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Human rights information bulletin

A European Action Plan for the full integration of people with disabilities

Malaga, Spain,
host to the Second European Conference of Ministers Responsible for
Integration Policies for People with Disabilities
7-8 May 2003

No. 59, March-June 2003

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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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

Andorra

On 26 March 2003 Andorra ratified Protocol No. 13 to the European Convention on Human Rights.

Belgium

On 23 June 2003 Belgium ratified Protocol No. 13 to the European Convention on Human Rights.

Cyprus

On 12 March 2003 Cyprus ratified Protocol No. 13 to the European Convention on Human Rights. [This date was incorrectly reported as 12 February in our last issue.]

Georgia

On 22 May 2003 Georgia ratified Protocol No. 13 to the European Convention on Human Rights.

Romania

On 7 April 2003 Romania ratified Protocol No. 13 to the European Convention on Human Rights.

San Marino

On 25 April 2003 San Marino ratified Protocols Nos. 12 and 13 to the European Convention on Human Rights.

Sweden

On 22 April 2003 Sweden ratified Protocol No. 13 to the European Convention on Human Rights.

Ukraine

On 11 March 2003 Ukraine ratified Protocol No. 13 to the European Convention on Human Rights.

Reservations and declarations

Georgia

Declaration contained in the instrument of ratification deposited on 22 May 2003 – Or. Engl.

Georgia declares that until the full jurisdiction of Georgia is restored on the territories of Abkhazia and Tskhinvali Region, it cannot be held liable for the violations on these territories of the provisions of Protocol No. 13.

College of Europe in Natolin wins 19th René Cassin European Human Rights Competition

A team of students from the College of Europe in Natolin (Poland) won the 19th René Cassin European Human Rights Competition, beating the team representing the Quebec University in Montreal (Canada) in the final held on 17 April 2003 in the Hearing Room of the European Court of Human Rights.

The competition involves mock trials in French based on the European Convention on Human Rights and is open to students of law and political sciences. This year, some 240 representatives of 60 universities from 20 different countries locked horns on the themes of freedom of the press and children's rights.

Internet : http://www.coe.int/Rene-Cassin/
http://www.concourscassin.org/

René Cassin, who inspired the creation of the European human rights competition

Pál Csáky, Vice-Prime Minister of the Slovak Republic for European Integration, participated in the Secretry General's colloquy.

Internet : http://www.coe.int/HR-Challenges/

New global challenges for human rights and democracy

The question of how to safeguard democracy and human rights in the context of globalisation was the focus of a colloquy organised by Council of Europe Secretary General Walter Schwimmer in association with the European Democracy Forum at the Palais de l'Europe in Strasbourg on 24 and 25 April.

Participants at the colloquy discussed the challenges posed to human rights and democracy – two of the guiding principles of the Council of Europe – by extremism, diversity, international environmental issues and scientific and medical developments.

Participants in the colloquy will include representatives from the worlds of politics, culture and science, and from NGOs on both sides of the Atlantic and from the Mediterranean. Among the rapporteurs were be Pál Csáky, Vice-Prime Minister of the Slovak Republic for European Integration, Human Rights and Minorities. The general conclusions of the colloquy will be presented by Dominique Moïsi, special adviser at the Institut Français des Relations Internationales.

European Court of Human Rights

Introduction

Between 1 March and 30 June 2003, the Court dealt with 6911 (7031) cases:
- 5751 (5753) applications declared inadmissible
- 108 (124) applications struck off the list
- 220 (265) applications declared admissible
- 615 (664) applications communicated to governments
- 217 (225) 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 for the purposes of the present Bulletin *and are not binding on the supervisory organs of the European Convention on Human Rights.*

Judgments and decisions of the Grand Chamber

Perna v. Italy
Judgment of 6 May 2003

Alleged violation of: Article 6 §§1 and 3 (d) (right to a fair trial) and Article 10 (freedom of expression)

Principal facts and complaints

The applicant, Giancarlo Perna, is an Italian journalist. In November 1993 he published in the Italian daily newspaper Il Giornale an article about a judicial officer, Mr Giancarlo Caselli, who was at that time the Public Prosecutor in Palermo. The article was entitled "Caselli, the judge with the white quiff" (*Caselli, il ciuffo bianco della giustizia*) and bore the sub-title "Catholic schooling, communist militancy – like his friend Violante..." (*Scuola dai preti, militanza comunista come l'amico Violante...*).

The article first contained a criticism of Mr Caselli's political militancy and then accused Mr Caselli of taking part in a plan to gain control of the public prosecutors' offices in all Italian cities and of using the criminal-turned-informer (*pentito*) T. Buscetta in an attempt to destroy the political career of Mr Giulio Andreotti, a former Italian prime minister.

On 10 January 1996, the Monza District Court found the applicant and the then manager of the newspaper guilty of aggravated defamation. They were sentenced to fines of 1,500,000 and 1,000,000 Italian lire (ITL) respectively (about 775 and 515 euros) and ordered to pay damages and costs in the sum of ITL 60,000,000 (about 31,000 euros), reimburse the complainant's costs and publish the judgment. Mr Perna appealed. The Milan Court of Appeal gave judgment against the applicant on 28 October 1997. The Court of Cassation upheld the Court of Appeal's decision.

Relying on Article 6 §§1 and 3 (d) of the Convention, the applicant complained of an infringement of his right to defend himself on account of the Italian courts' refusal throughout the proceedings to admit the evidence he had sought to adduce. He further alleged an infringement of his right to freedom of expression, guaranteed by Article 10 of the Convention, on account both of the Italian courts' decisions on the merits and of the alleged restrictions on his right to defend himself.

Decision of the Court

Article 6 §§1 and 3 (d)

The Court noted that the evidence the applicant had wished to adduce had been intended to prove the truth of statements which had had no defamatory import according to the courts which had tried the case. The Court agreed with those courts that the evidence concerned would not have been capable of establishing that Mr Caselli had failed to observe the principles of impartiality, independence and objectivity inherent in his duties as an officer of the State legal service. The applicant had not tried to prove the truth of his allegations; on the contrary, he had argued that he had expressed critical judgments which there was no need to prove. Accordingly, the proceedings complained of could not be considered unfair on account of the way the evidence had been taken.

Article 10

The applicant's conviction for defamation had incontestably amounted to interference with his right to freedom of expression. The Court had therefore to determine whether the national authorities had made proper use of their power of discretion in convicting the applicant of defamation.

It observed that it was important not to lose sight of the article's overall content and its very essence. As the domestic courts had rightly noted, it was apparent from the whole article that its author sought to convey to the public the following clear and unambiguous message: that Mr Caselli had knowingly committed an abuse of authority by taking part in a plan by the Italian Communist Party to gain control of public prosecutors' offices in Italy. In that context, even phrases like the one relating to the "oath of obedience" took on a meaning which was anything but symbolic. Moreover, as the Court had already found, at no time had the applicant tried to prove the truth of his allegations.

That being so, the Court considered that the applicant's conviction for defamation and the sentence imposed on him had not been disproportionate to the legitimate aim pursued, and that the reasons given by the Italian courts in justification of those measures had been relevant and sufficient. The interference with the right to freedom of expression could therefore reasonably be regarded as necessary in a democratic society.

Tahsin Acar v. Turkey
Judgment of 6 May 2003

Alleged violation of: Articles 2 (right to life), 3 (prohibition of torture), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private and family life), 13 (right to an effective remedy), 14 (prohibition of discrimination) and 18 (limitation on use of restrictions on rights)

Principal facts and complaints

The applicant, Tahsin Acar, is a Turkish national who lives in Sollentuna (Sweden). The case concerns the disappearance of the applicant's brother, Mehmet Salim Acar, who was a farmer in Ambar, a village in the Bismil district in south-east Turkey.

According to the applicant, his brother was abducted on 20 August 1994 by two unidentified persons, allegedly plain-clothes police officers. Mehmet Salim Acar's family lodged a series of petitions and complaints about his disappearance with the authorities in order to find out where and why he was being detained. According to the Government, effective investigations were carried out by the relevant authorities following the abduction and disappearance of the applicant's brother. His name is still on the list of persons being searched for by the gendarme forces in Turkey.

On 27 August 2001 the Turkish Government sent the Court the text of a unilateral declaration expressing regret for the actions

that had led to the application and offering to make an ex gratia payment of 70,000 pounds sterling to the applicant for any pecuniary and non-pecuniary damage and for costs. The Government requested the Court to strike the case out of the list under Article 37 of the Convention.

The applicant asked the Court to reject the Government's initiative, arguing that the terms of the declaration were unsatisfactory. In particular, he submitted that the declaration made no admission that there had been any Convention violation in respect of his application or that Mehmet Salim Acar had been abducted by State agents and was to be presumed dead, that it did not contain any undertaking to investigate the circumstances of the case and that the compensation was to be paid *ex gratia*.

In a judgment of 9 April 2002 a Chamber of the Court decided by six votes to one to strike the case out.

The applicant complained of the unlawfulness and excessive length of his brother's detention, of the ill-treatment and acts of torture to which his brother had allegedly been subjected while deprived of his liberty, and of the failure to provide his brother with the necessary medical treatment during that time. He further submitted that his brother had been deprived of the services of a lawyer and of any contact with his family. He relied on Articles 2, 3, 5, 6, 8, 13, 14 and 18 of the Convention.

Decision of the Court

Preliminary issue: the scope of the case

The Court noted that it had full jurisdiction within the limits of the case referred to it, as determined in the decision on admissibility taken by the Commission on 30 June 1997. Within those limits, the Court was able to deal with all questions of fact and law arising in the course of the proceedings instituted before it. In the particular circumstances of the case, the Court nevertheless considered that it should limit the scope of its examination, at the present stage of the proceedings and without prejudice to the merits, to the question whether the unilateral declaration submitted by the respondent Government offered a sufficient basis for holding that the continued examination of the application was no longer warranted.

Article 37

The Court considered that, under certain circumstances, it might be appropriate to strike out an application under Article 37 §1 (c) on the basis of a unilateral declaration by the respondent Government even if the applicant wished the examination of the case to be continued. It would depend on the particular circumstances of the case whether the unilateral declaration offered a sufficient basis for the Court to hold that respect for human rights as defined in the Convention did not require it to continue its examination of the case.

The present case was different in several respects from the case of *Akman v. Turkey*, which had concerned an act of homicide and had likewise been struck out following a unilateral declaration by the Government. The Court noted that there was substantial disagreement between the parties as to the facts of the present case. It further considered that the Government had negated the admission of liability contained in their declaration by subsequently making firm submissions to the effect that the declaration could in no way be interpreted as entailing any admission of responsibility or liability for any violation of the Convention.

The unilateral declaration made in the present case did not adequately address the applicant's grievances. In the Court's view, where a person had disappeared or had been killed by unknown persons and there was prima facie evidence to support allegations that the domestic investigation had fallen short of what was necessary under the Convention, a unilateral declaration should at the very least contain an admission to that effect, combined with an undertaking by the respondent Government to conduct, under the supervision of the Committee of Ministers, an investigation that fully complied with the requirements of the Convention as defined by the Court in previous cases of a similar nature.

As the Government's unilateral declaration in the present case did not contain any such admission or undertaking, it did not offer a sufficient basis for the Court to hold that it was no longer justified to continue the examination of the application. The Court accordingly rejected the Government's request to strike the application out under Article 37 §1 (c) of the Convention and decided to pursue its examination of the merits of the case.

Kleyn and Others v. the Netherlands

Judgment of 6 May 2003

Alleged violation of: Article 6 §1 (right to a fair trial)

Principal facts and complaints

The case concerns four joined applications brought by 23 Netherlands nationals and 12 Dutch companies, whose homes or business premises are located on or near the track of a new railway, the Betuweroute railway, which is currently being constructed and which runs across the Netherlands from the Rotterdam harbour to the German border.

All applicants took part in proceedings objecting to the decision on the determination of the exact routing of the Betuweroute railway, the so-called Routing Decision (*Tracébesluit*). This Routing Decision was taken under the procedure provided for in the Transport Infrastructure Planning Act (*Tracéwet*), as in force since 1 January 1994. In its decision of 28 May 1998, the Administrative Jurisdiction Division of the Council of State rejected most of the applicants' complaints. In so far as the complaints were considered well-founded, new partial routing decisions were taken in 1998. Appeals against these new partial decisions were dismissed by the Administrative Jurisdiction Division in separate decisions taken between 16 April 1999 and 25 July 2000.

The applicants complained, under Article 6 §1 of the Convention, that the Administrative Jurisdiction Division of the Netherlands Council of State could not be regarded as an independent and impartial tribunal in that the Council of State exercised both advisory functions, by giving advisory opinions on draft legislation, and judicial functions, by determining appeals under administrative law. Relying on the Court's findings in its judgment of 28 September 1995 in the *Procola v. Luxembourg* case, in which the Court held that the Supreme Administrative Court's successive performance of advisory and judicial functions in respect of the same decisions was capable of casting doubt on that institution's structural impartiality, the applicants complained that the Council of State had advised the Government on the Bill for the Transport Infrastructure Planning Act and that the Routing Decision they had subsequently challenged before the Administrative Jurisdiction Division of the Council of State had been taken on the basis of that Act.

Decision of the Court

Admissibility

The Government contended that, apart from Mr and Mrs Raymakers, the applicants had failed to exhaust domestic remedies because they had neither challenged the Administrative Jurisdiction Division nor appealed to the civil courts on the ground that the administrative proceedings at issue did not offer sufficient guarantees of fairness. Since the Raymakers' challenge, which was based on the Court's finding in the *Procola v. Luxembourg* case, had been dismissed, the Court failed to see how a further challenge by the other applicants, based on the same arguments as the Raymakers' challenge, could have resulted in a different decision. The applicants had further established that the civil remedy referred to by the Government offered no reasonable prospect of success. Accordingly, the applications could not be dismissed for failure to exhaust domestic remedies. The Court considered that the complaint under Article 6 §1 raised questions of law which were sufficiently serious to warrant an examination of the merits.

Article 6 §1

The sole question before the Court was whether, in the circumstances of this case, the Administrative Jurisdiction Division had had the requisite appearance of independence or the requisite objective impartiality. The Court found nothing in the manner and conditions of appointment of the Netherlands Council of State's members or their terms of office to substantiate the applicants' concerns regarding the independence of the Council of State. Nor was

there any indication of any personal bias on the part of any member of the bench that had heard the applicants' appeals against the Routing Decision.

The Council of State had advised on the Transport Infrastructure Planning Bill, whereas the applicants' appeals had been directed against the Routing Decision. The Court found that the advisory opinions given on the draft legislation and the subsequent proceedings on the appeals against the Routing Decision could not be regarded as involving the "same case" or the "same decision". Although the planning of the Betuweroute railway had been referred to in the advice given to the Government, that could not reasonably be regarded as a preliminary determination of any issues subsequently decided by the ministers responsible for the Routing Decision. The Court could not agree with the applicants that, by suggesting names of places where the Betuweroute was to start and end, the Council of State had in any way prejudged the exact routing of that railway.

The applicants' fears regarding the Administrative Jurisdiction Division's lack of independence and impartiality could not be regarded as objectively justified. There had accordingly been no violation of Article 6 §1.

Selected chamber judgments of the Court

Yasar Kemal Gökçeli v. Turkey
Judgment of 4 March 2003

Alleged violation of: Articles 6 §2 (right to a fair trial), 7 (no punishment without law) and 10 (freedom of expression)

Principal facts and complaints

C.S.Y., a publishing house, is a private company whose registered office is in Istanbul. Yasar Kemal Gökçeli is a Turkish writer who was born in 1926 and lives in Istanbul.

In 1995, the applicant company published a collection of articles entitled *Freedom of Expression and Turkey*, criticising and commenting on the Turkish authorities' policy on the "Kurdish problem" since the foundation of the Republic of Turkey. The book included two articles by Yasar Kemal Gökçeli, which had already been published abroad.

In February 1995 a judge of the National Security Court made an order for the seizure of the book on the ground that the articles in question expressly incited hostility and hatred based on a distinction according to race and ethnic origin. An application by the editor of the book and the author of the articles to set aside the seizure order was refused.

Two sets of criminal proceedings were brought against the editor and the author of the articles. In the first set of proceedings, the defendants were acquitted by the National Security Court on 1 December 1995. As regards the second set of proceedings the defendants were found guilty of an offence under Article 312 of the Criminal Code. The editor was given a suspended fine of 3,491,666 Turkish liras (TRL) and the author was sentenced to one year and eight months' imprisonment and a fine of TRL 466,666, likewise suspended. The court observed that, taken as a whole, the article had sought to stir up hatred and hostility between citizens of Turkish origin and citizens of Kurdish origin, and to create discrimination on the grounds of race and region of origin. The Court of Cassation later upheld the first-instance judgment.

In the case of *C.S.Y.* the applicant company submitted that the seizure of the book *Freedom of Expression and Turkey* had infringed its right to freedom of expression as enshrined in Article 10 of the Convention.

In the case of *Yasar Kemal Gökçeli v. Turkey* the applicant, relying on Article 10 of the Convention, complained of interference with his right to freedom of expression on account of the fact that he had been convicted of a criminal offence for writing an article. Under Article 6 §2, he further complained of a breach of the presumption of innocence in that the judge and the National Security Court had based their decision to seize the book on the assumption that the articles in issue were in breach of the law. Lastly, the applicant contended that his conviction had contravened Article 7.

Decision of the Court

Article 10

The Court noted that the measures complained of amounted to interferences with the applicants' right to respect for freedom of expression, and that they were prescribed by law. Having regard to the sensitivity of the fight against terrorism, the Court held that the interferences had pursued two aims that were compatible with Article 10 §2: unity and national security, and territorial integrity.

The Court found that the articles in question were written in the form of a political speech, both in the content and the terms used. It noted that the terms used in the articles were factual in content and emotional in tone with a distinctly aggressive and virulent note. In the Court's view, however, the content of the articles could not be deemed to constitute an incitement to violence, armed resistance or an uprising. Moreover, the articles in question contained the message that "peaceful means are necessary to resolve the Kurdish problem". The Court also noted the severity of the penalty imposed on the author. It accordingly considered that the seizure of the book and the criminal conviction of the author of the articles were measures that were not "necessary in a democratic society". It held unanimously in both these cases that there had been a violation of Article 10 of the Convention.

Article 6 §2

With regard to Yasar Kemal Gökçeli's allegation of a breach of the presumption of innocence, the Court noted that the seizure of the book was an interim measure with a view to bringing proceedings subsequently. The decision of the judge ordering seizure referred to a "state of suspicion" and did not contain a finding of guilt. Moreover, the subsequent proceedings did not reveal any prejudgement. Accordingly, the Court held unanimously that there had not been a violation of Article 6 §2 of the Convention.

Article 7

Concerning Yasar Kemal Gökçeli's allegation of a breach of Article 7, having regard to its conclusion regarding the foreseeability of the law, referred to in Article 10 §2, the Court held unanimously that there had not been a violation of this provision.

In both these cases the Court held that the finding of a violation in itself afforded adequate just satisfaction for the non-pecuniary damage sustained by the applicants. The Court awarded C.S.Y. certain sums for costs and expenses.

Posokhov v. Russia
Judgment of 4 March 2003

Alleged violation of: Article 6 §1 (right to a fair trial)

Principal facts and complaints

The applicant, Mr Posokhov, worked for the Taganrog Customs Board, supervising the clearance of imported goods at a seaport customs post. In 1996 criminal proceedings were brought against him for the alleged smuggling of considerable amounts of vodka.

In May 2000, Neklinovskiy District Court of the Rostov Region, comprising one professional and two lay judges (*narodnye zasedateli*), found the applicant guilty of being an accessory in the avoidance of customs duties and of abuse of office. However, the applicant was not required to serve his sentence, partly because of the expiry of a statutory limitation period and partly because of a 1997 amnesty law.

In his appeal the applicant challenged the bench that had delivered the judgment, alleging a breach of the rules on the appointment of lay assessors, submitting that the term of office of one of the lay judges had expired.

The applicant's appeals were dismissed, as were his two requests for supervisory review (*prineseniye protesta v poryadke nadzora*) in which he also complained that the lay judges' names had not been drawn by lot as required by the Lay Judges Act. He was later informed that a Presidential Decree of 25 January 2000 had extended their terms of office pending new appointments and that the list of lay judges for the Neklinovskiy

District for the period 10 to 22 May 2000 had been compiled on 4 February 2000.

In October 2002, Neklinovskiy District Authority informed the applicant that there was no record of any adoption of lay assessors' lists before 4 February 2000.

The applicant alleged that he was convicted by a court composed in breach of the relevant domestic law. He relied on Article 6 §1. He initially claimed that the two lay judges had, contrary to section 9 of the Act, been acting as lay judges prior to his trial for longer than the maximum 14 days per year and that their names had not been drawn by lot, in breach of section 5 of the Act. He subsequently also complained that there was no proof that they had ever been appointed as lay judges, even before the enactment of the Lay Judges Act.

Decision of the Court

The Court noted that it was particularly struck by the fact that Neklinovskiy District Authority – the body responsible for the appointment of lay judges – had confirmed that it had no list of lay judges appointed before 4 February 2000. The authority had thus failed to present any legal grounds for the participation of Ms Streblyanskaya and Ms Khovyakova in the administration of justice on the day of the applicant's trial, bearing in mind that the list adopted on 4 February 2000 only took effect on 15 June 2000.

Finding that Neklinovskiy District Court could not be regarded as a "tribunal established by law", the European Court of Human Rights held, unanimously, that there had been a violation of Article 6 §1 and awarded the applicant certain sums for non-pecuniary damage.

Lešník v. Slovakia

Judgment of 11 March 2003

Alleged violation of: Article 10 (freedom of expression)

Principal facts and complaints

In December 1991 the applicant, Alexej Lešník, made a request for criminal proceedings to be brought against a fellow businessman for fraud, which was refused. He subsequently complained to the police that he was being harassed and his telephone tapped. Criminal proceedings were later brought against him for stealing from the businessman in question. On 6 December 1993 he wrote a letter to the District Prosecutor accusing him of fabricating the case against him in accordance with the practice of former State Security agents, unfairly dismissing his criminal complaint and illegally ordering his telephone to be tapped. He also wrote a letter to the General Prosecutor complaining that the District Prosecutor had misused his powers and had possibly accepted bribes.

On 25 April 1995 Mr Lešník was convicted of (verbally) attacking a public official and sentenced to four months' imprisonment, suspended for a probationary period of one year. He unsuccessfully appealed. His trading licence was revoked on 28 October 1996, on the ground that he had been convicted of a criminal offence, but the decision was quashed on 4 June 1997. He registered as the owner of a new business on 18 February 1998 and received a new trading licence on 6 April 1998.

The applicant complained, under Article 10 of the Convention, that he had been convicted for criticising the actions of a public prosecutor which he had deemed to be unlawful. He further submitted that the interference had been disproportionate because his trading licence was revoked following his conviction.

Decision of the Court

Article 10 §2

The Court found that the interference with Mr Lešník's freedom of expression had been prescribed by law within the meaning of Article 10 §2 of the Convention. It noted that the criminal proceedings against him had pursued the legitimate aim of protecting the District Prosecutor's reputation and rights. It considered that individuals were entitled to criticise the administration of justice and the officials involved, but such criticism should not overstep certain limits.

Mr Lešník's letters had contained value judgments, which were not susceptible of proof, but also accusations of unlawful and abusive conduct. The domestic courts had rightly requested him to support those allegations with relevant evidence. They found them to be unsubstantiated and there was nothing to suggest that their finding was arbitrary. Moreover, the harm done to the public prosecutor's reputation could only have been exacerbated by the publication of the relevant parts of the letters in a newspaper, to which the applicant had contributed by supplying the relevant documents.

Mr Lešník had failed to show that he had suffered any damage as a result of having his trading licence revoked and could, in any event, have claimed compensation under the relevant legislation. Bearing in mind that a certain margin of interference was left to the national authorities in such matters, the interference complained of had not been disproportionate to the legitimate aim and could be regarded as necessary for the purposes of Article 10 §2 of the Convention. The Court accordingly held that there had not been a violation of Article 10 of the Convention.

Öcalan v. Turkey

Judgment of 12 March 2003

Alleged violation of: Articles 2 (right to life), 3 (prohibition of torture), 5 §§1, 3, and 4 (right to liberty and security), 6 §1 (right to a fair trial), 6 §1 taken together with Article 6 §§3 and 3 (c), 7 (no punishment without law), 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion), 10 (freedom of expression), 13 (right to an effective remedy), 14 (prohibition of discrimination) et 14 taken together with Article 2

Principal facts and complaints

The applicant, Abdullah Öcalan, of Turkish nationality, is the former leader of the Kurdistan Workers' Party (PKK). He is currently incarcerated in Imrali Prison (Bursa, Turkey).

At the time of his arrest, he was accused of founding an armed gang in order to destroy the integrity of the Turkish State and of instigating terrorist acts resulting in loss of life.

In October 1998 he was expelled from Syria, where he had been living for many years. From there he went to Greece, Russia, Italy and then again Russia and Greece before going to Kenya, where, on the evening of 15 February 1999, in disputed circumstances, he was taken on board an aircraft at Nairobi airport and arrested by Turkish officials. He was then flown to Turkey, being kept blindfolded for most of the flight.

On arrival in Turkey, a hood was placed over his head while he was taken to Imrali Prison, where he was held in police custody from 16 to 23 February 1999 and questioned by the security forces. He received no legal assistance during that period and made several self-incriminating statements which contributed to his conviction. His lawyer in Turkey was prevented from travelling to visit him by members of the security forces. 16 other lawyers were also refused permission to visit on 23 February 1999, when the applicant appeared before an Ankara State Security Court judge.

The applicant's contact with his lawyers and his access to the case file were severely restricted while in pre-trial detention.

In April 1999 the applicant was formally accused of carrying out actions calculated to bring about the separation of a part of Turkish territory and of forming and leading an armed gang to achieve that end. In June 1999 he was found guilty as charged and sentenced to death under Article 125 of the Criminal Code. The Court of Cassation upheld the judgment.

In November 1999 the European Court of Human Rights, applying Rule 39 of the Rules of Court, requested the Turkish authorities "to take all necessary steps to ensure that the death penalty [was] not carried out so as to enable the Court to proceed effectively with the examination of the admissibility and merits of the applicant's complaints under the Convention".

In October 2001 the Turkish Constitution was amended, abolishing the death penalty except in time of war or of imminent threat of war or for acts of terrorism and in August 2002 the Turkish Assembly resolved to abolish the death penalty in peacetime. The Ankara State Security Court

subsequently commuted the applicant's death sentence to life imprisonment.

The applicant complained, in particular, that the imposition and/or execution of the death penalty was or would be in violation of Articles 2, 3 and 14 of the Convention; and that the conditions in which he was transferred from Kenya to Turkey and detained on the island of Imrali amounted to inhuman treatment in breach of Article 3; that he was deprived of his liberty unlawfully; that he was not brought promptly before a judge; and that he did not have access to proceedings to challenge the lawfulness of his detention, in breach of Article 5 §§1, 3 and 4; that he did not have a fair trial because he was not tried by an independent and impartial tribunal, given the presence of a military judge on the bench of the State Security Court; that the judges were influenced by hostile media reports; and that his lawyers were not given sufficient access to the court file to enable them to prepare his defence properly, in breach of Article 6 §1; and the his legal representatives in Amsterdam were prevented from contacting him after his arrest and/or that the Turkish Government failed to reply to the European Court of Human Rights' request for them to supply information, in violation of Article 34. He also relied on Articles 7, 8, 9, 10, 13, 14 and 18 of the Convention.

Decision of the Court

Article 5 §4

The Court considered that the special circumstances of the case, notably the fact that he had been kept in isolation and that his lawyers had been obstructed by the police, made it impossible for the applicant to have the lawfulness of his detention decided upon speedily by a court. It therefore held that there had been a violation of Article 5 §4.

Article 5 §1

The Court found that the applicant's arrest and detention had complied with orders that had been issued by the Turkish courts "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence" within the meaning of Article 5 §1 (c).

It followed that the applicant's arrest on 15 February 1999 and his detention were to be regarded as having been in accordance with "a procedure prescribed by law" for the purposes of Article 5 §1 of the Convention. Consequently, there had been no violation of that provision.

Article 5 §3

The Court noted that the total period spent by the applicant in police custody before being brought before a judge came to a minimum of seven days. It could not accept that it was necessary for the applicant to be detained for such a period without being brought before a judge. There had accordingly been a violation of Article 5 §3.

Article 6
Impartiality of the Ankara State Security Court

The Court had found in earlier judgments that certain aspects of the status of military judges sitting in the State Security Courts raised doubts as to the independence and impartiality of the courts concerned. In the Court's view, the last-minute replacement of the military judge was not capable of curing the defect in the composition of the court which had led it to find a violation on this point in previous judgments.

In the exceptional circumstances of the case, moreover, the presence of a military judge could only have served to raise doubts in the accused's mind as to the independence and impartiality of the court.

The Court concluded that the Ankara State Security Court, which had convicted the applicant, had not been an independent and impartial tribunal within the meaning of Article 6 §1 of the Convention. Consequently, there had been a violation of that provision on that point.

Fairness of proceedings

The Court noted that the applicant had not been assisted by his lawyers when questioned in police custody, had been unable to communicate with them out of hearing of third parties and had been unable to gain direct access to the case file until a very late stage in the proceedings. Furthermore, restrictions had been imposed on the number and length of his lawyers' visits and his lawyers had not been given proper access to the case file until late in the day.

These difficulties had so restricted the rights of the defence that the principle of a fair trial had been contravened. There had therefore been a violation of Article 6 §1, taken together with Article 6 §3 (b) and (c).

The Court took the view that it was unnecessary to examine the other complaints under Article 6 relating to the fairness of the proceedings.

Articles 2, 3 and 14
Implementation of the death penalty

The Court considered that the threat of implementation of the death sentence had been effectively removed. It could no longer be said that there were substantial grounds for fearing that the applicant would be executed, notwithstanding the appeal which was still pending.

In those circumstances, the applicant's complaints under Articles 2, 3 and 14 based on the implementation of the death penalty were to be rejected.

Imposition of the death penalty

It remained to be determined whether the imposition of the death penalty, in itself, gave rise to a breach of the Convention. At the outset the Court considered that no separate issue arose as regards Article 2 and preferred to examine this question under Article 3.

Article 3 read against the background of Article 2

As to the question of whether Article 3 (prohibition of torture and inhuman and degrading treatment) could be interpreted as prohibiting the death penalty, contrary to the exceptions provided for in the second sentence of Article 2 §1, which explicitly permitted capital punishment under certain circumstances, the Court considered that the implementation of the death penalty could arguably be regarded as inhuman and degrading treatment contrary to Article 3. However, it was not necessary to reach any firm conclusion on this point since it would run counter to the Convention, even if Article 2 were to be construed as still permitting the death penalty, to implement a death sentence following an unfair trial.

Concerning the issue of unfair proceedings and the death penalty, the Court considered that even if the death penalty were still permissible under Article 2, an arbitrary deprivation of life pursuant to capital punishment would be prohibited. This flowed from the requirement that "Everyone's right to life shall be protected by law". An arbitrary act could not be lawful under the Convention.

In the Court's view, to impose a death sentence on a person after an unfair trial was to subject that person wrongfully to the fear that he would be executed, giving rise to a significant degree of human anguish. Such anguish could not be dissociated from the unfairness of the proceedings underlying the sentence. Having regard to the rejection by the Contracting Parties of capital punishment, which was no longer seen as having any legitimate place in a democratic society, the imposition of a capital sentence in such circumstances had to be considered, in itself, to amount to a form of inhuman treatment.

The imposition of the death sentence on the applicant following an unfair trial had therefore amounted to inhuman treatment in violation of Article 3.

Article 3

The Court considered that it had not been established "beyond all reasonable doubt" that the applicant's arrest and the conditions in which he was transferred from Kenya to Turkey exceeded the usual degree of humiliation that was inherent in every arrest and detention or attained the minimum level of severity required for Article 3 of the Convention to apply. Consequently, there had been no violation of that provision on this point.

Concerning the applicant's detention on the island of Imrali, the Court found that the general conditions in which he was being detained at Imrali Prison had not reached the minimum level of severity necessary to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention. Consequently, there had been no violation of that provision on that account.

Article 34

The applicant complained of being hindered in the exercise of his right of individual application in that his legal representatives in Amsterdam had not been permitted to contact him after his arrest and/or the Government had failed to reply to the Court's request for them to supply information.

As regards the applicant's inability to communicate with his lawyers in Amsterdam following his arrest, there was nothing to indicate that the exercise of the applicant's right to individual application was impeded to any significant extent.

Moreover the Court found, without prejudice to its views on the binding nature of interim measures under Rule 39, that in the special circumstances of the case the refusal of the Turkish Government to provide certain information did not amount to a violation of the applicant's right of individual application.

Remaining complaints

Finally, the Court considered that no separate examination of the complaints under Articles 7, 8, 9, 10, 13, 14 and 18 of the Convention, taken alone or together with the aforementioned provisions of the Convention, was necessary.

The Court took the view that any pecuniary or non-pecuniary damage that the applicant might have sustained had been sufficiently compensated by its findings of a violation of Articles 3, 5 and 6 of the Convention.

As regards costs and expenses, the Court considered it reasonable to award the applicant certain sums in respect of the claims made by all his legal representatives.

M.M. v. the Netherlands

Judgment of 8 April 2003

Alleged violation of: Article 8 (right to respect for private and family life)

Principal facts and complaints

In November 1993 the applicant, a practising lawyer, was defending a man detained on remand. As such, he saw his client's wife, Mrs S, on several occasions. After one such occasion Mrs S told her husband that the applicant had made sexual advances to her. Her husband informed the police who in turn informed the public prosecutor, who decided that a criminal complaint should be lodged. Fearing that her word would be insufficient to secure a conviction, the police and the public prosecutor decided to connect a tape recorder to Mrs S's telephone and suggested that she steer any conversations with the applicant towards his sexual advances. Mrs S recorded three conversations with the applicant which were collected by the police, transcribed and added to the investigation case-file.

The applicant was later convicted of sexual assault and given a four-month suspended sentence and a fine of 10,000 Netherlands guilders. The recorded telephone conversations were not relied on as evidence. He unsuccessfully appealed to the Supreme Court.

The applicant alleged that the recording of his telephone conversations with Mrs S had breached Article 8.

Decision of the Court

The Court found that there had been an interference by a public authority with the applicant's right to respect for his correspondence in that, with the prior permission of the public prosecutor, the police had made a crucial contribution to recording the telephone conversations and had thus engaged the respondent State's responsibility. At the relevant time the tapping or interception of telephone conversations for the purpose of obtaining evidence against a person suspected of committing an offence had required a preliminary judicial investigation and an order by an investigating judge. As neither condition had been met here the interference had not been in accordance with the law.

The Court held that there had been a violation of Article 8 of the Convention and awarded the applicant certain sums for costs and expenses.

Sigurðsson v. Iceland

Judgment of 10 April 2003

Alleged violation of: Article 6 §1 ((right to a fair trial)

Principal facts and complaints

In April 1997 the applicant, Pétur Thór Sigurðsson, lost a court case against the National Bank of Iceland. It subsequently emerged that the husband of Judge Guðrún Erlendsdóttir, who was one of the Supreme Court judges who had examined his appeal, had been one of the guarantors of debts owed to the National Bank and 20 other creditors on which the debtor had defaulted. In order to raise funds to pay the debt, her husband had issued four mortgage certificates to a financial institution owned by the National Bank secured on two properties belonging to his wife. The four certificates were sold to another financial institution the following month. In June 1996 the husband had signed a settlement agreement with the National Bank by which he was released from 75% of the debts against a final payment of the remaining 25% to the National Bank. The applicant unsuccessfully applied to the Supreme Court for the proceedings to be reopened on the ground that the judge in question had not been impartial.

Mr Sigurðsson complained that, on account of the close financial relationship between the judge and her husband on the one hand and the National Bank of Iceland on the other, his case against the bank had not been heard by an independent and impartial tribunal as required by Article 6 §1 of the Convention.

Decision of the Court

The Court observed that there was no evidence to suggest that Judge Guðrún Erlendsdóttir had been personally biased. It considered three sets of circumstances which could give rise to an issue of impartiality under Article 6 §1. The debts owed by her husband to the National Bank (approximately EUR 30,000) could reasonably be considered moderate and would not have constituted financial pressure capable of affecting her impartiality. Nor did it appear that the four mortgage certificates could have called judge's impartiality into question. However, neither of those two sets of circumstances could be dissociated from the third factor, which was the wider context of the debt settlement reached between her husband and the National Bank and Judge Guðrún Erlendsdóttir's role in facilitating that settlement. Presumably, without the security provided by her, the debt settlement would not have materialised.

The Court found that the cancellation of 75% of the husband's debts had to be considered favourable treatment. When the four mortgage certificates were brokered and the debt settlement was concluded with the National Bank, the applicant's case was already pending before the Supreme Court. There had at least been the appearance of a link between the steps taken by Judge Guðrún Erlendsdóttir in favour of her husband and the advantages obtained by him from the National Bank. Given the proximity in time to the Supreme Court's examination of the case, the applicant could reasonably have feared that the Supreme Court had lacked the requisite impartiality.

The Court therefore held that there had been a violation of Article 6 §1.

Papastavrou and Others v. Greece

Judgment of 10 April 2003

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

Principal facts and complaints

The applicants are 25 Greek nationals who are involved in a long-standing dispute with the State over ownership of land in Omorphokklisia, Galatsi, which is part of a wider area called the Veïkou Estate that was expropriated between 1923 and 1941. In October 1994 the prefect of Athens decided that an area of the Veïkou Estate should be reforested. The applicants challenged that decision before the Council of State, claiming that reforestation would deprive them of their property rights over their plots of land. Their appeal was dismissed on the ground that the prefect's decision had merely confirmed an earlier decision made by the Minister for Agriculture in 1934. However, in 1999 the Athens Forest Inspection concluded that only part of the area

concerned had been forest in the past and could therefore be reforested.

The applicants alleged a violation of Article 1 of Protocol No. 1 in that their property had effectively been expropriated without their being paid any compensation.

Decision of the Court

The Court did not address the issue of ownership of the disputed land, but considered the applicants as having an interest in it that attracted the protection of Article 1 of Protocol No. 1. In the Court's view, the authorities should have first assessed how the situation had evolved since 1934. In dismissing the applicants' appeal on the sole ground that the prefect's decision had merely confirmed an earlier decision, the Council of State had failed to protect the property owners' rights adequately, especially as there was no possibility of obtaining compensation under Greek law. A reasonable balance had not therefore been struck between the public interest and the requirements of the protection of the applicants' rights.

The Court held unanimously that there had been a violation of Article 1 of Protocol No. 1 and that the question of just satisfaction was not ready for decision.

Mehemi (No. 2) v. France

Judgment of 10 April 2003

Alleged violation of: Article 8 (right to respect for private and family life) and Article 2 of Protocol No. 4 (freedom of movement)

Principal facts and complaints

The applicant, Ali Mehemi, an Algerian national, married an Italian national who, he claims, has French nationality; he and his wife had three children who have French nationality. The entire family, including the applicant, lived in France until he was deported in 1995.

In 1991 the applicant was sentenced to six years' imprisonment for drug-trafficking offences and was permanently banned from entering French territory. The order was executed on 28 February 1995. The case was referred to the European Court of Human Rights, which held that there had been a violation of Article 8 by France as the applicant's deportation to a country with which he had no ties constituted an unjustified interference with his right to respect for his private and family life.

In October 1997 the applicant sought to have the exclusion order set aside, and in March 1998 the Lyons Court of Appeal reduced the exclusion period to 10 years. The applicant unsuccessfully appealed to the Court of Cassation. The applicant also applied unsuccessfully for a pardon. In November 1997, the Government informed the applicant that they were prepared to allow him to return to France immediately, subject to a compulsory residence order. Upon his return to France in February 1995, a ministerial decree was issued requiring him to reside in the département of Rhône. He later obtained leave to remain with a right to take up employment. The leave was renewed for successive six-month periods until September 2001; the compulsory-residence measure ended in October 2001. In October 2002 the Algerian authorities had still not renewed the applicant's passport, which prevented him from obtaining a residence permit from the French authorities. His leave to remain was extended until 31 December 2002.

The applicant complained of a breach of Article 8 of the Convention, arguing that the French authorities had failed to bring to an end the interference with his right to respect for his private and family life which the Court had previously found to be disproportionate. He complained that the exclusion order remained in effect and complained of the conditions imposed on his residence in France after his return. In its admissibility decision, the Court had ruled that the applicant's complaint would also be examined under Article 2 of Protocol No. 4.

Decision of the Court

Article 8

The Court considered that in the interval between its judgment and the applicant's return to France, the authorities had had an obligation to facilitate the applicant's return to his family. In that connection, it noted that the French Government had agreed to the applicant's return but had been responsible for delays when they should have acted expeditiously in view of the interests at stake, in particular, the fact that the applicant had been separated from his family for three years. However, it considered that the three-and-a-half month delay could not be regarded as excessive. The authorities had facilitated the applicant's early return and his right to respect for his private and family life had, therefore, not been infringed. Consequently, the Court held unanimously that there had been no violation of Article 8 of the Convention.

As regards the applicant's situation since his return to France, the Court noted that he had managed to re-establish ties with his family. The authorities had granted him residence permits incorporating a right to work, but subject to his residing in a specified area for so long as the exclusion order remained in effect. Those circumstances, and in particular the residence requirements, meant that the exclusion order had no legal effect, so that the applicant was under no imminent or short-term risk of deportation. Accordingly, the Court held unanimously that there had been no violation of Article 8 of the Convention after the applicant's return to France.

Article 2 of Protocol No. 4

As regards the complaint concerning freedom of movement, the Court noted that the applicant had not challenged the compulsory residence order, which had been revoked on the Minister's own motion and that two remedies had been available had the Minister refused to do so. In those circumstances, the Court held that it was unnecessary to examine this complaint.

Aktas v. Turkey

Judgment of 24 April 2003

Alleged violation of: Article 2 (right to life) 3 (prohibition of torture), 6 (right to a fair trial), 13 (right to an effective remedy) 14 (prohibition of discrimination) taken together with Articles 2 and 3

Principal facts and complaints

The applicant's brother, Yakup Aktas, died on 25 November 1990, one week after being taken into custody apparently on suspicion of channelling funds and weapons to the PKK (Workers' Party of Kurdistan). He left a widow and a baby daughter. Two police officers were charged with causing his death by beating him during interrogation in the Mardin interrogation centre. They were acquitted on 11 May 1994. The applicant unsuccessfully appealed against their acquittal.

The applicant alleged, in particular, that his brother had died as a result of torture by Government agents and that the investigation into his death had not met the applicable standards. He claimed that his brother had been in good health prior to his arrest, as certified by a doctor, and that although neither the post-mortem nor the autopsy had established the exact cause of death, the injuries observed had been consistent with death by asphyxiation caused by external physical forces.

The Government denied this, maintaining that he had suddenly fallen ill on 25 November 1990 and had been taken to hospital without delay; that an investigation had been begun immediately; and that the applicant had been able to intervene in the criminal proceedings against the police officers, who were acquitted for lack of sufficient evidence.

The applicant complained of a violation of Articles 2 and 3; of Article 13, taken together with Articles 2 and 3, as there had been no thorough and effective investigation into the circumstances of his brother's death and the victim's relatives had been denied effective access to the investigative process; of Article 14, taken together with Articles 2 and 3, in that his brother had been fatally maltreated because of his Kurdish origins; of Article 34 in that the failure properly to investigate his brother's death had hindered his application to the Commission and the Court; and of Article 38 in that there had been a lack of proper co-operation with the Commission and the Court.

Decision of the Court

Article 38 §1(a)

Concerning the effective operation of the system of individual petition, the Court noted three factors with concern: the Government's apparent inability to trace the doctor who had pronounced Yakup Aktas dead;

their insistence – allegedly for security reasons – on hearing evidence from 11 witnesses without the applicant being present; and their inability to produce the negatives of photographs of a body said to be that of Yakup Aktas. In those circumstances the Court found that it was entitled to draw inferences from the Government's conduct.

The Court noted that two doctors' reports showed that the injuries described had been consistent with mechanical asphyxiation. Given the lack of any hospital record of his death, the Court inferred that he had died while in police custody and found it proven beyond reasonable doubt that he had been subjected to external violence during that period, which had directly caused his death.

The Court found that the Government had not complied with their obligation to furnish all necessary facilities to the Commission and the Court in their task of establishing the facts.

Article 2

The Court found that Yakup Aktas had been deprived of his life in circumstances engaging the responsibility of the State. There was nothing to suggest that this had been necessary for any of the reasons set out in the second paragraph of Article 2 of the Convention. There had therefore been a violation of Article 2 in respect of Yakup Aktas's death.

As to the ensuing official investigation, the Court considered that there were five factors indicating that the investigation into Yakup Aktas's death had not been effective: firstly, the inspection almost immediately after his death of the premises used to interrogate him had been done by members of the gendarmerie itself; secondly, no officer appeared to have immediately alerted any competent authority to his death; thirdly, the provincial administrative council – to which the case had been referred – did not satisfy the requirement of independence; fourthly, the police officers' actions had been investigated by a member of the same chain of command; and fifthly, no statements had been taken from any members of the gendarmerie until four months after Yakup Aktas's death. The Court therefore found that there had also been a violation of Article 2 in respect of the deficiencies in the investigation into Yakup Aktas's death.

Article 3

It was not apparent that the ill-treatment had been caused by Yakup Aktas's own conduct. The Court was left with no alternative but to find that Yakup Aktas had been the victim of inhuman and degrading treatment. There was no doubt that the ill-treatment had been particularly serious since it had resulted in his death. The Court had no difficulty inferring that the suffering inflicted on him had been particularly serious and cruel. It was also reasonable to infer that the purpose had been to obtain information or a confession of guilt and therefore appropriate to find that Yakup Aktas had been tortured.

There had also been a violation of Article 3 on account of the inadequacy of the investigation into the ill-treatment inflicted on Yakup Aktas.

Article 13 taken together with Articles 2 and 3

In such circumstances, Article 13 required a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigation procedure. The national authorities could not be considered to have complied with their duty to carry out an effective investigation into the circumstances of the ill-treatment in custody and the death of Yakup Aktas. Accordingly, the Court found that the applicant had been denied an effective remedy in respect of his brother's death and, consequently, access to other remedies, including a claim for compensation.

Article 14 taken together with Articles 2 and 3

The evidence available suggested that Yakup Aktas had been arrested and questioned on suspicion of channelling funds and weapons to the PKK. The ill-treatment inflicted on him could not be deemed to have been linked to his ethnic origins as such.

Yvon v. France

Judgment of 24 April 2003

Alleged violation of: Article 6 §1 (right to a fair trial)

Principal facts and complaints

The applicant, a French national, is a winegrower and the former owner of 21 hectares of land with a house and farm building that were expropriated in the public interest to make way for the Saintes south-western bypass. Since the parties could not agree on the amount of compensation to be paid, an application was made to the expropriations judge in September 1994, who assessed the compensation at nearly 220,000 euros. The applicant did not accept that amount, which he considered should be nearer 574,000 euros, and appealed. His request for a copy of the documents the expropriating authority had relied on in its written submissions was refused by a letter signed by the deputy director of the Revenue Department who had acted as Government Commissioner in the relevant proceedings.

In his capacity as Government Commissioner, the same official lodged submissions in support of a cross-appeal in which he assessed the compensation at less than had previously been determined. The Government said that those submissions were served on the parties by the registry of the Expropriations Division of the Poitiers Court of Appeal. The Expropriations Division dismissed an objection in which the applicant complained of the dual rule played by the Revenue Department, which was both the expropriating authority's representative and Government Commissioner. An appeal by the applicant to the Court of Cassation was dismissed in April 1998.

The applicant complained under Article 6 §1 of the Convention that the judicial proceedings had not been adversarial because the Government Commissioner could not be compelled to communicate his submissions. He added that he had also been put at a disadvantage by the fact that the Government Commissioner, who had played an important role in assessing the expropriation compensation, had addressed the judge last. Finally, the privileged position enjoyed by the Government Commissioner in the expropriation proceedings contravened the principle that there should be equality of arms between the parties.

Decision of the Court

Equality of arms

The Court noted that in proceedings for assessing expropriation compensation, the party whose land had been expropriated had both the expropriating authority and the Government Commissioner as opponents, who enjoyed considerable advantages in terms of access to relevant information, including access to the Land-Registry index. The Government Commissioner played a dominant role in the proceedings and had considerable influence over the judge. The Court considered that that combination of factors created an imbalance to the detriment of the party whose land had been expropriated, in breach of the equality-of-arms principle, in violation of Article 6 §1 of the Convention.

Principle of adversarial proceedings

As regards the failure to communicate certain documents, the Court held that in civil proceedings the principle of adversarial proceedings did not require each party to communicate to an opponent documents which, as in the case before the Court, had been not communicated to the judge either.

As to the argument that there was no statutory obligation on the Government Commissioner at first instance to communicate his or her written submissions to the parties or to lodge them at the registry within a set period, the Court held that the applicant had no grounds for complaining of a breach of the adversarial principle, as he had obtained an adjournment of the case after being served with the submissions.

Finally, as regards the complaint that the Government Commissioner had addressed the judge last, the Court noted that the applicant had received the written submissions before the hearing and had been given a proper opportunity to reply; accordingly, there had been no breach of Article 6 §1 on that account.

Poltoratskiy v. Ukraine
Kuznetsov v. Ukraine
Nazarenko v. Ukraine
Dankevich v. Ukraine
Aliev v. Ukraine
Khokhlich v. Ukraine
Judgment of 29 April 2003

Alleged violation of: Article 3 (prohibition of torture), 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion)

Principal facts and complaints

All of the applicants had been sentenced to death for murder. A moratorium on executions was declared by the President of Ukraine on 11 March 1997 and the death penalty abolished on 22 February 2000. The applicants' death sentences were accordingly commuted to life imprisonment in June 2000.

The applicants all complained that the conditions to which they had been subjected on death row amounted to inhuman and degrading treatment contrary to Article 3 of the Convention. They all also complained of violations of Article 8. Mr Poltoratskiy and Mr Kuznetsov complained of a violation of Article 9 in that they had been denied visits from a priest. Mr Khokhlich and Mr Dankevich alleged, under Article 13, that they had not had an effective remedy in respect of their claims under the Convention.

Decision of the Court

Article 3
Allegations of assaults in prison

Mr Poltoratskiy and Mr Kuznetsov complained to the Commission's Delegates that they had been beaten by prison officers in Ivano-Frankivsk Prison in September 1998. The Court agreed with the Commission that it had not been established beyond reasonable doubt that the applicants had been ill-treated in Ivano-Frankivsk Prison and therefore held that there had been no violation of Article 3 in this respect. Mr Aliev complained of ill-treatment by prison officers in January 1998 and August 1999. No complaint had been submitted to the prison governor or other authority or to the prison doctor, however. His allegations were not supported by any medical or other material evidence. Accordingly, the Court found that there had been no violation of Article 3 in this respect.

Adequacy of investigation

Mr Poltoratskiy and Mr Kuznetsov had raised arguable complaints of ill-treatment by prison officers, requiring an effective official investigation capable of leading to the identification and punishment of those responsible. A medical examination had not been carried out in either case until October 1998 and there were no contemporaneous records to demonstrate the nature of the investigation into the allegations. Nor did any external authority appear to have been involved in the investigations. The Commission had concluded that the investigations had been both perfunctory and superficial. The Court shared the Commission's findings and held, accordingly, that there had been a violation of Article 3 in this respect.

Conditions of detention

In the case of Nazarenko, the Court took note of the request of the applicant's lawyer not to consider the case further now that Mr Nazarenko's complaints had been resolved following improvements in his conditions of detention. However, the Court observed that his complaint raised serious issues of a general nature in relation to the conditions of detention of death-row prisoners in Ukraine and therefore decided to continue its examination of the complaint.

In all the cases the Court reiterated its case law in respect of Article 3 regarding a prohibition in absolute terms on torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour. It noted that where the death penalty was imposed, the personal circumstances of the condemned person, the conditions of detention awaiting execution and the length of detention prior to execution were examples of factors capable of bringing the treatment or punishment within the proscription under Article 3.

The Court had jurisdiction to examine only the complaints relating to the period after 11 September 1997 when the Convention came into force in Ukraine, but could have regard to the overall period of detention. Until the death penalty was formally abolished in February 2000, the applicants must have suffered fear and anxiety as to their future, though the risk that the sentence would be enforced had diminished as time went by.

Of particular concern was the finding that until May 1998 at the earliest the applicants had been locked up 24 hours a day in restricted living space with no natural light. By the time the situation had improved, in May 1998, the applicants had been detained for periods ranging from 12 to 30 months. The Court had borne Ukraine's socio-economic problems in mind but considered that a lack of resources could not in principle justify prison conditions so poor as to constitute inhuman and degrading treatment.

The Court accordingly held that there had been a violation of Article 3 in this respect.

Mr Khokhlich complained that he had had to share a cell with an inmate suffering from tuberculosis and had become infected as a result. The Court observed that pathological changes in his lung were not revealed until three months after he had been separated from his fellow inmate. It was therefore improbable that he had been infected by him. Moreover, the medical report showed that they had suffered from two different types of tuberculosis. According to the medical documents submitted to the Court, Mr Khokhlich's health conditions were satisfactory and under continuous medical supervision. There had accordingly been no violation of Article 3 in this respect.

Article 8

The applicants' complaints under this head mainly concerned restricted visits from and correspondence with relatives, limitations on the authorised number of parcels containing food, clothes and toiletries and lack of contact with the outside world through TV or radio.

Period from 11 September 1997 to 11 July 1999

These restrictions had constituted interference by a public authority with the applicants' exercise of their right to respect for their private life and their correspondence. Such interference had to be in accordance with the law, pursue a legitimate aim and be necessary in a democratic society in order to achieve that aim. The law had to be accessible to the person concerned in order to foresee its consequences. Although the Correctional Labour Code had provided a legal basis for conditions of detention, no reference had been made to it when informing the applicants or their relatives about the rules applicable to death-row inmates. After their sentences had become final, their detention had been governed by an Instruction, which was an internal and unpublished document not accessible to the public. That Instruction had been replaced by the Temporary Provisions, which had entered into force on 11 July 1999 and were accessible to the public, extending the rights of death-row inmates. However, these were of no application to the applicants' complaints in respect of the period before 11 July 1999. The interference had not therefore been in accordance with the law and there had been a violation of Article 8.

Period after 11 July 1999

The Court had taken into account the logistical problem in processing an unlimited quantity of parcels in a large penitentiary. It found that the restriction to receiving parcels every sixth week could be regarded as respecting a proper balance between protecting security and respecting inmates' right to contact with the outside world.

Article 9

Mr Poltoratskiy and Mr Kuznetsov complained that they had not been allowed visits from a priest. The Commission had established that they had been unable to participate in the weekly religious services available to other prisoners and had not in fact been visited by a priest until 26 December 1998. The Court held that this interference had not been in accordance with the law because the Instruction did not qualify as a law under Article 9 §2. It had been replaced by Temporary Provisions, which allowed death-row inmates to pray, read religious literature and receive visits from a

priest, but the facts complained of had occurred before then. There had accordingly been a violation of Article 9.

Article 13

The Court reiterated that this provision required an effective remedy at national level to enforce Convention rights and freedoms. Mr Khokhlich complained that he had not been allowed a visit from a notary for more than eight months, but subsequently confirmed that this delay had not prejudiced his claim in any way. The Court therefore found that there had been no violation of Article 13. Rejecting the Government's preliminary objection regarding lack of victim status, the Court held that there had been a violation of this provision in Mr Dankevich's case.

McGlinchey and Others v. United Kingdom

Judgment of 29 April 2003

Alleged violation of: Article 3 (prohibition of torture) and 13 (right to an effective remedy)

Principal facts and complaints

The applicants, all British nationals, are the children and mother of Judith McGlinchey, who died in hospital in January 1999, aged 31.

Ms McGlinchey, who had a long history of heroin addiction and was asthmatic, was convicted of theft and sentenced to four months' imprisonment in December 1998. While in prison she manifested heroin-withdrawal symptoms, had frequent vomiting fits and lost a lot of weight. The day after her admission she was seen by a doctor who prescribed treatment for her various problems, including medication for her heroin-withdrawal symptoms. The doctor saw her again on 10 December 1998, prescribed an injection for the continuing withdrawal symptoms and gave instructions for her weight to be monitored. The next day he found her general condition stable. On 14 December 1998 she was admitted to hospital and the next day moved to intensive care where she was kept on a life-support machine and heavily sedated. She died on 3 January 1999. The autopsy report noted that the cause of her vomiting had not been established. An inquest was held before a jury on 6 December 1999. The jury unanimously returned an open verdict.

The applicants consulted a doctor with a view to bringing a claim in negligence. In the light of the doctor's opinion, counsel advised them that there was insufficient evidence to establish the necessary causal link between Ms McGlinchey's death and negligent care in custody. They did not pursue their claims.

The applicants complained, under Article 3, that Ms McGlinchey had suffered inhuman and degrading treatment in prison prior to her death and that there had been no effective remedy available to them to bring a complaint. They alleged, among other things, that the prison authorities had deliberately withheld her medication and locked her in her cell as a punishment for her difficult behaviour; that they had administered her medication irregularly; and that she had been left lying in her own vomit.

Decision of the Court

Article 3

The applicants' allegations that the prison authorities had failed to provide Ms McGlinchey with medication for her heroin-withdrawal symptoms and locked her in her cell as a punishment were unsubstantiated. While she was not given the prescribed drug on one occasion on 8 December 1998, this was on the doctor's instructions. It was also normal procedure for prisoners who were not attending classes to be detained in their cells during that period. In the urgency of Ms McGlinchey's immediate transfer to hospital, the failure to clean up her vomit adequately could not be regarded as degrading treatment. While the omissions in administering her medication indicated a regrettable lapse in the procedure, this failure could not be said to have adversely affected Ms McGlinchey's condition.

However, with regard to the complaints that not enough had been done to treat Ms McGlinchey for her heroin-withdrawal symptoms, the Court found that, while it appeared that her condition had been regularly monitored from 7 to 12 December 1998, she had been vomiting repeatedly during that period and losing a lot of weight. Over the following two days she was not seen by a doctor and continued to vomit and lose weight. The nursing staff did not find any cause for alarm, however, or consider it necessary to call a doctor. The doctor at the inquest had considered that there had been strong indications that she was dehydrated at the time of her admission to hospital.

The Court concluded from the evidence before it that by 14 December 1998 Ms McGlinchey had lost a lot of weight and become dehydrated. It found that the prison authorities had failed to provide her with the requisite medical care and concluded that the prison authorities' treatment of her had violated the prohibition against inhuman and degrading treatment contained in Article 3.

Article 13

The effect of Article 13 was to require the provision of a domestic remedy to deal with the substance of an arguable complaint under the Convention and to grant appropriate relief.

Although internal prison remedies as being available to Ms McGlinchey, no compensation was available under English law for the suffering and distress that the Court had found to amount to a violation of Article 3. As there had been no remedy by which to examine the standard of care given to her in prison and the possibility of obtaining damages, there had been a breach of Article 13.

Iglesias Gil and A.U.I. v. Spain

Judgment of 29 April 2003

Alleged violation of: Article 8 (right to respect for private and family life)

Principal facts and complaints

In 1989 the first applicant, María Iglesias Gil, married A.U.A. After their divorce in 1994 they had a son, A.U.I., who is the second applicant. The first applicant was awarded custody of the child, while the father was granted access. On 1 February 1997 A.U.A. abducted the child and took him to the United States.

The first applicant lodged a criminal complaint against A.U.A. and the members of his family who, she alleged, had collaborated in the abduction. Her requests to the investigating judge for investigative measures in connection with the offences of abduction, contempt of court and failure to comply with the judgment of the family-affairs judge were refused, as was her application an international search and arrest warrant to be issued against A.U.A. The first applicant appealed to the Pontevedra Audiencia Provencial and the Constitutional Court, but her appeals were dismissed.

In July 1998 the investigating judge provisionally discontinued the proceedings against A.U.A. on the ground that, as he could not be questioned, he could not be charged under the Code of Criminal Procedure. The first applicant's appeals against that decision were dismissed, along with her application challenging the judge and requesting that the proceedings be annulled.

In a judgment of 12 February 1999 the first applicant was granted full parental responsibility for the child. In June 2000, when A.U.A. and the child returned to Spain on a visit, the first applicant managed to take her son back with police assistance.

The first applicant, acting in her own name and in her capacity as her son's legal guardian, complained of a violation of Article 8 of the Convention. She alleged that the Spanish authorities had not taken sufficient steps to ensure rapid execution of the court decisions in her case and to facilitate the return of her son to her. In particular, she complained that the judicial authorities had not dealt diligently with her complaint alleging abduction.

Decision of the Court

In the Court's view, it was essential to determine whether the national authorities had taken all the steps that could reasonably be demanded of them to facilitate the execution of the court decisions awarding the first applicant custody and sole parental responsibility. As the case primarily concerned the removal and wrongful retention of the child, the Court set out to examine, in the light of the international obligations deriving from the Hague Convention, to which both Spain and the United States were contracting parties, whether the national authorities had made adequate efforts to enforce the first applicant's right to

the return of her child and the child's right to join his mother.

The father's actions towards his son were wrongful within the meaning of Article 3 of the Hague Convention, and indisputably fell within the scope of that instrument. Furthermore, Articles 6 and 7 of the Hague Convention required central authorities to co-operate with each other in order to discover the whereabouts of abducted children and to secure their return to the parent who had custody of them. Article 11 of the Hague Convention required the authorities of all Contracting States to act expeditiously in proceedings for the return of children.

The Court considered that once the Spanish judicial authorities had found the child's abduction to have been wrongful, the competent national authorities should have taken appropriate measures, as laid down in the relevant provisions of the Hague Convention, to secure the return of the child to his mother. However, none of the measures listed in those provisions had been taken by the authorities to facilitate the execution of the decisions in favour of the first applicant and her child.

Accordingly, notwithstanding the respondent State's margin of appreciation in the matter, the Court concluded that the Spanish authorities had failed to make adequate and effective efforts to enforce the first applicant's right to the return of her child and the child's right to join his mother, thereby breaching their right to respect for family life, as guaranteed by Article 8 of the Convention.

Appleby and Others v. the United Kingdom

Judgment of 6 May 2003

Alleged violation of: Articles 10 (freedom of expression), 11 (freedom of assembly and association) and 13 (right to an effective remedy)

Principal facts and complaints

The applicants are Mary Eileen Appleby, Pamela Beresford, Robert Alphonsus Duggan, and an environmental group called Washington First Forum, set up by the three individual applicants to campaign against a plan to build on the only public playing field near Washington town centre.

In March and April 1998 the applicants set about collecting signatures for a petition to persuade the council to reject the project. They tried to set up a stall and canvass views in "The Galleries", a shopping mall in Washington that had become the effective town centre. They were prevented from doing so, however, by a private company which owned most of the mall. The manager of the one of the shops in the mall gave the applicants permission to set up stands in his store, but not in April 1998 when the applicants wished to collect signatures for a further petition. Permission had been refused because the owner took a strictly neutral stance on all political and religious issues. The applicants claim that other organisations have been allowed to carry out collections and to set up stalls and displays in the Galleries.

Relying on Articles 10 and 11, the applicants complained that they had been prevented from meeting in their town centre to share information and ideas about the proposed building plans. They also complained, under Article 13, that they had had no remedy under domestic law to test whether any interference with their rights was lawful.

Decision of the Court

Articles 10 and 11

In the Court's view, freedom of expression was an important but not unlimited right, and that the property rights of the owner of the shopping centre also had to be taken into consideration. It considered that if a bar on access to property were to result in a breach of the right to freedom of expression, it would not rule out the possibility that a positive obligation could arise for the State to protect the enjoyment of such rights.

In the present case, however, the applicants had had alternative means of communicating their views to the public and had not been actually prevented from doing so as a result of the limited restriction imposed on them by the owner of the shopping centre. The Court did not find that the Government had failed to comply with any positive obligation to protect the applicants' freedom of expression. Largely identical considerations arose in respect of their right to freedom of assembly.

Article 13

Article 13 could not be interpreted as requiring a remedy against the state of domestic law, otherwise the Court would be imposing a requirement on Contracting States to incorporate the Convention into their national law. After 2 October 2000, when the Human Rights Act had taken effect, the applicants could have raised their complaints in the domestic courts.

The Court held, by six votes to one, that there had been no violation of Articles 10 and 11 and, unanimously, that there had been no violation of Article 13 of the Convention.

Papageorgiou v. Greece

Judgment of 9 May 2003

Alleged violation of: Article 6 §§1 and 3 (d) (right to a fair trial)

Principal facts and complaints

The applicant, Georgios Papageorgiou, an employee of the Commercial Bank of Greece, was prosecuted in June 1990 for allegedly using seven cheques from a cheque-book that had been issued but never delivered to Greek Railways ("OSE").

The applicant was convicted of fraud by the Athens Criminal Court of Appeal, which found that he had worked on the computer that had been used to commit the offence and had signed the cheques. During the proceedings the applicant made several unsuccessful requests for the production of certain evidence, including pages from the electronic calendar on the computer and the originals of the cheques. After the conviction was quashed following an appeal to the Court of Cassation, the case was remitted to the Athens Criminal Court of Appeal, which found the applicant guilty of deception and sentenced him to three years and six months' imprisonment. That decision was upheld by the Court of Cassation on 30 November 1999.

Relying on Article 6 §§1 and 3 (d), the applicant complained of the length and unfairness of the proceedings.

Decision of the Court

Noting that the case had lasted 9 years, 5 months and 28 days and that there had been periods of inaction and delays attributable to the judicial authorities, the Court held unanimously that there had been a violation of Article 6 §1 on account of the length of the proceedings.

The Court also noted that the case concerned a refusal produce the originals of documents that had served as a basis for a criminal conviction. The trial courts had not examined the computer's electronic records or the originals of the cheques. They had not even checked whether the copies that had been produced conformed to the originals. Production of the cheques was vital to the applicant's case and might have enabled him to demonstrate that the accusation was unfounded. Accordingly, the Court considered that the proceedings taken as a whole had not met the requisite standards of fairness. It held unanimously that there had been a violation of Article 6 §§1 and 3 (d) and awarded the applicant certain sums for non-pecuniary damage and for costs and expenses.

Kyrtatos v. Greece

Judgment of 22 May 2003

Alleged violation of: Articles 6 §1 (right to a fair trial) and 8 (right to respect for private and family life)

Principal facts and complaints

The applicants, Sofia Kyrtatou and her son, Nikos Kyrtatos, own property in the south-eastern part of the Greek island of Tinos, including a swamp by the coast in Ayios Yiannis. Their problems started when the prefect of Cyclades redrew the boundaries of Ayios Yiannis in the municipality of Dio Horia, on the basis of which the town-planning authority of Syros issued building permits in the area concerned. Two buildings were erected near their property.

In July 1993 the applicants and the Greek Society for the Protection of the Environment and Cultural Heritage applied to the Council of State for judicial review of the prefect's decisions and the building permits, based on a constitutional provision protecting the environment. Their applica-

tion was successful, but a special committee of the Council of State found that the decisions had not been enforced.

The applicants complained, under Articles 6 §1 and 8 of the Convention, about the authorities' failure to enforce the Council of State's decisions annulling two permits for the construction of buildings near their property. They further complained, under Article 6 §1, about the length of civil proceedings they had instituted against their neighbour, whom they accused of trespassing on their property, and also about the length of administrative proceedings concerning the threatened demolition of Mrs Kyrtatou's house.

Decision of the Court

Article 6 §1

The Court held that, by failing to enforce two final judicial decisions for more than seven years, the Greek authorities had deprived Article 6 §1 of the Convention of all useful effect. There had accordingly been a violation of that provision. The proceedings against the neighbour had lasted more than 12 years for two levels of jurisdiction and the proceedings in connection with the threatened demolition of the first applicant's house more than 8 years for one level of jurisdiction. The Court found that the cases were not particularly complex and that the applicants bore no responsibility for their excessive length. There had accordingly been a violation of Article 6 §1.

Article 8

The applicants had not shown how the alleged damage to the environment constituted an attack on the applicants' private or family life. The disturbances coming from the neighbourhood as a result of the urban development of the area had not been sufficiently serious to be taken into account under Article 8. There had accordingly been no violation of that provision.

The Court awarded the applicants certain sums for non-pecuniary damage and for costs and expenses.

Pantea v. Romania

Judgment of 3 June 2003

Alleged violation of: Articles 3 (prohibition of torture), 5 §§1, 3, 4, and 5 (right to liberty and security), 6 §§1 and 3 (c) (right to a fair trial) and 8 (right to respect for private and family life)

Principal facts and complaints

In April 1994 Mr Pantea, the applicant, was involved in an altercation with a person who sustained serious injuries. He was prosecuted and remanded in custody. He was released in April 1995 after his detention had been ruled unlawful and committed for trial on a charge of assault causing grievous bodily harm. The case is still pending in the Craiova Court of First Instance.

The applicant asserted that at the instigation of the staff of Oradea Prison he had been savagely beaten by his fellow-prisoners and then made to lie underneath his bed, immobilised with handcuffs, for nearly 48 hours. He alleged that, suffering from multiple fractures, he had been transferred to Jilava Prison Hospital in a railway wagon, and that during the journey, which had lasted several days, he had not received any medical treatment, food or water. He further alleged that while in Jilava Prison Hospital he had been obliged to share a bed with an AIDS patient and had suffered psychological torture.

The applicant lodged a complaint, accusing the prison warders and his fellow-prisoners of ill-treatment, but the complaint was dismissed by the Oradea military prosecution service as unsubstantiated and out of time. An action in which the applicant sought damages for his unlawful detention was also dismissed by the Timis Court of First Instance on the ground that it was time-barred.

Relying on Article 3 of the Convention, the applicant complained of the treatment he had been subjected to while in prison. He further contended that the circumstances of his arrest and detention had been contrary to Article 5. He complained that he had not been brought promptly before a judge after his arrest, in breach of Article 5 §3, that the Romanian courts had not speedily ruled on his application for release, in breach of Article 5 §4, and that he had not obtained compensation for his unlawful detention, in breach of Article 5 §5. Relying on Article 6, he complained of the length of the criminal proceedings against him and submitted that he had not been able to consult his lawyer during the investigation stage. Lastly, he complained of a violation of Article 8 of the Convention on account of the undue prolongation of his detention.

Decision of the Court

Article 3
Ill-treatment

The Court noted that no one had denied that the applicant had been assaulted when in pre-trial detention, while he was in the charge of the prison warders and management. Medical reports attested to the number and severity of the blows the applicant had received. The Court held that these facts had been clearly established and were sufficiently serious to constitute inhuman and degrading treatment.

In addition, the Court considered that the treatment in question had been aggravated by a number of circumstances: the applicant had been handcuffed while he continued to share a cell with his assailants and there was no evidence that the treatment prescribed for the applicant had ever actually been administered. A few days later when the applicant, now suffering from a number of fractures, was taken to another prison, he had had to travel for several days in a prison service railway wagon in conditions which the Government had not denied. Lastly, when the applicant was taken into hospital he had not been seen and treated by the surgery department. In those circumstances, the Court considered that the treatment suffered by the applicant had been contrary to Article 3 of the Convention.

As to whether this treatment was imputable to the Romanian authorities, the Court considered that the authorities could have foreseen that the applicant's psychological condition made him vulnerable, making it necessary to keep him under closer surveillance. The Court accepted the applicant's argument that it was illegal to place a person detained pending trial in the same cell as repeat-offenders or persons convicted in a decision which had become final. Moreover, it appeared that the prison warder had not come promptly to the applicant's aid and that he had been required to continue to occupy the same cell.

In those circumstances, the Court held that there had been a violation of Article 3, as the authorities had failed to discharge their positive obligation to protect the applicant's physical integrity.

Adequate inquiry

The Court noted that the applicant's complaint concerning his fellow-prisoners had been dismissed because it had not been lodged within the time allowed by law. The applicant had complained of "attempted homicide" or "assault causing grievous bodily harm", but the public prosecutor's office had classified the offence as "common assault", with the result that the time allowed was reduced and the complaint dismissed. Moreover, it appeared that the public prosecutor's office had not made sufficient effort to establish what consequences the incident had had on the applicant's health.

With regard to the inquiry concerning the prison warders, the Court noted that the public prosecutor's office had merely asserted that it was unsubstantiated, a conclusion which, in view of the evidence, was unacceptable. The applicant had also appealed against the decision of the public prosecutor's office, but the Court had not received any information from the Government on that point.

In the light of the above considerations, the Court considered that the authorities had not conducted a detailed and effective inquiry into the applicant's arguable allegation that he had been subjected to ill-treatment while in prison, and accordingly ruled that there had been a violation of Article 3 of the Convention in that respect.

Article 5 §1

As regards the applicant's arrest when it could not reasonably be considered necessary to prevent him from fleeing after committing an offence, the Court considered that the failure to comply with the

"procedure prescribed by law" at the time of the applicant's arrest, which had been recognised by the Romanian courts and admitted by the Government, had been clearly established and entailed a violation of Article 5 §1 (c) of the Convention.

Concerning the applicant's continued detention after the expiry of the initial warrant, the Court observed, referring to its case law, that the Oradea Court of Appeal had ruled that the applicant's continued detention after that date had been unlawful because no extension of his detention had been ordered by a judge. The Court accordingly considered that the applicant's detention during that period had not been lawful for the purposes of Article 5 §1 (c) and that there had been a violation of that provision.

Article 5 §3

As to whether the public prosecutor who ordered the applicant's detention was a judge for the purposes of Article 5 §3, the Court referred to its case law and observed that since in Romania public prosecutors acted as officers of the State legal service, subordinate to the Attorney General in the first instance and then to the Minister of Justice, they did not satisfy the requirement of independence from the executive. It followed that the legal officer who had ordered the applicant's detention was not a judge within the meaning of Article 5 §3.

As to the requirement of being brought promptly before a judge, the Court could not accept that it had been necessary to detain the applicant for more than four months before he was brought before a judge. There had therefore been a violation of Article 5 §3 of the Convention.

Article 5 §4

Three months and 28 days had elapsed before any court ruled on the applicant's request for release. Having regard to the circumstances of the case, the Court considered that the requirement of speedy determination laid down by Article 5 §4 had not been satisfied and that there had therefore been a violation of the Convention in that respect.

Article 5 §5

The Court considered that the effective enjoyment of the right to compensation for unlawful detention had not been secured by Romanian law in this case. There had therefore been a violation of the Convention in that respect.

Article 6 §1

The Court took as the starting-point for the assessment of the length of proceedings the date on which the Convention came into force in Romania, namely 24 June 1994. The criminal proceedings, which were currently pending in a court at the first level of jurisdiction, had lasted eight years and eight months. Considering that the Romanian authorities could be held responsible for the overall delay in dealing with the case, the Court held that the proceedings failed to satisfy the "reasonable time" requirement in Article 6 §1 of the Convention, and that that provision had been breached.

Article 6 §3 (c)

The Court took the view that the applicant's complaint that he had been unable to consult a lawyer was premature, since the proceedings against the applicant were still pending before the Romanian courts. It accordingly held that at the current stage there had been no violation of Article 6 §3 (c).

Article 8

As regards the applicant's allegation that his wife had been prevented from visiting him, the Court noted that this assertion was contradicted by the statement Mrs Pantea had made to the public prosecutor. As regards the applicant's other allegations relating to Article 8 of the Convention, the Court noted that these were not corroborated by any evidence in the file. It accordingly held that there had been no violation of Article 8 of the Convention.

Van Kück v. Germany
Judgment of 12 June 2003

Alleged violation of: Articles 6 §1 (right to a fair trial), 8 (right to respect for private and family life) and 14 (prohibition of discrimination) taken together with Articles 6 §1 and 8

Principal facts and complaints

The applicant, Ms Van Kück, a post-operative transsexual, had sued a health-insurance company in 1992 for reimbursement of the cost of hormone treatment and 50% of the cost of gender re-assignment surgery. Her claim was rejected by the Regional Court on the ground that the medical treatment was not necessary. The Court of Appeal upheld that decision and her subsequent appeal to the Constitutional Court was unsuccessful.

She complained, under Article 6 §1 of the Convention, that the German court proceedings had been unfair. She also complained of a breach of Article 8 and of Article 14 combined with Articles 6 §1 and 8.

Decision of the Court

Article 6 §1

In the Court's view, the German courts should have requested further clarification from a medical expert. With regard to the Court of Appeal's reference to the causes of the applicant's condition, it could not be said that there was anything arbitrary or capricious in a decision to undergo gender re-assignment surgery and the applicant had in fact already undergone such surgery by the time the Court of Appeal gave its judgment. The proceedings, taken as a whole, had not satisfied the requirements of a fair hearing.

Article 8

The central issue with regard to Ms Van Kück's complaint under Article 8 was the courts' application of the criteria for reimbursement of the medical costs of gender re-assignment surgery and not the legitimacy of such measures in general. Furthermore, what mattered was not the entitlement to reimbursement as such, but the impact of the court decisions on the applicant's right to respect for her sexual self-determination. Without hearing further expert medical evidence, both the Regional Court and the Court of Appeal had questioned the medical necessity of gender re-assignment. Since gender identity was one of the most intimate aspects of a person's private life, it appeared disproportionate to require Ms Van Kück to prove the medical necessity of the treatment. No fair balance had been struck between the interests of the insurance company on the one hand and the interests of the individual on the other.

The Court held that there had been a violation of Article 6 §1 and Article 8 and that no separate issue arose under Article 14. It awarded the applicant certain sums for non-pecuniary damage and for costs and expenses.

Gutfreund v. France
Judgment of 12 June 2003

Alleged violation of: Article 6 §1 (right to a fair trial)

Principal facts and complaints

The applicant, Alain Gutfreund, was prosecuted in the police court for assaulting his wife. His application for legal aid to defend himself was refused.

He complained under Article 6 §1 of bias on the part of the judge who decided his legal-aid application.

Decision of the Court

The Court noted that the applicant's complaint was confined to the procedure for applying for legal aid. That procedure did not concern the determination of a criminal charge against him, or of his civil rights and obligations, within the meaning of Article 6 §1. The Court accordingly held unanimously that that provision was inapplicable.

Pescador Valero v. Spain
Judgment of 17 June 2003

Alleged violation of: Article 6 §1 (right to a fair trial)

Principal facts and complaints

The applicant, Sixto José Pescador Valero, holds a law degree from Castilla-La Mancha University and works in the administrative division there.

In 1996 the chief education officer at the University removed him as head of the administrative staff (*gerente*) on the Albacete university campus, a post he had held since 1985. The applicant sought judicial review of that decision in the High Court of Justice. The case was assigned to a section of the Court presided over by Judge J.B.L.

On learning that Judge J.B.L. was a visiting professor at the University of Castilla-La Mancha, Mr Pescador Valero sought an order requiring him to stand down. This request was dismissed on the ground that Mr Pescador Valero should have been aware of the judge's professional links with the University and made his application earlier. The High Court of Justice, presided over by Judge J.B.L., found that Mr Pescador Valero's removal from his post as head of the administrative staff on the university campus had been lawful. The Constitutional Court dismissed his appeal.

Mr Pescador Valero complained under Article 6 §1 of the Convention of Judge J.B.L.'s involvement in the proceedings, on the ground that he had professional and financial links with the university.

Decision of the Court

The Court found that there was no evidence to suggest that Judge J.B.L. had been guilty of prejudice or bias.

As to Mr Pescador Valero's doubts regarding the objective impartiality of Judge J.B.L., the Court noted that the judge had had regular, close professional connections with Mr Pescador Valero's opponents in the proceedings and been in receipt of a not unsubstantial periodic salary (of EUR 7,200 a year, according to the Government). That situation could legitimately give rise to fears on the part of the applicant that the judge might not be impartial. Accordingly, the Court held that there had been a violation of Article 6 §1 and awarded him certain sums for non-pecuniary damage.

Hulki Günes v. Turkey
Judgment of 19 June 2003

Alleged violation of: Articles 3 (prohibition of torture) and 6 §§1 and 3 (d) (right to a fair trial)

Principal facts and complaints

The applicant, Hulki Günes, is currently serving a life sentence in Diyarbakir Prison. He was arrested by security forces in June 1992 on suspicion of taking part in an armed attack during which one soldier died and two others were wounded. A medical report on the applicant drawn up on the day of his arrest mentioned grazes on his face, chest and back and a number of superficial grazes in the lumbar region.

The applicant was later transferred to the Mus provincial gendarmerie post for questioning. On 3 July 1992 Mr Günes was twice examined by a doctor. The first medical report mentioned that the applicant had a vertical graze on his sternum which had scabbed over and the scabs of superficial grazes on his abdomen and back. According to the second medical examination, the applicant had a graze on his sternum which had scabbed over, grazes on his abdomen and a number of grazes and bruises on his spine and in the lumbar region. Two subsequent medical examinations confirmed the findings of the second report.

On 4 July 1992 Mr Günes was taken before a judge and then placed in detention pending trial. He denied the charges against him and asserted that he had been ill-treated while detained at the Mus gendarmerie post.

An investigation into the allegations of ill-treatment was opened. Those proceedings were discontinued in October 1998. A further investigation conducted first by the Mus public prosecutor's office and then by the Varto district commissioner's office was likewise discontinued in August 1999.

Mr Günes and a co-defendant, Mr Erdal, were charged with separatism and undermining national security; they were accused of firing at the security forces, causing the death of one soldier and wounding two more. The public prosecutor called for Mr Günes's acquittal for lack of evidence. The National Security Court, composed of three judges, including a military judge, sentenced the applicant to capital punishment commuted to life imprisonment, basing its decision in particular on statements made by gendarmes to the police investigators.

Relying on Article 3 of the Convention, the applicant asserted that he had been beaten while in the custody of the Varto gendarmerie. He further complained of ill-treatment to which he had been subjected at the Mus provincial gendarmerie post. Relying on Article 6, he further complained that the National Security Court had not been independent and impartial, since a military judge had sat as one of its members. In addition, he complained that the proceedings in the National Security Court had been unfair since he had been unable to examine or have examined the witnesses whose statements had formed the basis for his conviction.

Decision of the Court

Article 3

The medical report drawn up on the day of Mr Günes's arrest had mentioned certain injuries. According to the Turkish Government, those injuries had been self-inflicted. The Court noted that the reports drawn up after the applicant's arrest did not mention any resistance on his part or any injury to his person, and that the witness evidence on that point was contradictory. That being so, the authorities charged with the investigation should have verified whether the force used had been proportionately necessary to effect the applicant's arrest. Even if it had been, the Court considered that the Turkish Government could not be absolved of responsibility for the following reasons.

It was apparent from the second medical report of 3 July 1992 and the subsequent examinations that the grazes and bruises the applicant had on his spine, abdomen and back were significantly different from those noted previously and had not scabbed over, which suggested that they were recent. In addition, the doctor who had made out the medical certificate of 3 July 1992 had declared that the marks on the applicant's body could have been the result of blows, and Mr Günes's account of events had been consistent with the diagnosis (lumbar ankylosis).

In those circumstances the Court considered that it could be taken to have been established that the applicant had been beaten while in police custody.

As regards the seriousness of the alleged facts, the Court considered that they amounted to inhuman and degrading treatment. The Court accordingly found a violation of Article 3 of the Convention.

Article 6
Independence and impartiality of the court

Referring to its case law, the Court reiterated that certain features of military judges' status cast doubt on their independence and impartiality. They were members of the armed forces who continued to belong to the army, which in turn took its orders from the executive branch.

The Court took the view that where a civilian had to stand trial on the charge of committing a terrorist offence in a National Security Court one member of which was a military judge, he had a legitimate reason to fear that the court would lack independence and impartiality. It accordingly found a violation of Article 6 §1 on that account.

Fairness of proceedings

The National Security Court had attached particular weight to statements made by three gendarmes. Those witnesses had identified him at a confrontation after his arrest, although Mr Günes denied that such a confrontation had taken place, and had again identified him from two photographs before the trial.

The Court regretted that the trial court had not commented on the way the applicant's confessions had been obtained when he was being questioned and emphasised that the applicant had not been assisted by a lawyer at the investigation stage, during which the main evidence had been obtained. In that connection, it had been of crucial importance that the prosecution witnesses should be examined by the trial court, as only that court had the real possibility of assessing the credibility of their evidence.

In addition, the Court noted that in his submissions of 3 September 1993 the public prosecutor had called for the applicant's acquittal on account of the inconsistency between the gendarmes' statements on the one hand and the reports and the co-defendant's statements on the other. However, in his submissions of 30 December 1993 the public prosecutor had called for Mr Günes's conviction, even though no new evidence had been produced.

The Court held that as the witnesses had not appeared at the applicant's trial the judges had not been able to study their demeanour while giving evidence and thus form a personal opinion as to their credibil-

ity. Consequently, the lack of any confrontation in the National Security Court had deprived the applicant, in part, of a fair trial. The Court was not unaware of the undeniable difficulties of combating terrorism and the damage it caused to society, but considered that those factors could not justify circumscribing to such an extent a defendant's right to due process, whoever he might be. It accordingly held that there had been a violation of Article 6 §§1 and 3 (d).

Allard v. Sweden

Judgment of 24 June 2003

Alleged violation of: Article 8 (right to respect for private and family life) and Article 1 of Protocol No. 1 (protection of property)

Principal facts and complaints

The applicant, Inga Allard, a Swedish national, had a number of disagreements with members of her family over land they owned jointly in the archipelago of Stockholm, resulting in the demolition of a house belonging to the applicant which had been built in 1988 without the consent of the other joint owners. In November 1996 the Real Estate Court decided that the property should be divided into plots. The applicant was assigned the plot on which the house had stood. She was subsequently granted permission to rebuild the house.

Ms Allard complained, under Article 1 of Protocol No. 1, that the demolition of the house had violated her right to the peaceful enjoyment of her possessions and under Article 8 that it had violated her right to respect for her home.

Decision of the Court

In considering whether a fair balance had been struck between the general interest (as represented by the public interest in maintaining a workable system of joint ownership) and the applicant's individual interest, the Court found that the interest of the other joint owners could not be considered to be particularly great since the house was used exclusively by the applicant and immediate family and could not be seen from the plots used by the other joint owners. Although the applicant's difficulties had largely stemmed from a family conflict to which she appeared to have contributed, the measures taken had failed to strike a fair balance and she had therefore had to bear an individual and excessive burden.

The Court held unanimously that there had been a violation of Article 1 of Protocol No. 1 and awarded the applicant certain sums for pecuniary damage and for costs and expenses. It considered that the finding of a violation in itself constituted sufficient just satisfaction for non-pecuniary damage. It held, further, that it was not necessary to examine the applicant's complaint under Article 8.

Dowsett v. the United Kingdom

Judgment of 24 June 2003

Alleged violation of: Article 6 §§1 and 3 (b) (right to a fair trial)

Principal facts and complaints

The applicant, James Dowsett, a British national, is currently detained at H.M. Prison Kingston, Portsmouth (Hampshire). In March 1989 he was convicted of the murder of his business partner, Mr Nugent, and sentenced to life imprisonment. The prosecution had accused him and two others of hiring two hit men to kill Mr Nugent because he knew too much about the applicant's involvement in mortgage fraud. In his defence, Mr Dowsett argued that he had had no motive for killing Mr Nugent since he had been involved in the frauds being perpetrated through the business and that he had only intended for the men to break one of Mr Nugent's limbs in order to sideline him for a few weeks. He alleged that, after killing Mr Nugent, the hit men had blackmailed him into paying them more money.

Following his conviction, Mr Dowsett complained to the Police Complaints Authority that the police had refused to disclose evidence important for his defence. He appealed on this basis. Some of the material was disclosed prior to the hearing but other material was withheld, partly on the ground that it would not be in the public interest to disclose it. Mr Dowsett's appeal was dismissed.

He alleged, relying on Article 6 §1 in conjunction with Article 6 §3 (b), that he had been deprived of a fair trial because the prosecution had failed to disclose all the material evidence in their possession.

Decision of the Court

The Court observed that a procedure, such as in this case, whereby the prosecution itself – without notifying the trial judge – assessed the importance to the defence of concealed information and weighed that against the public interest in keeping the information secret, could not comply with the requirements of a fair trial. Even though Mr Dowsett could himself have requested the Court of Appeal to review the undisclosed material, that review procedure was not sufficient to remedy the unfairness caused at the trial by the absence of any scrutiny of the undisclosed information. The Court emphasised the importance of material relevant to the defence being placed before the trial judge for a ruling on whether or not it should be disclosed.

The Court held that there had been a violation of Article 6 §1 combined with Article 6 §3 (b) and considered that the finding of a violation amounted to sufficient just satisfaction for the non-pecuniary damage. It awarded the applicant certain sums for costs and expenses.

Maire v. Portugal

Judgment of 26 June 2003

Alleged violation of: Article 8 (right to respect for private and family life)

Principal facts and complaints

The applicant, Paul Maire, a French national, married S.C., a Portuguese national with whom he had a son, Julien. In June 1997, after the applicant had obtained a court order provisionally giving him custody of Julien, the boy's mother abducted him and took him with her to Portugal. The Besançon *tribunal de grande instance* later granted the couple a divorce, awarded custody of Julien to his father and, granted visiting rights to his mother. In addition, S.C. was found guilty of abducting a minor and was sentenced to one year's imprisonment. A warrant was issued for her arrest.

On 5 June 1997 the applicant applied to the French Ministry of Justice to have the child returned to him. The Portuguese were unable to trace the child. On 14 December 2001 Julien and his mother were found by the criminal investigation department and the child was placed in a foster home.

Submitting that the child had settled into his new surroundings, State Counsel requested the Cascais Family Affairs Court to vary the order of the Besançon *tribunal de grande instance* and to award parental responsibility to the child's mother. The court returned Julien to his mother and provisionally awarded her custody. Subsequently, in May 2002, the court granted the applicant access. The proceedings concerning the award of parental responsibility are still pending.

Relying on Article 8 of the Convention, the applicant complained of the Portuguese authorities' inactivity and negligence in failing to enforce the judicial decisions awarding him custody of his child.

Decision of the Court

In the present case, the Court had to determine whether the Portuguese authorities had taken all the steps that could reasonably be expected of them to enforce the decisions of the French courts, judging the adequacy of measures by their swiftness of implementation. The Court found it hard to understand how the authorities dealing with the case had not managed to summon S.C. to appear.

The lengthy period that had elapsed before the child had been found had created a factual situation that was unfavourable to the applicant, particularly in view of the child's tender age. In such circumstances, the Court considered that the Portuguese authorities had not made adequate and effective efforts to enforce the applicant's right to the return of his child. It therefore held that there had been a violation of Article 8 of the Convention and awarded the applicant certain sums for non-pecuniary damage and for costs and expenses.

Information on other decisions of the Court between 1 March and 30 June 2003 (according to principal complaint)

Article 2
Right to life

Menson v. United Kingdom
Inadmissibility decision of 6.5.2003
Subject matter: effective investigation – alleged racism in a police investigation into the murder of a black man (also concerned Articles 6, 13 and 14).

Tepe v. Turkey
Judgment of 9.5.2003
Subject matter: abduction and murder, allegedly by the police, in 1993, and adequacy of investigation (also concerned Articles 3, 5, 13, 14 and 18).

Article 3
Prohibition of torture

Tuncer and Others v. Turkey
Inadmissibility decision of 13.3.2003
Subject matter: lawyers insulted during hearings and attacked on leaving court by private individuals

Moldovan and Others v. Romania
Admissiblity decision of 3.6.2003
Subject matter: destruction of Roma houses by mob (also concerned Articles 6.1, 8 and 14)

Article 5
Right to liberty and security

R. L. and M.-J. D. v. France
Admissiblity decision of 20.3.2003
Subject matter: Confinement in psychiatric clinic of a restaurateur arrested in connection with a dispute with another restaurateur (admissible under Articles 3, 5.1 (c) and (e), and 5.5).

Wardle v. United Kingdom
Inadmissibility decision of 27.3.2003
Subject matter: prolongation of pre-trial detention after expiry of statutory time-limit, on the basis of prosecution's substitution of new charge

Frommelt v. Liechtenstein
Inadmissibility decision of 15.05.2003
Subject matter: transfer of detainee to psychiatric hospital in another State (also concerned Article 3)

Gusinskiy v. Russia
Admissiblity decision of 22.5.2003
Subject matter: detention of TV magnate on charges of fraud (also concerned Article 13).

Herz v. Germany
Judgment of 12.6.2003
Subject matter: Lawfulness of an urgent measure of provisional confinement

Raf v. Spain
Judgment of 17.6.2003
Subject matter: period to be examined with regard to detention with a view to extradition

Article 6
Right to a fair trial

Jasiuniene v. Lithuania
Judgment of 6.3.2003
Subject matter: non-enforcement of court decision concerning the restoration of property (also concerned Article 14 and Article 1 of Protocol No. 1).

G.L. and S.L. v. France
Inadmissibility decision of 6.3.2003
Subject matter: obligatory representation before the *Conseil d'Etat* by a lawyer authorised to appear before the supreme courts (also concerned Article 1 of Protocol No. 1).

S.A.R.L. du Parc d'Activites de Blotzheim and la S.C.I. Haselaecker v. France
Inadmissibility decision of 18.3.2003
Subject matter: proceedings relating to annulment of a decree amending a bilateral treaty (also concerned Article 14 and Article 1 of Protocol No. 1)

Anagnostopoulos v. Greece
Judgment of 3.4.2003
Subject matter: failure to examine civil party's compensation claim as a result of delays by the prosecution authorities.

OGIS-Institut Stanislas v. France
OGEC St. Pie X and 39 others and Blanche de Castille and 15 others v. France
Admissiblity decision of 3.4.2003
Subject matter: adoption of retroactive legislation during court proceedings involving the State (*OGEC St. Pie X and 39 others and Blanche de Castille and 15 others*: also concerned Article 14 and Article 1 of Protocol No. 1)

Porter v. United Kingdom
Inadmissibility decision of 8.4.2003
Subject matter: investigation by auditor into loss caused to local authority by wilful misconduct in office.

Nunes Dias v. Portugal
Inadmissibility decision of 10.4.2003
Subject matter: service by public notice where the defendant cannot be traced

Fischer v. Austria
Inadmissibility decision of 6.5.2003
Subject matter: application for re-trial following ruling of European Court of Human Rights

Sequeira v. Portugal
Inadmissibility decision of 6.5.2003
Subject matter: alleged incitement by agents provocateurs to commit a crime

Montcornet De Caumont v. France
Inadmissibility decision of 13.5.2003
Subject matter: proceedings concerning a request for amnesty (also concerned Article 7)

Antoine v. United Kingdom
Inadmissibility decision of 13.05.2003
Subject matter: nature of proceedings instituted following establishment of unfitness to plead

Soto-Sanchez v. Spain
Admissiblity decision of 20.5.2003
Subject matter: applicability of Article 6 to constitutional proceedings (also concerned Article 8)

Hallgren v. Sweden
Inadmissibility decision of 20.5.2003
Subject matter: length of proceedings – limited stakes for applicant

Crisan v. Romania
Judgment of 27.5.2003
Subject matter: adoption, during court proceedings, of a law excluding court review of the decisions of an administrative commission

Sofri and Others v. Italy
Inadmissibility decision of 27.5.2003
Subject matter: loss and destruction of evidence

Tierce v. San Marino
Judgment of 17.6.2003
Subject matter: length of proceedings relating to eviction of tenants

Article 8
Right to respect for private and family life

Šijakova and Others v. Former Yugoslav Republic of Macedonia
Inadmissibility decision of 6.3.2003
Subject matter: effect on relationship between parents and adult children of latters' decision to join monastic order

Glass v. United Kingdom
Admissiblity decision of 18.3.2003
Subject matter: administration of morphine to critically ill child against family's wishes (also concerned Articles 2, 6.1, 13 and 14)

Martin v. United Kingdom
Admissiblity decision of 27.3.2003
Subject matter: video surveillance of applicant's home following complaints of anti-social behaviour (also concerned Article 14)

Sylvester v. Austria
Judgment of 24.4.2003
Subject matter: adequacy of measures taken to enforce court decisions ordering return of child to father living abroad (also concerned Article 6.1)

Covezzi and Morselli v. Italy
Judgment of 9.5.2003
Subject matter: taking of children into care on an urgent basis and prolonged suspension of contacts with their parents

Chandra v. Netherlands
Inadmissibility decision of 13.5.2003
Subject matter: refusal of permanent residence permit for children who joined their mother in the Netherlands after 5 years' absence

Paradis v. Germany
Inadmissibility decision of 15.5.2003
Subject matter: order by court to return children to their father abroad under the Hague Convention

Cotlet v. Romania
Judgment of 3.6.2003
Subject matter: refusal of prison authorities to provide material for correspondence with the Court (also concerned Article 34)

R.F. v. Italy
Inadmissibility decision of 26.6.2003
Subject matter: impossibility of reuniting mother and child notwithstanding the intervention of the courts and the social services

Article 10
Freedom of expression

Harlanova v. Latvia
Inadmissibility decision of 3.4.2003
Subject matter: award of damages against a journalist for defamation of a religious official (also concerned Article 14)

Saday v. Turkey
Admissiblity decision of 10.4.2003
Subject matter: imposition of prison sentence on accused on account of the content of his pleadings (also concerned Article 6.1)

Plon (Société) v. France
Admissibility decision of 27.5.2003
Subject matter: prohibition on distributing a book containing information on a deceased Head of State covered by medical secrecy

Pedersen and Baadsgaard v. Denmark
Judgment of 19.6.2003
Subject matter: conviction of producers of television programmes for defamation of a senior police officer (also concerned Article 6.1)

Independent News And Media v. Ireland
Admissibility decision of 19.6.2003
Subject matter: level of award made by jury in libel case against media group

Article 11
Freedom of assembly and association

Sørensen v. Denmark
Jensen and Rasmussen v. Denmark
Hoffman Karlskov v. Denmark
Admissiblity decisions of 20.3.2003
Subject matter: obligation to join trade union

Skalka v. Poland
Judgment of 27.5.2003
Subject matter: conviction for insulting judges in a letter

P4 Radio Hele Norge v. Norway
Inadmissibility decision of 6.5.2003
Subject matter: denial of application to broadcast murder trial live on radio (also concerned Articles 10 and 13)

Article 13
Right to an effective remedy

Konti-Arvaniti v. Greece
Judgment of 10.4.2003
Subject matter: lack of effective remedy in respect of excessive length of court proceedings (also concerned Article 6.1)

Zavoloka v. Latvia
Admissiblity decision of 29.4.2003
Subject matter: refusal of courts to award non-pecuniary damages in respect of the death of her daughter in a road traffic accident (also concerned Article 2)

Article 14
Prohibition of discrimination

Pla Puncernau and Puncernau Pedro v. Andorra
Admissibility decision of 27.5.2003
Subject matter: exclusion of adopted child from inheritance (also concerned Article 8)

Article 17
Prohibition of abuse of rights

Garaudy v. France
Inadmissibility decision of 24.6.2003
Subject matter: conviction of writer for contesting crimes against humanity (also concerned Articles 6.1, 6.3 (d) and 10)

Article 34
Individual applications

Rechachi and Abdulhafid v. United Kingdom
Inadmissibility decision of 10.6.2003
Subject matter: payment of ex gratia compensation and settlement of civil claims (also concerned Articles 5.1 (c) and 5.5)

Article 35
Admissibility criteria

Reuther v. Germany
Inadmissibility decision of 5.6.2003
Subject matter: failure to pay sum required by the Constitutional Court of Bavaria in order for appeal to be examined (also concerned Article 6.1)

Article 1 of Protocol No. 1
Protection of property

Jantner v. Slovakia
Judgment of 4.3.2003
Subject matter: refusal of restitution of property, on the ground that claimant was not a permanent resident in the Czech and Slovak Republic (also concerned Article 14)

Des Fours Walderode v. Czech Republic
Inadmissibility decision of 4.3.2003
Subject matter: claim for restitution of property confiscated in Czechoslovakia in 1945

Guerrera and Fusco v. Italy
Judgment of 3.4.2003
Subject matter: agreement on amount of compensation for expropriation (also concerned Article 6.1)

Islamic Republic of Iran Shipping Lines v. Turkey
Admissiblity decision of 10.4.2003
Subject matter: seizure of vessel carrying arms through Bosphorous to Iran (also concerned Articles 6.1, 13 and 14)

Yildirim v. Italy
Inadmissibility decision of 10.4.2003
Subject matter: refusal to return to the owner a rented vehicle seized after being used to transport illegal immigrants (also concerned Articles 6 and 7)

Rissmann, Höller and Loth v. Germany
Admissiblity decision of 15.5.2003
Subject matter: obligation to return land after the reunification of Germany (also concerned Article 14)

Harrach v. Czech Republic
Inadmissibility decision of 27.5.2003

Subject matter: non-restitution of property confiscated at end of Second World War (also concerned Articles 6.1 and 14)

M.A. and Others v. Finland

Inadmissibility decision of 10.6.2003
Subject matter: retroactive law to make sale of stock options subject to income tax

Stretch v. United Kingdom

Judgment of 24.6.2003
Subject matter: denial of option to extend lease from local authority, on the ground that the granting of the option was *ultra vires*

Article 3 of Protocol No. 1

Right to free elections

Zdanoka v. Latvia

Admissiblity decision of 6.3.2003
Subject matter: ineligibility to stand for Parliament as an automatic consequence of a court finding of membership of an unconstitutional party (also concerned Articles 6.1, 8, 10 and 11)

Article 3 of Protocol No. 4

Prohibition of expulsion of nationals

Victor-Emmanuel de Savoie v. Italy

Judgment of 24.4.2003 (struck out)
Subject matter: constitutional provision prohibiting male descendants of the last king of Italy from entering and staying in the country

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. The Committee holds six regular Human Rights meetings per year to exercise its functions under these provisions. During the preparation and conduct of these meetings, it is assisted by the Secretariat of the Council of Europe (Directorate General of Human Rights – DG II – Department for the execution of the judgments of the European Court on Human Rights). Documentation for these meetings takes the form of the Annotated Agenda and Order of Business, in which appears the information provided by the respondent states about the measures adopted or under way, as well as its evaluation by the Committee. The Agenda is made public on the Committee's Internet site following each meeting.

Owing to the large number of cases examined 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://wcm.coe.int/.

Human rights (DH) resolutions

Austria

T. v. Austria
Application No. 27783/95
Judgment of the Court of 14 November 2000
Resolution ResDH (2003) 48, 24 April 2003
Articles 6 §1 and 6 §3.a and b (length of civil proceedings, right to be informed of the nature and cause of accusation, right to have adequate time and facilities for defence)

The Committee of Ministers satisfied itself that the government of the respondent state had paid the sums provided in respect of costs and expenses. It took note of the following information supplied by the Austrian Government.

Appendix
to Resolution ResDH (2003) 48

Information provided by the Government of Austria during the examination of the T. case by the Committee of Ministers

The Austrian Government considers that only the second violation i.e. that of Article 6, paragraph 1, taken in conjunction with Article 6, paragraph 3.a and b, required general measures.

At the origin of this violation was the system established by Sections 69 and 220 of the Code of Civil Procedure, concerning the imposition of fines for abuse of process in connection with legal aid requests. More precisely, Section 69 of the Code of Civil Procedure provided that a court should impose a fine for abuse of process of up to ten times the amount provided for in section 220, paragraph 1, of the same Code on a litigant who obtained legal aid improperly by making false or incomplete statements. Section 220, paragraph1, provided *inter alia* that a fine for abuse of process might not exceed 40 000 Austrian

schillings. In the event of an inability to pay, the fine should be converted into imprisonment. The length of imprisonment should be determined by the court, but might not exceed ten days (section 220, paragraph 3). The Code did not provide for any further hearing before the conversion of the fine into a prison term. These fines were not inscribed in the criminal records of the persons concerned.

In the present case, the European Court of Human Rights concluded (paragraph 67) that, having regard to the punitive nature and the large amount of the penalty at stake and its conversion into a prison term if it proves to be irrecoverable without the guarantee of a hearing, what was at stake for the applicant was sufficiently important to warrant classifying the offence as criminal within the meaning of Article 6, paragraph 1. Subsequently, it found (paragraphs 71-72) a violation of this article in conjunction with Article 6, paragraph 3.a and b.

Following the European Court's judgment, Section 69 of the Code of Civil Procedure was amended by Section 94 of the "First law on the conversion to the euro" (*Erstes Euro-Umstellungsgezetz*), which entered into force on 8 August 2001. According to the amendment, the maximum amount of fines for abuse of process was reduced from 400 000 Austrian schillings to 40 000 Austrian schillings (2 900 euros) and the conversion of fines into a prison term was abolished. In view of these changes, the Government is of the opinion that the punishment for abuse of process is no longer of such a nature and severity that might bring it, according to the Court's case-law, into the criminal sphere.

The attention of the legal community has been drawn to the judgment of the European Court through its publication in *Österreichische Juristenzeitschrift* 2001, p. 398, in *Ecolex* 2001, p. 490 and in *Österreichisches Institut für Menchenrechte Newsletter* 2000, p. 226. The judgment has also been disseminated to the judicial authorities directly concerned.

The Government of Austria considers that, given the developments mentioned above, there is no risk of new violations similar to that found in the present case and that Austria has consequently satisfied its obligations under Article 46, paragraph 1, of the Convention.

Cyprus

Selim v. Cyprus

Application No. 47293/99
Judgment of the Court of 16 July 2002
Resolution ResDH (2003) 49, 24 April 2003

Articles 8 (right to respect for family life), 12 (right to marry and found a family), 13 (right to an effective remedy) and 14 (prohibition of discrimination)
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 sums provided in respect of costs and expenses. It took note of the following information supplied by the Government of Cyprus.

Appendix to Resolution ResDH (2003) 49

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

A new law 46 (I)/2002 providing for the temporary application of the Marriage Law Cap. 279 to members of the Turkish community, thus conferring on the latter community the right to marry, was enacted by the Cypriot Parliament on 25 April 2002 and was published in the *Official Gazette* of the Republic on 2 May 2002.

The new law provides that, as long as the situation prevailing in the island continues, the provisions of the Marriage Law Cap. 279, including the matter of celebration of civil marriages by Marriage Officers, shall also be applicable where one or both parties to the proposed marriage are members of the Turkish community.

The new law on Civil Marriage, which has been tabled before Parliament for enactment, incorporates the provisions of the above-mentioned Law 46 (I)/2002.

The Government of Cyprus therefore considers that there is no risk of a new situation similar to that found in the present case and that Cyprus has consequently complied with its obligations under Article 46, paragraph 2, of the Convention.

Finland

L. v. Finland

Application No. 25651/94
Judgment of the Court of 27 April 2000
Resolution ResDH (2003) 69, 24 April 2003

Articles 8 (right to respect for private and family life), 13 (right to an effective remedy) 6 §1 (lack of an oral hearing before the County Administrative Court)

During the examination of the case by the Committee of Ministers, the government of the respondent state drew the Committee's attention to the fact that, on account of the specific circumstances of the case new, similar violations of the Convention could be avoided for the future by informing the authorities concerned of the requirements of the Convention: copies of the judgment had accordingly been sent out to them as well as to the High Supreme Court, the High Administrative Court, the Parliamentary Ombudsman and the Chancellor of Justice; the Court's judgment has been published on the Internet, on the judicial database FINLEX (www.finlex.fi); in addition, information about the judgment and the interpretation of the European Court had also been given during meetings arranged by the Ministry of Justice annually, or twice a year for appellate courts and for civil, criminal and administrative courts.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the sums provided in respect of costs and expenses. It took note of the information supplied by the Finnish Government.

France

Hermant v. France

Application No. 31603/96
Interim Resolution DH (2000)87
Final Resolution ResDH (2003) 88, 17 June 2003

Article 6 §1: length of civil proceedings

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. It took note of the following information supplied by the French Government about the measures taken to prevent new violations of the same kind.

Appendix to Resolution ResDH (2003) 88

Information provided by the Government of France during the examination of the Hermant case by the Committee of Ministers

To deal with the heavy case-load in certain divisions of the Court of Cassation, changes have been made in the processing and the hearing of appeals and it has been decided to increase staffing levels.

Changes in the handling and examination of appeals

First, applications are now filtered so that some appeals which are clearly unfounded can be heard by a reduced bench of only three judges.

Article L131-6 of the Code on Organisation of the Courts, as amended by section 27 of the Institutional Act of 25 June 2001, which came into force on 1 January 2002, provides:

"After filing of memorials, cases brought before a civil division shall be examined by a bench of three judges belonging to the division to which the cases were assigned.

"These judges shall disallow appeals that are inadmissible or unfounded on a serious ground of law. Where the solution is self-evident they shall decide the case. Otherwise, they shall send it for hearing by the division.

"However, the First President or the President of the division concerned, or their representatives, may, of their own motion or at the request of Principal State Counsel or one of the parties, send the case direct for hearing by the division, without having to give grounds for that decision.

"Where he or she deems that the solution of a case brought before the criminal division is self-evident, the First President or the President of that division may decide to have the case heard by a bench of three judges. At the request of one of the parties, these judges may decide to send the case for hearing by the division; hearing by the division shall be automatic where one of the judges sitting on the reduced bench so requests. The bench shall dismiss any appeal which is inadmissible or unfounded on a serious ground of law."

Statistical data since 1 January 2002 on the procedure for the admission of appeals

With regard to the Civil Chambers in the first half of 2002, out of a total of 9 448 judgments, 2 626 decisions of inadmissibility were delivered (i.e. 28%). This percentage is made up of 31% for the First Chamber, 39% for the Second Chamber, 10% for the Third Chamber, 19% for the Commercial Chamber and 33% for the Social Chamber.

These cases which are initially destined to be declared inadmissible at appeal are essentially those which contain no complexities and which have previously been judged by a restricted bench composed of three judges (Section L131-6 of the Code of Judicial Procedure). It may be noted furthermore that 10% of cases initially earmarked as potentially inadmissible were finally reassigned for reasoned judgment.

On the criminal side, inadmissibility concerns 35% of the appeals introduced before the Criminal Chamber.

Prevention of disputes

Secondly, section 26 of Institutional Act 2001-539 of 25 June 2001, which also came into force on 1 January 2002, amended Articles L151-1 and L151-2 of the Code on Organisation of the Courts, extending the procedure whereby the trial and appeal courts may seek the Court of Cassation's opinion on a question of law arising in a significant number of cases, which has not yet been settled. In particular, the Act extended this procedure to criminal cases, thereby making it possible to avoid the emergence of causes for dispute. The relevant provisions read as follows:

Article L151-1

"Before deciding a new question of law, which raises a serious difficulty and arises in a large number of cases, the trial and appeal courts may, by a decision not open to appeal, seek the opinion of the Court of Cassation, which shall state its position within three months of the referral. …"

Article L151-2

"The bench of the Court of Cassation which deals with a request for an opinion shall be chaired by the First President or, if he or she is unable to be present, the most senior Division President. …

Apart from the First President, the bench required to give an opinion in criminal matters shall include the President of the Criminal Division, a Division President appointed by the First President, four judges of the Criminal Division and two judges of another division, appointed by the First President. …"

Thirdly, under arrangements made between the registry and the divisions of the Court of Cassation, the period between the date of the hearing and delivery of the judgment has been reduced to not more than four weeks.

Fourthly, a number of measures are currently being envisaged with the aim of rationalising the handling of cases. For instance, there are plans to group appeals by series, to link appeals raising the same point of law, with a view to hearing them concurrently or in a co-ordinated manner, and to reduce the time allowed for preparing certain categories of cases for hearing.

Increasing the staff of the *Cour de cassation*

A substantial increase in the staff of the Court of Cassation has been decided, so as to deal with the current backlog of cases. Six posts of auxiliary judge were established in 2001, and eleven supernumerary posts.

There are also plans to recruit six further supernumerary posts of auxiliary judges which will bring the total staff to 76 auxiliary judges. Pursuant to the Institutional Act of 25 June 2001, the number of specially recruited magistrates who may be appointed to the *Cour de cassation* has been doubled.

The Government of France considers that this body of measures will make it possible to accelerate proceedings before the *Cour de cassation* so that cases brought before it may be judged within a reasonable time in conformity with Article 6, paragraph 1, of the Convention and that France has accordingly fulfilled its obligations under former Article 32 of the Convention.

Muller v. France

Application No. 21802/93
Judgment of the Court of 17 March 1997
Resolution ResDH (2003) 50, 24 April 2003
Article 5 §3 (excessive length of detention on remand)

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. It took note of the following information supplied by the French Government about the measures taken to prevent new violations of the same kind.

Appendix to Resolution ResDH (2003) 50

Information provided by the Government of France during the examination of the Muller case by the Committee of Ministers

Law No. 2000-516 of 15 June 2000 reinforcing the protection of the presumption of innocence and the rights of victims, which came into force on 16 June 2000 upon its publication in the *Official Gazette* of the French Republic, inserted a preliminary article at the beginning of the Penal Code establishing the guiding principles for criminal proceedings, including a large number of the principles listed in Articles 5 and 6 of the European Convention on Human Rights.

"Preliminary Article - I. Criminal proceedings must be fair, be conducted in the presence of both parties and preserve a balance between the rights of the parties.

"Such proceedings must guarantee the separation between the authorities responsible for public prosecution and the judiciary.

"Persons in similar situations who are prosecuted for the same offences must be tried in accordance with the same rules.

"II. The judicial authority shall ensure that victims are kept informed and that their rights are safeguarded throughout criminal proceedings.

"III. Any person suspected of or prosecuted for an offence shall be presumed innocent until his/her guilt has been established. Any infringements of the presumption of innocence shall be prevented, compensated and/or punished under the conditions set out in law.

"Such persons are entitled to be kept informed of the nature of the accusation against them and to be assisted by a lawyer.

"Any coercive measures to be taken against such persons must be decided or effectively supervised by the judicial authority. Such measures must be strictly limited to the requirements of the proceedings and be proportional to the offence as charged; they must not violate the human dignity of the person in question.

"A final decision must be reached within a reasonable time on accusations against such persons.

Anyone convicted of an offence shall be entitled to appeal to another court against his/her conviction."

In particular connection with the problem raised in the instant case, namely the duration of detention on remand, Article 137 of the Code of Criminal Procedure reaffirms the principle that detention on remand is an exceptional measure, a principle introduced in 1984, and also lays down a number of provisions to reinforce the judicial safeguards on detention on remand.

Article 137 establishes the office of *Juge des libertés et de la détention* (judge for civil liberties and detention) as distinct from the investigating judge. The *Juge des libertés et de la détention* is responsible for deciding

to detain a person under examination at the investigating judge's request, but the investigating judge remains free to decide whether or not to release a detainee.

Article 137 of the Code of Criminal Procedure also establishes the function of *Juge des libertés et de la détention* distinct from that of the investigating judge. The *Juge des libertés et de la détention* makes decisions on detention at the request of the investigating judge, but the latter may always decide to free a detainee.

Article 145 of the code of criminal procedure establishes the procedure for proceedings before the *Juge des libertés et de la détention*.

The Law of 15 June 2000 reinforcing the protection of the presumption of innocence and the rights of victims, as complemented by Law No. 2002-307 of 4 March 2002, also comprises provisions restricting the conditions for, and duration of, detention on remand.

In connection with the new criteria for detention on remand, the 15 June Law changed the minimum degree of gravity of charge required for remanding a person under examination in custody.

Article 144 of the Code is replaced by two Articles, 143-1 and 144, reading as follows:

"Article 143-1 – Subject to the provisions of Article 137, detention on remand can only be ordered or prolonged in the following cases:

1. The person under examination is liable to a penalty for a serious offence;
2. The person under examination is liable to a penalty for a minor offence comprising a prison sentence of at least three years.

Detention on remand can also be ordered under the conditions set out in Article 141-2 where the person under examination deliberately fails to comply with the requirements of judicial supervision.

Article 144 – Detention on remand can only be ordered or prolonged if it constitutes the only means of:

1. preserving items of real or circumstantial evidence, or preventing pressure from being exerted on witnesses or victims or collusion from taking place between persons under examination and accomplices;
2. protecting the person under examination, guaranteeing that he/she will remain at the court's disposal, or ensuring the discontinuation or preventing the repetition of the offence;
3. ensuring the discontinuation of an exceptional, persistent disturbance of law and order due to the seriousness of the offence, the circumstances of its perpetration or the extent of the resultant damage.

Taking account of the direct effect given to the Convention and the case-law of the European Court of Human Rights in French law (see, in particular, *Bozkurt – Social Chamber of the Cour de cassation*, 14 January 1999 and judgments Nos. 7688 (16 January 2001) and 3659 (16 May 2001) of the Criminal Chamber of the *Cour de cassation*), the Government of France is convinced that judges responsible for checking the conditions applicable to detention on remand and the extension thereof will not fail to take due account of the Strasbourg case-law when evaluating these criteria in order to avoid further violations of Article 5, paragraph 3.

In order to limit the possibilities of prolonging detention on remand, maximum lengths have been reduced for those person under examination of minor offences and introduced for those person under examination of more serious crimes.

Article 145-1 of the Code reads as follows:

"Article 145-1. In cases of minor offences, detention on remand may not exceed four months unless the person under examination has already been sentenced for a serious or ordinary offence to a severe criminal penalty or a non-suspended prison sentence exceeding one year, where the person under examination is liable to a sentence equal to or less than five years.

In other cases, the *juge des libertés et de la détention* may exceptionally decide to prolong detention on remand for a maximum of four months on the basis of an order setting out reasons in accordance with the provisions of Article 137-3, issued following an *inter partes* discussion organised in accordance with the provisions of Article 145-6, the lawyer having been summoned to appear in accordance with the provisions of Article 114-2. This decision may be renewed in accordance with the same procedure, subject to the provisions of Article 145-3, whereby the total duration of detention may never exceed one year. However, this period may be increased to two years where one of the facts constituting the offence was committed outside the national territory or where the person is being prosecuted for drug trafficking, terrorism, criminal association, procuring, blackmail or gangsterism and is subject to a minimum ten-year prison sentence."

Law No. 2002-1138 of 9 September 2002 added a new sub-paragraph after Article 145-1, as follows: "Where it is necessary for an investigating judge's investigations to be continued and releasing the person under examination would give rise to a particularly serious risk to the safety of persons or property, the investigating chamber may, as an exceptional measure, prolong the two-year duration provided in the present article by four months. The investigation chamber before which the person under examination appears by law, having been seised by the *Juge des libertés et de la détention* of an order giving reasons pursuant to the procedures set out in the last sub-paragraph of Article 137-1, shall decide the matter in accordance with the provisions of Articles 144, 144-1, 145-3, 194, 197,198, 199, 200, 206 and 207."

A new indent worded as follows has been inserted after the two first indents of Article 145-2:

"The person under examination cannot be remanded in custody for more than two years where the penalty incurred is less than twenty years' imprisonment, and more than three years in all other cases. The respective periods increase to three and four years where one of the facts constituting the offence was committed outside the national territory. The period is also four years were the person is being prosecuted for several of the serious offences mentioned in Books II and IV of the Criminal Code or for drug trafficking, terrorism, criminal association, procuring, blackmail or gangsterism."

The Perben Act added a new sub-paragraph after Article 145-1, as follows:

"Where it is necessary for an investigating judge's investigations to be continued and releasing the person under examination would give rise to a particularly serious risk to the safety of persons or property, the investigating chamber may, as an exceptional measure, prolong the two-year duration provided in the present Article by four months. The investigation chamber before which the person under examination appears by law, having been seised by the *Juge des libertés et de la detention* of an order giving reasons pursuant to the procedures set out in the last sub-paragraph of Article 137-1, shall decide the matter in accordance with the provisions of Articles 144, 144-1, 145-3, 194, 197,198, 199, 200, 206 and 207. This decision may be renewed once, subject to the same conditions and pursuant to the same procedures."

Finally the law introduced provisions to prevent persons having parental authority over a child of less than 10 years from being held in detention on remand.

The first indent of Article 145-5 of the Code of Criminal Procedure reads as follows:

"Persons who have pointed out during their interviews with the investigating judge prior to referral to the *Juge des libertés et de la détention* that they hold exclusive parental authority over a child aged sixteen or under who is resident at the person's home can only be remanded in custody if one of the departments or persons listed in the seventh indent of Article 81 has first been instructed to identify and propose appropriate measures to prevent any risk to the child's health, safety and morality and/or any serious threat to the conditions of his/her education."

The French Government considers that all these measures will prevent the repetition of any future violations of the kind noted in the instant case and that it has consequently fulfilled its obligations under former Article 54 of the Convention.

Guisset v. France
Application No. 33933/96)
Judgment of the Court of 26 September 2000
Resolution ResDH (2003) 87, 17 June 2003

Article 6 §1 (length of criminal proceedings, lack of a public procedure)

The Committee of Ministers,
[…]
Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgment of 26 September 2000, having regard to France's obligation under Article 46, paragraph 1, of the Convention to abide by it;
Whereas during the examination of the case by the Committee of Ministers, the government of the respondent state recalled that measures had already been taken to avoid new violations of the same kind as that found in this case, notably referring to a judgment delivered on 30 October 1998 (in the *Lorenzi* case) by the Conseil d'Etat, which held that, in cases similar to that of the applicant, the Disciplinary Offences (Budget and Finance) Court must hold a public hearing; and indicated that the Court's judgment had been sent out to the authorities directly concerned;
Having satisfied itself that on 15 December 2000, within the time-limit set, the government of the respondent state had paid the applicant the sums provided for in the judgment of 26 September 2000,
Declares, after having taken note of the information supplied by the Government of France, that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case.

Italy

A.M. v. Italy
Application No. 37019/97)
Judgment of the Court of 14 December 1999
Resolution ResDH (2003) 72, 24 April 2003

Violation of Article 6 §1; Violation of Article 6 §3.d; Pecuniary damage – financial award; Non-pecuniary damage – financial award; Costs and expenses award – domestic proceedings; Costs and expenses award – Convention proceedings

The Committee of Ministers,
[…]
Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgment of 14 December 1999, having regard to Italy's obligation under Article 46, paragraph 1, of the Convention to abide by it;
Whereas […] the government of the respondent state drew the Committee's attention to the fact that the violation resulted from the fact that the Florence Public Prosecutor had specifically asked that no lawyer should attend the witness examination in the United States even though the judicial co-operation treaty between Italy and United States allows for the presence of a lawyer and, consequently, on account of the specific circumstances of the case new, similar violations of the Convention could be avoided for the future by informing the authorities concerned of the requirements of the Convention. Accordingly, copies of the judgment had been sent out to all judges and prosecutors together with a circular letter stressing the need to respect the right of the defence in the contest of the application of the judicial co-operation treaty between Italy and United States; in addition, the Court's judgment has been published in the review *Documenti giustizia* (No. 6, November-December 2000);
Having satisfied itself that on 24 May 2000, within the time-limit set, the government of the respondent state had paid the applicant the sums provided for in the judgment of 14 December 1999,
Declares, after having taken note of the information supplied by the Government of Italy, that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case.

M.A. and others v. Italy
Applications Nos. 44814/98, 45401/99, 45372/99, 47463/99 and 47724/99
Judgment of the European Court of Human Rights of 30 November 2000
Resolution ResDH (2003) 84, 24 April 2003

Article 6 §1 (excessive length of certain civil proceedings brought by haemophiliacs seeking compensation for damages suffered following blood transfusions infected with various viruses such as hepatitis B or C or HIV)

The Committee of Ministers,
[…]
Whereas in its judgment of 30 November 2000 the Court, after having taken formal note of a friendly settlement reached by the government of the respondent state and the applicants, and having been satisfied that the settlement was based on respect for human rights as defined in the Convention or its Protocols, decided unanimously to strike the case out of its list and took note of the parties' undertaking not to request a re-hearing of the case before the Grand Chamber;
[…]
Recalling that Rule 44, paragraph 2, of the Rules of the Court provides that the striking-out of a case shall be effected by means of a judgment which the President shall forward to the Committee of Ministers once it has become final in order to allow it to supervise, in accordance with Article 46, paragraph 2 of the Convention, the execution of any undertakings which may have been attached to the discontinuance or solution of the matter;
Having satisfied itself that within the time-limit agreed to under the terms of the friendly settlement, the government of the respondent state had paid the applicants the sums provided for in the friendly settlement and that the judicial proceedings, which were pending since 1993 before domestic courts, had come to an end in October 2000,
Recalling that, as regards the applicants' complaint declared admissible in these cases, the Committee of Ministers is at present supervising the execution of several judgments of the Court and of a considerable number of Committee of Ministers' decisions under former Article 32 of the Convention, finding a violation of Article 6, paragraph 1, of the Convention on account of the excessive length of proceedings before the Italian civil courts, including cases, such this one, where an exceptional diligence was required;
Whereas, in this connection, the Italian authorities informed the Committee of Ministers 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 above-mentioned cases (see Resolutions DH (97) 336, DH (99) 437 and ResDH (2000) 135),
Declares, after having taken note of the information supplied by the Government of Italy, that it has exercised its functions under Article 46, paragraph 2, of the Convention with respect to the commitments subscribed to in this case.

Luxembourg

G.J. v. Luxembourg
Application No. 21156/93)
Judgment of the Court of 26 October 2000
Resolution ResDH (2003) 108, 17 June 2003

Article 6 §1 (right to a hearing within a reasonable time)

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. It took note of the information supplied by the Government of Luxembourg

Russia

Kalashnikov v. the Russian Federation
Application No. 47095/99
Judgment of the Court of 15 July 2002, final on 15 October 2002
Interim Resolution ResDH (2003) 123, 4 June 2003

Article 3 (prohibition of inhuman or degrading treatment)
Article 5 §3 (right to stand trial within a reasonable time)
Article 6 §1 (right to a fair hearing within a reasonable time)

The Committee of Ministers […]
Whereas in its judgment of 15 July 2002 the Court unanimously:

– held that there had been a violation of Article 3 of the Convention in respect of conditions of the applicant's pre-trial detention, which amounted to degrading treatment;
– held that there had been violations of Article 5, paragraph 3, due to the excessive length of the applicant's pre-trial detention;
– held that there had been a violation of Article 6, paragraph 1, due to the excessive length of criminal proceedings;
– held that the government of the respondent state was to pay the applicant, within three months from date on which the judgment became trial, the following amounts to be converted into Russian roubles at the rate applicable at the date of the payment: – 5 000 euros in respect of non-pecuniary damage; – 3 000 euros in respect of costs and expenses, and that simple interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points should be payable from the expiry of the above-mentioned three months until settlement;
– dismissed the remainder of the claim for just satisfaction;

Recalling the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court, which includes the adoption of general measures preventing new violations of the Convention similar to those found in the Court's judgments;

Stressing that the necessity of adopting such measures is all the more pressing if a judgment reveals structural problems which may give rise to a large number of new, similar violations of the Convention;

Having invited the Russian Federation to inform it of the measures adopted or being taken in consequence of the present judgment;

Having satisfied itself that on 17 December 2002, within the time-limit set, the respondent government paid the applicant the sums provided for in the judgment;

Having examined the information provided by the Russian authorities concerning the measures which have been taken so far, are being adopted or are planned in order to prevent new, similar violations to those found (this information appears in the appendix to this resolution);

Noting that the general measures required by the present judgment are closely connected to the ongoing reform of the Russian Federation's criminal policy and the penitentiary system and welcoming progress achieved so far in this respect;

Noting in particular with satisfaction the significant decrease of the overcrowding in pre-trial detention facilities (SIZOs) and the ensuing improvement of sanitary conditions, as demonstrated by the recent statistics submitted to the Committee by the Russian authorities (see appendix);

Considering however that further measures are required in this field to remedy the structural problems highlighted by the present judgment;

Stressing in particular the importance of prompt action by the authorities to remedy the overcrowding in those SIZOs where this problem still remains (57 out of the 89 Russian regions) and to align the sanitary conditions of detention on the requirements of the Convention,

Calls upon the Russian authorities to continue and enhance the ongoing reforms with a view to aligning the conditions of all pre-trial detention on the requirements of the Convention, particularly as set out in the Kalashnikov judgment, so as effectively to prevent new, similar violations;

Invites the authorities to continue to keep the Committee of Ministers informed of the concrete improvement of the situation, in particular by providing relevant statistics relating to the overcrowding and sanitary and health conditions in pre-trial detention facilities;

Decides to examine at one of its meetings, not later than October 2004, further progress achieved in the adoption of the general measures necessary to effectively prevent this kind of violations of the Convention.

Appendix to Resolution ResDH (2003) 123

Information provided by the Government of the Russian Federation during the examination of the Kalashnikov case by the Committee of Ministers

As regards the conditions of pre-trial detention, the Government is fully aware of the existence of structural problems highlighted by the Kalashnikov judgment and resolved to remedy them in accordance with Russia's obligations under the European Convention, as set out in the Court's judgments. This determination has been demonstrated, *inter alia*, by a number of concrete measures which have been adopted both before and since the delivery of the Kalashnikov judgment on 15 July 2002.

The Government refers in particular to two major reforms which have already resulted in significant improvement of the conditions of pre-trial detention and their progressive alignment on the Convention's requirements:

- The new Code of Criminal Procedure, which entered into force on 1 July 2002, has resulted in a large decrease of the number of accused persons detained pending trial, due in particular to the transfer of the power to order detention to the courts and the introduction of stricter criteria for allowing pre-trial detention. Thus, the average number of persons committed to detention on remand per month decreased from 10 000 in 2001 to 3 700 in September-October 2002. As a result, the overall number of pre-trial detainees has decreased from 199 000 in October 2001 to 137 000 in October 2002, thus reducing significantly the overcrowding of pre-trial detention facilities (SIZOs);
- The Federal Programme for reforming the Ministry of Justice's penitentiary system for 2002-2006, which was adopted by a decision of the Russian Government of 29 August 2001, provides for the building of new pre-trial detention facilities (SIZOs) for 10 130 places and the renovation of a great number of the existing ones with a view to improving, *inter alia*, the sanitary conditions of detention. In 2002, some 838 new places have already been created in Russian SIZOs.

As a result of the above measures, the living space per detainee was increased to 3.46 sq. m by 1 January 2003. Further improvements are planned. In 32 of 89 Russian regions the number of persons held in pre-trial detention no longer exceeds the limits set for detention facilities.

In November 2002, the Ministry of Justice published in its professional review (*Vedomosti UIS*, No. 8/2002) those reports of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) which concern its visits to detention facilities placed under the responsibility of this Ministry (i.e. pre-trial detention facilities and prisons). The Government considers that this publication will be most useful for aligning, in close co-operation with the CPT, of the conditions of pre-trial detention on the Convention requirements.

As regards the excessive length of pre-trial detention and of criminal proceedings, the Russian authorities have indicated that the new Code of Criminal Procedure is highly instrumental in preventing new, similar violations as it vests in courts sole competence to order and prolong pre-trial detention and imposes stricter time-limits on investigation and trial (see Articles 109, 162, 255).

Following the Kalashnikov judgment, the Vice-Chairman of the Supreme Court also sent on 5 September 2002 a circular letter to all Russian regional and republican courts pointing out the undue procedural delays at the basis of the violations found by the Court in the Kalashnikov case. The circular stresses that the Kalashnikov judgment has a precedent value and entails very serious consequences inasmuch as it reflects the Court's position on important questions relating to fundamental rights of individuals subject to criminal prosecution, including the right to a reasonable length of

judicial proceedings. In conclusion, the circular requests all courts to ensure strict compliance with the time-limits set by the Code of Criminal Procedure for investigation and trial and to prevent unjustified delays in proceedings.

The Government has furthermore ensured the publication of the Kalashnikov judgment (in Russian translation) in the official Russian daily *Rossijskaia Gazeta* (17 and 19 October 2002), which publishes all laws and regulations of the Russian Federation. The judgment has also been published in a number of Russian legal journals and internet data bases, and is thus easily available to the authorities and the public.

Given this wide dissemination of the Kalashnikov judgment and its binding force in Russian law, the Government trusts that domestic courts will not fail to take it directly into account in order to ensure that pre-trial detention is based on valid and sufficient reasons as required by Article 5, paragraph 3, and that criminal proceedings are concluded within a reasonable time as required by Article 6, paragraph 1 of the Convention.

United Kingdom

Michael Matthews v. the United Kingdom
Application No. 40302/98
Judgment of the Court of 15 July 2002
Resolution ResDH (2003) 51, 24 April 2003

Article 14 taken in conjunction with Article 1 of Protocol No. 1 (discrimination on grounds of sex in relation to right to property)
Case struck off the list following a friendly settlement

The Committee of Ministers,
[…]
Whereas in its judgment of 15 July 2002 the Court, after having taken formal note of a friendly settlement reached by the government of the respondent state and the applicant, and having been satisfied that the settlement was based on respect for human rights as defined in the Convention or its Protocols, decided unanimously to strike the case out of its list and took note of the parties' undertaking not to request a rehearing of the case before the Grand Chamber;

The Committee of Ministers satisfied itself that the government of the respondent state had paid the sums provided in respect of costs and expenses; It took note of the following information supplied by the Government of United Kingdom

Appendix to Resolution ResDH (2003) 51

Information provided by the Government of the United Kingdom during the examination of the Michael Matthews case by the Committee of Ministers

By virtue of Statutory Instrument 2006/673, the Travel Concessions (Eligibility) Act 2002, which amended section 93 (7) of the Transport Act 1985, section 240 (5) of the Greater London Authority Act 1999 and section 146 of the Transport Act 2000, entered into force in England on 1 April 2003.

Under the new Act, all persons who have attained the age of sixty years, irrespective of their sex, are eligible to receive travel concessions in or outside Greater London.

As regards Wales, the same effect is achieved by the Travel Concessions (Extension of Entitlement) Order 2001 (Statutory Instrument 2001/3765), which came into force on 1 April 2001.

The Government of the United Kingdom therefore considers that there is no risk of a new situation similar to that found in the present case and that the United Kingdom has consequently complied with its obligations under Article 46, paragraph 2, of the Convention.

Work in progress

In a feature new to the *Bulletin*, we present some of the cases currently before the Committee of Ministers in which resolutions concluding the affair have not yet been adopted. Information on the progress of such cases is published in the annotated agenda of the Committee of Ministers' human rights meetings – to which reference is occasionally made in the the summaries. The agendas are available to the public on the Committee of Ministers' Internet site: http://wcm.coe.int/.

The cases below were discussed during the Ministers' 834th and 841st meetings (9-10 April 2003 and 3-4 June 2003 respectively).

France

Colombani and others v. France
Application No. 51279/99
Court judgment of 25 June 2002, final on 25 September 2002

This case was examined for the first time at the 819th meeting (3 and 5 December 2002).

The case concerns the conviction in 1998 of the daily newspaper *Le Monde*, its director and a journalist for having published an article about an official report prepared at the request of the Commission of the European Communities on drug production and trafficking in Morocco which implicated the King of Morocco's entourage. The French courts found the applicants guilty of insulting a foreign Head of State, under Section 36 of the Law of 29/07/1881 on the Freedom of the Press, and condemned the applicants to pay a fine and publish the details of the conviction. Unlike the provisions covering defamation in ordinary law, the offence covered by Section 36 of this law does not permit *exceptio veritatis* defence. The European Court therefore considered that, because of the special nature of the protection afforded by this provision, the existence of a misdemeanour of insulting foreign heads of state was liable to infringe freedom of expression without corresponding to a "pressing social need" sufficient to justify such a restriction (violation of Article 10).

Individual measures

The question was raised at the 819th meeting (December 2002) of the need to erase any consequences for the applicants of the conviction. In this context, attention was drawn to the fact that the applicants may request the reopening of the proceedings before domestic courts.

General measures

The judgment of the European Court has been published and commented in several French legal journals; the confirmation of its dissemination, with an information note, to criminal courts and the Court of Cassation is expected.

A draft law abrogating Article 36 of the Law of 29/07/1881 has been pending before Parliament since March 2001: the timeframe for its adoption is unknown. The French authorities, referring to a judgment of the Paris Court of Appeal of 03/07/2002 indicated in December 2002 that they considered that Article 36 was already falling into disuse. However, although this judgment resulted in the defendants' acquittal, the French court did not allow them to prove the truth of their allegations and reaffirmed the compatibility of Article 36 with the requirements of a democratic society, which is contrary to the Strasbourg case-law.

Information is therefore expected on measures envisaged to bring French law into conformity with the Convention.

Italy

Sulejmanovic and others and Sejdovic and Sulejmanovic v. Italy

Application No. 57574/00
Court judgment of 8 December 2002 – Friendly settlement

This case was examined for the first time at the 827th meeting (11-12 February 2003).

The case concerns the applicants' expulsion to Bosnia-Herzegovina in March 2000 (complaints under Articles 3, 8 and 13 of the Convention and under Article 4 of Protocol No. 4 to the Convention).

According to the friendly settlement reached, the Italian Government has undertaken, in addition to the payment of certain sums to the applicants and to their lawyer, to revoke the deportation orders, to permit the applicants to enter Italy with their families and to issue them with residence permits on humanitarian grounds. Pending the finding of long-term accommodation for the applicants, the Government has undertaken to provide them with temporary accommodation. The Government has further undertaken to arrange for the children of school age to attend school and for a sick child to receive the medical attention she needs.

Individual measures

The agreed sums were paid on 10/02/03 to 5 applicants and on 17/03/03 to 8 applicants and their lawyer. Payment to three other applicants is under way. The deportation orders were revoked on 18/10/2002 and the applicants' names removed from the "Schengen" database. All but two applicants re-entered Italy on 13 and 15/11/02, their travel being paid by the Italian authorities, who also accepted to extend the time-frame agreed in the friendly settlement for the return of the two missing applicants. The applicants currently in Italy have been granted – on 25/11/02, 30/11/02 and 9/12/02 – residence permits on humanitarian grounds, valid for one year, allowing them to work and study in Italy. Some applicants have already been accommodated in an equipped camp where they already had some family and negotiations are under way to find suitable accommodation for two other families which are, for the time being, in a hotel at the state's expense. Confirmation of payment to the three missing applicants is expected as well as information on the situation of two who have not re-entered Italy yet and on the execution of the undertakings made concerning the schooling and medical care of the children.

Moldova

Metropolitan Church of Bessarabia and others v. Moldova

Application No. 45701/99
Court judgment of 13 December 2001, final on 27 March 2002

This case was examined for the first time at the 798th meeting (11-12 June 2002).

The case concerns the failure of the Government to recognise the Metropolitan Church of Bessarabia. The Court concluded that this non-recognition constituted an interference with the applicants' right to freedom of religion and that this interference, although pursuing a legitimate aim, was not "necessary in a democratic society" and thus not justified under the Convention (violation of Article 9). The Court also concluded that the applicants did not enjoy an effective remedy in respect of their claims at domestic level (violation of Article 13).

Individual measures

Following the Court's judgment, the Moldovan authorities recognised and registered the applicant Church on 30/07/2002 in accordance with the Moldovan Law on Religious Denominations, as amended on 12/07/2002. The Church has thus acquired legal personality, opening the possibility for it to claim property entitlement.

Since the registration of the Church, the procedure for the registration by the Department for Religious Denominations of the Church's sub-divisions (parishes, rectories, monasteries, etc.) has been initiated. This procedure is governed by the current Law on Religious Denominations and provisional Regulations adopted in October 1994. The same procedure applies to all religious denominations. According to the information provided by the Moldovan authorities in February 2003, 11 parishes, a monastery and 4 rectories had so far been registered within the applicant Church. The latter disposed at the time of more than 120 rectories with almost 160 priests.

As regards the alleged problems regarding the applicants' property claims and some other issues they raised, the Government subsequently informed the Committee as follows:

According to Decree No. 740 of 10/06/2002, representatives of religious associations submit requests for establishing and registering their rights to special commissions set up by the local authorities. If more than one religious community claims the same property, the competent commission decides, on the basis of the documents before it, to whom the property should be assigned. This decision is subject to appeal before administrative courts which will ensure judicial review the Commission's decisions.

The Government further submitted that its Decision No. 1008 of 26/09/2001, which states that the Metropolian Church of Moldova is a legal successor of the Hotin and Chisinau Bishopric and of the Metropolitan Church of Bessarabia, does not pose any problem for the newly registered Bessarabian Church. In particular, it does not appear that the newly registered Bessarabian Church was denied any property registration on the ground of the aforementioned Decision.

As regards the Criminal Code, the new text in force since 01/01/2003 no longer contains the provision prohibiting illegal occupation of religious buildings. It contains a general provision prohibiting illegal occupation of any immovable property. However, no prosecution of the applicant church on the ground of either old or new provisions have so far been reported.

General measures

The Moldovan authorities informed the Committee of Ministers that the original version of the judgment of the European Court and its official translation into Moldovan were published on 09/07/2002 in the Official Journal of Moldova (*Monitorul Oficial*, No. 100).

The Moldovan authorities also indicated that the Moldovan legislation on religious denominations was amended by Law No. 1220-XV which entered into force on 12/07/2002.

Article 325 of the Code of Civil Procedure has also been amended so as to allow the reopening of domestic civil proceedings following violations of the Convention found by the European Court. The Moldovan authorities moreover recalled that a similar provision (Article 369/2, 1i) had been in existence since June 2000 in the Code of Criminal Procedure.

These amendments to the law on religious denominations were, however, found to be insufficient to prevent new, similar violations (Articles 9§3 and 14 did not reflect the requirement of proportionality inherent to the Convention, lack of clarity on the right a religious community to take judicial proceedings against the authorities' decision to cancel its recognition, etc).

A new draft law was accordingly submitted in March 2003 to the Secretariat. The result of the preliminary examination is, however, that the draft does not solve all outstanding problems which had already been identified in the law currently in force. This analysis was shared by the independent experts mandated by the Council of Europe to conduct a broader legal expertise on the draft at the request of the Moldovan authorities. This expertise was transmitted to the Moldovan authorities on 17/04/2003 together with a suggestion that a follow-up meeting on the expert study be held in Chisinau in good time before the adoption of the draft law by Parliament. At the time of issuing the present annotated Agenda, the Moldovan authorities had not yet replied to this proposal.

Russia

Kalashnikov v. the Russian Federation

Application No. 47095/99
Court judgment of 15 July 2002, final on 15 October 2002

This case was examined for the first time at the 819th meeting (3 and 5 December 2002)

The case concerns the poor conditions of the applicant's pre-trial detention between 1995 and 2000, which was found by the European Court to amount to degrading treatment, due in particular to severe prison overcrowding and an unsanitary environment; and its detrimental effect on the applicant's health and well-being, combined with the length of the period during which the applicant was detained in these conditions (violation of Article 3). The case also concerns the excessive length of this detention (1 year, 2 months falling within the Court's jurisdiction – violation of Article 5§3) and the excessive length of criminal proceedings brought against the applicant (1 year, 10 months falling within the Court's jurisdiction – violation of Article 6§1).

General measures

During the first examination of the case at the 819th meeting (December 2002), the Russian delegation stated that a number of improvements had been and continued to be made as regards the conditions of pre-trial detention in the Russian Federation. They indicated in particular that:

– from October 2001 to October 2002 the overcrowding of pre-trial detention facilities has largely decreased, mostly through reducing the overall number of detainees (from 199 000 to 137 000) as a result of the entry into force of the new Code of Criminal Procedure on 01/07/2002;
– in 2002 some 838 new places were created in pre-trial detention facilities;
– the number of persons committed to detention on remand per month has decreased from 10 000 in 2001 to 3 700 in September-October 2002
– as a result of the above measures, the living space per detainee was increased to 3.46 m². In 26 of 89 Russian regions the number of persons held in pre-trial detention does not exceed the limits set for detention facilities.

The Russian Delegation furthermore indicated that the Ministry of Justice had published in its professional review in November 2002 those extracts from the CPT reports which concern the detention facilities placed under the responsibility of this Ministry (including pre-trial detention facilities).

As regards the excessive length of pre-trial detention and criminal proceedings, the Russian authorities indicated that the new Code of Criminal Procedure is instrumental in preventing new, similar violations as it imposes stricter time-limits on investigation and trial. Following the Kalashnikov judgment, a circular letter was sent by the Vice-Chairman of the Supreme Court to all Russian courts requiring strict compliance with the time-limits.

The European Court's judgment furthermore was published in the daily *Rossijskaia Gazeta* (17 and 19 October 2002) and in many other Russian legal journals.

The Deputies took note of the information provided and the Russian authorities were invited to keep the Committee informed of further measures adopted to prevent fresh violations of the Convention, in particular with regard to the conditions of pre-trial detention.

At the 827th meeting (February 2003), the Russian Delegation again referred to the aforementioned measures and confirmed the authorities' resolve to continue to improve the conditions of detention, as demonstrated by statements of the Russian Minister of Justice during his recent visit to the Council of Europe (9-10 December 2002). The Russian authorities were requested to keep the Committee informed of further measures adopted, in particular in the regions where detention facilities remain overcrowded.

At the 841st meeting the Committee adopted an Interim Resolution to take stock of all measures adopted (see p. 25).

Turkey

Institut de Prêtres français and others v. Turkey

Application No. 26308/95
Court judgment of 14 December 2000 – Friendly settlement

This case was examined for the first time at the 760th meeting (10-11 July 2001)

The case concerns a Turkish judicial decision of 1993 annulling the applicant Institute's property entitlement to a plot of land on the grounds that, by letting part of this land to a private company, the applicant Institute was no longer eligible for special treatment as a non-profit body (complaints under Article 1 of Protocol No. 1 and Article 9). The parties concluded a friendly settlement according to which the Government undertook the following obligations:

– The Treasury and the Directorate General of Foundations recognise the right to usufruct to the benefit of the priests representing the applicant Institute. This right to usufruct shall comprise the full use and enjoyment of the land and the buildings thereon and the right to rent the land for profit-making purposes in order to meet its needs;
– The two above-mentioned state authorities agree to undertake the formalities necessary to register their respective declarations in the land register with a view to renewing the life tenancy in favour of the priests who will replace the current usufructuary;
– The Directorate General of Foundations waives its claim to USD 41 670 owed by the applicant Institute in rent collected over the five years since its property title was annulled.

The necessity of urgent compliance with these obligations has been stressed in the Committee of Ministers at each of its DH meetings since October 2001 and the Turkish authorities have been invited to take the necessary measures without further delay. In 2002, the Turkish Delegation indicated on numerous occasions that the above-mentioned problems were going to be solved, notably through a Decree by the Prime Minister and that the competent national authorities were engaged in negotiations with the applicant Institute in order to establish the division of rent between the State and the applicants. However, no conclusive result has been achieved.

In view of these persistent problems, it was decided at the 810th meeting (October 2002) that the Chairman-in-office of the Committee of Ministers write a letter to her Turkish counterpart with a view to conveying to him the Committee's concern at the non-execution of the friendly settlement concluded in this case and to requesting a rapid solution to the problem. This letter was sent on 06/11/2002. By letter of 29/11/2002, the Minister of Foreign Affairs conveyed the Committee's concerns to the Prime Minister asking him to instruct the competent authorities urgently to implement the friendly settlement (see Addendum 4 of the 834th meeting).

During the examination of the case at the 819th meeting (December 2002), the adoption of an Interim Resolution was suggested if no concrete and visible progress were achieved by February 2003.

At the 827th meeting (11-12 February 2003) the Committee was informed that the conditions of the usufruct had finally been settled and would soon be formally approved and registered by the Council of Ministers. It was again stressed that a final solution was urgent given that the friendly settlement concluded before the Court had remained unexecuted more than 2 years after the Court's judgment.

In April 2003, however, the applicants' representative indicated to the Secretariat that the conditions of usufruct were still waiting for the approval by the Minister of Finance and by the Council of State and that the time-frame for their final adoption and registration by the Council of Ministers therefore was very uncertain. Consequently, at the 834th meeting (April 2003), it was agreed that the Chairman of the Committee of Ministers would send a new letter to the

Turkish authorities if they did not settle this case by June 2003. At the time of issuing the present annotated Agenda, no information showing progress in this case at the national level was available.

Sadak, Zana, Dicle and Dogan v. Turkey
Application No. 29900/96
Court judgment of 17 July 2001
Interim Resolution ResDH (2002) 59

This case was examined for the first time at the 764th meeting (2-3 October 2001)

The case concerns the violation of the right to a fair trial in proceedings before the Ankara State Security Court, which sentenced the four applicants, members of the Turkish Grand National Assembly, to 15 years' imprisonment in December 1994.

The violations found are the following:

– lack of independence and impartiality of the tribunal due to the presence of a military judge on the bench of the State Security Court (violation of Article 6 §1 – see §40 of the judgment);
– lack of timely information about the legal redefinition of the accusation brought against the applicants and lack of sufficient time and facilities to prepare the applicants' defence (violation of Article 6 §3.a and b taken together with Article 6 §1 – see §§57-59 of the judgment);
– impossibility to examine or to have examined the witnesses who testified against the applicants (violation of Article 6 §3.d taken together with Article 6 §1 – see §§67-68 of the judgment).

Having found these violations, the Court did not consider it necessary to decide separately the applicants' complaints under Articles 10, 11 and 14.

Individual measures

Background

In view of the extent of the violations of the right to a fair trial and of their consequences for the applicants, the Turkish authorities were requested, at the 764th meeting (October 2001), to consider urgently specific individual measures to erase these consequences. (cf. Committee of Ministers' Recommendation R (2000) 2 and its Interim Resolution ResDH (2001) 106 on the individual measures in cases concerning freedom of expression in Turkey).

The Turkish authorities initially informed the Committee (at the 775th meeting, December 2001) that possibilities for re-opening domestic proceedings following the European Court's judgments would be shortly introduced through legislation. However, at the 783rd meeting (February 2002), the Turkish Delegation indicated that preparation of the draft law in question had been adjourned but that the Turkish authorities were continuing to seek ways to adopt the necessary individual measures in the present case. Many delegations expressed their disappointment at the fact that the new legislation, which was of such urgency for the execution of the present judgment, had been adjourned and deplored the fact that no specific measure had yet been taken in respect of the applicants. Some delegations furthermore stressed that the execution of the judgment was being attentively observed by the Parliamentary Assembly (cf. AS(2002)CR2) and outside the Council of Europe, notably by the European Union.

Interim Resolution ResDH (2002) 59

At the 794th meeting (30 April 2002), as no progress in the execution of the judgment was reported on this point, the Committee of Ministers adopted Interim Resolution in which it

– Strongly urges the Turkish authorities, without further delay, to respond to the Committee's repeated demands that the said authorities urgently remedy the applicants' situation and take the necessary measures in order to reopen the proceedings impugned by the Court in this case, or other *ad hoc* measures erasing the consequences for the applicants of the violations found;
– Decides, in view of the urgency of the situation, to resume its control of the adoption of these individual measures, if necessary at each of its meetings.

At the 798th (June 2002) and 803rd (July 2002) meetings, the Turkish delegation stated that the authorities were still considering the introduction of a possibility for reopening of proceedings through legislation.

At the 807th meting (September 2002), the Representative of Turkey presented the reforms adopted by the Parliament on 03/08/2002 and the Deputies specifically considered the amendments to the Codes of Criminal and Civil Procedure, which concern the reopening of domestic proceedings. Disappointment was expressed at the fact that that the four applicants in the present case – who continue to serve their 15-year prison sentences and to suffer the consequences of the violations found – will not be able to benefit from the newly adopted provisions (the latter were applicable only to new cases lodged with the European Court after their entry into force, i.e. after 03/08/2003). The necessity for urgent action to grant the applicants the appropriate redress has been accordingly strongly reiterated.

As no concrete action in this respect had been reported at the 810th meeting (October 2002), the Secretariat was mandated to prepare a new draft Interim Resolution. The latter was however not adopted by the Committee given concrete measures taken by Turkey to reopen the impugned proceedings (see below).

Adoption of new legislation and retrial: On 04/02/2003 a new Law entered into force allowing the re-opening of domestic proceedings in all cases which have already been decided by the European Court and in all new cases which would henceforth be brought before the European Court. The provisions however exclude re-opening for all cases which are presently pending before the Court and have not yet been decided.

On the basis of this new law, the applicants' request for retrial was accepted by the State Security Court of Ankara on 28/02/2003 and a first public hearing of the case was held by the same court on 28/03/2003. However, the applicants' request for suspension of the execution of the original prison sentence pending new trial was refused without motivation (see §3 of decision of 28/02/2003, Addendum 4), and the applicants thus remained in prison.

While welcoming the entry into force of the new Law and the reopening of the criminal proceedings in the applicants' case, regrets were expressed in the Committee at the fact that the execution of the original prison sentence was not suspended, although it had been imposed in an unfair trial impugned by the European Court. Some delegations stated that this situation was not in accordance with the European Court's judgment and that additional action by the Turkish authorities was therefore needed to put an end to all negative effects on the applicants of the violations found. The Deputies agreed to resume consideration of this issue at the present meeting).

Follow-up by the Parliamentary Assembly

From the outset, the Parliamentary Assembly has been closely scrutinising the follow-up to the present judgment. At its 4th part session (23/09/2002) the Assembly held a debate and adopted Resolution 1297 (2002) and Recommendation 1576 (2002) on the implementation of the Court's judgments by Turkey. In these texts the Assembly, in particular, strongly supported demands to remedy the applicants' situation and urged the Committee of Ministers to use all means at its disposal to ensure compliance with the judgment without further delay.

In its reply to Recommendation 1576 (2002), the Committee "welcomes the fact that […] the criminal proceedings in the aforementioned case are to be reopened before the State Security Court of Ankara. The Committee nevertheless notes that the suspension of the execution of the original prison sentence of the applicants pending the new trial was not approved when the request to re-open proceedings was accepted. The Committee trusts that a new, fair trial will proceed expeditiously so

as effectively to erase the consequences of the violations found by the Court."

On 30 April 2003, the Committee received a new written question (CM (2003) 68) from Mr Erik Jurgens, a member of the Assembly, in which he "regret[s] notably that the execution of the original prison sentence imposed in the unfair proceedings had not been suspended" and "ask[s] if the Committee does not consider that to comply with the European Court's judgment Turkey must suspend the execution of [this] sentence […] awaiting the new fair trial". The Committee has not yet replied to this question.

General measures

Information has been requested with regard to the measures the Turkish authorities envisage with a view to preventing new violations of the right to a fair trial in the proceedings before the security courts. The Turkish authorities have informed the Committee that some reforms had already been adopted and certain others were under way.

As regards the specific problem relating to the lack of independence and impartiality of the State Security courts, general measures have already been adopted within the constitutional reform which replaced the military judge on State Security Courts by a civil judge (see the Çiraklar against Turkey case, judgment of 28/10/1998, Resolution DH (99) 555). As regards the right to a fair trial in general, this right received constitutional protection as a result of an amendment to Article 36 of the Constitution on 17/10/2001.

Ukraine

Sovtransavto Holding v. Ukraine

Application No. 48553/99
Court judgment of 25 July 2002, final on 6 November 2002

This case was examined for a first time at the 827th meeting (11-12 February 2003)

The case concerns the failure to respect the applicant company's right to a fair trial before an impartial and independent tribunal in respect of certain proceedings it conducted between 1997 and 2002 before the Ukrainian courts with a view to establishing the unlawfulness of domestic decisions which resulted in the depreciation of its shares in – and the ensuing loss of control over – a Ukrainian transport company (violation of Article 6 §1).

The main deficiencies found by the Court consist of:

– repeated attempts by the President of Ukraine to influence domestic court decisions;
– application of "protest" procedure ("application for supervision") making it possible to quash final judicial decisions without any limitations;
– the refusal by courts to examine the arguments on the merits in a public hearing and the absence of adequate motivation of judicial decisions.

The Court concluded in addition that the manner in which the impugned proceedings were conducted and concluded had also violated the applicant company's right to peaceful enjoyment of its possessions (violation of Article 1 of Protocol No. 1).

Individual measures

Given the extent of the violations found and their continuing negative effects on the applicant company, the Ukrainian authorities were invited to rapidly inform the Committee of Ministers of the measures adopted or envisaged to grant the applicant the appropriate redress. It was notably suggested that the reopening of the impugned proceedings may be an appropriate avenue to comply with the judgment, which does however not exclude other options (such as a friendly settlement, the revoking the impugned administrative decisions, etc.). At the 834th meeting (April 2003), the Ukrainian authorities confirmed that the present case had been restored to the list of the Supreme Court of Ukraine but that no progress in the proceedings were reported.

General measures

At the 827th meeting (February 2003), it was noted that the violations found in this case would call for a number general measures.

– As regards the problem of the executive's repeated interferences of with judicial proceedings, the Ukrainian authorities were invited to revoke or quash all acts taken to that effect and adopt measures to prevent in future similar incidents as illegal and incompatible with the Convention. It was furthermore noted that legislative, regulatory or financial measures would be necessary to effectively ensure domestic courts independence and impartiality.
– Concerning supervisory review (protest), it was recalled that this procedure had been abolished in the Ukrainian law since June 2001 and the authorities were requested to provide the Secretariat with all legal texts which introduced this important change in civil, criminal and commercial procedure.
– As finally regards other problems highlighted by the Court in conducting of domestic proceedings (§§79 and 81 of the judgment), the authorities were also invited to address these issues to prevent new similar violations. In this context the need for wider dissemination of the judgment of the European Court and for in-service training of Ukrainian judges on the Convention and the Court's case-law was stressed.

On 21/03/2003, the Director General of Human Rights sent the Ukrainian authorities a letter containing more detailed explanations on possible individual and general measures to be adopted in response to the present judgment (see Addendum 4).

The following general measures have so far been reported by the Ukrainian authorities:

– the procedure for supervisory review (protest) was abolished in Ukrainian law with the judicial reform of 21 June 2001;
– the Law on the judiciary adopted in February 2002 set up the State Judicial Administration, a specialised institution independent from the executive with a view to management of the national judiciary; all Ukrainian courts are henceforth financed from the central budget; the budget assigned to the courts is administered by the country's supreme courts;
– as a result of in-service training of Ukrainian magistrates in the framework of the Council of Europe/European Union joint initiative, domestic courts apply the Convention more frequently (certain examples of the Constitutional Court's decisions referring to the Convention were submitted to the Secretariat);
– the European Court's judgment was translated and published on the Ministry of Justice's internet site and in the journal Case-law of the ECHR.

At the 834th meeting (April 2003), the Deputies took note of this information and the Ukrainian authorities were invited to inform the Committee of other measures envisaged or being taken. Particular attention of the authorities was drawn to the issues raised in the letter of 21/03/2003 by the Director General of human rights, including the necessity of abolishing all acts (letters, resolutions, etc.) by which the executive interfered with the judiciary's independence, and to take the necessary measures at the highest level to prevent similar acts in future.

United Kingdom

A. v. the United Kingdom

Application No. 25599/94
Court judgment of 23 September 1998

This case was examined for the first time at the 647th meeting (13 October 1998)

The case concerns the failure of the state to protect the applicant from ill-treat-

ment (1993-1994) by his step-father (violation of Article 3).

General measures

Newspaper coverage has been extensive. The publication of the European Court's judgment in a legal journal is still to be confirmed.

As regards the legislative change which the United Kingdom authorities had undertaken to have adopted (see §24 of the judgment), the Secretariat received a copy of the Consultation Paper on the Physical Punishment of Children prepared by the United Kingdom authorities. Answers to the questions raised in this paper were ready by mid-2001. It was indicated that the answers should be the basis for further discussions on possible legislative changes to be introduced.

Subsequently, at the 775th meeting (December 2001) the United Kingdom authorities indicated that the Human Rights Act would suffice to prevent the recurrence of a breach of the kind found by the Court in this case so that no special legislative change is necessary. However, this new approach raised the question as to how parents, in the absence of a clear legislative change, would be made aware of the new standard.

At the 819th meeting (December 2002) the United Kingdom Representative responded that ministers have asked the Attorney General to continue his review of the use of the "reasonable chastisement" defence. His report of May 2002 suggested that it was indeed being used reasonably. Furthermore steps had been taken to support families through promoting positive parenting, such as an HM Treasury announcement of a 25 million-pound (37 million-euro) three-year programme to support parents through the voluntary sector.

The National Family and Parenting Institute, which is government-funded, has launched a video and leaflet "From Breakfast to Bedtime". This provides tips for parents on how to cope with "meltdown moments" with toddlers. Both parents and professionals have received it very well and NFPI is having to produce additional copies to meet demand. It deliberately avoids any mention of smacking since preliminary research with parents found that the positive parenting messages were much better received on their own.

Ministers are aware that the smacking rules are different in Wales and Scotland where there is a total ban on childminders using corporal punishment, and are listening carefully to what others are saying on these issues. The Government will be reviewing the National Standards this year and this will be the opportunity for making any changes.

In view of recent case-law evidencing a continuing high degree of tolerance in respect of what violence constitutes "reasonable chastisement" (discussed in particular at the Seminar organised in Strasbourg on 21-22/11/2002) and the Government's undertaking before the Court, several Delegations and the Secretariat expressed that, apart from the measures already announced, legislative changes would be needed in this case.

The Committee has asked to be kept informed of any new development in particular as regards legislative change.

At the 834th meeting (April 2003), the Committee asked the Secretariat to prepare a Memorandum containing the information received so far in the case (see CM/Inf (2003) 22).

McShane v. the United Kingdom
McKerr v. the United Kingdom
Shanaghan v. the United Kingdom
Hugh Jordan v. the United Kingdom
Kelly and others v. the United Kingdom

Application Nos. 43290/98, 28883/95, 37715/97, 24746/94, 30054/96
Court judgments of 28 May 2002 (final on 28 August 2002) and 4 May 2001 (final on 4 August 2001)

The McShane case was examined for the first time at the 819th meeting (3 and 5 December 2002) and the other cases at the 764th meeting (2-3 October 2001)

These cases concern the death of applicants' next-of-kin during police detention or security forces operations. In this respect, the Court mainly found the following shortcomings in the proceedings for investigating the use of lethal force by police officers/security forces (violations of Article 2): lack of independence of the investigating police officers from the security forces/police officers involved in the events; lack of public scrutiny and information to the victims' families concerning the reasons for decisions not to prosecute any soldier/police officer; the inquest procedure did not allow for any verdict or findings which could play an effective role in securing a prosecution in respect of any criminal offence which might have been disclosed; the soldiers/police officers who shot the deceased could not be required to attend the inquest as witnesses; the non-disclosure of witness statements prior to the witnesses' appearance at the inquest prejudiced the ability of the applicants to participate in the inquest and contributed to long adjournments in the proceedings; the inquest proceedings did not commence promptly and were not pursued with reasonable expedition.

The McShane case also concerns the finding by the Court of a failure by the respondent state to comply with its obligations under Article 34, in that the police had – albeit unsuccessfully – brought disciplinary proceedings against the solicitor who represented the applicant in national proceedings for having disclosed certain witness statements to the applicant's legal representatives before the European Court.

General measures

Representatives of the United Kingdom and the Secretariat have maintained various contacts in order to discuss the Government's preliminary position in respect of the measures that need to be adopted. The publication of the judgments of the European Court and dissemination to police officers/security officers and judicial authorities concerned are still to be confirmed. Copies of the judgments have been sent to the Director of Public Prosecutions and to all coroners in Northern Ireland.

On 25/09/2002, consultations took place between the Secretariat and representatives of the United Kingdom authorities regarding the measures to be taken. On 07/10/2002, following these consultations, the United Kingdom authorities submitted to the Committee of Ministers a document containing a package of measures (either already adopted or for adoption) with a view to avoiding the repetition of the violations found in these cases. A preliminary examination of this information was made at the 810th meeting (October 2002). The main document was included in Addendum 4, volume 1, of the 819th meeting and the appendix (300 pages) to the document can be obtained from the Secretariat in the original language.

The examination of this document and other relevant information was pursued at the 819th meeting (December 2002) at the close of which the Secretariat was requested to prepare a memorandum summarising the information available. Subsequently, additional information has been received, notably from the applicants' representatives and the Northern Ireland Human Rights Commission. The memorandum, including the additional information submitted, had been distributed under the reference CM/Inf (2003) 4.

At the 827th meeting (11-12/02/2003), the Committee decided to resume consideration of the examination of the information contained in the Memorandum prepared by the Secretariat at its 834th meeting (09-10/04/2003). Subsequently, the Secretariat has received further information from the United Kingdom authorities. The information has been included in a revised version of the Memorandum (CM/Inf (2003) 4 Revised).

At the 834th meeting (April 2003) several Delegations took the floor to insist on the need to have information in response to the questions raised in the Memorandum. However, it was agreed that the outcome of the proceedings in the Middleton case was important for further discussion of some of the issues covered in the Memorandum.

After the expiry of the time-limit set to submit new information, the delegation of the United Kingdom sent the Secretariat additional information (see Addendum 4) which is currently being analysed by the Secretariat.

Commissioner for Human Rights

The Commissioner for Human Rights is an independent institution within the Council of Europe that aims to promote awareness of and respect for human rights in its member states. Mr Alvaro Gil-Robles was elected the first Commissioner for Human Rights in 1999, by the Parliamentary Assembly, out of a list of political figures proposed by the Committee of Ministers, for a non-renewable term of office of six years.

Mandate

The mandate of the Commissioner for Human Rights is laid out in Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, which was adopted by the Committee of Ministers on 7 May 1999 (see *Bulletin*, No. 46, p. 56). The Resolution requires that the Commissioner:

- help promote the effective observance and full enjoyment of human rights, as embodied in the various Council of Europe instruments;
- identify possible shortcomings in the law and practice of member states with regard to compliance with human rights;
- promote education in and awareness of human rights in the member states;
- encourage the establishment of human rights structures in member states where such structures do not exist.

In performing his duties, the Commissioner may directly contact the governments of Council of Europe member states, which must facilitate the independent and effective performance by the Commissioner of his functions.

The Commissioner is to encourage action by, and work actively with, all national human rights structures and national ombudsmen or similar institutions. The Commissioner is to co-operate also with other international organisations for the promotion and protection of human rights.

The Commissioner is a non-judicial institution which does not take up individual complaints concerning the approximately 800 million inhabitants of the 45 member states. He cannot, therefore, accept any requests to present individual complaints before national or international courts, nor before national administrations of member states of the Council of Europe. Nevertheless, he can draw conclusions and take initiatives of a general nature that are based on individual complaints.

Under certain circumstances, the Commissioner may also work with non-Council of Europe member states. This led him to issue a report, on 16 October 2002, on the human rights situation in Kosovo and on the fate of persons displaced from Kosovo, despite the fact that Serbia and Montenegro had not then joined the Council of Europe.

For more information, please refer to the web site of the Commissioner:

http://www.commissioner.coe.int

Visits

When on official visit, the Commissioner has taken the habit to meet with citizens' associations (NGOs) and the national ombudsperson (where such an institution exists) before he meets the authorities. In order to have a balanced view, talks with members of the country's political opposition are often sought by him. In many countries, the Commissioner also speaks with the leaders of the religious communities and of ethnic minorities. He often insists upon meeting with Roma people in the places where they live. **Visiting hospitals (including mental hospitals), prisons and other places of detention as well as shelters for vulnerable people is an important part of his standard programme.**

Mr Alvaro Gil-Robles conducted four official visits to member states between May and June 2003. The reports of these visits are still to be presented to the Committee of Ministers and will then be available on the website of the Commissioner.

Slovenia (11-13 May 2003)

The Commissioner had meetings with NGOs, the Human Rights Ombudsman, members of the Government, the President of the National Assembly, representatives of the judiciary, of the police and of the prison administration.

Discussions focused on the situation of minorities, including the Roma and groups of persons originating from other parts of the former Yugoslavia, and on questions relating to the length of judicial proceedings, the work of the police and the detention of foreigners.

The Commissioner gave a lecture at the University of Ljubljana on the theme "The Commissioner for Human Rights – an institution facing the challenge of protecting human rights in the 21st century in Europe".

A joint press conference with the Slovene Foreign Minister was held at the Government Press Centre.

Portugal (28-30 May 2003)

The Commissioner's programme included meetings with various NGOs, the Ombudsman, members of the Government and a meeting in the Parliament. His discussions focused on immigration problems, domestic violence, the situation of Roma and prisons conditions.

A joint press conference with the Minister for Foreign Affairs of Portugal was also held at the Ministry for Foreign Affairs.

Turkey (9-13 June 2003)

The Commissioner's programme included meetings with a number of NGOs in Istanbul, Ankara and Diyarbakir and with various members of the Government in Ankara, notably the Deputy Prime Minister and Minister for Foreign Affairs, and the Minister of Justice. The Commissioner also had meetings in the Parliament, as well as with representatives of the judiciary, including the President of the Constitutional Court, and with practising lawyers. He met the leaders of different religious communities, considered as "minorities" under the Treaty of Lausanne (1923), and the Head of the UNHCR Office in Turkey. Discussions focused on the implementation of the recent reforms regarding human rights related issues in Turkey.

The Commissioner travelled to Diyarbakir, in the south-east of the country, to have discussions with the local and regional authorities and visit a prison for political prisoners. He also held a joint press conference with the President of the Human Rights Commission of the Grand National Assembly of Turkey in the Parliament buildings.

Before leaving Turkey, the Commissioner met with the Ambassadors of the European Union Member States and States of the future enlargement.

A documentary film of the visit was made by the Council of Europe's Press and Documentation Service.

Cyprus (26-28 June 2003)

The Commissioner's programme included meetings with NGO representatives, the Ombudsman, the President of Cyprus, members of the Government, the President of the Parliament and the Attorney General. He also visited the Central Prison of Nicosia and travelled to the northern part of the island.

The Commissioner focused his attention on problems relating to trafficking in human beings, prison conditions and the processing of asylum applications. A press conference took place at the Hilton Hotel in Nicosia.

Publications

The report of the Commissioner's visit to the Russian Federation (Chechnya and Ingushetia, 10-16 February 2003) was made available on the website of the Commissioner on 4 March 2003. It is focused on three main themes: insecurity and impunity for crimes, the establishment of political institutions and the improvement of material living conditions in Chechnya. A 7-minute documentary of this visit was broadcast on 17 March 2003 on the French TV channel "France 2" in its programme "Un oeil sur la planète". The documentary was by Dominique Derda, the permanent correspondent of "France 2" in Moscow.

A 14-minute documentary film covering the Commissioner's visit to Turkey (9-13 June 2003), made by the Council of Europe's Press and Documentation service, is available from the Commissioner's Office.

Seminars and conferences

Expert consultation on the human rights situation of the Roma/Gypsies in Europe (The Vatican, 3-4 March 2003)

The Commissioner's Office organised this meeting with the participation of Roma representatives and experts with a view to the preparation of a report on the human rights situation of the Roma in Europe, which will be available later this year.

In the course of his official visits to various Council of Europe Member States, the Commissioner has addressed the situation of the Roma population as one of the priority areas of concern, through discussions with the Roma representatives and authorities, and visits to Roma communities. On the basis of these visits, the Commissioner had to conclude that, throughout Europe, the Roma face considerable obstacles in the enjoyment of basic rights, notably in the fields of health, housing, education and employment. Discrimination remains a serious problem, and in many localities, the Roma continue to be excluded and segregated, treated as aliens in their own countries.

One of the general conclusions from that meeting was that the situation of the Roma has indeed deteriorated over the past years in many countries. A number of different factors contributed to this situation: the recent growth of nationalistic movements in Europe, the increased restrictions on movement both inside and between countries, and the recent impoverishment of many Roma, partly as a result of the negative consequences of the transition to market economies.

It is against this background that the Commissioner feels that a report focusing on the recent challenges to the human rights situation of the Roma throughout Europe is needed to sound the alarm and to encourage further action through concrete recommendations addressed to various actors. The intention is to present the report to the Committee of Ministers and the Parliamentary Assembly during autumn 2003.

Participation at the 7th Round Table of the Russian Federation's Regional Ombudsmen (Kaliningrad, 27-28 March 2003)

The Commissioner participated in this event, which focused mainly on the right to Russian citizenship, as well as on migration problems, including in the area of Kaliningrad, where the Round Table took place.

The event was co-organised by the Council of Europe, the Russian Federal Ombudsman and the Regional Ombudsman of Kaliningrad.

The Commissioner informed the participants that a particular programme, financed both by the EU and his Office, had been initiated to promote the institution of the Regional Ombudsman in Russia. This is planned as a two-year programme, which starts this year.

Reflection table on "Immigration and Human Rights" (Athens, 4-5 April 2003)

The Commissioner organised that event with the co-operation of the Marangopoulos Foundation for Human Rights and under the auspices of the Greek Presidency of the European Union.

After general considerations, the discussions focused mainly on the question of migration flows, integration of immigrants into the host societies and institutional questions.

A publication is currently being prepared by the Office of the Commissioner.

Participation in the Council of Europe Ministerial Conference on Integration of People with Disabilities (Malaga, 7-8 May 2003)

This conference was the major contribution of the Council of Europe to the European Year of People with Disabilities 2003 (proclaimed by the EU) and gave the **Year** a pan-European dimension, by involving the whole continent.

Ministers and senior officials from more than 45 European countries, representatives of different intergovernmental organisations and NGOs discussed ways and means of promoting full citizenship and active participation of people with disabilities by developing effective legal and policy provisions. The overall aim of the Conference was to set the European disability policy agenda for the next decade. To this end, the Conference adopted the Malaga Ministerial Declaration on People with disabilities "Progressing towards full participation as citizens" that sets the cornerstones for a European Action Plan to be developed in the months to come and to be implemented in the next decade.

The Commissioner delivered a speech that focused on two main themes: first, stepping up efforts to empower persons who face discrimination not only on the ground of disability, but also on additional grounds, such as gender, age, or ethnicity, and second, the improvement of the conditions in institutions for persons with disabilities.

The Commissioner also supported the creation of a European observatory for the protection of the rights of persons with disabilities, as he had already done at a Seminar in Neuchâtel in October 2001.

The speech is available on the Commissioner's website under "Speeches, articles, interviews".

Law and policy – Intergovernmental co-operation in the human rights field

One of the Council of Europe's vital tasks in the field of human rights is the creation of legal policies and instruments. In this, the Steering Committee on Human Rights (CDDH) plays an important role. The CDDH is the principal intergovernmental organ answerable to the Committee of Ministers in this area, and to its different expert committees.

Steering Committee for Human Rights (CDDH)

The most recent phase of work for the CDDH concerning the reform of the control mechanism set up by the European Convention on Human Rights (ECHR) was initiated by the Committee of Ministers' Declaration of 7 November 2002 and the subsequent terms of reference received from the Ministers' Deputies to draw up a set of concrete and coherent proposals which, if adopted, would provide a significant tool for guaranteeing the long-term effectiveness of the European Court of Human Rights and of the Convention system in general.

In March 2003 both the Reflection Group on the Reinforcement of the Human Rights Protection Mechanism (CDDH-GDR) and the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) continued their work to finalise a draft set of proposals, which were submitted to the CDDH and were adopted in the form of a final report in April 2003. The proposals (possible amendments to the ECHR as well as a number of recommendations of the Committee of Ministers to member states) concern three main areas: preventing violations at the national level and improving domestic remedies; optimising the effectiveness of the filtering and the subsequent processing of applications; and improving and accelerating the execution of the Court judgments.

The CDDH submitted its final report to the 112th Ministerial Session of 14-15 May 2003, as well as, for information, to the Registry of the Court and the Parliamentary Assembly. A Declaration welcoming this report was adopted by the Ministerial Session (see below). The final report of the CDDH is available under *ECHR Reform* on the Internet site of the the Directorate General of Human Rights: www.coe.int/human_rights/.

On 5 June 2003 the CDDH received new terms of reference from the Ministers' Deputies to give effect to the proposals contained in its final report taking into account all the elements of the aforementioned Declaration at the 112th Ministerial Session. The completion date for this work has been set for April 2004. During its 55th meeting (17-20 June 2003), the CDDH organised its future work to meet this deadline.

At this meeting, the CDDH also adopted an opinion on the feasibility of a European programme of education on human rights; as well as draft terms of reference with a view to the elaboration of a possible legally binding instrument on access to official documents, terms of reference for a working group on social rights (GT-DH-SOC) and a final report on its contribution to the "monitoring" exercise of the Committee of Ministers.

Declaration: Guaranteeing the long-term effectiveness of the European Court of Human Rights

adopted by the Committee of Ministers on 15 May 2003 at its 112th Session

The Committee of Ministers,

1. Recalling its Declarations of 8 November 2001 and 7 November 2002 on the European Court of Human Rights;
2. Reaffirming its conviction that the European Convention on Human Rights must remain the essential reference point for the protection of human rights in Europe and its determination, in the interest of legal certainty and coherence, to guarantee the central role that both the Convention and the European Court of Human Rights must continue to play in the protection of human rights and fundamental freedoms on this continent;
3. Reiterating its concern about the implications for the effectiveness of the Convention system of the continuing increase in numbers of individual applications submitted to the Court;
4. Welcoming the final report of the Steering Committee of Human Rights (CDDH) containing a coherent set of concrete proposals for guaranteeing the long-term effectiveness of the Court, in accordance with its Declaration of 7 November 2002, and endorsing the approach taken therein;
5. Bearing in mind the collective responsibility of the member states to guarantee the effectiveness of the Convention system, measured by the degree to which

the Court is able to fulfil its role under Article 19 of the Convention, that is to ensure the observance by the States Parties of the obligations they have contracted under the Convention;

6. Wishing to be in a position to consider, with a view to its adoption, a draft amending Protocol to the Convention and other relevant instruments arising from the implementation of this Declaration, at its 114th Session in 2004;
7. Instructs the Ministers' Deputies to give effect, through the drafting of the relevant amendments to the Convention as well as the other instruments proposed, to the proposals contained in the final report of the CDDH, in the following manner:

a. implement the CDDH proposals aiming at preventing violations at national level and improving domestic remedies;

b. taking into account Paragraphs 8 and 9 below, implement the CDDH proposals aiming at optimising the effectiveness of the filtering and the subsequent processing of applications;

c. taking into account Paragraphs 10 and 11 below, implement the CDDH proposals aiming at improving and accelerating execution of judgments of the Court;

8. In giving effect to the proposal to add a new admissibility requirement to Article 35 of the Convention, instructs Deputies to take account of all effects of the proposed addition on the unique right of individual application, including the Committee's previously expressed concerns as to the threat to this right posed by the increase of the workload of the Court;
9. With regard to the proposal to make it possible in the future to increase by unanimous decision of the Committee of Ministers the number of judges of the Court, Ministers' Deputies will undertake the necessary feasibility study and report back to it;
10. In giving effect to the proposal to enable the Committee of Ministers to supervise the execution of the terms of friendly settlements as they appear in the relevant decisions of the Court, Ministers' Deputies will work on a more developed proposal;
11. With regard to the proposal to empower the Committee of Ministers to institute proceedings before the Court in order to obtain a finding by the Court of an infringement by a State of its obligation under Article 46 §1 of the Convention, instructs Ministers' Deputies to pursue the necessary further work on the conditions and modalities for the exercise of such a power and report back to it;
12. As regards the amendment of the Convention, account should also be taken, as appropriate, of the other issues raised in the final report of the CDDH, *i.e.*, the possibility of accession of the European Union to the Convention in case of agreement between the European Union and the Council of Europe, the issue of the terms of office of judges of the Court and the need to ensure that the future amendments to the Convention be given effect as soon as possible;
13. Encourages the Court to optimise its internal working methods and structures particularly with regard to the filtering of applications;
14. Encourages the governments of member states to cooperate fully in the implementation of this Declaration and to share information with civil society;
15. Invites the Ministers' Deputies to share information with the Parliamentary Assembly and to consult with the Court on the implementation of this Declaration, to seek their opinion in the preparation of draft amendments to the Convention, and to examine any relevant further proposals that may be made;
16. Instructs the Ministers' Deputies to remain themselves closely involved throughout this process.

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

Forty-three member 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's 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.

Recent developments in complaints lodged before the European Committee of Social Rights

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

The complaint, lodged on 4 April 2002, relates to Article 5 (right to organise). It alleges that the right not to belong to a trade union is not guaranteed in the manner required under Article 5.

The European Committee of Social Rights declared the complaint admissible on 19 June 2002. It held a public hearing on 31 March 2003.

No. 14/2003 International Federation for Human Rights (IFHR) v. France

The complainant organisation alleges that recent reforms of the *Aide médicale de l'Etat* (State medical assistance) and to the *Couverture maladie universelle* (Universal health coverage) violate Articles 13 (right to social and medical assistance), 17 (right of the family to social, legal and economic protection) as well as Article E of the Revised Social Charter (prohibition of all forms of discrimination in the application of the rights guaranteed by the treaty). According to the organisation, the reforms in question deprive a large number of adults and children with insufficient resources of the right to medical assistance.

The European Committee of Social Rights declared the complaint admissible on 16 May 2003.

No. 15/2003 European Roma Rights Centre v. Greece

The complainant organisation alleges that there is widespread discrimination both in law and in practice against Roma in the field of housing contrary to Article 16 (the right of the family to social, legal and economic protection) and in light of the Preamble (non-discrimination) of the European Social Charter.

The European Committee of Social Rights declared the complaint admissible on 16 June 2003.

No. 16/2003 Confédération Française de l'Encadrement – CFE CGC v. France

The complaint, lodged on 14 May 2003, relates 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 Social Charter. It alleges that the provisions relating to the working hours of managers (*cadres*) contained in Act No. 2003-47 of 17 January 2003 violates these provisions.

The European Committee of Social Rights declared the complaint admissible on 16 June 2003.

Conferences, seminars, meetings

Kyiv, Ukraine, 2-3 June 2003

Ratification of the Revised European Social Charter: round table in Ukrainian Parliament following contact with representatives from the Ministry of Labour and Social Policy.

Moscow, Russian Federation, 3-4 June 2003

Regional seminar to raise awareness of the Revised Social Charter (2 June 2003); Technical seminar: preparation for the ratification of the Revised Social Charter (3 June 2003).

Sarajevo, Bosnia and Herzegovina, 22-23 May 2003

Seminar for the preparation for the signature of the Revised Social Charter (initially planned for 19-20 March 2003).

Malaga, Spain, 7-8 May 2003

Participation in the 2nd European Conference of Ministers responsible for Integration Policies for People with Disabilities.

Paris, France, 6 May 2003

Information day for NGOs on the Additional Protocol to the European Social Charter, providing for a collective complaints procedure.

Berlin, Germany, 30 April 2003

Hearing of the Social, Health and Family Affairs Committee at the Bundestag.

Komotini – Athens, Greece, 7-9 April 2003

European Colloquy "For broader protection of social rights: the European Social Charter".

Madrid, Spain, 7-8 April 2003

European Disability NGOs Conference organised by the European Disability Forum and the Spanish National Council of Disabled Representatives.

Lisbon, Portugal, 28-29 March 2003

Participation in the Conference "Guarantee of Rights to Equal Pay".

Vaduz, Liechtenstein, 24-25 March 2003

Seminar in preparation for the ratification of the Revised Social Charter.

Dublin, Ireland, 24 March 2003

Information meeting on the Social Charter.

Baku, Azerbaijan, 13-14 March 2003

Meeting in preparation for the ratification of the revised European Social Charter.

Publications

European Committee of Social Rights – Conclusions 2003

Volume 1: Bulgaria, France, Italy

Volume 2: Romania, Slovenia, Sweden

European Committee of Social Rights – Conclusions XVI-2: Articles 2, 3, 4, 9, 10 and 15

Volume 1: Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland

Volume 2: Malta, Netherlands, Norway, Poland, Portugal, Slovak Republic, Spain, Turkey, United Kingdom

Social Charter Internet 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, March 2003

The CPT carried out a six-day visit to the Transnistrian region of the Republic of Moldova. This region unilaterally declared itself an independent republic in 1991 and negotiations aimed at resolving this situation are still taking place.

It was the CPT's second visit to the region, the first visit having taken place in November 2000. 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.

Russia, April 2003

A delegation of the CPT carried out a one-week visit to the Kaliningrad Region of the Russian Federation. It was the CPT's first visit to this enclave of the Russian Federation, surrounded by countries which will soon join the European Union.

The visit focused mainly on the arrangements for the transit of prisoners and psychiatric patients between the Kaliningrad Region and the rest of Russia, and the authorities' plans for the future. To avoid lengthy delays and other problems related to the transfer of prisoners, the regional authorities are in the process of setting up facilities offering the full range of regimes envisaged by the legislation.

The CPT's delegation also explored the application in practice of the provisions of the new Code of Criminal Procedure regarding police detention.

Bosnia and Herzegovina, May 2003

A delegation of the CPT carried out a two-week visit to Bosnia and Herzegovina. The visit was the first time that the CPT examined the treatment of persons deprived of their liberty in Bosnia and Herzegovina.

In the course of the visit, the CPT's delegation held consultations with the competent ministerial authorities of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska, as well as with senior officials responsible for police establishments, prisons and psychiatric hospitals. The Committee also held talks with representatives of international institutions (ICRC, EUPM, OHR, OSCE).

United Kingdom, May 2003

The CPT carried out a visit to the United Kingdom and the Crown Dependency of the Isle of Man from 12 to 23 May 2003.

The CPT's delegation examined prison overcrowding in England, and reviewed developments concerning detention by the police and in prisons in Scotland and the Isle of Man. It also visited detention facilities for children in Scotland and the Isle of Man and a psychiatric establishment in Scotland.

During the visit, the delegation held discussions in England with Martin Narey, Commissioner for Correctional Services, and Phil Wheatley, Director General of the Prison Service, in Scotland with Tony Cameron, Chief Executive of

the Prison Service, and Andrew McLellan, Chief Inspector of Prisons, and in the Isle of Man with Richard Corkill, Chief Minister, Philip Braidwood, Minister for Home Affairs, and Clare Christian, Minister for Health and Social Security.

Russia, June 2003

A delegation of the CPT carried out a one-week visit to the Chechen Republic of the Russian Federation. It was the sixth time since the outbreak of the current conflict in Chechnya that the CPT has examined the treatment of persons deprived of their liberty in the Republic.

The delegation focused its attention on the treatment of persons detained by Federal forces and by Federal and Republican law enforcement agencies. Forced disappearances and unofficial places of detention were among the issues explored during the visit. In addition, conditions of detention in pre-trial establishments were reviewed, including at the recently reopened SIZO No. 1 in Grozny.

In the course of the visit, the CPT's delegation held discussions with numerous senior officials of the Chechen Republic Administration and of Federal structures. They included Mr A. Kadyrov, Acting President of the Chechen Republic, General Makarov, Commander of the Allied Group of Forces in the North Caucasian region, Mr R. Dudaev, Chairman of the Security Council of the Chechen Republic, Mr A. Alkhanov, Minister of the Interior of the Chechen Republic, Mr Z. Zaverbekov, Chairman of the Supreme Court of the Chechen Republic, Mr V. Kravchenko, Prosecutor of the Chechen Republic, and Mr A. Mokritsky, Military Prosecutor of the Allied Group of Forces.

The President of the CPT, Ms S. Casale, joined the delegation in the Chechen Republic from 26 to 27 May 2003. Subsequently, on 28 May 2003, she had talks in Moscow on issues arising out the visit with Mr A. Sultykov, Special Representative of the President of the Russian Federation for ensuring human and civil rights and freedoms in the Chechen Republic, and Ms E. Pamfilova, Chairperson of the Commission for Human Rights under the President of the Russian Federation.

Hungary, June 2003

A delegation of the CPT carried out a 6-day visit to Hungary. The visit, which began on 30 May 2003, was the Committee's third to Hungary.

The purpose of the visit was to review the treatment of remand prisoners in police and prison establishments in Budapest. Particular attention was paid to the activities provided to remand prisoners, which is a major issue of concern to the Committee following the findings during the two previous visits to Hungary.

In the course of the visit, the CPT's delegation met Tibor Pál, State Secretary, Ministry of the Interior, István Somogyvári, Executive State Secretary, Ministry of Justice, Ferenc Tari, Deputy State Secretary, Ministry of Justice, as well as other senior officials of these ministries. The delegation also held discussions with Péter Polt, General Prosecutor, and Albert Takács, General Deputy of the Parliamentary Commissioner for the Rights of the Citizen.

The delegation carried out follow-up visits to the Police Central Holding Facility in Budapest and Budapest Remand Prison, and visited for the first time the 2nd and 4th District Police Stations of the capital.

France, June 2003

A delegation of the CPT carried out a seven-day visit to France. The visit began on 11 June 2003. The main purpose of the visit was to assess the current situation in the prison system, in particular as regards overcrowding and the regimes offered to prisoners serving long sentences.

In the course of the visit, the delegation also examined developments concerning the treatment of persons deprived of their liberty by law-enforcement agencies, in the light of instructions issued by the Ministry of the Interior, Internal Security and Local Freedoms on the dignity of persons in police custody. The delegation held in-depth discussions with the national authorities on the basic safeguards to be offered to persons in police custody; particular emphasis was placed on the implementation of the CPT's recommendations concerning access to a lawyer as from the outset of custody.

During the visit, the delegation met Dominique Perben, Minister for Justice and Pierre Bedier, State Secretary for Justice Property Programmes, as well as senior officials from the Ministry of the Interior, Internal Security and Local Freedoms (including the Deputy Director of the Minister's Private Office) and the Ministries of Justice, Foreign Affairs, Defence, and Health, Family and Disabled Persons. Further, the delegation held talks with Joël Thoraval, President of the National Consultative Commission of Human Rights and Pierre Truche, President of the National Commission for a Security Code of Conduct.

Reports

Germany

March 2003: Report of the CPT's fourth visit to Germany (December 2000) and response of the German government

During the visit the CPT followed up issues examined during the previous three visits to Germany and, in particular, the treatment of persons deprived of their liberty under aliens legislation. Issues tackled for the first time in Germany included the treatment of persons placed in forensic psychiatric institutions and of persons living in homes for the elderly.

The CPT found that the premises at Frankfurt-am-Main Airport for foreign nationals subject to the airport procedure could hardly offer satisfactory living conditions. In their response, the German authorities indicate that these premises have been replaced by more appropriate facilities.

The CPT severely criticises the conditions in which – at the time of the visit – certain patients were secluded in secure rooms at the Forensic Psychiatric Section in Wiesloch. In its response, the Government refers to a series of measures taken to remedy this situation.

Spain

March 2003: Report of the CPT's visit to Spain in July 2001 and response of the Spanish government

During the visit the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment continued to receive allegations of ill-treatment by National Police and Civil Guard officers. It also gathered evidence, including of a medical nature, consistent with those allegations. In its report, the CPT concludes that the existing legal framework fails to provide detained persons with an effective set of safeguards against ill-treatment.

In their response the Spanish authorities indicate that they do not consider it necessary to review the current legal framework.

"The former Yugoslav Republic of Macedonia"

April 2003: Government's response to the report drawn up by the Committee after its *ad hoc* visit in July 2002

The July 2002 visit focused on the treatment of persons detained by the State's law-enforcement agencies (Ministry of the Interior). From the facts found, the CPT concluded that the physical ill-treatment of such persons is a serious problem, affecting ordinary criminal suspects as well as those suspected of crimes against the State. Moreover, the information gathered by the Committee revealed that there is no guarantee that an effective investigation will be carried out when it comes to the attention of judges and prosecutors that a person may have sustained injuries while in police custody.

The CPT called upon the national authorities to ensure that a formal statement from the highest political level is delivered to law enforcement officials, making clear to them that the ill-treatment of detained persons will not be tolerated. The Committee also identified specific measures to be applied by various authorities – judges and prosecutors, as well as the police and prison services – to prevent police ill-treatment and combat impunity.

In the response to the report on the July 2002 visit, it is highlighted that during a recent session of the Government (10 February 2003) a number of conclusions were reached in line with the CPT's recommendations. Most importantly, the Government stressed that ill-treatment by law enforcement officials is contrary to the fundamental values of a democratic society, to the respect of human rights and to the rule of law, and that those who perpetrate such acts would be made subject to severe sanctions.

One specific measure under consideration in the Ministry of the Interior is the introduction of a custody officer system in police stations. For its part, the Ministry of Justice point outs that formal instructions have been issued to all public prosecutors to ensure that allegations of ill-treatment by law enforcement officials are properly investigated and pursued.

Romania

April 2003: Report of the CPT's second visit to Romania (January/February 1999) and response of the Romanian government

During the visit the CPT examined developments concerning the treatment of persons detained by the police or held in prison, and reviewed the situation at Poiana Mare Psychiatric Hospital. It also examined in detail the situation of foreign nationals detained under immigration rules and the treatment of minors at the Găeşti Re-education Centre.

The CPT has returned subsequently to Romania on three occasions (in October 2001, September 2002 and February 2003) and re-examined most of the above issues.

Sweden

June 2003: CPT's preliminary observations concerning its visit to Sweden, January/February 2003

During the visit, the CPT 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. The CPT also examined the situation in psychiatric institutions and in homes providing care for young persons and substance abusers. The preliminary observations are published with the agreement of the Swedish authorities.

Turkey

June 2003: Reports on the CPT's visits to Turkey in March and September 2002, and response of the Turkish government

One of the main purposes of the visits in March and September 2002 was to examine the implementation in practice of recent legal reforms concerning custody by law enforcement agencies; those reforms relate to matters such as access to a lawyer and notification of custody. The conditions under which medical examinations of persons in police custody take place were also reviewed in depth by the CPT's delegation. Further, it explored recent cases of resort to the provisions of Article 3 (*c*) of Legislative Decree No. 430, under which prisoners who have to be questioned as part of the investigation of offences giving rise to the declaration of a state of emergency may be returned to the custody of law enforcement agencies. These different issues were examined in particular in the province of Diyarbakir.

The CPT's delegation also reviewed the development of communal activities for inmates in the new F-type prisons. For this purpose, a visit was carried out to Sincan F-type Prison (Ankara).

Russia

June 2003: Report on the CPT's third periodic visit to the Russian Federation (December 2001) and response of the Russian authorities

Although the committee has visited the Russian Federation on eleven occasions since 1998, this is the first CPT visit report on Russia to be made public.

The report contains findings and recommendations concerning places of detention in two far eastern regions of

Russia, the territories of Khabarovsk and Primorskyi, as well as in a number of Militia (police) establishments in Moscow.

During the visit the CPT received a disturbing number of allegations of physical ill-treatment by members of the Militia. In the report, the committee calls upon the Russian authorities to make it clear to Internal Affairs staff, and in particular to operational Militia staff in charge of gathering evidence, that the ill-treatment of persons in their custody is illegal and will be dealt with severely in the form of criminal prosecution and disciplinary action. The CPT welcomes new legal provisions which improve access to lawyers for detained persons. However, it recommends that the right of persons detained by the Militia to be examined by a doctor be expressly guaranteed.

As regards prisons, the CPT notes the progress made on reducing the country's prison population. Nevertheless, at SIZO No. 1 in Vladivostok – a pre-trial detention facility – the committee was concerned by the serious overcrowding and the continuing presence of shutters blocking access to natural light and fresh air in the cells. The report also criticises the practice of transferring back to Militia-run detention centres remand prisoners diagnosed with contagious tuberculosis, which is accompanied by an interruption of their treatment.

The Russian response refers to some positive measures taken to implement the CPT's recommendations. In particular, the Ministry of Justice has instructed regional prison directorates to remove all shutters from the windows of prisoner accommodation; this is a major step forward in terms of improving conditions of detention. Further, it is indicated that the inmate population of the Vladivostok SIZO has dropped by 39% and that all prisoners have been provided with individual sleeping places.

The CPT report also makes recommendations in respect of Vladivostok City Psychiatric Hospital, which was severely overcrowded at the time of the visit and offered few therapeutic and rehabilitative activities to patients. In their response, the Russian authorities indicate that additional funding has been set aside for improving conditions at the hospital.

Internet: http://cpt.coe.int/

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 30 June 2003, the Advisory Committee had received 32 state reports and already adopted 28 opinions, 2 of them, in respect of Azerbaijan and Ireland, adopted during its 17th plenary meeting, held from 19 to 23 May 2003. The last two opinions have been forwarded to the Committee of Ministers.

As this same date, the Committee of Ministers had adopted and made public conclusions and recommendations in respect of 19 state parties. For more details, visit the minorities Internet site:

Internet site: http://www.coe.int/minorities/

Monitoring of the Framework Convention

During the period under consideration, two follow-up meetings on the first results of the monitoring of the Framework Convention took place, the first in Armenia (Joint Programme with the European Union, South Caucasus), the second in Germany.

Stability Pact for South Eastern Europe

Three projects concerning national minorities are currently being implemented. They include:

1. *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, Serbia and Montenegro, "the former Yugoslav Republic of Macedonia", Ukraine and Kosovo/UNMIK. Final reports have been received in respect of Hungary, Moldova, Serbia and Montenegro and "the former Yugoslav Republic of Macedonia".

2. *Acceptance and implementation of existing standards*. This project is geared towards encouraging the countries in the region to sign and ratify all relevant international stand-

ards and also ensure that these standards are fully implemented in practice at national level and local level.

Among the recent activities carried out in this framework, are:

– an information meeting on the Croatian Constitutional Law for the Rights of National Minorities;

– a training seminar in Kosovo on the Framework Convention;

– a training seminar in Moldova on Protocol No. 12 and other European standards in the areas of equality and non-discrimination;

– three training sessions in Romania, one for journalists, on national minorities and the mass media, the second for audiovisual professionals and the third for print media professionals.

3. The third project concerns *bilateral co-operation agreements.* It is 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.

During the period under consideration, several meetings were held in Moldova on the subject of bilateral agreements as a tool for further protection of educational and cultural rights of national minorities.

Internet site: http://www.coe.int/minorities/

Media

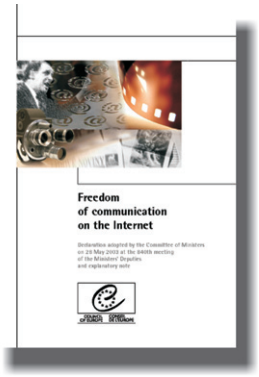
At the heart of the Council of Europe's democratic construction lies freedom of expression, which forms an essential part of the structure. Responsibility for maintaining it is in the hands of the Steering Committee on the Mass Media, which aims at promoting free, independent and pluralist media, so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

Transfrontier television

On 26 March 2003, Moldova ratified the European Convention on Transfrontier Television. The instrument will enter into force with respect to Moldova on 1 July, bringing to 26 the number of Contracting Parties.

At its meeting in April 2003, the Standing Committee on Transfrontier Television continued its discussion on the implications of converging media infrastructures and services, which reflect the technological and economic developments in the broadcasting market. It examined a report prepared by a consultant covering the possible options to review the Convention in order to reflect this evolution. Suggestions on how to define new media services are made in the report, as is the question of whether such new services should fall under the scope of the Convention. The report also points to the need to reconsider or re-interpret many of the substantive provisions in the Convention in the light of market and technological developments.

Freedom of communication on the Internet



On 28 May 2003, the Committee of Ministers adopted a Declaration on freedom of communication on the Internet. Its main objective is to strike a balance between freedom of expression and information on the Internet and other rights guaranteed by the European Convention on Human Rights, such as the protection of children against harmful online content.

In response to the risk of over-regulation of Internet access, the text underlines the principle of freedom of expression and the free circulation of information on the Internet, in accordance with the requirements of Article 10 (freedom of expression and information) of the ECHR. The Declaration condemns practices aimed at restricting or controlling Internet access, especially for political reasons. It also deals with the freedom to provide services via the Internet, the responsibility of intermediaries and the anonymity of Internet communications. The declaration is published as H/Inf (2003) 7.

Violence and the media

An expert meeting on violence and the media took place in Strasbourg on 10-11 June 2003, bringing together representatives of research institutions, media organisations, public authorities and Council of Europe bodies. The aim of the meeting was to take stock of the current debate and activities in this field and examine whether any new initiatives should be taken by the Council of Europe to address the question of the portrayal of violence in the traditional media and new information services. The deliberations and follow-up will form a part of a comprehensive policy to prevent violence in the framework of the Council of Europe Integrated Project "Responses to violence in everyday life in a democratic society" (2002-2004).

Activities for the development and consolidation of democratic stability

The Media Division continued to organise training seminars aimed at ensuring the implementation of the principles developed by the European Court of Human Rights in the field of freedom of expression. In the framework of the Stability Pact for South-Eastern Europe, two regional seminars for Serbian judges and prosecutors on Article 10 of the ECHR were held in Nis in March 2003, and a further one took place in Novi Pazar in May 2003. The participants had the opportunity to familiarise themselves with the general principles developed by the European Court and discuss how these could be implemented in practice in the national context. Similar training sessions for magistrates were organised in Moldova and Ukraine.

Participants in a Stability Pact Conference, organised in Tirana on 28-29 March 2003 by the Council of Europe and the Albanian Media Institute, have decided to establish a working group to review the Albanian Penal Code's provisions on defamation. Legal experts, journalists, representatives of Parliament and public authorities will look in particular at the provisions in the existing Penal Code which provide for up to

two years' imprisonment for defamation and at the provisions which grant special protection to public officials.

A written expertise on a draft Montenegrin Law on access to information was carried out at the beginning of May 2003. On 28-30 May, the Council of Europe experts visited Podgorica to discuss their proposed amendments with representatives of the Montenegrin authorities and the drafters of the legislation. The working group of drafters will meet in July in order to finalise the draft text on the basis of the experts' comments and the results of the expertise mission.

Publications

Georgian version of "Media and elections – Handbook"

Internet Site: http://www.coe.int/media

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.

European Commission against Racism and Intolerance (ECRI)

At its 30th plenary meeting, held on March 2003, ECRI welcomed several new members as the newly composed ECRI met for the first time following the entry into force of its new Statute, 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 45 member States of the Council of Europe.

On 7 May 2003 ECRI published its Annual Report on its activities for the year 2002.

Country-by-country approach

ECRI published its second reports on Andorra, Azerbaijan, Liechtenstein, Lithuania, Moldova and Sweden on 15 April 2003, and on Armenia, Iceland, Luxembourg, Slovenia and Spain on 8 July 2003.

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.

ECRI adopted its final second report on San Marino at its 31st plenary meeting, in June 2003. The publication of this report, which completes ECRI's second round of country-by-country monitoring, is planned for November 2003.

In 2003, ECRI also 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 adopted in June 2003 its draft third reports on Belgium, Bulgaria, Norway, the Slovak Republic and Switzerland. These draft reports have now been transmitted to the authorities of the countries concerned for a process of confidential dialogue.

Work on general themes

The next ECRI General Policy Recommendation – the eighth – will deal with the subject of the fight against terrorism and combating racism, namely risks which might arise from the inclusion of racist elements in anti-terrorist measures, and from the implementation or as a consequence of such measures.

Relations with civil society

ECRI's Round Table in Lithuania (12 June 2003)

These Round Tables are organised, at national level, 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.

The Round Table discussed ECRI's second report on Lithuania; the challenges facing the country in the field of asylum and immigration; national legislation to combat discrimination; and the situation of Roma/Gypsies in Lithuania. Government agencies, victims of discrimination and representatives of the media attended it.

EUMC/ECRI Joint Round Table "Local Solutions to Combat Racism" (21 March 2003)

ECRI and the European Monitoring Centre on Racism and Xenophobia (EUMC) organised their first Joint Round Table in Strasbourg, on the occasion of the International Day for the Elimination of Racial Discrimination on 21 March 2003.

This one-day event contributed in a positive way to the debates on problems related to racism, racial discrimination and intolerance at the local, national and European level and at the same time further strengthened co-operation between ECRI and the EUMC.

The Round Table examined the conditions for minimising points of potential conflict between different groups in a given community – with an emphasis on practical initiatives. Three sub-themes were discussed by the participants: (1) The application at the local level of effective national legislation

against racial discrimination, incitement to racial discrimination and violence; (2) Youth and the fight against racism and intolerance; and (3) The mechanisms for dialogue, co-operation and conflict resolution and the necessary conditions for their success.

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

Publications

Second report on Andorra
CRI (2003) 2 – 15 April 2003

Report on Azerbaijan
CRI (2003) 3 – 15 April 2003

Second report on Liechtenstein
CRI (2003) 4 – 15 April 2003

Second report on Lithuania
CRI (2003) 5 – 15 April 2003

Second report on Moldova
CRI (2003) 6 – 15 April 2003

Second report on Sweden
CRI (2003) 7 – 15 April 2003

Annual Report on ECRI's activities covering the period from 1 January to 31 December 2002
(20 March 2003)

Equality between women and men

Since 1979, the Council of Europe 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.

Gender-balanced participation in decision-making

On 12 March 2003 the Committee of Ministers adopted Recommendation Rec (2003) 3 to member states on balanced participation of women and men in political and public decision making. The Recommendation, together with its explanatory report, is published by the Equality Section under the reference H/Inf (2003) 6.

Trafficking in human beings

The Council of Europe has decided to draft an internationally binding legal instrument to combat trafficking in human beings. On 30 April 2003, the Committee of Ministers set up an Ad Hoc Committee to prepare a European Convention on Action against Trafficking in Human Beings. This committee meets for the first time in Strasbourg on 15-17 September 2003. More information on Council of Europe activities in the field of trafficking can be found at: http://www.coe.int/trafficking.

As part of the project on criminal law reform to combat and prevent trafficking in human beings (LARA Project), a regional seminar was organised in Zagreb from 2 to 4 April 2003 to assess anti-trafficking legislation in the countries of south-east Europe and set up regional co-operation. The proceedings of the seminar are published by the Equality Section, and also available on the Internet: http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/.

Violence against women

The group of specialists on the implementation of and follow-up to Recommendation Rec (2002) 5 on the protection of women against violence met for the second time in March 2003. It examined the replies to a questionnaire sent to member states concerning the implementation of the recommendation and possible action plans on violence against women. The group also made progress in the drafting of indicators to ensure follow up to the recommendation.

A seminar on "Measures dealing with men perpetrators of domestic violence", organised in co-operation with the Council of Europe's Integrated Project 2: *Responses to violence in everyday life in a democratic society,* took place on 25 and 26 June. It brought together about 15 experts with different backgrounds and from a range of countries, all of whom had experience working with violent men. The seminar's aim was to propose concrete recommendations on priority measures for intervention, prevention and societal change. One of the most innovative aspects dealt with therapy to reduce or suppress men's violent behaviour. One of the conclusions was the request to organise a meeting between European therapists dealing with the treatment of violent men.

Gender mainstreaming

The second meeting of a group of experts on gender budgeting took place on 27-28 March. The group is preparing a report including a definition of gender budgeting, a methodology for its implementation and examples of practices at local, regional and national level.

The Group of specialists on promoting gender mainstreaming in schools (EG-S-GS) held its third meeting on 22 and 23 May. The group is preparing a report containing guidelines for the development of a strategy to promote gender mainstreaming in schools, including examples of good practice.

Women and peacebuilding

The 5th European Ministerial Conference on Equality between Women and Men (Skopje, January 2003) focused on democratisation, conflict prevention and peacebuilding. As a follow-up to this conference, a group of experts met on 19-20 June to start work on a study that will deal with one particular aspect of this issue, namely the roles of women and men in intercultural and interreligious dialogue.

Co-operation activities

The Council of Europe is reponsible for a project "Promotion of gender equality and gender mainstreaming in institution building" as part of the Joint Programme of co-operation between the European Commission and the Council of Europe in Ukraine.

At the request of the Ukrainian authorities (State Committee for Family and Youth, responsible for gender

equality issues at governmental level), the Council of Europe organised a written assessment of the draft act on equal rights and equal opportunities for women and men. A meeting between the drafters of the text and the experts of the Council of Europe was held in Kyiv on 7-8 April. On 9 April, a round table brought together different international organisations, ambassadors, government and parliament officials and the media to discuss the draft act. The Council of Europe delegation also met the Co-ordination Council for Gender and Family Issues (advisory council to the State Committee for Family and Youth). A seminar on the national machinery to promote equality between women and men in Ukraine was held on 10 April, with the participation of representatives of the regions, followed by a seminar on the national action plan to promote equality on 11 April.

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

Proceedings of the Lara project regional seminar "Criminal law reform to combat and prevent trafficking in human beings in south-eastern Europe", Zagreb, 2-4 April 2003

LARA (2003) 36

Recommendation Rec (2003) 3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making

H/Inf (2003) 6

List of Council of Europe documents in the field of equality between women and men

EG (2003) 1

2002 Annual Report on Council of Europe action in the field of equality between women and men

EG (2003) 2

Information note on action undertaken by the Council of Europe in the field of trafficking in human beings

Trafficking (2003) info rev.

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.

International workshop on human rights ombudsman's role in South-Eastern Europe

Athens, 22-23 May

The workshop, organised by the Greek Ombudsman Office in co-operation with the Council of Europe's Directorate General of Human Rights, brought together representatives of Ombudsman institutions of south-eastern European countries, international organisations and NGOs dealing with human rights protection in the region. Two main themes were discussed during the two-day workshop:

- mediation and human rights protection mechanisms in south-eastern Europe
- the Ombudsman stakes for strengthening human rights protection in the European integration process.

The European Ombudsman, former Greek Ombudsman Professor Diamandouros, also took part in the workshop.

Federal Republic of Yugoslavia – Conformity of legislation with the ECHR

On 6 March 2003 a report on the conformity of the law and practice of the Federal Republic of Yugoslavia with the European Convention on Human Rights as at August 2002 was published in English and Serbian.

Ratification of the European Convention on Human Rights and its additional protocols (hereafter "Convention") is one of the most important commitments undertaken by states when joining the Council of Europe. As part of its preparation for accession, the Federal Republic of Yugoslavia, now Serbia and Montenegro, was expected to carry out an in-depth examination of the conformity of its domestic legislation and practice with the requirements of the Convention, its protocols and the case law of the European Court of Human Rights, a "compatibility exercise" undertaken by new member states or candidate states since 1994.

Such compatibility exercises have a dual aim: firstly, they offer an opportunity to state institutions and to local administrations to familiarise themselves with the norms that will become part of their domestic law once the state concerned has joined the Council of Europe and ratified the Convention. At such time, the authorities of Serbia and Montenegro will be required to ensure that the rights guaranteed by the Convention are, first and foremost, fully protected in the country, by relevant authorities at both Union and member state levels, including the courts. Indeed, following ratification of the Convention, everyone within the jurisdiction of Serbia and Montenegro whose Convention rights and freedoms are allegedly violated, will have a right to an effective remedy before the competent authority at Union or state member levels, in accordance with Article 13 of the Convention. [According to UNSCR 1244, Kosovo is currently under UN jurisdiction.]

By the same token, the compatibility exercise is a preventive exercise, since it enables any potential shortcomings in domestic law and practice, both at the federal and republic levels, now Union and member state levels, to be identified and to be addressed through changes in legislation or practice. The compatibility exercise is thus an important instrument for facilitating the full and effective enjoyment of Convention rights at the domestic level in line with the subsidiary nature of the judicial protection afforded by the European Court of Human Rights.

Such an exercise was started in the Federal Republic of Yugoslavia in June 2001 following a launching conference in February 2001. The Federal Ministry of Justice, co-ordinator of the project on the Yugoslav side, appointed the Institute for Comparative Law of Belgrade to carry out the compatibility study of Yugoslav law and practice with the requirements of the Convention.

The present compatibility exercise covers principally Federal and Serbian legislation and practice.

The Working Group was composed of the following academics from the Institute of Comparative Law: Ms Vesna Rakic-Vodinelic (Head of the group), Mr Oliver Nikolic, Ms Violeta Beširevic and Mr Saša Gajin.

The Council of Europe appointed Mr Tamas Bàn (Hungary), Mr Olivier de Schutter (Belgium) and Mr Jeremy McBride (United Kingdom), following established practice, as its experts to comment on the report prepared by the Working Group.

The Working Group carried out its review in 2001 and 2002. The present study – which identifies significant areas where reforms are required – covers the legal instruments which were in place at both federal and republic levels, as of August 2002. It does not address legislation adopted since then or draft legislation still under discussion. Furthermore, it should be read in the light of Council of Europe expertises on specific pieces of legislation. The areas identified as requiring

reforms remain the same after 5 February 2003, when the Constitutional Charter of Serbia and Montenegro was adopted.

Police and human rights

Field activities

Bosnia and Herzegovina

On 24-28 March 2003 the "Police and Human Rights" Programme organised a fact-finding mission to Bosnia and Herzegovina with a view to assessing the needs of the police services for human rights training, especially in the light of training already carried out.

Albania

On 8-10 April 2003 a preliminary visit to Tirana was organised by the Programme to plan a psychological support project for the Albanian Police. The object of the visit was to discuss arrangements for the establishment of a welfare and psychological support service for the Albanian Police. Some recommendations have been made to the Albanian Government and the response is awaited.

Turkey

The Directorate General of Human Rights' "Police and Human Rights – Beyond 2000" programme is running a Joint Initiative with the European Commission: *Police, Professionalism and the Public* in Turkey. This project was initially due to end in early 2003 but has been extended for one year. The project comprises translation of Council of Europe police training material, expertise on curriculum and "Train the Trainers" courses.

The translations were finalised last year and copies were forwarded to the relevant Turkish authorities to be used at the police/gendarmerie training institutions.

In January 2003 the Turkish authorities forwarded the revised curriculum for the new two-year basic training of the police (the gendarmerie's curriculum has recently been forwarded to the National Committee for Human Rights and Education for approval and will be sent to the Council of Europe for expertise in the near future). The curriculum has now been expertised in order to ensure that the training programmes for police officers are in compliance with the Council of Europe standards. The experts made suggestions for its improvement and the report was presented to the Turkish authorities on 13-14 May during a meeting of the Working Group.

The aim of this Working Group meeting was to finalise the planning of the three remaining "Train the Trainers" courses. The Working Group agreed on the topics to be included in the programme for the preparation course in Turkey, as well as on the contents of the programme for the training abroad. The remaining courses are planned for mid-September 2003.

Azerbaijan

In co-operation with the Institute of Human Rights of the National Academy of Sciences of Azerbaijan, the "Police and Human Rights" Programme organised a seminar in Baku on 4 and 5 June 2003 on "Human rights, the rule of law and the police". The aim of this seminar was not only to introduce and to teach European human rights standards but also to review police work in Azerbaijan.

Russia

As part of the project "Protecting and Respecting Human Rights – The Main Task of Policing", the "Police and Human Rights – Beyond 2000" Programme organised, in co-operation with Ministry of the Interior of the Russian Federation and the Police Academy in Voronezh, a training workshop for the Russian Militia on how to deal with domestic violence. This workshop was held in Voronezh from 16 to 20 June 2003. The aim of this workshop was to train Russian Militia Trainers from 23 Higher Institutes for Police Training, who, following this training course, will be expected to train militia students and/or colleagues on how to deal with domestic violence, amongst other topics.

Ukraine

Under the European Commission/Council of Europe Joint Programme for Ukraine, a project for the setting up of a Human Rights Centre for the training of the Ukrainian Militia is expected to begin in the autumn, in co-operation with the National University of Internal Affairs in Kharkiv.

Master classes

As the staff of the Programme is very limited, we have to rely on the help of serving and recently retired police officers who are experts in their own specialist fields and in human rights to deliver the Programme throughout the continent. In order to ensure a common approach from these officers, who come from many countries and who have a variety of backgrounds, training is provided from time to time

Participants in the Stockholm master class

in the form of a "master class". The first class was held in the Netherlands in June 2000 and the second one just recently at the Swedish Police Academy in Stockholm from 1-6 June 2003 with seventeen participants representing fourteen different countries.

Human rights issues were at the top of the agenda, *e.g.* cases from the European Court of Human Rights in Strasbourg were discussed. Trainers were also introduced to modern teaching methods to enable them to catch and hold the interest of their audience, instead of simply reading out their lectures.

Co-ordination

The Co-ordinating Group of the European Platform for Policing and Human Rights held two meetings this year, one in Riga and one in Copenhagen. Meetings of the Co-ordinating Group are held at regular intervals to discuss such issues as applications to the Platform, the website, etc., and to prepare the Annual General Meeting which will be held in Belfast from 15-16 September 2003.

"Awareness" website: http://www.coe.int/awareness/

Committee of Ministers

The Committee of Ministers is the Council of Europe's decision-making body. It comprises the Foreign Affairs Ministers of all the member states, who are represented, outside the two annual ministerial sessions, by the permanent representatives of the member states to the Council of Europe. It is a place where national approaches to problems facing European society can be discussed on an equal footing, and where Europe-wide responses to such challenges are formulated. Guardian, together with the Parliamentary Assembly, of the Council's fundamental values, it also monitors member states' compliance with their undertakings.

Accession of Serbia and Montenegro

Resolution (2003) 3 of 26 March 2003

Following the favourable opinion adopted by the Parliamentary Assembly, the Committee of Ministers invited Serbia and Montenegro to join the Organisation. The accession took place on 3 April.

The Council of Europe's authorities welcomed the considerable progress made by Serbia and Montenegro in a very short time to leave the painful heritage of the past behind it and to orient towards European integration.

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 published after each of their meetings. Taken in the name of the Committee of Ministers, they contain the full text of the decisions and adopted texts as well as the terms of reference of committees.

Participation of women and men in political and public decision making

Recommendation Rec (2003) 3 on balanced participation of women and men in political and public decision making

The Recommendation reflects the absolute priority given by the Organisation to the building of a Europe based on equality, social cohesion, solidarity and respect for human rights. It defines strategies and measures in order that the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

The Recommendation is accompanied by an Explanatory Memorandum.

Asylum-seekers

Recommendation Rec (2003) 4 on measures of detention of asylum-seekers

The Committee of Ministers recommends to the governments of the member states to apply, in their legislation and administrative practice, guarantees of treatment for persons seeking international protection coming directly from a country of persecution. The recommendation does not concern measures of detention of asylum-seekers on criminal charges or rejected asylum-seekers detained pending their removal from the host country.

Measures of detention of asylum-seekers should be applied only after a careful examination of their necessity in each individual case. These measures should be specific, temporary and non-arbitrary and should be applied for the shortest possible time. Asylum applications from persons in detention should be prioritised for the purposes of processing. The place of detention should be appropriate, and the right to a private and family life should be ensured, especially for people who have been seriously traumatised or with special needs. Asylum-seekers should have the right to

establish communication with the outside world, and be guaranteed access to a complaints mechanism. Additional measures are provided for minors.

Freedom of expression and information

Declaration on freedom of communication on the Internet (28 May 2003)

The main objective of this text is to strike a balance between freedom of expression and information on the Internet – sometimes suffering restrictions for political reasons – and other essential rights guaranteed by the European Convention on Human Rights, such as the protection of children against unsuitable online content.

The Declaration also deals with the freedom to provide services via the Internet, the responsibility of intermediaries and the anonymity of Internet communications.

Political Message from the Committee of Ministers to the World Summit on the Information Society, organised by the United Nations in Geneva in December 2003 (adopted on 19 June 2003)

In this Message, the Committee of Ministers underlines its belief that the Summit will enable the principles of human rights, democracy, respect for cultural diversity and trust between peoples to be firmly embedded in the new information society.

It recalls that new information and communication technologies offer unprecedented opportunities for the full enjoyment of freedom of expression and information.

Concerning democracy and citizenship, the Ministers encourage the establishment of standards on electronic voting, in order to allow e-enabled elections and referenda to be held in full respect of the fundamental principles of democratic elections.

The Ministers also point out that the Council of Europe drew up the first legal instruments for fighting crimes committed via ICT (i.e. the Convention on Cybercrime, with its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature, and the Data Protection Convention) and reaffirm the Organisation's availability to share experiences in this area with other regions of the world, in the context of a global action plan.

They affirm the willingness of the Council of Europe to contribute to the discussions of the Summit by putting forward a number of proposals such as: training journalists in the use of new technologies and finding ways to uphold content standards which apply to traditional media regarding the separation of editorial content and advertising, the prohibition of certain types of advertising and the protection of minors against illegal and harmful content.

Finally, they raise the possibility of offering a multi-disciplinary platform for studying the feasibility of preparing a Code of use for the Internet, containing the rights and duties of all users.

Recommendation Rec (2003) 9 on measures to promote the democratic and social contribution of digital broadcasting

The Committee of Ministers recalls a certain number of principles which the governments of member states should take into account when adopting measures aimed at guaranteeing, *inter alia*, the pluralism of broadcasting services, the maintenance of public service broadcasting and the respect for the protection of minors and human dignity.

Exploitation of human beings

Reply from the Committee of Ministers to Recommendation 1523 (2001) of the Parliamentary Assembly on domestic slavery

Extracts:

The Committee of Ministers is currently continuing its examination of the feasibility of a draft European Convention on action against trafficking in human beings, whose aim would be to protect human rights, and in particular those of the victims of trafficking, with a view to avoiding all forms of exploitation.

[...] It considers that the efforts to be undertaken should, both at national and at international level, focus in particular on the detection and punishment of these acts, as well as on police training and awareness.

[...] In its opinion [...], the Steering Committee for Equality between Women and Men reiterates the Assembly's concerns about gender discrimination and emphasises the need for equality policies and national machinery for applying them. The Committee of Ministers has taken this point into account and the next monitoring exercise of compliance with member states' commitments will look at the question of machinery at national level "to secure equal rights between women and men in compliance with the relevant Council of Europe instruments".

Furthermore, in the Declaration and Programme of Action adopted by the 5th European Ministerial Conference on Equality between Women and Men (Skopje, 22-23 January 2003), the European Ministers responsible for equality issues agreed that the activities undertaken by the Council of Europe to protect and promote the human rights of women should be focused, among others, on the objective to prevent and combat violence against women and trafficking in human beings and proposed a specific programme of action.

In the light of the existing legal body of social and employment rights, the Committee of Ministers does not consider making the drafting of a domestic workers' charter of rights one of the Council of Europe's immediate priorities.

Implementation of Court's judgments

Reply from the Committee of Ministers to Recommendation 1576 (2002) of the Parlimanetary Assembly on the implementation of decisions of the European Court of Human Rights by Turkey

1. The Committee can assure the Parliamentary Assembly that supervision of the execution of judgments of the European Court of Human Rights is one of the Committee's main priorities. Speedy and efficient execution is essential for the credibility and efficiency of the European Convention on Human Rights (ECHR) as a constitutional instrument of European public order on which the democratic stability of the Continent depends.

2. The Committee welcomes the recent enhancement of Turkey's political determination to comply with the Court's judgments and, more generally, to meet the requirements of the ECHR and other Council of Europe standards, as reflected in Prime Minister Gül's statement to the Assembly at the January 2003 part-session. In this context, the Committee welcomes in particular the wide-ranging reforms which have been accomplished within a short time frame on such matters as the abolition of the death penalty, the lifting of certain restrictions on non-violent speech, the increased efforts to fight torture and ill-treatment, not least through improved investigative procedures and more severe sanctions against members of the security forces responsible for abuses. The Committee also welcomes the programme recently agreed upon by Council of Europe experts and the Turkish authorities, within the framework of a Joint European Union/Council of Europe Initiative, providing for in-depth training of Turkish judges and prosecutors on the Convention and the Court's case-law, with a view to ensuring their effective implementation in day-to-day practice.

3. The recent constitutional and legislative reforms, the ensuing evolution of domestic case law, as well as the training and awareness measures represent important developments which will undoubtedly contribute significantly to the execution of a number of judgments concerning Turkey.

4. In addition to the measures already adopted, the Committee has recently received assurances from the Turkish authorities that they intend rapidly to settle, in particular, the problems concerning the remaining restrictions on the applicants' civil and political rights in some 20 cases relating to violations of freedom of expression, and concerning shortfalls in payment of just satisfaction in some 40 cases. The Committee will continue its supervision of these matters, and indeed of all other outstanding issues.

5. As regards the two specific cases mentioned in the Recommendation, the Committee can inform the Assembly as follows:

6. Concerning the case of *Sadak, Zana, Dicle and Dogan*, Law No. 4793, which entered into force on 4 February 2003, allows domestic proceedings impugned by the Court to be reopened in all cases currently pending before the Committee for control of execution. The Committee welcomes the fact that, as a result of this new law, the criminal proceedings in the aforementioned case are to be reopened before the State Security Court of Ankara. The Committee nevertheless notes that the suspension of the execution of the original prison sentence of the applicants pending the new trial was not approved when the request to re-open proceedings was accepted. The Committee trusts that a new, fair trial will proceed expeditiously so as effectively to erase the consequences of the violations found by the Court. Furthermore the Committee notes that the scope of the new law would not extend to cases which are currently pending before the Court. It trusts that steps will rapidly be taken to modify this situation.

7. As regards the *Loizidou* case, the Committee notes with satisfaction that the Assembly has supported its position, as expressed in three Interim Resolutions of the Committee of Ministers. The Committee recalls that it follows the case with the greatest attention and confirms its resolve to ensure, with all means available to the organisation, the execution of this judgment by Turkey. The Committee is presently exploring different avenues with a view to achieving this aim.

In this context, the Committee notes that the Turkish authorities have indicated, at recent Committee of Ministers meetings, their determination to comply with the Court's judgment of 28/07/98. The Committee expects to receive shortly information on concrete steps to this effect.

8. The Committee, referring also to Prime Minister Gül's recent expression of the Turkish authorities' determination to comply with the judgments of the Court, expects that the momentum, as illustrated above, will be maintained so that all outstanding issues will be settled rapidly and all judgments complied with fully.

9. On a more general level, the Committee would like to inform the Assembly that reflections are under way, both within the Committee itself and in the context, of the work on reinforcing the ECHR control system, designed to improve and speed up the execution of judgments. In this context, particular focus is being given to possible measures in the event of slow or negligent execution or non-execution of judgments. Relevant recommendations of the Assembly are being borne in mind in this regard. The Committee will keep the Assembly informed of progress in the reflections.

Human rights situation in the Chechen Republic

Reply from the Committee of Ministers to Recommendation 1600 (2003) of the Parliamentary Assembly

Extracts:

[...] Since June 2000, a monthly discussion has taken place in the Deputies on interim reports by the Secretary General on the work of the Council of Europe experts present in Chechnya under the item "Contribution of the Council of Europe towards restoration of the rule of law, respect of human rights and democracy in Chechnya". Relevant Parliamentary Assembly Recommendations are being taken into account during these discussions.

[...] In order to enhance this process, the Committee of Ministers continues to encourage the Russian authorities to take the necessary measures to ensure that the rights

guaranteed by the European Convention on Human Rights are fully respected in the Chechen Republic, and that all violators of these rights are held accountable.

At the same time, the Committee of Ministers strongly condemns the various terrorist acts including suicide-attacks as well as the bomb explosion near 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, in Grozny on 21 April 2003, when the convoy of the Council of Europe experts was passing. It reiterates its call for an end to all terrorist activities in the region. The Committee stresses once again that there can be no alternative to a political solution.

The Committee of Ministers calls upon the Russian authorities to ensure that all existing Russian mechanisms are effectively used to bring to justice those responsible for human rights abuses. It furthermore calls for strengthened efforts to ensure further improvement in the human rights situation in the Republic.

Any further steps towards a political solution in Chechnya, in particular, the planned elections of the President and the Parliament, should be implemented in full compliance with the principles of democracy, human rights and the rule of law.

During the last three years the Council of Europe has actively contributed to the endeavours of the restoration of these principles, including through the continued presence of its staff in the Chechen Republic since June 2000.

Additional areas of activities of the Council of Europe experts working in the Office of the Special Representative of the President of the Russian Federation on Human Rights and Fundamental Freedoms in the Chechen Republic, were agreed upon with the Russian Foreign Minister in June 2002. Their implementation is taking place within the framework of the programme of co-operation in the Chechen Republic and contributes to the restoration of the rule of law, respect of human rights and democracy in the Republic.

[...].

Discrimination

Reply from the Committee of Ministers to Written Question No. 367 on discriminations against Romanian homosexuals

Extracts:

[...] During the intervening years, there has been regular dialogue between the Committee and the Romanian authorities in order to arrive at a satisfactory outcome to the raised problem.

By a letter dated 26 February 2003, the Permanent Representative of Romania provided the Secretariat with translations of official texts concerning the modification of the Romanian Criminal Code, and indicated that the current legislation on sexual crimes has established a clear, non-discriminatory regime on the issue.

The Romanian authorities have also confirmed that no one is serving a prison sentence as a result of the application of the former legislation.

Reply from the Committee of Ministers to Written Question No. 399 on the situation of the Orthodox Church believers in Estonia

The Committee of Ministers informed the Question's author that:

– on 17 April 2002, the Ministry of the Interior registered the statute of the Estonian Orthodox Church of the Moscow Patriarchate, ending a nine-year dispute over the church's status started in 1993, when the Estonian government registered the Estonian Apostolic Orthodox Church under the jurisdiction of the Ecumenical Patriarchate;

– under the Churches and Congregations Act, passed on 12 February 2002, and which entered into force on 1 July 2002, responsibility for registering religious organisations that choose to seek legal status has been transferred from the Interior Ministry's Department for Religious Affairs to the local courts. The fact that the registration of religious organisations is now handled by a judicial rather than an executive authority makes the procedures more neutral;

– on 29 August 2002, a provisional agreement was reached between the Estonian Interior Ministry and both the Estonian Apostolic Orthodox Church and the Estonian Orthodox Church of the Moscow Patriarchate to share the use of existing church property.

112th Session of the Committee of Ministers (14-15 May 2003)

The Ministers concentrated their discussion on the following major topics of the Council of Europe's political agenda:

– the future role of the Council of Europe in building a Europe without dividing lines, with a view to the Organisation's Third Summit;

– possible future Council of Europe action to combat the trafficking of human beings – an issue of great concern, for which a possible convention is considered – promote freedom of movement of persons within greater Europe, and fighting terrorism;

– the means of guaranteeing the effectiveness of the European Court of Human Rights.

Concerning the latest topic, the Ministers adopted a Declaration in which they, *inter alia*, gave instructions for the preparation of a draft amending protocol to the European Convention on Human Rights in order to face the implications for the effectiveness of the Convention system of the continuing increase in numbers of individual applications submitted to the Court.

The amendments should aim at preventing violations at national level and improving domestic remedies, optimising the effectiveness of the filtering and the subsequent processing of applications, and accelerating execution of judgments of the Court.

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

The human rights situation in member and non-member states

Accession of Serbia and Montenegro

The decision by the Committee of Ministers to approve the accession of Serbia and Montenegro was warmly welcomed by the Council's Secretary General, Walter Schwimmer, and the President of the Parliamentary Assembly, Peter Schieder.

Peter Schieder said: "After so many years of waiting, human suffering and despair, the last remaining part of what was once known as Yugoslavia will take its place among Europe's democratic family of nations. I believe this is an historic moment for the people of Serbia and Montenegro, for the people of the region and for Europe as a whole."

The formal accession ceremony took place on 3 April during the spring session of the Council of Europe's Parliamentary Assembly in Strasbourg.

3 April 2003: Serbia and Montenegro's flag is hoisted in front of the Palais de l'Europe

The human rights situation in the Chechen Republic

Recommendation 1600 (2003), Resolution 1323 (2003) and Order No. 586 (2003), 2 April 2003

The Assembly said that so far everyone involved had "failed dismally" to protect the people of the Chechen Republic from human rights abuses, and that the main reason both Russian soldiers and Chechen fighters went on committing such abuses to this day was that "they nearly always get away with them".

"Criminal investigations of gross violations by Russian forces and Chechen fighters are … few and far between, depressingly ineffective and mostly fail to secure convictions in court – if they reach that stage, which is rare," the parliamentarians said. They warned that without a tangible improvement in human rights, all attempts at pacifying the region were "doomed to failure".

Among other recommendations, the Assembly called on member states to lodge inter-state complaints against the Russian Federation before the European Court of Human Rights and to exercise "universal jurisdiction" for the most serious crimes committed in the Chechen Republic. Russian forces should be better controlled, discipline enforced, and all relevant military and civilian regulations, constitutional guarantees and international and humanitarian law fully respected. Chechen fighters should immediately stop their terrorist activities and renounce all forms of crime, while any kind of support for them should cease immediately.

National and ethnic minorities

Resolution 1335 (2003) on preferential treatment of national minorities by the kin-state: the case of the Hungarian Law on Hungarians Living in Neighbouring Countries ("Magyars") of 19 June 2001, 25 June 2003

Criticism of this law has been made in certain countries neighbouring on Hungary, on the grounds that it represents a unilateral approach. The Assembly stressed the necessity of bilateral discussions and agreements with the neighbouring countries in this and similar contexts.

Trafficking in human beings

Resolution 1337 (2003) and Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution, 25 June 2003

The resolution includes several proposals aimed at countering this problem, including:

- the adoption of effective measures to improve the economic situation in countries of origin
- sociological research projects and surveys aimed at improving knowledge of the profiles of clients of trafficking in women and prostitution, and at identifying and promoting alternative measures to the present options of criminalising clients or granting them total impunity

- the improvement of migration policies
- the creation of data banks and the exchange of information
- awareness-raising campaigns
- co-operation with non-governmental organisations
- international co-operation between special police units
- the development of interpretative commentaries for judges and other officials as well as comprehensive procedural guidelines for police and immigration officers on the prevention and prosecution of offences linked to trafficking
- a Council of Europe convention on trafficking in human beings
- encouraging the signature and ratification of the United Nations Convention Against Transnational Organized Crime and its additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol)
- the introduction of the offence of trafficking into national criminal law, where it does not already exist
- enabling female migrant victims of trafficking and forced prostitution to return home in dignity and security
- guidelines to enable the rapid identification of victims and provide them with assistance
- financial assistance to non-governmental organisations that implement protection programmes and initiatives for victims of trafficking
- compensation to victims of trafficking to be paid by the traffickers.

Areas where the European Convention on Human Rights cannot be implemented

Recommendation 1606 (2003), 23 June 2003

Although in theory the European Convention on Human Rights must be implemented throughout the territory of the member states, in reality there are areas in which obstacles to its application exist. Examples are armed conflict or emergency situations, occupation of part of a state's territory or intervention by one state on the territory of another, or even the effective absence of control by a state over part of its territory.

Lack of awareness of the ECHR or practical reasons constitute a further obstacle.

In circumstances where the scale and gravity of violations could be regarded as war crimes or crimes against humanity, only state applications enable a situation to be addressed in its entirety. Unfortunately, despite strong recommendations from the Assembly to this effect as regards massive violations of human rights, states do not use this means of obtaining redress.

The Assembly raises particularly its concern about those situations where member states, as a part of the larger international community, engage in a process of reconstruction following an armed conflict in European territories legally not covered by the ECHR. Those territories should be provided with legal means to ensure that they do not turn into lawless areas in the field of human rights under member states' control.

The Assembly recommended that the Committee of Ministers:

i. take steps to ensure that the ECHR is better known and that training is provided for all those who could help to prevent human rights abuses – lawyers, judges, public prosecutors and civil servants – as well as for those whose actions may give rise to such abuses, particularly members of the armed forces;
ii. envisage an *actio popularis* and create the post of public prosecutor at the European Court of Human Rights, who would have the task of bringing actions concerning violations of human rights before the Court;
iii. entrust this task, if necessary, to the Council of Europe's Commissioner for Human Rights, assigning him the necessary resources to carry out this new function;
iv. include in the ECHR an obligation on states to comply with measures imposed by the Court.

The Assembly also recommended that the member states introduce legislation on universal jurisdiction, which would enable them to take proceedings against the perpetrators of international crimes.

Rights of persons held in the custody of the United States in Afghanistan or Guantánamo Bay

Resolution 1340 (2003), 26 June 2003

The Assembly expressed its concern over the situation of persons detained by the United States following the armed conflict in Afghanistan. It raised the question of the legality of their detention, and called on the United States government to respect its obligations under international law in recognising the status of these persons and ensuring their correct treatment in accordance with international treaties.

Democracy and legal development

Environment and human rights

Recommendation 1614 (2003), 27 June 2003

The Assembly made certain recommendations to the governments of member states, including: the recognition of a human right to a healthy, viable and decent environment which includes the objective obligation for states to protect the environment in national laws, preferably at constitutional level; and the harmonisation of national legislation on environmental protection and safety.

It also called for an additional protocol to the European Convention on Human Rights concerning the recognition of individual procedural rights intended to enhance environmental protection, as set out in the Aarhus Convention.

As an interim measure, it recommended that the Committee of Ministers make a recommendation to member states setting out the ways in which the European Convention on Human Rights provides individual protection against environmental degradation, proposing the adoption at national level of an individual right to participation in environmental deci-

sion making, and indicating a preference, in cases concerning the environment, for a broad interpretation of the right to an effective remedy guaranteed under Article 13.

The Council of Europe and the Convention on the future of Europe

Resolution 1339 (2003), 24 June 2003

The resolution endorses the outcome of the European Union Convention on the future of Europe and, in particular, its firm support for the European Union's accession to the European Convention on Human Rights. The European Union Intergovernmental Conference, entrusted with the adoption of the new constitution, should closely follow the wording of the proposed draft and lead to an associate membership of the European Union in the Council of Europe.

Statements of the Parliamentary Assembly President

"International Criminal Court is needed more than ever before"

Welcoming the official inauguration of the International Criminal Court in The Hague on 11 March 2003, Peter Schieder and Walter Schwimmer urged member states who have not yet ratified the Rome Statute to do so without further delay.

"In the present international situation, the International Criminal Court is needed more than ever before. It is sending a clear message to dictators around the world that they may be held accountable for their action. With the support of international key actors, the Court can play a role of deterrent, which may be crucial in the preservation of world peace," Peter Schieder said.

"All too long it seemed that if you killed one person, you went to jail but if you tortured and slaughtered hundreds or thousands, you could get away with it. With the creation of the International Criminal Court, genocide, war crimes and crimes against humanity shall no longer go unpunished," Walter Schwimmer emphasised.

The Council of Europe leaders appealed to all countries to join this first worldwide effort to bring the perpetrators of the most serious crimes of global concern to justice.

They called on the member states to withstand efforts aimed at undermining the Court's work, in particular not to sign bilateral immunity agreements.

"We all bear a historical responsibility in bringing redress to the victims of the worst atrocities known to mankind," they concluded.

International Women's Day, 8 March 2003

"International Women's Day is not Mother's Day. It is not an occasion to celebrate, but to protest."

"It was born out of the profound and humiliating injustice suffered by women in the early 1900s. A century later, the situation for millions of women around the world has not improved in any significant way. They continue to suffer inequality in every imaginable respect. They are physically and psychologically abused, raped, mutilated, killed. They are economically exploited, socially disadvantaged and politically oppressed. They are trafficked as cattle and forced into slavery and prostitution. They have no access to education, proper employment, medical attention, family planning and assistance in bringing up their children. They are victimised for being women. 8 March is for them.

The Assembly, through its Committee on Equal Opportunities for Women and Men, has made a series of recommendations dealing with some of the worst forms of abuse and discrimination which continue to occur in Europe. It is now up to governments to implement them. But this kind of injustice cannot only be remedied through changing laws, we must also change attitudes. That is a responsibility we all share."

Election observation missions

Armenia

An Assembly delegation chaired by Lord Russell-Johnston observed both the presidential and the parliamentary elections in Armenia, as part of the international election observation mission. See *Information bulletin*, No. 58.

Concern expressed about presidential election

Voting and counting in the second round presidential election in Armenia were marked by serious irregularities. The overall election process fell short of international standards. This is 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.

"I am disappointed. We had hoped for better", said Peter Eicher, the head of the ODIHR long-term observation mission. "Once again we witnessed significant problems on election day, and the period between the two rounds did not meet international standards for an open and fair political campaign."

"At the same time, we want to pay tribute to the vast majority of Armenia's voters for their active and honest participation and to the many poll workers around the country who performed their duties conscientiously," added Lord Russell-Johnston. "For Armenia to advance democratically and to meet its commitments to the Council of Europe, we need the same attitude from the senior political leadership."

Of particular concern for international observers were the numerous, confirmed cases of ballot-box stuffing.

The international observers welcomed the fact that between the rounds no serious incidents of violence occurred despite the charged political atmosphere. They were pleased to see broad public involvement in the election process, as well as the participation of a number of domestic observer groups. The technical preparations for the second round of voting were generally efficient.

The period between the two rounds was, however, marred by a number of shortcomings. These included the de-

tention of opposition proxies and campaign staff, discrepancies and implausible figures in the official results for the first round, and a general failure by the authorities to hold accountable those responsible for irregularities in the first round. The transparency of the tabulation process was undercut by the failure to promptly publish full preliminary results by precinct, thus undermining confidence in the figures.

Public TV was again biased in favour of the incumbent and failed to meet its obligation to provide balanced reporting. In a positive development, however, the first ever television debate between presidential candidates took place.

Serious irregularities

Speaking on 7 March 2003, Peter Schieder and Walter Schwimmer expressed their concern that the Armenian presidential elections fell short of international standards for democratic elections. They considered this to be all the more serious, as free and fair elections are the basis of democracy.

"It is now of the utmost importance that the administrative and judicial authorities carefully examine electoral complaints and appeals in a transparent and credible manner. This is an essential condition for re-establishing confidence in the electoral process, with a view to the forthcoming legislative elections in May," Walter Schwimmer pointed out.

"Following serious irregularities reported after the first round, we made a series of requests to ensure better conduct of the second round. We very much regret that these requests were not met," Peter Schieder stressed.

"The full extent of responsibility for, and the impact of, the irregularities are yet to be determined, but it is already clear that they cannot remain without consequences. The issue will be raised in forthcoming meetings at parliamentary and ministerial level," concluded the Council of Europe leaders.

Parliamentary elections "an improvement"

Parliamentary elections in Armenia (25 May 2003) marked an improvement over the presidential voting, but failed to meet international standards in several key areas, concluded an international observation mission led by the Parliamentary Assemblies of the OSCE and the Council of Europe, and the OSCE's Office for Democratic Institutions and Human Rights (ODIHR). The election was marred by a fatal shooting at a polling station on election day.

"After a generally peaceful campaign we have observed an election which represents an improvement in meeting international standards, despite a number of serious incidents and shortcomings during the electoral process," said Giovanni Kessler, the head of the OSCE Parliamentary Assembly delegation and special co-ordinator appointed by the OSCE Chairman-in-Office. "However, the low turnout is a clear indication of the lack of voter confidence in the electoral process and political institutions in the country. Enhancing such confidence is the major challenge to the political leadership in Armenia."

"There was undoubted progress towards meeting international standards despite a limited number of reported incidents of a very serious nature," added Lord Russell-Johnston. "I hope that those responsible will be held accountable and that there will be no return to the sense of impunity evident in the recent presidential election."

"While the legislative framework generally provides a basis for democratic elections, Armenia's leadership must demonstrate more determination in order that future elections meet international standards," said Ambassador Robert Barry, head of the OSCE/ODIHR long-term observation mission.

The international observers noted several improvements in comparison with the recent presidential election, particularly with regard to the campaign and the media coverage. However, the observers pointed out that these improvements mirrored a similar development during the previous succession of presidential and parliamentary elections in 1998 and 1999, which also failed overall to comply with international standards. In addition to a generally inadequate performance of the election administration, the mission again observed a number of irregularities during election day, including falsification of results, intimidation of observers, and violations of the secrecy of the ballot during military voting.

The international observer mission stressed that its final conclusion on the extent to which the elections meet international standards will depend on the transparency of the tabulation and announcement of results, and the complaints resolution process.

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			**23.06.03**	16.10.90		23.07.91	
Bosnia and Herzegovina	12.07.02	12.07.02	12.07.02	12.07.02	12.07.02	29.07.03	29.07.03			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	**22.05.03**			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		16.07.03	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		**07.04.03**		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	**25.04.03**	**25.04.03**			31.01.90	05.12.96
Serbia and Montenegro											11.05.01
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		**22.04.03**	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: 01.09.03
Ratifications between **01.03.03** and **30.06.03** 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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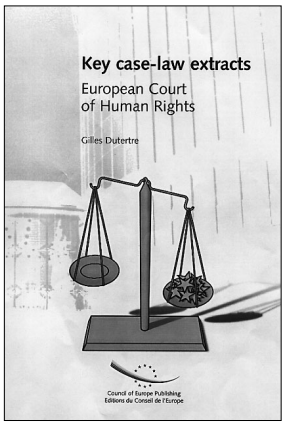

Key Case-Law Extracts European Court of Human Rights

(October 2003)

The first application to the European Commission of Human Rights was made in 1955 and the European Court of Human Rights delivered its first judgment in 1961. There are now several hundred published volumes of judgments and decisions – a huge body of case-law whose sheer bulk can make it inconvenient to consult. The author of this book, a legal specialist, has condensed the case-law into a single volume.

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Extraits-clés de jurisprudence Cour européenne des Droits de l'homme

(Septembre 2003)

La première requête transmise à la Commission européenne des Droits de l'Homme date de 1955 et la Cour européenne des Droits de l'Homme a rendu son premier arrêt en 1961. La publication de tous ces arrêts et décisions représente plusieurs centaines de volumes, une abondance qui en rend la consultation parfois difficile. L'auteur du présent ouvrage – juriste – extrait l'essentiel de cette vaste jurisprudence pour la rassembler en un volume unique.

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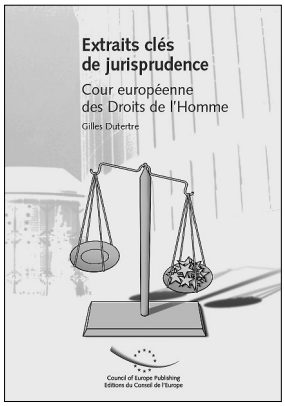

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