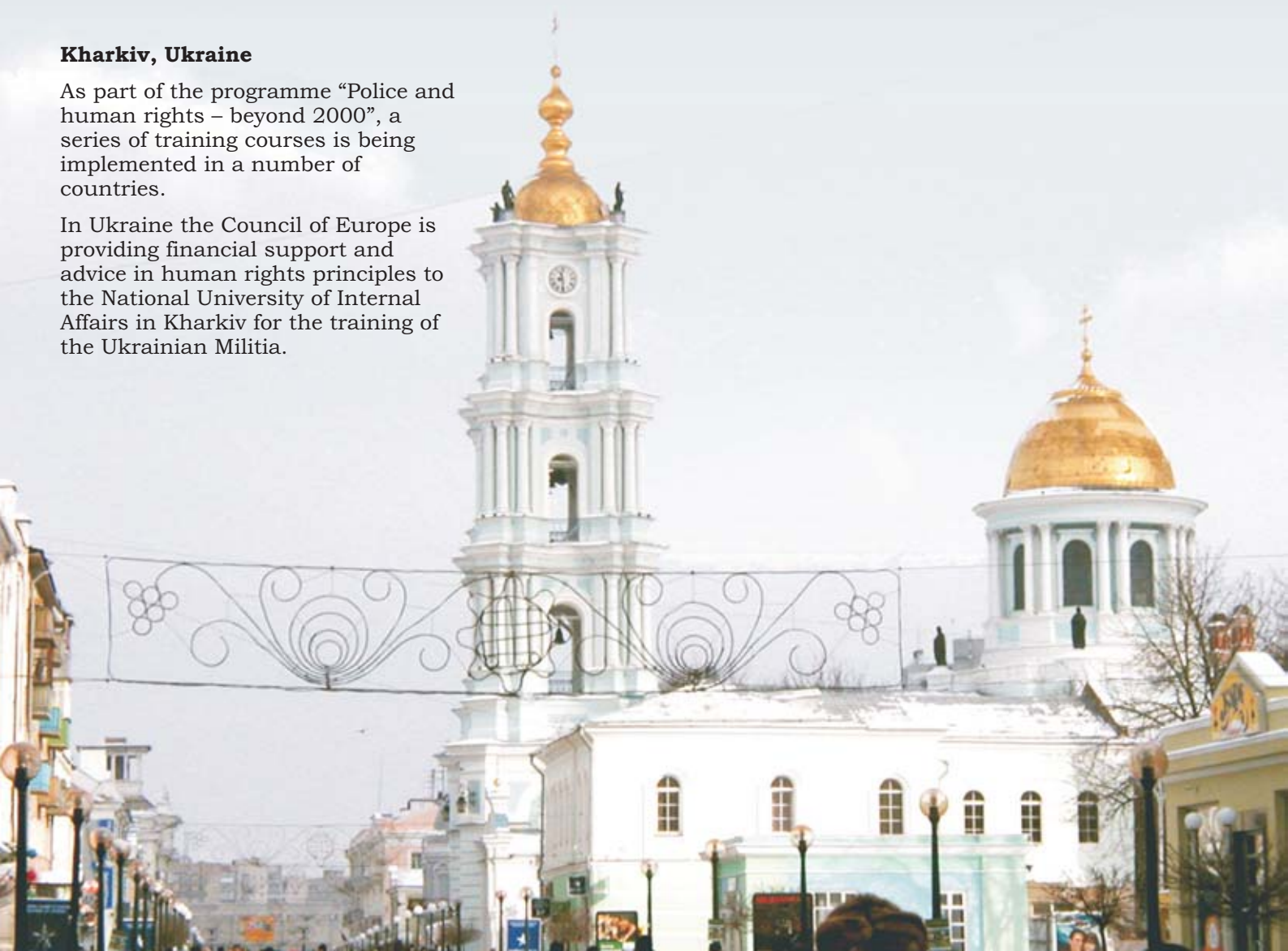


Human rights information bulletin

Kharkiv, Ukraine

As part of the programme “Police and human rights – beyond 2000”, a series of training courses is being implemented in a number of countries.

In Ukraine the Council of Europe is providing financial support and advice in human rights principles to the National University of Internal Affairs in Kharkiv for the training of the Ukrainian Militia.



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European Convention on Human Rights

Signatures and ratifications

Austria

On 12 January 2004 Austria ratified Protocol No. 13 to the European Convention on Human Rights.

Azerbaijan

On 12 November 2003 Azerbaijan ratified Protocol No. 12 to the European Convention on Human Rights.

Estonia

On 25 February 2004 Estonia ratified Protocol No. 13 to the European Convention on Human Rights.

Lithuania

On 29 January 2004 Lithuania ratified Protocol No. 13 to the European Convention on Human Rights.

Slovenia

On 4 December 2003 Slovenia ratified Protocol No. 13 to the European Convention on Human Rights.

Turkey

On 12 November 2003 Turkey ratified Protocol No. 6 to the European Convention on Human Rights.

On 9 January 2004 Turkey signed Protocol No. 13 to the 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/>.

European anthem

A Council of Europe CD with new interpretations of the European anthem was presented for the first time on Thursday 29 January

This compilation features the first ever hip-hop version of the European anthem, the Council's musical symbol based on the *Ode to Joy* from Beethoven's Ninth Symphony.

The disc, entitled *Variations*, also includes techno, trance and jazz versions, as well as new classical

interpretations for piano, church organ and symphony orchestra.

The CD is aimed at providing music for different European events and ceremonies, and also as background music for radio and television journalists making reports with a European theme.

The European anthem was adopted by the Council of Europe in 1972. It became the anthem of the European Union in 1986. The official version in use by both organisations remains the 1971 arrangement by the conductor Herbert von Karajan.



European Court of Human Rights

Introduction

Between 1st November 2003 and 29 February 2004, the Court dealt with 7 315 (5 817) cases:

- 224 (241) judgments delivered
- 223 (245) applications declared admissible
- 6 255 (5 038) applications declared inadmissible
- 177 applications struck off the list
- 436 (293) applications communicated to governments (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 a selection of chamber judgments are presented. Exhaustive information can be found in Court's press releases and monthly case law information notes, published on its web site, and, for more targeted researches, in the Hudoc database of the case law of the Convention:

<http://www.echr.coe.int/>

<http://hudoc.echr.coe.int/>

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

Judgments of the Grand Chamber

Cooper v. United Kingdom and Grievs v. United Kingdom Judgments of 16 December 2003

Alleged violations of: Article 6 § 1 (right to a fair hearing and to an independent and impartial tribunal)

Principal facts and complaints

The two cases concerned whether trial by court martial in the United Kingdom – under the system in place since the coming into force of the 1996 Armed Forces Act – was compatible with Article 6 § 1 of the Convention.

– At the relevant time, Graham Cooper was a serving member of the Royal Air Force (RAF). On 18 February 1998 he was convicted of theft by an Air Force district court martial (DCM). He was sentenced to 56 days'

imprisonment, to be reduced to the ranks and dismissed from the service. The DCM comprised a permanent president, two other officers lower in rank and a judge advocate. The permanent president was on his last posting prior to retirement and had ceased to be the subject of appraisal reports from August 1997. The two ordinary members had attended a course in 1993 which included training in disciplinary procedures. On 3 April 1998 the Reviewing Authority, having received advice from the Judge Advocate General, upheld the DCM's finding and sentence. The applicant appealed unsuccessfully to the Courts Martial Appeal Court (CMAC).

– Mark A. Grievs, at the relevant time, was a serving member of the Royal Navy. On 18 June 1998 he was convicted by a Royal Navy Court Martial of unlawfully and maliciously wounding with intent to do grievous bodily harm. He was sentenced to three years' imprisonment, reduced in rank, dismissed from the service and ordered to pay 700 pounds sterling in compensation. The court martial comprised a president (a Royal Navy captain), four naval officers and a judge advocate, who was a serving naval officer and barrister working as the naval legal advisor to FLEET (the command responsible for the organisation and deployment of all ships at sea). On 29 September 1998 the Admiralty Board, having received advice from the Judge Advocate of the Fleet (JAF), upheld the court martial's finding and sentence. The applicant appealed unsuccessfully to the CMAC.

Both applicants complained that they were denied a fair and public hearing by an independent and impartial tribunal established by law.

Decision of the Court

Admissibility

The Court considered that, given the nature of the charges against the applicants, together with the nature and severity of the penalty imposed, the court martial proceedings constituted the determination of a criminal charge against the applicants. Finding that the applicants' complaints raised questions of law which were sufficiently serious that their determination should depend on an examination of the merits, the Court declared the complaints admissible.

Merits

– In the *Cooper* case, the Court rejected the applicant's general submission that service tribunals could not, by definition, try criminal charges against service personnel consistently with the independence and impartiality requirements of Article 6 § 1.

It Court also rejected his complaint that his own court martial lacked independence and impartiality. His submissions did not cast any doubt on the genuineness of the separation of the prosecuting, convening and adjudicating roles in the court martial process or the independence of the decision-making bodies from chain of command, rank or other service influence.

The Court stated that there was no ground upon which to question the independence of the Air Force judge advocate since he was a civilian appointed by the Lord Chancellor (a civilian) and he was appointed to a court martial by the Judge Advocate General (also a civilian). It was also found that the presence of a civilian with such qualifications and such a central role in court martial proceedings constituted one of the most significant guarantees of the independence of those proceedings. Furthermore the Permanent President of Courts Martial (PPCM) appointed to the court martial in the case was independent and made an important contribution to the independence of an otherwise ad hoc tribunal. Turning then to the ordinary members, the Court found that their ad hoc appointment and relatively junior rank did not in themselves undermine their independence, as there were safeguards against outside pressure being brought to bear on them, namely the presence of the PPCM and the judge advocate, the prohibition of reporting on members' judicial decision-making and the briefing notes distributed to the members.

The Court noted that the Reviewing Authority was an anomalous feature of the present court martial system and expressed its concern about a criminal procedure which empowered a non-judicial authority to interfere with judicial findings. However, the Court found that the role of the Reviewing Authority did not undermine the independence of the court martial, because the final decision in the proceedings would always lie with a judicial body, the CMAC.

Accordingly, it concluded that the court martial proceedings could not be said to have been unfair and that there had not, therefore, been a violation of Article 6 § 1.

– In the *Grievs* case, the Court noted that Royal Navy courts martial differed in certain important respects from the Air Force system.

In contrast to the other services, the naval prosecuting authority could appoint a prosecutor for a court martial from a list of uniformed naval barristers outside his own staff. However, the prosecutor in the applicant's case came from the staff of the prosecuting authority, as in the *Cooper* case. The Naval Court Administration Officer was a civilian, not a serving officer as the Air Force Court Administration Officer. The in-

volvement of a civilian in a service court martial process plainly contributed to its independence and impartiality.

It was significant that the post of PPCM did not exist in the naval system; the president of a Royal Navy court martial being appointed for each court martial as it was convened. The Court considered that the absence of a full-time PPCM, with no hope of promotion and no effective fear of removal and who was not subject to report on his judicial decision-making, deprived Royal Navy courts martial of an important contribution to the independence of an otherwise ad hoc tribunal.

Most importantly, the Court noted that, although Royal Navy judge advocates fulfilled the same pivotal role in courts martial as their Air Force equivalents, they were serving naval officers, who, when not sitting in a court martial, carried out regular naval duties. The Air Force judge advocate was a civilian working full-time for the Judge Advocate General, himself a civilian. In addition, Royal Navy judge advocates were appointed by a naval officer, the Chief Naval Judge Advocate.

The Court noted with some concern certain reporting practices regarding Royal Navy judge advocates which applied at the relevant time. For example, the JAF's report on a judge advocate's judicial performance could be forwarded to the judge advocate's service reporting officer. The Court considered that, even if the judge advocate appointed to the applicant's court martial could be seen as independent despite these reporting practices, the position of naval judge advocates could not be considered a strong guarantee of the independence of a Royal Navy court martial. Accordingly, the lack of a civilian in the pivotal role of judge advocate deprived a Royal Navy court martial of one of the most significant guarantees of independence enjoyed by other services' courts martial.

The Court further considered the briefing notes sent to members of Royal Navy courts martial to be substantially less detailed and significantly less clear than the RAF briefing notes. They were consequently less effective in safeguarding the independence of the ordinary members of courts martial from inappropriate outside influence.

The Court accordingly found that the distinctions between the Air Force court martial system assessed in the Cooper case and the Royal Navy court martial system at issue in the *Grievs* case were such that Mr Grievs's misgivings about the independence and impartiality of his court martial, convened under the 1996 Act, could be considered to be objectively justified. His court martial proceedings were consequently unfair and there had, therefore, been a violation of Article 6 § 1.

It awarded the applicant a certain sum for costs and expenses.

Perez v. France

Judgment of 12 February 2004

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

Principal facts and complaints

In July 1995 the applicant went to her local gendarmerie to file a complaint against her children for assault. She alleged that following a dispute between them, and while she was in a motorcar driven by her daughter, her son had used a syringe to give her two injections. Soon afterwards injection marks were found on the applicant's body, and the gendarmes later discovered a syringe containing traces of Valium. A judicial investigation was opened on the grounds of assault with an offensive weapon. During the investigation, the applicant joined the proceedings as a civil party. On 14 March 1997 the investigating judge decided that there was no case to answer on the basis that there was insufficient evidence that anyone had committed an offence. The applicant's appeal against that decision was dismissed on the ground that she had missed the legal deadline. Her appeal on points of law was also dismissed by the Indictment Division on 21 April 1998.

The applicant alleged, in particular, that at the end of the investigation during which she was joined as a civil party, the procedure before the Court of Cassation had not been fair.

Decision of the Court

Government's preliminary objection

The French Government submitted that Article 6 § 1 was not applicable, because the applicant had failed to make a claim during the proceedings for compensation for the damage directly caused by the offence. For the applicant, it was imperative for Article 6 to apply as soon as the civil party joined the proceedings, whether the case was pending or concluded.

The Court recalled its case-law on the applicability of Article 6 § 1 to civil-party proceedings. In the light of the drawbacks of that case-law, it wished to end the uncertainty surrounding the applicability of Article 6 § 1 to civil-party proceedings, particularly since a number of other High Contracting Parties to the Convention had similar systems.

The Court considered that a new approach should be adopted, based on a restrictive interpretation of derogations from the safeguards embodied in Article 6 § 1, and, after examining the relevant French legislation, held that a criminal complaint accompanied by an application to join the proceedings as a civil party came within the scope of Article 6 § 1 of the Convention, except in certain specific cases ("private revenge" and *actio popularis*; the right to have third parties prosecuted or sentenced for a criminal offence could not be asserted independently: it had to be indissociable from the victim's exercise of the right under

domestic law to bring proceedings which were civil by their nature, even if only to secure symbolic reparation or to protect a civil right). That approach was consistent with the need to safeguard victims' rights and their proper place in criminal proceedings.

The Court found that the applicant had lodged a civil-party complaint during the criminal investigation, exercised her right to claim reparation for the damage caused by the offence of which she was allegedly the victim, and had not waived that right. The proceedings therefore came within the scope of Article 6 § 1 of the Convention, and the Court dismissed the Government's preliminary objection.

Article 6 § 1

The Court considered that the court of Cassation could not be criticised on purely formal grounds for neglecting to mention all the domestic legislative provisions the applicant had invoked, noting moreover that some of them were plainly inapplicable. It also found that the Court of Cassation had taken due account of and effectively addressed all of the applicant's grounds of appeal. The Court therefore held unanimously that there had been no violation of Article 6 § 1.

Gorzelik and Others v. Poland

Judgment of 17 February 2004

Alleged violation of: Article 11 (freedom of association)

Principal facts and complaints

The applicants complained that the Polish authorities had arbitrarily refused to register their association on the ground that both the intended name – "Union of People of Silesian Nationality" – and certain provisions of the union's memorandum of association – which characterised Silesians as a "national minority" – suggested that their real intention was to circumvent the provisions of the electoral law and gain unqualified and legally enforceable privileges conferring particular rights on national minorities. They further added that the absence of any legal definition of a national minority in Poland, or any procedure whereby such a minority could obtain recognition under domestic law, made it impossible for them to foresee what criteria they were required to fulfil to have their association registered.

In a Chamber judgment of 20 December 2001, the Court found that there had been no breach of Article 11. It held that the refusal to register the applicants' association, which had been prompted by the need to protect the State electoral system against the applicants' potential attempt to claim unwarranted privileges under electoral law, had been justified. The applicants requested that the case be referred to the Grand Chamber.



Decision of the Court

Article 11

The Grand Chamber agreed with the Chamber that refusing to register the association as an “organisation of the Silesian national minority” interfered with the applicants’ right to freedom of association and that the interference was justified.

Interference “prescribed by law”

With regard to the applicants’ argument that Polish law did not provide any definition of a “national minority”, the Court reiterated that a definition would be very difficult to formulate. In particular, the notion was not defined in any international treaty. Likewise, practice regarding official recognition by States of national, ethnic or other minorities within their population varied from country to country or even within countries. While it appeared to be a commonly-shared European view that national minorities should be respected, international law did not require States to adopt a particular definition of “national minority” in their legislation or to introduce a procedure for the official recognition of minority groups. The Court considered that the lack of an express definition of the concept of a “national minority” in Polish legislation did not therefore mean that Poland was in breach of its duty to frame law in sufficiently precise terms. The Court also recognised that, in the area under consideration, it might be difficult to frame laws with a high degree of precision. It might even be undesirable to formulate rigid rules.

It was both inevitable and consistent for the national courts to be left with the task of interpreting the notion of a “national minority”, as distinguished from an “ethnic minority” within the meaning of the Constitution, and assessing whether the applicants’ association qualified as an “organisation of a national minority”. The Supreme Court and the Court of Appeal took into consideration all the statutory provisions applicable to associations and national minorities as well as social and other legal factors, including all the legal consequences that registering the applicants’ association in the form they proposed might have entailed.

The Court was therefore satisfied that the Polish law to be applied in the case was formulated with sufficient precision to enable the applicants to regulate their conduct.

Pursuing “a legitimate aim”

The domestic courts expressly invoked the need to protect domestic law and the rights of other ethnic groups against an anticipated attempt by the applicants’ association to circumvent the provisions of the 1993 Elections Act or other statutes conferring particular rights on national minorities. Against that background, the Grand Chamber considered that the applicants had not put forward any arguments that would warrant a departure from the Chamber’s finding that

the interference in question was intended to prevent disorder and to protect the rights of others. Indeed, it could be said that, as the measure purported to prevent a possible abuse of electoral law by the association itself or by other organisations in a similar situation, it served to protect Poland’s democratic institutions and procedures.

In response to a “pressing social need”

The Court accepted that the national authorities, and in particular the national courts, did not overstep their margin of appreciation in considering that there was a pressing social need, at the moment of registration, to regulate the free choice of associations to call themselves an “organisation of a national minority”, in order to protect the existing democratic institutions and election procedures in Poland and to prevent disorder and to protect the rights of others.

The refusal to register the association was not a comprehensive, unconditional one, directed against the cultural and practical objectives that the association wished to pursue, but was based solely on the mention, in the memorandum of association, of a specific name for the association. It was designed to counteract a particular, albeit only potential, abuse by the association of its status. It by no means amounted to a denial of the distinctive ethnic and cultural identity of Silesians or to disregard for the association’s primary aim, which was to “awaken and strengthen the national consciousness of Silesians”. On the contrary, in all their decisions, the authorities consistently recognised the existence of a Silesian ethnic minority and their right to associate with one another to pursue common objectives. All the various cultural and other activities that the association and its members wished to undertake could have been carried out had the association been willing to abandon its insistence on retaining the name set out in paragraph 30 of its memorandum of association.

The Grand Chamber could hardly perceive any practical purpose for this paragraph in relation to the association’s proposed activities other than to prepare the ground for enabling the association and its members to benefit from the electoral privileges accorded by section 5(1) of the 1993 Elections Act to “registered organisations of national minorities”. The disputed restriction on the establishment of the association was essentially concerned with the label which the association could use in law – with whether it could call itself a “national minority” – rather than with its ability “to act collectively in a field of mutual interest”. As such, it did not go to the core or essence of freedom of association.

Consequently the interference in question could not be considered disproportionate to the aims pursued.

The Court concluded, therefore, that it was not the applicants’ freedom of association per se that was restricted by the State.

The authorities did not prevent them from forming an association to express and promote distinctive features of a minority but from creating a legal entity which, through registration under the Law on Associations and the description it gave itself in paragraph 30 of its memorandum of association, would inevitably become entitled to a special status under the 1993 Elections Act. Given that the national authorities were entitled to consider that the contested interference met a “pressing social need” and given that the interference was not disproportionate to the legitimate aims pursued, the refusal to register the applicants’ association could be regarded as having been “necessary in a democratic society”. There had, therefore, been no violation of Article 11.

Maestri v. Italy

Judgment of 17 February 2004

Alleged violation of: Article 11 (freedom of assembly and association)

Principal facts and complaints

In November 1993 disciplinary proceedings were brought against the applicant, a judge, under Article 18 of the Royal Legislative Decree of 31 May 1946, for having been a member of a Masonic lodge affiliated to the *Grande Oriente d’Italia di Palazzo Giustiniani* from 1981 until March 1993. In a decision of 10 October 1995 the disciplinary section of the National Council of the Judiciary found that the applicant had committed the offence of which he was accused and gave him a reprimand. The disciplinary section stated that it was contrary to disciplinary rules for a judge to be a Freemason, on account of the incompatibility between the Masonic and judicial oaths, the hierarchical relationship between Freemasons, the rejection of State justice in favour of Masonic justice and the indissoluble nature of the bond between Freemasons. It also referred to the directives issued by the National Council of the Judiciary in March 1990 and July 1993 which highlighted the conflict between membership of the Freemasons and membership of the judiciary.

The applicant appealed on points of law to the Court of Cassation, which dismissed the appeal on 20 December 1996.

The applicant alleged that the imposition of a sanction on him for being a Freemason amounted to a violation of Articles 9 (right to freedom of thought, conscience and religion), 10 (freedom of expression) and 11 (freedom of assembly and association) of the Convention.

Decision of the Court

The Court considered that the applicant’s complaints fell more particularly within the scope of Article 11 of the Convention. Accordingly, it would consider the complaints submitted to it under that provision alone.

The Court considered that there had been interference with the applicant’s right to freedom of association as guaranteed by Article 11. Regarding whether the interfer-

ence had been prescribed by law, the Court reiterated that the measure in question had to have had a basis in domestic law and to have been accessible and foreseeable.

In that connection the Court observed that Article 18 of the 1946 decree, construed in the light of Law no. 17 of 1982 on the right of association and the 1990 directive, had been the legal provision used as the basis for the sanction imposed on the applicant. Accordingly, the disciplinary measure had had a basis in Italian law.

With regard to the quality of the law, the Court noted at the outset that Article 18 of the 1946 decree was accessible in that it was public and the applicant, on account of his profession, could easily have learned of it. Secondly, as regards whether the law had been foreseeable, namely whether Italian law had laid down with sufficient precision the conditions in which a judge should refrain from joining the Freemasons, the Court observed that Article 18 did not define whether and how a judge could exercise his or her freedom of association.

The Court considered that, in the applicant's case, a distinction had to be made between two periods: the period prior to the adoption by the National Council of the Judiciary of its first directive on 22 March 1990, and the subsequent period. That directive stated that a judge's membership of lawful associations which, like the Freemasons, were governed by specific rules of conduct could be problematical for him or her. Regarding the period from 1981 to March 1990, the Court considered that Article 18 did not satisfy the condition of foreseeability and that, even after Italy had passed a law in 1982 on the right of association, the applicant could not have foreseen that a judge's membership of a Masonic lodge could give rise to a disciplinary issue. The same was true of the period from the adoption of the directive in March 1990 until March 1993. Although the directive in question had been issued in the context of an examination of the question of judges' membership of the Freemasons the debate before the National Council of the Judiciary had sought to formulate, rather than solve, a problem. The directive, which had been adopted after the major debate in Italy on the unlawfulness of the secret P2 lodge, had merely stated that members of the judiciary were prohibited by law from joining proscribed associations. Accordingly, the Court held that the wording of the directive had not been sufficiently clear to enable the applicant, despite being a judge, to realise that his membership of a Masonic lodge could lead to sanctions being imposed on him. That being so, the Court concluded that the condition of foreseeability had not been satisfied either. The Court's assessment was confirmed by the fact that the National Council of the Judiciary had itself felt the need to come back to the issue in July 1993 and state in clear terms that the exercise of judicial functions was incompatible with membership of the Freemasons.

Accordingly, the interference had not been prescribed by law. There had therefore been a violation of Article 11 of the Convention.

The Court awarded the applicant 10,000 euros for non-pecuniary damage and a certain sum for costs and expenses.

Selected chamber judgments of the Court

Napijalo v. Croatia

Judgment of 13 November 2003

Alleged violation of: Article 6 § 1 (right to a hearing within a reasonable time) and Article 2 of Protocol No. 4 (freedom of movement)

Principal facts and complaints

The applicant, a Croatian national, was fined by the customs authorities at a border checkpoint for failing to declare goods on entering Croatia. He maintains that a customs officer confiscated his passport because he was unable to pay the fine immediately. According to the Croatian Government, the applicant refused to pay the fine refused to pay the fine and drove away demonstratively, leaving his passport behind. Shortly afterwards, the applicant wrote to the customs authorities requesting the return of his passport. He received a reply in which the authorities stated that his passport had been seized in accordance with the law. On 2 March 1999 the applicant brought a civil action in the Zagreb Municipal Court against the Ministry of Finance, seeking the return of his passport and an award of damages on account of his resultant inability to leave Croatia. He also applied for an interim measure to ensure the immediate return of his passport. His action was dismissed on 10 September 2002. Alongside those proceedings, the applicant applied to the Zagreb County Court but was again unsuccessful. In the meantime, his passport was returned to him on 4 April 2001.

The applicant complained of the length of the civil proceedings for the recovery of his passport. He also maintained that the confiscation of his passport had resulted in an infringement of his freedom of movement as guaranteed by Article 2 of Protocol No. 4.

Decision of the Court

Article 6 § 1

The Court noted that the proceedings brought by the applicant had lasted three years, six months and eight days and considered that their length did not comply with the "reasonable time" requirement in Article 6 § 1 of the Convention. It accordingly held unanimously that there had been a violation of Article 6 § 1.

Article 2 of Protocol No. 4

The Court observed that the customs authorities had stated in their letter to the applicant that the seizure of his passport had been in accordance with the law. In doing so, they had admitted having seized the passport, and the Croatian Government's assertion that no seizure had taken place had to be rejected.

The customs authorities, which had been in possession of the applicant's passport, had not returned it to him but had sent it to the Slunj Police Department, which had subsequently forwarded it to the Zagreb Police Department, where it had remained for two years before being sent to the Karlovac Police Department. The reasons for not returning the passport to the applicant were unclear, as no proceedings had been instituted against him for any customs offence.

As he had been denied the use of his identification document, the applicant had been unable to leave the country. The restrictions thus imposed on his freedom of movement had amounted to interference with the right afforded to him by Article 2 of Protocol No. 4. The Court could not find any justification for the customs authorities' refusal to return the applicant's passport or for the Zagreb Municipal Court's refusal of his application for an interim measure, both of which decisions had prolonged the seizure of his passport and the interference with his right to freedom of movement. The interference had not proportionate to the aims pursued and had not been a measure "necessary in a democratic society". The Court accordingly held unanimously that there had been a violation of Article 2 of Protocol No. 4.

The Court awarded the applicant 2,000 euros for non-pecuniary damage.

Scharsach and News Verlagsgesellschaft mbH v. Austria

Judgment of 13 November 2003

Alleged violation of: Article 10 (right to freedom of expression)

Principal facts and complaints

The applicants were H.-H. Scharsach, an Austrian journalist who was born in 1943 and lives in Vienna, and the News Verlagsgesellschaft mbH company, the owner and publisher of the weekly newspaper News.

In 1995 News published an article entitled "Brown instead of black and red?" in which Mr Scharsach explained why he was opposed to the possibility of a government coalition including the Austrian Freedom Party (FPÖ), led by Jörg Haider. The article criticised members of the FPÖ who had not been able to dissociate themselves from the extreme right, stated that "old closet Nazis" (Kellernazi) who had left the party in the 1980s had returned under Haider and went on to mention a number of persons by name, including a Mrs Rosenkrantz. At the



material time Mrs Rosenkrantz, a politician, was a member of the Lower Austria Regional Parliament (Landtag) and deputy chair of the Lower Austria regional branch of the FPÖ. She became in the meantime a member of the Austrian Parliament and chair of the Lower Austria regional branch of the FPÖ. Her husband is a well-known right-wing politician and publisher of the newspaper *Fakten*, which is considered to be on the extreme right.

Mrs Rosenkrantz brought criminal proceedings for defamation against Mr Scharsach and an action for damages against News Verlagsgesellschaft mbH. On 21 June 1998 the St Pölten Regional Court found Mr Scharsach guilty of defamation and ordered him to pay a fine of 60,000 schillings. Under the Media Act, News Verlagsgesellschaft mbH was ordered to pay the complainant ATS 30,000. The Regional Court found that the article insinuated that Mrs Rosenkrantz was engaged in clandestine neo-Nazi activities but had not proved that that was the case. The applicants appealed unsuccessfully.

The applicants complained that the judgment against them had infringed their right to freedom of expression, guaranteed by Article 10 of the European Convention on Human Rights.

Decision of the Court

The European Court of Human Rights noted that the judgment against the applicants amounted to interference with their right to freedom of expression. The interference had been prescribed by law and pursued a legitimate aim, namely protection of the reputation or rights of others.

Noting that the offending article had been written in a political context and had targeted a politician, the Court observed that the limits of acceptable criticism were wider for a politician than for a private individual. It considered that the Austrian courts had failed to take sufficient account of the article's political context when assessing the meaning of the offending terms. The article in question had criticised the complainant, together with other FPÖ politicians, for their failure to dissociate themselves from the extreme right, i.e. to take a stand against extreme-right positions. The term "closet Nazi" used in the article was to be understood in its context, in the sense given to it by the FPÖ politician who had first coined it, as a description of a person who had an ambiguous relation to National Socialist ideas. Contrary to the Austrian courts, the Court considered that the term "closet Nazi" was not to be regarded as a statement of fact but as a value judgment on an important subject of public interest. While it was true that it had not been established that Mrs Rosenkrantz herself was a neo-Nazi, she was the wife of a politician who edited an extreme-right newspaper. As a politician she had never publicly dissociated herself from her husband's political views and had publicly criticised the Prohibition Act, which banned National Socialist activities.

Considering that Mrs Rosenkrantz was a politician, and having regard to the role of journalists and the press in imparting information and ideas on matters of public interest, even those that may offend, shock or disturb, the Court considered that the use of the term "closet Nazi" did not exceed what might be considered fair comment. That being so, the interference with the applicants' rights had been disproportionate to the aim pursued and was not "necessary in a democratic society". The Court accordingly concluded, by 6 votes to 1, that there had been a violation of Article 10. It held unanimously that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant company, but awarded Mr Scharsach 5,000 euros for non-pecuniary damage. It awarded the two applicants 12,646.83 euros for pecuniary damage and a sum for costs and expenses.

Shamsa v. Poland

Judgment of 27 November 2003

Alleged violations of: Article 5 § 1 (right to liberty and security)

Principal facts and complaints

In May 1997 the applicants were arrested in Warsaw without valid identity papers or residence permits. On 28 May 1997 an order was made for their deportation, to be enforced within 90 days at the most, and they were taken into custody pending execution of the order. From 24 August 1997, the last day of the period fixed by law for their expulsion, the authorities made three attempts to deport the applicants, first via Prague and later via Cairo and Tunis. These attempts were unsuccessful, mainly because the applicants refused to leave willingly. On their return from Prague on 25 August 1997 the applicants were deemed persons whose presence in Polish territory was undesirable. Between the attempts to deport them they were detained by the border police at Warsaw Airport, where they remained until 3 October 1997, on which date they left the hospital where they had been taken without any police move to prevent them. The applicants lodged a complaint concerning their detention between 25 August and 3 October 1997, but the related proceedings were discontinued.

The applicants submitted that they had been unlawfully detained at Warsaw Airport by the border police, in breach of Article 5 § 1 of the Convention.

Decision of the Court

While they were being held in the transit zone the applicants, who were constantly under the surveillance of the border police, did not have freedom of movement and had to remain at the disposal of the authorities. Consequently, their detention in the transit zone had amounted to a deprivation of liberty.

Polish law required a deportation order to be enforced within 90 days, failing which the person concerned had to be released. In

the present case the applicants should have been released on 25 August 1997. However, the authorities had continued to try to enforce the deportation order without any legal basis even though the statutory time-limit had expired. The Court noted that there was no domestic decision or provision which laid down the conditions for such detention. Accordingly, Polish legislation did not fulfil the requirement of "foreseeability" for the purposes of Article 5 § 1.

Moreover, detaining someone in the transit zone for an indefinite and unforeseeable period without any basis in the form of a specific legal provision or valid judicial decision was in itself contrary to the principle of legal certainty, which was implicit in the Convention and was one of the fundamental elements of the rule of law. The Court also pointed out that detention for several days which has not been ordered by a court or judge or any other person authorised to exercise judicial power cannot be regarded as "lawful" within the meaning of Article 5 § 1 of the Convention.

Considering that the detention was neither in accordance with a procedure prescribed by law nor lawful, the Court held unanimously that there had been a violation of Article 5 § 1. It awarded each applicant EUR 4,000 for non-pecuniary damage and both of them jointly EUR 3,000 for costs and expenses.

Henaf v. France

Judgment of 27 November 2003

Alleged violation of: Article 3 (prohibition of inhuman or degrading treatment)

Principal facts and complaints

The applicant had been convicted of various offences. In particular, he was sentenced to ten years' imprisonment for armed robbery. He was also sentenced to six months' imprisonment in 1998 for failing to return to prison after a period of leave; the experts who examined him on that occasion attributed his conduct to a psychological disorder that had impaired his powers of judgment, especially in view of his advanced age. On 7 November 2000 the applicant was transferred to hospital to undergo an operation the following day. The prison governor had given instructions on the conditions in which the applicant was to be taken to hospital, requesting the presence of police officers to escort and watch over him throughout his time there, keeping him under a normal level of supervision left to the discretion of the officer in charge of the escort. The applicant was handcuffed while being taken to hospital and remained handcuffed for the rest of the day. The night before the operation, he was chained by the ankle to a bedpost. In these conditions, he refused to be operated on and returned to prison. He lodged a criminal complaint against the police officers who had escorted him, alleging serious ill-treatment, assault and torture. In May 2001 his complaint was declared inad-

missible because a sum to cover costs had not been paid into court.

After serving his sentence, the applicant was released on 1 October 2001. He has subsequently been imprisoned in connection with other proceedings.

The applicant complained, on account of his age and state of health, about the conditions of his stay in hospital and maintained that he had been subjected to treatment contrary to Article 3 of the Convention.

Decision of the Court

As regards the danger posed by the applicant, the Court noted that he had several previous convictions but that there had not been any explicit reference to acts of violence. Admittedly, in 1998 he had not returned to prison after a period of leave, but that event, which, according to the experts, had resulted from a "psychological disorder", had been non-violent and isolated.

In the Court's opinion, it had not been established that the applicant posed a danger at the material time. That was sufficiently clear from the prison governor's instructions recommending a normal and not a reinforced level of supervision while the applicant was being transferred to hospital and during his time there. In any event, the degree of danger he allegedly posed could not justify attaching him to his hospital bed the night before his operation.

Having regard to the applicant's age, his state of health, the absence of any previous conduct giving serious grounds to fear that he represented a security risk, the prison governor's written instructions recommending a normal and not a reinforced level of supervision and the fact that he had been taken to hospital the day before he had been due to undergo an operation, the Court considered that the restrictions on his movement had been disproportionate to the security requirements, particularly as two police officers had been specially placed on guard outside his room.

The Court considered it helpful to observe that in its report to the French Government following its visit in May 2000, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had recommended, among other things, that the practice of attaching prisoners to their hospital beds for security reasons be outlawed.

In those circumstances, the national authorities' treatment of the applicant had not been compatible with Article 3 of the Convention.

Müslüm Gündüz v. Turkey **Judgment of 4 December 2003**

Alleged violation of: Article 10 (freedom of expression)

Principal facts and complaints

Criminal proceedings were instituted against the applicant following his appearance, in his capacity as a leader of Tarikat Aczmeni (a community that describes itself

as an Islamic sect), on a television programme. The programme, which was broadcast live on 12 June 1995, lasted approximately four hours.

On 1 April 1996 a state security court found him guilty of inciting the people to hatred and hostility on the basis of a distinction founded on religion and sentenced him to two years' imprisonment and a fine. It found in particular that he had described contemporary secular institutions as "impious" (dinsiz), fiercely criticised secular and democratic principles and openly called for the introduction of the shariah.

The applicant complained that his criminal conviction had entailed a violation of Article 10 (freedom of expression) of the Convention.

Decision of the Court

The Court found that the applicant's conviction amounted to interference with his right to freedom of expression. The interference was prescribed by the Turkish Criminal Code and had legitimate aims: the prevention of disorder or crime, and the protection of morals and of the rights of others.

The Court observed, firstly, that the programme had been about a sect whose followers had come into the public eye. Mr Gündüz, whose ideas the public was already familiar with, was invited onto the programme to present the sect and its nonconformist views, including the notion that democratic values were incompatible with its conception of Islam. The topic was the subject of widespread debate in the Turkish media and concerned a problem of general interest.

In the Court's view, some of the comments for which the domestic courts had convicted the applicant did demonstrate an intransigent attitude towards and profound dissatisfaction with contemporary institutions in Turkey. However, they could not be regarded as a call to violence or as "hate speech" based on religious intolerance. Furthermore, in view of the context in which they had been made, the Court considered that, when weighing up the competing interests of freedom of expression and the protection of the rights of others to determine whether the interference was necessary for the purposes of Article 10 § 2 of the Convention, the domestic courts should have given greater weight to the fact that the applicant was actively engaged in a lively public debate. Lastly, there could be no doubt that expressions that sought to propagate, incite or justify hatred based on intolerance, including religious intolerance, did not enjoy the protection of Article 10 of the Convention. However, in the Court's view, merely defending the shariah, without calling for the use of violence to establish it, could not be regarded as "hate speech". In view of the context, the Court found that it had not been convincingly established that the restriction was necessary.

Accordingly, notwithstanding the margin of appreciation accorded to the national authorities, the Court found that, for the purposes of Article 10, there were insufficient reasons to justify the interference with the applicant's right to freedom of expression. It held by six votes to one that there had been a violation of Article 10. It awarded the applicant EUR 5,000 for non-pecuniary damage.

M.C. v. Bulgaria

Judgment of 4 December 2003

Alleged violation of: Articles 3 (prohibition of degrading treatment) and 8 (right to respect for private life)

Principal facts and complaints

The applicant alleged that she was raped by two men, A. and P., aged 20 and 21, when she was 14 years old, the age of consent for sexual intercourse in Bulgaria. She claimed that it occurred when she went to a disco with the two men and a friend of hers. On the way back, A. suggested stopping at a reservoir for a swim. M.C. remained in the car. P. came back before the others, allegedly forcing M.C. to have sexual intercourse with him. M.C. maintained that she was left in a very disturbed state. In the early hours of the following morning, she was taken to a private home. She claimed that A. forced her to have sex with him at the house. She was later found by her mother and taken to hospital where a medical examination found that her hymen had been torn. A. and P. both denied raping M.C. The criminal investigations conducted found insufficient evidence that M.C. had been compelled to have sex with A. and P.. The proceedings were terminated by the District Prosecutor, who found that the use of force or threats had not been established beyond reasonable doubt. In particular, no resistance on the applicant's part or attempts to seek help from others had been established. The applicant appealed unsuccessfully.

Written expert opinions submitted to the European Court of Human Rights by M.C. identified "frozen fright" (traumatic psychological infantilism syndrome) as the most common response to rape, where the terrorised victim either submits passively to or dissociates her or himself psychologically from the rape.

M.C. complained that Bulgarian law and practice do not provide effective protection against rape and sexual abuse, as only cases where the victim resists actively are prosecuted. She submitted that Bulgaria has a positive obligation under the European Convention on Human Rights to protect the individual's physical integrity and private life and to provide an effective remedy. She also complained that the authorities had not effectively investigated the events in question. She relied on Article 3 (prohibition of degrading treatment), Article 8 (right to respect for private life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination).



Decision of the Court

Article 3 and 8

The Court reiterated that, under Articles 3 and 8 of the Convention, Member States had a positive obligation both to enact criminal legislation to effectively punish rape and to apply this legislation through effective investigation and prosecution.

The Court then observed that, historically, proof of the use of physical force by the perpetrator and physical resistance on the part of the victim was sometimes required under domestic law and practice in rape cases in a number of countries. However, it appeared that this was no longer required in European countries. In common-law jurisdictions, in Europe and elsewhere, any reference to physical force had been removed from legislation and/or case-law. Although in most European countries influenced by the continental legal tradition, the definition of rape contained references to the use of violence or threats of violence by the perpetrator, in case-law and legal theory, it was lack of consent, not force, that was critical in defining rape.

The Court also noted that the member States of the Council of Europe had agreed that penalising non-consensual sexual acts, whether or not the victim had resisted, was necessary for the effective protection of women against violence and had urged the implementation of further reforms in this area. In addition, the International Criminal Tribunal for the former Yugoslavia had recently found that, in international criminal law, any sexual penetration without the victim's consent constituted rape, reflecting a universal trend towards regarding lack of consent as the essential element of rape and sexual abuse. As Interights had submitted, victims of sexual abuse - in particular, girls below the age of majority - often failed to resist for a variety of psychological reasons or through fear of further violence from the perpetrator. In general, law and legal practice concerning rape were developing to reflect changing social attitudes requiring respect for the individual's sexual autonomy and for equality. Given contemporary standards and trends, Member States' positive obligation under Articles 3 and 8 of the Convention requires the penalisation and effective prosecution of any non-consensual sexual act, even where the victim had not resisted physically.

The applicant alleged that the authorities' attitude in her case was rooted in defective legislation and reflected a practice of prosecuting rape perpetrators only where there was evidence of significant physical resistance. In the absence of case-law explicitly dealing with the question, the Court considered it difficult to arrive at safe general conclusions on the issue. However, the Bulgarian Government were unable to provide copies of judgments or legal commentaries clearly disproving the applicant's allegations of a restrictive approach in the prosecution of rape. Her claim was there-

fore based on reasonable arguments which had not been disproved.

The presence of two irreconcilable versions of the facts obviously called for a context-sensitive assessment of the credibility of the statements made and for verification of all the surrounding circumstances. Little was done, however, to test the credibility of the version of events put forward by P. and A. - even the assertion that the applicant, aged 14, had started caressing A. minutes after having had sex for the first time in her life with another man - or to test the credibility of the witnesses called by the accused or the precise timing of the events. Neither were the applicant and her representative able to question witnesses, whom she had accused of perjury. The authorities had therefore failed to explore the available possibilities for establishing all the surrounding circumstances and did not assess sufficiently the credibility of the conflicting statements made.

The reason for that failure appeared to be that the investigator and prosecutor considered that a "date rape" had occurred, and, in the absence of "direct" proof of rape such as traces of violence and resistance or calls for help, that they could not infer proof of lack of consent and, therefore, of rape from an assessment of all the surrounding circumstances. While the prosecutors did not exclude the possibility that the applicant might not have consented, they adopted the view, in the absence of proof of resistance, that it could not be concluded that the perpetrators had understood that the applicant had not consented. They did not assess evidence that P. and A. had deliberately misled the applicant in order to take her to a deserted area, thus creating an environment of coercion, or judge the credibility of the versions of the facts proposed by the three men and witnesses called by them.

The Court considered that the Bulgarian authorities should have explored all the facts and should have decided on the basis of an assessment of all the surrounding circumstances. The investigation and its conclusions should also have been centred on the issue of non-consent. Without expressing an opinion on the guilt of P. and A., the Court found that the effectiveness of the investigation of the applicant's case and, in particular, the approach taken by the investigator and the prosecutors fell short of Bulgaria's positive obligations under Articles 3 and 8 of the Convention - viewed in the light of the relevant modern standards in comparative and international law - to establish and apply effectively a criminal-law system punishing all forms of rape and sexual abuse.

Article 13 and 14

The Court found that no separate issue arose under Article 13 and that it was not necessary to examine the complaint under article 14.

It awarded the applicant 8,000 euros for non-pecuniary damage and a certain sum for costs and expenses.

Palau-Martinez v. France

Judgment of 16 December 2003

Alleged violations of: Article 8 (right to respect for family life) read separately and taken together with Article 14 (prohibition of discrimination), 6 § 1 (right to a fair trial), and 9 (freedom of religion) read separately and taken together with Article 14

Principal facts and complaints

The applicant, a French national living in Spain, married in 1983. Two children were born of this marriage. In 1994 her husband left her and moved in with his mistress. Mrs Palau-Martinez petitioned for divorce. On 5 September 1996 the Nîmes tribunal de grande instance granted a divorce, attributing fault to the husband alone. The children would live with their mother in Spain and terms were fixed for access by, and residence with, their father. Mrs Palau-Martinez appealed. On 14 January 1998 the Court of Appeal upheld the divorce decree but ruled that the children should live with their father in France, granting the applicant access and residence rights. It noted that Mrs Palau-Martinez did not deny that she belonged to the Jehovah's Witnesses and observed that the rules they imposed as regards the upbringing of their members' children were "essentially objectionable on account of their harshness, their intolerance and the obligation for the children to engage in proselytism". The Court of Appeal considered that it was in the children's interest "to escape from the constraints and interdicts imposed by a religion structured as a sect". An appeal by the applicant on points of law was dismissed in July 2000.

The applicant submitted that the residence order providing that the children should live with their father had interfered in her private and family life within the meaning of Article 8 and was discriminatory for the purposes of Articles 8 and 14 taken together. She further complained of a discriminatory interference with her freedom of religion under Article 9, both taken separately and together with Article 14. In addition, she submitted that she had not had a fair hearing within the meaning of Article 6 § 1.

Decision of the Court

Article 8 taken together with Article 14

The Court noted at the outset that when the Court of Appeal ruled that the children should live with their father they had been living with their mother for nearly three and a half years. Consequently, its judgment had constituted an interference with the applicant's right to respect for her family life.

In deciding to change the residence arrangements for the children the Court of Appeal had expressed an opinion on the conditions in which each of the parents was

bringing them up. In order to do so it had taken into account information supplied by the parties, and it would appear that it had attached decisive importance to the applicant's religion, criticising severely the educational principles it was believed to impose. In doing so it had introduced between the parents a difference in treatment grounded on religion.

The Court reiterated that a difference in treatment is discriminatory unless it has "an objective and reasonable justification". In the present case, the difference in treatment thus introduced by the Court of Appeal had pursued a legitimate aim, namely protection of the children's interests. As to whether it was proportionate to that aim, the Court noted that in its judgment the Court of Appeal had made observations of a general nature about Jehovah's Witnesses. There was no practical, direct evidence that the applicant's religion had influenced the children's upbringing or daily life. Moreover, whereas the applicant had asked the court to commission a social report, a common practice where custody of children was concerned, the Court of Appeal had not thought it necessary to allow her application. Such a report would no doubt have provided some concrete information about the children's lives with each of their parents and made it possible to ascertain what impact, if any, their mother's practice of her religion had had on them. The Court of Appeal had ruled on the basis of general considerations without establishing a link between the children's living conditions with their mother and their real interests. Although relevant, that reasoning had not been sufficient.

The Court could accordingly not conclude that there had been a reasonably proportionate relationship between the means employed and the aim pursued.

Other Articles

The Court held that it was not necessary to rule on an alleged violation of Article 8 read alone, and that no separate issue arose under Article 6 § 1 (right to a fair trial) or Article 9 (freedom of religion) either taken separately or in conjunction with Article 14.

It awarded the applicant 10,000 euros for non-pecuniary damage and a certain sum for costs and expenses.

Haas v. Netherlands

Judgment of 13 January 2004

Alleged violations of: Articles 14 (prohibition of discrimination) and 8 taken together, and Article 13 (right to an effective remedy)

Principal facts and complaints

The applicant complained that as an unrecognised "illegitimate" child, he was not able to inherit from his father.

Decision of the Court

The Court observed that the applicant was essentially complaining about the refusal

of the courts to examine and recognise his claim to the estate of Mr P. over that of Mr K. In reality, the courts were faced with a question of evidence going to the issue of whether family-law ties between the applicant and the deceased should be recognised.

The case did not concern Article 8 of the Convention, whether seen in terms of "family life" or "private life". The applicant had never lived with Mr P. and any sporadic contact between them could not be construed as "family life." Neither had the applicant intended to have his claim to be Mr P.'s son accepted in order to provide him with the emotional security of knowing that he was part of a family or to enable him to create ties with Mr P.'s surviving family circle or to resolve any doubts he might have had about his own personal identity - he was convinced in his own mind that he was the unrecognised illegitimate son of Mr P.

The Court also noted that the applicant had the option of applying for a judicial declaration of paternity under Article 1:207 of the Civil Code.

It, therefore, held unanimously that Articles 8, 14 and 13 were not applicable.

Jahn and Others v. Germany

Judgment of 22 January 2004

Alleged violations of: Article 1 of Protocol No. 1 (protection of property) read separately and taken together with Article 14 (prohibition of discrimination)

Principal facts and complaints

The five applicants all inherited plots of land which had been allocated to their families - subject to certain restrictions regarding the transfer of title to the land - following the 1945 agrarian reform in the Soviet Occupied Zone of Germany. On 16 March 1990 the Modrow Law entered into force, in the German Democratic Republic, lifting the restrictions regarding the transfer of title and giving those concerned full ownership rights. After German reunification, however, certain individuals who had inherited land allocated following the agrarian reform, including the applicants, were required to transfer this land to the tax authorities of their local Länder without compensation, under the Federal Republic of Germany's second Pecuniary Rights Amendment Act of 14 July 1992. This law stipulated that those inheriting land acquired following the agrarian reform who had not worked in the agriculture, forestry or food-production sectors either on 15 March 1990 or during the previous 10 years, or been members of an agricultural cooperative in the GDR, transfer the land to the tax authorities.

The applicants complained that, in being required to reassign their property without compensation, they were deprived of their property, in violation of Article 1 of Protocol No. 1 to the Convention. They also complained, under Article 14, that the tax authorities' right to assignment of the land amounted to discrimination against them

compared to other owners of land distributed under the land reform.

Decision of the Court

Article 1 of Protocol No. 1

The Court found that the applicants were owners of the land in question. Whatever their position before the Modrow Law entered into force, they had legally acquired full ownership of the land under that law, which was passed by the GDR's parliament and became an integral part of German domestic law following the reunification of Germany. After reunification the applicants had all been registered as owners in the land register and had, initially, been able to dispose of their property as they wished. Ordering the applicants to reassign their property to the tax authorities therefore deprived them of their property within the meaning of Article 1 of Protocol No. 1.

The Court also recognised that this transfer of title had a legal basis and that it was in the public interest; in that it was a question of correcting the results - which the German authorities considered to be unjust - of the Modrow Law.

However, a fair balance had to be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The Court reiterated that the taking of property without paying compensation related to its value would normally constitute a disproportionate interference; a total lack of compensation could only be considered justifiable under Article 1 of Protocol No. 1 in exceptional circumstances.

The Court noted that the Modrow Law was passed by parliament in the GDR in 1990 in negotiations between the two German States during the period between the fall of the Berlin Wall and the implementation of German reunification. The aim of the law was to open up the GDR to a market economy, by lifting all the restrictions on land acquired under the land reform.

If the German legislature's intention was to correct the - in its opinion unjust - effects of the Modrow Law by passing a new law two years later, this did not pose a problem in itself. The problem was the content of the new law. In the Court's view, in order to comply with the principle of proportionality, the German legislature could not deprive the applicants of their property for the benefit of the State without making provision for them to be adequately compensated. However, the applicants did not receive any compensation.

The Court accepted that the second Property Rights Amendment Act did not only benefit the State, but also in some cases provided for the redistribution of land for the benefit of farmers and to the detriment of heirs to the land who had not themselves farmed it. However, the Court was required to deal only with the cases actually brought before it. The applicants, as



the heirs of owners of land that had been acquired under the land reform, had had to reassign their land to the tax authorities without any compensation whatsoever.

The Court concluded that, even if the circumstances surrounding German reunification had to be regarded as exceptional, the lack of any compensation for the State's taking of the applicants' property upset, to the applicants' detriment, the fair balance which had to be struck between the protection of property and the requirements of the general interest. There had therefore been a violation of Article 1 of Protocol No. 1.

Article 14 of the Convention

Noting its finding above, the Court did not find it necessary to examine the alleged violation of Article 14 taken together with Article 1 of Protocol No. 1.

Kyprianou v. Cyprus

Judgment of 27 January 2004

Alleged violations of: Article 6 §§ 1, 2, and 3a)
(right to a fair trial, right to be presumed innocent, right to be informed in detail of the nature and cause of the accusation)

Principal facts and complaints

The applicant, an advocate, was sentenced to five days' imprisonment and a fine after being found in contempt of court by an assize court before which he was appearing. He was conducting the cross-examination of a prosecution witness when he was interrupted by the court. He would, then, have showed disrespect to the court.

The applicant complained that he was not tried by an independent and impartial court, as it was the court that alleged him to be in contempt that had tried and punished him. He also complained of a violation of the right to be presumed innocent, and of the right to be informed in detail of the nature and cause of the accusation. Lastly, he complained of a breach of his right to freedom of expression

Decision of the Court

Article 6 § 1

The Court considered that the decisive feature of the case was that the judges on the court which convicted the applicant were the same judges before whom the contempt was allegedly committed. This in itself is enough to raise legitimate doubts, which are objectively justified, as to the impartiality of the court. The hostile climate which had raised between the applicant and the court hastened the latter to punish the applicant summarily, with immediate imprisonment, without availing themselves of other alternative, less drastic, measures.

There was no retrial of the case by the Supreme Court. As a court of appeal, the Supreme Court did not have full competence to deal *de novo* with the case, but could only review the first instance judgment for possible legal or manifest factual errors. The Court also noted that the ap-

peal did not have a suspensive effect on the judgment of the Assize Court.

In conclusion, the Court considered that there was a breach of the principle of impartiality.

Article 6 § 2

The Court noted that the Assize Court formed and expressed an opinion during its discussion with the applicant amounting to a conclusion that it considered him guilty of the criminal offence of contempt of court. The applicant was given little opportunity to defend himself against a charge which was to have grave consequences for his liberty. The Court reiterated its findings as regards the role of the Supreme Court and the non-rectification of the defects in the proceedings of the Assize Court on appeal.

It therefore found that there had been a violation of the principle of the presumption of innocence.

Article 6 3 a)

The Court observed that the applicant was informed about the nature and cause of the accusation against him by the Assize Court after this court had already formed its opinion that the applicant was guilty of the criminal offence of contempt of court. Furthermore, the material facts which influenced the court's decision, as expressed in the decision of the majority to impose on him the sentence of imprisonment, were not disclosed before that decision. This situation deprived the applicant of a full opportunity to defend himself against a charge which was to have grave consequences for his liberty. In these circumstances, the Court found that the Assize Court violated right to be informed in detail of the nature and cause of the accusation.

Article 10

The Court held that it was not necessary to examine the applicant's complaint under Article 10.

It awarded the applicant 15,000 euros for non-pecuniary damage and a certain sum for costs and expenses.

Gennadiy Naumenko v. Ukraine

Judgment of 10 February 2004

Alleged violations of: Articles 3 (prohibition of torture or inhuman or degrading treatment) and 13 (right to an effective remedy)

Principal facts and complaints

The applicant is serving a life sentence in Zhytomyr Prison. On 26 April 1996 the Kharkiv Regional Court convicted him of two counts of murder, one count of attempted murder and one count of rape, and sentenced him to death. The convictions were upheld by the Supreme Court in July 1996 and he was transferred to "death row" in Kharkiv Prison no. 313/203. In June 2000 the sentence was commuted to one of life imprisonment.

On his arrival at Kharkiv Prison in August 1995 the applicant had been examined by a psychiatrist, who did not find him to be suffering from any mental disorder. However, following the dismissal of his appeal to the Supreme Court, the applicant showed signs of disturbance and his medical file indicates that he was psychopathic, had suicidal tendencies and was prone to aggression. He was placed under the supervision of a psychiatrist and in 1996 and 1997 was put on medication in the form of neuroleptics and psychoactive drugs that were administered orally or by injection.

While in Kharkiv Prison the applicant made several attempts to commit suicide by hanging. He alleged, among other things, that he was subjected to radiation from a "psychoactive drugs generator" and complained of repeated beatings and of being handcuffed for days on end. Between May 1996 and September 2000 the applicant lodged more than 150 complaints with domestic and international bodies, in which he challenged the lawfulness of the judicial decisions in his case and alleged that he had been subjected to ill-treatment and torture, such as having been obliged to take medication, or having been given electric shocks.

In September 2002 Court delegates went to Ukraine on a fact-finding mission. They took evidence from the applicant and witnesses and visited Zhytomyr Prison (no. 8) where the applicant was being held.

The applicant alleged that he was subjected to treatment contravening Article 3 of the Convention, and that he had no remedy in domestic law to complain of the treatment.

Decision of the Court

The Court observed that it only had jurisdiction to examine complaints it had declared admissible and that related to events that had occurred after the Convention entered into force with respect to Ukraine and were not entirely new or different from those covered by its admissibility decision. Accordingly, it would confine its examination to the applicant's complaints under Articles 3 and 13 of the Convention for the period from 11 September 1997, when the Convention came into force with respect to Ukraine, until 14 July 2001, when the applicant was transferred from Kharkiv Prison to Zhytomyr Prison.

Article 3

Forced medical treatment

Referring to its case-law, the Court reiterated that domestic authorities were required to protect the health of prisoners. No matter how disagreeable, therapeutic treatment could not in principle be regarded as contravening Article 3 of the Convention if it was persuasively shown to be necessary.

From the evidence of the witnesses, the medical file and the applicant's own statements it was clear that the applicant was suffering from serious mental disorders

and had twice made attempts on his own life. He had been put on medication to relieve his symptoms. In that connection, the Court considered it highly regrettable that the applicant's medical file contained only general statements that made it impossible to determine whether he had consented to the treatment. However, it found that the applicant had not produced sufficient detailed and credible evidence to show that, even without his consent, the authorities had acted wrongfully in making him take the medication.

The Court saw no reason to question the description or dosage of the substances that were administered or to suspect that he had been given other substances. Nor was there anything to suggest that the treatment had caused the applicant to suffer from side effects. As regards the period of treatment, it emerged from the discrepancies between the applicant's statements and witnesses' evidence that it had ended in January 1998.

The Court did not, therefore, have sufficient evidence before it to establish beyond reasonable doubt that the applicant had been forced to take medication in a way that contravened Article 3 of the Convention.

Unreasonable use of handcuffs

The Court worked on the assumption that handcuffs were used as a means of restraining the applicant on two occasions: the first on 7 September 1997 and the second on 1 July 1998. It had no jurisdiction to hear the first allegation, as the Convention had not entered into force with respect to Ukraine by that date. As to the second, the Court found on the facts that the prison authorities had not restrained the applicant more than was necessary to calm him down and prevent him from using violence against himself or others, particularly as he had already made two suicide attempts. That measure could not, therefore, be termed "inhuman or degrading treatment". Likewise, in the light of all the circumstances surrounding the case, the Court accepted that forcing the applicant to wear handcuffs when not in his cell was justified in the interests of prison security. There was, therefore, no *prima facie* evidence of a violation of Article 3 of the Convention on this point.

The alleged beatings

The applicant alleged that he had been subjected to beatings on five occasions during his spell in Kharkiv Prison: on 4 March 1998, 22 January and 21 February 1999, and 5 April and 4 May 2001. However, there was no satisfactory evidence before the Court that the applicant had been subjected to blows that would constitute "inhuman or degrading treatment" within the meaning of Article 3.

Other treatment complained of by the applicant

The applicant complained that he had received electric shocks in his cell in mysterious circumstances. However, there was no evidence to support his allegations and the

Court found them unfounded. The same applied to the allegation that he had been subjected to radiation through a "psycho-active drug generator".

Article 13

The Court noted that under Ukrainian law it was the public prosecutor's responsibility to examine prisoners' complaints of ill-treatment or torture, to gather any necessary evidence and, if appropriate, visit the premises to interview the prisoner and prison staff. Various courses of action were open to the public prosecutor to ensure compliance with the State's positive obligations under Article 3 of the Convention and his or her decisions could be reviewed.

In the case before the Court, it appeared that the applicant had lodged more than 150 complaints between May 1996 and September 2000 with various national and international bodies. A large number of the complaints had been lodged with the regional public prosecutor's office. The applicant had met the public prosecutor several times and there was nothing to indicate that he had encountered any obstacles in making his complaints. The same applied to his written complaints, including those concerning his medical treatment which had led to an inquiry. The Court also noted that the applicant had received written replies to most of his complaints and had acknowledged that he had been able to see his lawyer at will.

There were even indications that, on being interviewed by the public prosecutor, the applicant had refused to provide him with details of the substance of his complaints. In that connection, the Court found that the applicant's complaint of the lack of an effective investigation was unsustainable in view of his failure to cooperate with the public prosecutor, added to which he could have sought a review of the latter's decisions. The domestic law afforded a remedy that was in principle effective, but the applicant had failed to use it. Consequently, there had been no violation of Article 13 of the Convention.

Deputies v. France

Judgment of 10 February 2004

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

Principal facts and complaints

The applicant, who was suspected of having sexually assaulted his stepdaughters, was placed under formal investigation in September 1994 for rape and aggravated sexual assault. He applied to be released during the judicial investigation but without success, and at the end of the investigation was committed by the Indictment Division to stand trial in the Gironde Assize Court. He appealed to the Court of Cassation against his committal for trial but his appeal was dismissed. In a judgment of 3 April 1998 the Assize Court found him guilty as charged and sentenced him to 19 years'

imprisonment and to temporary deprivation of his civic, civil and family rights. He lodged an appeal on points of law, which was dismissed on 9 June 1999 by the Criminal Division of the Court of Cassation, whose members included two of the judges who had examined his appeal against his committal for trial.

Relying on Article 6 § 1 (right to a fair hearing) of the Convention, the applicant complained that the Criminal Division had not been impartial as two of its members had previously examined appeals he had lodged at various stages of the proceedings.

Decision of the Court

The Court noted, firstly, that the public hearing it held in the case had been the first occasion on which the applicant had complained that the judges in question had also been sitting when the Criminal Division had heard his application for release. It considered that this new argument had been submitted out of time and could not be taken into consideration.

The Court noted that the applicant was not disputing the personal impartiality of the judges in question. However, it considered that the fact that two of the members of the Criminal Division had ruled on two previous appeals by the applicant could give rise to misgivings on his part as to that court's impartiality.

In assessing whether his misgivings were justified, the Court took into account the specific function and nature of the review undertaken by the Court of Cassation. The judges of that court who had already intervened twice in the proceedings had on both occasions ruled on the lawfulness and the reasoning of decisions by the courts below. However, the points in issue in the first appeal had concerned the lawfulness of the investigation, whereas those in the second appeal had concerned the lawfulness of the judgment. Accordingly, the judges had never had to assess the merits of the charge against the applicant and had been required to examine different points of law in each appeal, so that the issues before them had been different in the two appeals.

Although the applicant might have had doubts as to the impartiality of the Court of Cassation, the Court considered that because of the difference between the issues before the Criminal Division in the two appeals, he had not had any objective grounds for fearing that the court might be biased or prejudiced in ruling on his appeal against his conviction. The Court accordingly held unanimously that there had been no violation of Article 6 § 1 of the Convention.



Nachova and Others v. Bulgaria

Judgment of 26 February 2004

Alleged violations of: Article 2 (right to life), Article 14 (prohibition of discrimination) taken together with Article 2, and Article 13 (right to an effective remedy)

Principal facts and complaints

The case concerns the killing of the applicants' two relatives by a military policeman who was trying to arrest them.

Mr Angelov and Mr Petkov were both conscripts in a division of the army dealing with the construction of apartment blocks and other civilian projects. Early in 1996 they had been arrested for repeated absences without leave. On 22 May 1996 Mr Angelov was sentenced to nine-months' imprisonment and Mr Petkov to five-months' imprisonment. Both had previous convictions for theft.

On 15 July 1996 they escaped from a construction site where they were working and went to the home of Mr Angelov's grandmother in Lesura. On 19 July 1996 the commanding officer in the Vratsa Military-Police Unit, Colonel D., sent four military police officers, under the command of Major G., to arrest the two men. At least two of the officers knew one or both of the men. Colonel D. told the officers that "in accordance with the rules" they should carry their handguns and automatic rifles and wear bullet-proof vests. He informed them that Mr Angelov and Mr Petkov were "criminally active" – a euphemism used to describe people with previous convictions or those suspected of committing offences – and that they had escaped from detention. The officers were instructed to use all necessary means to arrest them. When the police arrived at Mr Angelov's grandmother's house, the two men, who were not armed, tried to escape. After warning them that he would shoot if they did not surrender, Major G. shot them down. They were taken to Vratsa Hospital, where they were pronounced dead on arrival. An eyewitness claimed that, because his grandson had been in the area where the shooting occurred, he had asked Major G. for permission to approach and remove him from danger. Major G. had pointed his gun at him, saying: "You damn Gypsies!".

A criminal investigation into the deaths was opened the same day. The autopsy report found that both men had died from chest wounds, fired from an automatic rifle from a distance, the direction of the shot having been from front to back, in the case of Mr Petkov, and from back to front, in the case of Mr Angelov. The investigation concluded that Major G. had followed Regulation 45 of the Military Police Regulations. He had warned the two men several times and fired shots in the air. He had shot them only because they had not surrendered, as there had been a danger they might escape, and he had tried to avoid inflicting fatal injuries. No one else had been hurt.

The applicants appealed unsuccessfully.

The applicants alleged that their relatives were deprived of their lives in violation of Article 2 (right to life) of the Convention, as a result of deficient law and practice which permitted the use of lethal force without absolute necessity. They also complained that the authorities had failed to conduct an effective investigation into the deaths. They further alleged that prejudice and hostile attitudes towards people of Roma origin had played a decisive role in the events leading up to the shootings and the fact that no meaningful investigation was carried out, relying on Article 14 (prohibition of discrimination) in conjunction with Article 2.

Decision of the Court

Article 2

Deprivation of life

The Court noted that: Mr Angelov and Mr Petkov were serving short sentences for non-violent offences, they had escaped without using violence, neither was armed, and, that they had no record of violence. Their behaviour must also have appeared predictable to the authorities, since, following a previous escape Mr Angelov had been found at the same address in Lesura. The evidence showed that the arresting officers were fully aware that Mr Angelov and Mr Petkov were not armed or dangerous. Nonetheless, Major G. fired at and fatally wounded them. The Court considered that the legitimate aim of effecting a lawful arrest could not justify putting human life at risk where the fugitive had committed a non-violent offence and did not pose a threat to anyone.

The use of potentially lethal firearms inevitably exposed human life to danger even when there were rules designed to minimise the risks. Accordingly, the Court considered that it could in no circumstances be absolutely necessary to use such firearms to arrest a person suspected of a non-violent offence who was known not to pose a threat, even where a failure to do so might result in the opportunity to arrest the fugitive being lost. It followed that the use of firearms in the case could not possibly have been "absolutely necessary" and was therefore prohibited by Article 2 of the Convention.

The Court also found that unnecessarily excessive force was used.

Regarding the planning and control of the arrest, the authorities had failed to comply with their obligation to minimise the risk of loss of life, as the nature of the offence and the fact that the two men did not pose a danger were not taken into account. Likewise, the circumstances in which recourse to firearms should be envisaged – if at all – were not discussed, apparently owing to deficient rules and lack of adequate training.

The Court therefore found that Bulgaria was responsible for deprivation of life, in violation of Article 2, because firearms were used to arrest two men suspected of

non-violent offences, who were unarmed and did not pose any threat to the arresting officers or others. The violation of Article 2 was aggravated by the fact that excessive firepower was used. Bulgaria was also responsible for the failure to plan and control the operation for the mens' arrest in a manner compatible with Article 2.

Effectiveness of the investigation

The Court noted that the Bulgarian authorities did not bring charges as they considered that the relevant regulations on the use of force had been complied with. The Court found that this conclusion was based on questionable findings which, even if accepted, could not be seen as grounds for concluding that the force used against the two men was "no more than absolutely necessary". The authorities should have concluded that the use of firearms was not justified on the basis that the men did not pose any threat to the arresting officers or third parties and had committed non-violent offences. It was also necessary to investigate the planning of the operation and its control, including the question whether the commanders had acted adequately so as to minimise the risk of loss of life. None of these issues were seen by the authorities as being relevant. The Court therefore considered that the investigation into the mens' deaths was flawed in that it did not apply a standard comparable to the "no more than absolutely necessary" standard required by Article 2 § 2.

Concerning the collection and assessment of the evidence, the Court noted that important initial steps, such as preserving evidence at the scene and taking all relevant measurements, were neglected. The sketch map relied upon by the authorities was also insufficiently detailed. The information that could have been obtained through a reconstruction of the events and detailed descriptions was crucial, in particular, in order to establish whether Major G. had committed a criminal offence. It was also highly significant that the investigator and the prosecutors failed to comment on a number of facts which appeared to contradict Major G.'s statements. Without any proper explanation, the authorities merely accepted Major G.'s statements. The Court therefore found that the investigation was characterised by a number of serious and unexplained omissions. It ended with decisions which contained inconsistencies and conclusions unsupported by a careful analysis of the facts.

The investigator and prosecutors at all levels ignored certain facts, failed to collect all the evidence that could have clarified the sequence of events and omitted reference in their decisions to troubling facts. As a result, the killing of Mr Angelov and Mr Petkov was labelled lawful on dubious grounds and the police officers involved and their superiors were cleared of potential charges and spared criticism despite there being obvious grounds for prosecuting at least one of them. The Court considered that such conduct on the part of the au-

thorities – which had already been remarked on by the Court in previous cases against Bulgaria (Velikova and Anguelova cases) – was a matter of particular concern, as it cast serious doubts on the objectivity and impartiality of the investigators and prosecutors involved.

The Court found that the investigation and the conclusions reached by the prosecutors were characterised by serious unexplained omissions and inconsistencies, and that the approach was flawed. There had, therefore, been a violation of Bulgaria's obligation under Article 2 § 1 to investigate deprivations of life effectively.

Obligation to protect life by law

The Court found that it was not necessary to examine separately the complaint that there had been a violation of Bulgaria's general obligation to protect life by law.

Article 13

The Court found that no separate issue arose under Article 13.

Article 14

Failure to investigate whether discrimination played a role in the shootings

The Court observed that certain facts which should have alerted the authorities and led them to be especially vigilant and investigate possible racist motives were not examined. No attention was paid by the investigation to the fact that Major G. had fired an automatic burst in a populated area – the Roma neighbourhood of Lesura – against two unarmed, non-violent fugitives and one of the victims had wounds to the chest, not the back (suggesting that he might have turned to surrender). The force used was in any event disproportionate and unnecessary.

Furthermore, despite information that Major G. knew some of the villagers and the

village where the shooting took place, no effort was made to investigate whether or not personal hostility might have played a role in the events. Witness evidence that Major G. had shouted: "You damn Gypsies" while pointing a gun at him moments after the shooting, was disregarded, although it had not been contradicted.

The Court considered that any evidence of racist verbal abuse by law enforcement officers during an operation involving the use of force against people from an ethnic or other minority was highly relevant to the question whether or not unlawful, hatred-induced violence had taken place. Where such evidence came to light in the investigation, it had to be verified and – if confirmed – a thorough examination of all the facts had to be undertaken in order to uncover any possible racist motives. This was not done.

The Court therefore found that the authorities had failed in their duty under Article 14, taken together with Article 2, to take all possible steps to establish whether or not discriminatory attitudes might have played a role in events.

Whether discrimination played a role in the shootings

The Court reiterated that the Bulgarian authorities had made no attempt to investigate whether discriminatory attitudes had played a role in the killings, despite having evidence before them that should have prompted them to carry out such an investigation. The Court therefore considered that the Bulgarian Government had to satisfy the Court, on the basis of additional evidence or a convincing explanation of the facts, that the events complained of were not shaped by any prohibited discriminatory attitude on the part of the Bulgarian authorities. They had failed to do so.

The Court considered it highly relevant that this was not the first case against Bulgaria in which it had found that law enforcement officers had subjected Roma to violence resulting in death. In its Velikova and Anguelova judgments, the Court noted that the complaints of racial motivation in the killing of two Roma in police custody in separate incidents were based on "serious arguments". Other incidents of alleged police brutality against Roma in Bulgaria had been reported by the European Commission against Racism and Intolerance, the European Committee for the Prevention of Torture, United Nations bodies and non-governmental organisations. It appeared that some of those reports had not been contested by the Bulgarian authorities. They had apparently acknowledged the need to adopt measures to combat discrimination against Roma.

In sum, having regard to the inferences of possible discrimination by Major G., the failure of the authorities to pursue lines of inquiry – in particular into possible racist motives – that were clearly warranted in their investigation, the general context and the fact that this was not the first case against Bulgaria in which Roma had been alleged to be the victims of racial violence at the hands of State agents, and noting that no satisfactory explanation for the events had been provided by the Bulgarian Government, the Court found that there had been a violation of Article 14, taken together with Article 2.

The Court awarded: jointly to Ms Nachova and Ms Hristova, 25,000 euros for pecuniary and non-pecuniary damage; jointly to Ms Rangelova and Mr Rangelov, 22,000 euros for pecuniary and non-pecuniary damage; and, jointly to all the applicants, a sum for costs and expenses.



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

Under Article 46 of the Convention,¹ the Committee of Ministers supervises the execution of the Court's final judgments by ensuring, in accordance with the Rules it has adopted for this purpose, that all the necessary measures are taken by the respondent states.²

These measures should, in particular, repair the consequences of the violation for the applicant (payment of any just satisfaction awarded by the Court, where necessary the provision of special individual measures such as the reopening of the proceedings at the origin of the violation, annulment of a criminal conviction imposed in violation of the right to freedom of expression, revocation of an expulsion order violating the right to respect for family life, etc.). The necessary execution measures may also be of a general character in order to prevent new violations from occurring (changes of legislation, regulations or case-law, or more practical measures such as the appointment of extra judges or magistrates to absorb a backlog of cases, the creation of adequate detention facilities for juvenile delinquents, improvement of police training etc.).

The Committee uses different means in order to ensure efficient execution: examination of progress achieved at the Committee of Ministers' Human Rights meetings, special meetings with the authorities concerned, public statements or interim resolutions. The

latter may notably provide information on reforms under way and the timetable for their adoption or encourage the adoption of certain reforms. When all necessary execution measures have been adopted, the Committee closes its supervision through a final resolution. All resolutions are available on the HUDOC site, as well as on the Committee of Ministers' Internet site.

Notwithstanding the abrogation by Protocol No. 11 of the Committee's own competence to decide under former Article 32 the merits of complaints, a great number of such cases are still pending before it for execution control (1 397 as of 1 January 2004).³

Documentation for the Committee's Human Rights meetings (six per year) takes the form of the **Annotated Agenda and Order of Business** and its **Addenda**, presenting notably the information provided by the respondent states about the measures adopted or under way, as well as the Committee's evaluation. The Agenda is made public on the Committee's Internet site.⁴

Owing to the large number of cases examined by the Committee of Ministers, only those of particular interest are included below in a "country-by-country" list. Further information may be obtained from the Directorate General of Human Rights at the Council of Europe,⁵ or through the Committee of Ministers' Internet site.

1 Former Article 54 as modified by Protocol No. 11.

2 Article 46 states:
"(1) The High Contracting Parties undertake to abide by a final judgment of the Court in any case to which they are parties,
(2) The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

3 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. The Committee of Ministers also decided the just satisfaction to be awarded. Such decisions are not published separately but appear as part of "traditional" or "final" resolutions.

4 Two or three weeks after each meeting. The Addenda are not made public because they may also contain confidential information.

5 The Department for the execution of the judgments of the European Court of Human Rights assists the Committee during the preparation and conduct of its Human Rights meetings.

Part 1. Work in progress

Cases currently before the Committee of Ministers in which resolutions concluding the affair have not yet been adopted

Cases examined at the 863rd (2-3 December 2003) and 871st (10-11 February 2004) meetings

(CM /Del/OJ/OT (2003) 863 and CM/Del/OJ/OT (2004) 871)

Austria

Sylvester v. Austria

Appl. No. 36812/97

Court judgment 24 April 2003

The case was examined for the first time at the 854th meeting (7 and 8 October 2003)

The case concerns the failure of the Austrian authorities to enforce a final court decision rendered in December 1995 under the 1980 Hague Convention on the Civil Aspects of International Child Abduction, that ordered that the first applicant's daughter (the second applicant, born in 1994), unlawfully taken away by her mother, should be returned to him in the United States. After an unsuccessful attempt to enforce that decision in May 1996, the Austrian Courts set aside the enforcement of the return order by court decision of August 1996 (final in October 1996) on the grounds that, due to the considerable lapse of time since the two year-old child had lost contact with her father, there would be a risk of grave psychological harm if she was separated from her mother, who had become her main person of reference. Subsequently, the second applicant's mother was awarded sole custody of the second applicant.

The European Court noted that, in cases of this kind, the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences. A change in the relevant facts may exceptionally justify the non-enforcement of a final return order under the Hague Convention, but the change must not have been brought about by the state's failure to take all measures that could have reasonably been expected. The Court found that the Austrian authorities had failed to take, without delay, all measures that could have been reasonably expected to enforce the return order, and thereby breached the applicant's right to respect for his family life, by allowing the passage of time to determine the outcome of the custody proceedings (violation of Article 8).

Individual measures

The Austrian delegation indicated that the applicant enjoyed visitation rights after the moment when custody was awarded to the mother of the child, and still regularly visits his daughter on the basis of an out-of-court agreement. By letters sent

to the Secretariat, the applicant complained about the conditions of this access, stressing that he was forced to accept them because the Austrian courts were not able to provide him with an acceptable possibility of access to his child, since they regularly favoured the mother's interests, afforded him too little visitation time, allowed late appeals of the mother to prevent that already-established visits take place, etc. He also complained that he was never permitted to have unsupervised contacts with the child or take her to visit the United States. According to the Austrian delegation, no request is currently pending before the domestic authorities concerning the visitation rights of the applicant.

In the United States, an arrest warrant against the mother and a US custody order granting sole custody to the father are in force.

General measures

The Austrian delegation indicated that a new law was adopted in November 2003 (due to enter into force in January 2005), providing for the decrease of the number of courts competent to deal with requests of return based on the Hague Convention (at present all 180 district courts) to only 16 district courts. This concentration of competence will allow greater specialisation of the judges on this issue and will facilitate training efforts. The law also provides that decisions in non-contentious procedures relating to the Hague Convention are to be adopted speedily.

In the same time, the delegation indicated that interested persons have the possibility, based on Article 21 of the Hague Convention, to request visitation rights while the return proceedings are pending.

The Austrian delegation has confirmed the publication of the judgment of the European Court in the *ÖIM-Newsletter* 2003/2. Confirmation of the wide dissemination of the judgment to all competent authorities dealing with the application of the Hague Convention is still awaited.

Belgium

Ernst and others v. Belgium

Appl. No. 33400/96

Court judgment 15 July 2003

The case was examined for the first time at the 863rd meeting (2 and 3 December 2003)

This case concerns searches carried out in 1995 in the homes and business premises of the applicants, four professional journalists and two associations of professional journalists. These searches were carried out as part of preliminary investigations in cases where no charge had been brought against the applicants (the cases related to violations of professional secrecy, some of which seemed attributable to one or more members of the public prosecutor's office).

The European Court found an infringement of the applicants' right to free-

dom of expression (violation of Article 10), because the measures aimed at discovering their journalistic sources were not proportionate to the intended legitimate aims (among other things: preventing the disclosure of confidential information), particularly in the light of the inadequacy of the grounds for the searches and of the latter's massive character.

The Court also found an infringement of the applicants' right to respect for their home and private life (violation of Article 8), because of the inadequacy of the grounds for the searches, the broad wording of the terms of the search warrants, the great number of objects seized and the absence of information to the applicants regarding the legal proceedings that made the operation necessary.

Individual measures

At the 863rd meeting (December 2003), information was asked for concerning the reasons for which certain objects and documents were still in the hands of the judicial authorities.

General measures

At the 863rd meeting (December 2003), the Belgian delegation stated that bills relating to the protection of journalistic source were under discussion before Parliament. It also recalled that this judgment, like all other judgments of the European Court, is published in the official languages on the Internet site of the Ministry of Justice. At the same meeting, the dissemination of the judgment to investigating magistrates and to the police, together with a circular, has been asked for, as well as information relating to the progress of the discussion before Parliament.

Finland

K.A. v. Finland

Appl. No. 27751/95

Court judgment 14 January 2003

The case was examined for the first time at the 847th meeting (8 and 9 July 2003)

This case concerns the taking into care of the applicant's three children in 1992 and their placement in a foster family in 1993, following a finding of the competent authorities concerning family conditions that might endanger the children's development. The European Court found that the competent authorities had infringed the applicant's right to family life because they failed to take sufficient steps to reunite the applicant's family following the placement of the children in foster care. Thus, the authorities failed to conduct a periodic, concrete review of the need to keep the children in public care and adopted severe restrictions on the applicant's right to visit his children. These restrictions reflected the fact that the reunification of the natural family was not really being considered (§§ 142, 143 of the



judgment) (violation of Article 8).

When the Court rendered its judgment, only one of the three children (born in 1986) was still a minor.

Individual measure

The youngest child, who is nearly seventeen, meets his parents each month and does not wish to leave his foster family.

General measures

The Finnish delegation announced the Government's intention to revise the Child Welfare Act and improve the practices related to placement in custody and foster care, paying a specific attention to the development of communication between the parents and the children placed in public care, with the aim of reuniting the original families in as many cases as possible. The envisaged legislative reforms are planned to be partially achieved by the end of 2004. They will be followed by training programmes for the relevant staff.

The judgment of the European Court has been translated and published in the Finlex database and distributed to the relevant authorities, the highest courts, the Parliamentary Ombudsman, etc.

France

Mouisel v. France

Appl. No. 67263/01

Court judgment 14 November 2002

The case was examined for the first time at the 847th meeting (8 and 9 July 2003)

The case concerns inhuman and degrading treatment experienced by the applicant in that he was kept in prison until his provisional release on 22 March 2001, despite the decline in his state of health, which was considered more and more alarming and less and less compatible with his imprisonment. It also raises questions about his conditions of detention, transfer to hospital and medical treatment (violation of Article 3).

General measures

In the judgment, the European Court took note of the recent evolution of French legislation in this field, which has increased the powers of the judge responsible for the execution of sentences in respect of seriously ill prisoners. It considered that these judicial procedures "may provide sufficient guarantees to ensure the protection of prisoners' health and well-being, which States must reconcile with the legitimate requirements of a custodial sentence". Under Article 729 of the Code of Criminal Procedure (CCP) as amended by the Law of 15 June 2000, the need to undergo treatment may be taken into account in a decision to grant parole. Furthermore, under the Law of 4 March 2002 on patients' rights (new Article 720-1-1 of the CCP), prisoners' sentences may be suspended if they are suffering from a life-threatening illness or if

their condition is incompatible in the long term with their continued detention. The judge may direct that the sentence be suspended indefinitely: he must arrange for two expert assessments in order to determine whether a sentence should be suspended or whether a suspension should be lifted.

As far as the conditions of detention and transfer to hospital are concerned, the Court particularly recalled the conclusions drawn by the Committee for the Prevention of Torture (CPT) following its visit to France in May 2000 (patients systematically forcibly handcuffed regardless of their state of health or age, examined and treated in the presence of law-enforcement officials, and physically attached to their hospital beds). In this connection, the French authorities have pointed out that they have drawn up a draft circular on the subject, for the drafting of which the CPT made some recommendations.

Information is expected on the implementation of the new legislative measures since their entry into force as well as on the measures envisaged concerning the conditions of transfer of sick prisoners and their medical treatment. On this last point, it could be useful to know how the draft circular announced before the CPT has been followed up.

Italy

Sulejmanovic and others v. Italy Sejdic and Sulejmanovic v. Italy

Appl. Nos. 57574/00 and 57575/00

Court judgment 8 November 2002 – Friendly settlement with specific commitments

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).

In accordance with the friendly settlement reached, the Italian Home Affairs Ministry has undertaken, in addition to the payment of certain sums to the applicants and to their lawyer:

- 1) to revoke the deportation orders in respect of the applicants;
- 2) to permit them to enter Italy with their families;
- 3) to issue them with residence permits on humanitarian grounds, valid for one year and renewable, allowing them to work and study in Italy;
- 4) to provide them with temporary accommodation, in association with the Rome local authorities, pending the finding of long-term accommodation in an equipped camp and to keep them informed of any development thereon;
- 5) to arrange with the competent authorities for the children of school age to attend school and be helped to make up for the school years lost

after their expulsion to Bosnia; to arrange with the competent authorities for a sick child to receive the medical attention she needs in the framework of the public health system.

Individual measures

The agreed sums were paid.

As regards the other undertakings

- 1) The deportation orders were revoked on 18 October 2002 and the applicants' names removed from the "Schengen" database.
- 2) All the applicants re-entered Italy, their travel being paid by the Italian authorities who also accepted to extend the time-frame agreed in the friendly settlement for their return.
- 3) All the applicants have been granted residence permits in conformity with the terms of the friendly settlement; information is expected as regards the renewal of the residence permits expired in November 2003.
- 4) Shortly after their return to Italy, in November 2002, the family of Izet Sulejmanovic settled in an equipped site where their grandmother lived. Three other families settled in an equipped site in October 2003. Further information is expected as regards the placement of Nenad Sulejmanovic's family.
- 5) & 6) In reply to a letter of 29 May 2003 from the applicants' lawyer indicating that no step had been taken yet by the competent authorities as regards undertakings concerning the schooling and medical care of the children, the Italian delegation recalled, at the 841st meeting (June 2003) that, on the basis of their residence permits, the applicants were entitled to benefit from the public school and health system and that specific action to be taken would be considered once they registered the children at schools and addressed the competent local health services. Subsequently, the Italian authorities indicated their intention to meet the applicants, at the end of June 2003, with a view to informing them about the concrete action required to benefit from educational and medical care services. Furthermore, they indicated that a voluntary association would be involved in the out-of-school support to the children. Information is expected on the follow-up given to these initiatives.

Belvedere Alberghiera S.R.L v. Italy

Appl. No. 31524/96

Court judgments 30 May 2000 (on the merits) and 30 October 2003 (just satisfaction)*The case was examined for the first time at the 732nd meeting (5 and 6 December 2000)*

The case concerns the deprivation of the applicant company's property in 1987 as a result of the unlawful occupation of its land by the state authorities under an expedited procedure in order to build a road, which was later found by the competent court not to be "in the public interest". The applicant lost title by effect of the case-law rule of "constructive expropriation" (*occupazione acquisitiva*). According to this rule, the public authorities acquire title to the land from the outset before formal expropriation if, after taking possession of the land and irrespective of whether such possession is eventually found lawful or not by the courts, public work has been already carried out on the land.

The European Court considered that this rule, as applied in Italy, was not compatible with the requirement of lawfulness and that it therefore constituted an arbitrary interference with the applicant company's property rights (violation of Article 1 of Protocol No. 1).

Individual measures

The Court found that the best reparation would consist, in addition to the payment of compensation for pecuniary and non-pecuniary damages, in the restitution of the land to the applicants by the state. Having taken note of the government's negative position on this issue, the Court awarded the applicant company comprehensive reparation in its judgment of 30 October 2003 which was not final yet at the date of preparing this document.

General measures

The Italian authorities have been asked to inform the Committee of Ministers of the measures envisaged in order to solve the problems underlined by the Court, relating to the system of "constructive expropriation".

As regards legislative measures, in June 2001, a new Expropriation Code (*Testo Unico*, D.P.R. No. 327 of 8 June 2001) was adopted and entered into force, with amendments, on 30 June 2003. This new law sets out more clearly and in a single text the procedure and deadlines for expropriation, with a view, among other things, to preventing recourse to the "constructive expropriation" rule. The law, however, still allows expedited occupation procedures (Article 22bis) as well as the possibility for the administration irrevocably to acquire, in the public interest, unlawfully occupied property (Article 43). Some clarification is expected on how the new provisions are applied.

The judgment was published in 2000 in *Rivista internazionale dei diritti dell'uomo*, No. 3 and in other legal journals.

Latvia**Lavents v. Latvia**

Appl. No. 58442/00

Court judgment 28 November 2002*The case was examined for the first time at the 834th meeting (9 and 10 April 2003)*

The case concerns a number of violations concerning, first the pre-trial detention of the applicant, a former Chairman of the Board of the largest Latvian bank (Banka Baltija) which had gone bankrupt, and secondly the criminal proceedings brought against him before the Latvian courts.

The European Court found the following shortcomings:

- the composition of the Riga Regional Court of had been contrary to domestic law (violation of Article 6§1);
- the lack of impartiality of this court due to public statements made by its President suggesting the applicant's guilt (violation of Article 6§1);
- a violation of the presumption of innocence due these statements (violation of Article 6§2);
- the lack of effective judicial supervision of the applicant's detention on remand, given the unlawfulness of the composition of the aforementioned court and the fact that it was not impartial (violation of Article 5§4);
- the excessive length of this detention on remand which lasted roughly four and half years (violation of Article 5§3);
- the excessive length of the criminal proceedings which lasted more than five and half years and which are still pending at appeal (violation of Article 6§1);
- the continuing monitoring of the correspondence between the applicant and his family and his lawyers on the basis of Article 176 of the Code of Criminal Procedure, which lacks the precision required by the Convention (violation of Article 8);
- the total refusal of family visits during part of his detention, a measure deemed unnecessary in a democratic society (violation of Article 8).

Individual measures

Shortly before the 834th meeting (April 2003), the Latvian delegation informed the Committee that on 27 January 2003 the applicant was released pending trial and placed under police supervision.

As regards the violations of Article 6, on 13 February 2003 the Senate of the Latvian Supreme Court quashed the judgment of the Riga Court of first instance of 19 December 2001 and referred the case back to that court for re-examination with a new bench of judges.

As to the violations of Article 8, as of 20 April 2000 the prohibition of family visits imposed on the applicant was lifted.

On 27 March 2003 a judge of the Riga Court of first instance ordered an end to the monitoring of the applicant's correspondence, which had been imposed on him in 1997.

As to the acceleration of the excessively long criminal proceedings pending at national level, further information is awaited.

General measures

As regards the violation of Article 5§3 (excessive length of the applicant's detention on remand), information concerning the new draft of the Code of Criminal Procedure and the draft law on detention on remand is awaited.

As to the violation of Article 8 due to the monitoring of the applicant's correspondence, at the 834th meeting (April 2003), the Latvian Delegation announced that legislative amendment of the impugned provisions (Article 176 of the Code of Criminal Procedure) is envisaged. Further information concerning this subject is awaited.

Concerning the violation of Article 8 due to the refusal of family visits during a part of the applicant's detention, the Latvian Delegation indicated that legislative measures in this field are envisaged. In addition, by a decision of 19 December 2001, the Latvian Constitutional Court declared unconstitutional any form of interference with the subjective rights of an individual solely on the basis of a ministerial order. Clarification was sought concerning the effects of this decision.

The judgment of the European Court was translated into Latvian and published in the *Official Gazette* on 12 February 2003. Information concerning the dissemination of the Court's judgment, as well as concerning the training of the Latvian judges on the Convention and the Court's case-law is expected.

Romania**Pantea v. Romania**

Appl. No. 33343/96

Court judgment 3 June 2003*The case was examined for the first time at the 863rd meeting (2 and 3 December 2003)*

The case concerns the ill-treatment inflicted on the applicant by his fellow-prisoners during his detention on remand, until his conditional release on 22 March 2001, in circumstances which engaged the state's responsibility, and the shortcomings of the investigation carried out by the Romanian authorities into the facts of the case (violations of Article 3).

Individual measures

Information is awaited concerning the possibility of a new evaluation of the accusations brought by the applicant against his fellow-prisoners and the prison warders, in the light of the European Court's findings under Article 3 of the Convention. Moreover, information is awaited



on the issue of whether the applicant may obtain compensation for his illegal deprivation of liberty, under the new provisions of the criminal code. Finally, information on the acceleration of the criminal procedure brought against the applicant is also necessary.

General measures

Legislative reforms of the Code of Criminal Procedure in 2003 now provide the obligation to bring detainees before a judge within three days and for the granting of compensation for illegal detention in situations similar to the one of the applicant. Information on the publication and wide dissemination of the judgment of the European Court, as well as on the measures required by the other aspects covered by the judgment, especially on the violation of Article 5§4, is awaited.

Sweden

Janosevic v. Sweden

Appl. No. 34619/97

Court judgment 23 July 2002

The case was examined for the first time at the 847th meeting (8 and 9 July 2003)

The case concerns the applicant's right of access to court to determine the merits of criminal charges brought against him because of allegedly incorrect tax declarations. On 8 March 1996 the applicant requested reconsideration of the surcharges decided by the tax authority and a stay of execution. Notwithstanding this request, the tax authority took enforcement measures, particularly on the basis of the surcharges. The stay of execution was refused by the tax authority on 21 May 1996, as no security had been furnished for the amounts due. The enforcement proceedings were continued with the result that the applicant was declared bankrupt on 10 June 1996, before the administrative courts had decided on his appeal against the refusal to stay execution. His applications for leave to appeal before the Supreme Administrative Court were eventually refused on 3 November 1998 in respect of the stay of execution and on 18 September 1996 in respect of the bankruptcy. The decisions on the reconsideration of the surcharges, which were a precondition for the court's examination of the appeal on their merits, were not taken until three years after the applicant's request for reconsideration. The European Court found that the tax authority had failed to act with the required urgency and thereby unduly delayed a judicial determination of the issues, depriving the applicant of effective access to court (violation of Article 6§1).

The case also concerns the excessive overall length of the proceedings. The proceedings started on 1 December 1995, the date of the tax authority's audit report containing the surcharges, and were still pending before the Administrative Court of Appeal at the date of the European Court's

judgment (almost 6 years and 8 months) (violation of Article 6§1).

Individual measures

Acceleration of the proceedings pending at national level was requested, particularly to remedy the applicant's lack of effective access to a court. Further information is awaited concerning the state of these proceedings.

General measures

At the 863rd meeting (December 2003) the Swedish delegation stated that some reforms had been made to the legislation concerning tax surcharges and that it would forward the relevant case-law and legislation to the Secretariat. Further information is awaited in both these respects.

Turkey

Demades v. Turkey Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey

Appl. Nos. 16219/90 and 16163/90

Court judgments 31 July 2003

Les affaires ont été examinées pour la première fois lors de la 871^e meeting (10 and 11 février 2004)

These two cases concern the violation of the applicants' right to the peaceful enjoyment of certain properties located in the northern part of Cyprus, insofar as they have been denied access to them and control, use and enjoyment of them, respectively since 1974 and 1988, the date on which, in the second case, the applicant company was given the property concerned (violation of Article 1 of Protocol No. 1). In the Demades case, the European Court also noted that the applicant's house was fully furnished and equipped and that he and his family had made regular use of it; it therefore concluded that the fact that the applicant had been unable to use that property constituted an interference in his right to respect for his home (violation of Article 8).

Possible individual and/or general measures

These cases present similarities with the Loizidou case, with the addition that in the Demades case a violation of Article 8 has been found. It is recalled that both violations are also under the Committee's examination in the case of Cyprus against Turkey.

Chypre v. Turkey

Appl. No. 25781/94

Grand Chamber judgment 10 May 2001

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

The case relates to the situation that has existed in northern Cyprus since the conduct of military operations there by Turkey in July and August 1974 and the continuing division of the territory of Cyprus.

The European Court of Human Rights held that the matters complained of by Cyprus in its application entailed Turkey's responsibility under the European Convention on Human Rights. In its judgment, the Court held that there had been 14 violations of the Convention:

Greek-Cypriot missing persons and their relatives

- a continuing violation of Article 2 (right to life) of the Convention concerning the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances;
- a continuing violation of Article 5 (right to liberty and security) concerning the failure of the Turkish authorities to conduct an effective investigation into the whereabouts and fate of the Greek-Cypriot missing persons in respect of whom there was an arguable claim that they were in Turkish custody at the time of their disappearance;
- a continuing violation of Article 3 (prohibition of inhuman or degrading treatment) in that the silence of the Turkish authorities in the face of the real concerns of the relatives attained a level of severity which could only be categorised as inhuman treatment.

Home and property of displaced persons

- a continuing violation of Article 8 (right to respect for private and family life, home and correspondence) concerning the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus;
- a continuing violation of Article 1 of Protocol No. 1 (protection of property) concerning the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights;
- a violation of Article 13 (right to an effective remedy) concerning the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 and Article 1 of Protocol No. 1.

Living conditions of Greek Cypriots in Karpas region of northern Cyprus

- a violation of Article 9 (freedom of thought, conscience and religion) in respect of Greek Cypriots living in northern Cyprus, concerning the effects of restrictions on freedom of movement which limited access to

- places of worship and participation in other aspects of religious life;
- a violation of Article 10 (freedom of expression) in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school were subject to excessive measures of censorship;
- a continuing violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory and in that, in case of death, inheritance rights of relatives living in southern Cyprus were not recognised;
- a violation of Article 2 of Protocol No. 1 (right to education) in respect of Greek Cypriots living in northern Cyprus in so far as no appropriate secondary-school facilities were available to them;
- a violation of Article 3 in that the Greek Cypriots living in the Karpas area of northern Cyprus had been subjected to discrimination amounting to degrading treatment;
- a violation of Article 8 concerning the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home;
- a violation of Article 13 by reason of the absence of remedies in respect of interferences by the authorities, as a matter of practice, with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1.

Rights of Turkish Cypriots living in northern Cyprus

- a violation of Article 6 (right to a fair trial) on account of the legislative practice of authorising the trial of civilians by military courts.
- The Deputies examined this case for the first time at their 760th meeting (July 2001). During the second examination of the case at the 764th meeting (October 2001) delegations strongly supported the proposal made by the Delegation of Liechtenstein that the Committee should follow the approach already proposed by the Director General of human rights at the 760th meeting, that is, identifying specific categories of violations according to the complexity of the execution measures required, without preventing the Deputies from pursuing in parallel an examination of the other issues raised in the Court's judgment:
- the question of missing persons,
 - the living conditions of Greek Cypriots in northern Cyprus,
 - the rights of Turkish Cypriots living in northern Cyprus,

- the question of the homes and property of displaced persons.
- Since then, the different categories have been addressed at several times and the Delegation of Turkey as well as other delegations have provided information that has been examined by the Committee of Ministers.

Interim resolutions

Italy

Dorigo Paolo v. Italy

Appl. No. 33286/96, Interim Resolutions DH (99) 258, 15 April 1999 (finding of a violation) and DH (2002) 30, 19 February 2002 (re-opening of judicial proceedings in violation of the European Convention on Human Rights)

Interim Resolution ResDH (2004) 13, 10 February 2004

The Committee of Ministers,
[...]

Having regard to its decision of 15 April 1999 (Interim Resolution DH (99) 258) under former Article 32 of the Convention in the case of Dorigo Paolo finding a violation of the right to a fair trial guaranteed by Article 6 of the Convention on account of the applicant's conviction in 1993 on the basis of statements made before the trial by three "repented" co-accused, the applicant not having been allowed to examine these statements or to have them examined, in conformity with the law which was then in force until 1997; and

Having also regard to its Interim Resolution ResDH (2002) 30, taking note of the fact the absence of means to reopen the impugned proceedings has made it impossible fully to rectify the serious and continuing consequences of the violation found;

Stressing the obligation of every state to abide by the decisions adopted under former Article 32 of the Convention, not least by adopting individual measures putting an end to the violations found and removing as far as possible their effects for the victims;

Recalling that, in the Interim Resolution ResDH(2002)30 mentioned above, the Italian authorities were encouraged to ensure the rapid adoption of new legislation in conformity with the principles in its Recommendation of 19 January 2000, No.

R (2000) 2 to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;

Stressing that a legislation in conformity with the principles contained in that Recommendation should allow the re-examination of proceedings notably where:

- “(i) the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified

- except by re-examination or reopening, and
- (ii) the judgment of the Court leads to the conclusion that
- (a) the impugned domestic decision is on the merits contrary to the Convention, or
- (b) the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of”;

Noting that the draft law to introduce the possibility of such reopening in Italy, currently before the Senate, goes to some extent beyond the requirements of Recommendation No. R (2000) 2 in that it foresees no distinction between Article 6 violations which affect the fairness of proceedings to such an extent as to cast serious doubt on their outcome and those which do not, and in that it takes no account of the seriousness of the consequences suffered;

Noting nonetheless with concern that the draft law would not apply to violations on the merits or to those which, as in the Dorigo Paolo case, occur before its entry into force and concern convictions for particularly serious offences;

Aware of the fact that the repression of crimes particularly dangerous to security in a democratic society calls for great severity and justifies special caution, but also that these requirements cannot justify either non-compliance with the obligation to rectify violations found by the Convention's organs or any inequality of treatment between convicted persons to the extent that they are deprived of the enjoyment of guaranteed rights such as the right to a fair trial or to the presumption of innocence;

Persuaded that a fair balance between these different demands can be struck in accordance with Recommendation No. R (2000) 2;

Strongly urges the Italian authorities, without further delay, to ensure the adoption of measures allowing for the consequences for the applicant in this case to be erased, in accordance with Italy's obligations under former Article 32 of the Convention.

Turkey

Loizidou v. Turkey

Appl. No. 15318/89, Court judgment 28 July 1998

Interim Resolution ResDH (2003) 174, 12 November 2003

The Committee of Ministers,
[...]

Recalling that, in that judgment, the Court held that Turkey was to pay to the applicant as just satisfaction specific sums for damages and for costs and expenses;

Recalling its three earlier interim resolutions and the fact that on 19 June



2003, before the Committee of Ministers, the Turkish authorities declared unambiguously that they had initiated the measures necessary to enable the Committee to take note of payment of the just satisfaction award and approve a draft final resolution at the DH meeting on 7 and 8 October 2003;

Recalling that it was clear that this payment had to intervene before the examination of the draft final resolution;

Very deeply deploring the fact that Turkey did not honour its undertaking and has thus still not complied with its obligation under Article 46 of the Convention to abide by this judgment,

Stressing anew that the obligation to comply with the Court's judgments is unconditional;

Strongly urges Turkey to reconsider its position and to pay without any conditions whatsoever the just satisfaction awarded to the applicant by the Court, within one week, i.e. 19 November 2003 at the latest;

Declares the Committee's resolve to take all adequate measures against Turkey if Turkey fails once more to pay the just satisfaction awarded by the Court to the applicant.

Resolution ResDH (2003) 190, 2 December 2003

The Committee of Ministers,
[...]

Having regard to the judgment of the European Court of Human Rights of 28 July 1998 which ordered Turkey to pay to the applicant, before 28 October 1998, the sums of 300 000 Cypriot pounds for pecuniary damage, the sum of 20 000 Cypriot pounds for non-pecuniary damage, and the sum of 137 084.83 Cypriot pounds for costs and expenses, plus 8% interest from the expiry of the above date until payment;

Recalling that Turkey's compliance with this judgment has been examined by the Ministers' Deputies since September 1998;

Taking note of the Declaration made by the Government of Turkey today on the execution of the judgment of the European Court of Human Rights dated 28 July 1998;

Having satisfied itself that the sums awarded, together with default interest, have been paid to the applicant on 2 December 2003,

Declares that it has exercised its functions under Article 46, paragraph 2, of the Convention as regards the judgment of 28 July 1998.

Résolution ResDH (2003) 191 du 2 Décembre 2003

The Committee of Ministers,
[...]

Having regard to the judgment of the European Court of Human Rights dated 18 December 1996,

Decides to resume consideration of the execution of the judgment of 18 Decem-

ber 1996 in due time, taking into consideration proposals to do so at the end of 2005.

Ukraine

Sovtransavto Holding v. Ukraine

Appl. No. 48553/99, Court judgment 25 July 2002

Interim Resolution ResDH (2004) 14, 11 February 2004

The Committee of Ministers,
[...]

Having regard to the judgment of the European Court of Human Rights ("the Court") of 25 July 2002 in the *Sovtransavto Holding* case transmitted to the Committee of Ministers once it had become final under Article 44 of the Convention;

Recalling that the case originated in an application (No. 48553/99) against Ukraine, lodged with the Court on 11 May 1999 under Article 34 of the Convention by *Sovtransavto Holding*, a Russian company, and that the Court declared admissible the complaints relating,

- first, to a violation of its right to a fair trial before an impartial and independent tribunal due to repeated attempts by the Ukrainian authorities, including the President of Ukraine, to influence the domestic court decisions, to the application of the "protest" procedure ("supervisory review procedure" – allowing the quashing of final judicial decisions without any limitations) and to the refusal by the courts to examine the applicant company's arguments on the merits in a public hearing and to the absence of adequate motivation of the judicial decisions and
- secondly to a violation of the effective enjoyment of its right of property due to the manner in which these proceedings were conducted and ended, and to the uncertainty in which the applicant company was left;

Whereas in its judgment of 15 July 2002 the Court held:

- unanimously that there had been a violation of Article, 6 paragraph 1, of the Convention;
- by six votes to one that there had been a violation of Article 1 of Protocol 1 to the Convention;
- unanimously that it was not necessary to decide whether the applicant was a victim of discrimination on the basis of its nationality;
- unanimously that the question of application of Article 41 was not ready for decision, and consequently, reserved it and postponed it for a later stage;

Stressing the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court;

Recalling that this obligation implies the adoption of individual measures putting an end to the violations found and removing as far as possible their effects for the applicant, as well as general measures preventing new violations of the Convention similar to those found in the Court's judgments including, where appropriate, making available effective domestic remedies pending the entry into effect of the necessary changes;

Stressing that the adoption of general measures is particularly pressing in cases where a judgment reveals structural problems which may give rise to a large number of new, similar violations of the Convention;

Having invited Ukraine to inform it of the measures adopted or being taken in consequence of the judgment in this case;

Having examined the information provided by the Ukrainian authorities concerning the measures adopted or being planned to abide by the judgment (as it appears in the appendix to this resolution);

Noting with interest, as regards the applicant company's situation, that on 19 August 2003 the Ukrainian Supreme Court ordered the reopening of the impugned proceedings and emphasising the need to guarantee that these new proceedings are conducted in full respect of the Convention and of the case-law of the European Court in this case;

Noting also that European Court, on 2 October 2003, delivered its judgment under Article 41 on just satisfaction, which will become final in accordance with the terms of Article 44, paragraph 2 of the Convention;

Welcoming, as regards the general measures, the fact that, prior to the Court's judgment, the procedure for supervisory review (protest), which was one of the main structural problems at the basis of the violations found, was abolished through a comprehensive judicial reform of 21 June 2001 and stressing the importance of ensuring that prosecutors do not retain powers similar to that of "protest" in civil cases under other legal provisions;

Further welcoming the reforms adopted in 2002 aimed at reinforcing the independence of the judiciary, in particular the establishment of the State Judicial Administration and the new arrangements by which the courts are financed from the central state budget instead of from the budgets of local authorities;

Welcoming the order made by the President of Ukraine on 12 July 2003 aiming at ensuring the unconditional implementation of all legal norms, including the Convention, protecting the independence of the judiciary, the adoption of any further legislation deemed necessary for this purpose and the enhancement of training measures in co-operation with the Council of Europe and the European Union to ensure that the administration of justice conforms with the legislation in force and international law,

including the Convention;

Stressing the importance of rapid and efficient action to give effect to this order so as to ward off attempts to influence the administration of justice, and to ensure that adequate sanctions are imposed on the authors of any such attempts and other appropriate measures are taken to enhance the independence of the judiciary;

Emphasising in this connection the responsibility of the authorities to provide adequate training and awareness-raising, not least concerning the case-law of the European Court, for judges, prosecutors and other public officials;

Noting the importance of the training of Ukrainian judges in particular on the Convention conducted within the Joint Programme of co-operation between the European Commission and the Council of Europe to strengthen democratic stability in Ukraine;

Noting with interest the establishment by the Decree of the President of Ukraine of October 2002 of the Judges' Academy of Ukraine the main task of which is the initial and in-service training of judges including training courses on the Convention;

Welcoming the practice of publishing of the European Court's judgements, including the judgment in the present case, in Ukrainian in the Official Journal and in the Bulletin of the Ministry of Justice of Ukraine;

Encourages the Ukrainian authorities rapidly to ensure that the necessary measures are taken to guarantee that each and every state authority fully respects the independence of the judiciary, in particular by ensuring:

- that effective sanctions are imposed on officials who in any way interfere, or attempt to interfere, with pending court proceedings;
- that all necessary measures to implement the President's order of 12 July 2003 are taken so as to guarantee the respect of the Constitution and the Convention;
- that it is no longer possible for public prosecutors to question the final character of court judgments in civil cases;

Calls on the competent authorities to continue the training on the Convention, including the case-law of the European Court, during the initial and in-service training of judges and prosecutors and to ensure that the latter have ready access to such case-law;

Encourages the further development of the training of Ukrainian judges, in particular in co-operation with the Council of Europe institutions;

Urges the Ukrainian authorities to ensure the wide dissemination of the present resolution in Ukrainian translation to the Government ministries, General prosecutor's office, local authorities and courts;

Expects to receive further informa-

tion soon on additional measures planned to execute the judgment in this case and,

Decides to continue the examination of the case until the judgment has been fully executed.

Appendix to Interim Resolution ResDH (2004) 14

Information provided by the Government of Ukraine during the examination of the Sovtransavto Holding case by the Committee of Ministers

As regards individual measures

The applicant company's request for reopening of the impugned proceedings with a view to obtaining redress for the violations of the Convention was granted by the Supreme Court on 19 August 2003. The case was referred to the court of first instance for a new hearing (the Economic Court of Lougansk, former "arbitration court"). The outcome of these proceedings is awaited.

As regards general measures

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

- the procedure for supervisory review (protest) was abolished in Ukrainian law by the judicial reform of 21 June 2001;
- the Law on the Judiciary, adopted in February 2002, sets up the State Judicial Administration, which is a specialised institution, independent from the executive, responsible for organising the management of the national judiciary; the law also provides that all Ukrainian courts are henceforth financed from the central budget and that the budget assigned to the courts is administered by the country's supreme courts;
- in order to give effect to the judgment, the President of Ukraine, on 12 July 2003, instructed:
 - a) the Prime Minister to ensure, with the participation of the General Prosecutor's Office, the unconditional implementation of the provisions of Ukrainian law and of the Convention (which has the force of law in Ukraine) concerning the inadmissibility of any form of interference in the independence of the judiciary, whether in pending proceedings or otherwise, in order to influence courts or judges;
 - b) the Ministry of Justice to analyse the legislation of Ukraine concerning the guarantees of independence of judiciary with a view to submitting, if necessary, proposals on improvement of legislation and appropriate administrative and financial measures and as well as de-

sign and implement, together with the Ministry of Foreign Affairs and in co-operation with the Council of Europe and the European Union, the training measures necessary to ensure that the Ukrainian administration of justice conforms with the legislation in force and international treaties, including the Convention; on 26 August 2003, the Cabinet of Ministers ordered ministries and other central or regional bodies having executive power in Ukraine to take all necessary measures to implement the President's above-mentioned order;

- as a result of systematic training of Ukrainian judges between 2001 and 2003 in the framework of the Council of Europe/European Commission Joint Programme (consisting of one-day training on the Convention for all judges, two "train-the-trainers" seminars in Kiev, and 73 seminars in different regions of Ukraine), domestic courts apply the Convention and the case-law of the European Court more frequently (as evidenced by a number of decisions notably from the Constitutional Court - decision No. 9-zp of 25 December 1997, dec. No. 6-rp/99 of 24 June 99, dec. No. 11-rp/99 of 29 December 1999, opinion No. 2-v/2000 of 11 July 2000, dec. No. 11-rp/2000 of 18 October 2000, dec. No. 13-rp/2001 of 10 October 2001 and dec. No. 15-rp/2001 of 14 November 2001).
- the European Court's judgment was translated and published in the Official Journal of Ukraine, issue No. 44/2003, in the Bulletin of the Ministry of Justice, issue No. 9/2003, on the Ministry of Justice Internet site www.minjust.gov.ua and in the journal Case-law of the ECHR, issue No. 3/2002 and has been sent out to the authorities directly concerned, i.e. to the Supreme Court and the Supreme Commercial Court of Ukraine (letters of the Ministry of Justice of Ukraine of 6 August 2002, No. 44-5/793 and 44-5/794) and to the Government ministries, General prosecutor's office, local authorities and courts.

The Ukrainian Government stresses Ukraine's commitment to abide fully by the European Court's judgment in this, as indeed in all other cases, and the authorities will pursue the adoption of the measures required to prevent new similar violations of the Convention. In this connection, the Government, in particular, encourages the courts, prosecutors and other authorities to develop further the direct effect of the Convention and of the judgments of the European Court.

Part 2. Human rights (DH) final resolutions

Austria

Vereinigung Demokratischer Soldaten Österreichs and Gubi v. Austria

Appl. No. 15153/89, Court judgment 19 December 1994

Resolution ResDH (2003) 175, 6 January 2004

The application was brought by Vereinigung Demokratischer Soldaten Österreichs, a private association of soldiers under Austrian law which has its seat in Vienna and by Mr Berthold Gubi, an Austrian national. The Commission had declared admissible the complaints concerning the refusal by the Federal Ministry of Defence to place the periodical *Igel*, published by the applicant association, on the list of publications distributed free of charge in army barracks and the prohibition of the applicant, a national serviceman, from distributing it (complaint under Article 10) and the absence of any remedy in this respect (complaints under Article 13).

In its judgment the Court, among other things:

- held, by six votes to three, that there had been a violation of Article 10 of the Convention in respect of the first applicant;
- held, by eight votes to one, that there had been a violation of Article 10 of the Convention in respect of the second applicant;
- held, by six votes to three, that there had been a violation of Article 13 of the Convention in respect of the first applicant;
- held, unanimously, that there had been no violation of Article 13 of the Convention in respect of the second applicant;
- held, unanimously, that the present judgment constituted in itself sufficient just satisfaction for the alleged non-pecuniary damage;
- held, unanimously, that the government of the respondent state was to pay the applicants, within three months, 180 000 Austrian Schillings in respect of costs and expenses;
- dismissed, unanimously, the remainder of the claim for just satisfaction.

In this resolution the Committee of Ministers satisfied itself that the government of the respondent state had paid the applicants the sums provided for in the judgment, and took note of the information provided by the government.

Appendix to Resolution ResDH (2003) 175

Information provided by the Government of Austria during the examination of the case Vereinigung Demokratischer Soldaten Österreichs and Gubi by the Committee of Ministers

As regards the violation of Article 13 of the Convention found by the European Court of Human Rights, the Government recalls that on 1 January 1991, under Article 129a of the Federal Constitution Law (*"Bundesverfassungsgesetz" novelle 1988*), the Independent Administrative Tribunals (*Unabhängige Verwaltungssenate*) were set up. These tribunals are competent to examine the merits of all applications by persons who claim to have suffered an infringement of their rights through the exercise of immediate authority of command or coercion (*unmittelbarer verwaltungsbehördlicher Befehls- und Zwangsgewalt*), excluding only the federal state's fiscal power and power to impose penalties.

This new procedure went a long way towards ensuring protection against new, similar violations of Articles 10 and 13 of the Convention. However, in order to clarify the application of the new remedy in the military context, a similar procedure was subsequently introduced in Section 54 of the new Military Powers Act, which entered into force on 1 July 2001, (published on 10 August 2000 in the *Federal Law Gazette*, Part I., 86/2000 as amended subsequently by Federal Law, see *Federal Law Gazette*, Part I, 102/2002).

According to paragraph 1 of this new section, the Independent Administrative Tribunals decide complaints by persons who allege infringement of their rights through the exercise of immediate authority of command or coercion and in accordance with the provisions of this federal act.

In addition, under paragraph 2, the Independent Administrative Tribunals decide complaints by persons who allege infringement in another way of their rights through the performance of military defence tasks, provided that the infringement did not result from an administrative ruling.

Paragraph 3 provides that complaints under paragraph 1 above, which are directed against the deprivation of personal liberty under the Military Powers Act may, during the period of detention, be filed with the military authority enforcing this measure. This authority shall refer the complaint to the Independent Administrative Tribunal without delay.

According to paragraph 4, complaints under paragraphs 1 and 2 above are decided upon by one of the members of the Independent Administrative Tribunal. Sections 67c to 67g and Section 79a of the General Administrative Code concerning the special provisions on proceedings before the Independent Administrative Tribunal shall apply.

Furthermore, paragraph 5 provides

that, if it is relevant for a decision of the Independent Administrative Tribunal under paragraph 2 to establish the lawfulness of the use of data, this authority, except in case of imminent danger, shall

- a) stay its proceedings until the Data Protection Commission has decided this preliminary question,
- b) at the same time request the Data Protection Commission to take a decision in this regard.

Lastly, according to paragraph 6, the responsibility for the exercise of power under this federal act shall, for the purpose of any proceedings regarding the lawfulness of such exercise of power, lie with the Federal Minister of Defence.

By granting this new complaint option, Austria will fully comply with the requirements enshrined in constitutional and international law providing persons with an "effective remedy before a national authority" within the meaning of Article 13 of the European Convention on Human Rights.

In respect of the violation of Article 10 found by the Court, the government is of the opinion that by setting up the above-mentioned remedy there is no risk of new violations similar to those found by the Court, in particular due to the direct effect given to case-law of the European Court in Austrian law.

The Government of Austria is of the opinion that these measures will prevent the repetition of the violations found in the present case and considers that it has therefore fulfilled its obligations with regard to Article 46, paragraph 1 of the Convention.

Beer Gertrude v. Austria

Appl. No. 27253/95, Court judgment 6 February 2001

Resolution ResDH (2004) 1, 24 February 2004

The applicant alleged an infringement of the principle of equality of arms, in that the applicant was not informed of an appeal brought by her opponents against a cost order in proceedings to which had been party before a labour tribunal, and could therefore not reply.

In its judgment the Court unanimously:

- held that there had been a violation of Article 6, paragraph 1, of the Convention;
- held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
- held that the government of the respondent state was to pay the applicant, within three months 80 000 Austrian schillings in respect of costs and expenses and that simple interest at an annual rate of 4% would be payable on this sum from the expiry of the above-mentioned three months until settlement;

- dismissed the remainder of the applicant's claim for just satisfaction; In this resolution the Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sums provided for in the judgment, and took note of the information provided by the government.

Appendix to Resolution ResDH (2004) 1

Information provided by the Government of Austria during the examination of the Beer Gertrude case by the Committee of Ministers

At the origin of the violation found by the European Court of Human Rights was the system established by the Code of Civil Procedure, governing appeals against cost orders (*Kostenrekurs*). More precisely, Article 521a of the Code of Civil Procedure enumerated in an exclusive way the categories of appeals to be subject to an adversarial procedure before domestic courts and in which, accordingly, the communication of a copy of such appeal to the opposing party was required. Appeals against cost orders were not included in these categories and therefore their communication to the opposing party was not required.

Following the European Court's judgment, Article 521a of the Code of Civil Procedure was amended by Article 94 (20d) of the "First law on the conversion to Euro" (*Erstes Euro-Umstellungsgesetz*) which entered into force on 8 August 2001. According to the amendment, the court of first instance is obliged to communicate appeals against cost orders to the opposing party who now has the opportunity to reply within a time-limit of 14 days from the communication of the appeal.

The government is of the opinion that, through this amendment, the principle of equality of arms with regard to appeals against cost orders is henceforth ensured.

Furthermore, the attention of the legal community has been drawn to the judgment through its publication in the *Newsletter* of Austrian Institute for Human Rights 1/2001.

The Government 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.

Greece

Agoudimos and Cefallonian Sky Shipping Co. v. Greece

Appl. No. 38703/97, Court judgment 28 June 2001

Resolution ResDH (2004) 2 du 24 February 2004

The applicants complained that

complaint that legislative interference in litigation before the Court of Cassation between the applicants and the sailors' social security fund (NAT) amounted to a violation of their right to a fair trial.

In its judgment the Court unanimously:

- held that there had been a violation of Article 6, paragraph 1, of the Convention;
- held that the government of the respondent state was to pay the applicants, within three months from the date at which the judgment became final, 2 500 000 drachmas in respect of non-pecuniary damage; 7 700 US dollars in respect of costs and expenses, together with any value-added tax that might be chargeable and that simple interest at an annual rate of 6% would be payable on those sums from the expiry of the above-mentioned three months until settlement;
- dismissed the remainder of the applicants' claim for just satisfaction.

In this resolution the Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sums provided for in the judgment, and took note of the information provided by the government.

Appendix to Resolution ResDH (2004) 2

Information provided by the Government of Greece during the examination of the Agoudimos and Cefallonian Sky Shipping Co. case by the Committee of Ministers

The violation found by the European Court of Human Rights in this case had its origin in a dispute over the applicants' liability for contributions to the sailors' social security fund (NAT) by the previous owner of a ship they had bought on 6 February 1983 at public auction. NAT won at first instance and the applicants on appeal. The Court of Cassation (judgment No. 472/16 April 1997), applying the existing legislation at the time of the sale, found against the applicants and drew a further argument from Act 1711/1987 (adopted following the appeal decision) which, although interpreting the existing provisions, actually determined the substance of the dispute retrospectively, establishing buyers' liability in case of public auctions. The case was thereafter referred back to the Piraeus Court of Appeal for a new decision. The European Court found that the state had intervened in the proceedings in a decisive manner favourable to itself.

The government recalls that Article 28, paragraph 1, of the Greek Constitution provides that the Convention is part of the national legal order and its provisions prevail over every other legislative provision. It also draws attention to the direct effect of the Convention and of the Court's case-law in Greek law (as shown e.g. in

Resolution DH (99) 74 in the Papageorgiou case and by other examples of domestic case-law, especially judgments 33/2002 and 14/1999 of the Court of Cassation, plenary; judgment 954/1999 of the Athens Court of Appeal; judgment 1141/1999 of the Supreme Administrative Court, 1st Chamber; etc.).

Given that direct effect, and the measures taken to ensure that judges of courts of first instance and of appeal are aware of the obligation to avoid applying laws which are incompatible with the Constitution and the Convention (Circular No. 29 issued by the President of the Court of Cassation on 6 February 2002), the government is satisfied that new, similar violations will be prevented.

The government also recalls that the judgment was covered by the national press (see the newspaper *Kathimerini* of 14 February 2002, Greek and English edition, www.kathimerini.gr).

As regards the situation of the applicants, the Piraeus Court of Appeal, in the proceedings ordered by the Court of Cassation, quashed the judgment of the first instance court (judgment No. 681/29 June 2001) on the grounds that, independently of the findings of the Court of Cassation, the act of assessment of the debt to NAT had already been declared void by a previous final judgment and that the debt was already prescribed.

With regard to the seizure of the first applicant's property as security for the claims of NAT (see paragraph 18 of the judgment), it was lifted on 19 June 2001 following judgment No. 280/1999 of the Piraeus Administrative Court of first instance upheld by judgment No. 1964/2000 of the Piraeus Administrative Court of Appeal.

The Government considers, in the light of the above, that there is no longer any risk of a repetition of the violation found in the present case and that Greece has thus fulfilled its obligations under Article 46 in this case both as regards general and individual measures.

Italy

Biasetti v. Italy

Appl. No. 30428/96, Commission decision 8 October 1999, Interim Resolution DH (99) 356

Final Resolution ResDH (2003) 176, 6 January 2004

In its interim resolution the Committee of Ministers had decided that there had been a violation of Article 5, paragraph 4, of the Convention on account of the excessive length of certain appeal proceedings brought by the applicant against a judicial order dismissing his request to be released from detention on remand.

At the 680th meeting of the Deputies, the Committee of Ministers, agreeing with the Commission's proposals, held by a



decision adopted on 8 October 1999, in accordance with former Article 32, paragraph 2, of the Convention, that no sum of money was to be paid to the applicant as just satisfaction, since the latter had not submitted any claim in this respect.

In this final resolution the Committee of Ministers took note of the following information provided by the Italian government.

Appendix to Final Resolution ResDH (2003) 176

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

The Government of Italy recalls that the essential element in the finding of the violation in this case was the failure to observe the deadline laid down for forwarding the file to the appeal court. In the case at issue, this in fact took more than 6 months.

Under Law No. 332 of 5 August 1995, such a violation can no longer take place as, if the file is not transmitted or a decision on an application to reopen is not taken within the appointed deadline (1 to 5 days and 10 days respectively), the order imposing the applicant's detention becomes void.

The report of the European Commission of Human Rights has been sent to all competent judicial authorities.

The Government of Italy accordingly considers that it has satisfied its obligations under former Article 32 of the Convention.

San Marino

Tierce and others v. San Marino

Appl. Nos. 24954/94, 24971/94 and 24972/94, Court judgment 25 July 2000

Resolution ResDH (2004) 3, 24 February 2004

The three applicants had complained of the unfairness of certain criminal proceedings.

In its judgment the Court unanimously:

- held that there had been a violation of Article 6, paragraph 1, of the Convention regarding Mr Tierce, since the double function – as investigating and trial judge – of the *Commissario della Legge* and the wide-ranging extent of his investigative powers could objectively cast doubt on his impartiality;
- held that there had been a violation of Article 6, paragraph 1, of the Convention as regards the three applicants in that they could not be heard in person by the appellate judge;
- held
- a) that the government of the respondent state was to pay the first applicant, within three months,

12 000 000 Italian lire in respect of non-pecuniary damage;

- b) that the government of the respondent state was to pay the second and the third applicants, within three months, 10 000 000 Italian lire each in respect of non-pecuniary damage;
 - c) that the government of the respondent state was to pay the three applicants, within three months, the overall sum of 15 000 000 Italian lire in respect of costs and expenses, together with any value-added tax that may be chargeable;
 - d) that simple interest at an annual rate of 2.5% would be payable on those sums from the expiry of the above-mentioned three months until settlement;
 - dismissed the remainder of the applicants' claim for just satisfaction
- In this resolution the Committee of

Ministers satisfied itself that the government of the respondent state had paid the applicant the sums provided for in the judgment, and took note of the information provided by the government.

Appendix to Resolution ResDH (2004) 3

Information provided by the Government of San Marino during the examination of the Tierce and others case by the Committee of Ministers

With regard to the individual measures, the Government points out that the two Italian applicants, Mr Marra and Ms Gabrielli, given prison sentences in 1993 of one year and two months and ten months respectively, have submitted to the Committee of Ministers no request for, nor information concerning, reparation for any consequences of the convictions.

As regards Mr Tierce, the government recalls that the applicant has never been deprived of his liberty (in 1993 he received a suspended sentence of one year's imprisonment) and that all remaining consequences of the conviction at issue have been erased by a Court decree delivered on 31 October 2002, which effectively "cancelled" the crime. Accordingly, the reference to the conviction which was in violation of the Convention was removed from Mr Tierce's record and he is no longer barred from running a company. The "historical" criminal record, used solely by the judicial authorities, also mentions that the crime has been cancelled. The government recalls that at the end of 2002 Mr Tierce introduced a request for rehabilitation before the Parliament (*Consiglio Grande e Generale*).

With regard to the assets seized at the request of Mr Tierce's former associate, such seizure is solely part of the civil procedure for damages initiated by the applicant's former associate, still pending before the civil national courts. The courts in question are not bound by the findings of the

criminal procedure. Accordingly, this is a matter totally unrelated to the complaints at issue in the present case. Furthermore, the closure of the present case by the Committee does not prejudice the outcome of the procedure pending before the national courts nor the outcome of any new application filed before the European Court.

With regard to the general measures, in order to inform the public and to ensure that the courts will be able to give a direct effect to the requirements emerging from the Tierce judgment in implementing San Marino law, this judgment was published on 6 October 2000 by posting the whole text in Italian, French and English on the doors of the Public Palace (*ad valvas palatii*) – as is traditionally done in San Marino for all important official information (such as new laws, etc.) – in order to enable anybody to obtain, upon request, a copy of the judgment.

As regards the appeal procedure, a new law adopted on 27 June 2003 amended Article 198, paragraph 2, of the Code of Criminal Procedure, as amended by Law No. 20 of 24 February 2000, by explicitly confirming the possibility, already recognised in practice by the case-law, for an accused to be heard in person, if he or she so requests, by the court during the public appeal hearing.

In addition, the possibility for a combination of functions by the *Commissario della Legge* was abolished by Law No. 83 of 1992 on the administration of justice which applies until the entry into force of a new Code of Criminal Procedure. In this connection, the parliamentary committee working on the draft code has ruled out the possibility of combining investigation and judgment functions, in accordance with the case-law of the European Court, and the San Marino authorities undertake not to reintroduce such a combination of functions in the new Code of Criminal Procedure.

Laws Nos. 144 and 145 of 30 October 2003 (concerning the organisation of the judiciary system) have not modified the legislative provisions prohibiting the combination of judicial functions and providing for the right of accused persons to be personally heard by the deciding judge in first instance and appeal proceedings.

The Government concludes that these individual and general measures provide reparation for the applicant, that they prevent the risk of new violations similar to those found in the present case and that, accordingly, the Republic of San Marino has, in the instant case, fulfilled its obligations under Article 46.

In addition, the government draws attention to the fact that further to Recommendation R (2000) 2 by the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, on 27 June 2003 the San Marino Parliament (Consiglio Grande e Generale) passed a law which makes it possible to reopen criminal

proceedings in which the European Court of Human Rights has found a violation of the Convention before national courts.

Sweden

Lundevall v. Sweden

Appl. No. 38629/97, Court judgment 12 November 2002

Resolution ResDH (2003) 152, 20 October 2003

The case concerned an alleged violation of the applicant's right to a fair trial on account of the refusal by the Administrative Court of Appeal to hold a hearing in proceedings concerning social security benefits.

In its judgment the Court unanimously:

- held that there had been a violation of Article 6, paragraph 1, of the Convention;
- held that the government of the respondent state was to pay the applicant, within three months from the date at which the judgment became final, 5 000 euros in respect of costs and expenses, to be converted into the national currency of the respondent state at the rate applicable at the date of settlement, and that simple interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;
- dismissed the remainder of the applicant's claim for just satisfaction.

In this resolution the Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sums provided for in the judgment, and took note of the information provided by the government.

Appendix to Resolution ResDH (2003) 152

Information provided by the Government of Sweden during the examination of the Lundevall case by the Committee of Ministers

Generally speaking, the Government of Sweden recalls that both the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights are part of the Swedish legal order and have to be applied by the courts and authorities (see for example Resolution DH (98) 205 in the case of Holm against Sweden, or Resolution DH (95) 94, in the Case of Fredin No. 2 against Sweden).

The Government therefore considers that Swedish administrative courts will not fail to adapt their practice with regard to the holding of oral hearings to the jurisprudence of the European Court, in order to prevent new violations of the Convention.

It states in this regard that the attention of the authorities concerned has been drawn to their obligations ensuing from the Convention by means of the publication in *Svensk Juristtidning* (the most important legal journal in Sweden) of an article by Mr Danelius, former member of the European Commission of Human Rights, explaining the Strasbourg Court's position in the cases of Lundevall and Salomonsson against Sweden. Furthermore, an explanatory report relating to the European Court's judgments in these cases has been sent to all the relevant judicial authorities. An additional publication of the judgments is under way in the *Judicial Authorities Bulletin* (*Domstolsverket informerar*).

Finally, with regard to the applicant's rights, the government notes that the applicant has the right to ask for the reopening of the proceedings before the Supreme Administrative Court and that this Court can order the reopening of the proceedings, if it considers it necessary, in order to fully erase the consequences of the violations for him.

The Government of Sweden considers that Sweden has accordingly complied with its obligations under Article 46, paragraph 1, of the Convention.

Switzerland

F.R. v. Switzerland

Appl. No. 37292/97, Court judgment 28 June 2001

Resolution ResDH (2003) 154, 20 October 2003

The complaint related to a breach of the equality of arms principle, in that the Federal Insurance Court in its judgment of 10 June 1997 had not considered a statement of the applicant, that in these proceedings certain witnesses had not been heard and that he himself had not been properly heard.

In its judgment the Court unanimously:

- held that there had been a violation of Article 6, paragraph 1, of the Convention;
 - held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
 - held that the government of the respondent state was to pay the applicant, within three months from the date at which the judgment became final, 3 103.95 Swiss francs in respect of costs and expenses and that simple interest at an annual rate of 5% would be payable on this sum from the expiry of the above-mentioned three months until settlement;
 - dismissed the remainder of the applicant's claim for just satisfaction
- In this resolution the Committee of

Ministers satisfied itself that the government of the respondent state had paid the applicant the sums provided for in the judgment, and took note of the information provided by the government.

Appendix to Resolution ResDH (2003) 154

Information provided by the Government of Switzerland during the examination of the F.R. case by the Committee of Ministers

As regards individual measures, the European Court of Human Rights' judgment was forwarded to the applicant on 22 October 2001, enabling the latter to seek a review of the Federal Insurance Court's judgment of 10 June 1997.

Concerning general measures, Section 110 of the Federal Judiciary Act of 16 December 1943, which sets out the rules governing exchanges of submissions following the lodging of appeals with the Swiss Federal Court, provides that the Federal Court may seek observations from the authority that took the decision in question. The act also allows a second exchange of submissions, enabling, *inter alia*, the appellant to set out his views on the observations submitted by the court concerned.

The Federal Court's case-law has clarified the scope and conditions of application of this section of the act, taking account of the case-law of the Strasbourg organs concerning Article 6, paragraph 1, of the Convention.

Moreover, the judgment of the European Court was transmitted to the Federal Insurance Court on 29 June 2001, to the Courts-Martial Appeal Court and to the Federal Government Departments on 11 July 2001 and to the Cantonal Justice Departments on 11-12 July 2001 for the attention of the cantonal courts. It was published in the journal *Jurisprudence des autorités administratives de la Confédération* No. 65/IV (2001) and may be consulted (in French) at the following website: <http://www.vpb.admin.ch/franz/cont/heft/654som.html>. The judgment was also mentioned, *inter alia*, in the Federal Council's annual report on Swiss activities at the Council of Europe in 2001, which was published in the *Feuille fédérale* No. 8/2002.

The Government of Switzerland believes that these measures will prevent any future occurrence of violations similar to that found in the present case and that Switzerland has therefore satisfied its obligations under Article 46 of the Convention.

D.N. v. Switzerland

Appl. No. 27154/95, Court judgment 29 March 2001

Resolution ResDH (2003) 177, 6 January 2004

The case related to the lack of impartiality of the Administrative Appeals Commission of the Canton of St Gall, which



in 1994 dismissed the applicant's request for release from a psychiatric clinic; the juge rapporteur having been beforehand invited to prepare an opinion as a psychiatric expert.

In its judgment the Court:

- held, by twelve votes to five, that there had been a violation of Article 5, paragraph 4, of the Convention;
- held, unanimously, that the government of the respondent state was to pay the applicant, within three months, 3 000 Swiss francs in respect of non-pecuniary damage and 3 500 Swiss francs in respect of costs and expenses and that simple interest at an annual rate of 5% would be payable on those sums from the expiry of the above-mentioned three months until settlement;
- dismissed, unanimously, the remainder of the applicant's claim for just satisfaction.

In this resolution the Committee of Ministers satisfied itself that the govern-

ment of the respondent state had paid the applicant the sums provided for in the judgment, and took note of the information provided by the government.

Appendix to Resolution ResDH (2003) 177

Information provided by the Government of Switzerland during the examination of the D.N. case by the Committee of Ministers

Following the judgment of the European Court of Human Rights, the practice of the Administrative Appeals Commission of the Canton of St Gall has changed: the specialised judge will continue to carry out the interview of the person concerned, he will submit his findings to the Commission and he will participate in the hearing. However, he will no longer participate in the deliberations and the taking of the decision. The specialised judge can, thus, give his opinion from the beginning of the proceedings, as his function is clearly separate from that of the judge who takes the decision.

Moreover, the judgment of European Court has been disseminated to the

cantonal departments of justice, to the Administrative Appeals Commission of the Canton of St Gall and to the Federal Court. It was published in the journal *Jurisprudence des autorités administratives de la Confédération*, No. 65/IV (2001) and may be consulted (in French) at the following website: <http://www.vpb.admin.ch/franz/cont/heft/654som.html>. The judgment was also mentioned, *inter alia*, in the Federal Council's annual report on Swiss activities at the Council of Europe in 2001, which was published in the *Feuille fédérale* No. 8/2002.

Concerning individual measures, the Government of Switzerland informed the Committee of Ministers that the judgment was sent to the applicant in order to allow her to seek, if she wishes, a review of the Federal Court's judgment of 3 April 1995.

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

Intergovernmental co-operation – Law and policy 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 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 CDDH held its 56th meeting on 18-21 November 2003. During this meeting it:

- adopted its Interim Activity Report: "Guaranteeing the long-term effectiveness of the European Court of Human Rights" - Implementation of the Declaration adopted by the Committee of Ministers at its 112th Session (14-15 May 2003)". The Committee of Ministers took note of this report on 8 January 2004;
- adopted its Final Activity Report on Protection of Human Rights during armed conflicts, internal disturbances and tensions and within this framework, also adopted the draft declaration intended for the Committee of Ministers. The latter took note of the report and adopted the Declaration on 21 January 2004;
- noted the ad hoc terms of reference with a view to the elaboration of a draft legally binding instrument on access to official documents and, within this framework, elaborated a questionnaire on the application of Recommendation Rec (2002) 2 on access to official documents and adopted a Guide aiming at raising the awareness of national authorities and the public at large.
- adopted three opinions on Parliamentary Assembly Recommendations 1606(2003) "Areas where the European Convention on Human Rights cannot be implemented", 1614 (2003) "Environment and human rights", 1615 (2003) "The institution of Ombudsman" respectively.

Replies to these Recommendations were adopted by the Committee of Ministers on 21 January 2004. With regard to environment and human rights, on 21 January 2004, the Committee of Ministers also adopted terms of reference for the CDDH to draft an instrument, in the form of guidelines or a manual, recapitulating the relevant rights as interpreted in the Court's case-law and emphasising the need to strengthen environmental protection at national level, notably as concerns access to information, participation in decision-making processes and access to justice in environmental matters.

- proceeded to an exchange of views with Mr Kevin McNamara, Rapporteur on the Reform of the European Court of Human Rights of the Committee of Legal Affairs and Human Rights of the Parliamentary Assembly and with Mr Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe;
- held a *tour de table* on the state of signatures and ratifications of Protocols No. 12 and No. 13 of the Convention.

The Bureau of the CDDH held a meeting in Paris on 5 and 6 February 2004 to take stock of the progress in the work of the CDDH further to the above mentioned Declaration "Guaranteeing the long-term effectiveness of the European Court of Human Rights". It also undertook a first exchange of views on the activities that the CDDH could give priority to once it has finished its work on the reform.

Bodies answerable to the CDDH

Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR)

At its 55th meeting (18-20 February 2004), the DH-PR completed the work assigned to it by the CDDH in June 2003 as part of the follow-up to the above mentioned Declaration "Guaranteeing the long-term effectiveness of the European Court of Human Rights".

- It adopted a preliminary draft Declaration of the Committee of Ministers "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels".
- With regard to proposals aiming at preventing violations at the national level and improving domestic remedies, it finalised:
 - the draft Recommendation of the Committee of Ministers to Member States on the improvement of domestic remedies with its draft appendix;

- the draft Recommendation of the Committee of Ministers to Member States on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights with its draft appendix;
- the draft Recommendation of the Committee of Ministers to Member States on the European Convention on Human Rights in university education and professional training with its draft appendix;
- With regard to proposals aiming at improving and accelerating the execution of the Court judgments, at its previous meeting (the 54th, 10-12 September 2003), it had already elaborated:
 - the draft Resolution of the Committee of Ministers on judgments revealing an underlying systemic problem.

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

The most recent phase of work for this Group was launched following the Committee of Ministers Declaration “Guaranteeing the long-term effectiveness of the European Court of Human Rights” adopted at its 112th Ministerial Session (14-15 May 2003) and which expressed the Committee’s wish to be in a position to consider, with a view to its adoption, a draft amending Protocol to the European Convention on Human Rights and other relevant instruments arising from the implementation of their Declaration, at their 114th Session in 2004.

To this end, the Ministers’ Deputies, at their 842nd meeting (June 2003), subsequently assigned the Steering Committee of Human Rights terms of reference for this purpose. In its turn, the CDDH, at its 55th meeting (17-20 June 2003), instructed its drafting group to draw up a draft amending Protocol to the European Convention on Human Rights, accompanied by an explanatory report.

This work has concentrated on measures to be taken concerning the European Court of Human Rights (optimising the effectiveness of the filtering and the subsequent processing of applications before the Court) requiring amendment of the Convention, some amendments with regard to the execution of the judgments of the Court, as well as some other issues (*i.e.* possible accession of the European Union to the Convention; terms of office of judges of the Court). Following its first (6-8 October 2003) and second (5-7 November 2003) meetings, the Drafting Group submitted an Interim Activity Report: “Guaranteeing the long-term effectiveness of the European Court of Human Rights” - Implementation of the Declaration adopted by the Committee of Ministers at its 112th Session (14-15 May 2003)” to the Steering Committee for Human Rights, which transmitted it to the Committee of Ministers. The latter took note of this report on 8 January 2004.

The Group continued its work during its 3rd (17-19 December 2003) and 4th meeting (25-27 February 2004). During its 4th meeting, it held an exchange of views with NGOs, National Human Rights Institutions and lawyers on the issues and measures under discussion. In the course of its work, the Drafting Group also set up two sub-groups, one to address the issue of filtering and the other to address the question of accession of the EU to the European Convention on Human Rights. The conclusions of these sub-groups were submitted to the Drafting Group with a view to facilitating discussions on these issues.

European Social Charter

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

Signatures and ratifications

Forty-three member states of the Council of Europe have signed the 1961 Charter or the 1996 revised Charter. To date, 34 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. It is composed of thirteen members elected by the Council of Europe's Committee of Ministers.

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 are in conformity with the Charter. Its decisions ("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 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.

The organisations entitled to lodge complaints with the Committee are the European Trade Union Confederation, the Union of Industrial and Employers' Confederations of Europe, the International Organisation of Employers, non-

governmental organisations with consultative status with the Council of Europe, employers' organisations and trade unions in the country concerned, and, under certain conditions, national NGOs. Once the complaint has been declared admissible, a written procedure is set in motion, with an exchange of documents between the parties. A public hearing may be held. The Committee then takes a decision on the merits of the complaint, which it forwards to the parties concerned and the Committee of Ministers in a report, which is made public. Finally, the Committee of Ministers adopts a resolution, by which it may recommend that the state concerned take specific measures to bring the situation into line with the Charter.

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.

Conclusions of the European Committee of Social Rights

The European Committee of Social Rights adopted, at its 200th session (February 2004):

1. Conclusions in respect of Cycle XVII-1 on the situation in Denmark, Greece, Malta, the Netherlands (including Aruba), Portugal, Spain, Turkey and the United Kingdom regarding Articles 1, 5, 6, 12, 13, 16 and 19 of the 1961 Social Charter.
2. Conclusions 2004 on the situation in Bulgaria, Estonia, France, Norway, Roumania, Slovenia, Sweden regarding the articles 1, 5, 6, 7, 12, 13, 16, 19 and 20 of the Revised Social Charter.

The situation as regards complaints lodged before the European Committee of Social Rights

Merits

On 4 November 2003, the European Committee of Social Rights took a decision on the merits of complaint N°13



lodged by the NGO “Autisme-Europe” which alleged that some provisions of the Social Charter were not respected by France due to insufficient educational provision for autistic persons.

The Committee concluded that the situation in France constituted a violation of Article 15 § 1 (right of disabled persons to education) and of Article 17 § 1 (rights of children to the care, assistance, education and training they need), whether alone or read in combination with Article E (non-discrimination) of the revised European Social Charter.

On 10 March 2004, the Committee of Ministers adopted Resolution ResChs (2004) 1.

Admissibility

The 5 complaints (No. 17 – 21/2003) lodged by the World Organisation Against Torture v. Greece, Ireland, Italy, Portugal and Belgium were declared admissible on 9 December 2003 by the European Committee of Social Rights.

They relate to Article 17 (protection of children) of the Charter. The organisation alleges that national law has not effectively prohibited corporal punishment of children, nor has it prohibited other forms of degrading punishment or treatment of children and provided adequate sanctions in penal or civil law.

Complaint No. 22/2003 (*Confédération Générale du Travail*) v. France was declared admissible on 9 February 2004. It alleges that the provisions of Act No. 2003-47 of 17 January 2003 (known as “Loi Fillon II”) relating to wages, working time and development of employment, violates Article 2 (right to just conditions of work), Article 3 (right to safe and healthy working conditions) and Article 11 (right to protection of health) of the Revised Charter.

Complaint No. 23/2003 (*Syndicat Occitan de l'éducation*) v. France was declared admissible on 9 February 2004. It alleges that the prohibition on non-representative professional organizations from presenting candidates in professional elections violates Articles 5 (right to organize) and 6 (right to collective bargaining) of the Revised Charter.

Seminars, meetings

Moscow, 17-18 November 2003

Steering Committee for the Co-operation between the Council of Europe, the European Union and Russia

Stockholm 26-27 November 2003

Visit of a delegation of the European Committee of Social Rights on the provisions of the Charter which have not been accepted by Sweden

Belgrade and Podgorica, 2-3 December 2003

Seminar on the Revised European Social Charter

Andorra, 17 December 2003

Seminar on the Revised European Social Charter

Warsaw, 5-7 February 2004

European meeting of ATD Fourth world “*Acteurs ensemble d'une Europe de la dignité pour tous*”

Strasbourg, 17-18 February 2004

Post-ratification visit to the Council of Europe of the Armenian Minister of Labour and Social Affairs

Strasbourg, 16-19 February 2004

Study visit to the Council of Europe of an official from the Ministry of Labour and Social Policy of Azerbaijan

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 or Punishment (CPT)

The CPT was set up under the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It is composed of persons from a variety of backgrounds: lawyers, medical doctors, prison experts, persons with parliamentary experience, etc. The CPT's task is to examine the treatment of persons deprived of their liberty. For this purpose, it is entitled to visit any place where such persons are held by a public authority; apart from periodic visits, the Committee also organises visits which it considers necessary according to 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

Prison No. 8 in Bender, November 2003

During a five-day visit a delegation of the CPT examined the situation at Colony (Prison) No. 8 in Bender. Since 10 July 2003, this establishment has been cut off from running water and electricity supplies by decision of the Bender municipal authorities.

Colony No. 8 in Bender forms part of the penitentiary system of the Republic of Moldova, but is located in an area under the control of the Transnistrian region. That region of the Republic of Moldova unilaterally declared itself an independent republic in 1991.

In the course of its visit, the CPT's delegation met the Minister for Justice of the Republic of Moldova, the Deputy Minister for Justice and the Director General of Prison Services. The delegation also had meetings with the authorities of the Transnistrian region and the Bender municipal authorities.

Portugal, November 2003

The CPT recently carried out a nine-day visit to Portugal. The CPT's delegation examined the treatment of persons

detained by law enforcement agencies and the fundamental safeguards against ill-treatment offered to such persons. It also reviewed the conditions of detention in prisons, including in Porto Central Prison, an establishment visited for the fifth time by the CPT. Further, the delegation examined for the first time the treatment of patients in a penitentiary psychiatric hospital.

During the visit, the CPT's delegation held discussions with the Minister for Justice, the Minister for Internal Administration and the Deputy State Secretary to the Minister for Internal Administration. In addition, the delegation met with senior officials of the Ministries of Justice and Internal Administration. It also met the Ombudsman (*Provedor da Justiça*).

The delegation visited Law enforcement establishments (Faro, Lisbon and Porto Public Security Police Headquarters, Almada/Pragal, Queluz-Massamá and Sintra Public Security Police Stations, Facilities of the Public Security Police at Lisbon Airport, Holding Centre of the Borders and Aliens' Service, Lisbon Airport, Facilities of the Customs Service, Lisbon Airport) and Prisons (Porto and Tirês Central Prisons, Faro, Leiria and Olhão Regional Prisons, Judicial Police Prison, Porto, The Psychiatric and Mental Health Clinic of the Central Prison of Santa Cruz Do Bispo, Porto);

Croatia, December 2003

The CPT carried out its second visit to Croatia. During the visit, the CPT's delegation followed up a certain number of issues already examined during the previous visit in 1998, in particular in respect of the treatment of persons held in police establishments and prisons. It also visited, for the first time, an establishment which holds foreign nationals awaiting enforcement of a removal order, as well as a psychiatric hospital and a social care home for the mentally ill.

The delegation held consultations with the Minister of Justice, the Minister of Health, the Vice Minister of Labour and Social Welfare, the Head of Prison Administration, the Deputy Director General of the Police, as well as with senior officials from the Ministries of Justice, Health, Interior, and Labour and Social Welfare.

The delegation visited establishments under the authority of the Ministry of the Interior (Split Police Administration: Police Station No. 1, Split, Trogir Police Station ; Zagreb Police Administration: Crnomerec Police Station, Immigration Police, Zagreb International Airport, Unit for detention, escort and security, Đordiceva Street 4, Je•evo Detention Centre for Illegal Immigrants), Establishments

under the authority of the Ministry of Justice (Lepoglava State Prison, Split County Prison, Temporary holding cells, Zagreb County Court), establishments under the authority of the Ministry of Health (Vrapce Psychiatric Hospital) and establishments under the authority of the Ministry of Labour and Social Welfare (Nuštar Social Care Home for the Mentally Ill).

Georgia, December 2003

A delegation of the CPT carried out its second visit to Georgia. The CPT's visit coincided in time with the political crisis in Georgia and the resignation of the country's President. As a result of the special situation, the delegation did not complete its programme, and in particular could not travel to the Adjara Autonomous Republic. A prolongation of the visit is therefore envisaged in early 2004.

During the visit, the CPT's delegation held discussions with the Acting Minister of Justice, the Minister of Labour, Health and Social Affairs, the Deputy Minister of Foreign Affairs, the Deputy Secretary of the National Security Council, the Deputy Prosecutor General and the Deputy Prosecutor General. It also met with senior officials of the Ministries of Justice, Internal Affairs, and Labour, Health and Social Affairs.

The delegation visited Police establishments (Temporary detention isolator of the Ministry of Internal Affairs, Tbilisi, Temporary detention isolator of the Main City Department of Internal Affairs, Tbilisi, Didube-Chugureti District Division of Internal Affairs, Tbilisi, Gldani-Nadzeldadevi District Division of Internal Affairs, Tbilisi, Isani-Samgori District Division of Internal Affairs, Tbilisi, Vake-Saburtalo District Division of Internal Affairs, Tbilisi, Temporary detention isolator of the Office of Internal Affairs, Rustavi) and Penitentiary establishments (Prison No. 5, Tbilisi, Penitentiary establishment for women No. 5, Tbilisi, Central prison hospital, Tbilisi, Juvenile institution, Avchala, Strict regime penitentiary establishment No. 2, Rustavi.)

Azerbaijan, January 2004

The CPT carried out its second visit to Azerbaijan. The main purpose of the visit was to collect information concerning the treatment of persons detained in relation to events which followed the recent Presidential election in that country. The delegation interviewed some thirty persons, currently held at Investigative isolator No. 1 (Bayil) in Baku. In addition, the delegation visited the Temporary detention centre of the Department for combating organised crime in Baku.

In the course of its visit, the CPT's delegation held discussions with the Minister of Justice, the Minister of Internal Affairs and the Deputy Minister of Health.

Bulgaria, January 2004

A delegation of the CPT carried out its fourth visit to Bulgaria. The purpose of the visit was to review the situation of persons placed by the public authorities in homes for adults with mental disorders and for children with mental retardation. Such establishments had already been visited by the CPT in the past, and the conditions observed there were of deep concern to the Committee (CPT/Inf (2002) 1).

The delegation visited home for women with mental disorders in the village of Razdol, Strumyani municipality, home

for men with mental disorders in the village of Pastra, Rila municipality and home for children and juveniles with mental retardation in the village of Vidrare, Pravets municipality.

In the course of its visit, the CPT's delegation met the Deputy Minister of Labour and Social Policy, and the Deputy Minister of Health.

Malta, January 2004

The CPT carried out an *ad hoc* visit to Malta. The main purpose of the visit was to examine the treatment of foreign nationals detained under the immigration legislation, as well as the procedures and means of restraint applied in the context of forcible removals by air.

The delegation visited Police establishments (Police Headquarters, Floriana, Ta'kandja Police Complex, Siggiewi, Malta International Airport Custody Centre, Luqa, Immigration Reception Centre, Hal Far) and Military establishments (Lyster Barracks, 1st Regiment of the Armed Forces, Hal Far, Safi Barracks, 3rd Regiment of the Armed Forces, Safi).

The delegation also went to Corradino Correctional Facility, as well as Mount Carmel Psychiatric Hospital and St Luke's Hospital, in order to interview foreign detainees and to consult specific medical files.

In the course of the visit, the delegation held meetings with the Minister for Justice and Home Affairs, the Ombudsman, the Commissioner for Refugees, the Commissioner of Police, and the Deputy Commander of the Armed Forces of Malta. In addition, it met a number of senior officials from the Ministry of Justice and Home Affairs, as well as from the Armed Forces of Malta.

Andorra, February 2004

The CPT carried out its second visit to Andorra. The CPT's delegation examined the measures taken by the Andorran authorities in response to the recommendations made following its previous visit (in 1998), in particular in respect of the safeguards offered to persons detained by the police and the regimes for prisoners. It also examined the conditions of hospitalisation of prisoners.

The delegation visited the Police Headquarters in Escaldes-Engordany, as well as the two prison establishments Casa de la Vall and La Comella and the two secure rooms for health care to prisoners at the Meritxell Nostra Senyora Hospital in Andorra-la-Vella.

During the visit, the CPT's delegation held discussions with the Minister for Justice and Interior and the Minister for Health and Welfare, as well as with senior officials of those Ministries. It also met the Ombudsman (*Raonador del Ciutadà*).

Lithuania, February 2004

A delegation of the CPT carried out its second visit to Lithuania. The CPT's delegation followed up a number of issues examined during the first visit, in particular the treatment of persons deprived of their liberty by the police, as well as the conditions of detention in police detention centres and prisons. For the first time in Lithuania, the CPT visited a juvenile prison and a psychiatric hospital.

The delegation held consultations with the Minister of Justice, as well as with senior officials from the Ministries of

Justice, Education and Science, Health Care, the Interior, and Social Security and Labour. It also met the Head of the Ombudsman Office, the Chairman of the Parliamentary Committee on Human Rights and representatives of the Prosecutor-General's Office.

The delegation visited establishments under the Ministry of the Interior (Alytus Police Detention Centre, Kaunas Police Detention Centre, Marijampole Police Detention Centre, Vilnius Police Detention Centre, Kosciuskos Street 1, Alytus Police Station, Kaunas Centre Police Station, Marijampole Police Station), establishments under the Ministry of Justice (Kaunas Juvenile Remand Prison and Correction Home, Lukiškes Remand Prison, Vilnius, Marijampole Correction Home Prison, Hospital, Vilnius) and establishments under the Ministry of Health (Kaunas Psychiatric Hospital).

Colony No. 8 in Bender, February 2004

During a three-day visit which began on 3 February 2004, a delegation of the CPT re-examined the situation at Prison No. 8 in Bender. Prison No. 8 in Bender forms part of the penitentiary system of the Republic of Moldova, but is located in an area under the control of the Transnistrian region. That region of the Republic of Moldova unilaterally declared itself an independent republic in 1991.

This establishment, last visited by the CPT in November 2003, has been cut off from running water and electricity supplies since 10 July 2003 by decision of the Bender municipal authorities. During the visit, the delegation explored possible ways of ending the current deadlock concerning such supplies.

In the course of the visit, the CPT's delegation met the Minister for Justice of the Republic of Moldova and the Director General of Prison Services. The delegation also held talks with the Head of the Bender Municipal Administration.

Documents state by state – General reports

Kingdom of the Netherlands

November 2003: Response of the Kingdom of the Netherlands to the report on its February 2002 visits

As regards the Kingdom in Europe, the authorities react favourably to a number of recommendations and comments made by the CPT. By way of example, routine weekly strip-searching of EBI (high security) prisoners in Vught has stopped, and criteria for the prolongation of placement in the EBI have been defined more precisely, taking into account the behaviour of the prisoner concerned. Certain improvements have also been introduced at Bloemendaal Special Detention Facility (holding persons suspected of carrying drugs in corpore), in particular, regarding material conditions, staff resources, medical confidentiality, and information provided to detainees. Triport Detention Units for the holding of persons refused entry and criminal suspects at Schiphol Airport have now been replaced by new facilities, designed to meet all relevant standards. As regards nursing homes, the authorities are examining the difficulties relating to the recruitment and retention of

trained staff, and the related effects on the quality of care, as well as taking steps to improve further the legal protection of vulnerable patients (in particular, in the context of the use of means of restraint and seclusion).

The position of the authorities concerning certain fundamental safeguards during police custody remains unchanged. In particular, criminal suspects are still not entitled to have access to a lawyer during the initial period of detention (of up to six hours) by the police for interrogation purposes.

As regards the Netherlands Antilles, the authorities respond favourably to a number of recommendations concerning Philipsburg Central Police Station and Pointe Blanche Prison (St-Maarten) and Bon Futuro Prison (Curacao). The authorities confirm that the renovation of the cell complex at Philipsburg Central Police Station has been completed and the very small (0.65 m²) holding cells taken out of service. Positive steps taken at Pointe Blanche Prison include the completion of the renovation programme and remedying the problem of the quality of drinking water; at Bon Futuro Prison, they include the appointment of a governor, the implementation of regime and rehabilitation programmes, and the end of the practice of placing prisoners, for control purposes, in the Forensic Observation Centre (FOBA). At both establishments, a classification and allocation system for detainees has been introduced and an increase in the flexibility of visit entitlements has been granted. However, there are still severe difficulties as regards the recruitment of fully qualified prison staff.

France

December 2003: Report on Roissy-Charles de Gaulle visit

The French Government has agreed to the publication of the report by the CPT on the visit which it carried out at Roissy-Charles de Gaulle airport from 17 to 21 June 2002. The aim of the visit was to examine the situation of foreign nationals held at the airport. The report is published together with the response of the French authorities.

No credible allegations were heard of ill-treatment of detained persons by staff employed in Immigration Waiting Zones (ZAPI) Nos. 2 and 3. However, there were a certain number of allegations of ill-treatment of foreign nationals (slaps, kicks, baton blows, tight handcuffing, threats and insults) by police officers during passport controls, requests for asylum and attempts to force detainees to board aircraft. In their response, the French authorities emphasise that the professional code of ethics – and the sanctions imposed on those who contravene that code – are periodically recalled, clarified and explained in detail. This is done by the central department of the border police and senior officers, taking into account the specific nature of the tasks which law enforcement officials are required to carry out.

The CPT has recommended that certain aspects of the directives concerning the forcible removal of foreign nationals by air should be completed and updated. An assessment has been undertaken by the French authorities, which should soon result in the directives being updated. In particular, they will list in a precise and comprehensive manner those techniques which are prohibited in all circumstances, as well as those which must always be employed. In this respect, it will be recalled that techniques which can directly or indirectly

obstruct the airways, such as compression of the thorax or techniques involving restriction of limbs with adhesives, are to be prohibited.

In their response, the French authorities also provide details on a series of initiatives currently underway and measures taken following CPT recommendations concerning detention areas in terminals and at the local removal unit (for example, the resolution of reported problems regarding the provision of meal trays to foreigners).

The holding conditions of ZAPI Nos. 2 and 3 show a clear improvement. These conditions, subject to the improvements suggested by the CPT, could be satisfactory for periods of up to 20 days.

Measures have also been recommended with a view to improving the health care of detained persons. In this respect, the response describes measures aimed at reinforcing the health-care team in the ZAPI and indicates that a permanent medical presence will be maintained in the holding zone.

Georgia

January 2004: Georgian responses to May 2001 visit report

In response to the CPT's recommendations aimed at preventing ill-treatment by the police, the Georgian authorities have taken measures to improve professional training and step up control of police activities. However, it is acknowledged that conditions of detention at the majority of police facilities remain unsatisfactory, due to a lack of finance.

As regards prison establishments, the Georgian authorities react favourably to a number of recommendations and comments made by the CPT. In the context of the reform of the penitentiary system, a special monitoring department has been set up at the Ministry of Justice. It systematically inspects prisons and makes proposals for legal and organisa-

tional changes. Progress is also reported in the area of combating tuberculosis. However, conditions at Prison No. 5 in Tbilisi – which is the largest pre-trial establishment in the country – are mostly unchanged. The establishment remains overcrowded and the building estate has additionally deteriorated as a result of the 2002 earthquake. The authorities' efforts to re-allocate prisoners and refurbish Prison No. 5 are being thwarted by difficulties in financing the completion of a new prison in Rustavi.

The responses also refer to some progress at the Strict Regime Psychiatric Hospital in Poti. In particular, screening for tuberculosis of newly admitted patients has been introduced. More improvements are expected in 2004, as a consequence of the increased funding of the federal programme for psychiatric treatment.

Turkey

February 2004: Report on the CPT's visit to Turkey in February 2003 and Turkish Government's response.

The February 2003 visit was triggered by persistent reports that relatives and lawyers of Abdullah Öcalan had been experiencing considerable difficulties in gaining access to Imrali island, where he is detained. The CPT's delegation examined in detail the visiting arrangements for prisoners held at Imrali Closed Prison and interviewed Abdullah Öcalan, who is currently the establishment's sole inmate. The delegation also reviewed his conditions of detention, in the light of recommendations made by the CPT after its previous visits to Imrali Closed Prison in March 1999 and September 2001.

Internet site: <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 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 29 February 2004, the Advisory Committee had received 34 state reports and already adopted 31 opinions. The Committee of Ministers had adopted and made public conclusions and recommendations in respect of 24 state parties.

Follow-up meetings on the first results of the monitoring of the FCNM

In the period under consideration, two follow-up meetings on the first results of the monitoring of the FCNM took place in the Czech Republic (December 2003) and Cyprus (January 2004).

Projects under the Stability Pact for South-Eastern Europe concerning minorities

Building on the assistance and co-operation activities as well as the Joint Programmes with the European Commission, three projects were implemented under the Stability Pact for South-Eastern Europe concerning national minorities and were concluded at the end of 2003.

These projects included 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. There was also a project concerning acceptance and implementation of existing standards. This project was geared towards encouraging the countries in the region to sign and ratify all relevant international standards and also ensures that these standards are fully implemented in practice at national level and local level. Finally there was a project concerning bilateral co-operation agreements aimed at reinforcing and developing bilateral co-operation in the field of minorities in a way that is consistent and co-ordinated with existing multilateral standards, and in particular those of the Framework Convention for the Protection of National Minorities.

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



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.

7th European Ministerial Conference on Mass Media Policy

The Steering Committee on the Mass Media (CDMM) held its 60th meeting on 4-6 November 2003 in Rome at the invitation of its Chairperson. During this meeting, the CDMM continued its preparation of the 7th European Ministerial Conference on Mass Media Policy, which will be held in Kyiv, Ukraine, on 25-26 November 2004. The debates will be structured around 3 sub-themes: "Freedom of expression and information in times of crisis"; "Cultural and media diversity in times of globalisation", and "Human rights and regulation of the media and new communication services in the Information Society".

Freedom of political debate in the media

On the initiative of the CDMM, the Committee of Ministers adopted on 12 February 2004 a Declaration on freedom of political debate in the media. The text, which is based on Article 10 of the ECHR and the case law of the Strasbourg Court, reaffirms the right of the media to disseminate negative information and critical opinions concerning political figures and institutions, as well as civil servants. It states that the humorous and satirical genre allows an even wider degree of exaggeration and provocation, as long as the public is not misled about the facts.

Whilst recalling Article 8 on the right to respect for private life, the Declaration stipulates that information on the private lives of politicians and civil servants may be disseminated where it is of direct public concern to the manner in which they carry out, or have carried out their functions. Political figures and civil servants should not enjoy a greater level of protection of their reputation and other rights than individuals, in the case of their rights being violated by the media. Any sanctions imposed on the media should be proportional to the violation in question, and the application of prison sentences should be limited to extreme cases.

The Declaration emphasises that freedom of political debate does not include freedom to express racist opinions or those inciting hatred, xenophobia, anti-Semitism or any other form of intolerance.

Activities for the development and consolidation of democratic stability

Russian Federation

A Seminar on "Freedom of expression and the transparency of public authorities" was organised on 4-5 December 2003 in Svetlogorsk, Kaliningrad Region, in co-operation with the Kaliningrad Media Centre. Its purpose was to review the situation one year after the entry into force of a regional law on access to official information. Further media-related activities will be conducted in the Kaliningrad Region in the framework of a new European Commission/Council of Europe Joint Programme for North-West Russia (2004-2005).

Montenegro

In the framework of the second Joint Initiative between the European Agency for Reconstruction and the Council of Europe concerning the media in Montenegro, a Conference on media concentrations and media transparency took place in Podgorica on 22 January 2004. The general objective of the Conference was to present the current situation in Montenegro concerning media concentrations and to introduce to the participants the French and Slovenian experiences in this field as well as the Council of Europe's work. The discussions focused on the measures that the Montenegrin authorities should take in order to better monitor and possibly regulate media concentrations.

Publications

Compendium of Council of Europe legal texts in the media field – in Georgian

Internet site: <http://www.coe.int/media>

European Commission against Racism and Intolerance

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.

ECRI is an independent human rights monitoring body on issues related to racism and racial discrimination in the 45 member states of the Council of Europe. ECRI's programme of activities comprises three aspects: a country-by-country approach; work on general themes; and activities in relation with civil society.

Country by country approach

In the framework of this approach, ECRI closely examines the situation concerning racism and intolerance in each of the member States of the Council of Europe. Following this analysis, ECRI draws up suggestions and proposals addressed to governments as to how the problems of racism and intolerance identified in each country might be overcome.

ECRI released its second report on San Marino on 4 November 2003, thereby completing its second round of monitoring of member States' laws, policies and practices to combat racism and intolerance. To mark the end of this second round, ECRI published a compilation of its second round reports in February 2004. This compilation includes reports on all the 43 countries covered during ECRI's second round of country-specific monitoring, from 1999-2003.

On 27 January 2004 ECRI made public the first in its series of third round country-by-country reports, on Belgium, Bulgaria, Norway, Slovakia and Switzerland respectively. The third round covers the period from 2003-2007. Third reports focus on implementation, examining if ECRI's recommendations from previous reports have been implemented, and if so with what degree of success. They also deal with specific issues, chosen according to the different situations in each country and examined in more depth in each report.

The publication of ECRI's country-by-country reports is a stage in the development of an ongoing, active dialogue between ECRI and the authorities of member States with a view to identifying solutions to the problems of racism and intolerance with which the latter are confronted. The input of non-governmental organisations and other bodies or individuals active in this field is a welcome part of this process, and should ensure that ECRI's contribution is as constructive and useful as possible.

Work on general themes

General Policy Recommendations

ECRI's General Policy Recommendations are addressed to all member States and cover important areas of current concern in the fight against racism and intolerance. They are intended to serve as guidelines which policy-makers are invited to use when drawing up national strategies to combat racism and intolerance.

ECRI continued work on its General Policy Recommendation No. 8 on Combating racism while fighting terrorism (to be adopted in March 2004). This General Policy Recommendation focuses on how to ensure that the fight against terrorism does not infringe upon the right of persons to be free from racism and racial discrimination. It also complements more general efforts underway in the Council of Europe to ensure respect for human rights while fighting against terrorism.

At its 32nd plenary meeting (2-5 December 2003), ECRI established a working group responsible for preparing its General Policy Recommendation No. 9. This General Policy Recommendation will be devoted to the fight against antisemitism and is expected to be adopted in June 2004.

Collection and dissemination of examples of "good practices"

In February 2004 ECRI published an updated booklet in its "Examples of good practices" series on "Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level". This booklet contains short descriptions of specialised bodies which already exist at national level, to serve as a source of inspiration for those involved in promoting the creation or strengthening of such bodies in the various member States of the Council of Europe.



Relations with civil society

Seminar with national specialised bodies (13-14 November 2003)

On 13-14 November 2003, ECRI organised a two-day Seminar with national specialised bodies to combat racism and racial discrimination in order to discuss how best to implement legislation to combat racism and racial discrimination on the basis of ECRI's General Policy Recommendations No. 2 and No. 7. This Seminar was a very timely event as many member States of the Council of Europe were engaged in the process of reviewing their anti-discrimination legislation and considering the establishment or reinforcement of national specialised bodies. ECRI has always strongly promoted the creation of such specialised bodies and wanted therefore to provide key actors in the field with a forum for exchange and discussion as to how best to implement legislation to combat racism and racial discrimination.

The Seminar brought together representatives of national specialised bodies to combat racism and racial discrimination, representatives of general human rights institutions (Ombudsman, Human Rights Commissioner etc.) whose mandate already covers or will be extended to cover racism and racial discrimination, and representatives of ministries who are or will be responsible for the setting up of such a national specialised body.

Publications

Second Report on San Marino

CRI (2003) 42, 4 November 2003

Third Report on Belgium

CRI (2004) 1, 27 January 2004

Third Report on Bulgaria

CRI (2004) 2, 27 January 2004

Third Report on Norway

CRI (2004) 3, 27 January 2004

Third Report on Slovakia

CRI (2004) 4, 27 January 2004

Third Report on Switzerland

CRI (2004) 5, 27 January 2004

On the occasion of ECRI's tenth anniversary, celebrated on 18 March 2004, ECRI released a series of publications. A full report on this event will be appear in the next bulletin (September 2004).

ECRI: 10 years of combating racism in Europe: A review of the work of the European Commission against Racism and Intolerance

Mark Kelly, Human Rights Consultants, Council of Europe, February 2004

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

ECRI, Council of Europe, February 2004

ECRI's country-by-country approach: Compilation of second round reports 1999-2003

ECRI, Council of Europe, February 2004

Examples of good practice: specialised bodies to combat racism, xenophobia and intolerance at national level

ECRI, Council of Europe, February 2004

European Commission against Racism and Intolerance: leaflet

February 2004

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

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

As a follow up to 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, the Steering Committee for Equality between Women and Men (CDEG) invited its members to provide information on the follow-up given to the recommendation at national level and provide statistics on the 10 indicators in paragraph 44 of the Appendix to the Recommendation. These statistics are being analysed in order to identify the main trends and measure progress in this field.

Future Council of Europe Convention on action against trafficking in human beings

The ad hoc Committee on Action against Trafficking in Human Beings (CAHTEH) responsible for drafting the Convention met in Strasbourg on 8-10 December 2003 and 3-5 February 2004. During these two meetings, the Committee completed their first reading of the following provisions: Purpose, Scope of Application, Non-Discrimination Principle and Definitions (Chapter I), Prevention, co-operation and other measures (Chapter II), Measures to protect and promote the rights of victims, including gender equality issues (Chapter III). The Committee also started to examine Chapter IV Substantive criminal law.

More information on Council of Europe activities in the field of trafficking in human beings can be found on the website: www.coe.int/trafficking.

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 held its 4th meeting on 25-27 February 2004. The Group prepared the Recommendation's draft monitoring framework based on indicators and studied examples of good practice to be used as a basis for the guidelines on setting up policies and concrete actions in the fight against violence against women.

Gender mainstreaming

The Group of Specialists on Promoting Gender Mainstreaming In Schools (EG-S-GS) held its last meeting on 26-28 November. It finalised its report containing guidelines for the development of a strategy to promote gender mainstreaming in schools, in particular in school management and in teacher training, as well as in the curricula. After examination and if necessary revision, by the CDEG, this report will be transmitted to the members of the Steering Committee on Education (CD-ED) in order that they raise awareness with their national experts of this gender mainstreaming strategy.

The Informal Group of experts on gender budgeting held its 3rd meeting on 5-7 November 2003. It prepared a definition of gender budgeting, drafted guidelines for its implementation and collected examples of initiatives at local, regional, national and international level.

Women and peacebuilding

The Group of Specialists on the role of women and men in intercultural and interreligious dialogue for the prevention of conflict, for peacebuilding and for democratisation (EG-S-DI) held its 2nd meeting on 18-19 November 2003. This Group is preparing a report which aims at identifying obstacles to women's participation in these fields and which will make propositions for mechanisms to reduce or abolish these obstacles. It also organised a Hearing at which personalities involved in intercultural and interreligious dialogue exchanged experiences and good practices which will be used for the drafting the report.

Co-operation activities

The final activities planned in the framework of the Joint Programme IV for Ukraine took place: a training session for the staff of the Ukrainian equality machinery (Kyiv, 17-19 November 2003); a seminar on National and regional equality action plans (Kyiv, 12-13 February 2004); and a study visit to Slovenia for two officials of the Ukrainian equality mechanism (24-28 February 2004).

Among the equality activities carried out in the framework of this Programme, two important results should be noted: the draft Act on Equal Rights and Equal Opportunities

for Women and Men, revised following a Council of Europe legal assessment was passed by the Parliament on its first reading and the governmental body responsible for questions relating to equality between women and men, the State Committee for the Family and Youth, became a ministry.

As a follow-up to Recommendation Rec (2003) 3 on balanced participation of women and men in political and public decision making: Political strengthening of women in local government, a seminar, on Political strengthening of women in local government took place in Bitola ("the Former Yugoslav Republic of Macedonia") on 16-17 December 2003.

A seminar on the Preparation of a national action plan on equal opportunities for women and men was held in Andorra on 27 and 28 January 2004.

Publications

– **Proceedings of the Lara project training seminar in drafting legislation for the protection of victims and victim-witnesses of trafficking in human beings**

Strasbourg 8-10 September 2003 (LARA (2003) 38)

– **Preventing violence against women: a European perspective**

ISBN 92-871-5291-8

Internet site: <http://www.coe.int/equality/>

Internet site: <http://www.coe.int/trafficking/>

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.

Police and human rights

Russian Federation

Human rights training for the Russian Militia

The purpose of this project is to enhance, into the daily work of Militia officers in the Russian Federation, knowledge of human rights standards. Participants are Police Instructors selected from various MVD Higher Police Institutes, who, following their training courses, are expected to train militia students and colleagues.

Workshops

Krasnoyarsk, (16-19 February 2004)

Train the trainers workshop for the Russian Militia on how to deal with domestic violence.

The Rostov-on-Don MVD Academy, (17- 21.11.2003)

A one-week workshop was organised on general human rights and aspects of migration and ethnic minorities. The participants were Police Instructors from different parts of Russian Federation (Saratov, Bryansk, Krasnodar, Khabarovsk, Stavropol and Rostov on Don) dealing with migration and ethnic minorities.

Cheliabinsk, (15-18.12.2003)

This workshop was organised on general human rights and how to investigate domestic violence.

Serbia

A workshop on Curriculum Development for the Serbian Police was held in Belgrade from 17 to 21 November 2003.

Ukraine

The first in a series of training courses for trainers on human rights standards and the implementation of the "Trainers' Supply Kit" was held in Kharkiv from 24 to 28 November 2003. The second one was held in Sumy from 2 to 6 February 2004. Another three such courses will be held before the end of July.

Turkey

An evaluation of the Train the trainers courses for the Turkish Police and Gendarmerie carried out in 2003 took place in Ankara on 18 February 2004.

Government Agents meeting in the Hague

Building up the capacities of the Government Agents to the European Court of Human Rights in the face of growing case-load and ongoing reflection on the impact of the reform of the European Human Rights protection machinery on the work of Government Agents were the topics of a two day meeting held in the Hague on 8-9 December 2003 in the context of the Dutch Chairmanship of the Committee of Ministers of the Council of Europe.

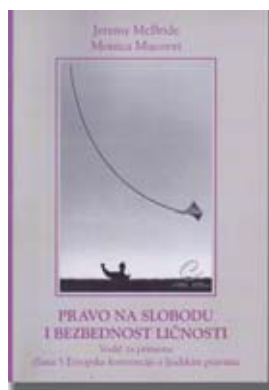
The topics discussed at the meeting included the relationship between Government Agents and domestic judges in ensuring the proper implementation of European Convention's standards, the role of GAs in ensuring execution of the judgments of the Strasbourg Court and the question of ensuring compatibility of domestic legislation with European Human Rights standards. A separate session was devoted to discussions on the impact on the work of Government Agents of the reform of the European Convention on Human Rights.

Serbia and Montenegro

Human rights handbooks

The Council of Europe has produced in the last years a number of "handbooks" on specific Articles of the European Convention on Human Rights (ECHR), which have been translated into local languages and have also been adapted in the light of the domestic law.

The Serbian version of the "handbooks" on the right to





liberty and security of the person and the right to fair trial were produced in October 2003 and February 2004 and used in training activities on the ECHR for legal professionals in Serbia and Montenegro.

Conscientious objection in Serbia and Montenegro

Following a Council of Europe expertise, a Decree establishing conscientious objection entered into force on 15 October 2003, and for the first time in the history of Serbia and Montenegro, 226 young men are serving alternative service this year.

Compatibility exercise in Montenegro

As the report of the compatibility exercise published on December 2002 covered principally Federal and Serbian legislation and practice, it was decided, in co-operation with the Montenegrin Ministry of Justice, to carry out a compatibility study of the current law and practice of Montenegro. A first draft of the compatibility report was submitted to the Secretariat of the Council of Europe in December 2003. After

its translation was completed, it was transmitted to Council of Europe experts for comments. A first round table between the Montenegrin and Council of Europe experts will be organised on 5 and 6 April 2004.

Ukraine

Within the framework of a Joint Programme between the European Commission and the Council of Europe, between June 2002 and December 2003, the Council of Europe organised in all the regions of Ukraine and in co-operation with the Centre for Judicial Studies 100 one-day seminars on the European Convention on Human Rights for judges of first instance and appellate courts, as well as a conference for 88 Supreme Court judges. The objective of the programme was to equip Ukrainian judges with the skills required to apply the Convention and the case law of the European Court of Human Rights at a domestic level.

In February and March 2004, two groups of 22 judges of all instances visited the Council of Europe, and in particular the European Court of Human Rights, in order to become acquainted with the Strasbourg process and establish contacts with members of the Secretariat.

Russian Federation

On November 2003, the Joint Programme between the European Commission and the Council of Europe in the Kaliningrad region of the Federation of Russia for 2004-2005 was signed on 2nd December 2003 in view of ensuring more effective human rights protection at regional level and improving co-operation between the civil society and the authorities in the field of human rights.

Site Internet : <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.



Protecting human rights during armed conflict

Declaration on the Protection of human rights during armed conflict, internal disturbances and tensions, 21 January 2004

1. The Committee of Ministers of the Council of Europe:
 1. Recalls Resolution No. II adopted by the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000) on the theme "Respect for Human Rights, a Key factor for Democratic Stability and Cohesion in Europe: Current issues";
 2. Shares the concern expressed in that resolution about situations of conflict or crisis in Europe, which pose fundamental questions of respect for human rights;
 3. Underlines the importance of appropriate preventive measures of a political and educational nature in order

- to promote respect for human rights during armed conflict as well as internal disturbances and tensions;
4. Recalls that in any event states cannot derogate from the peremptory norms of international law or from those of international humanitarian law where applicable;
5. Firmly condemns all situations of serious and massive violations of human rights;
6. Welcomes the various activities that have been and are being undertaken as a follow up to the said Resolution as well as the strong interest shown by the Parliamentary Assembly in furthering the effective protection of human rights, as expressed most recently in its Recommendation 1606 (2003) on "Areas where the European Convention on Human Rights cannot be implemented";

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.

7. Notes that the main problem of human rights protection in such situations is not one of lack of norms but rather of lack of implementation of, and compliance with, applicable human rights standards;
8. Urges therefore all member states to take measures to ensure compliance in all circumstances with applicable human rights standards and in particular during armed conflict, as well as in situations of internal disturbances and tensions;
9. Reiterates its call to member states to ratify the Rome Statute of the International Criminal Court and urges them to take measures to combat impunity generally;
10. Invites all Council of Europe bodies and institutions active in the field of human rights – each within its own sphere of responsibility and limits of its competence – to pay special attention to human rights concerns in the context of all existing and newly emerging situations of tension or conflict;
11. Commends the activities already undertaken in this respect, notably by the Council of Europe Commissioner for Human Rights, with a view to the prevention of human rights violations;
12. Encourages the Commissioner to continue to pay particular attention to situations where there is a threat or where there are allegations of serious and massive violations of human rights, notably by further developing fact-finding and the formulation of targeted recommendations to which appropriate follow-up should be given;
13. Agrees to contribute, through the elaboration of appropriate information and training materials, to efforts to ensure better awareness of human rights standards as laid down in relevant Council of Europe instruments:
 - among all relevant civil and military authorities of the member states;
 - among persons protected by such standards, so as to promote compliance with those standards also in situations of armed conflict or internal disturbances and tensions;
14. Agrees to keep under review the question of further Council of Europe action in this area.

Media: the right to freedom of expression and information

Declaration on freedom of political debate in the media, 12 February 2004

By means of this document, the Committee of Ministers takes a stand against restrictions imposed on the expression of opinions or on the spread of information concerning political representatives or civil servants.

The text, based on Article 10 of the European Convention on Human Rights and the jurisprudence of the Court, reaffirms the right of the media to disseminate negative information and critical opinions concerning political figures and institutions – the state, the government or any other

branch of the executive, the legislature or the judiciary – as well as civil servants.

It states that the humorous and satirical genre allows an even wider degree of exaggeration and provocation, as long as the public is not misled about the facts.

Whilst recalling Article 8 of the European Convention on Human Rights, on the right to respect for private life, the declaration stipulates that information on the private lives of politicians and civil servants may be disseminated where it is of direct public concern to the manner in which they carry out, or have carried out their functions.

Political figures and civil servants should not enjoy a greater level of protection of their reputation and other rights than individuals, in the case of their rights being violated by the media. Any sanctions imposed on the media should be proportional to the violation in question, and the application of prison sentences should be limited to extreme cases.

Finally, the Declaration emphasises that freedom of political debate does not include freedom to express racist opinions or those inciting hatred, xenophobia, anti-Semitism or any other form of intolerance.

113th session of the Committee of Ministers

Chisinau, 5-6 November 2003

Communiqué (extracts)

European Court and Convention on Human Rights

The Ministers expressed support for the reform process of the European Court of Human Rights, as well as the strengthening of the convention-based work of the Council of Europe. They expressed their appreciation for the Organisation's contribution to international action against terrorism and trafficking in human beings, and discussed the issue of free movement of Europeans on the continent. They recognised the importance of intercultural and inter-religious dialogue, and noted the important work being undertaken by the Council of Europe in its fields of competence with the purpose of building confidence and understanding.

Restating the need to maintain a coherent approach to the protection of fundamental rights in the whole of Europe, the Ministers noted that the draft constitutional treaty provides that the European Union shall seek accession to the European Convention on Human Rights. Having recalled work in progress in this regard within the Council of Europe, they expressed their readiness to open negotiations as soon as a positive decision has been taken by the European Union.

Progress report on current work to guarantee the long-term effectiveness of the European Court of Human Rights

Having taken note of the progress made in the implementation of their Declaration entitled "Guaranteeing

the long-term effectiveness of the European Court of Human Rights", the Ministers reaffirmed their intention to consider, with a view to their adoption, the texts of a draft amending protocol to the Convention and other relevant instruments at their next Session in May 2004.

3rd summit

The Ministers emphasised that ten years after the Vienna Summit, significant progress in fulfilling the political mandate assigned to the Organisation to bring together all European democratic states on an equal footing within permanent structures has been achieved. It would be for the 3rd Summit to lay down the guidelines for the future action of the Council of Europe in the context of profound changes in the continent, and its interaction with other international organisations. The Ministers agreed that the common responsibility for the future of Europe, commitment to the strategic goal of building one Europe without dividing lines and the desire to meet the aspirations of all Europeans should guide the preparations for the Summit. They emphasised that the objectives of consolidating democracy and the rule of law, promoting human rights – including the rights of persons belonging to national minorities – and strengthening social cohesion should retain paramount importance in the Council of Europe's future agenda. At the same time, the Council of Europe could make a meaningful contribution to working out common European policies and standards to meet the new challenges faced by European societies.

The Ministers took note of preparatory work undertaken since their last Session in May 2003, while welcoming the important contributions made by the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe.

Taking into account the conclusions of their previous session, the Ministers welcomed Poland's offer to host the Summit in Warsaw in 2005, during its future Chairmanship of the Committee of Ministers. Consultations on a date will take place in the meantime with a view to a decision by the 114th session of the Committee of Ministers in May 2004, provided that a substantive agenda and possible concrete results thereof have been identified by their Deputies. They therefore instructed their Deputies to intensify their work on possible results of the Summit and to report to them at their next meeting in May 2004.

The Committee of Ministers in session in Moldova



Council of Europe contribution to the international fight against trafficking in human beings

The Ministers reiterated that trafficking in human beings constituted a crime which is a serious offence to the dignity and the integrity of the human being and undermines the enjoyment of the human rights of the victims. They stressed that the protection of the victims of trafficking and the prosecution of traffickers must be paramount objectives of the action the Council of Europe against this scourge, underlining the importance of close co-operation and co-ordination with the European Union, the OSCE and the United Nations. As the problem of trafficking affects all countries, be they source, transit or recipient countries, the Ministers encouraged the member states of the Council of Europe to pay special attention to it at all levels. They reiterated their commitment to pursue actively the negotiation of the draft European Convention on action against trafficking in human beings, with the prospect of adopting this instrument as soon as possible.

Council of Europe contribution to international action against terrorism

Bearing in mind that terrorism seriously jeopardises human rights and threatens democracy, the Ministers noted with satisfaction the signatures and ratifications of the Protocol Amending the European Convention on the Suppression of Terrorism, opened for signature at their last session, and called upon States to ensure its early entry into force. They welcomed the results of the 25th Conference of European Ministers of Justice (Sofia, 9-10 October 2003) and noted with satisfaction that their consideration has commenced within the committee on terrorism. They welcomed the significant progress made in the implementation of activities against terrorism they had agreed upon at their last session (in particular those relating to the protection of witnesses and pentiti/collaborators with justice and to special investigation techniques) and supported their pursuance as a matter of priority. At the same time, they stressed the importance of respect for human rights and fundamental freedoms in the fight against terrorism, recalling the guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers. Finally they asked that a report be submitted to them in due course on the added value of a comprehensive European Convention against terrorism, which could be elaborated within the Council of Europe, with a view to contributing significantly to the UN efforts in this field.

Promoting human rights

The Ministers reaffirmed their support for the Council of Europe's work in the field of democratic citizenship and human rights education. In this context, they welcomed the manual on Human Rights Education "Understanding Human Rights" published by the Human Security Network under Austrian chairmanship in 2002/2003. They recommended that this important manual should be taken into account in the future work of the Council of Europe.

Chairmanship by the Netherlands of the Committee of Ministers

At the close of the 113th Session of the Committee of Ministers of the Council of Europe, Jaap de Hoop Scheffer, Foreign Affairs Minister of the Netherlands, set out the priorities of the programme for the Dutch Chairmanship of the Council of Europe over the next six months.

On 3 December 2003, Dr Bernard Bot was appointed Foreign Minister of the Netherlands. In this capacity, he will be chairing the Council of Europe Committee of Ministers until 14 May 2004.

The programme of the Netherlands Chairmanship will be structured around three key themes:

- the defence of human rights and the effectiveness of monitoring mechanisms
- integration and social cohesion
- the promotion of synergy between the Council of Europe and other international organisations.

The Dutch Government will organise several events in the Netherlands based on these themes, including:

- a conference on issues related to the European Court of Human Rights in The Hague in December
- a congress on fundamental rights and intercultural society in The Hague in November
- a meeting of the European Committee on Migration, Refugees and Demography in Rotterdam in December
- a seminar on police ethics in March 2004
- a seminar on the implementation of human rights in Europe in spring 2004.

During the Dutch chairmanship of the Committee of Ministers, the Netherlands was the guest of honour at the Strasbourg Christmas market



Joint Declaration – 13th high-level “2+2” meeting

The 13th Council of Europe-OSCE high-level meeting was held in Chisinau on 5 November. Participants were: Council of Europe Committee of Ministers Chair, Moldovan Foreign Minister, Nicolae Dudau; OSCE Chairman-in-Office, Netherlands Foreign Minister, Jaap de Hoop Scheffer; and the Secretaries General of both organisations

They reviewed the situation in the three south Caucasian republics following the elections held in Armenia, Azerbaijan and Georgia during 2003. Despite considerable pre-electoral assistance from the Council of Europe and OSCE providing an adequate framework for holding democratic elections, the election process in all three countries did not meet international standards due to an apparent lack of political will to guarantee impartial implementation and transparency. This was a setback for overall democratic development and called for joint action by the Council of Europe, the OSCE and EU, to advance both the capacity and the commitment for credible elections in these three member States. This will involve continued support for the improvement of electoral codes and procedures, and efforts to support a renewed commitment of these states to the democratic election process, through activities such as large-scale training programmes for all those involved in the electoral process. Regular engagement on electoral issues and monitoring of the situation will be necessary.

Participants repeated that the continued unresolved conflicts in the South Caucasus region were detrimental to the completion of democratic transition, genuine regional co-operation, and further European integration. They expressed the hope that, with elections concluded, new opportunities will be seized upon to bring about lasting solutions.

Participants reiterated their call for a political solution to the conflict in the Chechen Republic (Russian Federation), and an end to the continuing climate of violence and violations of human rights. They agreed to pursue close consultations with each other on the process, set in motion with the referendum and adoption of the constitution in March 2003. The purpose of these consultations would be to ensure coordinated and complementary assistance from both Organisations for reconstruction and democratic rehabilitation in Chechnya.

Participants underlined the vital importance of the ongoing process of democratic reform in Bosnia and Herzegovina and Serbia and Montenegro. They also stressed the necessity of close co-operation with the ICTY throughout the region. They welcomed the close co-operation between both Organisations and the EU on numerous issues with regard to these countries.

Participants also discussed the situation in Kosovo and paid tribute to the work of the UN, OSCE, the Council of Europe, and other representatives of the international community present there. They hoped there would be a rapid solution to the continued question of the applicability of Council of Europe conventions in particular with regard to the protection of human rights.

Participants expressed their full support for a political solution of the Transnistrian conflict, based on the respect of the territorial integrity and sovereignty of Moldova. In this context, they also supported the efforts of the three mediators (Russian Federation, Ukraine and the OSCE). They welcomed the initiative of President Voronin to establish a Joint Constitutional Commission to draft a new constitution on a federal basis, and were thankful to the “Venice Commission” for providing legal expertise and advice to the two sides of this forum. They took note with appreciation of the

Conference on “Frozen conflicts in Europe”, organised by the Moldovan Chairmanship of the Council of Europe in Chisinau in September 2003. With regard to Moldova’s recently stated policy of increased integration in European structures, participants highlighted the importance for the country to continue its democratic and legal reform process.

Examining developments in Ukraine, participants stressed the importance of pursuing the reform process in view of the presidential elections scheduled to take place there in 2004. They advocated full and rapid implementation of the country’s Action Plan on the Media.

On Belarus, participants expressed concern about the continuing restrictive measures by the authorities against NGOs and media activities, and the inadequacies in the legislative framework for elections. They called on the government of Belarus to honour their international commitments and to allow civil society, including media, to play their vital role in furthering democracy. They endorsed the proposal to reactivate the parliamentary (OSCE/PACE/European Parliament) Troika on Belarus to foster democratic reform in that country.

Discussing measures to curb trafficking in human beings, participants welcomed the Council of Europe’s ongoing work to draw up a European convention on action against trafficking in human beings, based on the Palermo

Protocol to the UN Convention against transnational organised crime. They noted the complementarity of these efforts with the recently adopted OSCE’s Action Plan to combat trafficking. They favoured the establishment of a special OSCE mechanism for advocacy and monitoring. They agreed to examine on a continuous basis how both organisations could work closely together in this field, including awareness-raising about trafficking. They welcomed the close co-operation between the two Organisations on the case of a trafficking victim in Montenegro.

On the fight against terrorism, participants expressed satisfaction with OSCE’s increasing anti-terrorism activities and voiced support for the examination of the possible elaboration by the Council of Europe of a comprehensive European Convention on combating terrorism to complement instruments and principles elaborated by the UN, the Council of Europe and OSCE in this area.

Co-operation between the two Organisations in other regions and other fields of common interest was also discussed. Participants stressed the need to keep each other informed and to work to avoid overlap and duplication. To that end they agreed to evaluate cooperation modalities and to revise accordingly the Common Catalogue of Co-operation Modalities.



Parliamentary Assembly

“The Parliamentary Assembly is a unique institution, a gathering of parliamentarians, from more than forty countries, of all political persuasions, responsible not to governments, but to our own consensual concept of what is right to do.”

Lord Russell-Johnston, former President of the Assembly



Human rights situation in member and non-member states

Internally displaced persons

Recommendation 1631 (2003) on internal displacement in Europe – 25 November 2003

The Parliamentary Assembly was alarmed at the numbers of internally displaced persons (IDPs) resulting from various armed conflicts and human rights abuses which have occurred since the early 1990s in more than ten Council of Europe member states. It has been estimated that there are between 3.2 and 3.7 million IDPs in Europe. Turkey, Azerbaijan, Serbia and Montenegro, Bosnia and Herzegovina and the Russian Federation are particularly affected.

The Assembly said that IDPs as such, as opposed to refugees, are not protected by any international legally binding instrument and the entire issue is often regarded as an internal matter. It therefore attracts much less attention from the international community than the issue of refugees. Moreover, the governments concerned sometimes refuse to recognise a problem of displacement existing within their borders. Even where legislation on displaced persons has been enacted, it tends not to be implemented properly.

The Assembly therefore recommended: that the situation of displaced populations in member states be examined, paying particular attention to compliance of national legislation in force with the Guiding Principles on Internal Displacement; and that the UN Guiding Principles on Internal Displacement be promoted at European level.

It also urged the member states concerned to review their legislation to bring it in line with the Guiding Principles on Internal Displacement; to ensure that the legislation in force relating to displaced populations is fully implemented, in particular at local level; and to systematically use the Guiding Principles as a basis for their present and future policies and programmes in support of internally displaced persons.

Forced returns

Recommendation 1633 (2003) on forced returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states – 25 November 2003

The Assembly noted that there are still more than one million displaced persons in the Balkans. It said that Roma constitute a particularly vulnerable group of the displaced population, estimating that between 50 000 and 100 000 Roma from Serbia and Montenegro, including Kosovo, who fled the region during the conflict in the Balkans, are still living in various European countries, mostly in Germany, the Netherlands, Belgium, Switzerland and Luxembourg. They fall into the category of candidates for return.

Forced returns started shortly after the democratic changes following the presidential elections in the Federal

Texts adopted by the Assembly

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

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

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

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

Republic of Yugoslavia in September 2000. So far, approximately 1 000 Roma have been forcibly returned.

These returns raise three main areas of concern: the legitimacy of certain decisions on expulsion; the conditions in which forced returns take place; and the situation upon return to Serbia and Montenegro.

Among other recommendations, the Assembly called on the member states concerned to evaluate forced returns on a case-by-case basis to ensure access to fair and effective asylum procedures and to rule out forced returns of Roma to Kosovo or to Serbia and Montenegro as long as the security situation in Kosovo has not improved.

It also urged the Serb and Montenegrin authorities to provide for the return of Roma by actively seeking support and international funding for reintegration programmes; by consulting Roma representatives on key issues; and by ensuring that the relevant government and administrative bodies are informed as to the readmission process and the returnees' fundamental rights, in accordance with a comprehensive policy to address all aspects of this matter.

Lesbians and gays in sport

Recommendation 1635 (2003) on lesbians and gays in sport – 25 November 2003

The Assembly said that homophobia in sport, both among participants and in their relations with spectators, should be combated on the same grounds as racism and other forms of discrimination as being contrary to the Olympic Charter, the European Convention on Human Rights and its Protocol No. 12 and the European Sports Charter.

It therefore called on member states and European sports organisations to combat homophobia in sport, giving it the same status and treatment under law and regulations as racism. It also encouraged the media to give all athletes equitable representation, whatever their gender or sexual orientation.

Family mediation and gender equality

Recommendation 1639 (2003) on family mediation and gender equality – 25 November 2003

The Assembly said that family mediation is a valuable alternative for resolving family disputes as it promotes methods of friendly settlement and can reduce the economic and social costs of separation and divorce for families, the state and society.

Gender equality must be guaranteed in family mediation as in family justice systems in general. Individual rights must not be sacrificed to cost-effectiveness or the trend towards alternative conflict resolution methods. When patently unfair agreements are reached during family mediation they must not be endorsed by the mediator or approved by a judge.

The primary aim of mediation is to repair a breakdown in communication between the parties, not to reduce congestion of the courts. Judicial proceedings cannot be

appropriately replaced by the mediation process unless the constituent elements of mediation are present.

The Assembly therefore called on member and observer states to ensure, in connection with family mediation, freedom of choice for the mediated parties; the inclusion of family mediation in the legal aid system; review of the lawfulness and fairness of mediation agreements; and the existence of a formal complaints system within every mediation service.

Conviction of Grigory Pasko

Resolution 1354 (2003) on the conviction of Grigory Pasko – 25 November 2003

The Assembly welcomed the liberation of Mr Pasko from prison in February 2003 and noted that Mr Pasko had filed a third supervisory appeal to the President of the Supreme Court Presidium and a complaint with the European Court of Human Rights.

It was deeply concerned at the unusual features of Mr Pasko's prosecution, trial and conviction and said that the most important conclusion to be drawn from this case is that the definition of "state secret" must be clarified and made public.

It called on the Russian State Duma to initiate a law ensuring that secret decrees containing elements of penal law can never again become the basis for criminal convictions and stressed the need for greater transparency in proceedings before military courts. It also urged those countries which have maintained separate military courts to ensure that the same procedural safeguards that exist in ordinary criminal courts are fully applied in the military court system.

Public service broadcasting

Recommendation 1641 (2004) on public service broadcasting – 27 January 2004

The Assembly said that public service broadcasting, a vital element of democracy in Europe, is under threat, competing with political and economic interests, commercial media and affected by media concentrations and financial difficulties. It stressed that public service broadcasting must be able to operate independently of those holding economic and political power to provide the whole of society with information, culture, education and entertainment.

Many European countries have so far failed to maintain and develop a strong public broadcasting system. The situation varies across Europe. In some cases, national broadcasting is under strict governmental control. In others, laws on public service broadcasting contain provisions and practices contrary to European standards.

It said that substantial progress has been made in some countries, but problems still remain throughout Europe. European countries and the international community in general must become more actively involved in efforts to develop general standards and good practice as guidelines for national policies in this area.

The Assembly therefore recommended, among other things, the adoption of a new major policy document on public service broadcasting and ensuring close co-operation with other international organisations in maintaining its standards regarding freedom of expression.

It also called on the governments of member states to define an appropriate legal, institutional and financial framework for the functioning of public service broadcasting and its adaptation and modernisation to suit the needs of the audience and the requirements of the digital era.

Azerbaijan

Resolution 1358 (2004) on the functioning of democratic institutions in Azerbaijan – 27 January 2004

Ten years after its independence, Azerbaijan is undergoing political transition for the first time. The Assembly noted that the new government has serious work to do in pursuing the reforms necessary to fulfil Azerbaijan's obligations and commitments as a member state of the Council of Europe. It pointed out a number of shortcomings in this regard, including the lack of progress towards peacefully resolving the Nagorno-Karabakh conflict; the failure to meet generally accepted international electoral standards in several areas; inadequate constitutional provisions regarding the separation of powers; numerous problems concerning media freedom; and the failure to ensure the protection of basic human rights and fundamental freedoms, including freedom of association, freedom of peaceful assembly and the prohibition of torture and ill-treatment.

In the light of all this, the Assembly urged the Azerbaijani authorities to take steps to remedy these and other significant shortcomings and said that if no progress is recorded by June 2004, the Assembly may be requested to reconsider the ratification of the credentials of the Azerbaijani parliamentary delegation to the Council of Europe.

Resolution 1359 (2004) on political prisoners in Azerbaijan – 27 January 2004

The Assembly once again considered the problem of political prisoners in Azerbaijan, stressing that the existence of political prisoners is incompatible with Azerbaijan's membership of the Council of Europe.

It welcomed the release of a handful of such prisoners following a report by a group of independent experts mandated by the Secretary General, but deplored the retrial of certain prisoners clearly identified as being detained for political reasons.

The Assembly concluded by saying that if there is no solution to the problem of the political prisoners by the Assembly's autumn 2004 part-session, Azerbaijan's presence within the Council of Europe will have reached a critical stage. It formally asked the Government of Azerbaijan for the immediate release on humanitarian grounds of political prisoners whose state of health is very critical, prisoners whose trials were illegal, prisoners having been political activists or

eminent members of past governments, and members of their families, friends or people who were linked to them.



Exhibition of traditional costumes of the minorities of southern China, Parliamentary Assembly Session January 2004

Armenia

Resolution 1361 (2004) on honouring of obligations and commitments by Armenia – 27 January 2004

The Assembly said that Armenia, which has been a member of the Council of Europe for three years, had made little progress towards honouring its obligations and commitments in the year 2003, but that this was largely due to a busy electoral schedule. It noted however that the reform effort has since recommenced.

On a positive note, the Assembly observed that Armenia has honoured all of its commitments with regard to conventions, having ratified notably Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty. Progress on the domestic legislation front has also been noteworthy, with the adoption of a new Criminal Code which excludes the death penalty, but a number of reforms have been delayed due to the rejection of constitutional reform by referendum. The Assembly said that these reforms can no longer be deferred.

On the downside, it deplored the conduct of the presidential and parliamentary elections in 2003, which gave rise to serious irregularities and massive fraud, and led the international observers to conclude that the electoral process as a whole had not complied with international standards.

It also pointed to other areas requiring immediate attention, including judicial reform, administrative detention as provided for in the Administrative Code, certain provisions of the Criminal Code, freedom of expression and media pluralism, corruption of intolerable proportions and the Nagorno-Karabakh conflict.

It concluded by expressing satisfaction at its excellent co-operation with the Armenian authorities, but said that in view of the obligations and commitments that remain to be honoured, it could not end the current monitoring procedure.

Cyprus

Resolution 1362 (2004) and Recommendation 1642 (2004) on the situation in Cyprus – 28 January 2004

The Assembly said that several factors were leading to hopes that a just and lasting solution will at last be found to the decades-old Cyprus problem. For this reason, it particularly deplored the fact that Mr Denktash, the Turkish Cypriot leader, rejected the latest plan in March 2003, while Mr Papadopoulos, President of the Republic of Cyprus, appeared willing to sign it. It said that if no settlement is reached, a divided Cyprus will join the European Union on 1 May 2004, which may perpetuate the current deadlock and jeopardise Turkey's prospects for accession to the EU.

The Assembly therefore called on the leaders of the two communities to resume negotiations without delay on the basis of the Annan Plan and to build confidence between the two communities. It also called for the backing of the international community and in particular the constructive support of both Turkey and Greece.

In its recommendation, the Assembly recommended that the Committee of Ministers envisage a more active role for the Council of Europe in the search for a settlement in Cyprus.

Georgia

Resolution 1363 (2004) and Recommendation 1643 (2004) on the functioning of democratic institutions in Georgia – 28 January 2004

The Assembly said that the presidential election and partial parliamentary elections of 4 January 2004 constituted significant progress over the previous elections, with fraud and irregularities occurring on a much smaller scale. It also said that the parliamentary elections of 28 March 2004 would be a genuine test of Georgia's commitment to the principles of pluralist democracy and recommended a number of measures, including simplifying voting procedures, ensuring a clear segregation between governmental structures and the electoral authorities and revising the voters' lists.

It also addressed other areas of concern, including the role and situation of the parliamentary opposition, corruption, law enforcement reform and the withdrawal of Russian troops from Georgia.

In its recommendation, the Assembly said that it expected the Georgian authorities to put a stop to the autocratic exercise of power in Georgia, to speed up reforms in accordance with the obligations and commitments entered into by Georgia when it joined the Organisation and to respect the principles of pluralist democracy.

It also recommended strengthening the Council of Europe's co-operation with the Georgian authorities in the effort to consolidate the rule of law and the creation of truly democratic institutions.

Asylum-seekers

Recommendation 1645 (2004) on access to assistance and protection for asylum-seekers at European seaports and coastal areas – 29 January 2004

The Assembly said that while no reliable statistics are available on clandestine immigration by boat or by ship, experience shows that it is not a negligible phenomenon. Legal and practical hurdles, it said, should not hinder effective access to the asylum procedure for those who arrive at European seaports or coastal areas, and the effective exercise of the right of appeal against the refusal of asylum or against expulsion must be ensured.

Among other recommendations, it called for a comprehensive review of the law and practice of Council of Europe member states regarding access to asylum procedures and urged member states to improve international co-operation, introduce harmonised criminal legislation to punish the smuggling of migrants and the trafficking of human beings and to establish appropriate and permanent reception structures in coastal areas and near seaports.

Ukraine

Resolution 1364 (2004) on the political crisis in Ukraine – 29 January 2004

Recent developments in Ukraine relating to amendments to the Constitution of Ukraine are not in compliance with the rules of procedure of the Verkhovna Rada or Article 19 of the Constitution of Ukraine, the Assembly said. It also questioned the timing of the current debate on constitutional reform, considering that any reform of the constitutional election rules taken on the eve of presidential elections is likely to be biased and divisive.

In view of the lack of discussion of the officially registered draft amendments and the motions tabled by the opposition, the Assembly called for a peaceful resolution of this crisis in full respect for parliamentary rules and regulations. Other areas of concern included the independence of the judiciary, electoral procedures and freedom of expression, notably in the media.

It concluded by saying that if any further attempts are made to push through political reforms by amending the constitution in an irregular manner, or if Ukraine should fail to guarantee free and fair elections in October 2004, it may challenge the credentials of the Ukrainian delegation and request the suspension of Ukraine's membership of the Council of Europe.



Democracy and legal development

Future of democracy

Resolution 1353 (2003) and Recommendation 1629 (2003) on the future of democracy: strengthening democratic institutions – 25 November 2003

The Assembly said that a number of phenomena, including the low and decreasing participation of citizens in public life, particularly elections, and the decline of trust in politicians, political parties and above all democratic elections, make it necessary to redefine the essence of democracy in order to face the new challenges of the twenty-first century. It considered that several factors contribute to a feeling of disenfranchisement from political decision-making, in particular the growing globalisation of trade, economies and financial markets, which poses challenges to national governments and parliaments beyond their control through national law and policies.

The Assembly called on its members and observers to consider ensuring greater accessibility and openness of democratic decision-making processes, greater accountability of political decision makers and decision-making and greater accountability of the executive branch of government to parliament.

In its recommendation, the Assembly called on the Committee of Ministers to encourage education for democratic citizenship and the training of young democratic leaders with a view to strengthening the understanding of democratic standards and processes and urged those member states that have not already ratified the Council of Europe's Agreement establishing the Group of States against Corruption (GRECO) to do so as quickly as possible.

Commissioner for Human Rights

Recommendation 1640 (2004) on the 3rd Annual Report on the Activities of the Council of Europe Commissioner for Human Rights (1 January-31 December 2002) – 26 January 2004

The Assembly reviewed the 3rd Annual Report of the Commissioner for Human Rights on his activities in 2002 and congratulated him on his accomplishments. It agreed that it could add its political weight to his recommendations and suggested giving the idea further consideration. It also invited the Commissioner to play a more active role, in co-operation with its own relevant committees and with the Committee of Ministers, in promoting legislative changes that appear necessary in member countries.

In conclusion, the Assembly called on the Committee of Ministers to review the Commissioner's terms of reference and to amend the European Convention on Human Rights so as to enable the Commissioner to bring cases before the European Court of Human Rights and to endow the Commissioner with additional resources to enable his or her office to cope with the heavy work programme.

Terrorism

Recommendation 1644 (2004) on terrorism: a threat to democracies – 29 January 2004

The Assembly said that the existence of a global terrorist threat is now a well established fact and welcomed the many initiatives intended to improve international co-operation in this area. It stressed, however, that one comprehensive convention, grouping the existing fragmented legal texts together, would present considerable added value to the fight against terrorism.

The Assembly therefore asked the Committee of Ministers to begin work on a comprehensive Council of Europe convention on terrorism and to study, in consultation with the European Union, the possibility of transforming Europol into an effective pan-European agency, with sufficient means to challenge international terrorism.



"6 artists, 6 concepts", an exhibition organised by the permanent representative of Andorra during the Parliamentary Assembly Session January 2004

EU enlargement

Recommendation 1648 (2004) on the consequences of European Union enlargement for freedom of movement between Council of Europe member states – 30 January 2004

The Assembly warned against building a "two-tier Europe" through the enlargement of the EU and as a result of the expansion of the Schengen visa system.

It therefore called on member states to continue constructive political dialogue between European Union member states and non-member states on this matter and to adopt liberal measures concerning immigration policy with respect to citizens of other Council of Europe member states so as to simplify formalities for obtaining visas and facilitate border-crossing. It also called on the EU to make visa requirements and procedures more rapid and flexible in general and to develop immigration policies which allow the greatest possible degree of freedom of movement of persons through-

out Europe and encourage the integration of migrants in the host societies and states.

European Court of Human Rights

Resolution 1366 (2004) and Recommendation 1649 (2004) on candidates for the European Court of Human Rights – 30 January 2004

In its Resolution, the Assembly specified conditions in which lists of candidates for appointment to the European Court of Human Rights would be considered, including such criteria as the representation of both sexes, working knowledge of Council of Europe official languages and the breadth of candidates' experience. It also said that the appointment of judges should run for nine years non-renewable in order to ensure their independence and impartiality.

In its recommendation, the Assembly said that the process of selection and appointment of judges to the European Court of Human Rights must reflect the principles of democratic procedure, the rule of law, non-discrimination, accountability and transparency. It also stressed that the judges' status must contribute to protecting their impartiality and firmly recommended that the high contracting parties address the issue of gender imbalance in the composition of the Court.

Election observation missions

Presidential election in Georgia

Closer to meeting international standards

Representatives of the International Election Observation Mission (IEOM) said that the presidential election in Georgia of 4 January 2004 demonstrated notable progress over previous elections in the country but was only a partial test of Georgia's electoral system and commitment to a democratic process.

The Mission's concerns in this election regarded issues such as the continued lack of a clear separation between party and state structures and the political imbalance in the composition of the election administration, in favour of the current authorities. The irregularities reported were generally on a lesser scale than in the November 2003 parliamentary election. The IEOM also noted less scrutiny by domestic observers in all aspects of the process.

Parliamentary elections in Serbia

Changes to election law long overdue

The IEOM reported that the parliamentary elections on 28 December 2003 in Serbia went smoothly and were generally conducted in line with international standards, but underlined that the election law contains serious shortcomings including a key article contradicting OSCE commitments and Council of Europe standards.

The IEOM noted that many voters felt they were able to vote for their preferred option, rather than for the party they disliked the least, as has often been the case in previous elections. Campaign rhetoric was generally moderate and media coverage of the campaign largely unbiased. Overall, the election administration worked in an efficient and open manner despite challenges caused by lack of an intermediate level of election administration.

State Duma elections in Russian Federation

Fell short of international standards

The IEOM concluded that the State Duma elections of 7 December 2003 failed to meet many OSCE and Council of Europe commitments, calling into question Russia's willingness to move towards European standards for democratic elections.

It credited the Central Election Commission for its professional organisation of these elections, but observed that the pre-election process was characterised by extensive use of the state apparatus and media favouritism to benefit the largest pro-presidential party. This was reflected in voter apathy.

The IEOM nevertheless recognised the improvement of a comprehensive legal framework which provides the potential for a democratic election process, as well as the fact that the Central Election Commission functioned in an efficient and open manner. It also approved a decision by the constitutional court lifting the most restrictive and controversial provisions on campaign media. Televised debates encouraged an exchange of views, although their value to the electorate was lessened by the non-participation of United Russia.

Voting was generally calm and orderly. Irregularities were noted, however, in regard to the protection of the secrecy of the vote, while other problems were noted during the counting process.

Parliamentary elections in Georgia

Confusion over voter lists

The IEOM concluded that the parliamentary elections of 2 November 2003 in Georgia fell short of a number of international standards. In particular, public confidence in the governmental and parliamentary authorities' capacity to manage an effective and transparent election process was undermined by delays and confusion over voter lists.

It said that although the election provided voters with a wide choice of candidates, unrealistic timelines and improvised, last-minute decisions threatened to undermine the otherwise improved work of the Central Election Commission.

The IEOM recognised improvements, including the new Unified Electoral Code and the increased transparency of the work of the Central Election Commission, but cited the deployment of security forces in four districts and numbers of unauthorised persons in polling stations as adding to a notion of interference in the election process.



Statements of the Parliamentary Assembly President

Death penalty in Japan and the USA

Assembly President Peter Schieder called for the abolition of the death penalty in Japan on 27 February 2004, following the death sentence passed on Shoko Asahara, the leader of a Japanese doomsday cult, and other members of the cult involved in the gas attack on a Tokyo subway in 1995, stating that human rights apply to every one of us, without exception.

"Japan and the United States are leading democracies which have been very vocal on their commitment to human rights. We are calling on them to stand by their own standards of civilised behaviour," he said.

Kazakhstan: moratorium on executions

Peter Schieder welcomed the signature of a presidential decree on 19 December 2003, introducing a moratorium on executions in Kazakhstan, as announced by the authorities of the country.

"This is a very positive step and I hope it will lead to the definite abolition of the death penalty in the country. It clearly illustrates that Kazakhstan is willing to move closer to European standards."

"This important decision comes just before the signature of the special co-operation agreement between our Parliamentary Assembly and the Parliament of Kazakhstan, due to take place in January 2004," Peter Schieder said.

Shevardnadze resignation

Following the resignation of Eduard Shevardnadze as President of Georgia, Peter Schieder said on 23 November 2003 he hoped that this move would contribute to a peaceful solution to the country's political crisis.

"It is extremely important that this period of upheaval remains without violence and that the armed forces do not intervene in the political process," he said. He also praised the restraint shown by all sides and the positive role played by Russian Foreign Minister Igor Ivanov.

Serbia: parliamentary elections

On 19 November 2003, Assembly President Peter Schieder called on voters to participate in the December parliamentary elections in Serbia. "This vote is not only about the composition of the parliament, it is about the stability of democratic institutions and the future of democracy in Serbia," he said.

"It comes after the third consecutive failure to elect a Serbian president due to low voter turnout. Three failures within one year are a sign that people are beginning to lose faith in democratic institutions. If this is allowed to continue, it will compromise the prospects for a modern and

stable Serbia and undermine the achievements of the past two years."

"Those who called for a boycott of the presidential elections bear a part of the responsibility. Serbia is a recent and fragile democracy. All attempts to undermine its democratic institutions are dangerous. Together with Montenegro, it must continue implementing the necessary reforms in order to meet Council of Europe requirements as a member state. The alternative is a return to the past and away from Europe."

"The parliamentary elections at the end of December represent a new crucial test. Serbia cannot afford to fail again," Peter Schieder concluded.

Turkey: abolition of death penalty

On 12 November 2003, Assembly President Peter Schieder welcomed Turkey's formal deposition of the ratification instruments for Protocol No. 6 to the European Convention on Human Rights, abolishing the death penalty in peacetime, as a milestone on Europe's path towards a death penalty-free continent.

"This is a step of huge political significance, confirming the historic decision taken by the Turkish parliament earlier this year to abolish the death penalty. It is a logical follow-up to a series of important legal changes that have brought several key aspects of Turkish legislation into line with Council of Europe standards. I am confident that these will have an impact on Turkey's EU accession chances," Peter Schieder said.

Guest speakers to PACE

Mikheil Saakashvili

Success in Georgia means success for the entire region

The President of Georgia, in his speech on 28 January 2004, stated that the peaceful Rose Revolution in his country was a direct manifestation of the European values of liberal democracy.

"If anything, the non-violent Rose Revolution served as a message to the world – that all Georgians aspire to build and live in a democratic, independent and stable state," he said.

"Georgia and Europe share a common identity. To strengthen that connection, however, Europe needs to do more – to ensure the prosperity and stability of future generations."



Tassos Papadopoulos

Greek Cypriot side ready for new negotiations

Speaking to the Parliamentary Assembly on the subject of “ongoing grave violations of human rights”, the President of the Republic of Cyprus, Tassos Papadopoulos, called for the Assembly’s active support to end ongoing discrimination concerning the few remaining Greek enclaves in the occupied part of Cyprus. Referring to the implementation of the *Loizidou* judgment, Mr Papadopoulos



criticised the “unjustified refusal to execute the *Loizidou* merits judgment of 1996”.

“No State should be allowed to deny the obligations accepted unconditionally upon membership,” he said. Mr Papadopoulos also expressed his support for new negotiations mediated by the UN Secretary General.

For more information on these and other topics, see:

Assembly Internet site: <http://assembly.coe.int/>

The fight against terrorism

Council of Europe standards

The fight against terrorism

Council of Europe standards

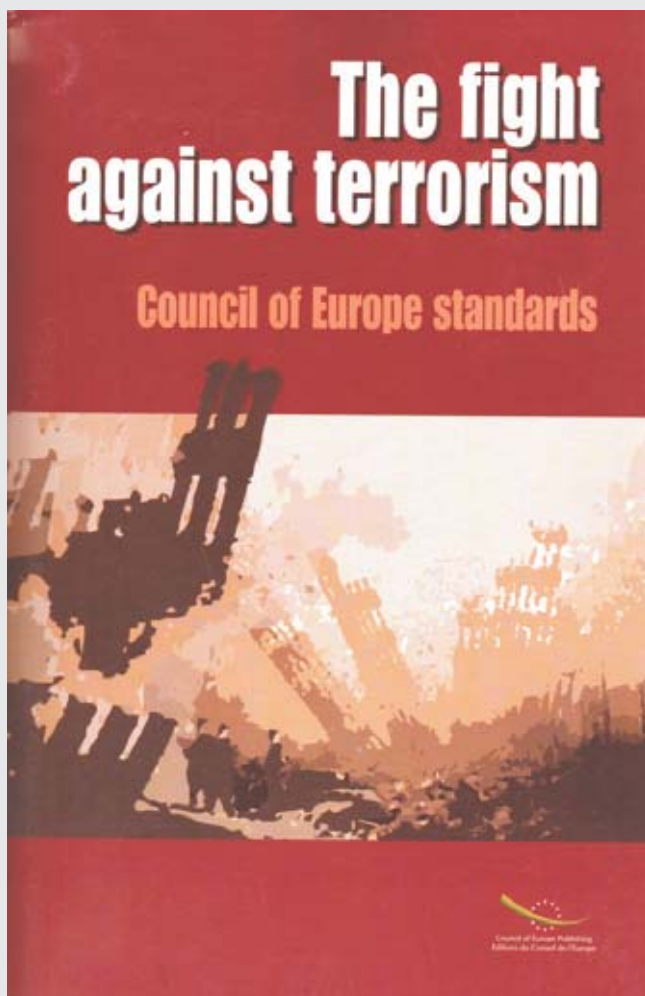
December 2003

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The Council of Europe has been dedicated, since 1949, to upholding human rights, the rule of law and pluralist democracy. Terrorism repudiates these three fundamental values and the Council of Europe is determined to combat it.

The Council of Europe has drafted a number of international legal instruments and standards which reflect the importance it attaches to combating terrorism and illustrate the underlying message of the Organisation, which is that it is possible to fight efficiently against terrorism while upholding the basic values that are the common heritage of the European continent.

This publication contains these texts and is intended to provide a handy, comprehensive reference document.



Human rights institutes

The supplement to the Human rights information bulletin, published at the beginning of each year, presents the recent activities of European human rights institutes. Below is a contribution from the Ludwig Boltzmann Institute of Human Rights, whose report did not appear in the annual collection.

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The primary focus of the Boltzmann Institute's work lies in research activities in the field of human rights, both on the national and the international level. BIM staff is also engaged extensively in human rights teaching and training. The Institute hosts a public human rights library, a Service Centre for Human Rights Education and a Service Centre for Civic Education, all based in Vienna, Austria.

Activities

In fall 2002 the institute was mandated by the European Commission to carry out "Twinning Projects" under the PHARE, TACIS, CARDS and MEDA programs. The projects support candidate countries in implementing the *acquis communautaire* in the area of democratisation, rule of law and human rights. The Institute has so far been

commissioned as "leading institution" with five projects on the implementation of the EU Anti-Discrimination Directives in Poland, prevention of torture in Turkey, data protection in Latvia and Lithuania and reform of asylum law in the Ukraine.

As "junior partner" and "supporting institution" the BIM is involved in five additional projects in the area of equal treatment of women and men in Poland, the development of a modern administrative jurisdiction in Bulgaria and the reform of the Lithuanian prosecution, strengthening of institutions in the fights against trafficking in human beings in Turkey and improvement of the rights of children and juveniles in the Romanian jurisdiction.

In 2004 the BIM successfully completed a study on economic and social rights of asylum-seekers in Austria, and will also publish an analysis on temporary protection in Europe. BIM is also committed to the implementation of the Convention on the Rights of the Child in Austria. It actively participates in the International Human Security Network. Together with two other institutes the BIM serves as national focal point within the racism and xenophobia network,

reporting to the European Monitoring Centre on Racism and Xenophobia (EUMC) and also offers training to lawyers and prosecutors on anti-discrimination.

Training and courses

With the beginning of the 1998/99 academic year BIM/Vienna University for the first time participated in the EU-sponsored Post-Graduate Programme "European Master's Degree in Human Rights and Democratization".

Another academic training programme on the "right to information and information law" started in October 1999. BIM is also involved in post-graduate programmes on "European Studies" at Vienna University and at Viadrina University Frankfurt/Oder.

Publications

In 2003, Manfred Nowak published an introduction to the international human rights system. A comprehensive commentary on the UN Covenant on Civil and Political Rights will be published in 2004. In order to document results of our research BIM publishes a Study Series, edited by Manfred Nowak and Hannes Tretter.

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	29.09.03	26.04.02				21.01.04	18.06.02	20.07.98
Austria	03.09.58	03.09.58	18.09.69	05.01.84	14.05.86		12.01.04	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	02.03.04	23.07.91	
Bosnia and Herzegovina	12.07.02	12.07.02	12.07.02	12.07.02	12.07.02	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	26.02.03	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	07.03.68		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	03.11.99	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					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		25.02.04		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		29.01.04		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			03.10.03	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	03.03.04	03.03.04	03.03.04	03.03.04	03.03.04	03.03.04	03.03.04			03.03.04	11.05.01
Slovakia	18.03.92	18.03.92	18.03.92	18.03.92	18.03.92					11.05.94	14.09.95
Slovenia	28.06.94	28.06.94	28.06.94	28.06.94	28.06.94		04.12.03	22.06.98	07.05.99	02.02.94	25.03.98
Spain	04.10.79	27.11.90		14.01.85						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	06.05.80	29.05.98	21.06.88	09.02.00
Switzerland	28.11.74			13.10.87	24.02.88		03.05.02	17.12.62		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		12.11.03				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			10.10.03	11.07.62		24.06.88	15.01.98

Updated: 25.03.04
Ratifications between **01.11.03** and **29.02.04** 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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