for in the friendly settlement and,on the other hand, that no other measure was required in the present case to conform to the Court's judgment.

Biba v. Greece

Appl. No. 33170/96
Court judgment 26 September 2000
Resolution ResDH (2003) 5, 24 February 2003

Article 6.1 and 3 c) taken together (lack of legal aid to bring an appeal on points of law)

This case concerned the impossibility in which the applicant – sentenced to life imprisonment for murder – had been placed to bring an appeal on points of law, in that he did not have the means to engage a lawyer to represent him, that domestic law did not provide for free legal assistance and that he was incapable of conducting his appeal in person before the Court of Cassation.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sum provided for in the Court's judgment. It took note of the following information supplied by the Greek authorities about the measures taken to prevent new violations of the same kind:

Appendix to Resolution ResDH (2003) 5

Information provided by the Government of Greece during the examination of the Biba *case by the Committee of Ministers*

"The Government reiterates that, in cases of the most serious category of criminal offence (*kakouryimata*), Article 340, paragraph 1 of the Code of Criminal Procedure provides that the President of the first-instance court must assign counsel to an accused who is not represented in order to assure his defence. Counsel is chosen from a list of lawyers drawn up by the local Bar. Article 376 provides that, at appeal, the President has the same obligation and that Article 340, paragraph 1, applies *mutatis mutandis*.

The Government notes that the violation of Article 6, paragraph 1 and 3 *c*) of the Convention in this case resulted from the case law of the Court of Cassation according to which the Code of Criminal Procedure did not provide for legal aid for appeals on points of law (Court of Cassation decisions No. 381/1982, *Pinika Hronika*, vol. 32, p. 928; No. 724/1992, *Pinika Hronika*, vol. 32, p. 656; and No. 1368/1992).

Immediately after the finding of the violation in this case, the judgment of the European Court of Human Rights was disseminated (in Greek) to the competent services of the Ministry of Justice for consideration on the adoption of the necessary general measures for its execution. It was also published (in Greek) on the official Internet site of the State Legal Council (www.nsk.gr).

Act No. 2721/3 June 1999 has added a new provision (Article 96A) at the end of Article 96 of the Code of Criminal Procedure, which came into force on 1 July 1999 and which enlarged the possibility to have *ex officio* free legal aid in cases in which the accused does not have the means to engage a lawyer. More precisely, this provision extends this possibility to cases concerning the less serious category of crime (*plimmelimata*). It also provides for the compulsory appointment *ex officio* of a lawyer until the end of the proceedings in every instance as well as for the lodging of appeals. Consequently, it covers the whole of proceedings before the Court of Cassation. The lawyer is chosen from a list drawn up by the local Bar every three years in June and transmitted to all courts. The Ministers of Justice and Finance determine, with a common decision, the lawyer fees provided for by the Code of Lawyers.

The Government considers that following the above-mentioned amendment, there is no more risk of violations similar to that found in the present case and that Greece has, consequently, satisfied its obligations under Article 46, paragraph 1 of the Convention."

Limited Liability Company "Sotiris and Nikos Koutras Attee" v. Greece

Appl. No. 39442/98
Court judgment 16 Novembre 2000
Resolution ResDH (2003) 16, 24 February 2003

Articles 6.1 and 13 (right of access to a court and right to an effective remedy)

The Court had found a disproportionate restraint to the applicant company's right of access to a court on account of the fact that the Council of State had mistakenly declared inadmissible his appeal for annulment, and because of the absence of effective remedies to establish his rights.

The Committee of Ministers satisfied itself that the government of the respondent

state had paid the sums provided for in the Court judgment. It took note of the information that the judgment had been sent out to the authorities directly concerned.

Karakasis v. Greece

Appl. No. 38194/97
Court judgment 17 October 2000
Resolution ResDH (2003) 6, 24 February 2003

Article 6, par.a 1 (right to a fair trial)

The Court had found a violation of Article 6, paragraph 1, in respect of the failure to hear the applicant – following his acquittal after a detention on remand – in connection with his entitlement to compensation, and in respect of the absence of any reasons supporting the decision to refuse compensation.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sum provided for in the Court's judgment for non-pecuniary damage. It took note of the following information supplied by the Greek authorities about the measures taken to prevent new violations of the same kind:

Appendix to Resolution ResDH (2003) 6

Information provided by the Government of Greece during the examination of the Karakasis *case by the Committee of Ministers*

"The Government noted that the violations of Article 6, paragraph 1 in this case had resulted from Articles 535, paragraph 1, and 536, paragraph 1 and 2 of the Code of Criminal Procedure and their application by the domestic courts. More precisely:

Article 533, paragraph 2 provided that persons who had been detained on remand and subsequently acquitted had the right to request compensation, if it had been established in the proceedings that they had not committed the criminal offence in respect of which they had been detained on remand.

Article 535, paragraph 1, provided that the state did not have any obligation to pay compensation if the person concerned was, intentionally or by gross negligence, responsible for his or her own detention.

According to Article 536, paragraph 1 and 2, upon a compensation request, the court which had heard the case should decide on the state's obligation to pay compensation in a separate decision issued at the same time as the verdict. However, the court might also issue such a decision *proprio motu*. This decision was final.

In the applicant's case the domestic court decided *proprio motu*, without inviting comments on his part, that he should not be compensated and it did not invoke any reasons for precluding compensation.

The Government indicated that Article 93, paragraph 3 of the Constitution as amended in April 2001, requires that judicial decisions should be supported by detailed reasoning and authorises the law to provide for sanctions in case of non-respect of this rule. Following the constitutional revision, the new Act No. 2915/29 of May 2001 amended Articles 535 and 536 of the Code of Criminal Procedure: the new provisions no longer exclude the possibility of compensation in cases of detention due to "gross negligence" of the detainee and oblige criminal courts to give reasons for their decisions after having heard the persons concerned.

Furthermore, the judgment was published on the official internet site of the State Legal Council (www.nsk.gr) and disseminated to the criminal courts of the country.

The Government considers that, given the developments mentioned above, the risk of a repetition of the violations found in the present case will no longer exist and, consequently, Greece has satisfied its obligations under Article 46, paragraph 1 of the Convention."

Livanos H., G. and E. v. Greece
Teka Ltd v. Greece
Tiburzi v. Greece

Appl. Nos. 53051/99, 50529 and 49222/99
Court judgments of 16 May 2002, 26 June 2002 and 25 October 2001
Resolutions ResDH (2003) 31, 32 and 33 , 24 February 2003

Article 6, par.a 1 (length of proceedings)
Cases struck off the list following friendly settlements

These three cases concerned the excessive length of criminal proceedings combined with civil action for damages (Livanos), and civil proceedings (Teka and Tiburzi).

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicants the sums provided for in the friendly settlements, and that no other measures were required in these cases to conform to the Court's judgment.

"Avis Tourist, Hotel and Rural Industry Enterprises" v. Greece

Appl. No. 30175/96
Interim Resolution DH (98) 314,
25 September 1998
Final Resolution ResDH (2003) 7, 24 February 2003

Article 6.1 (right to a fair trial) and Article 1 of Protocol No. 1 (protection of property)

In this case, the Committee of Ministers, acting under the terms of former Article 32 of the Convention, had held that there had been a violation of Article 6, paragraph 1, of the Convention as regards the unfairness of an expropriation procedure insofar as provisional compensation had been fixed without the applicant being summoned to appear, and as regards the excessive length of the proceedings. It also held that there had been a violation of Article 1 of Protocol No. 1 to the Convention because reasonable compensation had not been paid within the time-limit provided for by law and on account of the system for the "setting-off" of costs in expropriation procedures (with the result that costs were never reimbursed to the persons whose property was expropriated).

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sum fixed for just satisfaction. It took note of the following information supplied by the Greek authorities about the measures taken to prevent new violations of the same kind:

Appendix to Resolution ResDH (2003) 7

Information provided by the Government of Greece during the examination of the "Avis Tourist, Hotel and Rural Enterprises" *case by the Committee of Ministers*

"The Greek Government considers that only the violation of Article 1 of Protocol No. 1 to the Convention as a result of the system of "setting-off" the costs of expropriation procedures calls for special general measures.

It notes that the violation stemmed from Article 1 of legislative decree No. 446/1974 and Article 22 of law No. 3693/1957, according to which, when the state expropriated on its own behalf, the costs incurred by the person expropriated as a result of the expropriation procedure (stamp duties, lawyers' fees, etc.) were always "set off", i.e., they were never reimbursed, so the courts could not order the state to pay costs. However, when the expropriation benefited someone other than the state, that person was required to pay the corresponding costs in full (Article 9 paragraph 5 of law No. 1093/1980).

In order to remedy the violation, Law No. 2882/6 February 2001 (Real Estate Expropriation Code) was adopted and entered into force on 6 May 2001. Under Article 18, paragraph 4 of this law, the practice of "setting-off" legal costs established in Article 22 of Law No. 3693/1957 does not apply to expropriation procedures.

As an interim measure the Commission's report had been circulated to the competent authorities and the civil courts, leading in 2000 to a change in the case law of the Court of Cassation, which concluded in plenary that protection of the right to own property required the compensation paid to the expropriated person to be "full" and "intact". It should therefore cover legal costs. Accordingly, the principle of "setting-off" legal costs, effectively decreasing the compensation, violated the ownership rights of the expropriated person. The Court of Cassation had thus found that in setting-off the legal costs the appeal court had violated the ownership rights of the persons expropriated. It had therefore set aside the corresponding part of the impugned judgment and referred the case to a new court of ap-

peal to review the matter of legal costs (decisions 13 and 17-19/29 June 2000)."

Italy

Guerra and others v. Italy

Appl. No. 14967/89
Court judgment 19 February 1998
Resolution ResDH (2002) 146, 17 December 2002

Articles 2 (right to life), 8 (right to respect for private and family life) and 10 (freedom of expression)

In this case – which concerned the failure by the competent authorities to provide information about the inherent risk and how to proceed in the event of a major accident in a nearby high-risk chemical factory – the Court had found a violation of Article 8.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sum fixed as a just satisfaction. It took note of the following information supplied by the Italian authorities about the measures taken to prevent new violations of the same kind:

Appendix to Resolution ResDH (2002) 146

Information provided by the Government of Italy during the examination of the Guerra and others *case by the Committee of Ministers*

"The Italian Government observes that the violation found in this case was the result of the incorrect application, at different levels, of the Italian legislation in force at the time, mainly presidential decree No. 175 of 18 May 1988 implementing Directive 82/501/EEC of the Council of the European Communities ("the Seveso Directive").

In order to draw the attention of the different authorities concerned to these implementation problems and to their obligation to ensure henceforth that the application of this legislation respects the requirements of Article 8 of the Convention so as to effectively prevent new, similar violations, the judgment of the European Court of Human Rights was rapidly sent out to all authorities concerned. The public was also informed of the European Court's judgment and the resulting obligations incumbent on the Italian authorities, following its publication in Italian translation in several Italian legal journals, notably *Rivista Internazionale dei Diritti dell'Uomo*, No. 2; May-August 1998, pp. 514-523. A summary of the judgment is also available in Italian translation on the internet web site of *La Consulta per la Giustizia Europea dei Diritti dell'Uomo* (organised by a number of associations of lawyers): www.dirittiuomo.it. These awareness-raising measures have contributed to the development of practices ensuring that today, adequate information regarding environmental hazards is rapidly provided.

The Government also draws attention to the fact that the activities concerned in the case ceased definitively in 1994 and that the inquiries subsequently conducted by authorities have confirmed the absence ever since of any high risk activity or stock, according to the criteria established by the legislation in force in this field. The Government thus finds that there is no call today for any further measures in respect of the applicants in this case [...]".

Cantafio v. Italy

Appl. No 14667/89
Interim Resolution DH (95) 260,
20 November 1995
Final Resolution ResDH (2002) 147, 17 December 2002

Article 6.1 (right of access to a court))

In this case, the Committee of Ministers, acting under the terms of former Article 32 of the Convention, had found a violation of Article 6, paragraph 1, for lack of access by the applicant to a court in order to resolve a dispute with a Municipality (since the arbitration committee established for the purpose never met as a result of notification problems and the legislation then in force excluded the possibility of seizing an ordinary court).

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sum fixed for non-pecuniary damage and in respect of costs and expenses. It took note of the following information supplied by the Italian authorities about the measures taken to prevent new violations of the same kind:

Appendix to Final Resolution ResDH (2002) 147

Information provided by the Government of Italy during the examination of the Cantafio *case by the Committee of Ministers*

"The Constitutional Court, by decision No. 152 of 9 May 1996, declared unconstitutional the provision according to which neither of the parties to a dispute could unilaterally derogate from the arbitrator's competence in the field of public works (Article 16 of Law No. 741 of 10 December 1981, which replaced the relevant part of Article 47 of Presidential Decree No. 1063 of 16 July 1962). This finding of unconstitutionality signifies that it is not compulsory to have recourse to arbitration and that each party may seize ordinary courts, in situations, among others, similar to this case. There is therefore no risk of new violations similar to that found in this case.

As regards the individual measures required, Mr Cantafio could, at any time following the above-mentioned decision, have brought the matter before an ordinary court in order to solve the dispute with the administration awarding the contract, at least until 3 October 1996, the date upon which his right to payment for the work carried out is presumed to have lapsed.

The Government also notes that in 1997 the applicant introduced a new application (No. 37851/97), reiterating among other things his complaint of lack of access to a tribunal and that the European Court of Human Rights, by a decision of 30 May 2000, dismissed it in application of Article 35, paragraph 4, of the Convention, having considered that the complaint was substantially the same as the previous application No. 14667/89 and that it did not contain any relevant new information."

Caruso Alfredo v. Italy

Appl. No. 46535/99
Court judgment 5 October 2000
Resolution ResDH (2002) 157, 17 December 2002

Article 6.1 (length of proceedings)
Case struck off the list following a friendly settlement

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sums provided in respect of non pecuniary damage and costs and expenses, and that no other measures were required in the present case to conform to the Court's judgment. In this connection, the Italian authorities stated that they were drafting and adopting new general measures in order to put to an end to the serious problem of excessive length of proceedings, so as to prevent new violations similar to those already found in the present case (see Resolutions DH (97) 336, DH (99) 437 and DH (2000) 135).

Buscemi v. Italy

Appl. No. 29569/95
Court judgment 16 September 1999
Resolution ResDH (2003) 17, 24 February 2003

Articles 6.1 (right to a fair trial) and 8 (right to respect for private and family life)

The applicant had complained that his right to respect for family life had been violated on account of the measures taken by a youth court to remove his daughter from him – including the way a psychological examination was carried out – as well as on account of the statements made in the press on the merits of the case by the presiding judge of the youth court. He had also complained of the lack of impartiality of the said judge.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sum provided for in respect of costs and expenses. Having invited the Italian government to inform it of the measures which had been taken in consequence of the judgment, the Committee of Ministers took note of the following information:

Length of proceedings cases against Italy

On 13 February 2003, the Committee of Ministers continued its examination of general measures undertaken by Italy in order to reduce the excessive length of judicial proceedings in the light of the second annual report prepared by the Italian authorities in conformity with Interim Resolution ResDH (2000) 135 as well as of the information published in Italy at the opening of the judicial year in January 2003.

The relatively encouraging evolution observed when the first report was examined appears, in the light of the latest data, to have generally slowed down and even to have regressed in certain areas. The Committee thus noted that significant progress was yet to be achieved in order for Italian justice fully to comply with the requirements of Article 6 of the Convention as regards the length of proceedings. In this respect, it noted that a remarkable number of further measures are under way and strongly encouraged the Italian authorities to ensure that these measures meet, as soon as possible, the objective of speeding up judicial proceedings. In particular, the Committee stressed the need to respect the time-frame foreseen for the *Sezioni stralcio* to bring to an end the oldest civil cases. Furthermore, the Committee noted with concern that, according to a recent decision of the Court of Cassation, the right to a trial within a reasonable time enshrined in Article 111 of the Constitution, is not considered to be directly binding on Italian judges.

In view of this situation, the Committee of Ministers invited the Italian authorities to intensify their efforts at national level as well as their contacts with the different bodies of the Council of Europe competent in this field.

The Committee will resume consideration of the Annual report 2002 in April 2003 as regards progress made in the field of administrative justice.

"Whereas during the examination of the case by the Committee of Ministers, the government of the respondent state observed that the violation of the Convention was so closely linked to the specific circumstances of the case that no question of general measures arose; nevertheless in order to inform the authorities directly concerned of the outcome of the case, the Court's judgment has been sent out to the Turin Youth Court as well as to the Italian Supreme Judicial Council; in addition, the Court's judgment has been published in Italian in the legal review *Rivista internazionale dei Diritti dell'Uomo*, No. 1, of January-April 2000, pp. 291 and following, and an extract in French is presented on the web site of *La Consulta per la Giustizia Europea dei Diritti dell'Uomo* (organised by a number of associations of lawyers and magistrates): www.dirittiuomo.it; furthermore, the applicant has the possiblity of instituting new proceedings at any time with regard to Article 6 of the Convention to have all questions linked to the removal of the child from the applicant examined."

Amato Del Re, Arrivabene, Ferrari, Fusco, OL. B., S.B., T., V.L and others, F.B. and G.F., Celona, Colucci, De Filippis, Guglielmi, Pane A. and Pane P., Pezza, Stoppini, Tiberio, Barone, Castello G. and S. and Vintani N. and D. and Veronesi, Girolami Zurla, Immobiliare Anba, Micucci, Musiani Dagnini, Pini and Bini, Serlenga, SIT s.r.l., Tentori Montalto, Pittini, Venturi v. Italy
Appls. Nos. 44968/98, 35797/97, 35795/97, 42609/98, 42444/98, 40037/98, 40537/98, 44864/98, 32671/96, 32541/96, 31605/96, 33967/96, 31480/96, 37509/97, 31525/96, 39716/98, 38656/97, 30968/96, 32645/96, 32404/96, 31916/96, 31922/96, 33831/96, 31929/96, 31927/96, 32650/96, 32648/96, 37007/97, 36010/97
Court judgments 7 May and 13 June 2002, 21 February 2002, 4 October 2001, 18 July 2002
Resolutions ResDH (2003) 34, 35, 36 and 37, 24 February 2003

Article 1 of Protocol No. 1 (protection of property)
Cases struck off the list following friendly settlements

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicants the sums provided for, and that no other measures were required in these cases to conform to the Court's judgment.

In this connection, the Italian authorities informed the Committee of Ministers that they were envisaging new general measures (in addition to the adoption, in December 1998, of the law No. 431/98 "Regulations concerning the renting and the repossession of housing", which sets, *inter alia*, the conditions, modalities and deadlines for the implementation of eviction proceedings) in order to put to an end the serious problem of non-enforcement of judicial eviction orders, so as to prevent new similar violations.

Ireland

Croke v. Ireland
Appl. No. 33267/96
Court judgment 21 December 2000
Resolution ResDH (2003) 8, 24 February 2003

Article 5.1 and 5.4 (right to liberty and security)
Case struck off the list following a friendly settlement

The applicant's complaint related to the absence of an independent and automatic review prior to or immediately after his initial detention in a psychiatric institution as well as to the absence of a periodic, independent and automatic review of his detention thereafter.

The Committee of Ministers satisfied itself that the Government of the respondent state had paid the applicant the sum provided for in the friendly settlement. It took note of the following information supplied by the Irish authorities about the measures taken to prevent new violations of the same kind:

Appendix to Resolution ResDH (2003) 8

Information provided by the Government of Ireland during the examination of the Croke *case by the Committee of Ministers*

"In order to bring the Irish Mental Health legislation into conformity with the European Convention of Human Rights, a new Mental Health Act had been enacted in July 2001 and is in the process of being implemented, a measure which, when fully in force, should avoid new violations of the same kind as the one found in this case [...]."

Netherlands

K.K.C. v. Netherlands
Appl. No. 58964/00
Court judgment 21 December 2001
Resolution ResDH (2003) 38, 24 February 2003

Article 3 (prohibition of torture of inhuman or degrading treatment)
Case struck off the list following a friendly settlement

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant – a Russian national of Chechen origin threatened with expulsion to Russia – the sum provided for in the Court's judgment and that it had granted him a residence permit without restrictions.

Poland

Kliniecki v. Poland
Appl. No. 31387/96
Court judgment 21 December 2000
Resolution ResDH (2003) 39, 24 February 2003

Article 6.1 (length of criminal proceedings)
Case struck off the list following a friendly settlement

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicants the sums provided for in the friendly settlements, and that no other measures were required in these cases to conform to the Court's judgment.

Portugal

Sousa Miranda, Conde, Fernandes, Fertiladour S.A., Nascimento, Rego Chaves Fernandes, Galinho Carvalho Matos, Vaz da Silva Girão, Malveiro, Guerreiro, Bento da Mota, Azevedo Moreira, Baptista do Rosário, Caldeira and Gomes Faria, Conçeicão Fernandes, Martos Mellado Ribeiro, Pereira Palmeira and Sales Palmeira, Sociedade Panificadora Bombarralense Lda, Viana Montenegro Carneiro v. Portugal
Appls. Nos. 43658/98, 37010/97, 47459/99, 36668/97, 42918/98, 46462/99, 35593/97, 46464/99, 45725/99, 45560/99, 42636/98, 48959/99, 46772/99, 45648/99, 48960/99, 47584/99, 52772/99, 46143/99 et 48526/99
Court judgments 30 October 2001, 23 March 2000, 18 April 2002, 18 May 2000, 27 September 2001, 21 March 2001, 23 November 1999, 21 March 2002, 14 March 2002, 31 January 2002, 28 June 2001, 30 May 2002, 4 April 2002, 14 February 2002, 20 December 2001, 30 May 2002, 4 July 2002, 14 February 2002 and 30 May 2002
Resolutions ResDH (2002) 151, (2003) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 40, 41, 42, 43, 44, 45, 46 and 47, 17 December 2002 (1st case) and 24 February 2003 (all others)

Article 6.1 (length of civil proceedings)
The 8 last cases had been struck off the list following friendly settlements

The Committee of Ministers satisfied itself that the applicants, in all cases, were paid the sums provided for. It took note of the information given by the Portuguese government that the Court's judgment had been sent out to the authorities directly concerned and that the question of the length of judicial proceedings was being examined in order to verify that such proceedings can be concluded within a reasonable time.

Switzerland

D'Amico Heidi and Salvatore v. Switzerland
Interim Resolution DH (2000) 88, 29 May 2000
Final Resolution ResDH (2003) 28, 24 February 2003

Article 6.1 (length of proceedings concerning civil rights and obligations before administrative courts)

In this case, the Committee of Ministers, acting under the rules of former Article 32 of the Convention, had found a violation of Article 6, paragraph 1, and held that certain sums should be paid as just satisfaction and in respect of costs and expenses.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicants the sums provided for, and took note of the measures taken by the Swiss authorities to conform to its decisions.

Turkey

Can, Özçetin, Polat Yüksel v. Turkey
Appls. Nos. 33369/96, 34591/96 and 33645/96
Court judgments 5 December 2000
Resolutions ResDH (2002) 158, 159 and 160, 17 December 2002

Article 6.1 (length of criminal proceedings)
Cases struck off the list following friendly settlements

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicants the sums provided for in the friendly settlements, and that no other measure was required in the three cases to conform to the Court's judgment.

United Kingdom

Sawden v. Royaume Uni
Appl. No. 38550/97
Court judgment 12 March 2002
Resolution ResDH (2002) 161, 17 December 2002

Article 14 (prohibition of discrimination), taken in conjunction with Article 8 (right to respect for family life) and Article 1 of Protocol No. 1 (protection of property), and Article 13 (right to an effective remedy)
Case struck off the list following a friendly settlement

The applicant complained that the lack of provision for widowers' benefits under British social security legislation resulted in discrimination against the applicant on grounds of sex.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicants the sums provided for in the friendly settlement. It recalled, as far as general measures were concerned, that legislative changes had been introduced in the Welfare Reform and Pensions Act 1999, mainly Section 54 and 55, granting equal treatment to widows and widowers in respect of social security benefits as from 9 April 2001.

Devlin v. Royaume Uni
Appl. No. 29545/95
Court judgment 30 October 2001
Resolution ResDH (2003) 9, 24 February 2003

Article 6.1 (right of a ccess to a court)

The applicant had applied for a position with the Northern Ireland Civil Service. The Secretary of State for Northern Ireland informed him that he had been unsuccessfull "for the purpose of safeguarding national security and of protecting public safety". Mr Devlin's application for judicial review concerning the Secretary of State's decision was rejected.

The Court had noted that (i) at no stage of the proceedings brought by the applicant was there any independent scrutiny by the relevant fact-finding bodies of the facts which led the Secretary of State to issue the conclusive certificate, (ii) that no evidence as to why the applicant was considered a security risk was ever presented to the Fair Employment Tribunal, (iii) nor was there any scrutiny of the factual basis of the Secretary of State's decision in the proceedings for judicial review brought in the High Court. Finding a disproportionate restriction on the applicant's right of access to a court, it held that there had been a violation of the applicant's right of access to a court.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sums provided for the non pecuniary damage and in respect of costs and expenses.

The government of the United Kingdom recalled that measures had already been taken to avoid new violations of the same kind as that found in this case, notably through the entry into force on 29 July 1999 of the Northern Ireland Act (Tribunal (Procedure) Rules 1999), (see Resolution DH (2000) 49 in the *Tinnelly* case) which provides, under Rule 7 of the Tribunal Rule, the right of judicial appeal against such certificates.

Mills v. Royaume Uni
Appl. No. 35685/97
Court judgment 5 June 2001
Resolution ResDH (2003) 10, 24 February 2003

Article 6.1 (right to a fair trial)

The Court had found that a district army court-martial had not met the requirements of independence and impartiality under Article 6, paragraph 1.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sums provided for in the Court's judgment in respect of costs and expenses.

The authorities of the United Kingdom recalled that measures had already been taken to avoid new violations of the same kind as that found in this case, notably through the entry into force on 1 April 1997 of the Armed Forces Act 1996 which amended the relevant provisions of the Army Act 1955 and the Air Force Act of 1955 (see e.g., Resolution DH (98) 11 in the case of *Findlay v. United Kingdom* and Resolution DH (98) 12 in the case of *Coyne v. United Kingdom*).

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.

2nd Council of Europe Round Table with National Human Rights Institutions

A Second Round Table with National Human Rights Institutions took place in November 2002 in Belfast and Dublin, the main themes of which were (i) the Role of national human hights institutions in the prevention and resolution of conflict and tension; (ii) the Rights of asylum seekers; and (iii) Co-operation between national human rights institutions and between them and the Council of Europe and other international organisations.

At the close of this Round Table, participants adopted Recommendations on each of these three issues.

Steering Committee on Human Rights

The Bureau of the Steering Committee for Human Rights held a meeting in Paris on 30-31 January 2003. Work focussed on the drafting of the final report on the strengthening of the system for the protection of human rights established under the European Convention on Human Rights. This report must be submitted to the Ministers' Deputies on 17 April 2003.

Bodies answerable to the CDDH

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

In 2002, the DH-S-AC focussed on the follow-up to Recommendation Rec (2002) 2 of the Committee of Ministers to member states on access to official documents. Within this framework, a seminar entitled "What Access to Official Documents?" took place in Strasbourg from 27 to 29 November 2002. It provided an opportunity to exchange information on national experiences in the various areas covered by the Recommendation and to identify the main difficulties and potential solutions concerning the implementation of the Recommendation. The participants of the Seminar, *inter alia*:

- strongly encouraged the Council of Europe to elaborate a binding instrument on access to official documents, further to the rules laid down in Recommendation (2002) 2, together with a monitoring system in order to help States to adopt appropriate legislation and to implement it;
- stressed the importance of a booklet on access to official documents and, therefore, urged the Council of Europe to finalize it and to ensure that member states widely disseminate such a document, notably among their public officers;
- encouraged the Council of Europe to continue helping its members states to better implement the principles set out in Recommendation (2002) 2, notably by supporting training of senior members of national administration and of public officers; by giving comments, on request, on draft laws concerning access to official documents and, if need be, by drafting such model laws. Such a role should be played in connection with civil society.

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

A new phase of work for this Group was initiated by a Committee of Ministers Declaration of 7 November 2002 and the subsequent terms of reference received by the CDDH from the Ministers' Deputies.

Within these terms of reference, the Group's objective is to draw up a set of concrete and coherent proposals which, if adopted, would provide a significant tool for preserving the effectiveness of the Court and of the Convention system in general. Under the terms of reference, the following areas were highlighted as having to particularly be taken into account when drawing up proposals:

a. Preventing violations at national level and improving domestic remedies;
b. Optimising the effectiveness of the filtering and subsequent processing of applications;

c. Improving and accelerating execution of judgments of the Court.

To this end the Group held its 6th, 7th, and 8th meetings in Strasbourg on 4-6 December 2002, 5-7 February and 19-21 February 2003, respectively. It also held a consultation meeting, mainly with NGOs, national human rights institutions and lawyers, on 17 and 18 February 2003 in Strasbourg on the subject "Guaranteeing the long-term effectiveness of the control system of the European Convention on Human Rights". This meeting enabled CDDH-GDR members to hear the reactions of representatives of the invited bodies to the proposed reforms to the system of control of the European Convention on Human Rights under consideration by the CDDH-GDR.

The completion date for the terms of reference is 17 April 2003.

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

In accordance with the terms of reference given it by the CDDH, this Committee continued to examine at its 30th meeting (18-20 December 2002) the issue of protecting human rights during armed conflicts, and during internal disturbances and tensions. Its discussions focused on three specific questions: Article 15 of the European Convention of Human Rights, a possible fact-finding mechanism, and the proposed Committee of Ministers recommendation on situations where there is a threat or where there are allegations of serious or massive human rights violations, calling on states to take measures to protect human rights more effectively in such situations.

European Social Charter

The European Social Charter sets out rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by the States Parties. This legal instrument was recently revised, and the 1996 revised European Social Charter, which came into force in 1999, is gradually replacing the initial 1961 treaty.

Signatures and ratifications

43 members states of the Council of Europe have signed the 1961 Charter or the 1996 revised Charter.

To date, 33 states have ratified one or other of the instruments.

About the Charter

Rights guaranteed by the Charter

The rights guaranteed by the Charter concern all individuals in their daily lives, in such diverse areas as housing, health, education, employment, social protection, the movement of persons and non-discrimination.

European Committee of Social Rights

The European Committee of Social Rights ascertains whether countries have honoured the undertakings set out in the Charter. Its thirteen independent, impartial members are elected by the Council of Europe Committee of Ministers for a period of six years, renewable once. The Committee determines whether or not national law and practice in the States Parties are in conformity with the Charter.

A monitoring procedure based on national reports

Every year the States Parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter.

The Committee examines the reports and decides whether or not the situations in the countries concerned are in conformity with the Charter. Its decisions, known as "conclusions", are published every year. If a state takes no action on a Committee decision to the effect that it does not comply with the Charter, the Committee of Ministers addresses a recommendation to that state, asking it to change the situation in law or in practice.

The Committee of Ministers'work is prepared by a Governmental Committee comprising representatives of the governments of the States Parties to the Charter, assisted by observers representing European employers' organisations and trade unions.

A collective complaints procedure

Under a protocol opened for signature in 1995, which came into force in 1998, complaints of violations of the Charter may be lodged with the European Committee of Social Rights.

Effects of the application of the Charter in the various states

As a result of the monitoring system, states make many changes to their legislation or practice in order to bring the situation into line with the Charter. Details of these results are described in the "Survey", published annually by the Charter Secretariat.

The list of complaints lodged is as follows:

No. 1/1998 – International Commission of jurists v. Portugal

The complaint related to Article 7 (para. 1) of the Charter (prohibition to work for children under fifteen years). It alleged that the situation in practice in Portugal was in violation of this provision.

The European Committee of Social Rights declared the complaint admissible. It concluded that there was a violation of Article 7 (para. 1) and transmitted its decision on the merits of the complaint to the Parties and to the Committee of Ministers.

The Committee of Ministers adopted Resolution ResChS (99) 4 on 15 December 1999.

No. 2/1999 – European Federation of Employees in Public Services v. France

The complaint related to Articles 5 (the right to organise) and 6 (the right to bargain collectively). It alleged that the armed forces were denied these rights.

The European Committee of Social Rights declared the complaint admissible. It concluded that there was no violation of Articles 5 and 6 and transmitted its decision on the merits of the complaint to the Parties and to the Committee of Ministers.

The Committee of Ministers adopted Resolution ResChs (2001) 2 on 7 February 2001.

No. 3/1999 – European Federation of Employees in Public Services v. Greece

The complaint related to Articles 5 (the right to organise) and 6 (the right to bargain collectively). It alleged that the armed forces were denied these rights.

The European Committee of Social Rights declared the complaint inadmissible.

No. 4/1999 – European Federation of Employees in Public Services v. Italy

The complaint related to Articles 5 (the right to organise) and 6 (the right to bargain collectively). It alleged that the armed forces were denied these rights.

The European Committee of Social Rights declared the complaint admissible. It concluded that there was no violation of Articles 5 and 6 and transmitted its decision on the merits of the complaint to the Parties and to the Committee of Ministers.

The Committee of Ministers adopted Resolution ResChs (2001) 3 on 7 February 2001.

No. 5/1999 – European Federation of Employees in Public Services v. Portugal

The complaint related to Articles 5 (the right to organise) and 6 (the right to bargain collectively). It alleged that the armed forces were denied these rights.

The European Committee of Social Rights declared the complaint admissible. It concluded that there was no violation of Articles 5 and 6 and transmitted its decision on the merits of the complaint to the Parties and to the Committee of Ministers.

The Committee of Ministers adopted Resolution ResChs (2001) 4 on 7 February 2001.

No. 6/1999 – Syndicat national des professions du tourisme v. France

The complaint related to Articles 1 (para. 2) (prohibition against all forms of discrimination in access to employment), 10 (the right to vocational training) and E (non-discrimination) of the Revised Charter. It alleged discrimination in access to work and vocational training for guide-interpreters and national lecturers.

The European Committee of Social Rights declared the complaint admissible. It concluded that there was a violation of Article 1 (para. 2) and transmitted its decision on the merits of the complaint to the Parties and to the Committee of Ministers.

The Committee of Ministers adopted Recommendation RecChs (2001) 1 on 30 January 2001.

No. 7/2000 – International Federation of Human Rights Leagues v. Greece

The complaint related to Article 1 (para. 2) (prohibition of forced labour) of the Charter. It alleged that a number of legislative provisions and regulations did not respect the prohibition of forced labour.

The European Committee of Social Rights declared the complaint admissible. It concluded that there was a violation of Article 1 (para. 2) and transmitted its decision on the merits of the complaint to the Parties and to the Committee of Ministers.

The Committee of Ministers adopted Resolution ResChS (2001) 6 on 5 April 2001.

No. 8/2000 – Quaker Council for European Affairs v. Greece

The complaint related to Article 1 (para. 2) (prohibition of forced labour) of the Charter. It alleged that the application in practice of the act authorising alternative forms of military service for conscientious objectors did not respect the prohibition of forced labour.

The European Committee of Social Rights declared the complaint admissible. It concluded that there was a violation of Article 1 (para. 2) and transmitted its decision on the merits of the complaint to the Parties and the Committee of Ministers.

The Committee of Ministers adopted Resolution ResChs (2002) 3 on 6 March 2002.

No. 9/2000 – Confédération Française de l'Encadrement – CGC v. France

The complaint related to Articles 2 (the right to just conditions of work), 4 (the right to a fair remuneration), 6 (the right to bargain collectively including the right to strike) and 27 (the right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Charter. It alleged that the provisions relating to the working hours of white-collar workers contained in the second Act on the Reduction of Working Hours (Act No. 2000-37 of 19 January 2000 – "Loi Aubry n° 2") violated these provisions.

The European Committee of Social Rights declared the complaint admissible. It concluded that there was a violation of Article 2 (para. 1) and of Article 4 (para. 2) and transmitted its decision on the merits of the complaint to the Parties and to the Committee of Ministers.

The Committee of Ministers adopted Resolution ResChs (2002) 4 on 26 March 2002.

No. 10/2000 – Tehy ry and STTK ry v. Finland

The complaint related to Article 2 (para. 4) (the right to additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations) of the European Social Charter. It alleged that the fact that hospital personnel, who were subjected to the hazards of radiation during the course of their work were no longer entitled to special radiation related leave, violated this provision of the Charter.

The European Committee of Social Rights declared the complaint admissible. It concluded that there was a violation of Article 2 (para. 4) and transmitted its decision on the merits of the complaint to the Parties and to the Committee of Ministers. The Committee of Ministers adopted Resolution ResChs (2002) 2 on 21 February 2002.

No. 11/2001 – European Council of Police Trade Unions v. Portugal

The complaint related to Articles 5 (right to organise) and 6 (right to collective bargaining). It alleged that members of *Polícia de Segurança Pública* were not guaranteed these rights.

The European Committee of Social Rights declared the complaint admissible. It concluded that there was no violation of Articles 5 and 6 and transmitted its decision on the merits of the complaint to the Parties and to the Committee of Ministers.

The Committee of Ministers adopted Resolution ResChS (2002) 5 on 17 July 2002.

No. 12/2002 – Confederation of Swedish Enterprise v. Sweden

The complaint related to Article 5 (right to organise). It alleged that the right not to belong to a trade union was not guaranteed in the manner required under Article 5.

The European Committee of Social Rights declared the complaint admissible.

No. 13/2002 – Autisme Europe v. France

The complaint related to Article 15 (right of persons with disabilities), Article 17 (right of children and young persons to social, legal and economic protection) and to Article E (non-discrimination) of the Revised Charter. It alleged insufficient educational provision for autistic persons constituting a violation of the above provisions.

The European Committee of Social Rights declared the complaint admissible.

Conferences, seminars, meetings, workshops, training programmes

- 7-8 November 2002, Kyiv, Ukraine: Seminar on the revised European Social Charter
- 17-19 December 2002, Moscow, Russian Federation: Seminar on the revised European Social Charter Hearing at the State Duma
- 11 February 2003, St Petersburg, Russian Federation : Seminar on the revised European Social Charter

Publications

- **European Committee of Social Rights – Conclusions 2002**

ISBN 92-871-4925-9

- **European Committee of Social Rights – Conclusions XVI-1 Vols. 1 & 2**

ISBN 92-871-5003-6
ISBN 92-871-5005-2

Internet site: site: http://www.coe.int/T/E/Human_Rights/Esc/

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

Article 3 of the European Convention on Human Rights provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". This article inspired the drafting of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

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

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 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.

Visits

Moldova

24 February-1 March 2003

This was the CPT's second visit to the Transnistrian region, the first visit having taken place in November 2000. [This region unilaterally declared itself an independent republic in 1991 and negotiations aimed at resolving this situation are still taking place.] The CPT's delegation examined developments since its first visit, in particular as regards the treatment of persons held in penitentiary establishments. It also assessed the means required to improve the situation of such persons.

The delegation visited Prison No. 1 in Glinoe as well as Colony No. 2 and the remand prison (SIZO) at Colony No. 3 in Tiraspol. It also visited the Police Headquarters and the temporary holding facility (IVS) and administrative detention facility in Tiraspol.

The CPT examines conditions of detention of Abdullah Öcalan

16-17 February 2003

The CPT delegation, which comprised a Belgian lawyer and a Swiss forensic doctor, visited the prison on the island of Imrali and interviewed Abdullah Öcalan, the establishment's sole inmate.

The CPT's visit was triggered by persistent reports that relatives and lawyers of Abdullah Öcalan have been experiencing considerable difficulties in gaining access to Imrali island in order to visit him. The delegation reviewed his conditions of detention in the light of recommendations made by the CPT after its previous visits to Imrali Closed Prison (in March 1999 and September 2001).

In the course of the visit, the CPT's delegation met Levent Ersüz, Regional Gendarmerie Commander of Bursa and Emin Özler, Chief Public Prosecutor of Bursa, and discussed in detail with them means of ensuring that Abdullah Öcalan's right to receive visits from his relatives and lawyers is fully effective in practice. Further, the delegation held consultations with two of Abdullah Öcalan's lawyers.

Romania

9-11 February 2003

During the visit, the delegation met the Minister of the Interior, as well as senior officials from the Interior Ministry.

The main purpose of the visit was to re-examine conditions of detention in the General Directorate of the Police in Bucharest. The CPT visited this establishment in 1995, 1999 and, most recently, September 2002. Following the last visit, the Romanian authorities informed the CPT of measures taken to improve the situation in this establishment and invited the Committee to return to review developments.

Luxembourg

2-7 February 2003

A delegation of the CPT has carried out its second periodic visit to the Grand-Duchy of Luxembourg. In the course of the visit, the delegation held consultations with the Minister of Justice, the Minister of the Interior, the Minister of Health and Social Welfare, and the Minister of Family, Social Solidarity and Youth, as well as with senior officials from the ministries concerned.

The delegation followed up a certain number of issues already examined during the two previous visits, in particular in respect of the Luxembourg Prison at Schrassig and the State Socio-Educational Centre for Boys at Dreiborn. In addition, the delegation examined in detail the situation of foreign nationals deprived of their liberty under aliens legislation.

The delegation visited the following places: establishments of law enforcement agencies (Police, Customs and Excise Administration), prisons, health establishments and juvenile institutions.

Sweden

27 January-5 February 2003

During this visit, the CPT's fourth to Sweden, the delegation reviewed measures taken by the Swedish authorities in response to recommendations made after previous visits, in particular as regards the safeguards offered to persons detained by the police, mechanisms for handling complaints against the police and the regimes offered to remand prisoners. It also examined the situation in psychiatric institutions and in homes providing care for young persons and substance abusers.

The CPT's delegation met the Minister for Justice, the Director of the Public Prosecution Authority, the Head of Legal Affairs of the National Police Board, the Director General of the National Prison and Probation Administration, and the Chief Parliamentary Ombudsman. It also held talks with senior officials from the Ministry of Foreign Affairs, the Ministry of Health and Social Affairs, the Aliens Appeals Board and the Migration Board.

The delegation visited the following places: police establishments, prisons, psychiatric establishments, establishments for young persons and establishments for substance abusers.

Portugal

17- 20 December 2002

The purpose of the visit was to review developments at Oporto Prison. The Committee had previously visited Oporto Prison in May 1995, October 1996 and April 1999. On those occasions, the prison was overcrowded and prisoners' living areas were unhygienic, there was a high level of inter-prisoner intimidation/violence, drugs were widely available and staffing levels on the wings were inadequate. Following the 1999 visit, the Portuguese authorities informed the CPT of action taken in the light of the CPT's recommendations and invited the Committee to revisit the establishment.

In the course of its visit, the CPT's delegation met the Director General of Prison Services and the Deputy Director General of Prison Services for Education, Sentences and Planning.

Ukraine

24 November-6 December 2002

During the visit, the CPT's fourth to Ukraine, the delegation paid particular attention to the treatment of persons deprived of their liberty by law enforcement agencies and reviewed developments concerning penitentiary establishments and mental health institutions since its last visit two years ago. The delegation also examined in detail the situation of immigration detainees.

In the course of the visit, the delegation met in particular the Deputy Director at the Cabinet of Ministers of Ukraine, the Director and First Deputy Director of the Department of the Execution of Sentences, the Deputy State Secretary for Internal Affairs, the Deputy State Secretary of Health and the First Deputy Head of the Committee for the Protection of National Borders of Ukraine.

In addition, the delegation held consultations with the Deputy Prosecutor General of Ukraine. It also had discussions with the National Ombudsman of Ukraine.

The delegation visited the following places: law enforcement agencies, prisons, border guard establishments and mental health establishments.

Azerbaijan

24 November-6 December 2002

During the visit, the CPT's delegation focused its attention on the treatment of persons detained by the police, the situation of remand prisoners, the care provided to inmates suffering from tuberculosis, and conditions in military detention facilities. The delegation also visited a centre for forensic psychiatric assessment and two border guard establishments.

At the outset of the visit, the CPT's delegation held consultations with the Minister of Justice, the Minister of Health, the Deputy Minister of Internal Affairs, the Prosecutor General and the Human Rights Commissioner.

The delegation visited the following places: establishments under the authority of the Ministry of Internal Affairs (temporary detention centre, special reception station, police stations), establishments under the authority of the Ministry of National Security, the Ministry of Justice, the Ministry of Health, the Ministry of Defence and the National Border Service.

"the former Yugoslav Republic of Macedonia"

18-27 November 2002

In the course of the visit, the CPT's fourth to this country, the delegation held consultations with the Minister of Justice, the Minister for the Interior, the Minister for Foreign Affairs and the Minister of Health. It also held discussions with senior officials from those Ministries, as well as from the Ministry of Labour and Social Policy, and met judicial and prosecuting authorities.

The CPT's delegation reviewed developments concerning the treatment of persons deprived of their liberty by law enforcement agencies and legal remedies in cases involving allegations of ill-treatment. It also examined, for the first time, conditions of detention in remand prisons and in a social care home for mentally handicapped persons.

The delegation visited the following establishments: establishments under the authority of the Ministry of the Interior, the Ministry of Justice, the authority of the Ministry of Health and the Ministry of Labour and Social Policy.

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 governments have agreed to the publication of CPT reports regarding visits listed below.

United Kingdom

Visit of 17-21 February 2002

In a report published at the request of the United Kingdom authorities together with their response, the CPT assessed the treatment of foreigners detained in the United Kingdom pursuant to the Anti-Terrorism, Crime and Security Act 2001.

The CPT's delegation heard no allegations of physical ill-treatment by police officers of persons detained under the 2001 Act and, with one exception, there were no allegations of physical ill-treatment by prison officers. Some allegations of verbal abuse were received.

Persons detained pursuant to the 2001 Act were being treated as Category A prisoners, the highest security risk classification. Their material conditions of detention were of an adequate standard. However, as regards out-of-cell time and activities, the situation found left a great deal to be desired. In their response, the United Kingdom authorities inform the CPT that persons detained under the 2001 Act have been moved to units capable of offering enhanced activities and that their regime is subject to ongoing review.

As regards health care, the CPT recommended that consideration be given to the specific needs – both present and future – of persons detained under the 2001 Act, in terms of psychological support and/or psychiatric treatment. In their response, the United Kingdom authorities underline the commitment of health care staff to providing an adequate level of care to the detainees.

Council of Europe Secretary General Walter Schwimmer welcomed the decision to publish these documents and highlighted the constructive spirit which characterises the well-established co-operation between the Committee and the United Kingdom. Mr Schwimmer also expressed his appreciation of the clear statement by the United Kingdom Government that actions taken by its institutions and officials to combat terrorism and to preserve a democratic society will at all times be in accordance with the fundamental human rights of any person against whom action is taken.

Italy

Visit of 13-25 February 2000

Follow-up visit of November 1996

In two reports, the CPT assessed the treatment of persons deprived of their liberty in Italy. The reports, which have been published at the request of the Italian authorities, together with their responses, concern the third periodic visit to Italy, as well as a follow-up visit carried out at San Vittore Prison (Milan).

Given the deficiencies observed during the 2000 visit, the CPT recommended an inspection of all detention facilities of law enforcement agencies. In their response, the Italian authorities highlight the improvements made in the light of the CPT's standards. The CPT also welcomed the closing-down of Francavilla Fontana Temporary holding centre for foreign nationals, in response to an immediate observation made by its delegation.

The CPT made numerous recommendations concerning the prison system; one of the most important concerned prisoners subject to Section 41bis of the Prison Law. In their response, the authorities describe efforts made to ensure appropriate contacts and activities for prisoners subject to that regime. In addition, they outline the measures taken following the CPT's recommendations concerning Bologna and Naples (Poggioreale) Prisons; they relate in particular to the improvement of the material conditions of detention and of the programmes of activities offered to prisoners.

A number of recommendations were also made by the Committee concerning establishments for minors (Bari, Bologna, Nisida), as well as the Judicial Psychiatric Hospital in Montelupo Fiorentino. In their response, the authorities inform the CPT of their decision to entirely rebuild the Penal Institution for Minors in Bologna and to set up an *ad hoc* commission mandated to analyse the specific problems faced by judicial psychiatric hospitals.

Turkey

Visit of 2-14 September 2001

In its report published on 24 April 2002, the CPT assessed the treatment of persons held in police stations, prisons (including F-type establishments and the Imrali Closed Prison) and reformatories for juveniles. The response to that report has been published at the request of the Turkish authorities.

The Turkish Government's response was finalised on 20 September 2002. Consequently, it does not reflect the most recent developments on some of the issues raised by the CPT in its report.

As a result of legislative amendments which entered into force on 11 January 2003, important improvements have been introduced concerning two subjects of particular interest to the CPT: access to a lawyer for detained persons suspected of offences falling under the jurisdiction of the State Security Courts, and criminal proceedings in respect of ill-treatment.

Further, thanks to a Circular issued by the Minister of Justice on 10 October 2002, all prisoners in F-type prisons can now participate in the regular conversation periods for groups of up to ten persons,

Albania

Visits of 9-19 December 1997, 13-17 December 1998, 4-14 December 2000 and 22-26 October 2001

The Albanian Government has authorised the publication of all reports on visits to its country by the CPT. The reports concern four visits, carried out between 1997 and 2001. They provide a full picture of the evolution and impact of the CPT's work in Albania over the past five years.

The CPT has visited numerous establishments, including police stations, prisons and psychiatric hospitals, throughout the country and has made detailed recommendations to improve the treatment and conditions of detention of persons held there. Particular areas of concern, addressed in the reports, are ill-treatment by the police, poor material conditions in police detention facilities, prison overcrowding and precarious living conditions for psychiatric patients.

In their responses, which are published together with the reports, the Albanian authorities provided detailed information on the measures taken to implement the CPT's recommendations. One particularly noteworthy development was a significant decrease in the number of deaths at Elbasan Psychiatric Hospital, following improvements made as regards heating, hygiene and food in the establishment.

Cyprus

Visit of 22-30 May 2000

The visit did not extend to the occupied part of the island. The CPT expresses the hope that, in the interests of avoiding a vacuum as regards the protection of human rights in that part of Cyprus, appropriate ways and means will be found to enable the Committee to exercise its mandate throughout the island.

The information gathered during the visit indicated that physical ill-treatment by the police remained a serious problem in Cyprus. In their response, the Cypriot authorities described measures taken to combat police ill-treatment, including the adoption of legislation that will introduce a presumption of ill-treatment by the police in case a detained person displays injuries at the end of his custody.

The CPT also re-examined the situation at Nicosia Central Prisons, as regards, *inter alia*, the regime offered to prisoners, confidentiality of medical information, segregation of hepatitis/HIV positive prisoners and treatment of mentally -ill prisoners.

Slovenia

Visit of 16-27 September 2001

This report assesses the treatment of people held in police stations, prisons, psychiatric establishments and centres for illegal aliens in Slovenia.

The report has been published at the Slovenian authorities' request, together with their response. It covers the CPT's second visit to Slovenia.

Persons deprived of their liberty by the police in Slovenia are generally treated correctly. Nevertheless, the CPT has emphasised the need to exercise continuing vigilance in this area. In their response, the Slovenian authorities indicate that police training has been further improved and that police complaints procedures will be made more effective in the future. Further positive developments include the continuing refurbishment of all police stations and the planned closing down of the centre for aliens in Ljubljana and the opening of a new facility in Postojna.

Since the CPT's first visit to Slovenia in 1995, the country's prison population has grown by more than 80% and has resulted in overcrowding in certain establishments. The Committee has proposed measures to curb this trend. In this connection, the Slovenian authorities have taken steps to make increased use of probation and early release. The CPT also made recommendations to improve remand prisoners' contacts with their families; the Slovenian authorities have subsequently introduced measures to this effect.

As regards social welfare establishments and psychiatric hospitals, the Committee has stressed that net-beds are not an appropriate means of dealing with agitated residents or patients. In their response, the Slovenian authorities emphasise that discontinuation of the use of net-beds is in progress throughout the country. The authorities also refer to measures aimed at improving living conditions at the two psychiatric establishments visited by the CPT, such as replacing large dormitories by smaller rooms.

Moldova

Visit of 27-30 November 2000

Following its first visit to the Transnistrian region of the Republic of Moldova (a region which unilaterally declared itself an independent republic in 1991), the CPT drafted a report highlighting the severe overcrowding of penitentiary establishments. It also expressed great concern about the inadequate level of care provided to prisoners suffering from tuberculosis. In their response, the local authorities of the Transnistrian region described various measures taken to tackle these problems but also stressed that progress is hindered by a lack of funds.

The CPT drew attention to the significant number of detained persons, interviewed by its delegation, who alleged ill-treatment by the police. It recommended a strengthening of fundamental safeguards against ill-treatment as well the stepping up of professional training for law enforcement officials. Measures to improve the poor conditions in the detention facility at Tiraspol Police Headquarters were also identified. The local authorities of the Transnistrian region emphasised their willingness to implement the CPT's recommendations and highlighted various specific steps already taken.

In response to concerns expressed by the CPT about the solitary confinement regime applied to three members of the Ilascu group, the local authorities of the Transnistrian region affirmed that the prisoners concerned were isolated at their own request. One of those prisoners, the parliamentarian Ilie Ilascu, was released on 5 May 2001.

The report on the visit has been published, with the agreement of both the authorities of the Republic of Moldova and the local authorities of the Transnistrian region. The local authorities' responses have also been made public.

Liechtenstein

Visit of 31 May-2 June 1999

The Government of the Principality of Liechtenstein has requested the publication of the report of the CPT on its periodic visit to Liechtenstein, together with the authorities' response.

It was the Committee's second periodic visit to Liechtenstein, the first being organised in 1993. The Committee reexamined the safeguards against the ill-treatment of persons in police custody and the activities available to inmates at Vaduz Prison. In their response, the Liechtenstein authorities provided information on the measures which have been taken upon the CPT's report.

Greece

Visit of 23 September-5 October 2001

The Greek government has requested the publication of the report of the CPT on its periodic visit, together with the authorities' response. The CPT reviewed the treatment of persons detained by law enforcement officials and conditions of detention in police stations, transfer centres, border guard posts and holding facilities for aliens. As regards prisons, it reexamined the situation with respect to overcrowding and the regime provided to prisoners. In their response, the Greek authorities provide information on the measures being taken upon the CPT's report.

Netherlands (including the Netherlands Antilles)

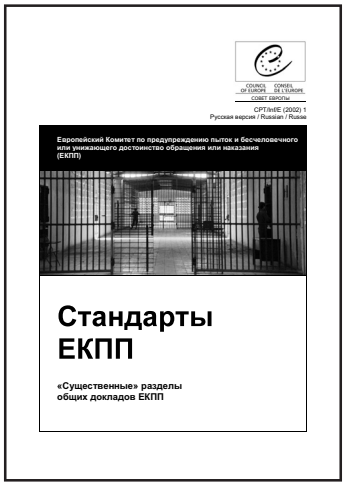
Visit of 17-26 February 2002

In the Kingdom in Europe, the CPT received no allegations of ill-treatment by law enforcement officials. Some recommendations were made regarding conditions of detention in police establishments (e.g., concerning access to outdoor exercise for remand prisoners) and fundamental safeguards for persons in police custody (as regards, in particular, access to a lawyer during the initial period of detention for interrogation purposes). The CPT reviewed the situation at the Extra Security Prison (EBI) in Vught; it recommended measures in order to prevent inter-prisoner violence, improve the regime and define more precisely the conditions under which placement in this establishment may be extended. Other recommendations were made as regards the treatment of persons suspected of carrying drugs *in corpore*, held at Bloemendaal Special Detention Facility.

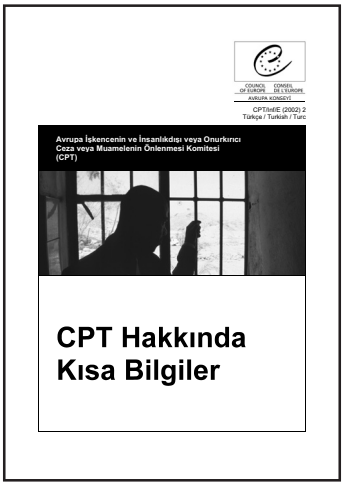
During the visit to the Netherlands Antilles, the CPT reviewed the situation at Bon Futuro Prison in Curacao and visited, for the first time, Pointe Blanche Prison and the Central Police Station in Sint Maarten. The conditions of detention in that police station were unacceptable, and the authorities made a commitment to take measures immediately to remedy this situation. At Bon Futuro Prison, the material conditions had improved, but a severe shortage of staff had numerous negative consequences; in particular inter-prisoner violence and the absence of a regime. Conditions at Pointe Blanche Prison were generally more favourable, despite critically low staffing levels.

All CPT's reports are available on the CPT's website: http://www.cpt.coe.int/

Publications



During its visits, the CPT has become aware of a need to make available background publications in non-official languages in order to reach as many European citizens as possible.



These documents include a set of 4 booklets:

1. The CPT in brief
2. Preventing ill-treatment
3. Standards of the CPT
4. Text of the Convention (as amended by the Protocols) and the explanatory report

The complete texts of the CPT background publications are now published in 8 languages: **Albanian**, **German**, **Estonian**, **Romanian**, **Russian**, **Serbian**, **Turkish** and **Urkainian**.

Extracts from these documents are available in other languages and new translations are planned for 2003.

They are also available on the CPT's website, under the section “Other languages”

The whole of the CPT’s website is to be published on CD-Rom at the end of April 2003.

Framework Convention for the Protection of National Minorities

The particularity of Europe is the diversity of traditions and cultures of European peoples with shared values and a common history.

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, it entered into force on 1 February 1998. The current state of signatures and ratifications of the convention is shown in the appendix to this *Bulletin*; for detailed, up-to-date information, see the Council of Europe's Treaty Office site, http://conventions.coe.int/.

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 28 February 2003, the Advisory Committee had received 31 state reports and already adopted 26 opinions, 3 of them, in respect of Lithuania, Sweden and Switzerland, adopted during its 16th plenary meeting, held from 17 to 21 February 2003. The last three opinions will be forwarded to the Committee of Ministers.

On 15 January 2003 the Committee of Ministers adopted an outline for the state reports to be submitted under the second monitoring cycle, in conformity with Article 25 of the Framework Convention for the Protection of National Minorities. This outline is meant to provide States Parties with some guidance as to the structure and information of second state reports. Following this outline, second state reports should largely focus on the follow-up given to the results of the first monitoring cycle.

As at 28 February 2003, the Committee of Ministers had adopted and made public conclusions and recommendations in respect of 18 State Parties.

Stability Pact for South Eastern Europe

Three projects concerning national minorities are currently being implemented.

These projects include a non-discrimination review aimed at identifying discriminatory provisions in the legislation, policies and practices of the countries of the region and recommending action to bring legislation and practice into line with European standards. To date, the following Country groups of experts have submitted a Preliminary Assessment Report: Albania, Hungary, Moldova, Romania, the Federal Republic of Yugoslavia-Serbia, "the former Yugoslav Republic of Macedonia" and Ukraine.

There is also a project concerning acceptance and implementation of existing standards which is geared towards encouraging the countries in the region to sign and ratify all relevant international standards and also ensure that these standards are fully implemented in practice at national level and local level.

Finally there is a project concerning bilateral co-operation agreements aimed at reinforcing and developing

bilateral co-operation in the field of minorities in a way that is consistent and co-ordinated with existing multilateral standards, and in particular those of the Framework Convention for the Protection of National Minorities.

Among the activities carried out between 1 November 2002 and 28 February 2003 in the framework of the two latter projects:

- Multilateral seminar for Stability Pact Countries on "Bilateral agreements as an instrument for the Protection of National Minorities and for ensuring stability", proposed by the Centre for Minority Issues in Moldova, 5 November 2002
- Round table on minority rights, organised in co-operation with the association "Democratic Values and Human Rights", Stara Zagora, Bulgaria, 8-9 November 2002
- Exploratory Meeting of Joint Commissions on "The Implementation of Bilateral Agreements in the Field of Minorities in Central and South-Eastern Europe", Poiana Brasov, Romania, 18-19 November 2002
- Training seminar on national minorities in Montenegro and the Framework Convention for the Protection of National Minorities, Ulcinj, 7-8 December 2002
- Workshop on "Consolidating Roma/Gypsy Participation in Local Level Decision-Making Processes", Ungheni, Moldova, 14-15 December 2002.

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

Among the activities carried out in this framework during the reference period:

- National Implementation Conference on the results of the monitoring of the Framework Convention for the Protection of National Minorities organised in co-operation with the Office for National Minorities, Budapest, 2-3 December 2002
- Training for NGOs on the Framework Convention for the Protection of National Minorities co-organised by Minority Rights Group and the Council of Europe, Strasbourg, 20-23 February 2003

Internet site: www.coe.int/T/E/human_rights/minorities/

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, which aims at promoting free, independent and pluralist media, so safeguarding the proper functioning of a democratic society.

Freedom of expression and the fight against terrorism

On 25 November 2002, the Steering Committee on the Mass Media (CDMM) organised in Strasbourg a European Conference on media, terrorism and anti-terrorist activities : "Are freedom of information and security contradictory?" The event brought together representatives from the media and public authorities in charge of the fight against terrorism in member states, as well as representatives of IGOs and NGOs. The discussions were structured in three sessions addressing the following issues: "Reporting on terrorism: the media standpoint", "Reporting on terrorism: the perspective of the public authorities" and "Reconciling freedom of expression and information with the fight against terrorism". The reports presented by the guest speakers are available on the Internet.

Photo: Mr Alessandro Silj, Secretary General of the Council for Social Science, Rome, during his keynote speech

Further work on this topic is being undertaken by the Advisory Panel on Media and Terrorism (AP-MT), which held its first meeting on 16-17 December 2002. The Panel is examining initiatives which could be taken or supported by the Council of Europe and its member states to enhance the media's contribution to better understanding between peoples. It is also assisting the Group of Specialists on freedom of expression and other fundamental rights (MM-S-FR) in the elaboration of a draft Declaration on freedom of expression and information in the context of the fight against terrorism.

Defamation

The major Regional Conference on defamation and freedom of expression organised by the Council of Europe in Strasbourg on 17-18 October 2002 (see the Internet site) has set in motion a number of follow-up events throughout South-Eastern Europe. The Media Division is continuing to provide assistance to the countries that wish to bring their defamation-related legislation and practice in line with European standards. For example, similar events are planned in Albania and in "the Former Yugoslav Republic of Macedonia" in 2003.

In this connection, an overview of legal provisions concerning defamation, libel and insult in 40 European countries was prepared in February and is available on the Internet for all interested parties.

Activities for the development and consolidation of democratic stability

A Review Conference, organised in Kyiv on 6 December 2002 in co-operation with the Supreme Court and Ministry of Justice of Ukraine, completed a series of seven regional training seminars for Ukrainian judges on Article 10 of the ECHR. Although some positive results could be observed since the seminars took place, continued efforts were required to achieve a more systematic application of the principles developed by the Court in the field of freedom of expression. Study visits for Ukrainian judges to other European countries, as well as training courses for lawyers on European standards in this field, were among the suggestions for complementary activities to be undertaken in 2003.

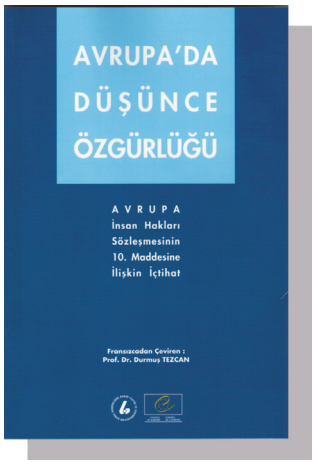
In the framework of a Joint Initiative between the European Union and the Council of Europe for the South Caucasus, a workshop was held in Tbilisi on 13 December 2002 to discuss the possibility of setting-up self-regulatory mechanisms for the media and whether a Press Ombudsman institution would be the most appropriate one for Georgia. Two additional meetings are foreseen at the beginning of 2003 in order to prepare a Code of Ethics for journalists and to examine the question of creating a Press Council.

Finally, a written expertise of draft amendments to the law on the public broadcasting institution "Teleradio-Moldova" was conducted in December 2002.

Internet Site: http://www.coe.int/media

Publications

Turkish version of "Freedom of expression in Europe – Case law concerning Article 10 of the European Convention on Human Rights"



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.

Statute

ECRI's new Statute, which was adopted by the Committee of Ministers on 13 June 2002, entered into force on 1 January 2003. This Statute consolidates ECRI's specific role as an independent human rights monitoring body on issues related to racism and racial discrimination in the member states of the Council of Europe.

Country by country approach

In November 2002 ECRI made public its second report on Portugal.

At its 30th plenary meeting in December 2002, ECRI adopted its final second reports on Andorra, Azerbaijan, Liechtenstein, Lithuania, Moldova and Sweden. These reports will be made public on 15 April 2003. At the same meeting, ECRI adopted its draft second reports on Armenia, Iceland, Luxembourg, Slovenia and Spain, which have now been transmitted to the authorities of the countries concerned for a process of confidential dialogue.

These reports form part of ECRI's second round of monitoring of 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 Council of Europe member state, and suggestions and proposals intended to help governments overcome any problems identified.

In 2003, ECRI started work on the third round of its country-by-country approach. The third round reports will focus on implementation: they will examine if and in what way the recommendations contained in ECRI's previous reports have been implemented and if they have been effective. The third round will also focus on "specialisation": specific questions, chosen according to the situation in each country, will be examined in more depth in each report.

ECRI is currently preparing its third reports on Belgium, Bulgaria, Norway, the Slovak Republic and Switzerland, and will carry out contact visits to these countries in Spring 2003.

Work on general themes

ECRI adopted its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination on 13 December 2002.

This Recommendation sets out a whole range of elements which should be contained in an effective national legislation to combat racism and racial discrimination and covers all branches of the law: constitutional, criminal, civil and administrative.

While taking into account national legislation and existing international standards, ECRI's Recommendation goes in many aspects further than existing international provisions. Amongst the most significant additions are : the inclusion – alongside race, colour and ethnic origin – of nationality, religion and language among the grounds on which discrimination is prohibited; the application of the prohibition of discrimination to a very broad range of areas, including the activities of the police and border control officials; the attribution of more extensive powers to the national specialised bodies to combat racism and racial discrimination; and the establishment of a positive duty on public authorities to promote equality and to prevent discrimination in carrying out their functions.

Relations with civil society

ECRI's Round Table in Portugal (26 February 2003)

ECRI's Round Table in Portugal was one of a series of national round tables organised in the framework of ECRI's new Programme of Action on Relations with Civil Society, which works to fully involve civil society in the fight against racism and intolerance and to promote intercultural dialogue between the various sectors of society.

Govermental agencies, victims of discrimination and representatives of the media attended this Round Table, which was organised in Lisbon.

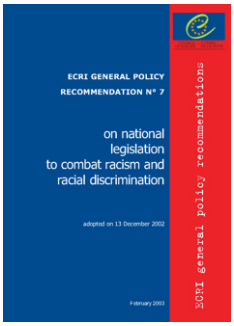
The Round Table discussed ECRI's second report on Portugal; the challenges ahead for Portugal in the field of asylum and immigration; Portugal's anti-discrimination legislation; and the situation of Roma/Gypsies in Portugal. The Round Table also emphasised the importance of the role the media can play in combating racism and intolerance.

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

Publications

- **Second report on Portugal**
(CRI (2002) 23), 23/07/2002

- **General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination**
(CRI (2003) 8), 17/02/2003



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 responsibility for co-ordinating these activities.

Violence against women

Following the adoption of Committee of Ministers Recommendation Rec (2002) 5 on the protection of women against violence, the Steering Committee for Equality between Women and Men (CDEG) set up a group of specialists on the implementation and monitoring of this recommendation. The group, composed of CDEG members and experts in the areas covered by the Recommendation, met for the first time in November 2002. It will draft indicators to ensure follow-up to the Recommendation and study the evolution of the situation in member states using a thematic approach.

Trafficking in human beings

A regional seminar on "Co-ordinated action against trafficking in human beings in South Caucasus: towards a regional action plan" was held in Tbilisi on 6-7 November 2002. Representatives from Armenia, Azerbaijan, Georgia, Turkey, Ukraine and Russian NGOs discussed a regional action plan to combat this phenomenon and each national delegation issued recommendations for a national action plan.

Gender mainstreaming

The first meeting of an informal group of experts on gender budgeting took place in November 2002. The group's aim is to prepare an inventory including a definition of gender budgeting, a methodology for its implementation and examples of practices at local, regional and national level.

As part of its work to promote gender mainstreaming within the Council of Europe, the CDEG organised a joint seminar with the European Committee for Social Cohesion (CDCS) on gender mainstreaming in social services (Strasbourg, 13 December 2002).

Women and peacebuilding

The 5th European Ministerial Conference on Equality between Women and Men (Skopje, 22-23 January 2003) focused its discussions on the roles of women and men in conflict prevention, peacebuilding and post-conflict democratic processes.

They adopted a Declaration and Programme of Action outlining Council of Europe priorities in the field of equality for the coming years.

In the resolution (see appendix, reproduced below), the Ministers of the states participating defined a number of strategies to promote the roles of women and men in this area.

Branko Crvenkovski, President of the Government of FYROM and Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe

Peacebuilding strategies for changing societies

1. Human rights of women and the non-violent resolution of conflicts

Governments are invited to:

a. organise meetings between ministers, decision-makers and NGOs involved in conflict prevention and resolution and peacebuilding;
b. encourage the inclusion of human rights, conflict prevention and resolution, mutual understanding, a culture of peace and gender equality in formal and non-formal education at all levels;
c. provide training in human rights and gender equality, as appropriate, for those involved in conflict prevention, peacebuilding and post-conflict democratic processes;
d. take measures aiming at encouraging young people, and particularly young women, to participate in

conflict prevention and resolution and in the peacebuilding process;
e. raise public awareness on the violation of the human rights of women during and after conflicts, and on the increase of domestic violence, gender-based violence, sexual violence and trafficking for the purpose of sexual and economic exploitation;
f. provide information on international law and human rights instruments, including those concerning women's human rights, especially through new information technologies;
g. encourage and support networking among non-governmental organisations, in particular women's organisations, involved in conflict prevention and resolution and peacebuilding;

Governments and international organisations are invited to:

a. encourage and support women's regional projects on conflict prevention and resolution and peacebuilding, both within and across borders;
b. encourage the work of NGOs dealing with peace issues, in particular women's and youth organisations, especially by providing appropriate technical, logistic and financial support;

NGOs are invited to:

a. develop more cross-border activities and projects involving partners from neighbouring countries;
b. seek ways to link up with well-established human rights organisations and networks in order to make their work better known;
c. make efforts to intensify their co-operation with decision-makers in order for their interests, experiences, initiatives and solutions to be taken on board as a substantial contribution to their work;

The media are invited to:

a. refrain from portraying stereotypes based on gender, ethnicity and religion;
b. promote peace by producing programmes which foster gender equality and non-discrimination, stimulate mutual understanding and oppose intolerance and racism.

2. Balanced participation of women and men in decision-making

Governments are invited to:

a. take the necessary measures to recognise and promote the equal and individual rights of women and men to participate in political life, in particular by combating the practice of family voting;
b. take measures aiming at increasing the number of women in decision-making bodies in political and public life at all levels, inter alia by enacting legislation and taking special measures for political parties, social partners, other professional organisations, public institutions, etc.;
c. take measures to achieve a gender balance in public appointments to committees or missions;
d. take the necessary measures to ensure that women have an equal opportunity to reach all levels in the diplomatic services;
e. increase the number of women candidates to high-level decision-making posts in international organisations;
f. ensure that women are involved in all stages of conflict prevention, resolution and reconstruction, including peace mediation and negotiations;
g. take the necessary measures to train mediators involved in conflict resolution, peace missions and peace support operations to apply a gender perspective;
h. encourage parliaments and local and regional authorities to examine their time tables and working methods in order to enable women and men legislators to reconcile their work and family life;
i. encourage the work of NGOs dealing with the empowerment of women for active citizenship, especially by providing appropriate logistic and financial support;

International organisations are invited to:

a. support training for women who wish to become actively involved in the field of conflict prevention and resolution;
b. ensure a balanced participation of women and men in their staff and in their field missions;

NGOs and political parties are invited to:

a. organise training for women in active citizenship and involvement in political and public decision-making;
b. organise broadly, at local, national, regional and international level, support for women already engaged in political or public life at all levels of society to ensure their continuing involvement in post-conflict reconstruction;

3. Gender equality and gender mainstreaming

Governments are invited to:

a. fully implement international instruments and programmes designed to advance and empower women, and take the necessary measures to translate them into national languages and to make them available and known to the general public;
b. adopt and implement procedures to promote gender equality and integrate a gender perspective in the framework of their international co-operation policy;
c. consider a gender screening of their legislation relevant to conflict prevention, peacebuilding and post-conflict democratic processes and introduce a systematic gender impact assessment into legislative processes, policies, programmes and budgeting;

Governments and international organisations are invited to:

a. encourage and support national and transnational research in women's and gender equality issues relating to conflict prevention, peacebuilding and post-conflict democratic processes;

b. integrate a gender equality perspective in the planning, design and implementation of peace-keeping operations and humanitarian aid;
c. introduce gender-sensitive training for participants of international peace-keeping and conflict resolution operations;
d. set up, improve and implement codes of conduct for participants in peace-keeping and conflict resolution operations to prevent all forms of violence against women;
e. provide assistance to victims of conflicts, including refugees and internally displaced persons, giving special attention to the needs of women and girls, particularly war widows, female-headed households and orphans;
f. set up special gender-based programmes to heal women and men from trauma and give them the necessary training and skills to survive after conflict.

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

Publications

- **Final report of the Group of specialists on the impact of the use of new information technologies on trafficking in human beings for the purpose of sexual exploitation**

(EG-S-NT (2002) 9)

- **Declaration and Programme of Action adopted by the 5th European Ministerial Conference on Equality between Women and Men**

(MEG-5 (2003) 3)

- **Resolution adopted by the 5th European Ministerial Conference on Equality between Women and Men: The roles of women and men in conflict prevention, peacebuilding and post-conflict democratic processes – a gender perspective**

(MEG-5 (2003) 4)

- **Seminar on gender mainstreaming in social services, Strasbourg, 13 December 2002 – Summary of discussions**

(CDEG/CDCS (2003) 1)

Co-operation and 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.

New European Convention on Human Rights training programme for Turkish judges and prosecutors

In the framework of the Joint European Commission/ Council of Europe Initiative with Turkey on democratisation and human rights, a new, in-depth training programme on the European Convention on Human Rights and the case law of the European Court of Human Rights has been developed for Turkish judges, prosecutors and legal practitioners.

On 22 February 2003 a High Level Joint Expert Advisory Group, composed of representatives of the Ministry of Justice, Human Rights Presidency, Ministry of Foreign Affairs, National Committee on the Decade for Human Rights Education, the Bar Union and the General Secretariat of the EU, together with Council of Europe experts, gathered in Istanbul, for their second meeting. The Group agreed on a model programme and strategic plan for such training. In the first place, they agreed that priority should be given to the training of a select group of judges and prosecutors who would in the future act as trainers for the country's remaining 9,000 + judges and prosecutors.

A two-phase approach was adopted.

In the first phase, some 225 judges and prosecutors will be selected to participate in intensive, interactive study sessions on the application of those articles of the Convention that have significant importance for Turkey. Nine such sessions will be organised throughout 2003, in 7 cities (Ankara, Istanbul, Izmir, Erzurum, Diyarbakir, Adana and Antalya). The study sessions will last four and a half days, with a considerable amount of time set aside for discussions and group work on case studies. It was considered particularly important that an interactive, participatory approach be adopted as the aim of the programme is to ensure the effective implementation of the Convention and the Court's case law in day-to-day practice in Turkey. Close follow-up is envisaged after each session in order to gauge the effectiveness of the training, to identify any missing elements and to establish how far participants have subsequently been able to apply the case law in their courts.

The High Level Advisory Group further decided that a limited number of preparatory materials should be sent out to participants in advance of sessions, including the new pocket version of the Convention in Turkish and Turkish editions of the Council of Europe handbooks for judges on different articles of the Convention. Turkish translations of key judgments of the European Court of Human Rights are also to be made available.

Phase 2 of the programme, which will begin in January 2004, will focus on further developing training methodology and expertise. It will include pilot training sessions conducted with those judges and prosecutors trained during Phase1.

The High Level Advisory Group agreed that a further programme for the training of lawyers should be developed in co-operation with the local bar associations and the Bar Union.

The first study session for judges and prosecutors is scheduled to take place in Ankara at the end of April 2003. The Council of Europe is now working closely with the Training Department of the Ministry of Justice on all organisational details.

"Train the Trainers" Seminar in Strasbourg

From 20 to 24 January 2003, 16 judges, prosecutors and lawyers from Serbia and Montenegro participated in a "train the trainers" seminar which was organised by the Directorate General of Human Rights in the Human Rights Building of the Council of Europe.

The seminar aimed at enabling trainers to design and implement an ECHR training seminar at national level; familiarising participants with modern training methodologies in order to develop specific training tools, in particular presentations, case studies, role plays/moot courts; acquainting participants with ECHR Articles 5 and 6 and particular

training requirements related thereto. In addition, set of indicators for measuring the results of training were agreed among participants.

The five-day seminar was also attended by the President of the Supreme Court of Serbia, Leposava Karamarkovic, and Representatives of the Judicial Training Centres of Serbia and Montenegro, who discussed plans for the inception of basic training seminars on the ECHR for the judiciary in the respective countries with the future trainers. According to the participants the seminar was a great success and resulted in a strong desire among all those present to continue to deepen and broaden judicial training in Serbia and Montenegro and make it rely more and more on national trainers.

The organisation of the workshop was made possible thanks to a generous voluntary contribution by the United Kingdom earmarked for this activity. Additional financial support was given by the Irish Government.

Internet site: http://www.coe.int/awareness

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 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.

Conferences

Better access to social rights

Malta, 14-15 November 2002

To analyse obstacles which impede access to social rights, despite fundamental achievements in Europe, to discuss concrete examples of how obstacles are overcome within Council of Europe member states – these were the main objectives of a conference organised by the Council's Directorate for Social Cohesion and the Maltese Government in Saint Julians.

The conference was organised as one of the most significant events of the Maltese chairmanship of the Council of Europe's Committee of Ministers and brought together experts from the 44 member states of the Organisation, observer states and a number of North African countries. It was an opportunity to propose solutions for bridging the gap between established legal provisions guaranteeing access to social rights already in place in most of the Council of Europe member and observer states, and their actual implementation through policy and social provision.

"Malta declaration"

delivered 15 November 2002 at the Conference on access to social rights

The final declaration of the Conference called on governments and other political, social and business partners to develop and implement policies promoting access to social rights on the basis notably of the principles of equality of treatment, solidarity, quality and accessibility of services and transparency by providing an adequate legal framework and appropriate mechanisms for the effective implementation of social rights and by actively combating discrimination against users, in particular where vulnerable groups are concerned.

The full text of the declaration can be found at: http://www.coe.int/SocialRights/.

Member states

Human rights developments in Turkey

The Chair of the Committee of Ministers' Deputies (Human Rights meetings), Johannes C. Landman, made the following public declaration on 5 December 2002:

"The Committee of Ministers, meeting today at Deputies' level, has welcomed information from Turkey on the *Sadak, Zana, Dicle and Dogan* case, that provisions to allow the proceedings to be reopened have now been included in the complementary reform package just presented to the Prime Minister." They expressed confidence that Turkey will now ensure that the new legislation is adopted rapidly, and immediately applied to the applicants' case in the light of the gravity of their situation.

The Deputies were meeting to supervise the execution of the judgments of the European Court of Human Rights. They had previously urged Turkey to grant the applicants a new trial or other redress for the violations found by the ECHR.

Adopted texts

Treaties – or conventions – are binding legal instruments for the Contracting Parties.

Recommendations to member states are not binding and generally deal with matters on which the Committee has agreed a common policy.

Resolutions are mainly adopted by the Committee of Ministers in order to fulfil its functions under the European Convention on Human Rights, the European Social Charter and the Framework Convention for the Protection of National Minorities.

Declarations are usually adopted only at the biannual ministerial sessions.

Decisions of the Ministers' Deputies, issued as public documents, 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.

Russian Federation

Joint action on Chechnya and trafficking in human beings

In a decision taken at a meeting in The Hague on 5 February 2002, the Council of Europe and the OSCE planned to send a joint needs assessment mission to Chechnya, before the constitutional referendum of 23 March. The two organisations agreed that close consultation was needed on the Chechnya issue, and regretted that there had been no agreement with the Russian authorities on the extension of the mandate of the OSCE Assistance Group.

Both organisations also stressed their joint commitment to combating trafficking in human beings and welcomed progress on an OSCE action plan and preparations for a Council of Europe convention on the issue.

Reply of the Committee of Ministers to Parliamentary Assembly Recommendation 1498/1499 (2001) on the situation in the Chechen Republic of the Russian Federation – 4 December 2002

In a reply to Assembly Recommendations 1498 (2001) and 1499 (2001), the Committee of Ministers asked the Secretary General to assign to a team of Council of Europe legal experts the task of examining jointly with a team of Russian experts the conformity of the "1998 Russian Federal Law on the Suppression of Terrorism" with Council of Europe standards. In their report, the experts emphasise the need for the Russian law to clarify certain aspects, e.g. (a) in respect of the powers, the limits and the responsibilities of persons who conduct counter-terrorist actions and (b) as regards interaction with the Code of Criminal Procedure. Their report also contains comments on specific provisions of the law as well as recommendations on how such provisions might be amended.

Reply by the Committee of Ministers to Written Questions Nos. 419 and 420 by Lord Judd: "Effectiveness of Council of Europe experts in the Chechen Republic" and "Work of the Consultative Council in Chechnya" – 23 January 2003

Questions:

What action has been taken to resolve the issues surrounding the location, freedom of travel, access to Grozny and general effectiveness of the Council of Europe experts in the Chechen Republic and what was its outcome?

Why it has not yet mobilised funds to support the work of the Consultative Council on Chechnya established under the aegis of the Joint Working Group (PACE and Duma) and how soon does it intend to ensure that such funds are available?

Replies:

In reply to the first of these questions, the Committee of Ministers stated that the Minister for Foreign Affairs of the Russian Federation had agreed to a prolongation until 4 July 2003 of the mandate of the Council of Europe staff providing consultative expertise to the Office of the Special Representative of the President of the Russian Federation for ensuring human and civil rights and freedoms in the Chechen Republic.

Concerning the second question, the Committee of Ministers replied that the Secretary General maintained contacts with the European Commission, and notably with External Relations Commissioner Chris Patten, with a view to securing joint funding by the European bodies most concerned.

New treaties

Racism and xenophobia on the Internet

The Committee of Ministers adopted the Additional Protocol to the Convention on Cybercrime on 7 November 2003. The Protocol requires states to criminalise the dissemination of racist and xenophobic material through computer systems, as well as racist and xenophobic-motivated threat and insult including the denial, gross minimisation, approval or justification of genocide or crimes against humanity, particularly those that occurred during the period 1940-45. It also defines the notion of this category of material and establishes the extent to which its dissemination violates the rights of others and criminalises certain conduct accordingly.

The scope of this protocol is twofold:

- to harmonise substantive criminal law in the fight against racism and xenophobia on the Internet,
- to improve international co-operation in this area, while respecting the right to freedom of expression enshrined, more than 50 years ago, in the European Convention on Human Rights.

All the offences recognised by the Protocol must be committed "intentionally" for criminal liability to apply. For example, under this provision a service-provider will not be held criminally liable for having served as a conduit for, or having hosted, a website or newsroom containing such material, unless the intentional nature of the dissemination of racist and xenophobic material can be established under domestic law in each given case.

Dealing with global threats and challenges needing global responses, the negotiation process of this Protocol, as for the Convention on Cybercrime, also involved Council of Europe non-member states: the USA, Canada, Japan, Mexico and South Africa. The protocol is also open to signature by them.

The Committee of Ministers decided to open the Additional Protocol for signature on the occasion of the next Parliamentary Assembly winter session (27-31 January 2003).

Corruption

The Council of Europe's Committee of Ministers adopted an Additional Protocol to the Criminal Law Convention on Corruption on 22 January 2003. This protocol extends the scope of the Convention to arbitrators in commercial, civil and other matters, as well as to jurors, thus

complementing the Convention's provisions aimed at protecting judicial authorities from corruption.

Countries which ratify this instrument will have to adopt the necessary measures to establish, as criminal offences, the active and passive bribery of domestic and foreign arbitrators and jurors. The protocol will be opened for signature on 15 May 2003 and will enter into force after five ratifications.

The text of the Protocol is available under *New Treaties* on the Treaty Office Internet site, at http://conventions.coe.int/.

Terrorism

The Council of Europe has updated the 1977 European Convention on the Suppression of Terrorism. The Ministers' Deputies adopted the Protocol amending the Convention on 13 February 2003.

The adoption of this first European text since the attacks of 11 September is part of the action initiated by the Council of Europe last July to make the fight against terrorism compatible with human rights protection.

The new protocol allows for the considerable extension of the list of offences to be "depoliticised" and the opening of the convention to Observer States of the Council of Europe. The death penalty, torture and life imprisonment without the possibility of parole are added as grounds for refusal to extradite.

The Protocol will be opened for signature on 15 May 2003 at the 112th session of the Committee of Ministers. It will enter into force simultaneously for all parties to the convention.

Complete text of the protocol and its explanatory report are available under *New Treaties* on the Treaty Office Internet site, at http://conventions.coe.int/.

European Convention and Court of Human Rights

Declaration on "The Court of Human Rights for Europe"

7 November 2002

The Committee of Ministers wishes to take concrete measures to reform the control system of the Convention, with a view to increasing the Court's capacity to manage its caseload. It therefore invites the Council of Europe bodies and the governments of member states to contribute to a collective effort to:

- prevent violations at a national level and improve domestic remedies;
- improve the effectiveness of filtering and subsequent handling of applications;
- improve and accelerate the execution of the Court's judgments.

Recommendation Rec (2002) 13

on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights – 18 December 2002

This text calls upon member states to review their practice as regards the publication and dissemination of the text of the Convention in the language(s) of the country and of the Court's judgments and decisions in order to ensure their availability in local language versions and their effective application by national authorities.

Resolution Res (2002) 58

on the publication and dissemination of the case law of the European Court of Human Rights – 18 December 2002

This text recommends that the Court review its practice as regards the publication and dissemination of its judgments and decisions. It stresses in this respect the importance for the Court that its judgments and decisions be made available immediately in an electronic database on the Internet; that its main judgments, important decisions on admissibility and information notes on case law be made accessible rapidly, in both paper and electronic form (CD-Rom, DVD, etc.); and that it indicates rapidly and in an appropriate manner, in particular in its electronic database, the judgments and decisions which constitute significant developments of its case law.

Resolution Res (2002) 59

concerning the practice in respect of friendly settlements – 18 December 2002

The Committee of Ministers recalled that the European Convention on Human Rights must continue to play a central role as a constitutional instrument for safeguarding public order in Europe and noted the significant increase in the number of individual applications lodged with the European Court of Human Rights.

Recalling that Article 38, paragraph 1.b, of the Convention provides that if the Court declares an application admissible, it shall "place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto", it also noted with interest the increasing practice of resorting to friendly settlements in order to solve repetitive cases or cases that do not raise any question of principle or of changes of the domestic legal situation.

Considering that the conclusion of a friendly settlement, while remaining a matter left entirely to the discretion of the parties to the case, may constitute a means of alleviating the workload of the Court, as well as a means of providing a rapid and satisfactory solution for the parties, the Committee of Ministers underlined the importance of giving further consideration in all cases to the possibilities of concluding friendly settlements and, if any such friendly

settlement is concluded, of ensuring that its terms are duly fulfilled.

Reply by the Chairman of the Committee of Ministers to Written Question No. 413

on "Reform of the procedures and membership of the European Court of Human Rights" by Mr Kevin McNamara – 15 January 2003

Question:

What progress has been made towards reform of the procedures and membership of the European Court of Human Rights?

Reply:

"The Honourable Member knows that following the submission of the Report of the Evaluation Group in September 2001, the Committee of Ministers, at its 109th Session in November, adopted a declaration outlining how the reform process was to be carried forward. He will also recall that, in his address to the Committee on Legal Affairs and Human Rights in September 2002, the Chairman of the Deputies' Liaison Committee with the European Court of Human Rights (CL-CEDH) indicated that the necessary financial provisions had been approved in principle and provided some indications of the main lines of the progress report of the Steering Committee for Human Rights (CDDH).

[…]

The Committee of Ministers adopted a new declaration in which, in particular, it instructed the Ministers' Deputies to take steps to accelerate ongoing work and to present a set of coherent proposals covering on the one hand measures that could be implemented without delay and on the other any possible amendments to the Convention and accordingly to assign revised terms of reference to the CDDH, to be completed no later than 17 April 2003, on the basis of the priorities identified in its interim report, taking account, inter alia, of the following areas:

- preventing violations at national level and improving domestic remedies;
- optimising the effectiveness of the filtering and subsequent processing of applications;
- improving and accelerating execution of judgments of the Court; and

encouraged the governments of the member States to further this collective effort by contributing their own proposals to the work of the CDDH.

[…]

Regarding the precise terms of Mr McNamara's question, it will be clear from the above that only part of the 'coherent proposals' refer to the procedures of the Court, many of which have been adjusted or are subject to critical examination by the Court itself. With regard to the Court's composition, it will be recalled that one of the proposals of the Evaluation Group, which is still under active consideration by the CDDH, concerns the modification of judges' terms of office."

Joint reply of the Committee of Ministers to Parliamentary Assembly Recommendations 1568 and 1578

on the future of co-operation between European institutions and the Council of Europe and the new issue involved in building Europe – 22 January 2002

The Committee of Ministers noted that some of the issues raised by the Assembly, particularly the proposal that the European Union accede to the European Convention on Human Rights, are currently being discussed within the Convention on the Future of Europe, established by the Laeken European Council in December 2001. In this respect, it noted with satisfaction that Resolution 1290 had been distributed to the members of the Convention as a working document, and that two other substantive contributions to the Convention's work had been made by the Secretary General of the Council of Europe, via documents SG/Inf (2002) 35 ("800 million Europeans: involving the Greater Europe in responding to key Laeken questions") and SG/Inf (2002) 42 ("Freedom, Security and Justice for the whole of Europe. Involving the Greater Europe in the realisation of an area of freedom, security and justice ").

Terrorism

Reply from the Committee of Ministers to Parliamentary Assembly Recommendations 1549 and 1550 (2002)

"Air transport and terrorism: how to enhance security?" and "Combating terrorism and respect for human rights" – 22 January 2002

The Committee of Ministers, after closely examining the Parliamentary Assembly Recommendations 1549 (2002) and 1550 (2002), decided to communicate these texts which deal with a question of high priority for the Organisation and for the international community as a whole, to governments.

Where Recommendation 1549 on air transport and terrorism is concerned, the Committee of Ministers decided to bring it to the attention of IATA (International Air Transport Association), ECAC (European Civil Aviation Conference) and ICAO (International Civil Aviation Organisation). It also instructed the Multidisciplinary Group on International Action against Terrorism (GMT) to take account of it.

Where Recommendation 1550 is concerned, the Committee of Ministers assigned ad hoc terms of reference to the Steering Committee for Human Rights (CDDH) and to the Multidisciplinary Group on International Action against Terrorism (GMT).

With regards to the more specific recommendation concerning refusal to extradite, the draft protocol amending the European Convention on the Suppression of Terrorism, whose contents were endorsed by the Committee of Minis-

ters at the 111th Session, proposes to add a new paragraph to Article 5, worded as follows:

"Nothing in this Convention shall be interpreted either as imposing an obligation to extradite if the person subject of the extradition request risks being exposed to the death penalty or, where the law of the requested state does not allow for life imprisonment, to life imprisonment without the possibility of parole, unless under applicable extradition treaties the requested state is under the obligation to extradite if the requesting state gives such assurance as the requested state considers sufficient that the death penalty will not be imposed or, where imposed, will not be carried out, or that the person concerned will not be subject to life imprisonment without the possibility of parole."

111th Session of the Committee of Ministers

Conclusions of the Chair

The Conclusions of the Chair, referring to the six-month period up to November 2002, were reproduced in the *Human rights information bulletin*, No. 57, page 36.

Priorities of the Maltese presidency

The Council of Europe Committee of Ministers met in Strasbourg on 6-7 November 2002.

An informal meeting was held at Strasbourg City Hall (Hôtel de Ville) on 6 November, devoted to an exchange of views on the Organisation's future political priorities and the prospects of holding a 3rd Summit of Heads of State and Government in the near future.

On the following day, under the chairmanship of Lydie Polfer, Luxembourg Foreign Minister, the Ministers discussed the main themes on the Organisation's current political agenda, including:

- the request for membership by the Federal Republic of Yugoslavia;
- the Council of Europe's contribution to action against terrorism, following the work of the Multidisciplinary Group on International Action against Terrorism (GMT) established one year ago;
- ways of guaranteeing the long-term effectiveness of the European Court of Human Rights.

Just before the session, the Joint Committee, composed of Ministers and parliamentarians, discussed the request for membership by the Federal Republic of Yugoslavia and the proposed 3rd Summit.

At the opening of the session, Deputy Secretary General Maud de Boer-Buquicchio took an oath of office, having taken up her duties on 2 September 2002.

Maltese Presidency sets out its priorities

Maltese Foreign Minister Joseph Borg set out the priorities of the Council of Europe Maltese presidency for the next six months on 7 November 2002.

Its two basic objectives were:

1. to continue the process of unification of Greater Europe on the basis of the co-operation structures offered by the Council of Europe;
2. to strengthen the social and cultural dimensions of European integration on a continent-wide scale.

The Maltese Presidency declared that it would do its utmost to strengthen co-operation between the Committee of Ministers and its institutional partners – the Parliamentary Assembly, the Congress of Local and Regional Authorities, the European Court of Human Rights, the Commissioner for Human Rights – as well as with its partner organisations (European Union, OSCE, United Nations and others).

The Presidency organised a Conference on Access to Social Rights in Malta on 14 and 15 November. It also proposed to hold a round table conference early in 2003 on migration policies for Mediterranean countries – north and south – aimed at discussing the migration management strategy recommended by the Council of Europe.

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

Financing of terrorism

Recommendation 1584 (2002) on the need for intensified international co-operation to neutralise funds for terrorist purposes – 18 November 2002

The Assembly underlined the importance of identifying and neutralising funds destined for terrorist purposes – an undertaking which is possible only with a high degree of co-operation at the normative, operative and implementation levels. While such an effort may not ensure the prevention of all terrorist acts, it can contribute significantly to weakening terrorist infrastructures. This is so especially if measures can neutralise terrorism's legal sources of financing, which in certain cases operate under the cover of humanitarian, non-profit or even charitable organisations. It is also necessary to prevent general criminal activities that often serve to finance terrorism, such as trafficking in human beings, drugs and weapons. The systems and measures developed over the last few years to prevent the laundering of proceeds from crime can, if conscientiously applied, play a significant role in the detection, freezing and confiscation of terrorist funds.

The Assembly therefore recommended that measures be taken to ensure the ratification of the totality of international legal instruments concerned with the fight against terrorism and its financing; to reach immediately an agreement on a definition of terrorism; to render any financial activity in support of terrorism thus defined a criminal offence; to adapt domestic legislation and international conventions to new technological and other developments as well as to the growing sophistication of terrorists, for the purpose of successfully tracing the origin as well as the routing of funds intended for terrorist ends; to intensify co-operation between national administration and judicial, police, financial and other authorities; to ensure the effective implementation of international conventions and other agreements against terrorism financing in Council of Europe member states and other participating states; and to ensure that the Council of Europe's fundamental values of democracy, the rule of law and human rights are upheld in all circumstances.

Crimes against minors

Recommendation 1583 (2002) on the prevention of recidivism in crimes against minors – 18 November 2002

The Assembly voiced its concern at the substantial increase in crimes against minors recorded in many European states, as well as the increase in indecent assaults against and interference with the sexual inviolability of children. In an alarming trend, a great many such crimes are being committed by persons who are supposed to be caring for children and who hold authority over them.

It acknowledged that traditional penalties cannot effectively prevent re-offending or remedy the personality disorders that are the cause of crimes against minors. To prevent re-offending, the Assembly stressed the advisability of using legal measures which lie outside the strict framework of criminal law. Such measures may be provided for in civil and family law, as well as under specific laws on the protection of children or texts governing specified occupations in which adults are in contact with, and hold authority over, children.

Consequently, the Assembly invited member states to adopt all the necessary measures to improve protection of children's rights, co-ordinate their efforts to combat the spread of child pornography and sexual exploitation of minors and ratify the Council of Europe's Convention on Cybercrime (ETS No. 185) as quickly as possible.

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 to one or more of its committees.

Youth policies

Recommendation 1585 (2002) on youth policies in the Council of Europe – 18 November 2002

Since 1968 and the establishment of the European Youth Centre in Strasbourg, the Assembly has drawn attention to the importance of youth participation in institutional and political life. The Assembly acknowledged the major role played by youth organisations but recalled that only a small percentage of young people are organised in a traditional manner.

In general terms, the Assembly would like to see a wider range of young people associated with the Council of Europe's activities, partly through encouraging the establishment of local youth forums or councils, with the support of local authorities and of national youth parliaments, in order to include young people in the democratic decision-making process and to prepare them for citizenship.

The Assembly therefore recommended fixing a long-term plan for the place of young people in tomorrow's Europe, including strengthened co-operation between the youth sector and the other sectors of the Council of Europe and increased resources for the European Youth Foundation.

New initiatives might include holding a conference with youth organisations and political parties in 2003, to analyse the causes of the low level of youth participation in political life and propose solutions; organising a new European campaign along the lines of the European Youth Campaign against Racism: All Different, All Equal, on a theme of interest to young people such as gender equality or participation in civic life; and re-launching the Euro-Arab youth dialogue.

Co-operation should focus on the setting up of national youth councils, the opening of regional youth centres, the creation of a European network of youth centres and the strengthening of co-operation with the European Union.

Migrants

Recommendation 1587 (2002) on residence, legal status and freedom of movement of migrant workers in Europe: lessons from the case of Portugal – 18 November 2002

The Parliamentary Assembly expressed its regret to see that the numerous efforts of the international community to achieve the adoption of an internationally binding instrument for the protection of migrant workers have not met with success.

It acknowledged the outstanding achievements made by the European Union in the area of the protection of EU migrant workers and believes that the Council of Europe should play a major role in bringing the protection of all migrant workers who are nationals of Council of Europe member states closer to EU standards.

The Assembly therefore called upon the Council of Europe member states to sign and ratify the European Convention on the Legal Status of Migrant Workers and to sign and ratify the European Convention on Establishment.

It also called upon the appropriate Committee of Ministers committee to analyse the reasons why so few member states have acceded to the above-mentioned Council of Europe conventions and to take measures aimed at increasing the number of states parties to these conventions and to conduct studies on the notions of residence and residence permits for foreign nationals in Council of Europe member states and on the feasibility of a Council of Europe instrument facilitating the movement and transit of migrant workers who are nationals of a Council of Europe member state and live and work legally in another member state.

Recommendation 1596 (2003) on the situation of young migrants in Europe – 31 January 2003

The Assembly is convinced that the situation of young migrants of all descriptions in Europe requires urgent action on the part of the Council of Europe, in co-operation with the relevant international organisations, to address the reasons why they want or are forced to emigrate, their rights and living conditions as immigrants, and finally their rights and needs when, and if, they return to their countries of origin.

The Assembly therefore recommended that a number of initiatives be undertaken, including:

- a long-term multidisciplinary programme on young migrants in Europe;
- seminars, hearings, conferences and others – on the topic of young migrants, with the participation of young migrants;
- funding or co-funding from the Council of Europe Development Bank for integration projects for young migrants in host countries, as well as reintegration projects for young migrants returning to their countries of origin, in particular young victims of trafficking; and
- studies on the acquisition and loss of nationality and on the feasibility of an international binding instrument on legal guardianship of "separated children".

Furthermore, the Assembly recommended that the member states take concrete measures to foster participation and social cohesion, that they ensure access to education for migrant children responding to their specific needs, facilitate family reunification of separated children with their parents and that any return of migrants to their country of origin is in accordance with international human rights obligations.

As to the issue of trafficking in children and young people, the Assembly called upon the member states to sign and ratify the existing international instruments applicable to this matter, to establish effective protection and support regimes for children and young victims of trafficking and to allocate additional financial resources to prevention activities in the countries of origin of potential child and young victims of trafficking.

Political freedoms

Resolution 1308 (2002) on restrictions on political parties in the Council of Europe member states – 18 November 2002

The question of restrictions on political parties reflects the dilemma facing all democracies: on the one hand, the ideology of certain extremist parties runs counter to democratic principles and human rights, and on the other hand, every democratic regime must provide maximum guarantees of freedom of expression and freedom of assembly and association. Democracies must therefore strike a balance by assessing the level of threat to the democratic order in the country represented by such parties and by providing safeguards.

The Assembly pointed out that, in this respect, each individual country's constitution or national legislation sets a different level of tolerance, resulting in a diverse range of sanctions.

It took note of the proposals put forward by the European Commission for Democracy through Law (Venice Commission) in its *Guidelines on the prohibition and dissolution of political parties and analogous methods* in order to obviate the need to adopt the extreme solution of banning political parties and stressed that the European Convention on Human Rights constitutes a safeguard against the abusive dissolution of a political party.

In agreement with the European Court of Human Right's case law, the Assembly believes that in exceptional cases, a party may legitimately be banned if its existence threatens the democratic order of the country.

It therefore called on the governments of member states to comply with the principle of political pluralism and to recognise the exceptional nature of measures restricting or dissolving political parties and the necessity of less radical measures. It further stated that a party cannot be held responsible for the action taken by its members if such action is contrary to its statute or activities and called for absolute respect of constitutional order and established legal and judicial procedures should a political party be banned or dissolved.

Freedom of religion

Resolution 1309 (2002) on freedom of religion and religious minorities in France – 18 November 2002

In reaction to the adoption by the French Parliament of Act No. 2001-504 on the reinforcement of the prevention and suppression of sects which infringe on human rights and fundamental freedoms, the Parliamentary Assembly reaffirmed its position on the illegal activities of sects, concluding that it was unnecessary to define what constituted a sect, but that it was essential to ensure that the activities of groups, whatever religious, esoteric or spiritual description they adopted, were in keeping with the principles of democratic societies and, in particular, the provisions of Article 9 of the European Convention on Human Rights (ECHR).

Although a member state is perfectly at liberty to take any measures it deems necessary to protect its public order, the authorised restrictions on the freedoms guaranteed by Articles 9 (freedom of thought, conscience and religion), 10 (freedom of expression) and 11 (freedom of assembly and association) of the ECHR are subject to specific conditions. Should the case arise, it will be for the European Court of Human Rights, and it alone, to say whether or not this law is compatible with the ECHR.

The Assembly therefore invited the French Government to reconsider this law and to clarify the definition of the terms "offence" and "offender".

Maternity in Europe

Resolution 1310 (2002) on maternity in Europe: improving social and health conditions – 18 November 2002

The Assembly considered that much remains to be done to further the rights of working mothers, particularly as regards maternity leave, continued payment of salaries, protection from dismissal during the course of their leave, authorised absences for medical follow-up or for breast-feeding purposes, adjustment of working hours, etc.

In terms of health care, there has been an overall improvement in the rates of infant and maternal mortality in Europe, but they are still too high in several member states and are subject to wide variation.

Maternity raises the issue of family policy and the reconciliation of family and working life in general. The Assembly therefore called on the member states of the Council of Europe to continue to build family policies with a view to raising the standards of maternity and parental leave; to fund maternity benefits through state social insurance funds; to improve, where necessary, access to affordable, high quality substitute child care; to resolve the tension between work and family by promoting gender equality; to aim for a kinder and wiser form of economic development; to step up their efforts to combat poverty, social exclusion and unemployment and to ratify, if they have not yet done so, the relevant international conventions and charters.

South-eastern Europe

Recommendation 1588 (2003) on population displacement in south-eastern Europe: trends, problems, solutions – 27 January 2003

The Assembly drew attention to the unresolved question of refugees and displaced persons in south-eastern Europe. To date, the number of displaced persons (internally displaced and refugees) still seeking durable solutions in the region amounts to a total of 1.2 million people. Some of them have been refugees for over ten years now.

The Assembly noted with satisfaction that the last two years marked a significant improvement of the situation, but observed that a number of obstacles remain, including the poor economic situation in certain areas of return, the

housing situation, and in particular obstacles related to the repossession of property or tenancy rights by returnees and a lack of alternative accommodation for those who illegally occupy others' houses. Both long- and short-term strategies need to be assisted financially and socially by the international community.

The Assembly therefore urged the Council of Europe member states to continue developing a comprehensive economic strategy in the framework of the Stability Pact for South-Eastern Europe and urged the governmental authorities in the region to do all in their power to create the humanitarian, economic and legislative conditions necessary for the durable return of refugees and displaced persons

Resolution 1312 (2003) on progress on the Stability Pact for South-Eastern Europe: enhancing security and political stability through economic co-operation – 27 January 2003

The Assembly took note of the results of the Third Parliamentary Conference on the Stability Pact for South-Eastern Europe, held in Tirana from 14 to 16 October 2002, and expressed its full support for the Tirana Declaration, adopted by acclamation by the Conference.

It noted the considerable frustration experienced by many of the South-East European Stability Pact members over the slow and organisationally cumbersome realisation of some of the Pact's projects. On the other hand, it also registered the impatience felt by many donor countries and institutions over what they see as lagging progress by countries in the region in areas vital for the Pact's success, such as effective implementation of bilateral Free Trade Agreements, the curbing of corruption and organised crime, the movement of people and the clear establishment and enforcement of property rights.

Finally, the Assembly welcomed and strongly supports the decision of the Stability Pact's "Investment Compact Initiative" to establish a monitoring mechanism for the implementation of key principles and best practices agreed by South-East European Ministers in July 2002, in order to enhance investment in South-Eastern Europe.

Mediterranean culture

Resolution 1313 (2003) and Recommendation 1590 (2003) on cultural co-operation between Europe and the south Mediterranean countries – 28 January 2003

The Assembly expressed its conviction that the values defended by the Council of Europe are universal and that the best reaction to globalisation is to co-operate with non-European countries that share certain of these values, beginning with the states that are closest to Europe in geographical terms.

Relations between Europe and the south Mediterranean countries must and can be improved. Culture, including education, heritage and the arts, science, youth, sport and the media, is particularly conducive to such co-operation.

Confronted with the economic, political, social and also cultural tensions in most parts of the world, the Assembly rejected the facile explanation of such tensions as a clash of civilisations. It was convinced that improved cultural relations between Europe and the south Mediterranean countries would provide the beginning of a solution to wider problems if such endeavours were backed by strong political will.

The Assembly resolved in particular: to develop cultural contacts with south Mediterranean countries; to enhance cultural co-operation with the south Mediterranean countries and with international organisations such as the cultural organisations of the Arab League (ALESCO) and of the Islamic Conference (ISESCO); to promote the dialogue and cultural co-operation with other countries and regions which are close to Europe and share its history.

It also called upon the competent authorities in the member states of the Council of Europe and in Algeria, Egypt, Libya, Mauritania, Morocco and Tunisia to give priority to cultural co-operation between Europe and the south Mediterranean countries in the areas of education, culture, religion and media in particular.

In its Recommendation 1590 (2003), the Assembly suggested considering such co-operation as one of the Organisation's priorities and gave details of project areas of particular interest.

Media

Recommendation 1589 (2003) on freedom of expression in the media in Europe – 28 January 2003

The Assembly regretted that many problems persist concerning freedom of expression and information in the media in Europe. Journalists are victims of intimidation, violence and even assassination in a number of European countries. It is unacceptable in a democracy that journalists should be sent to prison for their work. Other forms of legal harassment, such as defamation suits or disproportionately high fines that bring media outlets to the brink of extinction, continue to proliferate in several countries. Intimidation of media also takes the form of police raids, tax inspections and other forms of economic pressure.

Even the most advanced new democracies still face difficulties with ensuring genuinely independent public service broadcasting and proper balance between government and opposition.

Media concentration is a serious problem across the continent. In certain countries of central and eastern Europe a very small number of companies now predominantly own the printed press. Access to digital television also tends to be highly concentrated.

The Assembly therefore stressed the need for the Council of Europe to continue to monitor closely the state of freedom of expression and media pluralism across the continent. It also urged all European states, where appropriate, to ensure progress in the investigation of murders of journalists; to set free all journalists imprisoned for their legitimate professional work and to remove legislation that makes journalistic freedom of expression subject to criminal prosecution; to stop immediately all forms of legal and

economic harassment of dissenting media; and to revise their media legislation according to Council of Europe standards and to ensure its proper implementation.

Chechen Republic

Resolution 1315 (2003), Recommendation 1593 (2003) and Order No. 584 (2003) on the evaluation of the prospects for a political solution of the conflict in the Chechen Republic – 29 January 2003

The Assembly reiterated its firm conviction that the Chechen conflict cannot be resolved by the use of force and there will be no peace in the region, nor an end to terrorist attacks, without a political solution based on negotiation and on European democratic values.

With regard to the human rights situation in the Chechen Republic, the Assembly was distressed by the number of killings of politically active individuals, by repeated disappearances and the ineffectiveness of the authorities in investigating them, as well as by the widespread allegations and indications of brutality and violence against the civilian population in the Republic, and concluded that the Russian authorities seem unable to stop grave human rights violations in Chechnya.

Therefore, the Assembly called upon the competent authorities of the Russian Federation and Chechen Republic to reduce the federal military presence and to leave law-enforcement activities to the law-enforcement authorities of the Chechen Republic itself, to ensure that police and security personnel at all times adhere to codes of conduct as recommended by the Council of Europe, and apply all Russian constitutional guarantees to those arrested, wherever they are arrested and detained, to strengthen the independence and effectiveness of the judicial authorities, to curb the proliferation of weapons amongst the Chechen fighters and to encourage the armed fighters to surrender their weapons voluntarily,

Regarding the referendum on a draft constitution for the Chechen Republic planned for 23 March 2003, the Assembly was concerned that the necessary conditions for holding such a referendum are unlikely to be met by this date. It therefore called upon the competent authorities to ensure an adequate level of public security throughout the Chechen Republic before and during any referendum, to draw up a transparent and accurate register of voters, to examine possible ways of enabling the Chechen internally displaced persons (IDPs) to exercise their right to vote, to respect freedom of association and expression and to ensure transparency throughout any referendum process and subsequent elections.

The Assembly called upon the competent authorities of the Russian Federation and Chechen Republic together with the European and wider international community urgently to draw up a co-ordinated collaborative plan of action for reconstruction and humanitarian aid and ensure the fair, proper and transparent use of such aid.

It also urged the Chechen fighters to lay down their arms and commit themselves to a serious political process, to distance themselves convincingly from terrorist acts and other crimes committed as part of the conflict in the Chechen Republic and to release all kidnapped people immediately.

In its Recommendation 1593 (2003), the Assembly called for increased practical assistance to the authorities of the Russian Federation and the Chechen Republic in all relevant spheres including the rule of law, human rights, the functioning of democracy, cultural co-operation and humanitarian priorities and the immediate implementation of the recent recommendations made by the Council of Europe's Commissioner for Human Rights "on certain rights that must be guaranteed during the arrest and detention of persons following 'cleansing' operations in the Chechen Republic of the Russian Federation".

In its Order No. 584 (2003), it instructed its Committee on Legal Affairs and Human Rights to present a report on the human rights situation in the Chechen Republic at its next part-session, to be based on information made available by the competent authorities, international organisations, NGOs and journalists.

Persons with disabilities

Recommendation 1592 (2003): towards full social inclusion of persons with disabilities – 29 January 2003

It has been estimated that people with disabilities represent 10 to15% of the total population in Europe. Some of the fundamental rights contained in the European Convention on Human Rights, its protocols, and the European Social Charter (Revised) are still inaccessible to many people with disabilities.

The Assembly considered that the right to receive support and assistance, although essential to improving the quality of life of people with disabilities, is not enough. Guaranteeing access to equal political, social, economic and cultural rights should be a common political objective for the next decade. Equal status, inclusion, full citizenship, and the right to choose should be further promoted and implemented.

The Assembly recommended that, in the course of the year 2003, declared "European Year of People with Disabilities" by the Council of the European Union, all member states participate in the Second European Conference of Ministers responsible for integration policies for people with disabilities (Malaga, 7-8 May 2003), and called upon all relevant bodies of the Council of Europe to give consideration to including explicit reference to discrimination on the grounds of disability in the main Council of Europe legal instruments, to play an active role in the United Nations initiative to draft proposals for a comprehensive international convention to promote and protect the rights and dignity of persons with disabilities, to put in hand forthwith the preparation of a convention for the protection and promotion of the rights of people with disabilities, and to adopt an Action Programme for the full social inclusion of people with disabilities in Europe.

Iraq

Resolution 1316 (2003) on Iraq – 30 January 2003

The Assembly noted that the Iraq crisis more than ever remains a threat to peace and stability in the Middle East and Persian Gulf region, as well as throughout the world.

According to the international inspectors' interim report, the Iraqi authorities are not co-operating sufficiently and have not presented credible evidence of having dropped all the prohibited weapons programmes. However, they have found nothing to prove that Iraq still possesses weapons of mass destruction or ballistic missiles, or that it is preparing to produce these. In addition, public opinion in the member states of the Council of Europe is mostly in favour of the solution of the Iraq crisis through political means, and against unilateral intervention in Iraq. Even the American public increasingly favours the idea of a political solution.

The Assembly concludes from this that, in the current circumstances, the use of force against Iraq would not be justified. The inspectors must continue and intensify their work one last time, and must be provided with all necessary personnel, equipment and logistic support.

It reiterated its firm conviction that the solution of the Iraq crisis must be in accordance with the principles of international law and be based on specific United Nations Security Council authority and on broad international support.

It also took the view that Saddam Hussein's regime is responsible for the sufferings of the Iraqi people and is guilty of the human rights violations of which a large number of Iraqis have been victims. It therefore called on the Iraqi authorities to co-operate actively, immediately, openly and without reservations, with the United Nations inspectors in order to dispel the international community's suspicions about Iraq's compliance with the United Nations Security Council resolutions requiring it to disarm.

It further called on all Council of Europe member states, observer states and candidate states to step up their efforts to obtain, by political means, the verifiable disarmament of Iraq, to give their full support to the international inspectors and to refrain from any action detrimental to the authority and role of the United Nations

Democracy and legal development

Corruption

Opinion No. 241 (2002) on the draft additional protocol to the Criminal Law Convention on Corruption – 18 November 2002

The Assembly regretted that, almost four years after the Criminal Law Convention on Corruption was opened for signature, it has been ratified by only eighteen member states, in spite of the large number of reservations possible.

It welcomed the new advance represented by the draft additional protocol to the Criminal Law Convention on Corruption, which adds two new categories of people, namely arbitrators and jurors, but noted that the definition of the term *arbitrator* given in Article 1 of the draft protocol does not indicate the area in which the individuals concerned operate and recommended that the text should apply also to domestic and foreign referees and other sports officials with similar functions.

European Union

Resolution 1314 (2003) on the contribution of the Council of Europe to the Constitution-making process of the European Union – 29 January 2003

In view of the work of the Convention on the future of Europe, the Assembly congratulated the Convention Praesidium which, eight months after beginning work, submitted a preliminary draft treaty establishing a Constitution for Europe at the plenary session of 28 and 29 October 2002.

The Assembly accordingly favours the inclusion of the European Union's Charter of Fundamental Rights in the basic treaty and the accession of the European Union to the European Convention on Human Rights (ECHR) to strengthen the legally binding mechanisms for the protection of human rights in Europe. The Assembly is convinced that effective protection of human rights continent-wide can be achieved solely if the Union's institutions and organs are bound not only by the Charter but also by the ECHR.

The opportunity must not be lost to capitalise on the role that the Council of Europe would have to play in defining a privileged relationship between the Union and its neighbouring states, owing to its pan-European character and the fact that all its member states co-operate on an equal footing. The Convention should take this state of affairs into account and give priority to making full use of this institution, rather than setting up new bodies or other institutional arrangements, which would result in duplication of efforts and wasted resources.

The Assembly called on the EC/EU and its member states to incorporate the European Union's Charter of Fundamental Rights and the European Convention on Human Rights in the constitutional treaty, so as to give them binding legal force, to include in the future constitutional treaty a clause on accession of the EC/EU to the ECHR, to start negotiations with the Council of Europe and its member states without delay so as to prepare the legal instruments needed for this accession, to amend the Treaty establishing the European Community to allow direct appeals by individuals to the Court of Justice of the European Communities, to consider redefining the concept of European Union citizenship by basing it on a criterion other than nationality and to bear in mind and include the Council of Europe's conventional *acquis* in the future constitutional treaty.

Electoral good practice

Resolution 1320 (2003) and Recommendation 1595 (2003) on the code of Good Practice in Electoral Matters – 30 January 2003

The holding of free, equal, universal, secret and direct elections at regular intervals is a *sine qua non* for recognising a political system as democratic.

Noting that there is no formal text setting out all the underlying principles of European electoral systems and no permanent European body responsible for electoral monitoring, the Assembly considered that the Council of Europe, owing to its specific role as the guardian of democracy in Europe, should play a pioneering role in codifying election rules.

The Assembly welcomed the setting up of the Council for Democratic Elections, and especially thanks the Venice Commission for its significant contribution to the drafting of the *Code of Good Practice in Electoral Matters*, a publication which constitutes a major step towards harmonising standards for the organisation and observation of elections and in establishing procedures and conditions for the organisation of the electoral process. It also considered that as a reference document it would reinforce the impact and the credibility of the electoral observation and monitoring activities conducted by the Council of Europe.

The Assembly therefore invited the Venice Commission to accord the Council for Democratic Elections permanent status, and to implement the aims of the Council for Democratic Elections.

In its Recommendation 1595 (2003), the Assembly noted that the Council of Europe has, over the last decade, developed numerous activities relating to the organisation and observation of elections and that it therefore has widely-acknowledged international expertise in this field and recommended transforming the *Code of Good Practice in Electoral Matters* into a European convention, taking account, where appropriate, of the draft convention of the Association of Central and Eastern European Election Officials and the work of the OSCE's Office for Democratic Institutions and Human Rights.

Terrorism

Opinion No. 242 (2003) on the draft protocol amending the European Convention on the Suppression of Terrorism – 31 January 2003

The changes introduced by the draft protocol amending the European Convention on the Suppression of Terrorism to a large extent reflect the concerns which the Assembly has expressed in the past.

Nevertheless, the Assembly expressed its regret that the changes made to the current Article 13 are not as far-reaching as it recommended since it still allows for reservations which may defeat the purpose of the Convention. It did, however, recognise that there are significantly fewer possibilities of entering reservations and specific conditions which must be respected.

It considered that it would be a good idea, in due course, to consider the possibility of drawing up a general Council of Europe anti-terrorism convention, taking account of the work being carried out by the United Nations, and proposed a number of amendments to the draft protocol.

Statements of the Parliamentary Assembly President

Meeting with President Putin

Assembly President Peter Schieder made this statement following his meeting with President Vladimir Putin in Moscow on 27 November 2002:

"The agenda of the meeting with President Putin and other interlocutors in Moscow was dictated by recent events. Russia is a key member of the Council of Europe. Its commitment to, and respect for, the Council of Europe's political and legal standards in the field of democracy and human rights are of crucial importance for its stability, and for the stability of Europe as a whole.

"We agreed that the fight against terrorism should be the first priority of action at national and international level. The Council of Europe's recently adopted guidelines should help Russia, and other countries which face a direct terrorist threat, to act efficiently without compromising the protection of human rights and fundamental freedoms. President Putin's decision to veto parts of the recently adopted anti-terrorist law shows that he is fully aware of the need to maintain this balance.

"President Putin informed me of the Russian authorities' plans to organise a constitutional referendum and elections in the Chechen Republic in the first half of next year, and said the Council of Europe could provide useful assistance in this process. I expressed my support for any initiative that may contribute to a political solution to this tragic conflict. I also said, and President Putin agreed, that strict observance of Council of Europe human rights standards is a condition *sine qua non* for such a peaceful solution, and that violations which continue to occur should stop immediately.

"The Council of Europe is Russia's opportunity to play a significant role in the process of European co-operation and integration. Against the background of the situation in Kaliningrad, President Putin expressed his belief that the Council of Europe should look into the problem of the freedom of movement between EU member states and other European countries, as well as into other issues concerning the continent as a whole.

"I paid tribute to President Putin for his firm and principled position in maintaining a moratorium on the death penalty in Russia. President Putin accepted my invitation to visit Strasbourg and speak to the Parliamentary Assembly in the near future."

Peter Schieder visited Moscow at the invitation of the Speaker of the Russian State Duma Gennadiy Seleznev and the Speaker of the Council of the Federation Sergey Mironov. He also met with Foreign Affairs Minister Igor Ivanov and the

Chair of the Russian parliamentary delegation to the Assembly Dmitri Rogozin.

Serbian presidential election

Assembly President Peter Schieder made the following statement on 9 December 2002:

"The second successive invalidation of presidential elections in Serbia is a cause for concern. While low voter turnout is a common occurrence in many of our democracies, an inability to hold valid elections is not.

"The task now is to prevent a political crisis which could destabilise the country and undermine the democratic achievements of the past two years. The next few days and weeks will be critical, and I call on political leaders to act with the utmost responsibility and restraint.

"The political, legal and other circumstances which led to yesterday's failed vote should be carefully examined in order to find a solution which enjoys the broadest possible political support.

"Meanwhile, the authorities in Belgrade and Podgorica should proceed with ratification of the new Constitutional Charter on relations between Serbia and Montenegro agreed last Friday, and should continue implementing democratic reforms to enable the country to meet Council of Europe requirements once it becomes a full member of the organisation."

The elections were observed by an International Election Observation Mission composed of members of the Parliamentary Assembly and representatives of OSCE's Office for Democratic Institutions and Human Rights (ODIHR).

International Human Rights Day

Statement by Council of Europe Parliamentary Assembly President Peter Schieder on the eve of International Human Rights Day (10 December 2002):

"Fifteen months after the attacks of 11 September, the world continues to face an unprecedented terrorist threat. We must protect ourselves in unprecedented ways. But, in doing so, we must not sacrifice the very foundations of the society terrorists are trying to destroy. By giving up on human rights, we hand them victory.

"The Assembly's position on the fight against terrorism and the protection of human rights may be summarised in five points.

"Firstly, there can never be any justification for resorting to terrorism. No cause can ever be served by the deaths of innocent people.

"Secondly, we must not allow human rights to become a victim of terrorism, nor should they be sacrificed in our governments' fight against it.

"Thirdly, a successful anti-terrorist policy should stop more terrorists than it helps to create. Terrorist actions, particularly those aimed against civilians, are absolutely unjustifiable. However, disproportionate and indiscriminate retaliation, hurting huge numbers of innocent people, is counterproductive and wrong. It encourages the recruitment of future extremists, creating an army that may sow terror and death for decades to come.

"Fourthly, terrorists are afraid of human rights. They thrive under oppression, injustice, censorship and torture. Every time a state authority departs from universally agreed standards of justice and human rights, the work of terrorists becomes easier and their popular support is likely to grow.

"Fifthly, attacking the root causes of terrorism is not a sign of weakness. Repression alone will never work. To win in the struggle against terrorism, we must put in place long-term preventive measures dealing with social, political, economic and other circumstances related to terrorism. We must deal with legitimate grievances, quickly and fairly, before they are exploited by the extremists.

"We have the right to both freedom and security. By giving up on one, we risk losing both."

European Year of People with Disabilities

"I very much welcome the EU initiative to declare 2003 the European Year of People with Disabilities, but it would go against the spirit of the Council of Europe, and the values this organisation stands for, to limit such an initiative to only within EU borders. Non-discrimination is our guiding star," Assembly President Peter Schieder said during meetings with French Secretary of State for People with Disabilities, Marie-Thérèse Boisseau, and representatives of disability organisations on 29 March 2003.

"According to WHO estimates, people with disabilities constitute 10% of the general population, that is approximately 80 million people on the European continent, twice as many as the number in EU countries alone.

"Our objective must therefore be the full and equal enjoyment of human and social rights by people with disabilities in all our member states, particularly the rights to education, work, private and family life, health and social security, protection against poverty and social exclusion and the right to adequate housing," he said.

Representatives of disability NGOs delivered a declaration to the President, who promised to raise the issues it contained with Council of Europe ministers responsible for integration policies for people with disabilities at their conference in Malaga, Spain (7-8 May 2003).

International Criminal Court

The 87 members of the International Criminal Court's Assembly of States Parties (3-7 February 2003) elected the ICC's first 18 judges in New York. This election will open the way for the establishment of the Court, which has the potential to be the most important human rights institution created in decades. Peter Schieder expressed his support for the International Criminal Court:

"The ICC represents an enormous blow to the impunity all too often associated with genocide, crimes against humanity and war crimes. While not a panacea, the ICC will provide victims with redress, hold those accused of these horrific crimes to account under the highest standards

of international justice and thus strengthen the rule of law worldwide.

"The Assembly and the Council of Europe as a whole are firmly committed to the International Criminal Court, 33 of the 44 Council of Europe member states have already joined the ICC and I call on the other 11 to ratify the Rome Statute as quickly as possible.

"I deeply regret the United States government's continuing efforts to undermine the ICC despite the Treaty's numerous safeguards to preclude any politically motivated prosecutions. Nonetheless, it is clear that the Court will soon be a reality and will certainly disprove the claims of its most staunch opponents.

"I am greatly pleased by the partnership forged between members of the Parliamentary Assembly, the Council of Europe and non-governmental organisations to establish the Court. In this context I want especially to thank Human Rights Watch for its tenacious efforts over the years in this and other areas of Council of Europe concern."

Serbia and Montenegro

Assembly President Peter Schieder and Secretary General Walter Schwimmer welcomed the Serbian and Montenegrin Parliaments' adoption of the Constitutional Charter that will lead to the creation of Serbia and Montenegro.

Mr Schieder said that ratification was the condition set by the Assembly, when it debated the country's membership of the Council last September.

"I should like to appeal to the country's authorities to accelerate compliance with the commitments undertaken during the accession procedure. I am looking forward to welcoming a delegation of the Parliament of Serbia and Montenegro as a full member in our Assembly, but the final decision on inviting the country to become a member of the Council of Europe lies, of course, with the Committee of Ministers."

Mr Schwimmer said he hoped that Serbia and Montenegro would soon be in a position to become a member state.

"The natural place for Serbia and Montenegro is amongst the European family – as part of the Council of Europe – but I must stress that I attach extreme importance to co-operation with the International Criminal Tribunal for the former Yugoslavia in The Hague. The voluntary surrender of Milan Milutinovic, last week, was a very encouraging sign and I hope to see the other indictees arrested very soon," said Mr Schwimmer.

Iraq

"We are not divided on Iraq"

Assembly President Peter Schieder made the following statement on 23 January 2003:

"The United States administration strongly criticised the recent joint statement of the French President Chirac and German Chancellor Schroeder in favour of a peaceful resolution of the Iraq crisis. Some went as far as to claim that the two countries were isolated in their opposition to a new war with Iraq and that the majority of European countries, particularly in the 'new Europe which has shifted its center of gravity to the East' supported the military option pursued by the United States.

"Such claims are unfounded. We are not divided on Iraq. In September last year, the Parliamentary Assembly of the Council of Europe, adopted, with an overwhelming majority, a resolution on the threat of military action against Iraq, demanding that all Council of Europe member states, observers and special guests step up their efforts to avoid a new war in Iraq and to find a solution to the Iraqi problem in accordance with the United Nations' principles and through its mechanisms; the members of the United Nations Security Council resort to military intervention only after having exhausted all other approaches, and only if a flagrant violation of the United Nations' resolutions is confirmed by the inspectors' future report; and that all Council of Europe member states refrain from supporting any action not covered by a mandate of the United Nations Security Council.

"I should like to recall that the Parliamentary Assembly of the Council of Europe brings together members from national parliaments of 44 European countries, representing 800 million European citizens. It would be difficult to find any other body which would be able to reflect the European public opinion with greater authority and legitimacy.

"The Assembly is likely to hold a second debate on the situation in Iraq during its winter session starting next Monday in Strasbourg."

"There is no new and old Europe"

Assembly President Peter Schieder made the following statement at the opening of the Assembly's winter session in Strasbourg on 27 January 2003:

"Today, the world is on the brink of war. Not a small local spat that can quickly be dealt with but a conflict which may have long-term global repercussions. Some may ask what the Assembly and its decisions may change in this game played by the high and mighty. They may even dismiss it outright as unimportant and irrelevant. They are wrong!

"We should all bear in mind that the Assembly brings together parliamentarians from 44 European countries, representing 800 million Europeans. Our members are of all political persuasions, representing not only parties in power, but also those in opposition. It would be difficult to find a body which would be able to represent the opinion of Europe's citizens with more authority and legitimacy. Those who choose to ignore what is being said here in Strasbourg are doing so at their own risk.

"There is no 'new' and 'old' Europe in this chamber. In September last year, we said clearly that everything should be done to avoid a new war in Iraq and to find a solution to the Iraqi problem in accordance with the United Nations' principles and through its mechanisms. I do not think that it is only President Chirac, Chancellor Schroeder and foreign ministers Mr Fischer and Mr De Villepin who think that more should be done to find a peaceful solution to this crisis. Our debate on Thursday will certainly provide another indication on where Europe stands on this issue", he said.

Welcoming Turkish Prime Minister Abdullah Gül, Peter Schieder stressed that his visit was of real importance to the Council of Europe; not only because he was a very active member of the Assembly for many years but also because this visit offered a good chance to show in Strasbourg that doubts about whether Turkey belonged to Europe were unfounded and unfair.

"Turkey is an integrated part of the Council of Europe. It belongs to Europe. Mr Gül's policy is in line with our standards and recent initiatives aiming at finding a peaceful solution for Iraq demonstrated that Turkey is not only acting in its own but in Europe's and the world's interest," he pointed out.

European public opinion

Assembly President Peter Schieder made the following declaration on 6 February 2003:

"The information presented to the UN Security Council yesterday was disturbing. It certainly added weight to the case against Iraq. There should no longer be any doubt of the fact that the regime of Saddam Hussein is a threat to the Iraqi people, to its neighbours and to the world as a whole. There can no longer be any hesitation as to the necessity to act, effectively, to counter this threat.

"What remains a legitimate question, however, even after the intervention by Secretary Powell, is what should be done, when it should be done and by whom.

"The Parliamentary Assembly of the Council of Europe last week adopted a resolution which – in my view – accurately reflects public opinion in Europe as a whole.

"The Assembly resolution asks all Council of Europe member, observer and candidate states to refrain from any action detrimental to the authority and role of the United Nations and to exclude any use of force outside the international legal framework and without an explicit decision by the United Nations Security Council. It also asks these countries to give their full support to the international inspectors and to provide them with any information and any means which might help them to complete their work. Withholding information from inspectors is against the spirit and the letter of Security Council Resolution 1441, whether it is done by Iraq or anyone else."

Japan

Assembly President Peter Schieder made the following statement at the end of a four-day official visit to Japan, on 14 January 2003:

"Japan can be a motor for Asia in the defence of the principles the Council of Europe stands for: democracy, the rule of law and human rights. The country's legal values could serve as a model for other countries in the region, were it not for the open question of the death penalty and its application.

"For the Parliamentary Assembly this means that the observer status of Japan with the Council of Europe is at stake. We have to work towards a solution to the problem as the Assembly will soon present a new report examining the observer status of Japan and the United States of America.

"I was impressed by the open exchange of views and the possibility to speak a clear language with all interlocutors during my official visit. Let me therefore again launch a pressing appeal for significant progress on the abolition of the death penalty in Japan, or at least an immediate moratorium."

Armenian presidential election

Assembly President Peter Schieder, in a statement made on 26 February 2003, called on the Armenian authorities and the opposition to calm the political climate in the country in the run-up to the second round of the presidential election.

"It is the duty of the authorities to do their best to overcome tensions without resorting to disproportionate means to maintain public order," Peter Schieder said, calling for the immediate release of opposition campaigners arrested. The President also called for the opposition to fully respect the constitutional and legal order of the country.

"We are seriously concerned about the shortcomings and irregularities reported by the international election observation mission after the first round. If Armenia wants to live up to its democratic obligations as a member country of the Council of Europe, such irregularities should not be reproduced during the second round," he stressed.

Peter Schieder also appealed for greater transparency in the counting process and for the rapid publication of voting results. "The Parliamentary Assembly stands ready to observe the second round on 5 March alongside observers from the OSCE's Office for Democratic Institutions and Human Rights.

"We expect a free and fair outcome of the presidential election, one which allows for the results to be accepted by all those concerned, thus helping to consolidate democratic stability in the country."

Death penalty

Peter Schieder, Assembly President, and the Secretary General, Walter Schwimmer, marked International Death Penalty Abolition Day (Saturday, 1 March) by urging states across the world to abandon the use of capital punishment.

"The death penalty is arbitrary, discriminatory and irreversible. Judicial errors – which can never be entirely ruled out – simply cannot be reversed. The abolition of the death penalty is a central objective of the Council of Europe, and together we have to fight for the total abolition of capital punishment, not only in Europe, but globally," Mr Schwimmer said.

The Secretary General praised the actions of George Ryan, the Governor of Illinois who commuted the death sentences of 156 prisoners to life imprisonment in January. At the same time, he also appealed to the United States, which has observer status with the Council of Europe since 1996, not to execute César Roberto Fierro Reyna, Roberto Moreno Ramos and Osvaldo Torres Aguilera, three Mexican nationals currently on death row in the United States.

"The death penalty is in absolute contradiction to our belief in justice and human dignity. Although it no longer exists on the European continent – which is now a *de facto* death-penalty-free zone – the Parliamentary Assembly

believes that everyone's right to life is fundamental and goes beyond geographical borders. In particular, countries enjoying observer status with the Council of Europe are expected to share the Organisation's fundamental values," Peter Schieder stressed.

In a resolution adopted in June 2001, the Parliamentary Assembly urged Japan and the United States of America – both observers to the Council of Europe – to institute without delay a moratorium on executions, and take the necessary steps to abolish the death penalty and improve conditions on "death row" immediately, or risk having their observer status called into question should there be no significant progress by 1 January 2003. A debate on this issue is scheduled for the June 2003 Parliamentary Assembly session.

Election observation missions

Presidential election in Montenegro

Following the failed presidential election in Montenegro of 22 December 2002, the international observers from the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's Parliamentary Assembly called for the removal of provisions in the Republic's legislation allowing for a infinite repetition of unsuccessful elections.

"The possibility of repeating elections infinitely invites boycotts and carries the risk of protracted political instability", said Nikolai Vulchanov, Head of the long-term OSCE/ODIHR Election Observation Mission. "The legislation should ensure that electoral processes be concluded within a reasonable timeframe."

"We are very concerned that the deep political polarisation, which again became apparent during this election, may seriously endanger the continuation of Montenegro's reform process", added Andreas Gross, the Head of the delegation of the Council of Europe's Parliamentary Assembly.

In a post-election statement, the international observers noted that the elections were conducted largely in line with international standards. However, the observer mission criticised the decision by major opposition parties to boycott the elections, thereby depriving voters of a genuine choice and undermining the democratic process.

In order to avoid further repetitions of yesterday's failed election, the mission recommended to consider removing provisions allowing for repeat elections or abolishing the 50%-turnout requirement.

Parliamentary elections in Monaco

The delegation of observers from the Council of Europe Parliamentary Assembly concluded that the parliamentary elections held on 9 February in the Principality of Monaco were well organised and well conducted.

It welcomed the high turnout, which bore witness to voters' confidence in the democratic process.

The delegation was satisfied to note that the new electoral law, by introducing an element of proportionality into the system, will allow the opposition to be represented on the National Council. The Parliamentary Assembly had called for a reform of the electoral law in connection with the accession procedure.

The delegation held detailed discussions with all concerned by the elections: the leaders of the lists of candidates, the President of the National Council, representatives of the Court of First Instance and the Court of Appeal and the Mayor of Monaco.

The delegation members were able to observe voting and the counting of votes in Monaco's only polling station.

Presidential election in Armenia

Voting in the presidential election in Armenia on 19 February 2003 was generally calm and well-administered, but the counting process was flawed and the long-term election process fell short of international standards in several key respects. This was the conclusion of the 200-strong international election observation mission deployed by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and the Parliamentary Assembly of the Council of Europe (PACE).

"It is encouraging that election day went reasonably well, but serious irregularities did not enable us to make an overall positive assessment," said Lord Russell-Johnston, head of the PACE delegation.

"While we were pleased to see an active and vigorous campaign, we are concerned about serious shortcomings that were evident during the run-up to the election," added Peter Eicher, the head of the ODIHR long-term observer mission. "We urge the authorities to use the time before the upcoming parliamentary vote to address these shortcomings."

The international observers noted that the participation of nine candidates provided voters with a genuine choice. There was a vigorous, countrywide campaign with active public participation. The election was administered efficiently within an improved legislative framework. The voting process was generally well-conducted, although there were cases of ballot-box stuffing and intimidation of candidate proxies. Serious irregularities took place during the count in a number of polling stations visited by international observers.

The long-term electoral process was clouded by a number of shortcomings. These included patterns of intimidation and cases of disruption of campaign events, as well as one serious instance of violence. There was widespread use of public resources for the campaign of the incumbent. Public TV failed to meet its obligation to provide balanced and unbiased reporting.

Visits, hearings, meetings, etc.

Trafficking in women and prostitution

The Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe held a colloquy on migration connected with trafficking in women and prostitution in The Hague (Netherlands) on 14-15 November.

The colloquy considered the causes of this type of trafficking, which is the third most profitable form of trade after drugs and arms trafficking, as well as the situation in countries of origin (Russia and the Baltic states), in countries of transit (central Europe and the Balkans) and practical examples in the Netherlands.

At the end of the colloquy, committee members visited the prostitution districts of The Hague and the "De Rode Draad" (the red road) Foundation in Amsterdam and the Prostitution Information Centre.

- Residence legal status and freedom of movement of migrant workers in Europe: lessons from the case of Portugal.

Young refugees

A hearing on the situation of young refugees was held at the European Youth Centre of Budapest on 18 December 2002. This event was jointly organised by the Committee on Refugees, Migration and Demography of the Parliamentary Assembly, the European Youth Centre and the United Nations High Commissioner for Refugees. It brought together Hungarian authorities, parliamentarians members of the Committee, experts, voluntary organisations dealing with refugees issues and concerns to hear testimonies of young refugees on the situation they experience in their countries of asylum, including Hungary, the Czech Republic, Romania, Slovakia and Slovenia.

The hearing offered a portrayal of the situation of young refugees in their countries of asylum, with a view both to acknowledging positive aspects and to highlighting legal or practical omissions and inadequacies, so that these can be corrected and models of good practice can be proposed. The interaction, exchange of experience and joint work between parliamentarians and young refugees is expected to result in a number of political recommendations enhancing the protection and assistance provided to young refugees in Europe, who represent a substantial proportion of those who flee their countries of origin in fear of persecution.

For more information on these and other topics, see:

Assembly Internet site: http://assembly.coe.int/

European human rights institutes

This report updates the information contained in the supplement to Human rights information bulletin, No. 57. A further supplement on the activities of European human rights institutes will be published early in 2004.

Report covering the period July 2002 – February 2003

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Conferences

26-28 September 2002, Potsdam – Protecting Human Rights by Customary Law *Menschenrechtsschutz durch Gewohnheitsrecht*

Lecture given at the University of Potsdam in 2002/2003

Presentation of Papers on the Protection of Human Rights – *Vortragsreihe "ausgewählte Fragen des Menschenrechtsschutzes"*:

- "Are Rights of Minorities Human Rights?" – *Sind Minderheitenrechte Menschenrechte?*;
- "International Criminal Court" – *Der Internationale Strafgerichtshof*;
- "Teaching Human Rights" – *Menschenrechtserziehung*;
- "Preventive Human Rights Policy" – *Präventive Menschenrechtspolitik*;
- "Biological Ethics – Questions of current interest" – *Bioethik - aktuelle Fragen*.

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Public Duties to Co-operate with the International Criminal Court – *Staatliche Kooperationspflichten gegenüber dem Internationalen Strafgerichtshof*
2002, Tatjana Maikowski, Berlin-Verlag Arno Spitz GmbH, Vol. 16-17

Human Rights Chamber for Bosnia and Herzegovia – *Die Menschenrechtskammer für Bosnien-Herzegowina*
Elisabeth Küttler, 2003

Refugees – Human Rights – Nationality *Flüchtlinge – Menschenrechte – Staatsangehörigkeit*, 2002

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- Report on the Activities of the Human Rights Committee (United Nations) in 2002/I; *Bericht über die Arbeit des enschenrechtsausschusses der Vereinten Nationen im Jahre 2002 – Teil I*
- The Non-Aligned Movement – Engagement for Human Rights?; *Die Blockfreienbewegung – Einsatz für die Menschenrechte?*
- Half-time of the term of office: The Commissionar for Human Rights of the European Council – a successful prototype? *Halbzeit der Amtszeit: Der Menschenrechtskommissar des Europarats – ein Erfolgsmodell?*

Appendix
Simplified chart of 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	Protocol No. 13	European Social Charter	European Social Charter (Revised)	CPT	FCNM Framework Convention for the Protection of National Minorities
Albania	02.10.96	02.10.96	02.10.96	21.09.00	02.10.96				**14.11.02**	02.10.96	28.09.99
Andorra	22.01.96			22.01.96			26.03.03			06.01.97	
Armenia	26.04.02	26.04.02	26.04.02		26.04.02					18.06.02	20.07.98
Austria	03.09.58	03.09.58	18.09.69	05.01.84	14.05.86			29.10.69		06.01.89	31.03.98
Azerbaijan	15.04.02	15.04.02	15.04.02	15.04.02	15.04.02					15.04.02	26.06.00
Belgium	14.06.55	14.06.55	21.09.70	10.12.98				16.10.90		23.07.91	
Bosnia and Herzegovina	12.07.02	12.07.02	12.07.02	12.07.02	12.07.02					12.07.02	24.02.00
Bulgaria	07.09.92	07.09.92	04.11.00	29.09.99	04.11.00		**13.02.03**		07.06.00	03.05.94	07.05.99
Croatia	05.11.97	05.11.97	05.11.97	05.11.97	05.11.97	**03.02.03**	**03.02.03**	**26.02.03**		11.10.97	11.10.97
Cyprus	06.10.62	06.10.62	03.10.89	19.01.00	15.09.00	30.04.02	12.03.03	07.03.68	27.09.00	03.04.89	04.06.96
Czech Republic	18.03.92	18.03.92	18.03.92	18.03.92	18.03.92			03.11.99		07.09.95	18.12.97
Denmark	13.04.53	13.04.53	30.09.64	01.12.83	18.08.88		**28.11.02**	03.03.65		02.05.89	22.09.97
Estonia	16.04.96	16.04.96	16.04.96	17.04.98	16.04.96				11.09.00	06.11.96	06.01.97
Finland	10.05.90	10.05.90	10.05.90	10.05.90	10.05.90			29.04.91	21.06.02	20.12.90	03.10.97
France	03.05.74	03.05.74	03.05.74	17.02.86	17.02.86			09.03.73	07.05.99	09.01.89	
Georgia	20.05.99	07.06.02	13.04.00	13.04.00	13.04.00	15.06.01				20.06.00	
Germany	05.12.52	13.02.57	01.06.68	05.07.89				27.01.65		21.02.90	10.09.97
Greece	28.11.74	28.11.74		08.09.98	29.10.87			06.06.84		02.08.91	
Hungary	05.11.92	05.11.92	05.11.92	05.11.92	05.11.92			08.07.99		04.11.93	25.09.95
Iceland	29.06.53	29.06.53	16.11.67	22.05.87	22.05.87			15.01.76		19.06.90	
Ireland	25.02.53	25.02.53	29.10.68	24.06.94	03.08.01		03.05.02	07.10.64	04.11.00	14.03.88	07.05.99
Italy	26.10.55	26.10.55	27.05.82	29.12.88	07.11.91			22.10.65	05.07.99	29.12.88	03.11.97
Latvia	27.06.97	27.06.97	27.06.97	07.05.99	27.06.97			31.01.02		10.02.98	
Liechtenstein	08.09.82	14.11.95		15.11.90			**05.12.02**			12.09.91	18.11.97
Lithuania	20.06.95	24.05.96	20.06.95	08.07.99	20.06.95				29.06.01	26.11.98	23.03.00
Luxembourg	03.09.53	03.09.53	02.05.68	19.02.85	19.04.89			10.10.91		06.09.88	
Malta	23.01.67	23.01.67	05.06.02	26.03.91	**15.01.03**		03.05.02	04.10.88		07.03.88	10.02.98

	European Convention on Human Rights	**Protocol No. 1**	**Protocol No. 4**	**Protocol No. 6**	**Protocol No. 7**	**Protocol No. 12**	**Protocol No. 13**	**European Social Charter**	**European Social Charter (Revised)**	**CPT**	**FCNM** Framework Convention for the Protection of National Minorities
Moldova	12.09.97	12.09.97	12.09.97	12.09.97	12.09.97				08.11.01	02.10.97	20.11.96
Netherlands	31.08.54	31.08.54	23.06.82	25.04.86				22.04.80		12.10.88	
Norway	15.01.52	18.12.52	12.06.64	25.10.88	25.10.88			26.10.62	07.05.01	21.04.89	17.03.99
Poland	19.01.93	10.10.94	10.10.94	30.10.00	**04.12.02**			25.06.97		10.10.94	20.12.00
Portugal	09.11.78	09.11.78	09.11.78	02.10.86				30.09.91	30.05.02	29.03.90	07.05.02
Romania	20.06.94	20.06.94	20.06.94	20.06.94	20.06.94				07.05.99	04.10.94	11.05.95
Russia	05.05.98	05.05.98	05.05.98		05.05.98					05.05.98	21.08.98
San Marino	22.03.89	22.03.89	22.03.89	22.03.89	22.03.89					31.01.90	05.12.96
Slovakia	18.03.92	18.03.92	18.03.92	18.03.92	18.03.92			22.06.98		11.05.94	14.09.95
Slovenia	28.06.94	28.06.94	28.06.94	28.06.94	28.06.94				07.05.99	02.02.94	25.03.98
Spain	04.10.79	27.11.90		14.01.85				06.05.80		02.05.89	01.09.95
Sweden	04.02.52	22.06.53	13.06.64	09.02.84	08.11.85			17.12.62	29.05.98	21.06.88	09.02.00
Switzerland	28.11.74			13.10.87	24.02.88		03.05.02			07.10.88	21.10.98
"the former Yugoslav Republic of Macedonia"	10.04.97	10.04.97	10.04.97	10.04.97	10.04.97					06.06.97	10.04.97
Turkey	18.05.54	18.05.54						24.11.89		26.02.88	
Ukraine	11.09.97	11.09.97	11.09.97	04.04.00	11.09.97		11.03.03			05.05.97	26.01.98
United Kingdom	08.03.51	03.11.52		20.05.99				11.07.62		24.06.88	15.01.98

Updated: 04.04.03
Ratifications between **01.11.02** and **28.02.03** are highlighted

Full information on the state of signatures and ratifications of Council of Europe conventions can be found on the Treaty Office's Internet site: http://conventions.coe.int/

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