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ECRI anniversary

"10 years of combating racism"

Strasbourg, 18 March 2004

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European Convention on Human Rights

New treaties

Protocol No. 14 to the European Convention on Human Rights was opened for signature on 13 May 2004. Eighteen member states (see below) signed the protocol on the same occasion.

The protocol is aimed at maintaining and reinforcing the effectiveness of the European Court of Human Rights in the context of an ever-increasing number of individual complaints.

The reforms introduced by the protocol include measures to improve the implementation of the European Convention on Human Rights at the national level, and amendments to the Convention to ensure more effective filtering and treatment of individual complaints. They also provide for strengthening the Committee of Ministers' control of the execution of the Court's judgments.

The reforms also change the term of office for judges from the present six-year renewable term to a single nine-year term, and make provision for accession of the European Union to the Convention. For further details, see p. 63.

Signatures and ratifications

Armenia

On 13 May 2004 Armenia signed Protocol No. 14 to the European Convention on Human Rights, amending the control system of the Convention.

On 18 June 2004 Armenia signed Protocol No. 12 to the European Convention on Human Rights.

Croatia

On 13 May 2004 Croatia signed Protocol No. 14 to the European Convention on Human Rights, amending the control system of the Convention.

Denmark

On 13 May 2004 Denmark signed Protocol No. 14 to the European Convention on Human Rights, amending the control system of the Convention.

Estonia

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France

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Georgia

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Greece

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Iceland

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Italy

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Latvia

On 13 May 2004 Latvia signed Protocol No. 14 to the European Convention on Human Rights, amending the control system of the Convention.

Luxembourg

On 13 May 2004 Luxembourg signed Protocol No. 14 to the European Convention on Human Rights, amending the control system of the Convention.

Netherlands

On 13 May 2004 the Netherlands signed Protocol No. 14 to the European Convention on Human Rights, amending the control system of the Convention.

Norway

On 13 May 2004 Norway signed Protocol No. 14 to the European Convention on Human Rights, amending the control system of the Convention.

Portugal

On 27 May 2004 Portugal signed Protocol No. 14 to the European Convention on Human Rights, amending the control system of the Convention.

Romania

On 13 May 2004 Romania signed Protocol No. 14 to the European Convention on Human Rights, amending the control system of the Convention.

Serbia and Montenegro

On 3 March 2004 Serbia and Montenegro ratified:

- the European Convention on Human Rights,
- the Protocol to the European Convention on Human Rights,
- Protocol No. 4 to the European Convention on Human Rights, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto,
- Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty,
- Protocol No. 7 to the European Convention on Human Rights,
- Protocol No. 12 to the European Convention on Human Rights, and
- Protocol No. 13 to the European Convention on Human Rights, concerning the abolition of the death penalty in all circumstances.

Slovenia

On 13 May 2004 Slovenia signed Protocol No. 14 to the European Convention on Human Rights, amending the control system of the Convention.

Switzerland

On 13 May 2004 Switzerland signed Protocol No. 14 to the European Convention on Human Rights, amending the control system of the Convention.

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/.

Panthéon-Assas Paris II University wins 20th René Cassin European Human Rights Competition

A team of students from the Panthéon-Assas Paris II University (France) has won the 20th René Cassin European Human Rights Competition, beating the team representing the University of Limoges (France) in final, which was held in the Hearing Room of the European Court of Human Rights.

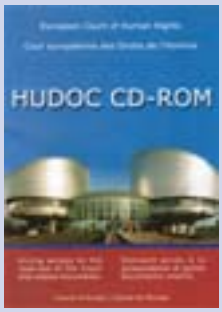
The winning team, composed of Caroline Gaudefroy and Gaelle Meric (speakers) and Alexandra Boudet (legal adviser), argued a fictitious case on the protection of contestants of TV reality games, theme for this year's competition.

The three students from the Paris II University were announced as the winners by Professor Denys Simon, President of the Jury. They were presented with prizes including a traineeship at the European Court of Human Rights and a lithography by Tomi Ungerer, the internationally-known artist from Alsace, Goodwill Ambassador for Childhood and Education of the Council of Europe, offered by the Juris Ludi Association.

CD-ROM for Court's judgments and decisions launched

The 14 June 2004, the European Court of Human Rights has officially launched its CD-ROM for HUDOC, the award-winning database of the Court's judgments, decisions and related texts.

Lawyers, academics, researchers, journalists and the general public will have instant access to the Court's case law through the CD-ROM, which will be of particular value to those without or with only limited access to the Internet.



For further information and to find out how to place an order, please see the Court's Internet site: http://www.echr.coe.int/hudoccd

European Court of Human Rights

Introduction

Between 1 March and 30 June 2004, the Court dealt with 7573 (4052) cases:
- 214 (221) judgments delivered
- 280 (275) applications declared admissible
- 5992 (3379) applications declared inadmissible
- 217 applications struck off the list
- 870 (177) 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 the Court's press releases and monthly case law information Notes, published on its web site, and, for more specific searches, 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

Assanidzé v. Georgia
Judgment of 8 April 2004

Alleged violations of: Articles 5 §1 (right to liberty and security) and §4 (right to have the lawfulness of the detention decided speedily), 6 §1 (right to a fair hearing), 10 (freedom of expression), 13 (right to an effective remedy), and Article 2 of Protocol No. 4 (freedom of movement)

Principal facts and complaints

Former mayor of Batumi – the capital of the Ajarian Autonomous Republic in Georgia – and a member of the Ajarian Supreme Council, the applicant was accused, in 1994, of illegal financial dealings in the Batumi Tobacco Manufacturing Company, and of unlawfully possessing and handling firearms. He was sentenced to eight years' imprisonment and orders were made for his assets to be confiscated and requiring him to make good the pecuniary losses sustained by the company. In October 1999, he was granted a pardon by the President of the Republic, but was not released by the local Ajarian authorities. In December 1999, further charges were brought against him in connection with a separate case of kidnapping. On 2 October 2000 the Ajarian High Court convicted the applicant and sentenced him to twelve years' imprisonment. Although he was subsequently acquitted by the Supreme Court of Georgia on 29 January 2001, he has still not been released by the Ajarian authorities. Consequently, more than three years later, he remains in custody in a cell at the Short-Term Remand Prison of the Ajarian Security Ministry.

Decision of the Court

Article 1

The Court observed that Georgia had ratified the Convention for the whole of its territory, without making any specific reservation with regard to the Adjarian Autonomous Republic and that the said Republic was indisputably an integral part of the territory of Georgia and subject to its competence and control. Even if the matters complained of by the applicant were directly imputable to the local Adjarian authorities, it was solely the responsibility of the Georgian State that was engaged under the Convention.

Article 5 §1

The Court found that since 29 January 2001 the applicant had been arbitrarily detained as there was no statutory or judicial basis for his deprivation of liberty.

Article 6 §1

The Court held that the fact that the judgment of 29 January 2001, which was a final and enforceable judicial decision, had not been complied with more than three years after its delivery had deprived the provisions of Article 6 §1 of the Convention of all useful effect.

Articles 5 §4 and 13

The Court noted that the complaints under these provisions raised essentially the same legal issue on the basis of the same facts as the issue which had been examined under Article 6 §1 of the Convention. Consequently, no separate examination of those complaints was necessary.

Article 3

As to the applicant's complaint that his being held in total isolation in a cell at the Ajarian Security Ministry prison constituted a breach of Article 3 of the Convention, the Court found that it had been raised for the first time after the admissibility decision, and was accordingly outside the scope of the case that had been referred to the Grand Chamber for examination.

Article 5 §3

The Court found that this complaint was out of time.

Article 10

The Court found that the applicant's complaints under Article 10 §1 was unsubstantiated.

Article 13 and Article 2 of Protocol No. 4

The Court considered that it was not necessary to examine these complaints.

The Court awarded the applicant 150,000 euros for pecuniary and non-pecuniary damage and a certain sum for costs and expenses. It also held unanimously that the Georgian State had to secure the applicant's release at the earliest possible date.

Tahsin Acar v. Turkey
Judgment of 8 April 2004

Alleged violations of: Articles 2 (right to life), 3 (prohibition of torture and inhuman and degrading treatment or punishment), 5 (right to liberty and security), 6 (right to a fair hearing), 8 (right to respect for private and family life), 13 (right to an effective remedy), 14 (prohibition of discrimination), 18 (limitation on use of restrictions on rights), 34 (right of individual application), and 38 (examination of the case)

Principal facts and complaints

The case concerned the disappearance of the applicant's brother, Mehmet Salim Acar, a farmer in south-east Turkey. According to the applicant – his brother – he was abducted by two unidentified people, allegedly plain-clothes police officers. His family lodged a series of petitions and complaints about his disappearance with the authorities in order to find out where and why he was being detained. One year after his disappearance, the applicant provided the Bismil public prosecutor with the names of two gendarmes and a village guard, whom he suspected of being responsible for his brother's abduction. The public prosecutor declined jurisdiction and referred the investigation to the Diyarbakir Administrative Council. This latter decided not to prosecute the officials in question, on the ground that there was insufficient evidence. The Supreme Administrative Court upheld that decision. Furthermore, Mehmet Salim Acar's relatives maintained that they had seen him in a news broadcast, during which a newsreader had announced that a man of that name had been arrested. They could not obtain a video recording of the televi-

Court's competence to give an advisory opinion

Judgment of 2 June 2004

Article concerned: Article 47 (competence to give advisory opinions)

The Grand Chamber of the European Court of Human Rights has delivered its decision concerning the first request to the Court for an advisory opinion under Article 47 of the Convention.

The Court concluded unanimously that the request for an advisory opinion, submitted by the Council of Europe's Committee of Ministers, did not come within its advisory competence. The request concerned the co-existence of the Convention on Human Rights of the Commonwealth of Independent States and the European Convention on Human Rights.

The request for an advisory opinion

The Commonwealth of Independent States (CIS) was established in 1991 by a number of former Soviet Republics and at present has 12 members. On 26 May 1995, the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States ("the CIS Convention") was opened for signature. It provides for the establishment of a Human Rights Commission of the Commonwealth of Independent States ("the CIS Commission") to monitor the fulfilment of the human rights obligations entered into by states. The CIS Convention entered into force on 11 August 1998.

In May 2001 the Parliamentary Assembly of the Council of Europe adopted Recommendation 1519 (2001), in which it recommended that the Committee of Ministers request the Court to give an advisory opinion on the question whether the CIS Commission should be regarded as "another procedure of international investigation or settlement" within the meaning of Article 35 § 2(b) of the European Convention on Human Rights [the said Article providing that "The Court shall not deal with any application (...) that is substantially the same as a matter that (...) has already been submitted to another procedure of international investigation or settlement (...)"]. The Parliamentary Assembly referred to "the weakness of the CIS Commission as an institution for the protection of human rights" and expressed the view that it should not be regarded as a procedure falling within the scope of Article 35 § 2(b).

The Committee of Ministers decided to accept the advice of the Parliamentary Assembly and requested the Court to give an advisory opinion on "the co-existence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights".

Procedure

The request was submitted by letter of 9 January 2002. It was assigned to the Grand Chamber of the Court. In accordance with Rule 84 § 2 of the Rules of Court, the Registrar informed the Contracting Parties that the Court was prepared to receive their written comments. Written comments were submitted by a number of the Contracting Parties.

Decision of the Court

The Court considered that the request for an advisory opinion related essentially to the specific question whether the CIS Commission could be regarded as "another procedure of international investigation or settlement" within the meaning of Article 35 § 2(b) of the Convention and was satisfied that the request related to a legal question concerning the interpretation of the Convention, as required by Article 47 § 1.

It was, however, necessary to examine whether the Court's competence was excluded by Article 47 § 2, on the ground that the request raised a "question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention". The Court considered that "proceedings" in this context referred to those relating to applications lodged with it by states or individuals under Articles 33 and 34 of the Convention respectively and that the term "question" extended to issues concerning the admissibility of applications under Article 35 of the Convention. It went on to observe that the question whether an individual application should be declared inadmissible on the ground that the matter had already been submitted to "another procedure of international investigation or settlement" had been addressed in a number of concrete cases in the past, in particular by the former European Commission of Human Rights. In that connection, the Court endorsed the Commission's approach, which showed that the examination of this question was not limited to a formal verification of whether the matter had been submitted to another procedure but extended, where appropriate, to an assessment of the nature of the supervisory body concerned, its procedure and the effect of its decisions. The question whether a particular procedure fell within the scope of Article 35 § 2(b) was therefore one which the Court might have to consider in consequences of proceedings instituted under the Convention, so that its competence to give an advisory opinion was in principle excluded.

As far as the CIS Convention procedure was concerned, the Court noted that several States Parties to the European Convention on Human Rights were members of the CIS and that three had signed and one had ratified the CIS Convention. Moreover, the rights set out in the CIS Convention were broadly similar to those in the European Convention on Human Rights. It could not therefore be excluded that the Court might have to consider in the context of a future individual application whether the CIS procedure was "another procedure of international investigation or settlement".

The Court concluded that the request for an advisory opinion did not come within its advisory competence.

sion broadcast, and the Diyarbakir public prosecutor decided not to open an investigation.

The applicant complained, *inter alia*, of the unlawfulness and excessive length of his brother's detention, of the ill-treatment and acts of torture to which his brother had allegedly been subjected while deprived of his liberty, and of the failure to provide his brother with the services of a lawyer and of any contact with his family.

Decision of the Court

Article 2

– *The disappearance of the applicant's brother*

Having regard to the information in its possession, the Court concluded that the allegation that the applicant's brother had been abducted and detained by agents of the State had not been established beyond reasonable doubt.

– *The alleged inadequacy of the investigation*

The Court considered that although the initial investigation might at first sight appear to have been in accordance with the authorities' obligations under the Convention, the manner in which it had been pursued once the applicant had informed the authorities of his suspicions against certain persons could not be regarded as complete or satisfactory.

Article 3

The Court considered that it had not been established beyond reasonable doubt that the applicant's brother had been abducted and detained in the circumstances alleged by the applicant nor that he had been subjected to ill-treatment or torture by persons for whose acts the State was liable.

Concerning the applicant himself, the Court considered that, despite the fact that the inadequacy of the authorities' investigation into his brother's disappearance might have caused him feelings of anguish and mental suffering, it had not been established that there were any special factors which could justify finding a violation of Article 3.

Articles 5, 6 and 8

Due to the preceding conclusion about Article 3, the Court considered that there was no factual basis for concluding that there had been a violation of these Articles.

Articles 13 and 14

As these complaints had been raised after a decision on the admissibility of the application had been given, the Court had no jurisdiction to examine them.

Article 18

The Court found no violation of Article 18 of the Convention.

Articles 34 and 38

The Court concluded that Turkey had failed to comply with its obligations under Article 38, as it did not act with due diligence in complying with requests by the Commission and the Court to make available evidence considered necessary for the examination of the application. It concluded that no separate issue arose under Article 34 in that regard.

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

Azinas v. Cyprus
Judgment of 28 April 2004

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

Principal facts and complaints

The applicant, who had been working for the Nicosia Public Service, as Governor of the Department of Co-operative Development, complained, in particular, that his dismissal – on the ground that he was found guilty by Nicosia District Court of theft, breach of trust and abuse of authority – also resulted in the forfeiture of his retirement benefits, including his pension.

Decision of the Court

The Grand Chamber recalled that the exhaustion of domestic remedies normally required that the applicant first raise at national level the complaints that were subsequently raised at international level, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law. The aim of the rule on exhaustion of domestic remedies is to allow the national authorities to address the alleged violation of a right protected under the European Convention on Human Rights and, where appropriate, to provide redress before that allegation is submitted to the Court. In so far as there exists at national level a remedy to deal with the alleged violation, at least in substance, it is that remedy which should be exhausted. If the complaint presented before the Court (for example, unjustified interference with the right of property) had not been put, either explicitly or in substance, to the national courts, when it could have been put in the exercise of a remedy available to the applicant, the national legal order had been denied the opportunity to address the Convention issue which the rule on exhaustion of domestic remedies was intended to provide.

It was not sufficient that the applicant might have, unsuccessfully, exercised another remedy which could have overturned the measure in question on other grounds not connected with the complaint of violation of a Convention right. It was the Convention complaint which had to have been aired at national level for there to have been exhaustion of the "effective remedy". It would be contrary to the subsidiary character of the Convention system if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument.

The Court noted that the Convention formed an integral part of the Cypriot legal system, where it took precedence over every contrary provision of national law. It further noted that Article 1 of Protocol No. 1 was directly applicable within the Cypriot legal system. The applicant could therefore have relied on that provision in the Supreme Court or on arguments to the same or like effect based on domestic law. However, he did not cite the violation of his property right to a pension before the Supreme Court, but only complained of the disproportionately severe sentence imposed on him. He did not therefore provide the Cypriot courts with the opportunity which was in principle intended to be given to States which had ratified the European Convention on Human Rights by Article 35 (admissibility criteria) of the Convention, namely the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged. Finding the Cypriot Government's objection that the relevant "effective" domestic remedy was not exhausted by Mr Azinas to be well-founded, the Court rejected the application as inadmissible. The Court further held that it was not necessary to examine the other arguments on admissibility submitted by the Cypriot Government.

Broniowski v. Poland
Judgment of 22 June 2004

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

Principal facts and complaints

The case concerned the alleged failure to satisfy the applicant's entitlement to compensation for property (a house and land) in Lwów (now Lviv, in the Ukraine) which belonged to his grandmother when the area was still part of Poland, before the Second World War. That entitlement was first bequeathed to the applicant's mother and, after her death in 1989, to the applicant.

The applicant's grandmother along with many others who had been living in the Eastern provinces of pre-war Poland (which included large areas of present-day Belarus, Ukraine and territories around Vilnius in what is now Lithuania) was repatriated after Poland's eastern border had been redrawn along the Bug River (whose central course formed part of the Curzon line), in the aftermath of the Second World War. The area was known as the "Borderlands" (*Kresy*) and also, "territories beyond the Bug River" (*ziemie zabuzanskie*).

Following the Yalta and Potsdam conferences – where this new border between the Soviet Union and Poland along the Curzon line had been agreed – and the so-called "re-

publican agreements" between the Polish Committee of National Liberation and the governments of the former Soviet Republics of Lithuania, Belarus and Ukraine, Poland undertook to compensate those who had been "repatriated" from the "territories beyond the Bug River" and had had to abandon their properties. From 1944 to 1953 around 1,240,000 people were "repatriated" under the provisions of the republican agreements.

Since 1946, Polish law has entitled those repatriated in such circumstances to compensation in kind; they have been entitled to buy land from the State and have the value of the abandoned property offset against the fee for the so-called "perpetual use" of this land or against the price of the compensatory property or land.

However, following the entry into force of the Local Government Act of 10 May 1990 and the enactment of further laws reducing the pool of State property available to the Bug River claimants – in particular, by excluding the possibility of enforcing their claims against State agricultural and military property – the State Treasury has been unable to fulfil its obligation to meet the compensation claims because it has had insufficient land to meet the demand. In addition, Bug River claimants have frequently been either excluded from auctions of State property or have had their participation subjected to various conditions. According to the Government, the anticipated total number of entitled persons is nearly 80,000.

The applicant's entitlement to compensation for the property abandoned by his grandmother was originally (in the 1980s) valued at 1,949,560 old Polish zlotys. According to an expert report produced by the Polish Government, the value of the applicant's entitlement at present amounts to some 390,000 new Polish zlotys. He has received only approximately 2% of its value (i.e. of the compensation due to him) in the form of the right of perpetual use of a small building plot which his mother bought from the State in 1981.

On 19 December 2002 the Polish Constitutional Court declared the provisions that excluded the possibility of enforcing the Bug River claims against State agricultural and military property unconstitutional. However, following this judgment, the State agencies administering State agricultural and military property suspended all auctions, considering that further legislation was required to deal with the implementation of the judgment.

On 30 January 2004, when the Law of 12 December 2003 entered into force, the Polish State's obligations towards the applicant, and all other Bug River claimants who had ever obtained any compensatory property under the previous legislation, was deemed to have been discharged. Claimants who had never received any such compensation were awarded 15% of their original entitlement, subject to a ceiling of 50,000 Polish zlotys.

The applicant complained that he had not received the compensatory property to which he was entitled. He further submitted that the Polish State failed to react to and resolve through legislative measures, the problem of the insufficient stock of State property designated for the Bug River claimants and also that the State had enacted laws that had all but removed the possibility of obtaining State property. He also maintained that the authorities had made the realisation of his entitlement impossible in practice, given the widespread practice of not putting State land on sale and preventing people entitled to compensatory property from bidding at auctions.

Decision of the Court

Scope of the case

The Court first observed that, while the historical background of the case was certainly important for the understanding of the current and complex legal and factual situation, the sole issue before the Court was whether Article 1 of Protocol No. 1 was violated through the Polish State's acts and omissions in relation to the implementation of the applicant's entitlement to compensatory property after the Protocol's entry into force in respect of Poland.

Article 1 of Protocol No. 1

The Court found that the applicant's entitlement to obtain compensatory property constituted "possessions" for the purposes of Article 1 of Protocol No. 1.

It proceeded on the assumption that, in so far as the acts and omissions of the Polish State constituted interferences or restrictions on the exercise of the applicant's right to the peaceful enjoyment of his possessions, they were "provided for by law" within the meaning of Article 1 of Protocol No. 1. The measures also pursued a legitimate aim; to reintroduce local self-government, to restructure the agricultural system and to generate financial means for the modernisation of military institutions.

In deciding whether the measures in question struck a fair balance between the interests involved, the Court recognised that, given the particular historical and political background of the case, as well as the importance of the various social, legal and economic considerations that the authorities had to take into account in resolving the problem of the Bug River claims, the Polish State had to deal with an exceptionally difficult situation, involving complex, large-scale policy decisions. The vast number of persons involved – nearly 80,000 – and the very substantial value of their claims were certainly factors to be taken into account in ascertaining whether the requisite fair balance had been struck.

It also had to be noted that the Polish State chose, by adopting both the 1985 and 1997 Land Administration Acts, to reaffirm its obligation to compensate the Bug River claimants and to maintain and to incorporate into domestic law obligations it had taken upon itself by virtue of international treaties entered into prior to its ratification of the Convention and the Protocol. It did so irrespective of the fact that it faced various important social and economic constraints resulting from the transformation of the country's entire system, and was undoubtedly confronted with a difficult choice as to which pecuniary and moral obligations could be fulfilled towards those who had suffered injustice under the totalitarian regime.

The Court accepted that in those circumstances a wide margin of appreciation had to be accorded to the Polish State. However, the exercise of the State's discretion, even in the context of the most complex reform of the State, could not entail consequences at variance with Convention standards. While the Court accepted that the radical reform of the country's political and economic system, as well as the state of the country's finances, might justify stringent limitations on compensation for the Bug River claimants, the Polish State had not been able to adduce satisfactory grounds justifying, in terms of Article 1 of Protocol No. 1, the extent to which it had continuously failed over many years to implement an entitlement conferred on the applicant, as on thousands of other Bug River claimants, by Polish legislation.

The Polish authorities, by imposing successive limitations on the exercise of the applicant's right to credit, and by applying the practices that made it unenforceable and unusable in practice, rendered that right illusory and destroyed its very essence. The state of uncertainty in which the applicant found himself as a result of the repeated delays and obstruction continuing over a period of many years, for which the national authorities were responsible, was in itself incompatible with the obligation arising under Article 1 of Protocol No. 1 to secure the peaceful enjoyment of possessions, notably with the duty to act in good time, in an appropriate and consistent manner where an issue of general interest was at stake.

The applicant's situation was compounded by the fact that what had become a practically unenforceable entitlement was legally extinguished by the December 2003 legislation, under which the applicant lost his hitherto existing entitlement to compensation. Moreover, under that legislation, Bug River claimants were treated differently, in so far as those who had never received any compensation were awarded an amount which, although subject to a ceiling of 50,000 PLN, was a specified proportion (15%) of their entitlement, whereas claimants in the applicant's position, who had already been awarded a much lower percentage, received no additional amount.

While the State was entitled to expropriate property, Article 1 of Protocol No. 1 required that the amount of compensation granted for the property be "reasonably related" to its value. Given that the applicant's family had received merely 2 % of the compensation due, the Court found no cogent reason why such an insignificant amount should per se deprive him of the

possibility of obtaining at least a proportion of his entitlement on an equal basis with other Bug River claimants.

Having regard to all the foregoing factors and in particular to the impact on the applicant over many years of the Bug River legislative scheme as operated in practice, the Court concluded that, as an individual, he had had to bear a disproportionate and excessive burden which could not be justified in terms of the legitimate general community interest pursued by the authorities. There had therefore been a violation of Article 1 of Protocol No. 1.

Article 46 of the Convention (binding force and execution of judgments)

The Court drew attention to two instruments adopted by the Committee of Ministers of the Council of Europe on 12 May 2004. The first, a resolution on judgments revealing an underlying systemic problem, invited the Court "to identify in its judgments finding a violation of the Convention what it considers to be an underlying systemic problem and the source of that problem, in particular when it is likely to give rise to numerous applications ...". The second, a recommendation on the improvement of domestic remedies, emphasised that States had a general obligation to solve the problems underlying the violations found and recommended the setting up of "effective remedies, in order to avoid repetitive cases being brought before the Court".

The Court concluded that the facts of the case disclosed the existence, within the Polish legal order, of a shortcoming as a consequence of which a whole class of individuals had been or were still denied the peaceful enjoyment of their possessions. It also found that the deficiencies in national law and practice identified in the applicant's individual case might give rise to numerous subsequent well-founded applications.

The Court reiterated that, under Article 46, a judgment in which the Court had found a violation imposed on the State concerned a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers of the Council of Europe, the measures to be adopted at national level to put an end to the violation and to redress so far as possible its effects. Subject to monitoring by the Committee of Ministers, the State remained free to choose the means by which it would discharge its legal obligation under Article 46, provided that such means were compatible with the conclusions set out in the Court's judgment.

The Court recalled that the violation in the applicant's case was caused by a situation concerning large numbers of people. The failure to implement, in a manner compatible with Article 1 of Protocol No. 1, the chosen mechanism for settling the Bug River claims had affected nearly 80,000 people. There were already 167 similar applications pending before the Court. That was not only an aggravating factor regarding Poland's responsibility under the Convention for an existing or past state of affairs, but also represented a threat to the future effectiveness of the Convention system.

The Court observed that general measures at national level were undoubtedly called for, to remedy the systemic defect identified by the Court, so as not to overburden the Convention system with large numbers of applications deriving from the same cause. Such measures should therefore include a scheme providing redress. It was for the national authorities, under the supervision of the Committee of Ministers, to take, retroactively if appropriate, the necessary remedial measures so that the Court did not have to repeat its finding in a lengthy series of comparable cases.

The Court was not in a position to assess whether the December 2003 Act could be treated as an adequate measure in that connection since no practice of its implementation had been established. In any event, the Act did not cover those who – like Mr Broniowski – had already received partial compensation. It was therefore clear that, for that group of Bug River claimants, the Act could not be regarded as a measure capable of putting an end to the systemic situation identified by the Court.

Regarding the general measures to be taken, the Court considered that Poland had either, through appropriate legal and administrative measures, to secure the effective and expeditious realisation of the entitlement in question in respect of the remaining Bug River claimants or to provide equivalent redress in lieu.

The Court awarded the applicant certain sums for costs and expenses, and further held, unanimously, that the question of an award in respect of any pecuniary or non-pecuniary damage was not ready for decision.

Selected chamber judgments of the Court

Glass v. United Kingdom
Judgment of 9 March 2004

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

Principal facts and complaints

The applicants were David Glass, a severely handicapped child, and his mother.

In July 1998, when David was 12, he was admitted to hospital on several occasions with severe respiratory infections. There were strong disagreements between members of the hospital staff and the mother on the possible use of diamorphine to alleviate David's distress. Moreover, a "Do not Resuscitate" notice was added to the child's file without consulting his mother, and the doctors stated that a "second opinion", if necessary from the courts, could be needed.

On one occasion, a crisis situation arose: the doctors believed that the child had entered a terminal phase and, with a view to relieving his pain, administered diamorphine to him against his mother's wishes. Disputes broke out in the hospital between members of the family and the doctors. Police were summoned to the hospital and several doctors and police officers were injured and the children on the ward had to be evacuated. While the fight was going on, Ms Glass successfully revived David and took him home. She applied for judicial review of the decisions made by the hospital, but the General Medical Council found that the doctors had not been guilty of serious professional misconduct or seriously deficient performance and that the treatment complained of had been justified. The Crown Prosecution Service did not bring charges against the doctors involved for lack of evidence.

The applicants argued that United Kingdom law and practice failed to guarantee the respect for David's physical and moral integrity. In particular, the decisions to administer diamorphine to David against his mother's wishes and to place a DNR notice in his notes without her knowledge interfered with both their rights under Article 8. They also maintained that leaving the decision to involve the courts to the discretion of doctors was a wholly inadequate basis on which to ensure effective respect for the rights of vulnerable patients.

Decision of the Court

The Court considered that imposing a treatment on David despite his mother's continuing opposition represented an interference with the child's right to respect for his private life. The Court nevertheless noted that the hospital staff had taken decisions in view of what they considered best to serve the interests of the child, so the interference was also legitimate. As to the "necessity" of the interference at issue, it had not been explained to the Court's satisfaction why the hospital had not sought the intervention of the courts at the initial stages to overcome the deadlock with the mother. The onus to take such an initiative and defuse the situation in anticipation of a further emergency was on the hospital. Instead, the doctors used the limited time available to try to impose their views on the mother. In such circumstances, the decision of the authorities to override the mother's objections to the proposed treatment in the absence of authorisation by a court had resulted in a breach of Article 8.

The Court awarded the applicants 10,000 euros for non-pecuniary damage and certain sums for costs and expenses.

Radio France v. France
Judgment of 30 March 2004

Alleged violations of: Article 6 §§1 and 2 (right to a fair trial and presumption of innocence), 7 §1 (no punishment without law) and 10 (freedom of expression)

Principal facts and complaints

The application was lodged by the national radio broadcasting company Radio France and by its editorial director and a journalist, Messrs Boyon and Gallicher.

At the beginning of 1997, sixty or so news flashes and bulletins broadcast on France Info – a channel dependant on the applicant company – mentioned an article published in the weekly magazine *Le Point* which alleged that Michel Junot, deputy prefect of Pithiviers in 1942 and 1943, had supervised the deportation of a thousand Jews.

In connection with those broadcasts, a judgment of the Paris Criminal Court found Messrs Boyon and Gallicher liable for the offence of public defamation of a civil servant and ordered them to pay a fine and damages. The applicant company was ordered to broadcast an announcement reporting that judgment on France Info every two hours during a 24-hour period.

The Paris Court of Appeal upheld the applicants' sentences. It considered that by alleging that Michel Junot had supervised the deportation of a thousand Jews and organised their transfer to Drancy, by comparing his situation with that of Maurice Papon (who had been committed for trial before the Assize Court), and by suggesting that he had not been a member of the Resistance, the disputed broadcasts had damaged his honour and dignity. The criminal division of the Court of Cassation dismissed the applicants' appeal on points of law

The applicants complained that the scope of the criminal law had been overextended. They submitted that by considering that the disputed facts came within the scope of the 29 July 1982 Audiovisual Communication Act, the domestic courts had created a new category of offence by process of "analogy". They further submitted that the 29 July 1982 Act created an irrebuttable presumption that the editorial director was liable, thereby infringing his right to the presumption of innocence. Moreover they claimed that the Act undermined the principle of equality of arms (right to a fair trial). Lastly, they complained of a violation of their right to "impart information" as a result of the sanctions and measures imposed on them by the domestic courts.

Decision of the Court

Article 7 §1

The Court noted that the presumption of liability raised against the editorial director by section 93-3 of the 29 July 1982 Act was a consequence of his duty to control the information broadcast by the medium in which he worked. That liability only arose when there had been a "prior recording" of the disputed statement before it was broadcast. France Info operates by broadcasting regular bulletins live on a rolling basis. Hence the French courts did not find the editorial director liable for broadcasting the first bulletin, but considered that it constituted a "prior recording" for the purposes of subsequent broadcasts. Accordingly they considered that the editorial director had been in a position to control the broadcasts in advance and found him criminally liable.

According to the Court, in the light of the way France Info operates, the criminal courts had interpreted the concept of "prior recording" consistently with the substance of the offence in question and in a way which was "reasonably foreseeable". The Court therefore held that there had been no violation of Article 7.

Article 6 §§1 and 2

The Court noted that the complaint under Article 6 §1 overlapped with the complaint under Article 6 §2 and that there was therefore no need for a separate examination of the facts under Article 6 §1.

The 29 July 1982 and 29 July 1881 Acts provide that an editorial director is criminally liable for the broadcasting of a defamatory statement where a "prior recording" has been made of it before it is broadcast. That presumption of liability was associated with another presumption which was not absolute, whereby defamatory statements are presumed to have been made in bad faith.

The editorial director could have escaped liability by proving either the good faith of the maker of the disputed statements, or that there had been no "prior recording" of the disputed statement. Given the importance of what was at stake, i.e. the need to prevent the broadcasting of defamatory or damaging statements in the media by obliging the editorial director to exercise prior control, the Court found that the presumption created by the 29 July 1982 Act remained within the requisite "reasonable limits". Moreover, noting the care with which the French courts had scrutinised the applicants' grounds of appeal in that respect, the Court found that they had not applied the law in such a way as to infringe the presumption of innocence. Accordingly, it held that there had been no violation of Article 6 §2.

Article 10

The Court noted that the applicants' sentences constituted an interference with their right to freedom of expression. The sentences of Messrs Boyon and Gallicher had a basis in the criminal law, as did, in the Court's view, the order for the applicant company to broadcast an announcement. According to the Court, the applicant company's civil liability was based on Article 1382 of the Civil Code relating to everyone's liability for their own acts, and on consistent domestic case law giving the courts exclusive jurisdiction to select the appropriate remedy for the damage suffered. In that respect, it appeared that the publication of judicial announcements was a common remedy for damage caused by the press.

The Court also noted that the disputed interference pursued a legitimate aim, namely the protection of the reputation or rights of others. As to whether that interference was proportionate to the aim pursued, the Court noted that the debate concerned an issue of general interest, namely the attitude of senior civil servants during the Occupation. Moreover, the disputed publications and broadcasts had taken place against the background of a wide-ranging public debate surrounding the proceedings taken against Maurice Papon for participation in crimes against humanity.

As to the disputed broadcasts, they had quoted, with systematic references to their source, from a detailed and well-documented article and interview published in a reputable weekly magazine. The France Info journalists could not therefore be accused of having failed to act in good faith simply because they had made those broadcasts. However, the broadcasts alleged that Michel Junot had admitted "having organised the departure of a convoy of deportees to Drancy". According to the Court, that allegation, which had not been published in *Le Point*, did not accurately reflect the published article or interview. The rest of the broadcasts quoted from the published information, summarising an investigation which was several pages long in a few sentences and highlighting its most striking aspects, thus presenting the facts in a much more categorical tone than had the magazine article. Although the broadcasts were subsequently slightly amended, and pointed out that the person concerned denied the allegations, the original bulletin was nonetheless broadcast several times.

In view of the extreme seriousness of the facts inaccurately attributed to Michel Junot and his intention to broadcast the statements many more times, the journalist concerned should have exercised the utmost caution and shown special moderation, particularly since the bulletin was broadcast by a radio station covering the whole of France. In those conditions, the Court considered that the reasons given by the Appeal Court in sentencing the applicants were "relevant and sufficient".

As to the applicants' sentences, the Court noted that Messrs Boyon and Gallicher had been found guilty of an offence and ordered to pay modest fines and damages. Moreover, ordering the applicant company to broadcast a judicial announcement of 118 words a dozen times on France Info reflected the courts' concern to tailor the remedy to the damage suffered and represented, according to the Court, only a limited encroachment on the editorial schedule of the channel concerned.

In the circumstances, the Court found that the measures taken against the applicants were not disproportionate to the legitimate aim pursued and could therefore be considered "necessary in a democratic society". Accordingly the Court held that there had been no violation of Article 10 of the Convention.

Hirst v. United Kingdom (No. 2)
Judgment of 30 March 2004

Alleged violations of: Articles 10 (freedom of expression), 14 (prohibition of discrimination) and Article 3 of Protocol No. 1 (right to free elections)

Principal facts and complaints

The applicant, who was sentenced to a term of discretionary life imprisonment for manslaughter, was barred, as a convicted prisoner, by the Representation of the People Act 1983 from voting in parliamentary or local elections. He issued proceedings in the High Court, under section 4 of the Human Rights Act 1998, seeking a declaration that section 3 was incompatible with the European Convention on Human Rights. His application was heard before the Divisional Court, but his claim and subsequent appeal were both rejected.

The applicant complained about being barred from voting. He also complained that voting was a form of expression which was fundamental to a functioning democracy and that he was discriminated against as a convicted prisoner in relation to his voting rights.

Decision of the Court

Article 3 of Protocol No. 1

Whilst states had a wide margin of appreciation in the sphere of the right to vote, any restrictions in this area should pursue a legitimate aim, be proportionate and should not impair the essence of the right. The margin of appreciation could not justify restrictions which had not been the subject of considered debate in the legislature and which derived, essentially, from unquestioning and passive adherence to an historic tradition. Bearing in mind the divergent political and penal philosophies and policies that could be invoked in this context, the Court refrained from ruling whether the aims invoked by the Government (prevention of crime, punishment of offenders and enhancement of civic responsibility) were legitimate or not. The Court considered that in any event there was no evidence in support of the claim that disenfranchisement deterred crime. Moreover, the removal of the vote could in fact be seen to run counter to the rehabilitation of the offender. As regards the proportionality of the measure, the Court noted that the provision automatically stripped a large number of convicted prisoners of their right to vote. The restriction applied irrespective of the length of their sentence or the gravity of the offence. In practice, the actual effect of the ban would depend, somewhat arbitrarily, on whether there were elections during the period when the prisoner was serving the sentence. Moreover, if disqualification was seen as part of a prisoner's punishment, there was no logical justification for it in the present case given that the punishment element of the applicant's sentence had expired. In conclusion, whilst acknowledging that national legislatures were to be granted a wide margin of appreciation in determining restrictions on prisoner's rights, there was no evidence that the legislature in the United Kingdom had sought to assess the proportionality of the ban as it affected convicted prisoners. A blanket restriction on all convicted prisoners did not fall within the State's margin of appreciation, and since the applicant had lost his right to vote as a result of such a ban, he could claim to be a victim of the measure.

Articles 10 and 14

The Court held that no separate issue arose under Article 10 or Article 14 in conjunction with Article 3 of Protocol No. 1

The Court awarded certain sums for costs and expenses.

Amihalachioaie v. Moldova
Judgment of 20 April 2004

Alleged violation of: Article 10 (freedom of expression)

Principal facts and complaints

The applicant, a lawyer and President of the Union of Lawyers of Moldova, had criticised, in an interview published in a journal, a decision of the Constitutional Court declaring unconstitutional the statutory provisions requiring lawyers to be members of the Union of Lawyers of Moldova. The Constitutional Court imposed an administrative fine on the applicant for being disrespectful towards it. It penalised him for stating that, as a result of the decision, "complete chaos would reign in the legal profession" and that the question therefore arose as to whether the Constitutional Court was constitutional. The court also penalised him for asserting that its judges "probably did not consider the European Court of Human Rights to be an authority".

Decision of the Court

The Court noted that the applicant's conviction amounted to interference with his freedom of expression, prescribed by Article 82(e) of the Code of Constitutional Procedure, and which had pursued a legitimate aim, which was to maintain the authority and impartiality of the judiciary.

With regard to whether the interference in question was "necessary in a democratic society", the Court noted that the applicant's statements had concerned a matter of general interest which was the subject of a fierce controversy among lawyers, that had been unleashed by a decision of the Constitutional Court on the status of the profession and which had put an end to the organisation of lawyers into a single structure, the Union of Lawyers of Moldova, of which the applicant was the president. In that context, even if Mr Amihalachioaie's statements did conceivably denote a certain lack of consideration towards the Constitutional Court, they could not be regarded as serious or insulting towards the judges of that court. Furthermore, since the applicant had subsequently denied part of the statements attributed to him by the press the Court considered that he could not be held responsible for everything that had been published in the interview. With regard to the fine imposed on him, although the amount had not been substantial, it had nonetheless shown an intention to punish the applicant severely since the Constitutional Court had applied a fine approaching the statutory maximum penalty.

In those circumstances the Court considered that there had not been a "pressing social need" to restrict the applicant's right to freedom of expression and that the domestic authorities had not provided "relevant and sufficient" grounds justifying the interference. Since the applicant had not exceeded the limits of criticism permissible under Article 10 of the Convention, the interference complained of could not be regarded as "necessary in a democratic society".

Plon (Société) v. France
Judgment of 18 May 2004

Alleged violation of: Article 10 (freedom of expression)

Principal facts and complaints

The applicant, a publishing company named Plon, had acquired publishing rights in respect of a book entitled *Le Grand Secret*. It had been written by a journalist and Dr Claude Gubler, who had been the private physician of President Mitterrand for a number of years, and it gave an account of the relations between the two men, describing how Dr Gubler had organised a medical team to take care of the President. It also mentioned the difficulties Dr Gubler had encountered in trying to conceal his patient's illness, cancer having been diagnosed shortly after Mr Mitterrand's election in 1981, although he had given an undertaking to publish a health bulletin every six months. Following President Mitterrand's death the book's authors and Plon decided to postpone publication. However, since Dr Gubler considered that as matters stood his professional competence had been called into question, they decided to publish *Le Grand Secret* a few days later. Mr Mitterrand's widow and children applied to the urgent applications judge, who issued an injunction prohibiting the book's distribution as an interim measure. The injunction was upheld by the Court of Appeal. Later on, the Paris *tribunal de grande instance*, ruling on the merits of the case, held that by disclosing information covered by the rules of medical confidentiality Dr Gubler, Plon and Plon's managing director had committed a wrongful act incurring civil liability. It accordingly ordered the ban on publication of *Le Grand Secret* to remain in force and the defendants jointly to pay damages.

Decision of the Court

The Court noted that the order against the applicant company constituted interference with its right to freedom of expres-

sion. It considered that there was no doubt that Plon must have known that the book contained revelations which might be covered by the rules of medical confidentiality and must have been "reasonably" able to foresee the likely legal consequences of its publication for the company. Consequently, the interference in issue had been prescribed by law within the meaning of Article 10 of the Convention.

Both the measures prohibiting distribution of *Le Grand Secret*, the injunction and the order made after trial on the merits, had been intended to protect the deceased president's honour, his reputation and the intimacy of his private life. In addition, it was precisely because many items of information revealed in the book were legally confidential that they had been capable of infringing the rights of others. Consequently, the interference complained of had pursued one of the legitimate aims set out in Article 10 of the Convention.

As to whether the interference met a "pressing social need", the Court noted that the publication of *Le Grand Secret* had taken place in the context of a general-interest debate which had already been going on for some time in France about the right of the public to be informed about serious illnesses of the head of state, and the aptitude of a person who knew he was seriously ill to hold that office. In addition, the secrecy imposed by the President about his illness and its progress, as described in the book, raised the public-interest issue of the transparency of political life.

The injunction

The urgent applications judge had given his ruling on the day following publication of *Le Grand Secret*, which had taken place barely ten days after Mr Mitterrand's death. On a date so close in time to the President's death the distribution of a book which, in breach of the rules of medical secrecy, presented him as having knowingly lied to the French people could only have deepened his family's grief. Moreover, Mr Mitterrand's death, coming after a long fight against his illness and a few months after he left office, had aroused strong emotions among politicians and the public, so that the damage to his reputation done by the book was particularly serious.

That being so, the Court considered that the interim ban on distribution of *Le Grand Secret* until such time as the relevant courts had ruled on its compatibility with medical confidentiality and the rights of others could be regarded as "necessary in a democratic society" for the protection of the rights of President Mitterrand and his heirs and successors.

The measures ordered after trial on the merits

The Court considered that the finding that the applicant company was civilly liable and the order requiring it to pay damages had been grounded on relevant and sufficient reasons. However, by that time keeping the ban on distribution of *Le Grand Secret* in force no longer met a "pressing social need" and was therefore disproportionate in relation to the aims pursued. The ruling had come more than nine months after President Mitterrand's death in a context which was different from the one in which the interim measure had been ordered, mainly because of the time that had elapsed since then.

In that connection, the Court considered that once medical confidentiality had been breached and the book's author had been found to have committed criminal and disciplinary offences, the passage of time had to be taken into account in order to be able to assess whether such a serious measure as a blanket ban on a book, as in the present case, was compatible with the freedom of expression. Moreover, at the time when the judge ruled on the merits 40,000 copies of the book had already been sold, it had been published on the Internet and it had been the subject of much comment in the media. Accordingly, preserving medical confidentiality could no longer constitute a preponderant imperative. Furthermore, the measure appeared all the more disproportionate in that it had been imposed in addition to the order requiring Plon to pay damages to Mr Mitterrand's heirs and successors.

Consequently, the Court considered that when the *tribunal de grande instance* gave judgment there was no longer a pressing social need justifying the continuation in force of the ban on distribution of *Le Grand Secret*.

In the light of that conclusion, the Court considered that it was not necessary to examine separately the applicant company's complaint that it had been ordered to pay "exorbitant" damages.

The Court awarded the applicant company certain sums for costs and expenses.

Vides Aizsardzibas Klubs v. Latvia

Judgment of 27 May 2004

Alleged violation of: Article 10 (freedom of expression)

Principal facts and complaints

The applicant, Vides Aizsardzibas Klubs (The Environmental Protection Club – known as the "VAK"), a non-governmental organisation, had adopted a resolution expressing its concerns about the conservation of coastal dunes (*kapu josla*) on a stretch of coast in the Gulf of Riga. The resolution contained allegations that the Mayor of Mersrags, I.B., had "signed illegal documents, decisions and certificates" and had wilfully omitted to comply with the instructions of the relevant authorities to halt illegal building works. The resolution was published in the regional newspaper. I.B. sued the applicant organisation in the Court of First Instance for the district of Talsi, which found that the applicant organisation had not proved the truth of its statements and ordered it to publish an official apology and pay damages to the mayor for publishing defamatory allegations.

Decision of the Court

The Court found that the order against the applicant organisation amounted to interference with the exercise of its right to freedom of expression. That interference was prescribed by law and pursued a legitimate aim, which was the protection of the reputation and rights of others.

It noted that the main aim of the resolution had been to draw the public authorities' attention to a sensitive issue of public interest, namely malfunctions in an important sector managed by the local authorities. As a non-governmental organisation specialised in the relevant area, the applicant organisation had thus exercised its role of "watchdog" under the Environmental Protection Act. That kind of participation by an association was essential in a democratic society. Consequently, in order to perform its task effectively an association had to be able to impart facts of interest to the public, give them its assessment and thus contribute to the transparency of public authorities' activities.

The order had been made against the applicant organisation for alleging that I.B. had signed the documents in question and had failed to comply with the instructions of the Regional Department for the Environment to halt the building works in the coastal area. Given that that was a factual allegation against a specific person, the applicant organisation had to expect that it would be required to establish the truth of its allegations, which it did. The Court did not see what additional proof the organisation could have supplied.

It could be seen from the Regional Court's judgment and the Government's observations that the resolution had been held to be defamatory because it attacked I.B. in person, whereas decisions of the municipal council were taken collectively. In view of a Latvian mayor's powers regarding the adoption of decisions and given the limits on permissible criticism of a public figure, the Court considered that criticism of the mayor for the policy of an entire local authority could not be regarded as an abuse of the freedom of expression.

The order had also been made against the applicant organisation for describing I.B.'s conduct as "illegal". In the Court's view, the applicant organisation had expressed a personal legal opinion amounting to a value judgment. It could not therefore be required to prove the accuracy of that assessment. In that connection the Court held that, in a democratic society, the public authorities were, as a rule, exposed to permanent scrutiny by citizens and, subject to acting in good faith, everyone had to be able to draw the public's attention to situations that they considered unlawful.

Consequently, despite the discretion afforded to the national authorities, the Court held that there had not been a reasonable relationship of proportionality between

the restrictions imposed on the applicant organisation's freedom of expression and the legitimate aim pursued.

The Court awarded the applicant 3,000 euros for non-pecuniary damage and certain sums for costs and expenses.

Hilda Hafsteindóttir v. Iceland

Judgment of 8 June 2004

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

Principal facts and complaints

The applicant alleged that her detention in police custody for drunkenness and disorderly conduct on six occasions on various dates between 31 January 1988 and 24 June 1997 had not been justified for the purposes of Article 5 §1.

The Court was satisfied on the evidence before it that the arrests and detention in question conformed to the national substantive and procedural rules. It appeared that on each occasion the police had contemplated less serious measures and could reasonably have considered that it was necessary to arrest and detain the applicant.

The Court noted, however, at the relevant time, the lack of a regulatory framework governing both the police's discretion over the duration of the relevant type of detention in all six instances and the decision to place the applicant in detention in January 1988.

Certain rules, which entered into force on 1 July 1988, applied to the last five instances of detention. Under those rules, conduct resulting from the use of alcohol and causing disorder or significant disturbance or inconvenience could warrant detention, provided it was highly likely that the situation would continue if the person were to remain at liberty. However, the Court noted, the rules did not specify when detention ceased to be justified and the detainee had a right to be released. Moreover the Court was not convinced that the more detailed provisions in the rules had been made accessible to the public. The Court was therefore not satisfied that the law, as applicable at the time, was sufficiently precise and accessible to avoid all risk of arbitrariness. Finding that the applicant's deprivation of liberty was not "lawful", the court held, by five votes to two, that there had been a violation of Article 5 §1. The Court held unanimously that the finding of a violation constituted sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. Certain sums were awarded for cost and expenses.

Pabla Ky v. Finland

Judgment of 22 June 2004

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

Principal facts and complaints

The applicant was a limited partnership company, which was running a restaurant in Helsinki. The company brought civil proceedings against the owner of the restaurant premises, after having paid a rental increase to cover renovation work which was not completed according to plan.

The applicant company complained that the court of appeal which sat in his civil proceedings was not independent or impartial since one of the judges was a Member of the Finnish Parliament (M.P.).

Decision of the Court

The Court noted that there was no indication that M.P. was actually, or subjectively, biased against the applicant when sitting in the Court of Appeal in his case. The only issue was whether, due to his position as a member of the legislature, his participation cast legitimate doubt on the objective impartiality or structural impartiality of the court which decided the applicant's appeal.

The Court had no objection *per se* to expert lay members participating in the decision-making in a court. The Court recalled that M.P. had sat on the court of appeal as an expert in rental matters since 1974 and had, in the Finnish Government's view, accrued considerable experience valuable in contributing to adjudicating in that type of case. Neither did the Court find that there was any indication in the applicant's case that M.P.'s membership of a particular political party had any connection or link with any of the parties in the proceedings or the substance of the case before the court of appeal. Nor was there any indication that M.P. played any role in respect of the legislation which was in issue in the case. Accordingly, M.P. had not exercised any prior legislative, executive or advisory function in respect of the subject-matter or legal issues before the court of appeal for decision in the applicant's appeal. The Court was not persuaded that the mere fact that M.P. was a member of the legislature at the time when he sat on the applicant's appeal was sufficient to raise doubts as to the independence and impartiality of the court of appeal. While the applicant relied on the theory of separation of powers, the principle was not decisive in the abstract.

The Court held, by six votes to one, that the applicant's fear as to a lack of independence and impartiality of the court of appeal, and that there consequently had been no violation of the right to a fair trial.

Aziz v. Cyprus

Judgment of 22 June 2004

Alleged violations of: Article 3 of Protocol No. 1 (right to free elections) and Article 14 (prohibition of discrimination)

Principal facts and complaints

The applicant, a Cypriot national of Turkish origin living in Nicosia, had applied to the Minister of the Interior, asking to be registered on the electoral roll in order to vote in the parliamentary elections of 27 May 2001. His request was refused on the ground that, under Article 63 of the Constitution, members of the Turkish-Cypriot community could not be registered in the Greek-Cypriot electoral roll. The applicant was also informed that the matter was under consideration by the Attorney-General of the Republic and that he would be informed of any developments.

On 27 April 2001 the applicant lodged an application with the Supreme Court against the decision of the Ministry of the Interior. He relied on Article 3 of Protocol No. 1 of the European Convention on Human Rights and submitted that, following the dissolution of the Communal Chambers, the Cypriot Government had failed to set up two electoral lists in order to protect the electoral rights of members of both communities.

On 23 May 2001 the Supreme Court dismissed the application, holding that Article 63 of the Cypriot Constitution and Article 5 of Law No. 72/79 (relating to the election of members of parliament) did not provide for members of the Turkish-Cypriot community living in the Government-controlled part of Cyprus to be included in the Greek-Cypriot electoral list and consequently, vote in parliamentary elections. The court stated that it did not have the competence to reform the Constitution, which provides for the compilation of separate electoral lists and for separate elections of the representatives of each community, as this would be contrary to the principle of the separation of powers.

Decision of the Court

Article 3 of Protocol No. 1

The Court recalled that Article 63 of the Cypriot Constitution, which entered into force in August 1960, provided for separate electoral lists for the Greek-Cypriot and Turkish-Cypriot communities. Nonetheless, the participation of Turkish-Cypriot members of parliament was suspended from 1963, from which time the relevant articles of the Constitution providing for the parliamentary representation of the Turkish-Cypriot community and the quotas to be adhered to by the two communities became impossible to implement in practice.

The Court noted that states which had ratified the European Convention on Human Rights enjoyed considerable latitude in establishing rules within their constitutional order governing parliamentary elections and the composition of their parliaments; the relevant criteria might vary according to the historical and political factors peculiar to each state. However, those rules should not be such as to exclude certain people or groups of people from participating in the political life of the country and, in particular, in the choice of the legislature, a right guaranteed by both the European Convention on Human Rights and the Constitutions of all Contracting States.

The Court noted that the situation in Cyprus deteriorated following the occupation of northern Cyprus by Turkish troops and had continued to do so for the last 30 years. It further observed that, despite the fact that

On 29 June 2004 the European Court of Human Rights decided not to grant a request for an interim measure submitted by lawyers acting on behalf of Saddam Hussein.

Mr Hussein's lawyers had asked the Court "to permanently prohibit the United Kingdom from facilitating, allowing for, acquiescing in, or in any other form whatsoever effectively participating, through an act or omission, in the transfer of the applicant to the custody of the Iraqi Interim Government unless and until the Iraqi Interim Government has provided adequate assurances that the applicant will not be subject to the death penalty". They rely on Articles 2 (right to life) and 3 (prohibition of torture and inhuman and degrading treatment) of the European Convention on Human Rights and Article 1 of Protocols Nos. 6 (abolition of the death penalty in time of peace) and 13 (abolition of the death penalty in all circumstances) to the Convention. They argued that under those provisions the United Kingdom has an obligation to ensure individuals are not subject to the death penalty and therefore not to surrender legal or physical custody of individuals to a country or jurisdiction where they would face such consequences and other breaches of the Convention.

* * *

Under Rule 39 of the Rules of Court the Court may indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it. It remains open to Mr Hussein to pursue his application before the Court.

the relevant constitutional provisions had been rendered ineffective, there was a notable lack of legislation to resolve the resulting problems. Consequently, the applicant, as a member of the Turkish-Cypriot community living in the Government-controlled area of Cyprus, was completely deprived of any opportunity to express his opinion in the choice of the members of the house of representatives of the country of which he was a national and where he had always lived.

Considering that the very essence of the applicant's right to vote, as guaranteed by Article 3 of Protocol No. 1, had been denied, the Court held, unanimously, that there had been a violation of Article 3 of Protocol No. 1.

Article 14 of the Convention

The Court noted that the applicant was a Cypriot national, resident in the Government-controlled area of Cyprus. It observed that the difference in treatment of which the applicant complained resulted from the fact that he was a Turkish Cypriot; it emanated from the constitutional provisions regulating the voting rights of members of the Greek-Cypriot and Turkish-Cypriot communities that had become impossible to implement in practice.

The Court considered that this difference could not be justified on reasonable and objective grounds, particularly in the light of the fact that Turkish Cypriots in the applicant's situation were prevented from voting at any parliamentary election.

It therefore concluded that there was a clear inequality of treatment in the enjoyment of the right in question, which had to be considered a fundamental aspect of the case. There had accordingly been a violation of Article 14 in conjunction with Article 3 of Protocol No. 1.

Pini and Bertani & Manera and Atripaldi v. Romania

Judgment of 22 June 2004

Alleged violations of: Articles 6 §1 (right to a fair trial), 8 (right to respect for family life) and 2 §2 of Protocol No. 4 (freedom of movement)

Principal facts and complaints

At the time the applications were lodged, the applicants had obtained orders for the adoption of two Romanian children, Florentina and Mariana. The children were nine years old when the adoption orders were made and in the care of the Poiana Soarelui Educational Centre in Brasov (the CEPSB). The CEPSB is a private institution approved by the Brasov Child Protection Department. Its function is to provide a home for orphaned and abandoned children, to take care of them and provide them with an education.

Acting through the intermediary of an association, the applicants began proceedings to adopt Florentina and Mariana, who had been judicially declared to have been abandoned at the age of three and seven. The Brasov District Court made the adoption orders on 28 September 2000 and ordered the children's birth certificates to be amended. An appeal against that decision by the Romanian Adoptions Board was dismissed and the orders became final.

The applicants sought to enforce the adoption orders, but the CEPSB refused to deliver up the children's birth certificates or to transfer custody of the children to them. On a number of occasions, court bailiffs accompanied by police officers and sometimes the applicants themselves attended the headquarters of the CEPSB in order to enforce the adoption orders. However, they were unsuccessful, as they were either refused access to the building or were unable to locate the children.

The CEPSB made various applications to Court to put a halt to the enforcement proceedings and unsuccessfully applied to have the adoption orders set aside. In September and November 2002 Florentina and Mariana issued proceedings to have the adoption orders revoked on the ground that they did not know their adoptive parents and did not wish to leave Romania and the CEPSB. The action brought by Florentina was dismissed, *inter alia*, on the ground that it was not in her interests for the adoption order to be revoked. However, the Brasov District Court granted Mariana's application and revoked the adoption order after noting that she was receiving a sound education and living in good conditions at the CEPSB and had not formed any emotional ties with her adoptive parents.

Articles in the local Brasov press echoed statements made by Baroness Nicholson of Winterbourne, a rapporteur at the European Parliament, that children in the care of the CEPSB should not travel abroad to join their adoptive families. They also noted that the CEPSB's founder, the former tennis player Ioan Tiriac, had said that none of the children at the centre would leave as they had all become members of his family and that it was time to put a halt to the export of Romanian children.

Relying on Article 8 of the Convention, the applicants complained that the Romanian authorities' failure to enforce final judicial decisions had deprived them of all contact with their adopted children. They further submitted that the authorities' refusal to permit their daughters to leave the country breached Article 2 §2 of Protocol No. 4 to the Convention.

Decision of the Court

Article 8

The Court reiterated that although the right to adopt was not guaranteed by the Convention as such, the relationship between an adoptive parent and the child was in principle of the same nature as the relationship within a family that was protected by Article 8 of the Convention. In the light of the circumstances of the case, the Court found that the relationship between the adoptive parents and their adopted daughters, under lawful adoptions

that were not shams, could be considered sufficient to warrant the respect required by Article 8 of the Convention, which accordingly was applicable.

As to whether the Romanian authorities had taken the necessary measures to enable the applicants to establish family relations with each adopted child, the Court noted that there was a conflict of interest between those concerned. It was clearly apparent to the Court that Florentina and Mariana now preferred to remain in the socio-family environment in which they had been raised at the CEPSB, where they considered themselves to be fully integrated and which was able to afford them physical, emotional, educational and social development rather than the prospect of being transferred to a different environment abroad. Their interest lay in not having imposed upon them against their will new emotional relations with people with whom they had no biological ties and whom they perceived as strangers. The applicants' interest lay in their desire to create a new family relationship by creating a relationship with their adopted daughters. However legitimate that might be, the applicants' desire could not enjoy absolute protection. When deciding whether national authorities had taken all measures that could be reasonably demanded of them to ensure that a child was reunited with its parents, particular importance had to be given to the best interests of the child. In adoption cases, it was even more important to give the child's interests precedence over those of its parents, as adoption meant "giving a family to a child and not the child to a family".

The Court deplored the manner in which the adoption proceedings had taken place, in particular the lack of concrete and effective contact between the applicants and the children before the adoption. These shortcomings had been made possible by gaps in the relevant domestic legislation at the material time. It was particularly regrettable that the children had clearly not received psychological support, which could have prepared them for their imminent departure from the centre that had been their home for several years and in which they had established social and emotional ties. Such measures would probably have enabled the applicants' interests to converge with those of the children, instead of competing with them as had happened in the case before the Court.

Regard being had to the circumstances of the case, the applicants' weaker interest could not justify imposing on the Romanian authorities an absolute obligation to ensure that the children went to Italy against their will and to ignore the fact that challenges to the adoption orders were pending. The children's interest meant that their opinions had to be taken into account once they had the necessary maturity to express them, which Romanian law deemed them to possess at the age of 10. In that respect, the refusal they had consistently manifested since that age carried a certain weight. The conscious opposition of the children to the adoption would make their harmonious integration in their new adoptive family unlikely.

Consequently, the Court found that the Romanian authorities could legitimately and reasonably have considered that the applicants' right to create ties with the adopted children could not take priority over the children's interest, notwithstanding the applicants' legitimate aspirations to found a family.

Article 6 §1

The Court considered that the applicants' complaints of a failure to enforce final decisions should be examined under Article 6 §1.

The sole cause of the failure to execute the adoption orders had been the actions of the CEPSB staff and its founding members. They had consistently opposed the children's departure by making various applications to prevent execution and preventing the court bailiffs from carrying out their task effectively. There had even been an occasion on which a bailiff, the applicants and the applicants' lawyer had been kidnapped at the centre when attempting to execute the adoption orders.

In that connection, the Court considered that people who chose to resort to such tactics against those whose task it was to enforce a court judgment had to be held accountable. In the case before it, the kidnapping had occurred as a direct result of the lack of police assistance and nothing had been done about it since. No measures had been taken to penalise the CEPSB for its lack of co-operation with the authorities and no action had been taken against the director of the CEPSB in respect of his refusal, for almost three years, to co-operate with the court bailiffs. By failing, for such a long time, to take effective measures to comply with final and enforceable judicial decisions, the Romanian authorities could be held accountable for the actions of a private institution that had rendered the provisions of Article 6 §1 of the Convention nugatory. Such a conclusion was made all the more necessary by the undoubtedly irreversible consequences which the passage of time had had on the potential relationship between the applicants and their respective adoptive daughters. On that subject, the Court noted with regret that, though they had not totally disappeared, the prospects of that relationship flourishing now appeared remote, given that the children, now aged 13, had recently indicated that they were strongly opposed to being adopted and going to live in Italy.

Article 2 §2 of Protocol No. 4

The Court found no appearance of a violation of this right: Florentina and Mariana were free to move as they wished both inside and outside Romania. Moreover, as those primarily concerned, they themselves denied that there had been any interference with their freedom of movement.

The Court awarded 12,000 euros to Mr Pini and Ms Bertani and 10,000 euros to Mr Manera and Ms Atripaldi for pecuniary and non-pecuniary damage certain sums for costs and expenses.

Von Hannover v. Germany

Judgment of 24 June 2004

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

Principal facts and complaints

Since the beginning of the 1990s Princess Caroline von Hannover has been campaigning – often through the courts – in various European countries to prevent photographs about her private life being published in the sensationalist press. She has on several occasions unsuccessfully applied to the German courts for an injunction preventing any further publication of a series of photographs which had appeared in the 1990s in the German magazines *Bunte*, *Freizeit Revue* and *Neue Post*. She claimed that they infringed her right to protection of her private life and her right to control the use of her image. In a landmark judgment of 15 December 1999 the Federal Constitutional Court granted the applicant's injunction regarding the photographs in which she appeared with her children on the ground that their need for protection of their intimacy was greater than that of adults. However, the court considered that the applicant, who was undeniably a contemporary "public figure", had to tolerate the publication of photographs of herself in a public place, even if they showed her in scenes from her daily life rather than engaged in her official duties. The Constitutional Court referred in that connection to the freedom of the press and to the public's legitimate interest in knowing how such a person generally behaved in public.

Decision of the Court

There was no doubt that the publication by various German magazines of photographs of the applicant in her daily life either on her own or with other people fell within the scope of her private life. Article 8 of the Convention was accordingly applicable. It was therefore necessary to balance protection of the applicant's private life against freedom of expression, as guaranteed by Article 10 of the Convention.

Although freedom of expression also extended to the publication of photographs, this was an area in which the protection of the rights and reputation of others took on particular importance, as it did not concern the dissemination of "ideas", but of images containing very personal or even intimate "information" about an individual. Furthermore, photos appearing in the tabloid press were often taken in a climate of continual harassment which induced in the person concerned a very strong sense of intrusion into their private life or even of persecution.

The Court considered that the decisive factor in balancing the protection of private life against freedom of expression should lie in the contribution that the published photographs and articles made to a debate of general interest. In the case before it, the photographs showed Caroline von Hannover in scenes from her daily life, and thus engaged in activities of a purely private nature. The Court noted in that connection the circumstances in which the photographs had been taken: without the applicant's knowledge or consent and, in some instances, in secret. It was clear that they made no contribution to a debate of public interest, since the applicant exercised no official function and the photographs and articles related exclusively to details of her private life.

Furthermore, while the general public might have a right to information, including, in special circumstances, on the private life of public figures, they did not have such a right in this instance. The Court considered that the general public did not have a legitimate interest in knowing Caroline von Hannover's whereabouts or how she behaved generally in her private life even if she appeared in places that could not always be described as secluded and was well known to the public. Even if such a public interest existed, just as there was a commercial interest for the magazines to publish the photographs and articles, those interests had, in the Court's view, to yield to the applicant's right to the effective protection of her private life.

The Court reiterated the fundamental importance of protecting private life from the point of view of the development of every human being's personality and said that everyone, including people known to the public, had to have a "legitimate expectation" that his or her private life would be protected. The criteria that had been established by the domestic courts for distinguishing a figure of contemporary society "par excellence" from a relatively public figure were not sufficient to ensure the effective protection of the applicant's private life and she should, in the circumstances of the case, have had a "legitimate expectation" that her private life would be protected.

Having regard to all the foregoing factors, and despite the margin of appreciation afforded to the state in this area, the Court considered that the German courts had not struck a fair balance between the competing interests. Accordingly, it held that there had been a violation of Article 8 of the Convention and that it was not necessary to rule on the applicant's complaint relating to her right to respect for her family life.

The Court held that the question of the application of Article 41 of the Convention (just satisfaction) was not ready for determination. It reserved it in its entirety and invited the Government and the applicant to submit observations in writing.

Election of Judges to the European Court of Human Rights

During the two last sessions (April and June 2004) of the Parliamentary Assembly, six new judges have been elected and 14 sitting judges re-elected to the European Court of Human Rights in Strasbourg.

New judges

- Germany: **Renate Jaeger**
- Iceland: **David Thór Björgvinsson**
- Lithuania: **Danutė Jočienė**
- Luxembourg: **Dean Spielmann**
- Netherlands: **Egbert Myjer**
- Norway: **Sverre Jebens**

Re–elected judges

- Belgium: **Françoise Tulkens**
- Croatia: **Nina Vajić**
- Czech Republic: **Karl Jungwiert**
- Estonia: **Rait Maruste**
- Finland: **Matti Pellonpää**
- France: **Jean-Paul Costa**
- Greece: **Christos Rozakis**
- Ireland: **John Hedigan**
- Liechtenstein: **Lucius Caflisch**
- Poland: **Lech Garlicki**
- Portugal: **Ireneu Cabral Barreto**
- Russia: **Anatoly Kovler**
- Sweden: **Elisabeth Fura-Sandström**
- United Kingdom: **Nicolas Bratza**

The emergence of freedom of religion in the case law of the European Court of Human Rights

by Jean-Pierre Schouppe

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The Islamic headscarf, the tip of the iceberg

The issues surrounding the Islamic headscarf have been thrust centre-stage in public awareness thanks to excessive media attention, and the matter, which calls for adequate solutions given the varied national circumstances in which it is arising, is justifiably of some concern to the respective political authorities. The European Court of Human Rights in Strasbourg recently handed down a judgment[1] in which it dismissed the case of an Islamic student who had been banned from attending the State University of Istanbul for repeatedly wearing a headscarf within the institution. The Judges stressed the importance of not generalising from one judgment given with respect to a particular situation in Turkey, a country constitutionally rooted in secularism and where Muslim women need protection from powerful forces tending to impose the headscarf upon them. The judgment is not one against Turkish women's right to display their religious convictions; it is above all an effort to ensure the necessary protection for those Turkish women who wish to free themselves from this obligation and to respect the secular nature of the Turkish State. There is no reason to believe that the Court could not, in different circumstances, find a violation of Article 9.[2]

The Islamic headscarf is only the tip of the iceberg, however, when it comes to religious freedom. Since the well-known judgment of *Kokkinakis* v. *Greece*, concerning acts of proselytism, was handed down in 1993, some two dozen judgments have examined allegations of violations of religious freedom as enshrined in Article 9,[3] signalling the emergence of freedom of religion in the Strasbourg case law. These judgments have dealt with numerous aspects of freedom of religion. Rather than going into the protection of internal freedom of religion, which is an absolute right but much more difficult to grasp in legal terms, they generally concern its manifestations, which can be subject to justifiable interference from the State under the conditions laid out in paragraph 2 of Article 9.[4] They can be divided into three categories according to whether they protect individual, collective or institutional aspects of freedom of religion. These three categories are far from being hermetically distinct; they give an idea of the predominant issue rather than defining the matter exclusively. Respectable proselytism may therefore be carried out alone or as a group, just as the collective right to open a place of worship in no way prohibits the individual use of a church or temple. The border line between collective and institutional freedom of religion should be regarded as flexible; just where the line is to be drawn depends on whether the collective enjoyment of a right by the members of

1 See *Leyla Sahin* v. *Turkey*, judgment of 29 June 2004.

2 As early as the 1990s, two decisions of the Commission had already declared inadmissible two separate applications submitted by two Muslim students who had refused to appear wearing a headscarf on their identity card, with the result that they could not obtain their study certificates. During the decade in question, the matter of the Islamic headscarf was examined by the Court in the case of *Dahlab* v. *Switzerland* (2001). The applicant was not a student, as in the above-mentioned cases, but a teacher asserting her right to wear a headscarf in a State-run school. The Court found that the prohibition was not unreasonable in view especially of the neutrality of the establishment and the young age of the pupils which made them particularly influenceable.

3 Other aspects related to freedom of religion, such as freedom of expression (Article 10), of assembly and of association (Article 11) or the right to education (Article 2 of Protocol No. 1), will not be dealt with directly in this article.

4 In a similar but not identical manner, in paragraph 2 of Articles 8, 10 and 11 of the European Convention. In the framework of Article 9 §2, such limitations must be "prescribed by law" and be "necessary in a democratic society". This necessity, measured in terms of proportionality, must aim to achieve "public safety", the "protection of public order, health or morals" or the "protection of the rights and freedoms of others".

a religious group or a right held by a religious institution as such is accentuated. For example, the initiative of opening a prayer-house can be viewed as the act of several families (collective freedom) or as that of a religious group as such (institutional freedom).

Individual freedom of religion

It all began with the problematic issue of proselytism that is not respectable. The *Kokkinakis* judgment was groundbreaking inasmuch as it established the essential distinction between proselytism which is respectable and that which is not. For the rest, however, this judgment is deceiving as it fails to go to the heart of the matter: the principle behind the creation of an offence for proselytism under Greek law and an overly vague legal definition of the offence. This left the judgment open to criticism, beginning with the separate opinions of several judges of the Court. When the matter came up again five years later, the judgment in the case of *Larrisis and others* v. *Greece* continued the trend in the protection of civilians' rights, but also took into account the situation of the armed forces and introduced, on the contrary, a virtual presumption of non-respectable proselytism on the part of officers with regard to soldiers. Even if the rigid hierarchy which characterises the army may make such a position understandable, this gap between the protection of civilians' fundamental rights and those of armed-service personnel is a matter of some concern.

Concerning military discipline again, but in the framework of Turkish secularism, the *Kalaç* judgment examined the compulsory retirement of a judge advocate from the air force for belonging to an Islamic fundamentalist group. The Judges did not find that there had been a violation of the applicant's freedom of religion, given that he could practise his religion. On the contrary, the applicant was considered to have failed to respect the commitment undertaken with such a career to respect the principle of Turkish secularism and military discipline.

San Marino did not fare so well in the case of *Buscarini*, where the obligation for parliamentary deputies to take an oath on the Holy Gospels was considered incompatible with the spirit of plurality appropriate to such an institution. In another vein, when two Greek secondary school students who were Jehovah's Witnesses and therefore bound to pacifism, *Esfratiou* and *Valsamis*, were sanctioned for having refused on religious grounds to participate in a ceremony in which reference was made to war, the Court found no violation of Article 9. The Court again found in favour of Greece in *Sofianopoulos and others*, where the applicants complained of a decision not to record the bearer's religion on national identity cards. In the case of *Thlimmenos* v. *Greece*, the Court examined the question of discrimination on grounds of religion when granting access to a liberal profession. The applicant, a Jehovah's Witness, was barred access to a position of chartered accountant because of his refusal to carry out military service, which his religion forbade him to do. The judgment is remarkable in the fact that it states that discrimination (Article 14 taken together with Article 9) can arise not only from the unequal treatment of two persons in analogous situations, but also from the equal treatment of two persons in objectively different situations.

Collective religious freedom

Two cases illustrate the collective aspect of freedom of religion. In *Manoussakis* v. *Greece*, the Court sanctioned a State requiring prior authorisation for the opening of a place of worship. The judgment does not condemn the system in itself, but rather the fact that 50 families professing to be Jehovah's Witnesses were prevented from opening a place of worship by the application of measures disproportionate to the legitimate goal sought and therefore not necessary in a democratic society. This judgment sufficed to convince the State to take a more lenient stance and accept a friendly settlement one year later in *Penditis and others*. In a very recent case,[5] however, the Court held that the public authorities' refusal to grant the "True Orthodox Christians" permission to open a prayer-house was justified and proportionate (even if it did find a violation of Article 6).

Regarding ritual dietary practices, the Court found in *Cha'are Shalom* v. *France* that the State had not violated the religious freedom of the applicant cultural association, which had complained of a refusal to grant the official approval it needed in order to legally perform ritual slaughter, because "glatt" meat could be obtained from other sources. The Court stressed that even if there had been interference, it would have been covered by paragraph 2. Other religious groups function under the same limitation and the discrimination complained of was of limited scope and was objectively justified and reasonable.[6] Involving an "applicant Church",[7] this case can also be considered in terms of institutional freedom of religion.

Institutional freedom of religion

The first area in which institutional or communal freedom of religion can be applied is the granting of legal personality with regard to civil matters. In the case of *Canea Catholic Church* (1997), the Court judged against Greece for having deprived the applicant of judicial protection by ceasing – in an unforeseeable manner – to recognise its legal personality and, in so doing, discriminating against this religious group in comparison with others without any objective or reasonable justification. In the *Metropolitan Church of Bessarabia and others* v. *Moldova* (2001), confronted with an attempt to turn the case into a political affair and in the absence of any form of traditional recognition of legal personality (not without reason, as the

5 See *Vergos* v. *Greece*, judgment of 24 June 2004.

6 It is noteworthy that these arguments failed to convince seven of the seventeen Judges of the Grand Chamber: they made it known in a single dissenting opinion that they considered, on the contrary, that the religious minority had suffered from discrimination. The difficult question is therefore just to what extent a State can be held responsible for positive obligations regarding the protection of minorities within a religious community and how it can ensure such protection without compromising its neutrality.

7 The term indicates a marked evolution, bearing in mind that it was not until 1977 and the case of *X and the Church of Scientology* v. *Sweden* that legal entities could, under European case law, be protected under Article 9.

group in question was considered to be schismatic in relation to the orthodox religion), the Court came to a conclusion essentially the same as that of the foregoing case.

Another area vital to the preservation of institutional freedom of religion is that of the appointment, dismissal or further still the defrocking of ministers of a religion. The authority to enact all these measures lies with the religious group itself, in the framework of its organisational autonomy and according to its own (canon) rules. They must be protected from any interference from the State … and nowadays from the European Union.[8] Three judgments relating to the post of mufti, in Greece or in Bulgaria, say long on the matter.[9]

Towards a concept of institutional freedom of religion?

The concept of institutional freedom of religion can, in the author's opinion, be established on the basis of the judgments of the Court in the following manner. Based on the rights already mentioned above, i.e. the right to legal personality with regard to civil matters and to respect for institutional autonomy, other fundamental rights complete the said concept. In this manner, a number of other rights derive from the right not to be unjustly deprived of legal personality, in particular the rights to organise meetings or to open a place of worship,[10] to bring a case before a court and to enjoy legal protection,[11] especially access to effective remedy,[12] either to defend its property or to protect itself against any form of discrimination[13] in relation to other religions. Institutional freedom of religion is thus accompanied by Articles 11, 6, 13 and 14 of the Convention, respectively, which indirectly ensure its protection.

The organisational autonomy of religious communities is the source of each religious group's right to free practice,[14] the free appointment of its ministers and, for the latter, the free exercise of spiritual duties (duties not to be confused with administrative or legal duties or functions likely to have some effect in civil matters[15]). In real terms, the former Commission[16] had already established the right of religious communities to impose doctrinal and ritual uniformity[17] and to require of their members the respect of specific discipline and rules; the religious freedom of the members and ministers of a particular religious community is strictly limited to the decision to join or leave the community. The community can therefore sanction or dismiss a minister, but the replacement or the unilateral imposition of a religious leader on the part of the State would be unacceptable.[18] Furthermore, in cases of internal conflict or division within a religion, the principle of religious plurality has been known to bring about the co-existence in a single office of religious ministers from different religious currents within the community.[19] Indeed, the State being bound to remain neutral,[20] it must refrain from any judgments relating to different forms of worship and, where tension or conflict exists between different religious groups within a community, it must monitor the mutual tolerance between them rather than attempt to eliminate the causes of the conflict by eliminating pluralism.[21]

The emergence of freedom of religion in the Strasbourg case law over the last decade is therefore a positive development well worth our attention. Many aspects of this freedom have already been recognised and protected by European judges. The "minimalism" of the Court's judgments, however, often criticised, has left some grey areas and has no doubt set back the advent of a rigorously defined concept of institutional freedom of religion. For the time being, we can only hope that it will soon see the day.

8 See Article I-51 of the Constitutional Treaty of the European Union, adopted in June 2004 and in the process of ratification by member states. The two first paragraphs of this text are in the same vein as declaration 11 in the appendix of the Amsterdam Treaty.
9 See *Serif* v. *Greece* (1999); *Hassan and Tchaouch* v. *Bulgaria* (2000) and *Agga* v. *Greece* (2002).
10 See *Metropolitan Church of Bessarabia*, paras. 105 and 117.
11 See *Canea Catholic Church*, paras. 39-40; *Metropolitan Church of Bessarabia*, paras. 101 and 105.
12 See *Hassan and Tchaouch*, para. 104.
13 See *Canea Catholic Church*, para. 47; *Hassan and Tchaouch*, para. 105
14 See *Metropolitan Church of Bessarabia*, para. 105.
15 See *Serif*, paras. 51-52.
16 See, for example, *Spetz and others* v. *Sweden*, para. 2.
17 See also *Cha'are Shalom Ve Tsedek*, paras. 73-74; *Metropolitan Church of Bessarabia*, para. 117.
18 See *Hassan and Tchaouch*, paras. 78 and 82.
19 See *Serif*, para. 52.
20 See *Metropolitan Church of Bessarabia*, para. 123.
21 See *Serif*, para. 53; *Metropolitan Church of Bessarabia*, para. 116.

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

According to 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 adopted by the respondent states.[2]

These measures should notably remedy the consequences of the violation for the applicant: payment of any just satisfaction awarded by the Court, where necessary they include special individual measures such as the reopening of the proceedings at the origin of the violation, erasing 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 can 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: notably 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 the supervision of execution.[3]

Documentation for the Committee's Human Rights meetings (6 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]

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 European Commission on Human Rights' 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 The Addenda are not made public because they may also contain confidential information.

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 – which assists the Committee of Ministers during the preparation and conduct of its Human Rights meetings – or through the Committee of Ministers' Internet site.

The cases below were examined at the 879th (05-06.04.2004) and 885th (01-02.06.2004) meetings of the Committee of Ministers. Reference documents: CM/Del/OJ/OT(2004)879, CM/Del/OJ(2004)885) volumes I & II, and CM/Del/OT(2004)885).

Committee of Ministers: http://wcm.coe.int/
HUDOC: http://hudoc.echr.coe.int/

Cases currently pending

Bulgaria

M.C.
Court judgment of 4 December 2003

In this case, the applicant had complained that Bulgarian law and practice did not provide effective protection against rape and sexual abuse, as only cases where the victim resisted actively were prosecuted.

In its judgment, the Court found that the respondent State had failed to comply with its positive obligations under Articles 3 and 8 to penalise and effectively prosecute any non-consensual sexual act, including in the absence of physical resistance by the victim. The Court considered that the approach of the authorities was restrictive as the investigation on the applicant's alleged rape in 1995 gave undue emphasis to the lack of direct proof of rape, such as violence, when it should have been centred on the issue of non-consent.

The Court noted that historically the law and the practice in a certain number of states sometimes required, in case of rape, the evidence of the perpetrator having used physical force and the victim opposed physical resistance. However, it appears that this is not required anymore in European countries. In common law countries, in Europe and elsewhere, any reference to physical force has disappeared from the legislation and/or case law. Although in most of the countries influenced by continental legal tradition the definition of rape contains references to the use of violence or threats of violence by the perpetrator, in the case law and the legal theory the lack of consent is seen as the key element of the rape's definition.

The Court also noted that the Council of Europe's member states agreed upon the necessity to penalise non-consensual sexual acts irrespective of whether the victim resisted or not, to ensure for women an effective protection against violence, and insisted on the necessity to implement further reforms in this field.

France

Kress, APBP, Immeubles groupe Kosser, Théraube
Court judgments of 7 June 2001, 21 March 2002, 21 March 2002, and 10 October 2002

These cases concern infringements of the right to a fair trail on account of the Government Commissioner's "participation" in the deliberations of the trial bench in proceedings before the Conseil d'Etat.

Following the *Kress* judgment, a memorandum dated 23 November 2001 was addressed by the *Président de la section du contentieux* of the *Conseil d'Etat* to Government Commissioners, in which it was in particular explained that they may continue to attend deliberations on condition that they do not take the initiative of speaking during the deliberations.

The question as to whether this measure constitutes an adequate and sufficient execution of the judgments is still to be answered. The Court should deal with this issue in the framework of a pending case (application No. 61164/00 – *Barbe and others*). Consequently, the Delegates decided to postpone the examination of this group until the outcome of this examination is known.

Greece

Dougoz & Peers
Court judgment of 6 June 2001 and 19 April 2001

The cases originate in applications of foreign nationals who had been detained in Athens police HQs and at a Piraeus detention center in 1997 and 1994 respectively. They raise serious long-standing issues regarding detention conditions in Greece (issues raised also in 2002 by the Council of Europe Human Rights Commissioner and Committee for the Prevention of Torture – CPT). The Greek National Human Rights Commission also produced two relevant lengthy reports in 2001 and 2002, with a series of recommendations for the amelioration of detention conditions in Greece.

– The first case concerns the conditions of the applicant's detention in 1997, in the Alexandras avenue (Athens) Police Headquarters and at the Drapetsona (Piraeus) detention center, which amounted to degrading treatment (violation of Article 3). The case also concerns the fact that the applicant's detention pending expulsion was not in accordance with a procedure "prescribed by law" within the meaning of the Court's case law (violation of Article 5 §1). Finally, the case concerns the fact that the domestic legal system did not afford the applicant an opportunity to have the lawfulness of his detention pending expulsion determined by a national court (violation of Article 5 §4).
– The second case concerns the conditions of the applicant's detention in 1994, in Korydallos prison, which amounted to degrading treatment (violation of article 3). The case also concerns the opening by the prison administration of letters addressed to him by the Secretariat of the former European Commission of Human Rights, a measure considered by the Court as unnecessary in a democratic society (violation of Article 8).

Individual measures

No individual measures were requested since the applicants had left Greece at time of the judgments.

General measures

Information was awaited on the improvement of detention conditions, especially at Alexandras avenue (Athens) and at Drapetsona detention centres and at Wing D of Korydallos prison which have been criticised in 2002 by the Council of Europe Commissioner for Human Rights and by CPT.

Also information was awaited on the issuance of the Inter-Ministerial Decision on the execution of expulsions ordered by courts, provided for by art 44 §8 of immigration law 2910/2001.

As regards the violation of Article 8, the Penitentiary Code (art 53 §§4 and 7 of Law 2776/1999) may now be regarded as

providing sufficient safeguards for the protection of prisoners' correspondence.

The Greek delegation informed the CM that the Alexandras avenue Police HQs detention centre is not used any more for holding foreign nationals under expulsion, while Wing D of the Korydallos prison does not suffer any more from the deficiencies mentioned by CPT in 2002. However the above-mentioned Inter-Ministerial Decision on expulsions has not as yet been published.

The Committee of Ministers is currently examining the execution of a series of judgments of the European Court of Human Rights, delivered in 2002 and in 2003, regarding violations by Greece of Article 1 of Protocol 1 to ECHR.

Azas, Efstathiou & Michailidis & Cie Motel Amerika, Interoliva ABEE, Konstantopoulos AE & others, Biozokat AE.

Court judgments of 19 September 2002, 10 July 2003, 10 July 2003, 10 July 2003 and 9 October 2003

The cases are related to problems of multiplication of proceedings in order to obtain compensation for specific damages following an expropriation. The main issue examined is whether the new legislation that entered into force at the end of 2001 ensures a global evaluation of the consequences of expropriation for the individuals concerned.

Tsirikakis, Hatzitakis, Karagiannis and Nastou

Court judgments of 10 July 2002 and 23 January 2003 (article 41), 11 April 2002, 16 January 2003 and 16 January 2003

The cases concern deprival of land without express expropriation, compensation or with depreciated compensation. They are linked to the major issue of absence of a Land Registry in Greece. In these cases, the State was not in a position to demonstrate whether it had property rights on land possessed by the applicants and it thus initiated action which led to the violation of the latter's property rights. The Committee of Ministers examines, inter alia, the possibility of creation by Greece of a Land Registry that may prevent violations of this kind in the future.

Papastavrou

Court judgment of 10 April 2003

Similarly to the above case, the violation of Article 1 of Protocol No. 1 found by the Court in this case is linked to issues concerning the lack of a Forest Registry in Greece. The Committee of Ministers is examining, *inter alia*, the possibility of Greece's adopting a Forest Registry that would prevent similar violations in the future, since it would avoid the risk of conflicting evidence as to the nature of land considered as public forests.

Satka and others

Court judgment of 27 March 2003

The problem at issue in this case is the non-execution of judicial decisions revoking expropriation. The respondent State has informed the Committee of Ministers that the Law 3068/2002 on public authorities' compliance with judicial decisions, constituted a sufficient measure which would prevent similar violations in the future. The Committee of Ministers is examining the actual application, thus far, of the above Law in cases of this kind.

Dactylidi

Court judgment of 27 March 2003

In this case, concerning a problem of non-execution by the authorities of their own decisions, the applicant had claimed a violation of Article 1 of Protocol 1 due to the fact that she could not obtain the demolition of premises depriving her house of a view and reducing its value, notwithstanding administrative decisions declaring that the said premises had been illegally built and ordering their demolition. The Committee of Ministers is currently examining the possible adoption by the respondent State of measures that may ensure the execution without delay by public authorities of their own decisions and may provide an effective remedy in cases of delays.

Georgia

Assanidze

Court judgment of 8 April 2004

The case concerns the continued detention of the applicant, during more than 3 years, ordered by authorities of the Autonomous Republic of Ajaria despite his acquittal on 29 January 2001 at central level, pronounced by the Supreme Court of Georgia.

In its judgment, the Court had recalled that its judgments are essentially declaratory in nature and that, in general, the State concerned is free to choose the means to be used in order to discharge its legal obligation under Article 46 of the Convention (i.e. to achieve *restitutio in integrum*), the Court concluded that, by its very nature, the violation found in the instant case does not leave the Georgian State any real choice as to the measures required to remedy it. In these conditions, having regard to the particular circumstances of the case and the urgent need to put an end to the violation of Article 5 § 1 and Article 6 § 1 of the Convention, the Court ordered the respondent State to secure the applicant's release at the earliest possible date.

Mr. Assanidze was released on 10 April 2004.

Liechtenstein

Wille

Court judgment of 28 October 1999

The case concerned a violation of the applicant's right to freedom of expression on the grounds that the Head of State of Liechtenstein, Prince Hans-Adam II, had informed him that he would not appoint him to public office on account of certain constitutional views he had expressed during a conference (violation of Article 10). The case also concerned the lack of an effective remedy to defend his reputation and to seek protection of his personal rights to challenge the action taken by the Prince (violation of Article 13).

General measures

Decisive information was provided by the authorities of Liechtenstein before the 879th meeting of the Ministers' Deputies (April 2004). The measures adopted by the authorities of Liechtenstein can be summarised as follows:

As to the question of the existence of an effective remedy, the State Court Act was modified on 27 November 2003 (entry into force: 20 January 2004) in order to clarify the competence of the State Court to hear cases of alleged violations of the European Convention rights by any public authority. Article 15 of the new State Court Act introduces a clear individual right to a remedy before the State Court to review the conformity with the Convention of any exercise of state power (*öffentliche Gewalt*), including powers exercised by the Prince. This understanding of Article 15 is confirmed by the explanatory notes to the Act (report on the Bill prepared by the Government). There is no contradiction between this provision and Article 7 § 2 of the Constitution, concerning the Prince's immunity; the latter concerns only the person of the Prince, but not his acts. Furthermore, the Court's case law has direct effect in Liechtenstein and the judgment of the European Court was published in German in the *Liechtensteinische Juristen-Zeitung*, December 2000 edition.

Turkey

Institut de prêtres français

Court judgment of 14 December 2000 (friendly settlement)

The case concerned the expropriation of a property owned by the applicant Institute and the absence of recognition of its legal personality (complaints based on Article 9 of the Convention and Article 1 of Protocol No. 1). The friendly settlement reached in this case includes some particular undertakings of the defendant State, among which an undertaking to grant the right to usufruct to the priests representing the Institute, as well as an agreement on the distribution of the incomes resulting from the renting of the properties among the Institute, the Tax authorities and the Directorate general of foundations.

On 8 October 2003, the Committee of Ministers adopted an Interim Resolution taking note of the substantial delay in the execution of the friendly settlement. The case now seems to be developping in a positive way: in particular, the Turkish delegation sent to the Secretariat, by letter of 17 June 2004, copy of a decree of the Council of Min-

isters providing that the right to usufruct shall be registered in favour of Mgr Fontaine, in line with a decision of the Board of Foundations of 12 May 2004. The Committee of Ministers is awaiting confirmation of the registration. Furthermore, according to the friendly settlement, guarantees are also needed as to how the right to usufruct shall be made transmittable to Mgr Fontaine's successors as heads of the Institute. Finally, confirmation is also awaited that the agreements on the incomes also cover the period of non-execution of the friendly settlement.

Chypre v. Turkey

Court judgment of 10 May 2001

At the 879th and 885th DH meetings of the Committee of Ministers (5-6 April and 1-2 June 2004), the supervision of the execution of the judgment focused particularly on the issue of missing persons and their families, and the questions related to education, namely censorship of schoolbooks and the organisation of secondary education.

Missing persons

On 1 June 2004, a memorandum of the Cypriot delegation was distributed among the delegations, inviting the Delegates to refuse to listen once more to information provided by the Turkish authorities on the Committee of Missing Persons (CMP), information considered by the Cypriot authorities as irrelevant in the light of the findings of the Court as to the limited powers of that organ.

However, with the agreement of the President and in the absence of any opposition – except the one of the Cypriot Delegation – the Turkish authorities announced at the June meeting that a request would soon be addressed to the Secretary General of the United Nations to call a meeting of the CMP with a view to strengthening its powers to comply with the requirements of the Convention. They furthermore confirmed their will to fully co-operate in the immediate implementation of the decisions that will be taken at that meeting, the conduct of exhumation operations, as well as in the communication of the results to the families concerned. On the last issue, the Turkish authorities stated that they were prepared, if necessary, to set up a special information unit on the Turkish Cypriot side.

Questions related to education

The Turkish authorities announced that, following a decision of the "Council of Ministers of the TRNC", work would soon begin for the establishment and regulation of a schooling system for the children of Greek Cypriot, Maronite and Latin origin families living in the Karpas region. According to them, the new legislation should alleviate the violation of Article 2 of Protocol No. 1. The aim is to pass the new law in time to enable the opening of a school for the 2004-2005 school year; furthermore, according to the Turkish authorities, the law will probably include new criteria for the censorship of schoolbooks.

Finally, financial provision has been made to allow the rewriting of school books (6 of them should be ready for the coming school year), with a view to introduce a European perspective into education. This project is followed by a consultant of the Council of Europe.

The announcement of the measures underway was welcomed with much satisfaction, something concrete having been initiated.

Follow-up expected

The Turkish authorities undertook to provide more precise and concrete written information on the measures announced for at least the 897th DH meeting (28-29 September 2004).

26 cases concerning freedom of expression

An Interim Resolution relating to general measures was adopted at the 885th DH Meeting (see Part 2. ResDH (2004) 38). In this Resolution, the Committee welcomes the important constitutional and legislative measures taken by Turkey since 2001 with a view to comply with its obligation under the Convention, while stressing that the effectiveness of these important reforms will, to a large extent, depend on the interpretation of the law by national courts in the light of the case law of the European Court of Human Rights. The Committee furthermore encourages the Turkish authorities to consolidate their efforts to bring Turkish law fully in conformity with the requirements of Article 10 of the Convention, and to take further measures to enhance the direct effect of the Convention and of the European Court's judgments in the interpretation of Turkish law, in particular by judges and prosecutors, taking into account the relevant Recommendations of the Committee of Ministers in this area. Lastly, the Committee will resume consideration of the general measures in these cases within nine months, it being understood that its examination of those cases involving applicants convicted on the basis of former Article 8 of the Anti-terrorism Law will be closed upon confirmation that the necessary individual measures have been taken.

United Kingdom

A.

Court judgment of 23 September 1998

The case concerned the corporal punishment of a child. The Court found that the state had failed to protect the applicant, at the time a child of nine years old, from ill-treatment by his step-father, who was acquitted of criminal charges brought against him after he raised the defence of reasonable chastisement (violation of Article 3).

An interim resolution was adopted at the 885th meeting (See Part 2. ResDH (2004) 39), taking note of the measures adopted until now, of the fact that the Committee of Ministers is unable at this stage to determine whether the domestic law is consistent with the requirements of the Convention, and of the Committee's decision to resume the examination of this case not later than in one year. In light of the different views expressed as to the extent to which corporal punishment of children is prohibited under Article 3 and of the reliance of the United Kingdom on (inevitably slow) developments in domestic case law to obviate the need for legislative change, postponing the case for one year appeared necessary to allow the Committee of Ministers to have in hand new examples of case law when the case is next examined.

In the meantime, the British Parliament continues to examine the Children Bill, to which amendments have been tabled in the House of Lords by peers who are not members of the governing party. One proposal would abolish the defence of reasonable chastisement, which was the cause of the violation found in the present case; an alternative seeks to limit the defence to cases where no actual bodily or psychological harm occurs. Debates on these amendments are planned in the House of Lords on 5 July 2004.

Interim resolutions

Turkey

Freedom of expression cases concerning Turkey: general measures

Interim Resolution ResDH (2004) 38, 2 June 2004

The Committee of Ministers,

[...]

Having regard to 27 judgments and decisions rendered by the Convention organs finding that the criminal convictions of the applicants on account of statements contained in articles, books, leaflets or messages addressed to, or prepared for, a public audience, had violated their freedom of expression guaranteed by Article 10 of the Convention (see cases listed in Appendix 1 [not reproduced]);

Bearing in mind a number of other cases involving similar complaints which the European Court has struck out of its list following the conclusion of friendly settlements on the basis of undertakings by the government to bring Turkish Law into line with the requirements of Article 10 of the Convention (see cases listed in Appendix I [not reproduced]);

Recalling its Interim Resolution ResDH (2001)106 on violations of the freedom of expression in Turkey, in which it encouraged the Turkish authorities to bring to a successful conclusion the comprehensive reforms planned to bring Turkish law

into conformity with the requirements of Article 10 of the Convention;

Having examined the significant progress achieved in further series of reforms undertaken with a view to aligning Turkish law and practice with the requirements of the Convention in the field of freedom of expression;

Welcoming the changes made to the Turkish Constitution, in particular to its Preamble to the effect that only anti-constitutional activities instead of thoughts or opinions can be restricted, as well as to Articles 13 and 26 which introduce the principle of proportionality and indicate the grounds for restrictions of the exercise of freedom of expression, similar to those contained in paragraph 2 of Article 10 of the Convention;

Welcoming also the recent, important legislative measures adopted as a result of these reforms, in particular the repeal of Article 8 of the Anti-terrorism Law and the modification of Articles 159 and 312 of the Turkish Criminal Code;

Noting nonetheless that the violations of freedom of expression found as a result of the application of Article 6 of the Anti-terrorism Law have yet to be specifically addressed;

Stressing that the effectiveness of these important reforms will, to a large extent, depend on the interpretation of the law by the national courts in the light of the case law of the European Court of Human Rights;

Welcoming in this context the "train the trainers" programme currently being carried out in the framework of the "Council of Europe/European Commission Joint Initiative with Turkey: to enhance the ability of the Turkish authorities to implement the National Programme for the adoption of the Community acquis (NPAA) in the accession partnership priority area of democratisation and human rights" (see Appendix 3 [not reproduced) and noting that this programme aims, among other things at devising a long-term strategy for integrating Convention training into the initial and in-service training of judges and prosecutors;

Noting in this context the recent establishment of the Judicial Academy, as well as many Convention awareness-raising and training activities for judges and prosecutors initiated by the Turkish authorities;

Welcoming furthermore the amendment of Article 90 of the Constitution, recently adopted by the Turkish Parliament, which should facilitate the direct application of the Convention and case law in the interpretation of Turkish Law;

Encourages the Turkish authorities to consolidate their efforts to bring Turkish Law fully into conformity with the requirements of Article 10 of the Convention;

Invites in particular the Turkish authorities to ensure, by appropriate means, that statements or accusations falling under Article 6 of the Anti-terrorism Law which serve the public interest and in respect of which the proof of truth is offered, or in respect of which the person concerned is in good faith about the truth, are not punishable and nor indeed are the printing of other statements covered by this article which do not incite to violence;

Encourages the Turkish authorities to take further measures to enhance the direct effect of the Convention and of the European Court's judgments in the interpretation of Turkish law, in particular by judges and prosecutors, taking into account the relevant Recommendations of the Committee of Ministers in this area;

Decides to resume consideration of the general measures in these cases within nine months, and outstanding individual measures concerning the respective applicants at its 897th meeting (September 2004), it being understood that the Committee's examination of those cases involving applicants convicted on the basis of former Article 8 of the Anti-terrorism Law will be closed upon confirmation that the necessary individual measures have been taken.

Appendix 2: Information provided by the Government of Turkey to the Committee of Ministers on the general measures taken in the area of freedom of expression

2.1. Constitutional amendments

A. On 3 October 2001, a number of constitutional amendments concerning, among other things, the provisions on freedom of expression were adopted and are directly applicable:

i. The Preamble to the Constitution now provides that only anti-constitutional "activities" (rather than "thoughts or opinions") may be restricted and, according to the new Article 13, such restrictions should respect the principle of proportionality and be based on the specific grounds listed in the relevant articles of the Constitution.

The amendment is an important step towards the enhancement of freedom of expression. With the amendment, it is activities, not expressions of ideas or opinions, against national interests and principles which are targeted.

ii. Article 26 of the Constitution on freedom of expression and dissemination of thought has been amended as well. The second paragraph of this Article lists the exceptional situations in which freedom of expression can be restricted.

The following addition was made to this paragraph: "The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

"The third paragraph restricting the use of languages prohibited by law and the seizure of written and printed documents, etc., has been repealed."

The following paragraph was added to the Article:

"The formalities, conditions and procedures to be applied in exercising the right to expression and dissemination of thought shall be prescribed by law."

iii. A further amendment was made to Article 28 on the freedom of the press. Before the amendment, the Article provided that publication could not be made in any language prohibited by law. This paragraph was removed from the text.

iv. Article 31 on the right to use mass media other than the press owned by public corporations was also amended. The second paragraph concerning the restrictions on this right has been amended.

B.i. A second amendment was made to the Constitution by Law No. 4777 which entered into force on 31 December 2002. The scope of freedom of thought and expression was further expanded with the amendment of Article 76. This Article regulates the conditions to be eligible to become a member of parliament. The previous conditions stipulated in this Article 7 provided that eligibility requires "not having participated in ideological or anarchical acts". This wording was repealed and a new provision regarding "participation in acts of terrorism" was introduced.

C. On 7 May 2004 the Turkish Parliament adopted an amendment to Article 90 of the Constitution, which now provides that international agreements will prevail over incompatible domestic law.

2.2. Legislative amendments to Articles 159 and 312 of the Turkish Criminal Code and Article 7 of the Anti-terrorism Law

Following the constitutional amendments, Turkey launched a comprehensive review of its legislation. Seven comprehensive legal amendments have been enacted in line with the constitutional amendments, all of them contributing to the enhanced implementation of freedom of expression.

The First Harmonisation Package, adopted on 6 February 2002, amended Article 312 and introduced a new criterion to the Article, namely "incitement in a manner which is explicitly dangerous to public order". Only overtly criminal acts or active disobedience of the law will be punishable under this amendment.

The First and Seventh Harmonisation Packages amended Article 159 of the Turkish Criminal Code and reduced the sentences. Another amendment to Article 159 was made by the Third Harmonisation Package, enacted on 3 August 2002. Under the terms of the amended articles, penalties have been lifted for expressions of thought, which will fall within the scope of freedom of thought and expression and are merely critical in nature. According to the new version of Article 159, written, oral or visual

expressions of thought which are merely critical in nature and which involve no deliberate attempt to insult or deride the bodies and institutions listed in the said Article, do not incur any penalty. Thus no penalties are provided for expressions of thought which fall within the scope of freedom of expression which are merely critical in nature.

Article 7 of the Anti-terrorism Law has been amended specifically so as to sanction propaganda carried out on behalf terrorist organisations in a manner that encourages resort to violence or other terrorist means.

These amendments have already led to acquittals or reduced sentences in a number of cases. It is just a matter of time before these amendments will find stronger expression in the case law of our national courts as well as in the practice of administrative authorities. In fact, cases referred to the Court of Cassation are now being quashed on the basis of the recent amendments, and the recent case law of the State Security Courts clearly demonstrates that national courts are applying the latest amendments in accordance with the jurisprudence of the European Court of Human Rights.

2.3. Law on the election of members of parliament

The amendment to Article 11 of the Law on the Election of the members of Parliament in the Fourth Harmonisation Package is another development contributing to the fulfilment of freedom of expression. Before amendment, the Article provided that persons convicted under Article 312 of the Turkish Criminal Code could not participate in parliamentary elections. This paragraph was amended to read as "persons convicted of terror crimes" are banned from participation in parliamentary elections.

2.4. Repeal of Article 8 of the Anti-terrorism Law

Law No. 4928 of 19 July 2003 repealed Article 8 of the Anti-terrorism Law, which prohibited written and spoken propaganda, meetings, assemblies and demonstrations aimed at undermining the territorial integrity of the Republic or the indivisible unity of the nation. As regards procedures initiated under this Article before its repeal, Law No. 4928 provides that preliminary prosecutions shall be discontinued, that persons arrested shall be released and that cases pending for decision or for execution shall be urgently examined by the competent courts in conformity with the principle set by Article 2 of the Turkish Criminal Code (*nullum crimen, nulla poena sine lege*).

2.5. Press Law No. 5680

Some provisions of the press law have also been amended, notably by deleting prison penalties and establishing respect for the confidentiality of journalists' sources in law. The possibilities of preventing distribution and collection of printed material have been limited. The period for which a periodical may be suspended in cases of conviction for press offences has been shortened. Sentences have been reduced in respect of persons who continue to publish a suspended periodical, or those who publish a new periodical which is clearly a continuation of a suspended periodical. The criminal responsibility of editors and publishers for the use of any language prohibited by the law has been lifted.

2.6. Other legislative changes having effect on freedom of expression

– Articles of the "Act on the Establishment of Radio and Television Enterprises and Their Broadcasts" have been amended for public good. The abstract expression of "pessimism and desperation and encouragement of chaos and violent tendencies" has also been removed from Article 4 thus enhancing freedom of expression.

With an amendment to Article 26 of the above-mentioned Act, the matter of retransmission has been clarified and alignment with the European Convention on Trans-frontier Television is ensured.

– Article 6 of the Law on Associations was amended by the Fourth Harmonisation Package, adopted on 2 January 2003. Here, the requirement that associations should only use Turkish in their correspondence was amended. The obligation to use Turkish is now limited solely to associations' official correspondence with Turkish public institutions.
– The amendments to various Articles of the Act on Political Parties and Law on Associations also have important effects on freedom of expression.

United Kingdom

A.
Court judgment of 23 September 1998

Interim Resolution ResDH (2004) 39 of 2 June 2004

The Committee of Ministers,
[...]

Having invited the Government of the United Kingdom to inform it of the measures taken in consequence of the judgment;

Recalling that the case involved the acquittal, on the basis of the defence of reasonable chastisement, of a man charged with assault occasioning actual bodily harm after having beaten his nine-year-old stepson with a garden cane, which had been applied with considerable force on more than one occasion;

Recalling also that the Court, in its judgment, considered that treatment of this kind reaches the level of severity prohibited by Article 3, emphasised that children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against ill treatment in breach of Article 3 of the Convention, found that the law did not provide adequate protection to the applicant against treatment or punishment contrary to Article 3 and held that the failure to provide adequate protection constituted a violation of Article 3 of the Convention;

Having regard to the fact that, before the Court, the United Kingdom admitted that there had been a violation of Article 3 of the Convention and committed itself to amending its domestic law to ensure that the corporal punishment of children would be unlawful under domestic law if it breached the standards required by the Article 3 of the Convention;

Noting that, upon the coming into force of the Human Rights Act 1998 on 2 October 2000, the Convention rights became directly applicable by domestic courts in cases of alleged violations of the Convention arising after that date;

Noting also that, subsequently, the Court of Appeal found in its judgment of 25 April 2001 in the case of *R* v. *H* that domestic courts were now obliged to take account of the criteria applied by the European Court of Human Rights in determining whether certain treatment falls within the scope of treatment prohibited by Article 3 of the Convention, and that this judgment has been reported in a number of law reports;

Recalling that the case involved acquittal of a father who had admitted hitting his four and a half year old son across the back with a belt, several times, causing bruising, as a punishment for refusing to write his name;

Having been informed by the United Kingdom authorities that, in the light of the coming into force of the Human Rights Act 1998 and of the aforementioned decision of the Court of Appeal, they do not intend to legislate on this matter and consider that the current state of the law in the United Kingdom complies with the Court's judgment in the present case;

Noting in this context that the possibility for criminal liability to be extended through case law has been recognised by the European Court of Human Rights, provided that such developments occur in accordance with the requirements of the Convention;

Considering, however, that a debate has arisen as to whether the application of the criteria enunciated by the Court of Appeal by the domestic courts in the case of *R* v. *H* itself and in subsequent case law clearly demonstrates that the corporal punishment of children in breach of the standards required by the Article 3 of the Convention is now unlawful under domestic law in the United Kingdom, or whether this fact has been effectively brought to the knowledge of the public so as to achieve the necessary deterrence;

Considering, therefore, that it is not at present able to conclude whether United Kingdom law complies with this judgment;

Decides to resume its consideration of the present case at a forthcoming meeting not later than 12 months hence, in the light of the measures taken to date and any further developments.

Final DH Resolutions

Bulgaria

Stefanov
Court judgment of 3 May 2001 (friendly settlement)

Resolution ResDH (2004) 32, 15 June 2004

The Committee of Ministers,
[...]
Recalling that the case originated in an application (No. 32438/96) against Bulgaria, lodged with the European Commission of Human Rights on 5 July 1996 under former Article 25 of the Convention by Mr Ivailo Stefanov, a Bulgarian national, and that the Court, seised of the case under Article 5, paragraph 2, of Protocol No. 11, declared admissible the complaint relating to the criminal conviction of the applicant, a Jehovah's Witness, for having refused to serve in the army on the grounds of conscientious objection;
Whereas in its judgment of 3 May 2001 the Court, after having taken formal note of a friendly settlement reached by the government of the respondent state and the applicant, and having been satisfied that the settlement was based on respect for human rights as defined in the Convention or its Protocols, decided, unanimously to strike the case out of its list;
Whereas under the above-mentioned friendly settlement the Government of Bulgaria stated as follows:
"a) all criminal proceedings and judicial sentences in Bulgaria of Bulgarian citizens since 1991 (especially but not limited to [Mr I. S. and three other applicants in other cases]) for refusing military service by virtue of their individual conscientious objection but who were willing at the same time to perform alternative civilian service shall be dismissed and all penalties and/or disabilities heretofore imposed in these cases shall be eliminated as if there was never a conviction for a violation of the law, thus the Council of Ministers of the Republic of Bulgaria undertakes the responsibility to introduce draft legislation before the National Assembly for a total amnesty for these cases;
b) That the alternative civilian service in Bulgaria is performed under a purely civilian administration and the military authority is not involved in civilian service and such service shall be similar in duration to that required for military service by the law on military service then in force;
c) That conscientious objectors have the same rights as all Bulgarian citizens to manifest their beliefs whether alone or in union with others after hours and on days off during the term of performing said civilian service without prejudice, sanction or another disability or impediment. (see (...) *Kokkinakis* v. *Greece* [judgment of 26.09.1996]); (...)
e) That the respondent Government will pay to the applicant the sum of 2,500 Bulgarian levs for costs and expenses;"
Recalling that Rule 44, paragraph 2, of the Rules of the Court provides that the striking out of a case shall be effected by means of a judgment which the President shall forward to the Committee of Ministers once it has become final in order to allow it to supervise, in accordance with Article 46, paragraph 2 of the Convention, the execution of any undertakings which may have been attached to the discontinuance or solution of the matter;
Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;
Having satisfied itself that on 11 September 2001 the government of the respondent state had paid the applicant the sum provided for in the friendly settlement concluded before the Court and had taken all other measures to fulfil its undertakings under this friendly settlement, this information appears in the appendix to this resolution,
Declares, after having taken note of the information supplied by the Government of Bulgaria, that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case.

Appendix: Information provided by the Government of Bulgaria during the examination of the Stefanov case by the Committee of Ministers

The applicant has had his rights reinstated on the basis of Article 86, paragraph 1 of the Criminal Code. All the consequences related to his conviction were thus erased.
The Bulgarian Parliament subsequently adopted, on 31 July 2002, a Law on the Amnesty for crimes provided by Article 361, paragraph 1 of the Criminal Code (refusal to perform military service), related to the exercise of the constitutional law of freedom of conscience, of freedom of thought and the free choice of religion, committed between the entry into force of the Constitution on 13 July 1991 and the entry into force on 31 December 1998, of the Law on the Replacement of Military Obligations by an Alternative Service.
Under the terms of Article 2 of the Law on the Amnesty, persons who committed such acts are exempted from penal responsibility to purge the sentence or to suffer the consequences of the judgment. The law erases the fact and the consequences of the convictions imposed on conscientious objectors for such acts committed during the period indicated.
In accordance with the Law on the Replacement of Military Obligations by an Alternative Service, citizens who perform an alternative service have the same rights as all Bulgarian citizens to express their convictions, individually or collectively, apart from in the place of employment (Article 4, paragraph 1 and Article 30 of the Law).
The Law provides that alternative service may be performed if the persons concerned so request, under the supervision of an entirely civil administration. In these cases the military authority would not participate in the organisation of the service. The length of alternative service is one-and-a-half times longer than that of military service (Article 15 of the Law).
The Bulgarian government thus considers that it has complied with the terms of the friendly settlement and that there is no risk of reproducing a situation similar to that at the origin of this case. Consequently, Bulgaria has fulfilled its obligations under Article 46, paragraph 2, of the Convention.

Czech Republic

Punzelt
Court judgment of 25 April 2000

Resolution ResDH (2004) 33 of 15 June 2004

The Committee of Ministers,
[...]
Recalling that the case originated in an application (No. 31315/96) against the Czech Republic, lodged with the European Commission of Human Rights on 25 March 1993 under former Article 25 of the Convention by Mr Siegfried Punzelt, a German national, and that the Court, seised of the case under Article 5, paragraph 2, of Protocol No. 11, declared admissible the applicant's complaint under Article 5 §3 of the Convention that there had been a breach of his right to trial within a reasonable time or to release pending trial, and his complaint under Article 6, paragraph 1, of the Convention concerning the length of the criminal proceedings brought against him;
Whereas in its judgment of 25 April 2000 the Court unanimously:
– held that there had been a violation of Article 5, paragraph 3, of the Convention on account of the length of the applicant's detention on remand;
– held that there had been no violation of Article 5, paragraph 3, of the Convention on account of the refusal to release the applicant on bail;
– held that there had been no 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, 10,000 German marks

in respect of non-pecuniary damage; 10,000 German marks in respect of costs and expenses and that simple interest at an annual rate of 10% would be payable on those sums from the expiry of the above-mentioned three months until settlement;

– dismissed the remainder of the applicant's claim for just satisfaction;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgment of 25 April 2000, having regard to the Czech Republic's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Whereas during the examination of the case by the Committee of Ministers, the government of the respondent state gave the Committee information about the measures taken preventing new violations of the same kind as that found in the present judgment; this information appears in the appendix to this resolution;

Having satisfied itself that on 6 October 2000, within the time-limit set, the government of the respondent state had paid the applicant the sums provided for in the judgment of 25 April 2000,

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

Appendix: Information provided by the Government of the Czech Republic during the examination of the Punzelt case by the Committee of Ministers

The Government notes that in its judgment of 25 April 2000, the European Court found that the domestic courts invoked "sufficient" and "relevant" reasons to justify the continuing detention of the applicant pending the adjudication of the criminal case brought against him for fraud. Nevertheless, taking into account the circumstances of the case, it was found that "special diligence" was not displayed in the conduct of the proceedings and therefore the length of the applicant's detention on remand was excessive.

With a view to avoiding new, similar cases, the translated judgment of the European Court was published on the Internet site of the Ministry of Justice and in the *Pravni Praxe*, a journal of the Ministry of Justice widely disseminated in legal circles. The judgment was also sent to the Constitutional Court and to Regional courts. These measures aimed to allow the competent Czech authorities to give direct effect to the judgment of the European Court and thus to ensure that "special diligence" was shown when dealing with criminal cases involving persons in detention on remand.

Subsequently, as a complementary measure, on 1 January 2002 Law No. 265/2001 entered into force amending some provisions of the Code of Criminal Procedure. The new wording of Article 2 (4) of the Code stressed that criminal matters must be dealt with as fast as possible whilst protecting in full the rights and liberties guaranteed by the Declaration of Basic Rights and Liberties and by the international treaties on human rights and basic liberties by which the Czech Republic is bound.

Also, additional safeguards have been added against excessive length of detention on remand. According to the new Article 71 (8) of the Code, overall detention in criminal proceedings may not exceed four years for defendants charged with crimes which carry exceptional punishments (life imprisonment or imprisonment between 15 and 25 years); three years for defendants charged with especially grave, wilfully committed criminal offences (which are punishable by a maximum term of imprisonment of at least 8 years); two years for the other criminal cases tried at first instance by a bench of a district court or a regional court; one year in criminal cases tried before a single judge.

Also, according to Article 71 (9) of the Code, of the above-mentioned time-limits, one third falls upon the preparatory proceedings, while two thirds upon the court proceedings. After expiry of these time-limits, the defendant must be immediately released from custody.

Before this amendment, the Code of Criminal Procedure allowed detention on remand for especially serious offences to be prolonged for a maximum period of four years, while at present the length of the detention on remand for such crimes cannot exceed three years.

In view of the foregoing, the Czech Government considers that the competent Czech authorities will not fail to provide for the "special diligence" required by the case law of the European Court of Human Rights and that there is thus no risk of future violations of the kind noted in the instant case and that the Czech Republic has consequently fulfilled its obligations under Article 46 of the Convention.

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

One of the Council of Europe's vital tasks in the field of human rights is the creation of legal policies and instruments. In this, the Steering Committee on Human Rights 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 57th meeting in Strasbourg, from 5 to 8 April 2004. It was devoted to the examination and adoption of the draft Protocol No. 14 to the Convention for the protection of Human Rights and Fundamental Freedoms, amending the Convention's control system; the draft explanatory report thereto (see CDDH-GDR below) and the other draft texts (a Declaration,[1] a Resolution[2] and three Recommendations[3]) prepared by the CDDH. These texts were submitted to the Committee of Ministers at its 114th Session (12-13 May 2004).[4] During that same meeting, the texts of the draft Protocol No. 14 and the Explanatory Report were transmitted by the Committee of Ministers to the Parliamentary Assembly with a view to obtaining its opinion. A number of proposals in that opinion, adopted by the Assembly at its Session on 26-30 April 2004, were taken up in the final text of the Protocol.

The CDDH held its 58th meeting in Strasbourg, from 15 to 18 June 2004. At its meeting it exchanged information on the outcome of the 114th Session of the Committee of Ministers at which it had adopted the above-mentioned texts. It also held a tour de table on the state of signatures and ratifications of Protocols Nos. 12, 13 and 14 to the European Convention on Human Rights. It noted that on the 18 June 2004, Protocol No. 12 had received 6 ratifications and 28 signatures not followed by ratifications and would probably enter into force in the first half of 2005. Protocol No. 13 had received 24 ratifications and 18 signatures not followed by ratifications and that it had entered into force on 1 July 2003. Protocol No. 14 had received 18 signatures. Concerning its future activities, it decided in particular that a seminar should be held on the implementation of the Guidelines on Human Rights and the Fight against Terrorism to take place in Strasbourg on 20-21 June 2005 during the 60th meeting of the CDDH.

Bodies answerable to the CDDH

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

The 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). This Declaration which expressed the Committee's wish to be in a position, at their 114th Session in 2004, 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.

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 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. The drafting group's work concentrated on measures to be taken concerning the European Court of Human Rights (optimising the effectiveness of the filtering and the subsequent processing of

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1 Declaration of the Committee of Ministers "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels".

2 Resolution (2004) 3 of the Committee of Ministers on judgments revealing an underlying systemic problem

3 Recommendation (2004) 4 of the Committee of Ministers to member states on the European Convention on Human Rights in university education and professional training; Recommendation (2004) 5 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; Recommendation (2004) 6 of the Committee of Ministers to member states on the improvement of domestic remedies.

4 The text of Protocol No. 14, together with extracts of its Explanatory Memorandum, can be found on page 63 of this edition. The other texts mentioned can be consulted on the website of the Committee of Ministers of the Council of Europe.

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).

In November 2003, 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. This was then transmitted to the Committee of Ministers which took note of the report on 8 January 2004.

The Group completed its work during its 5th (3- 5 March 2004) and 6th (24-26 March 2004) meetings and transmitted the draft Protocol No. 14 and the explanatory report thereto to the CDDH for examination, adoption and transmission to the Committee of Ministers.

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-five member states of the Council of Europe have signed the 1961 Charter or the 1996 revised Charter. To date, 35 states have ratified one or the 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, legal and social protection, the movement of persons and non-discrimination.

The 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 202th session (May 2004):

1. Conclusions in respect of Cycle XVI-2 on the situation in Ireland and Luxembourg regarding Articles 7, 8, 11, 14, 17 and 18 of the 1961 Social Charter;
2. Conclusions in respect of Cycle XVII-1 on the situation in Austria, Belgium Czech Republic, Finland, Germany and Poland regarding Articles 1, 5, 6, 12, 13, 16 and 19 of the 1961 Social Charter;
3. Conclusions 2004 on the situation in Cyprus, Ireland, Italy and Lithuania regarding 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

Admissibility

No. 27/2004 – European Roma Rights Center v. Italy

The Complaint, lodged on 28 June 2004, relates to Article 31 (right to housing) alone or in combination with Article E (non-discrimination) of the Revised European Social Charter. It is alleged that the situation of Roma in Italy amounts to a violation of Article 31 of the Revised European Social Charter. In addition, it alleges that policies and practices in the field of housing constitute, *inter alia*, racial discrimination and racial segregation, both contrary to Article 31 alone or read in conjunction with Article E.

No. 26/2004 – *Syndicat des Agrégés de l'Enseignement Supérieur* (SAGES) v. France

The complaint, lodged on 27 April 2004, relates to Article 5 (right to organise) alone or in combination with Articles E (non-discrimination), G (restrictions) and I (implementation of the undertakings given) of the Revised European Social Charter. It is alleged that French legislation impairs the freedom to organise since Decree No. 89-1 on the National Council for higher education and research (*Conseil national de l'enseignement supérieur et la recherche* – CNESER) does not guarantee collective legal remedies.

No. 25/2004 – *Centrale générale des services publics* v. Belgium

The complaint, lodged on 23 Feburary 2004, relates to Article 6 §§1-2 (right to collective bargaining: joint consultation and machinery for voluntary negociations) of the European Social Charter. It is alleged that Belgium does not guarantee the effectiveness of the legislation on the exercise of the right to collective bargaining in the Belgian public sector.

No. 24/2004 – *Syndicat Sud Travail Affaires Sociales* v. France

The complaint, lodged on 6 February 2004, relates to Article 1 §2 (prohibition of all forms of discrimination in employment) of the Revised European Social Charter. It is alleged that under the Labour Code (Article L.122-45) numerous categories of workers are excluded from the protection against discrimination in employment.

Seminars, meetings

Strasbourg, 14-17 May 2004

Study visit to the Council of Europe for co-ordinators of the two Serbian and Montenegrin working group in charge of drafting a compatibility study on the Revised European Social Charter.

Belgrade and Podgorica (Serbia and Montenegro), 21-23 April 2004

Bilateral meetings with Serbian and Montenegrin authorities to set up two working groups in charge of drafting a compatibility study on the Revised European Social Charter – *Joint Programme CoE/EC.*

Strasbourg 17-18 February 2004

Armenian Minister of Labour and Social Affairs, Mr Aghvan Vardayan visited the Council of Europe following Armenia's ratification of the Revised European Social Charter – *Joint Programme EC/CoE.*

Publications

Conclusions XVII-1 (Austria, Belgium, Czech Republic, Finland, Germany, Iceland, Luxembourg, Netherlands Antilles and Poland)

Conclusions 2004 (Cyprus, Ireland, Italy and Lithuania)

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

United Kingdom, March 2004

During the visit, the delegation focused its attention on the treatment of persons certified by the UK's Secretary of State to be suspected international terrorists and detained pursuant to the provisions of the Anti-Terrorism, Crime and Security Act 2001.

The delegation interviewed in private all the persons who were detained exclusively under the 2001 Act. Furthermore, in Belmarsh and Woodhill Prisons, it examined developments in the conditions of detention of these persons since the first visit to this category of detainees. The delegation also went to a high-security psychiatric hospital.

The delegation also had consultations with the national authorities, and in particular with the Director General of the Prison Service.

Turkey, March 2004

One of the main objectives of the visit was to examine the current situation on the ground as regards the treatment of persons held by the law enforcement agencies and to assess the impact of recent legal reforms concerning police custody. Prison related issues also formed an important part of the visit, particular attention being given to the move towards smaller living units for prisoners, the situation of juveniles held in prisons for adults and health-care services. The delegation visited law enforcement and prison establishments in various provinces, with particular emphasis on Gaziantep and Izmir. It also went to health-care facilities where persons in police custody are medically examined.

During the visit, the CPT's delegation met the Chief Public Prosecutors of the Republic in the Gaziantep and Izmir Provinces. The delegation also held discussions with representatives of the Gaziantep and Izmir Bar Associations and with lawyers practising in those cities, as well as with representatives of the Izmir branch of the Turkish Human Rights Foundation and of the Gaziantep and Izmir branches of the Human Rights Association.

At the end of the visit, during talks in Ankara with senior officials from the Foreign Affairs, Interior, Justice and Health Ministries, the CPT's delegation provided the Turkish authorities with its preliminary observations.

The delegation visited the following places: Law enforcement agency establishments: Aydin, Gaziantep, Izmir, Kahraman Maras, Kilis and Manisa Police Headquarters (Anti-Terror, Juvenile, Law and Order, and Smuggling, Trafficking and Organised Crime Departments), Dörtyol, Menemen and Türkoglu District Police Headquarters, Karsiyaka Police Station (Gaziantep); Basmane, Bogaziçi, Gümüspala and Kantar Police Stations (Izmir); Asarlik Police Station (Menemen), Gaziantep, Kahraman Maras and Kilis Provincial Gendarmerie Headquarters, Armutlu, Ortaklar and Türkoglu Gendarmerie Posts; Prisons: Aydin E-type Prison, Gaziantep E-type Prison, Izmir (Buca) Closed Prison, Izmir F-type Prison No. 1.

In addition, a number of prisoners were interviewed at Adana F-type, Gaziantep H-type and Kahraman Maras E-type Prisons.

Austria, April 2004

During its fourth visit, the CPT's delegation followed up issues examined during previous visits, in particular the safeguards provided to persons detained by the police and the treatment of foreign nationals held under the aliens legislation. The delegation also reviewed the conditions of detention of juvenile prisoners and examined the situation of prisoners sentenced to undergo psychiatric treatment.

In the course of the visit, the delegation held consultations with the Minister for Justice, the Minister for Health and Women Affairs, and the Minister for the Interior, as well as with senior officials from the Ministries of Foreign Affairs, the Interior and Justice. Discussions were also held with the Austrian Ombudsman Board and the Chairman of the Human Rights Advisory Board.

At the end of the visit, during talks with senior officials from the Ministries of Foreign Affairs, the Interior and Justice, the CPT's delegation provided the Austrian authorities with its preliminary observations.

The delegation visited various police establishments: Police detention centre (PAZ), Innsbruck, PAZ Linz, PAZ Vienna, PAZ Wels, Police station, Innsbruck, District police headquarters (KK OST), Vienna, Police station, Vienna, District police headquarters (KK WEST), Vienna, Police station, Wels; Prison establishments: Linz Prison, Vienna-Josefstadt Prison, Vienna-Mittersteig Prison (including the detached unit at Floridsdorf) and Psychiatric hospitals: Secure wards at Wagner-Jauregg Psychiatric Hospital, Linz.

Armenia, April 2004

The main purpose of this visit was to collect information concerning the treatment of persons deprived of their liberty in the course of or following the recent demonstrations in Yerevan.

The delegation interviewed numerous persons who had been deprived of their liberty in connection with the above-mentioned demonstrations. Most of these persons had been released by the time they were interviewed. The others were interviewed by the delegation at Kentron penitentiary establishment and at Temporary detention centre of the Yerevan Department of Internal Affairs.

In the course of its visit, the CPT's delegation held discussions with the Minister of Justice, the Head of the Armenian Police and the General Prosecutor.

Latvia, May 2004

The main purpose of this third visit was to review the measures taken by the Latvian authorities to implement the recommendations made by the Committee after its 2002 visit. Particular attention was paid to the treatment of persons detained by the police and conditions of detention in police establishments and prisons. The delegation also examined the regime and security measures applied to life-sentenced prisoners.

In the course of the visit, the CPT's delegation held consultations with the Minister for Justice, the Minister for the Interior, the State Secretary of the Ministry of Justice, and the State Secretary of the Ministry of Health. In addition, it met a number of senior officials from the Ministries of Justice, the Interior and Health.

The delegation visited various police establishments and prisons: Daugavpils Police Headquarters, Liepâja Police Headquarters, Pre-Trial Investigation Centre and Short-Term Isolator (ISO), Rîga, Ventspils Police Headquarters, Daugavpils Prison, Jelgava Prison, Rîga Central Prison (including the Prison Hospital).

Georgia, May 2004

A delegation of the CPT recently returned to Georgia in order to complete the second periodic visit which had started in November 2003. Given the political situation in November, the CPT's delegation was not in a position to complete its programme. A prolongation of the visit was therefore envisaged in early 2004.

The main purpose of the eight-day prolongation (7 to 14 May 2004) was to examine the treatment of persons detained in Ajara as well as conditions of detention in this part of Georgia. The delegation also returned to Prison No. 5 in Tbilisi in order to review the situation there and interview newly arrived prisoners. Further, the visit provided an opportunity for the CPT's delegation to discuss in detail all its findings with the current Georgian administration.

During the visit, the CPT's delegation held discussions with the Minister of Justice, the Deputy Prosecutor General, and the Head of the General Inspection of the Ministry of Internal Affairs.

The delegation visited various Police establishments, Penitentiary establishments and Ministry of Security establishments: Temporary detention isolator of the Ministry of Internal Affairs, Batumi, Temporary detention isolator of the City Department of Internal Affairs, Batumi, Sobering-up and administrative detention centre, Batumi, 5th District Division of Internal Affairs, Batumi, 8th District Division of Internal Affairs, Batumi, Department of Internal Affairs, Keda, Prison No. 3, Batumi, Prison No. 5, Tbilisi andTemporary detention isolator of the Ministry of Security, Batumi.

Iceland, June 2004

The CPT carried out its third visit to Iceland. The CPT's delegation reviewed measures taken by the Icelandic authorities in response to the Committee's recommendations made after its 1993 and 1998 visits, in particular as regards the safeguards offered to persons detained by the police, the situation in penitentiary establishments, and the treatment of persons subject to civil involuntary psychiatric hospitalisation and treatment. For the first time, the CPT's delegation examined the modalities of the execution of decisions to deport foreign nationals by air.

In the course of the visit, the CPT's delegation met the Minister of Justice and Ecclesiastical Affairs, the Commissioner of Icelandic Police, the State Prosecutor, the Director of Immigration Affairs, the Director of Prison and Probation Administration, the Deputy Director General at the Ministry of Health and Social Security, and the Parliamentary Ombudsman.

The delegation visited various Police establishments, Prisons and Psychiatric establishments: Reykjavik Police Headquarters, Budardalur Police Station, Grundarfjordur Police Station, Keflavik Airport Police, Keflavik Police Station, Olafsvik Police Station, Selfoss Police Station, Stykkisholmur Police Station, Kopavogur Prison, Kviabryggja Prison, Litla-Hraun Prison, Reykjavik (Skolavordustigur) Prison and Psychiatric Department of Reykjavik National (University) Hospital.

Romania, June 2004

The main purpose of the visit was to assess the current situation of patients at Poiana Mare Psychiatric Hospital for the Implementation of Security Measures (Dolj department) and developments in the hospital since the CPT's two previous visits in 1995 and 1999; particular attention was paid to the issue of mortality at the hospital. The delegation also visited Craiova Recovery and Rehabilitation Centre for Disabled Persons (Dolj Department).

During the visit, the CPT's delegation held discussions with the Minister for Health, and the Secretary of State in the Ministry for Health, as well as with senior officials from the Health Ministry and the Ministry of Labour, Social Solidarity and Family.

Documents state-by-state – General reports

Czech Republic

March 2004: Report on the CPT's visit in April 2002 and response of the Czech Government

During this visit, the CPT's delegation reviewed measures taken by the Czech authorities in response to the recommendations made by the Committee after the 1997 visit, in particular as regards the safeguards offered to persons detained by the police. Issues tackled for the first time in the Czech Republic included the conditions of stay in holding facilities for foreigners, as well as the treatment of psychiatric patients.

France

March 2004: Report on the CPT's visit in June 2003 and response of the French Government

The recent and alarming increase in overcrowding in remand prisons and in the number of suicides among prisoners were the main reasons for the Committee's visit. The visit was also an opportunity to examine developments concerning the regimes offered to prisoners serving long sentences and to review conditions of detention and fundamental safeguards in the context of police custody.

Romania

April 2004: Two reports on the CPT's visits (October 2001, September 2002 and February 2003) and response of the Romanian Government

One of the reports relates to a visit carried out in October 2001, which focused on the situation of children placed in centres under the National Authority for Child Protection and Adoption and the State Secretariat for Handicapped Persons. In its report, the CPT points to major deficiencies in the provision of the basic necessities of life (food, heating, running water, clothing) and in the care of residents in the centres visited. The Romanian authorities describe the measures subsequently taken to secure the basic necessities of life in these centres. Moreover, they indicate that the children placed at the Negru-Voda Centre (region of Constanta) have been transferred to a modern family-type complex staffed with a multidisciplinary team. A decision to transfer the children placed in the Giurcani and Husi Centres (region of Vaslui) has also been taken.

The other report concerns two visits carried out in September 2002 and February 2003. While taking note that action has been taken to combat ill-treatment by the police, the CPT stresses that the authorities must remain vigilant in this area. Following the invitation by the authorities to revisit, in February 2003, the General Directorate of the Police in Bucharest, the CPT is pleased to note that significant steps have been taken to improve material conditions in that establishment. It points out, however, that similar improvements must be made without delay in all police detention facilities in Romania. The CPT also observes that efforts have been made to improve conditions of detention in prisons; overcrowding none the less remains the principal obstacle to providing decent conditions of detention.

In their response, the authorities highlight the renovation programme for police establishments. They also state that the adoption of new criminal and criminal procedure codes, combined with an increase in the number of prison places, has reduced prison overcrowding.

Luxembourg

April 2004: Report on the CPT's visit in February 2003 and response of the Luxembourg Government

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

San Marino

April 2004: Report on the CPT's visit in June 1999 and response of the Marinese Government

The CPT's delegation followed up a certain number of issues already examined during the 1992 visit, in particular in respect of San Marino Prison and the Police and Gendarmerie Headquarters. In addition, the delegation visited a psychiatric establishment (Neuro-Psychiatric Department of the San Marino Civil Hospital) and an establishment for juveniles (*Casa Famiglia*).

Finland

June 2004: Report on the CPT's visit in September 2003

The CPT's delegation heard no allegations of recent ill-treatment of persons held in police establishments, and found no other evidence of such treatment. Police detention facilities were, on the whole, quite satisfactory for the initial 72-hour period of police custody; however, none of them offered suitable conditions for remand prisoners. The CPT has reiterated that remand prisoners should not, in principle, be held in police cells.

As regards persons detained under the Aliens Act, the CPT has highlighted a case in which medication having a tranquillising or sedative effect was administered in the context of a deportation procedure. The Committee has emphasized that the administration of medication to persons subject to a deportation order must always be carried out on the basis

of a medical decision taken in respect of each particular case; this implies that the persons concerned must be physically seen and examined by a medical doctor. More generally, the CPT has recommended that detailed instructions be issued on the manner in which deportation orders concerning foreign nationals are to be enforced. These instructions should, in particular, address the use of force and/or means of restraint authorised in the context of deportation operations.

Concerning prisons, the CPT has drawn attention to the ongoing problem of inter-prisoner intimidation and violence. Further, it has called for measures to address the overcrowding which affected Kuopio Prison and – to an even greater extent – the former Turku Remand Prison. That said, in both establishments, prisoner accommodation was on the whole of an acceptable standard.

Living conditions and treatment offered to patients at Niuvanniemi Psychiatric Hospital were generally adequate. The CPT has nevertheless expressed the hope that determined efforts will be made to involve a greater number of patients in activities which correspond to their individual needs and abilities.

Hungary

June 2004: Report on the CPT's visit in May/June 2003 and response of the Hungarian Government

The continuing practice of holding remand prisoners on police premises, often for periods of several months, was one of the main reasons for the CPT's visit. Particular attention was paid to the activities available to remand prisoners, in both police and prison establishments, and the possibilities offered to them to maintain contact with the outside world.

In their response, the Hungarian authorities highlight legislative measures to reduce the length of pre-trial detention as well as programmes for the renovation and construction of police holding facilities and prisons.

Turkey

June 2004: Report on the CPT's visit in September 2003 and response of the Turkish Government

The aim of the September 2003 visit was to assess the current situation as regards the treatment of persons while in the custody of law enforcement agencies. This included an examination of the implementation in practice of recent legal reforms concerning matters such as the reduction of custody periods, access to a lawyer and notification of relatives. The delegation also reviewed the operation of the system for the medical examination of persons in police/gendarmerie custody.

Bulgaria

June 2004: Report on the CPT's visit in October 2002 – Report on the ad hoc visit in December 2003 and responses of the Bulgarian Government

The first report relates to the third periodic visit to Bulgaria carried out in April 2002. During that visit, a considerable number of persons interviewed by the CPT alleged that they had been ill-treated by the police. A considerable number of allegations were received in respect of the 3rd District Police Directorate in Sofia. In response to a request by the Committee, the Bulgarian authorities carried out an inquiry into the methods used during the interrogation of criminal suspects at that establishment. The inquiry brought to light a number of violations and deficiencies, which were the subject of recommendations by the inspecting commission and led to the imposition of disciplinary sanctions.

During the 2002 visit, some improvements were noted in the country's investigation detention facilities, severely criticised by the CPT in previous visit reports. However, a great deal remained to be done: most detainees continued to spend months on end locked up in overcrowded cells 24 hours a day. In their response, the Bulgarian authorities highlight practical changes made, such as the closing down of two of the detention facilities visited by the Committee and the implementation of a refurbishment and construction programme.

Concerning prisons, the CPT has drawn attention to the problem of overcrowding and to the shortage of work and other activities for inmates. Further, it has called for immediate steps to improve conditions of detention of prisoners with life sentences at Pleven Prison. In their response, the authorities make reference to various measures taken to address the Committee's concerns.

The report on the 2002 visit also points to major deficiencies in the material conditions and in particular the provision of food to patients at Karlukovo Psychiatric Hospital. In response to the CPT's recommendations, the Bulgarian authorities have increased the hospital's budget for food and other basic necessities and have launched a refurbishment programme.

The second report concerns an ad hoc visit carried out in December 2003, which focused on the situation of persons placed by the public authorities in homes for adults with mental disorders and for children with mental retardation. The Home in the village of Razdol (first visited by the CPT in 2002) continued to lack the material environment and human resources necessary to provide appropriate care to residents. As to the Home in Pastra, the situation witnessed was even worse. In contrast, the Committee received a positive overall impression of the Home for children and juveniles with mental retardation in Vidrare. More generally, the CPT's report stresses the need for appropriate safeguards to surround placement in specialised care institutions.

In their response, the Bulgarian authorities indicate that the homes in Razdol and Pastra will be transferred to a new location. Other measures referred to in the response include the elaboration of a plan for reforms at special care institutions, the construction of protected houses, and the consideration of legislative changes which would ensure better observance of the rights of people with mental disabilities.

Publications

"CPT Stardards" and further documents about the CPT available in Lithuanian

"CPT Stardards" and further documents about the CPT available in Polish

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 30 June 2004, the Advisory Committee had received 34 state reports and already adopted 34 opinions. The Committee of Ministers had adopted and made public conclusions and recommendations in respect of 25 State Parties.

During the period covered by this bulletin, the following opinions were adopted by the Advisory Committee: Bosnia and Herzegovina, Bulgaria and "The Former Yugoslav Republic of Macedonia" and the Committee of Ministers adopted the Resolution on the implementation of the Framework Convention in Ireland.

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

In the period under consideration, three follow-up meetings on the first results of the monitoring of the FCNM took place in Italy (16 March 2004), the Russian Federation (24 March 2004) and Norway (14 March 2004).

Committee of Ministers decision on Kosovo (Serbia and Montenegro)

At its 890th meeting on 30 June 2004, the Committee of Ministers' Deputies authorised the Secretary General to conclude an agreement with the United Nations Interim Administration Mission in Kosovo (UNMIK), in order to guarantee compliance in Kosovo with the standards of the Framework Convention for the Protection of National Minorities and facilitate the monitoring arrangements in accordance with this Convention.

Legislative Expertise in Ukraine

The Secretariat of the FCNM, under the Joint Programme between the Council of Europe and the European Commission, organised the second regional seminar, in Charkiv, Ukraine on 21-22 June 2004 to discuss the draft law on National Minorities.

Legislative Expertise in Serbia and Montenegro

The Secretariat of the FCNM and the Ministry for Minority Rights Protection of Montenegro, together with the Venice Commission and the Council of Europe Office in Podgorica, held a meeting in Podgorica on 16 March 2004 on the draft law on national minorities of Montenegro to examine the draft law's compatibility with the Framework Convention for the Protection of National Minorities.

Activity Report ACFC/INF (2004) 001

The Advisory Committe adopted its fourth activity report covering the period 1 June 2002 to 31 May 2004.

The report covers, amongst other issues, the adoption of Advisory Committee (AC) opinions, the adoption of Committee of Ministers (CM) resolutions, AC follow-up visits, AC election rotation in member states, the commencement of the second cycle (submission of questionnaires and receipt of second reports, publication of the proceedings of the Conference to mark the 5th anniversary of the entry into force of the Framework Convention (the French version will be available in the autumn).

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

Media

At the heart of the Council of Europe's democratic construction lies freedom of expression. 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, thus safeguarding the proper functioning of Europe's democratic societies.

Harmful and illicit content on the Internet

Approximately 160 participants from 40 European countries and the United States attended the 2nd European Forum "Internet with a human face – a common responsibility", which was held in Warsaw on 26-27 March 2004. The Forum was organised together with a European Commission funded project, called SafeBorders, the Polish Internet company NASK and the Association of Polish Consumers. The main aim of this event was to give an opportunity to all those concerned by the fight against illegal and harmful content on the Internet to meet and exchange experiences and at the same time encourage self-regulation and co-regulation.

7th European Ministerial Conference on Mass Media Policy

At its meeting on 11-14 May 2004, the Steering Committee on the Mass Media (CDMM) fixed the new dates of the Ministerial Conference for 10-11 March 2005. The CDMM is now preparing the draft political texts to be adopted by the Ministers at the Conference, outlining priorities for future work within the Council of Europe in the area of media law and policy. The Steering Committee decided to invite non-governmental organisations working in the media field in Europe and other interested persons to submit their ideas and proposals as regards these future activities. This consultation procedure has been launched through the website of the Media Division.

Activities for the development and consolidation of democratic stability

Regional Conference on media ownership

The threat that concentrated media ownership poses for freedom of expression and media pluralism was the theme of a Regional Conference organised by the Council of Europe and the South-East European Network for Professionalisation of the Media (SEENPM) in Bled, Slovenia, 11-12 June 2004.

The Conference brought together public officials, parliamentarians, media professionals and non-governmental organisations from South-Eastern Europe and new EU member states. The aim was to examine the problems linked to media concentration and to recommend policy changes in the field. The Conference adopted a set of conclusions and recommendations which are available on the Internet.

Compatibility of the national legislative framework

In the framework of its assistance programmes, the Media Division continued its efforts geared towards ensuring the compatibility of the national legislative framework in the media field with European standards. In this context, a written expertise on a draft Montenegrin law on media concentrations was carried out at the beginning of May 2004. On 27 May, the Council of Europe experts visited Podgorica to discuss their proposed amendments with representatives of the Montenegrin authorities and the drafters of the legislation.

Media website : 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 dealing with 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.

In June 2004, ECRI published its Annual Report on its activities covering the period from 1 January to 31 December 2003. As in previous years, the introduction to this Annual Report outlines the most worrying current forms of racism and intolerance requiring ECRI's particular attention and action.

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.

On 8 June 2004 ECRI published four new third round country-by-country reports, on the Czech Republic, Germany, Greece and Hungary 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.

On 8 June 2004 ECRI released its General Policy Recommendation No. 8 on Combating racism while fighting terrorism. 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. This Recommendation can be seen as the contribution of an independent human rights monitoring body in the field of combating racism and intolerance to the more general efforts underway in the Council of Europe to ensure respect for human rights while fighting against terrorism, reflected notably in the Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and the Fight against Terrorism.

Based on the experience gathered in the framework of its country-by-country monitoring mechanism, ECRI addresses in this Recommendation the need for member states to refrain from the adoption of anti-terrorist measures which discriminate against persons, notably on grounds of "race", colour, language, religion, nationality and national or ethnic origin, and the need to ensure that legislation and regulations, including those adopted in connection with the fight against terrorism, are applied in a non-discriminatory way. It also addresses the need to ensure that the right to seek asylum is not jeopardised in law or in practice as a result of the fight against terrorism. Finally, ECRI also underlines the responsibility of the state to react promptly and effectively, including through legal means, to manifestations of racism and racial discrimination by individuals and organisations that result from the deterioration of the general climate generated by the fight against terrorism. As ECRI stated it in its Declaration following the terrorist attacks of 11 September 2001, "terrorism should be combated, but it should not become a pretext under which discrimination and intolerance are allowed to flourish".

At its 34th plenary meeting (21-25 June 2004), ECRI adopted its General Policy Recommendation No. 9, devoted to the fight against anti-Semitism, which will be published on Thursday 9 September 2004.

Relations with civil society

ECRI's Round Table in Switzerland (Bern, 15 June 2004)

On 15 June 2004, ECRI held a Round Table in Bern as part of a series of national round tables in the member states of the Council of Europe, which are organised in the framework of ECRI's Programme of Action on Relations with Civil Society.

The reasoning behind this Programme of Action is that racism and intolerance can only be successfully countered if civil society is actively engaged in this fight: tackling racism and intolerance requires not only action on the part of governments (to whom ECRI's recommendations are addressed), but also the full involvement of civil society. ECRI attaches great importance to ensuring that its anti-racism message filters down to the whole of civil society, and also to involving the various sectors of society in an intercultural dialogue based on mutual respect.

The main themes of ECRI's Round Table in Switzerland were: ECRI's report on Switzerland; racism and xenophobia in public discourse and in the public sphere; national legislation to combat discrimination and the situation of non-citizens residing in Switzerland. These issues were discussed with representatives of the responsible governmental agencies and of the victims of discrimination in the light of ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. The Round Table aimed to involve all the relevant actors in an open debate in order to identify ways of better implementing existing initiatives and also to provide the impetus for further reform in Switzerland.

Publications

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, February 2004, Council of Europe

Third Report on Czech Republic
CRI (2004) 22, 8 June 2004

Third Report on Germany
CRI (2004) 23, 8 June 2004

Third Report on Greece
CRI (2004) 24, 8 June 2004

Third Report on Hungary
CRI (2004) 25, 8 June 2004

General Policy Recommendation No. 8 on combating racism while fighting terrorism
CRI(2004)26, 8 June 2004

Annual Report on ECRI's activities covering the period from 1 January to 31 December 2003
CRI (2004) 36, June 2004

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

"All different, all equal: ECRI – 10 years of combating racism" – Conference to mark the 10th anniversary of ECRI

From left to right: Walter Schwimmer, Secretary General of the Council of Europe, Michael Head, Chair of the European Commission against Racism and Intolerance of the Council of Europe, Peter Schieder, President of the Parliamentary Assembly

From left to right: Frank Orton, former Chair of ECRI, Fatima Elhassouni, Young Women from Minorities, Isil Gachet, Executive Secretary of ECRI

On 18 March 2004 ECRI celebrated its 10th anniversary by holding a major conference with its long-standing partners in the fight against racism and intolerance.

The conference discussed the ever-changing nature of racism and the challenges that it poses to European societies, reviewed ECRI's contribution to the fight against racism, xenophobia, anti-Semitism and intolerance in Europe over the past ten years, and provided ECRI with fresh ideas for its ongoing and future work.

Rita Verdonk

ECRI's 10th Anniversary Conference was opened by Mr Walter Schwimmer, Secretary General of the Council of Europe. At the opening session, Ms Rita Verdonk, Dutch Minister for Immigration and Integration, Mr Peter Schieder, President of the Parliamentary Assembly and Mr Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe, addressed the conference.

The publication "ECRI – 10 years of combating racism in Europe" was launched at the Conference. This publication, whose author, Mark Kelly, is an independent consultant, provides a synthesis of the gist of ECRI's work, drawing out the main messages of ECRI's country-by-country reports as well as its General Policy Recommendations, and outlining its relations with civil society. The study tries to answer the question of how ECRI has contributed to the fight against racism in Europe, and evaluates the impact of its action. This question was discussed extensively during the conference and partners of ECRI were invited to act as "witnesses" to ECRI's action, describing their co-operation with ECRI and how ECRI's action has contributed to the fight against racism and intolerance in their respective fields of activity.

Mark Kelly

Workshops

The following topical themes were presented by renowned experts in the field and discussed in more depth in separate workshops during the conference:

Workshop 1 :
"Combating racism while fighting terrorism"


Gün Kut, ECRI member


Claudia Lam, ECRI Secretariat

Workshop 2 :
"Combating racism in the context of migration in Europe"


Fernando Ferreira Ramos, ECRI member


Isabelle Chopin, Migration Policy Group


Giancarlo Cardinale, ECRI Secretariat

Workshop 3 :
"Racism: a 'mutating bacillus' – Islamophobia, anti-Semitism and 'cultural' racism as new challenges in our societies"


Winnie Sorgdrager, ECRI member


Dr Neil MacMaster, *School of Economic and Social Studies*


Lanna Hollo, ECRI Secretariat

Other speakers included **Zygmunt Bauman**, Emeritus Professor at the University of Leeds, **Dimitrina Petrova**, Director of the European Roma Rights Centre and **Aaron Rhodes**, Executive Director of the International Helsinki Federation.


Zygmunt Bauman


Dimitrina Petrova


Aaron Rhodes

The closing address of the conference was given by **Ms Catherine Lalumière**, Vice-President of the European Parliament, who also opened ECRI's first plenary meeting 10 years ago on 22 March 1994.

Consult the special file on the conference:

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.

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, concluded the examination of the provisions of the draft Convention in its first reading, with the exception of the Preamble.

At their 887th meeting (9 June 2004), the Ministers' Deputies expressed their agreement to communicating, as soon as possible, the draft Convention, to the non-governmental organisations involved in the subject, for consultation purposes.

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

Gender mainstreaming

In line with the strategy to promote gender mainstreaming in Council of Europe bodies, a hearing on "Fostering awareness of gender equality issues at the local and regional levels: gender mainstreaming in municipalities and regions" (Strasbourg, 22 March 2004) was organised in co-operation with the Commission on Social Cohesion of the Congress of Local and Regional Authorities of the Council of Europe.

The Group of Specialists on gender budgeting held its first meeting on 17-18 May 2004. This Group will draft guidelines for member states either on introducing gender budgeting or when considering reforms in this field.

The conclusions of the *Report on the impact of new information technologies on trafficking in human beings for the purpose of sexual exploitation* were presented at a workshop entitled "Ethical issues, child protection, prevention of human exploitation, discrimination" during the European Forum on *Internet with a human face – a common responsibility* which took place in Warsaw on 26-27 March 2004. This event was co-organised by the Media Division of the Council of Europe and the Safe Borders Consortium and co-sponsored by the European Commission, through its Safer Internet Action Plan.

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 3rd meeting on 10-11 May 2004. A hearing of journalists was organised to enable the Group to meet journalists and consider the role and influence of the media in the promotion of intercultural and interreligious dialogue for conflict resolution as well as the image of women conveyed by the media. The ideas exchanged will fuel the group members' discussions with a view to preparing their final report.

Co-operation activities

On 24-25 June 2004, a seminar entitled "National and international mechanisms of action against trafficking in human beings: problems and solutions" took place in Kyiv. This seminar was organised as a final assessment of the 10-month project on action against trafficking in human beings carried out by the NGO *La Strada-Ukraine*. The project consisted of information campaigns and seminars for professionals and all those involved in anti-trafficking activities.

Equality website: http://www.coe.int/equality/

Trafficking website: 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

Human Rights training activities for the Russian Militia

As part of the project "Protecting and Respecting Human Rights – The Main Task of Policing", an evaluation meeting was organised by the "Police and Human Rights – Beyond 2000" Programme, in co-operation with the Ministry of the Interior of the Russian Federation. This meeting was held in Domodedovo from 28 to 30 January 2004. Its objective was to assess the effectiveness of the workshops carried out in 2003 for the Russian Militia and to gather information on how future training sessions could be improved. The first in a series of workshops similar to the ones organised in 2003 was held in Krasnojark from 16 to 20 February 2004. The second took place from 15-18 March in Khabarovsk, the third from 19 to 22 April in Saratov, and the fourth was held from 24 to 27 May 2004 in Irkutsk. The remaining seminars are planned for September, October and November 2004, to be held in Omsk, Krasnodar and Perm respectively. Two evaluation meetings, following the same lines as the one which took place in January, are scheduled in Moscow for June and December.

Further training courses in Ukraine

The second of five "train-the-trainers" courses for the Ukrainian Militia on human rights standards and the implementation of the "Trainers' Supply Kit" was held in Sumy from 2 to 6 February 2004. The remaining seminars took place from 22 to 26 March 2004 in Zaporozhye, 26 to 30 April in Odessa and from 17 to 21 May in Alushta (Crimea) respectively. Continuing the programme, a seminar on interview techniques was held from 28 June to 3 July 2004 in Kharkiv. Two more seminars are planned.

Evaluation meeting in Ankara

In order to finalise the Joint Initiative with the EC entitled Police, Professionalism and the Public in Turkey, an evaluation meeting was held in Ankara on 18 February 2004. The evaluation of the training courses was very positive. A meeting with the Turkish authorities took place in Strasbourg on 29 March 2004 in order to discuss possible future initiatives.

Preliminary visits to various countries

The Manager of the Police and Human Rights Programme travelled to Tirana in April 2004 to discuss future police training activities with the Ministry of the Interior.

Similar contacts have been made with the competent authorities in Moldova in April 2004. And a draft co-operation programme has been drawn up as a result of the mission. A series of three "train-the-trainers" seminars are planned throughout the country from July to September 2004.

A mission to Tbilisi to assess the needs of the Georgian police was also carried out in mid-May 2004 and it was agreed to assist the Georgian Police Academy with the elaboration of human rights and police ethics training programmes, as well as to train teachers of the Academy.

Since the beginning of 2004, discussions have been underway with the National University of Internal Affairs of Ukraine on the implementation of a 2-year Mobile Groups Project.

Fact-finding missions were also carried out in Belgrade and Skopje in May 2004 to discuss possible future training activities with the authorities.

"The former Yugoslav Republic of Macedonia"

Support provided to the Government Agent Office

The Government Agent of "the former Yugoslav Republic of Macedonia" carried out a study visit to the Office of the Government Agent of Croatia, in Zagreb, on 29 June to 2 July 2004.

The Office of the Government Agent of "the former Yugoslav Republic of Macedonia" was also provided with publications on European human rights standards and in particular the European Convention on Human Rights.

Training for lawyers on the European Convention on Human Rights

A workshop on the right to a fair trial as guaranteed by Article 6 of the European Convention on Human Rights was organised on 17 and 18 May 2004 jointly by the Council of Europe and the OSCE Spillover Monitoring Mission to Skopje. The seminar was attended by lawyers from the non-governmental organisation "All for a fair trial", which is specialised in the monitoring of trials at domestic courts.

Albania – training for lawyers on the European Convention on Human Rights

In order to enhance the knowledge of Albanian lawyers on European human rights standards, a workshop on the right to a fair trial and on the right to property as guaranteed by the European Convention on Human Rights was held on 5 and 8 April 2004 in Dürres. The workshop was the first of a series of training sessions on the ECHR to be organised for Albanian lawyers within the framework of the Joint Programme Albania IV between the European Commission and the Council of Europe.

Bosnia and Herzegovina – Compatibility Exercise

In accordance with Opinion No. 234 (2002) of the Parliamentary Assembly of the Council of Europe, Bosnia and Herzegovina undertook to ensure the compatibility of its legislation with European human rights standards and launched a compatibility study of its law and practice.

In two meetings held on 14 April 2004 and 10 May 2004, the members of the Working Group discussed areas of the Compatibility study and proceeded to the identification of domestic legislation to be analysed. The study will focus on Articles 8 to 11 of the Convention, Articles 1 and 3 of Protocol No. 1, Article 3 of Protocol No. 4, and also partially on Article 6. The first expert meeting between the Working Group and the Council of Europe experts took place in Strasbourg on 2-3 June 2004 to establish a first list of laws to be analysed under the Compatibility exercise. A second joint meeting is scheduled for 9 and 10 September 2004 in Strasbourg and the final report by the Working Group is expected at the end of 2004.

EC/CoE Joint Programme in the North-West region of the Russian Federation : 2004-2005

Eight training seminars on the European Convention on Human Rights for judges and seven training seminars for NGO lawyers operating in the sphere of human rights will be organised in 2004-2005 thanks to this programme.

The overall objective of the programme is to promote democratic governance and social development. The training is conducted by lawyers from the Registry of the European Court of Human Rights.

The first training seminar on the European Convention on Human Rights for lawyers from the West Federal region of the Russian Federation took place on 20-21 May 2004 in St Petersbourg in co-operation with the St. Petersburg State University.

The seminar was attended by thirty lawyers working mainly in human rights' NGOs (half of them came from Kaliningrad and the other half from other parts of the North West Federal region).

The objective of the seminar was to provide training on Council of Europe human rights mechanisms and standards with particular emphasis on Articles 3, 5 and 6 of the ECHR, the functioning of the Strasbourg Court and the Russian applications before the Court.

A second training seminar for judges took place on 16-17 June 2004. The participants were 30 presidents of city and regional courts from the North-West Federal Region of Russia.

Human Rights Bulletins

The Council of Europe contributed to the translation into local languages, publication and distribution of the *Human Rights Bulletins* in Albania, Moldova and "the former Yugoslav Republic of Macedonia". The bulletins, produced by the London-based NGO AIRE Centre, consist of summaries of recent key-judgments of the European Court of Human Rights as well as commentaries on the respective case law. This project aims at improving access to the recent Strasbourg Court's case law and should contribute to a better understanding of European human rights standards at domestic level.

Awareness website: http://www.coe.int/awareness/

Committee of Ministers

The Committee of Ministers is the Council of Europe's decision-making body. It comprises the Foreign Affairs Ministers of all the member states, who are represented, outside the two annual ministerial sessions, by the Permanent Representatives of the member states to the Council of Europe. It is a place where national approaches to problems facing European society can be discussed on an equal footing, and where Europe-wide responses to such challenges are formulated. Guardian, together with the Parliamentary Assembly, of the Council's fundamental values, it also monitors member states' compliance with their undertakings.

Norway unveils priorities for its Chairmanship of the Council of Europe

At the conclusion of the Session of the Committee of Ministers on 13 May 2004, Norway assumed the Chairmanship of the Council of Europe's executive body for the next six months.

"Strengthening pan-European co-operation, promoting human rights and the rule of law, improving co-ordination between international organisations in Europe and further developing the Council of Europe's role in conflict prevention will be the priorities of the Norwegian Chairmanship of the Organisation's Committee of Ministers", Jan Petersen, the country's Foreign Minister, said.

Mr Petersen said that Norway will focus on implementing reform of the European Court of Human Rights and take measures to improve and accelerate the execution of the Court's judgments. It will also support efforts to strengthen legal co-operation in the fields of terrorism, organised crime and cybercrime, seek to strengthen dialogue and practical co-operation between the Council

Jan Petersen, Minister of Foreign Affair of Norway and Chairman of the Committee of Ministers of the Council of Europe

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.

of Europe, the OSCE and the EU, and will facilitate and contribute to the ongoing discussions surrounding a possible Third Council of Europe Summit.

He also said that Norway wishes to strengthen the role of the Council of Europe in the area of conflict prevention, in particular through measures to promote good governance and greater understanding across cultures and religions.

Norway will organise a number of events during its Chairmanship, including:

– a seminar on reform of the European Court of Human Rights;
– a conference on efforts to strengthen local democracy and participation;
– a conference on intercultural dialogue and cultural understanding in education;
– a seminar on human rights and disability; and
– a seminar for Roma/Sinti youth on conflict prevention and alternatives to migration.

114th session of the Commitee of Ministers (Strasbourg, 12-13 May 2004)

Reform of the European Convention on Human Rights – Guaranteeing the long-term effectiveness of the Court

The Ministers adopted Protocol No. 14 to the European Convention on Human Rights, amending the Convention, and opened it for signature. They considered this to be a crucial achievement for sustaining and improving the efficiency of the Convention's unique system of human rights protection in the long term, notably in the light of the continuing increase in the workload of the European Court of Human Rights. The Ministers reaffirmed their determination to guarantee the central role that the Convention and the European Court of Human Rights must continue to play in the protection of the human rights and fundamental freedoms of 800 million people in Europe.

Committee of Ministers Session of May 2004

In a separate Declaration, the Ministers urged all member states to sign and ratify Protocol No. 14 as speedily as possible so as to secure its entry into force within two years after its opening for signature.

The Ministers asked their Deputies to assess the resources necessary for the rapid and efficient implementation of the Protocol, in particular for the Court and its registry, and to take measures accordingly.

The Ministers stressed that it is indispensable that this reform of the Convention be accompanied by effective measures by parliaments, governments and the courts at national level, in conformity with the obligations of states under the Convention. In this context, the Ministers adopted a set of three Recommendations to the member states and asked their Deputies to undertake a regular review of the implementation of all relevant Recommendations.

The Ministers adopted a Resolution on judgments revealing an underlying systemic problem, and asked their Deputies to take specific and effective measures to improve and accelerate the execution of the Court's judgments.

These texts are developed in the Part devoted to the reform of the Convention.

Third Summit of the Council of Europe

The Ministers agreed that a Third Summit was crucial in determining the future role of the Council of Europe in a profoundly changing Europe and its interaction with other institutions and organisations. Its goal is to ensure the Organisation's relevance for Europe's 800 million citizens and guarantee that its objectives and functioning address the challenges they face in the new century. By confirming at the highest political level the strategic objective of a Europe without dividing lines, based on democracy, the rule of law and respect for human rights, and by identifying the resulting priorities for the Council of Europe's future action, including social cohesion and the cultural dimension, the Summit will reinforce the Organisation's position as a key partner within the new European architecture.

The Ministers welcomed the report on the progress of work concerning the substantial agenda and possible results of the Third Summit and thanked Poland for its invitation to hold the Summit in Warsaw during its future chairmanship of the Committee of Ministers. They instructed their Deputies to continue drawing up the agenda of the Summit, including the action plan for the future work of the Council of Europe.

Contribution of the Council of Europe to international action against terrorism

The Ministers expressed their revulsion at terrorist attacks in member countries, notably Russia, Turkey and Spain, and their unequivocal condemnation of terrorism in all its forms. They expressed their deepest sympathy to the victims of such acts and their families. They stressed that

terrorism has exacted a terrible toll in human lives and seriously jeopardises the enjoyment of human rights and democracy. They stressed that the fight against terrorism should be conducted in accordance with international law, including respect for human rights. They furthermore emphasised the strong need also to address the root causes of terrorism. The Ministers reiterated the need to reinforce intercultural and inter-religious dialogue and emphasised the important role of the Council of Europe in building confidence and mutual understanding within and beyond the continent.

The Ministers expressed their determination to use all means available within the Council of Europe co-operative framework to combat terrorism as effectively as possible. They welcomed the progress made in this field, including the results of the 25th Conference of European Ministers of Justice (Sofia, 9-10 October 2003). They commended the ongoing ratification of the Protocol Amending the European Convention on the Suppression of Terrorism, opened for signature at their May 2003 Session, and called upon states to sign and ratify this instrument as soon as possible so as to ensure its entry into force.

Jan Petersen, Minister of Foreign Affair of Norway and Chairman of the Committee of Ministers of the Council of Europe, and Walter Schwimmer, Secretary General of the Council of Europe

The Ministers took note of the work performed by the Committee of Experts on Terrorism (CODEXTER) following their decision at their last session to ask that "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 United Nations efforts in this field" be considered. They agreed to give instructions for the elaboration of one or more instruments (which could be legally binding or not) with specific scope dealing with existing lacunae in international law or action on the fight against terrorism, such as those identified by the CODEXTER in its report.

Progress of the work relating to:

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

The Ministers reaffirmed that trafficking in human beings constitutes 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 underlined the need to fight this scourge actively and welcomed the progress made in the negotiations on the draft European convention on this matter. They reiterated their strong commitment to finalising the convention next spring.

The contribution of the Council of Europe to international action against organised crime

The Ministers welcomed the progress report on organised crime and reiterated their firm commitment to combat it in all its forms. They stressed the importance of co-operation programmes, some of which are developed jointly with the European Union, dealing with organised crime, corruption, money laundering, as well as with justice and police co-operation. Ministers also encouraged the rapid completion of the draft protocol revising the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and supported the work of the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL).

The Ministers called upon states which have not yet done so to become parties to the relevant conventions dealing with international co-operation in criminal matters. In particular, they welcomed the entry into force of the Convention on Cybercrime on 1 July 2004 and called upon states which have not yet done so to become parties to it and to its Additional Protocol.

Prospects for a reform of the Committee of Ministers' monitoring procedure

The Ministers took note of the progress report on the reform of the thematic monitoring procedure of the Committee of Ministers and instructed their Deputies to continue their work in accordance with the defined guidelines, in order to finalise the reform by the fixed deadline.

Possible creation of a European Forum for Roma and Travellers

The Ministers welcomed the significant progress made with respect to the Finnish initiative, put forward as a proposal by Finland and France, concerning a European Forum for Roma and Travellers, which would take the form of an NGO. They invited their Deputies to continue their work.

Declaration on the Code of Good Practice in Electoral Matters

The Ministers adopted a Declaration on the Code of Good Practice in Electoral Matters drawn up by the European Commission for Democracy Through Law (Venice Commission), in which they reaffirmed the importance they attached to ensuring that elections are held in conformity with the principles of the European electoral heritage: universal, equal, free, secret and direct suffrage, expressing

the voters' wishes and freely formed opinions, based on freedom of media and neutrality of public media.

They called on governments, parliaments and other relevant authorities in the member states to take account of the Code of Good Practice in Electoral Matters, to have regard to it, within their democratic national traditions, when drawing up and implementing electoral legislation and to make sustained efforts to disseminate it more widely in the relevant circles.

Texts adopted by the Committee of Ministers at the Deputies' meetings

Freedom of political debate in the media

(Declaration, 12 February 2004)

The Committee of Ministers reaffirms that the fundamental right to freedom of expression and information, guaranteed by Article 10 of the European Convention on Human Rights, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and the development of every individual. It 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 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.

Access of non-nationals to employment in the public sector

(Recommendation Rec (2004) 2, 24 March 2004)

The Committee of Ministers considers that the presence of migrants and of foreign-born persons or persons with an immigration background can contribute greatly to strengthening the social cohesion of modern societies. It recognises that the public services have a particular responsibility to take the lead and set an example in their own employment practices.

Taking account of the legal framework which is being developed at the level of the European Union in order to implement a common migration policy, it recommends that the governments of member states apply a set of principles in their legislation and administrative practice.

These action plans aim, *inter alia*, to ensure equal treatment with regard to recruitment, promotion, employment conditions and salaries, and combat any form of discrimination in this field.

Member states are also invited to revise their national legislation, wherever possible, in respect of sectors or posts where the maintenance of the condition of nationality or citizenship is not essential.

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Switzerland reserved the right for its cantons to subject access to public employment to conditions based on nationality.

Concept of "membership of a particular social group" in the context of the 1951 Convention relating to the status of refugees

(Recommendation Rec (2004) 9, 30 June 2004)

The Committee of Ministers takes into account the increasing number of cases where fear of being persecuted because of "membership of a particular social group" (MPSG) is claimed as grounds for refugee status and considers also the growing variety of reasons invoked to that effect. It wants to provide guidance to member states in applying this particular motif, as described in the Convention, which requires clarification, and to ensure a uniform application of the 1951 Convention in the member states of the Council of Europe. To this end, it recommends that member states take into account a set of principles when they determining, in the context of Article 1. A, paragraph 2, of the 1951 Convention, whether a person is persecuted because of membership of a particular social group.

Application of death penalty against persons who were minors at the time of the offence

The Committee of Ministres approved the following text of a Statement of Interest in support of the European Union's "amicus curiae brief" in a case (*Roper against Simmons*) before the United States Supreme Court concerning the application of the death penalty against persons who were minors at the time of the offence :

"The Council of Europe, an international organisation composed of 45 European states, fully concurs with the opinions and arguments submitted by the European Union. The Council of Europe has taken the firm position that

everyone's right to life is a basic value and that the abolition of the death penalty is essential to the protection of this right and for the full recognition of the inherent dignity of all human beings. It is of the opinion that there exists an international consensus against the execution of persons who were below 18 years of age at the time of the offence."

Common policy on migration and asylum

(Extracts from the Reply by the Committee of Ministers to Recommendation 1624 (2003) of the Parliamentary Assembly)

The Reply by the Committee of Ministers takes account of the opinions of the Ad hoc Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR), and the European Committee on Migration (CDMG), to which the Recommendation was transmitted.

The Committee of Ministers considers that a common standard policy based on core rights and procedural safeguards – a model for a Council of Europe common policy on migration and asylum – could be justified from the point of view that persons who are not refugees are seeking to enter countries through the asylum channel or refugees may even resort to migrant smugglers. Nonetheless, it is of the opinion that the core rights and procedural safeguards for both asylum seekers and migrants are already reflected in the European Convention on Human Rights and its relevant case law and are assured by the European Court of Human Rights.

There is a distinction between refugees and migrants. Having regard to the very specific situation of the refugees, a common model as proposed might lower the standards for their protection. In order to provide them with better protection, the Committee of Ministers has adopted two European agreements and a number of recommendations that provide member states with common standards in the field of refugee protection. The CAHAR has taken the initiative to reinforce the follow up to these Recommendations. ECRI continues to follow up the fair procedures mentioned in paragraph 9 of the Recommendation in its country-specific reports. The Council of Europe Commissioner for Human Rights also pays much attention to these problems. Asylum policy is a humanitarian policy and should not be confused with an orderly migration management.

However, the harmonisation of the policies in the field of migration will contribute to the achievement of greater unity among member states of the Council of Europe. It should also be recalled that the Council of Europe recommendations in the field of migration are traditionally taken into consideration by the European Commission in its process of drafting directives on similar subjects. The Migration Management Strategy adopted by the CDMG provides a framework for a co-ordinated action, from a human rights and human dignity perspective. The recently established Political Platform constitutes a solid basis for harmonising national approaches to migration and the development of synergies with the EU policies under the Common Asylum and Migration Policy. The CDMG is undertaking a study on the feasibility of establishing an Agency on Migration, which, if established, would address the root causes of forced migration and other migratory movements in close co-operation with other international actors.

As regards the Assembly's opinion on the accessibility of databases held on foreign nationals to all migration services, the Committee of Ministers considers that this does not seem advisable if this is intended to refer to personal data held in member states on foreign nationals residing on their territory. However, if the reference is made to general material on migration requirements, the Committee of Ministers shares the Assembly's opinion.

The Committee of Ministers fully shares the opinion of the Parliamentary Assembly, as regards a "common package of information accessible to potential migrants".

Situation of European prisons and pre-trial detention centres

(Extracts from the Reply by the Committee of Ministers to Recommendation 1656 (2004) of the Parliamentary Assembly)

The Committee of Ministers fully shares the concern of the Parliamentary Assembly about the need to protect efficiently the rights and dignity of persons deprived of their liberty. It stresses that this is a highly topical and important activity and it welcomes the important contribution made by the Assembly and agrees to maintain it closely associated to activities in this area.

It recalls that the updating of the European Prison Rules is in progress, and that on 9 March 2004 the European Parliament addressed Recommendation 2003/2188 to the Council of the European Union on the rights of prisoners in the European Union. In this text, the European Parliament recommends that the Council of the European Union should (i) encourage the Council of Europe to revise its European Prison Rules, (ii) encourage the drafting of a European Prisons Charter covering all member states of the Council of Europe, which would include specific rules on a list of topics and (iii) declare that, should this exercise not be completed in the near future, or should the outcome prove unsatisfactory, the European Union would draw up a Charter of the rights of persons deprived of their liberty which would be binding on the member states of the European Union and which could be invoked before the Court of Justice.

The Committee of Ministers observes that the proposals made in Recommendation 1656 are very much in line with those formulated by the European Parliament. In particular, the Parliamentary Assembly recommended to the Committee of Ministers to draw up, in conjunction with the European Union, a European Prisons Charter, which would (i) include specific rules on a list of topics (ii) draw on a set of guidelines prepared by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly and (iii) be submitted to the Parliamentary Assembly for an opinion.

A careful examination of the ad hoc terms of reference given by the Deputies to the Council for Penological Co-operation for the updating of Recommendation No. R (87) 3 on the European Prison Rules leads to the conclusion that

they already cover most, if not all, of the topics which should be dealt with by the European Prisons Charter, according to Recommendation 1656 (2004) of the Parliamentary Assembly and Recommendation 2003/2188 of the European Parliament.

Therefore, the Committee of Ministers agreed to transmit the Recommendation to the Committees which have started the work of updating the European prison rules, drawing their members' attention to the proposals made now by the Parliamentary Assembly and, in particular, to the proposal to prepare a European Prisons Charter. At the same time, it encouraged the European Union to become actively involved in the work under way in the Council of Europe to update the European Prison Rules, as a means of reaching common standards in this area. It is the Committee of Minister's view that an integrated approach to the issue of prisoner's right and dignity is the most appropriate, sound and effective way of dealing with this issue as it would avoid duplication, double standards and waste of scarce resources. It would also meet the wishes clearly expressed by both the Parliamentary Assembly and the European Parliament in their respective recommendations. Moreover, the Committee of Ministers considered that the forthcoming 26th Conference of European Ministers of Justice, scheduled to take place in Helsinki in April 2005, provided a most timely and appropriate opportunity to take stock of the progress achieved, discuss possible solutions to outstanding difficulties and provide political impetus to the conclusion of this important work.

Abolition of the death penalty in Council of Europe observer states

(Extracts from the Reply by the Committee of Ministers to Recommendation 1627 (2003) of the Parliamentary Assembly)

The Committee of Ministers commends the Parliamentary Assembly's sustained determination, and fully supports its initiatives, to enter into informed debate with the legislative bodies of two Observer states, Japan and the United States of America.

It wishes to refer to its reply to the Parliamentary Assembly's Recommendation 1246 (1994) in which it highlighted that Observer states are expected to "share Council of Europe values", which, *inter alia*, include the call for universal abolition of the death penalty with a view to overcoming what might be seen as a "value gap". With respect to the United States, it closely observes developments regarding the death penalty, expects to pursue a substantive dialogue and hopes that future initiatives of the Parliamentary Assembly aimed at opening a dialogue with US legislators will be favourably received. With respect to Japan, the Committee welcomes the parliamentary and governmental dialogue that has been initiated and encourages the further development of this dialogue.

The Committee of Ministers has requested its Chairman to reiterate the Committee's readiness to intensify dialogue with these states on the question of the death penalty. In stressing the Council of Europe's attachment to this essential issue, the Chair will highlight in particular the extensive experience of the Organisation in this field which might be drawn upon to achieve a moratorium on executions and subsequent abolition.

Terrorism: a threat to democracies

(Extracts from the Reply from the Committee of Ministers to Recommendation 1644 (2004) of the Parliamentary Assembly)

The Committee of Ministers has on several occasions stressed its conviction that strengthening international legal co-operation in the context of a multilateral approach is essential in the fight against terrorism.

It is pleased to inform the Assembly that the Committee of Experts on Terrorism has already commissioned an independent report on the added value of a comprehensive European convention on terrorism, which could be elaborated within the Council of Europe with a view to contributing significantly to the UN efforts in this field.

Role of the public prosecutor's office in a democratic society governed by the rule of law

(Extracts from the Reply by the Committee of Ministers to Recommendation 1604 (2003) of the Parliamentary Assembly)

The Committee of Ministers endorses the Parliamentary Assembly's recognition of the essential role of the public prosecutor in ensuring security and liberty throughout European societies. It further shares the Assembly's assessment that Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system constitutes a detailed reference text for guidance of the current actions and future reform of the public prosecutors' offices throughout Council of Europe member states. The Committee of Ministers once again draws the attention of national authorities to this text.

The Committee of Ministers underlines the variety of public prosecution models in different countries, resulting from legal traditions and the different organisation of criminal justice systems. Each system has its own checks and balances and it is difficult to treat one single element – the role of the public prosecution services, for instance – in isolation from other elements of the system. Besides, the Committee of Ministers is not in a position to endorse, without extensive additional debate at least – some of the Assembly's ideas in relation to the public prosecution services, such as the universal adoption of the principle of discretionary prosecution or the confinement of the role of public prosecutors to the criminal justice system. The Committee of Ministers finds no reason to request that the principle of legality be abandoned by those European jurisdictions where it is applied or to prevent prosecutors from exercising certain functions outside the criminal justice

system, as it is the case in many legal systems. As to the recommendation for complete independence of the public prosecutors in individual cases it considered appropriate to point out the difficulty to apply this in those legal systems where the public prosecution service is constitutionally part of the executive branch or Government. Furthermore, the Committee of Ministers recalls Guiding principle No. 3 against Corruption included in its Resolution (97) 24 of 6 November 1997 and the exhaustive monitoring conducted by the Group of States against corruption (GRECO) of the application of this principle. The guiding principle reads: "to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations".

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

Migrants and refugees

Recommendation 1667 (2004) on the situation of refugees and displaced persons in the Russian Federation and some other CIS countries – 25 June 2004

The Assembly observed that the numbers of refugees and displaced persons in the Russian Federation, Ukraine, Moldova and Belarus have decreased considerably over the last few years, mainly as a consequence of the naturalisation process and took note of the considerable progress made in terms of bringing their national legislation concerning refugees, displaced persons and other migrants in line with international standards. At the same time, it considered that federal or national legislation should be systematically enforced throughout the region and that regional or local regulations in contradiction with national laws should not be tolerated.

The Assembly recommended abolishing the *propiska* system of obligatory residence permits which has been formally outlawed in all countries concerned, but persists in administrative regulations and practice, causing undue hardship to the displaced population. It also called for the implementation of more efficient integration measures, together with concrete measures to combat racism and xenophobia.

Consequently, the Assembly called upon the Committee of Ministers to monitor closely the observance of asylum-seekers', refugees' and displaced persons' rights in the Russian Federation, Ukraine and Moldova, and especially the principle of non-refoulement, and to intensify programmes aimed at improving the situation of different categories of migrants. It also urged the states in question to observe strictly the fundamental principles of international law on the protection of refugees, asylum seekers and displaced persons and to elaborate clear migration policies including short-, medium- and long-term solutions for integration and repatriation in co-operation with the Council of Europe and other international organisations.

Recommendation 1655 (2004) a European migration observatory/agency – 26 April 2004

The Assembly said that there is a growing need for closer co-operation among Council of Europe member states, with the European Union and with major non-European countries of origin and transit, in order to improve the management of legal migration flows into Europe, including the integration of migrants, and to reduce irregular migration and criminal activities linked to it. It therefore strongly promotes parliamentary and intergovernmental activities with this aim.

The Assembly said it supports the creation by the European Union of a network of national contact centres for the improvement of migration information, and recommended extending co-operation in this area. In this context, it referred to the Council of Europe's 7th Conference of Ministers respon-

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.

sible for Migration Affairs (September 2002) and to the proposal made to set up a European migration observatory.

Recommendation 1650 (2004) on the links between Europeans living abroad and their countries of origin – 2 March 2004

The Assembly considered that, in view of the fact that several million Europeans live legally outside their countries of origin, migration policies in Council of Europe member states should take into account issues concerning emigration, not only immigration and integration.

It stressed in particular the importance of ensuring that expatriate nationals continue to actively exercise their rights linked to nationality and contribute to the political, economic, social and cultural development of their countries of origin. At the same time, it said that expatriates have an important role to play as intermediaries between their countries of origin and host countries,

For these reasons, the Assembly invited member states to improve their emigration policies and solutions in the field of relations with their expatriates; to establish institutional links with expatriate communities; to take account of their expatriates' interests in terms of political, economic and social rights; and to encourage and support the activities of expatriate associations and NGOs.

Recommendation 1652 (2004) the education of refugees and internally displaced persons – 2 March 2004

The Assembly considered the situation of refugees and IDPs in terms of education at all levels. Education is a basic essential which should not be in any way hindered by the abnormal and temporary state of refugees or by delay in the decision on whether to return or stay in the host country.

The Assembly therefore recommended member states to give priority to the planning of adequate measures to ensure that access to education is available for refugees and IDPs pending the possibility of a durable solution and make efforts to facilitate the integration of refugee and IDP children into the school system of the host country.

Iraq

Resolution 1386 (2004) on the Council of Europe's contribution to the settlement of the situation in Iraq – 24 June 2004

The Assembly expressed it fear that the continued violence in Iraq will hamper the satisfactory transfer of power to the Iraqi transitional authority. It called upon the United Nations to play a leading role in this transfer and hoped that the UN will be able to return to Iraq as soon as possible. It further considered in order to enable the broadly-based popular participation in the transition to democratic governance in Iraq the requisite security must be guaranteed.

In this context, the Assembly called on the Secretary General of the Council of Europe to propose to the United Nations Secretary General to take advantage of the Council of Europe's expertise in legislative and constitutional issues, in electoral matters and in the building of democratic institutions, in order to assist UNAMI. It also said that the democratic model cannot be transposed mechanically; therefore, it offered its assistance and expertise, on the understanding that building democracy is the responsibility of the Iraqi people themselves.

The Assembly also suggested offering Council of Europe expertise to the UN in the fields of reconstruction, the prevention of torture and sponsoring the training of Iraqi judges on the rule of law, procedural safeguards in the criminal system and human rights and international humanitarian law norms.

The Assembly also called upon those of its member and observer states that are engaged in the MNF to fully and effectively respect international humanitarian human rights and criminal law and to accept the jurisdiction of the International Criminal Court over the forces and agents present in Iraq, regardless of the existence of a UN mandate.

Italy

Resolution 1387 (2004) on the monopolisation of the electronic media and possible abuse of power in Italy – 24 June 2004

The Assembly expressed its concern at the concentration of political, commercial and media power in the hands of the Italian Prime Minister Silvio Berlusconi.

It pointed to the fact that, through Mediaset, Italy's main commercial communications and broadcasting group and one of the largest in the world, Mr Berlusconi owns about half of the nationwide broadcasting in the country; as Head of Government he is also in a position to influence indirectly the public broadcasting organisation RAI, Mediaset's main competitor. It said that this is not just a potential problem, as it is in conflict with the state's duty under the European Convention on Human Rights and the case law of the European Court of Human Rights to take positive measures to safeguard and promote media pluralism.

The Assembly therefore called on the Italian Parliament to resolve the conflict of interest between ownership and control of companies and ensure that legislation and other regulatory measures put an end to the long-standing practice of political interference in the media. The Assembly also asked the Venice Commission to provide an opinion on the compatibility of the Gasparri Law and the Frattini Bill with the standards of the Council of Europe in the field of freedom of expression and media pluralism, especially in the light of the case law of the European Court of Human Rights.

Resolution 1388 (2004) on the Italian Law on legitimate suspicion – 24 June 2004

The Assembly said that the enactment in November 2002 of the Italian Law on legitimate suspicion, known as the "Cirami law", gave reason for concern. It introduces the notion of legitimate suspicion as a ground for requesting the transfer of a case from one court to another, without any limit to the number of requests for transfer on these grounds. It is

sufficient to raise further grounds which may relate to facts already known that have not yet been relied upon.

Invoking these grounds results in a stay of proceedings, pending the decision of the Court of Cassation on the merits. If the Court of Cassation finds that the legitimate suspicion is founded, it must refer the case to another court, which must reopen the proceedings ab initio. Even if the Court of Cassation finds that the legitimate suspicion is unfounded, if one of the judges is replaced in the course of the trial, the proceedings must be started again ab initio.

The potential negative effects of this law's application include slowing down the course of justice; undermining trust in judges as a body; and violating the principle of equality before the law, as only those defendants able to afford the cost of lengthy legal proceedings can avail themselves of it. The Assembly therefore invited the Government of Italy to repeal the Cirami law and ensure the rule of law and the independence of judiciary.

Bosnia and Herzegovina

Resolution 1383 (2004) and Recommendation 1664 (2004) on honouring of obligations and commitments by Bosnia and Herzegovina – 23 June 2004

The Assembly welcomed the slow but steady progress of Bosnia and Herzegovina, which joined the Council of Europe on 24 April 2002, towards a functioning pluralist democracy and a state governed by the rule of law and respect for human rights.

The October 2002 general elections were administered by the domestic authorities themselves and not by the OSCE and they were largely in line with international standards for democratic elections. Bosnia and Herzegovina fulfilled almost all major formal commitments due within a year of accession, including the accession to key human rights treaties, the implementation of constitutional amendments and the adoption of several laws in the field of justice and education.

The Assembly welcomed the new laws in key areas of reform, and notably the adoption of a new criminal code and a code of criminal procedure, but expressed concern at the undue delay in setting up the implementing bodies. It also said that progress had been made in terms of the functioning of state level institutions and interparty dialogue and co-operation between the constituent people, even if much of this was only achieved as a result of constant pressure by the international community.

In view of these outstanding issues, the Assembly stressed that concerted action was needed to go beyond the sectarian political divides and to put the interests of citizens first; to find long-term solutions for the remaining refugees and internally displaced persons; to take steps to shed some light on the fate of thousands of people who disappeared during the war; and to co-operate fully with the International Criminal Tribunal for the former Yugoslavia.

Resolution 1384 (2004) on strengthening of democratic institutions in Bosnia and Herzegovina – 23 June 2004

The Assembly said that undeniable progress in building democratic institutions has been achieved in Bosnia and Herzegovina since the 1995 Dayton Agreements were signed and especially since its accession to the Council of Europe in April 2002, but that the constitutional order prescribed by the Dayton Agreements, which was the outcome of a political compromise reached in order to end the war, cannot secure the effective functioning of the state in the long term.

The Assembly therefore called on the political forces of Bosnia and Herzegovina to work together to carry out reforms establishing, reinforcing and ensuring the efficient functioning of the state institutions.

Terry Davis elected Secretary General of the Council of Europe

Terry Davis, British parliamentarian and a longstanding member of the Parliamentary Assembly, was elected Secretary General of the Council of Europe by the Parliamentary Assembly on 22 june 2004.

"I have a vision of Europe as part of a world where men and women are treated fairly and equally – a Europe where people live in peace on the basis of mutual respect without any discrimination based on gender, sexual orientation, ethnic origin or religious belief – a Europe with no borders, no visas, no passports – a Europe where people have the time and opportunity to enjoy not only their own culture but the cultures of other people. The Council of Europe is the best way to turn that vision into reality," he said.

The new Secretary General will take up office on 1 September 2004.

Corporal punishment

Recommendation 1666 (2004) on a Europe-wide ban on corporal punishment of children – 24 June 2004

The Assembly said that the issue of corporal punishment and other forms of degrading punishment or treatment of children has not been resolved in all member states, despite the clear prohibition laid out notably in the European Social Charter and the European Convention on Human Rights.

It therefore invited the Committee of Ministers to launch a co-ordinated and concerted campaign in all the member states for the total abolition of corporal punishment of children, in the same manner as the campaign to abolish the death penalty, in order to make Europe a corporal punishment-free zone for children.

Turkey

Resolution 1380 (2004) and Recommendation 1662 (2004) on honouring of obligations and commitments by Turkey – 22 June 2004

The Assembly said that Turkey has achieved more reforms in little more than two years than in the previous ten, despite the adverse economic and political situation.

With regard to pluralist democracy, the Assembly recognised that Turkey is a functioning democracy with a multi-party system, free elections and separation of powers, but also considered that requiring parties to win at least 10% of the votes cast nationally before they can be represented in parliament is excessive. It congratulated Turkey on other essential reforms, including reducing the role of the National Security Council to that of a purely consultative body concerned with defence and national security, excluding army representatives from civil bodies, and establishing parliamentary supervision of military activities, particularly from a financial standpoint. Progress has also been made notably in the areas of corruption, women's rights, combating torture and abolishing the death penalty through the ratification of Protocol No. 6 in November 2003 and the signing of Protocol No. 13 in January 2004.

In view of these advances, the Assembly decided to close the monitoring procedure under way since 1996 and to continue the post-monitoring dialogue with the Turkish authorities on the outstanding issues and on any other matter in connection with Turkey's obligations as a Council of Europe member state.

In its Recommendation, the Assembly said that Turkey must continue to benefit from the Council of Europe's assistance and co-operation programmes in order to complete and implement the reforms it has undertaken to strengthen the rule of law and the respect for human rights and fundamental freedoms.

Resolution 1381 (2004) on the implementation of decisions of the European Court of Human Rights by Turkey – 22 June 2004

The Assembly referred to the outstanding problems related to the implementation of decisions of the European Court of Human Rights concerning Turkey, such as payments of just satisfaction, erasure of the consequences of unjust convictions, excessive interferences with freedom of expression, control of the action of the security forces, the dissolution of political parties and the case of *Cyprus* v. *Turkey* and finally the *Loizidou* case.

It recognised that significant progress has been achieved recently, but held that further comprehensive action has still to be taken to improve procedures related to the payment of just satisfaction; to re-examine the new law on re-opening of proceedings; to continue reform in the area of freedom of expression through legal reform; and to deal with the problem of the dissolution of political parties.

Exhibition entitled "Die Neue Mitte", Parliamentary Assembly Session June 2004

Domestic slavery

Recommendation 1663 (2004) on domestic slavery: servitude, au pairs and mail-order brides – 22 June 2004

The Assembly took stock of the appalling situation of domestic slavery in Europe in the 21st century. Thousands of persons – mostly women or young girls – are still held as slaves in Europe and are forced to work with no or little financial reward, are physically constrained and are treated in a degrading and inhumane manner. The most common examples are domestic workers, au pairs or "mail-order brides". Victims find it difficult to extract themselves from their situation, being in a foreign country, far from home, often unable to speak the language of the country they live in and ignorant of the laws and customs of the land.

The Assembly thus recommended that negotiations on the Council of Europe draft Convention on action against trafficking in human beings be brought to a rapid conclusion;

that holding a person in any form of slavery be treated as a criminal offence in every member state; and that victim support structures be established.

Kosovo

Resolution 1375 (2004) and Recommendation 1660 (2004) on the situation in Kosovo – 29 April 2004

In response to the upsurge of ethnic violence in March 2004 in Kosovo, the Assembly strongly condemned the perpetrators of the recent events which resulted in many deaths, injuries and severe damage to property including important cultural monuments and which could be characterised as ethnic cleansing of the non-Albanian population.

It therefore considered that reconciliation should be made a priority and that every effort should be made to bring all public authorities in Kosovo within the jurisdiction of a judicial mechanism capable of providing effective remedies for all human rights violations, if possible subject to the supervision of the European Court of Human Rights. It also called for the full implementation of the Standards for Kosovo, endorsed by the UN Security Council on 12 December 2003, in an effort to achieve stability and draw Kosovo closer to Europe, and welcomed the launching by Unmik of the Kosovo Standards Implementation Plan on 31 March 2004.

The Assembly urged the Kosovo political forces to work in real partnership with Unmik; to make the reform of local self-government and public administration a priority; to discontinue active backing or passive support for the extremist groups inflaming ethnic violence against Serbs and other non-Albanians; and to take concrete action to address the causes of the ethnically-motivated violence and bring perpetrators to justice.

In its Recommendation, the Assembly encourages the Committee of Ministers to authorise the Secretary General to reach agreements with the Unmik and the Kosovo Stabilization Force (Kfor) for the full implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and of the Framework Convention for the Protection of National Minorities. It also recommended accepting Unmik's request to the Council of Europe to accept the responsibility for international observation of the Kosovo Assembly elections scheduled for 23 October 2004

Cyprus

Resolution 1376 (2004) on Cyprus – 29 April 2004

The Assembly said it was disappointed by the failure to reunite the two Cypriot communities, but that it respects the choice made by the Greek Cypriots and the Turkish Cypriots in separate and simultaneous referenda.

It therefore welcomed the support expressed by several European political leaders for financial assistance for the Turkish Cypriots and an easing of the international sanctions against them and said that the United Nations should also consider whether the resolutions on which the sanctions are based are still justified. It further called for efforts to help the Turkish Cypriot community break free of its present isolation.

Albania

Resolution 1377 (2004) on honouring of obligations and commitments by Albania – 29 April 2004

The Assembly welcomed the progress made in Albania towards pluralist democracy, the rule of law and respect for human rights in the past three years, but stressed that organised crime and others wishing to profit from the lack of regulation and control are threatening the fragile progress achieved. Poverty and corruption also remain serious challenges for Albania, as does reform of the judiciary system and the police.

It found additional shortcomings in the financing of political parties, implementation of key legislation, the role of parliament and the organisation and administration of elections. The Assembly therefore called upon the Albanian authorities to take vigorous action to resolve these problems and consolidate the progress made so far.

Belarus

Resolution 1371 (2004) and Recommendation 1657 (2004) on disappeared persons in Belarus – 28 April 2004

The Assembly has been concerned for over two years by several unexplained disappearances of former political figures, businessmen and journalists. It condemned the Belarusian authorities' systematic refusal to co-operate with the Council of Europe Rapporteurs attempting to investigate these disappearances and the conscious efforts made to undermine their investigation.

The Assembly therefore called for a truly independent investigation into the above-mentioned disappearances and considered it inappropriate to reconsider the suspension of Special Guest status in favour of the Belarusian Parliament.

Resolution 1372 (2004) and Recommendation 1658 (2004) on the persecution of the press in the Republic of Belarus – 28 April 2004

The Assembly reiterated the reasons for which the Special Guest status of the Parliament of Belarus was suspended in January 1997 and for which it consequently rejected, in January 2004, the application for re-granting Special Guest status.

It deplored the systematic harassment and intimidation carried out by state officials against journalists, editors and media outlets which are critical of the President of the Republic or the Government of Belarus in flagrant contradiction of the provisions of Article 10 of the ECHR. It also condemned the level of state control over all forms of media, both public and private and observed that reform of the Law on the Press and other Mass Media and other relevant laws, long announced and awaited, has not been finalised in time for the coming parliamentary elections.

The Assembly called on all member and Observer states not to tolerate any longer the existing state of affairs in Belarus, where fundamental rights and freedoms are systematically violated with the sole aim of keeping a non-democratic regime in power. It further urged the European Parliament, the Council of the European Union, the European Commission, the OSCE and the UN to do all in their power to put an end to systematic violations in this area.

Exhibition on traditional Czech puppets, Parliamentary Assembly Session April 2004

Armenia

Resolution 1374 (2004) on honouring of obligations and commitments by Armenia – 28 April 2004

The Assembly spoke out in response to the violent opposition protests organised in Armenia in March and April 2004, in the wake of the presidential elections, and the authorities' heavy-handed crackdown, subsequent arrests and alleged mistreatment and abuse of persons detained by the police and security forces.

The Assembly called upon the Armenian authorities to allow peaceful demonstrations and refrain from any further restrictions to the freedom of assembly guaranteed by the ECHR; to immediately investigate the incidents and human rights abuses reported during the recent events and urged the opposition and the authorities to refrain from any action which may lead to further violence and to engage in a dialogue without preconditions in order to resolve the present conflict.

Detention

Recommendation 1656 (2004) on the situation of European prisons and pre-trial detention centres – 27 April 2004

The Assembly said that living conditions in many prisons and pre-trial detention centres have become incompatible with respect for human dignity, largely due to overcrowding and an increase in the number of foreign prisoners and of prisoners awaiting final sentencing. It underlined that there is clearly a need to harmonise detention conditions and to introduce permanent external monitoring, perhaps in the form of a European prisons charter, which would be binding on all Council of Europe member states, and a clear and comprehensive reminder of prisoners' rights and obligations.

The Assembly therefore recommended that the Committee of Ministers draw up such a charter in conjunction with the European Union and actively promote the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has only been signed by seven countries and ratified by two.

Nationality rights and equal opportunities

Recommendation 1654 (2004) on nationality rights and equal opportunities – 2 March 2004

The Assembly set out to evaluate the situation regarding nationality and its acquisition with respect to gender, based on a survey conducted by its Committee on Equal Opportunities for Women and Men. It welcomed in particular the elimination of discrimination against women in several Council of Europe member states, where citizenship used to be passed down the male line, or women lost their citizenship upon marriage to a foreigner, as well as the elimination of discrimination against men, who were not always allowed to pass down their nationality to illegitimate children, especially those born abroad.

It also pointed out that some problems persist in the member states who responded to the survey, and that the situation in the thirteen member and two Observer states which did not might give rise to legitimate concern. The Assembly thus recommended that the Committee of Ministers conduct an in-depth comparative study of the relevant legislation in all Council of Europe member and Observer states.

Democracy and legal development

Conflict prevention and resolution

Resolution 1385 (2004) and Recommendation 1665 (2004) on conflict prevention and resolution: the role of women – 23 June 2004

The Assembly said that women are caught in a vicious paradox with respect to violent conflicts: they are the main civilian victims and, on the other hand, they are generally excluded from decision-making positions prior to, during and following violent conflict, thus reinforcing their victimisation.

It considered that Europe has so far failed to ensure women's full and equal participation in conflict prevention, peace operations and post-conflict peace-building. In particular, women are often excluded from negotiation and diplomacy aimed at ending armed conflicts, as was the case in peace talks in Kosovo, the Southern Caucasus and recently in Afghanistan and Iraq. In the Assembly's view, the mainte-

nance and promotion of international peace and security cannot be realised without fully understanding the impact of armed conflict on women and without appropriate measures being taken to ensure their empowerment and security. Women's equal participation in the peace process is an essential condition for establishing lasting peace. Women also bring alternative perspectives to conflict prevention at the grassroots and community levels.

It concluded by saying that practical steps and initiatives should be taken to advance the role of women in all aspects of conflict prevention and post conflict peace-building, in particular ensuring that national legal systems penalise all forms of violence against women; strengthening women's representation in local, national and international bodies for the regulation of conflicts; and providing sustained funding to women's non-governmental organisations dealing with peace issues.

Human Rights and Biomedicine

Opinion No. 252 (2004) on the draft additional protocol to the Convention on Human Rights and Biomedicine, on biomedical research – 30 April 2004

The Assembly said that freedom of research is necessary for the progress of knowledge, as it is part of freedom of thought and freedom of expression, and should therefore be recognised as a human right. In this connection, it approved the aim of the draft additional protocol to the Convention on Human Rights and Biomedicine, which is to increase the effectiveness of the protection of human dignity.

As to the Draft Protocol's contents, it welcomed the separation between the approval of research on the basis of scientific merit and the review of its ethical acceptability, but found the definition of "ethical acceptability" unclear and vague. It also considered that the notion of "relevance" of scientific information requires further debate and fully backed the provisions requiring parties to the protocol to ensure that the same ethical criteria be respected for the entire course of research initiated within their jurisdiction, regardless of where it is completed.

In conclusion, the Assembly recommended that the Committee of Ministers open the Draft Protocol for signature as soon as possible.

Draft Protocol No. 14

Opinion No. 251 (2004) on the Draft Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms amending the control system of the Convention – 28 April 2004

The Assembly said it supports any changes liable to facilitate or improve the proper functioning of the European Court of Human Rights, provided that the right of individual application, which is its *raison d'être*, continues to be guaranteed.

It regretted that none of its previous recommendations, including the creation of the post of public prosecutor at the European Court of Human Rights responsible for bringing cases of mass violations of human rights before the Court and a system of *astreintes* (fines for a delay in the performance of a legal obligation) for states that persistently fail to execute a Court judgment, have to date been accepted by the Committee of Ministers. The Assembly considered that the possibility of creating additional posts of judge would create inequalities between countries but wholeheartedly backed the proposal for a non-renewable nine-year term of office for judges.

"Figures of Peace", an exhibition on the Nobel Peace Prize, Parliamentary Assembly Session June 2004

It also said that the proposal to add a new admissibility criterion to Article 35 (individual applications) of the Convention was vague, subjective and liable to do the applicant a serious injustice, and would exclude only 1.6% of existing cases. It recommended instead that the Court be empowered to declare an application inadmissible if it is satisfied that the application has been duly examined by a domestic tribunal in accordance with the provisions of the Convention and the protocols thereto, thereby encouraging member states to incorporate the Convention and its protocols into their domestic legislation.

Principality of Monaco

Opinion No. 250 (2004) on the Principality of Monaco's application for membership of the Council of Europe – 27 April 2004

The Principality of Monaco applied for membership of the Council of Europe on 15 October 1998. The Assembly welcomed the major constitutional and legislative changes implemented by Monaco in response to the expertise carried out to assess the conformity of the legal structure in Monaco with Council of Europe fundamental principles. The most significant changes include enlarged powers of the National Council, reform of the electoral law and a new treaty on friendship and cooperation with France replacing that of 1918.

Two issues in particular remain unanswered, however. Firstly, the Franco-Monégasque Convention of 1930 stipulates that senior Monégasque government and civil service posts are reserved for French public servants on secondment, running counter to the principle of non-discrimination. Secondly, the Monégasque authorities must reform their tax policy in order to be taken off the OECD's list of uncooperative tax havens.

The Assembly finally recommended that the Committee of Ministers invite Monaco to become a member of the Council of Europe once these remaining issues have been dealt with.

Election observation missions

Georgia

Parliamentary election demonstrates continued progress

The International Election Observation Mission (IEOM) said that the 28 March Parliamentary election in Georgia demonstrated commendable progress, but that the continued intimidation and physical abuse against opposition supporters and journalists in Adjara, cast a shadow over the overall progress.

Efforts were made to improve the voters lists, but the continuing lack of a clear separation between state administration and political party structures, as well as the inability to ensure balanced composition of election commissions at all levels, should be addressed by the authorities.

Election day was calm and peaceful. The election administration operated with overall efficiency. In Adjara, apparently there were less systematic irregularities, although isolated incidents have been reported. Once again, voter irregularities were particularly noticeable in Marneuli, Gardabani and Tkibuli, where observers reported cases of multiple voting and ballot stuffing, as well as suspiciously high turn out figures.

Exhibition on the protection of natural water ressources in Bulgaria, Parliamentary Assembly Session June 2004

Russia

Well administered but not a genuinely democratic contest

The IEOM reported that the Russian Presidential Election on 14 March was generally well administered and reflected the consistently high public approval rating of the incumbent president but lacked elements of a genuine democratic contest. The lack of meaningful debate and genuine pluralism and bias in the state-controlled media marred this election.

Voter turnout was encouraged, but instances of misuse of official positions and even cases of intimidation, were a regrettable aspect to an otherwise commendable effort.

Statements of the Assembly President

Monaco

"The way for Monaco's accession as the 46th member state of the Council of Europe is open. I have received letters from both the Minister of State of Monaco and the Permanent Representative of France to the Council of Europe informing me that the negotiations for a new Convention to replace the 1930 instrument have been concluded. In particular, agreement was reached on the principle that Monegasque citizens may have access to all public-sector posts in their country," Assembly President Peter Schieder announced on 24 June 2004.

"This means that we expect the conditional green light for accession given by The Assembly at this year's April session to be turned into a final green light by the Joint Committee. It will then be up to the Committee of Ministers to formally invite Monaco to join the Council of Europe and to fix the date of accession," he said.

Release of former parliamentarians in Turkey

Assembly President Peter Schieder welcomed the release in Turkey of former parliamentarians Leyla Zana, Selim Sadak, Hatip Dicle and Orhan Dogan on 9 June 2004.

"Our Parliamentary Assembly has been pressing for this to happen for years. As recently as April, I expressed my dismay at the confirmation of the conviction by the Ankara State Security Court. I stressed that it damaged the overall image we had of Turkey and I called on the Turkish authorities to do everything in their power to set them free, pending the examination of their appeal by the Supreme Court."

"With yesterday's release Turkey has lived up to our expectations and to the image we have of the country, particularly with regard to the huge reform packages it has implemented," Peter Schieder said.

Torture

On 15 May 2004, Assembly President Peter Schieder condemned torture against the background of reports of abuse of prisoners by American and British troops in Iraq.

"The governments of the United States and the United Kingdom are responsible under international law for the well-being of prisoners in their custody. Cases tantamount to torture as reported by the International Committee of the Red Cross and others constitute a flagrant violation of the Geneva Convention. Moreover, the United Kingdom as a Council of Europe member state must at all times be in accordance with the fundamental human rights enshrined in the European Convention on Human Rights and particularly Article 3. Action to bring to justice those

responsible is the duty of a democratic society," Peter Schieder said.

"In the past fifty years, Europe has made a quantum leap forward in standards of civilised behaviour. The goal of abolishing the death penalty and torture are its hallmarks. But insecurity, particularly that generated by the threat of terrorist attacks, is an ideal breeding ground for populists and populist measures. I have been shocked by their calls to rationalise or even legitimise the use of torture," he said, referring to moves to do so by the Lega Nord Party in Italy and by Michael Wolffsohn, Professor at the German Army University in Munich.

"How can we expect to be coherent, consistent and effective in our joint efforts to promote democracy and human rights, to build a tolerant and peaceful society, in the Balkans, in the Caucasus, or anywhere else in the world, if the fundamental values of our own societies are not respected?" Peter Schieder concluded.

Prisoners in Azerbaijan

On 14 May 2004, Assembly President Peter Schieder wrote to Azerbaijan President Ilham Aliyev welcoming the decision to pardon 363 prisoners, some of whom are considered as political prisoners by the Assembly.

"As with the previous amnesty decrees, this is a step in the right direction, and brings Azerbaijan closer to fulfilling a key commitment it made on joining the Council of Europe three years ago," wrote Mr Schieder. "The Assembly has stressed many times that there can be no political prisoners in a Council of Europe member state."

"I am grateful to you that the amnesty includes seven of the eleven political prisoners on the list that I gave you when we met in Strasbourg two weeks ago. Your action is clear confirmation of your statement to the Assembly that you are personally committed to 'closing the chapter' on the question of political prisoners. I trust that this commitment will soon be fully realised," the President wrote.

Death sentences in Libya

On 6 May 2004, Assembly President Peter Schieder said that he was devastated at the news from Tripoli that a court of law had sentenced to death a number of international medics – five of whom are Bulgarians and therefore nationals of a Council of Europe member state.

"I hope that an appeal will be made and that the court ruling will be reversed. I do hope that goodwill will prevail in Tripoli, which has just reopened its dialogue with Europe," he said.

"Throughout Europe, capital punishment has long been abolished or no longer used, and we would expect Libya to subscribe to this fundamental value," he said.

Members of an international medical team based in Benghazi have been in a Libyan jail for over five years now, and were charged with deliberately infecting more than four hundred Libyan children with HIV.

Assassination of Abdel Aziz al-Rantissi

Assembly President Peter Schieder made the following statement on 16 April 2004:

"Once again, the Government of Israel has shown its contempt for the rule of law by carrying out the extra-judicial killing of an alleged terrorist in the territories it has occupied since 1967. I condemn the assassination of Hamas leader Abdel Aziz al-Rantissi. This is not self-defence but an invitation to further violence, which cannot be in Israel's interest.

"I appeal to the Israeli Knesset, which enjoys observer status with the Parliamentary Assembly of the Council of Europe, to do everything in its power to ensure that the principles of human rights, democracy and the rule of law, which are the hallmarks of civilised society in general and of the Council of Europe in particular, are observed by the Israeli Government in its relations with the Palestinians."

Murder of Hamas leader

"I condemn the missile-targeted murder by Israel this morning of Hamas leader Sheikh Ahmed Yassin," said Assembly President Peter Schieder on 22 March 2004. "Whatever the alleged crimes committed by Sheikh Yassin, the state of Israel has taken upon itself to act as an executioner in occupied territory under its protection. This is not the rule of law, nor is it human rights. It also violates our ban on the death penalty, which must be observed and applied by all states whose parliaments enjoy observer status in the Parliamentary Assembly of the Council of Europe. Making a martyr out of the spiritual leader of Hamas is not going to help the cause of peace in the Middle East," said President Schieder.

The Israeli Knesset has enjoyed observer status with the Assembly of the Council of Europe since 1957.

"Racism and intolerance are the quislings of terror"

"Seven days after the tragedy of Atocha, El Pozo and Santa Eugenia, the images of horror provoked by terrorist bombs are still on everyone's mind. 11 March – and the more than two hundred victims savagely murdered on that day – will be forever engraved in the collective memory of Europe and the world. (…) The message we should draw from the tragedy of Madrid is that in the face of such horror our anger is human, normal and justified. I say anger, not hate. Anger can make us stronger, hate only weakens us. Anger may help us to win, but if we succumb to hate, we have already lost," Peter Schieder said on 18 March 2004, speaking in Strasbourg at a conference marking the tenth anniversary of ECRI.

"The greater the degree of prejudice in our societies, the greater the chance that the reaction to an act of terrorism will be inappropriate, misdirected and wrong. Racism and intolerance are the quislings of terror. This is why the work of the European Commission against Racism and Intolerance (ECRI) is so important," he said.

Peter Schieder, speaking ahead of the International Day for the Elimination of Racial Discrimination on 21 March, concluded by congratulating ECRI on its important work. "ECRI holds up a mirror to ourselves. The image we see is not always the one we would like to see, or would like others to see, but it is the image that most accurately corresponds to who we really are. (..) Let us be honest with ourselves: we are all quick to condemn racism, intolerance, anti-Semitism, xenophobia or islamophobia in general terms, or in far and distant parts of the world, but when it comes to the situation in our own countries, we often lack the courage or the will to be totally honest and genuinely critical".

Continued ethnic violence

Peter Scheider made the following statement on 18 March 2004:

"The outbreak of violence in Kosovo, and its heavy human toll, has already been unanimously condemned by the international community. KFOR is sending additional troops to the province to prevent any further clashes and bloodshed. Meanwhile, in Belgrade, Nis and other cities across Serbia, protests provoked by the outbreak of violence, in some cases degenerated into a disgraceful display of ethnic hatred and vandalism. Two mosques have been burned, and a number of policemen and journalists have been brutally assaulted. While concern for the security of the Serbian population in Kosovo is justified, and shared by the international community as a whole, the events of last night have only aggravated the situation of the victims of ethnic violence in Kosovo.

Again, I call on Serbian and Kosovo Albanian leaders to unconditionally condemn and do all in their power to stop all acts of violence, including those committed by members of their own ethnic group."

UN Resolution on sexual orientation and human rights

"The UN Commission on Human Rights, meeting in Geneva from 15 March to 23 April, is due to consider a resolution put forward by Brazil on sexual orientation and human rights. The resolution is of great importance as it would be the first general statement opposing discrimination based on sexual orientation at the global level," Peter Schieder stressed in an open letter published on 16 March 2004.

"I call upon the member states of the Council of Europe who are members of the Commission to vote in favour of the resolution. I also invite the governments of all of our member sates to support the resolution without reservation at any stage of the discussion, since it is the only way to honour the commitment that derives from being part of the Council of Europe itself and to respect our shared fundamental principles. I finally call upon the UN Commission on Human Rights to support the resolution. There can be no justice, freedom or democracy if the international community is not able to defend and respect the human dignity of every individual, without differences on the grounds of sexual orientation or gender identity," he said.

Guest speakers

Kjell Magne Bondevik

"To fight terrorism more effectively we need to know its root causes," declared Kjell Magne Bondevik, Prime Minister of Norway, on 23 June 2004 in his speech before the Assembly. "Hatred is often the result of fear, which comes from ignorance, frustration and insecure identity. Extremists often try to spread the message of hate in the name of God. Yet nothing is further from true faith than hatred. On the contrary, those who have a strong faith, are often better able understand and respect the beliefs of others. This is tolerance," he said.

Robert Kocharian

"Armenia perceives its future in full scale integration with the European family," said Robert Kocharian, President of Armenia, in his speech before the Assembly on 23 June 2004. "A few days ago the European Union decided to include Armenia in its 'new neighbourhood' initiative. This will further advance our resolve to satisfy the European criteria, to be able to contribute and fully benefit from the co-operation between our states and nations. We walk this road with deep belief and confidence and we appreciate your efforts to help us in that uneasy but crucial effort."

Ilham Aliyev

Addressing the Council of Europe's Parliamentary Assembly on 29 April 2004, the President of Azerbaijan, Ilham Aliyev, reaffirmed his country's strong commitment to European values and to putting them into practice. "This is the reason why Azerbaijan joined the Council of Europe three years ago," he said.

President Aliyev described his country's efforts to establish a diversified and stable market economy which does

not neglect social needs, and stressed the necessity of not dissociating economy from the essential development and consolidation of a true, transparent, pluralist democracy.

Referring to the Nagorno-Karabakh conflict, President Aliyev pointed out that Azerbaijan, which, in his words, has been under occupation for ten years, respects the territorial integrity of all countries. "The same should be applied to Azerbaijan," he said, adding that concrete confidence-building measures can contribute to progressive developments towards a solution to the conflict based on the norms of international law.

Harri Holkeri

Harri Holkeri, Special Representative of the Secretary General of the United Nations in Kosovo, called for Kosovo's leaders to isolate extremists and work for dialogue with all communities in his speech before the Parliamentary Assembly on 29 April 2004.

He told the Assembly that self-government was vital and called on the Kosovo Albanians to talk to the Serbs and for the Serbs to rejoin and participate in all institutions.

"The international community must support Kosovo economically and socially," said Mr Holkeri, stressing the need to rebuild cultural heritage as a road to reconciliation.

Jan Peter Balkenende

"Diversity forms the essence of European civilisation. But if Europe does not resolutely protect its shared canon of values, it will put the essence of its civilisation at risk, stressed the Prime Minister of the Netherlands, speaking to the Parliamentary Assembly on the subject of changing European values and the need to find new standards," said Jan Peter Balkenende before the Parliamentary Assembly on 28 April 2004.

He went on to say that "Our challenge is not only to protect the values we have set out together but also to keep them alive in a time of tremendous movement and change. The day we stop living those values is the day Europe's heart stops beating," he said.

"Peace is more than the absence of war and violence. It is also a peaceful and prosperous society of people within the European community of values" he concluded.

Ivo Sanader

In his speech before the Assembly on 27 April 2004, Croatian Prime Minister Ivo Sanader stressed his country's European vocation and its commitment to European ideals. With an agreement on EU accession expected in June, the country was pursuing a historic path of European integration and counted on the support and assistance of the Council of Europe, he said. "The Council of Europe should remain a vigilant fortress of its values for all Europe. Democracy, rule of law, human rights and minority rights are a heritage of our history and a guide to our future," stated Mr Sanader.

For more information on these and other topics, see:

Assembly Internet site: http://assembly.coe.int/

Reform of the European Convention on Human Rights

The number of individual applications to the European Court of Human Rights has skyrocketed in recent years, jeopardising the effectiveness of the European Convention on Human Rights control system. Participants at the Rome European Ministerial Conference on Human Rights (November 2000) gave the problem political recognition and set in motion a reflection process within the Council of Europe to determine the means of guaranteeing the continued effectiveness of the Court. This process has now come full circle.

The Committee of Ministers adopted Protocol No. 14 to the European Convention on Human Rights, along with its Explanatory Report and a number of other related texts at its 114th Session on 12 May 2004. All of these texts are reproduced below. The Protocol was signed by 17 member states on 13 May 2004.

Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention

Preamble

The member States of the Council of Europe, signatories to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Having regard to Resolution No. 1 and the Declaration adopted at the European Ministerial Conference on Human Rights, held in Rome on 3 and 4 November 2000;

Having regard to the Declarations adopted by the Committee of Ministers on 8 November 2001, 7 November 2002 and 15 May 2003, at their 109th, 111th and 112th Sessions, respectively;

Having regard to Opinion No. 251 (2004) adopted by the Parliamentary Assembly of the Council of Europe on 28 April 2004;

Considering the urgent need to amend certain provisions of the Convention in order to maintain and improve the efficiency of the control system for the long term, mainly in the light of the continuing increase in the workload of the European Court of Human Rights and the Committee of Ministers of the Council of Europe;

Considering, in particular, the need to ensure that the Court can continue to play its pre-eminent role in protecting human rights in Europe,

Have agreed as follows:

Article 1

Paragraph 2 of Article 22 of the Convention shall be deleted.

Article 2

Article 23 of the Convention shall be amended to read as follows:

"**Article 23 – Terms of office and dismissal**

1. The judges shall be elected for a period of nine years. They may not be re-elected.
2. The terms of office of judges shall expire when they reach the age of 70.
3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.
4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions."

Article 3

Article 24 of the Convention shall be deleted.

Article 4

Article 25 of the Convention shall become Article 24 and its text shall be amended to read as follows:

"**Article 24 – Registry and rapporteurs**

1. The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court.
2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function

under the authority of the President of the Court. They shall form part of the Court's registry."

Article 5

Article 26 of the Convention shall become Article 25 ("Plenary Court") and its text shall be amended as follows:

1. At the end of paragraph d, the comma shall be replaced by a semi-colon and the word "and" shall be deleted.
2. At the end of paragraph e, the full stop shall be replaced by a semi-colon.
3. A new paragraph f shall be added which shall read as follows:

"f. make any request under Article 26, paragraph 2."

Article 6

Article 27 of the Convention shall become Article 26 and its text shall be amended to read as follows:

"Article 26 – Single-judge formation, committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.
3. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.
4. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.
5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned."

Article 7

After the new Article 26, a new Article 27 shall be inserted into the Convention, which shall read as follows:

"Article 27 – Competence of single judges

1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.
2. The decision shall be final.
3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination."

Article 8

Article 28 of the Convention shall be amended to read as follows:

"Article 28 – Competence of committees

1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,

a. declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or

b. declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

2. Decisions and judgments under paragraph 1 shall be final.
3. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.b."

Article 9

Article 29 of the Convention shall be amended as follows:

1. Paragraph 1 shall be amended to read as follows: "If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately."
2. At the end of paragraph 2 a new sentence shall be added which shall read as follows: "The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise."
3. Paragraph 3 shall be deleted.

Article 10

Article 31 of the Convention shall be amended as follows:

1. At the end of paragraph a, the word "and" shall be deleted.
2. Paragraph b shall become paragraph c and a new paragraph b shall be inserted and shall read as follows:

"b. decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and".

Article 11

Article 32 of the Convention shall be amended as follows:

At the end of paragraph 1, a comma and the number 46 shall be inserted after the number 34.

Article 12

Paragraph 3 of Article 35 of the Convention shall be amended to read as follows:

"3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

a. the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

b. the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

Article 13

A new paragraph 3 shall be added at the end of Article 36 of the Convention, which shall read as follows:

"3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings."

Article 14

Article 38 of the Convention shall be amended to read as follows:

"Article 38 – Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

Article 15

Article 39 of the Convention shall be amended to read as follows:

"Article 39 – Friendly settlements

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.
2. Proceedings conducted under paragraph 1 shall be confidential.
3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.
4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision."

Article 16

Article 46 of the Convention shall be amended to read as follows:

"Article 46 – Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the 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. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case."

Article 17

Article 59 of the Convention shall be amended as follows:

1. A new paragraph 2 shall be inserted which shall read as follows:

"2. The European Union may accede to this Convention."

2. Paragraphs 2, 3 and 4 shall become paragraphs 3, 4 and 5 respectively.

Final and transitional provisions

Article 18

1. This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by

a. signature without reservation as to ratification, acceptance or approval; or

b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 19

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 18.

Article 20

1. From the date of the entry into force of this Protocol, its provisions shall apply to all applications pending before the Court as well as to all judgments whose execution is under supervision by the Committee of Ministers.

2. The new admissibility criterion inserted by Article 12 of this Protocol in Article 35, paragraph 3.b of the Convention, shall not apply to applications declared admissible before the entry into force of the Protocol. In the two years following the entry into force of this Protocol, the new admissibility criterion may only be applied by Chambers and the Grand Chamber of the Court.

Article 21

The term of office of judges serving their first term of office on the date of entry into force of this Protocol shall be extended *ipso jure* so as to amount to a total period of nine years. The other judges shall complete their term of office, which shall be extended *ipso jure* by two years.

Article 22

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

a. any signature;

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

c. the date of entry into force of this Protocol in accordance with Article 19; and

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

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

Done at Strasbourg, this 13th day of May 2004, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Explanatory Report – Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention

Introduction

1. Since its adoption in 1950, the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") has been amended and supplemented several times: the High Contracting Parties have used amending or additional protocols to adapt it to changing needs and to developments in European society. In particular, the control mechanism established by the Convention was radically reformed in 1994 with the adoption of Protocol No. 11 which entered into force on 1 November 1998.

2. Ten years later, at a time when nearly all of Europe's countries have become party to the Convention,[1] the urgent need has arisen to adjust this mechanism, and particularly to guarantee the long-term effectiveness of the European Court of Human Rights (hereinafter referred to as "the Court"), so that it can continue to play its pre-eminent role in protecting human rights in Europe.

I. Need to increase the effectiveness of the control system established by the Convention

Protocol No. 11

3. Protocol No. 11 substituted a full-time single Court for the old system established by the 1950 Convention, namely, a Commission, a Court and the Committee of Ministers which played a certain "judicial" role.

4. Protocol No. 11, which was opened for signature on 11 May 1994 and came into force on 1 November 1998, was intended, firstly, to simplify the system so as to reduce the length of proceedings, and, secondly, to reinforce their judicial character. This protocol made the system entirely judicial (abolition of the Committee of Ministers' quasi-judicial role, deletion of the optional clauses concerning the right of individual application and the compulsory jurisdiction of the Court) and created a single full-time Court.

5. In this way Protocol No. 11 contributed to enhancing the effectiveness of the system, notably by improving the accessibility and visibility of the Court and by simplifying the procedure in order to cope with the influx of applications generated by the constant increase in the number of states.

Whereas the Commission and Court had given a total of 38 389 decisions and judgments in the forty-four years up to 1998 (the year in which Protocol No. 11 took effect), the single Court has given 61 633 in five years.[2] None the less, the reformed system, which originated in proposals first made in the 1980s, proved inadequate to cope with the new situation. Indeed, since 1990, there has been a considerable and continuous rise in the number of individual applications as a result, amongst other things, of the enlargement of the Council of Europe. Thus the number of applications increased from 5 279 in 1990 to 10 335 in 1994 (+96%), 18 164 in 1998 (+76%) and 34 546 in 2002 (+90%). Whilst streamlining measures taken by the Court enabled no less than 1 500 applications to be disposed of per month in 2003, this remains far below the nearly 2 300 applications allocated to a decision body every month.

6. This increase is due not only to the accession of new States Parties (between the opening of Protocol No. 11 for signature in May 1994 and the adoption of Protocol No. 14, thirteen new States Parties ratified the Convention, extending the protection of its provisions to over 240 million additional individuals) and to the rapidity of the enlargement process, but also to a general increase in the number of applications brought against states which were party to the Convention in 1993. In 2004, the Convention system was open to no fewer than 800 million people. As a result of the massive influx of individual applications, the effectiveness of the system, and thus the credibility and authority of the Court, were seriously endangered.

The problem of the Court's excessive caseload

7. It is generally recognised that the Court's excessive caseload (during 2003, some 39 000 new applications were lodged and at the end of that year, approximately 65 000 applications were pending before it) manifests itself in two areas in particular: i. processing the very numerous individual applications which are terminated without a ruling on the merits, usually because they are declared inadmissible (more than 90% of all applications), and ii. processing individual applications which derive from the same structural cause as an earlier application which has led to a judgment finding a breach of the Convention (repetitive cases following a so-called "pilot judgment"). A few figures will illustrate this. In 2003, there were some 17 270 applications declared inadmissible (or struck out of the list of cases), and 753 applications declared admissible. Thus, the great majority of cases are terminated by inadmissibility or strike-out decisions (96% of cases disposed of in 2003). In the remaining cases, the Court gave 703 judgments in 2003, and some 60% of these concerned repetitive cases.

8. Such an increase in the caseload has an impact both on the registry and on the work of the judges and is leading to a rapid accumulation of pending cases not only before committees (see paragraph 5 *in fine* above) but also before Chambers. In fact, as is the case with committees, the output of Chambers is far from being sufficient to keep pace with the influx of cases brought before them. A mere 8% of all cases terminated by the Court in 2003 were Chamber cases. This stands in stark contrast with the fact that no less than 20% of all new cases assigned to a decision-making body in the same year were assigned to a Chamber. This difference between input and output has led to the situation that, in 2003, 40% of all cases pending before a decision-making body were cases before a Chamber. In absolute terms, this accumulation of cases pending before a Chamber is reflected by the fact that, on 1 January 2004, approximately 16 500 cases were pending before Chambers. It is clear that the considerable amount of time spent on filtering work has a negative effect on the capacity of judges and the registry to process Chamber cases.

9. The prospect of a continuing increase in the workload of the Court and the Committee of Ministers (supervising execution of judgments) in the next few years is such that a set of concrete and coherent measures – including reform of the control system itself – was considered necessary to preserve the system in the future.

10. At the same time – and this was one of the major challenges in preparing the present protocol – it was vital that reform should in no way affect what are rightly considered the principal and unique features of the Convention system. These are the judicial character of European supervision, and the principle that any person claiming to be the victim of a breach of the rights and freedoms protected by the Convention may refer the matter to the Court (right of individual application).

11. Indeed, the Convention's control system is unique: the Parties agree to subject themselves to international judicial supervision of their obligation to secure to everyone within their jurisdiction the rights and freedoms set out in the Convention. This control is exercised by the Court, which gives judgments on individual applications brought under Article 34 of the Convention and on state applications – which are extremely rare[3] – brought under Article 33. The Court's judgments are binding on respondent Parties and their execution is supervised by the Committee of Ministers of the Council of Europe.

12. The principle of subsidiarity underlies all the measures taken to increase the effectiveness of the Convention's control system. Under Article 1 of the Convention, it is with the High Contracting Parties that the obligation lies "to secure to everyone within their jurisdiction the rights and freedoms" guaranteed by the Convention, whereas the role of the Court, under Article 19, is "to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention". In other words, securing rights and freedoms is primarily the responsibility of the Parties; the Court's role is subsidiary.

13. Forecasts from the current figures by the registry show that the Court's caseload would continue to rise sharply if no action were taken. Moreover, the estimates are conservative ones. Indeed, the cumulative effects of greater awareness of the Convention in particular in new States Parties, and of the entry into force of Protocol No. 12, the ratification of other additional protocols by states which are not party to them, the Court's evolving and extensive interpretation of rights guaranteed by the Convention and the

prospect of the European Union's accession to the Convention, suggest that the annual number of applications to the Court could in the future far exceed the figure for 2003.

14. Measures required to ensure the long-term effectiveness of the control system established by the Convention in the broad sense are not restricted to Protocol No. 14. Measures must also be taken to prevent violations at national level and improve domestic remedies, and also to enhance and expedite execution of the Court's judgments.[4] Only a comprehensive set of interdependent measures tackling the problem from different angles will make it possible to overcome the Court's present overload.

Measures to be taken at national level

15. In accordance with the principle of subsidiarity, the rights and freedoms enshrined in the Convention must be protected first and foremost at national level. Indeed this is where such protection is most effective. The responsibility of national authorities in this area must be reaffirmed and the capacity of national legal systems to prevent and redress violations must be reinforced. States have a duty to monitor the conformity of their legislation and administrative practice with the requirements of the Convention and the Court's case-law. In order to achieve this, they may have the assistance of outside bodies. If fully applied, these measures will relieve the pressure on the Court in several ways: they should not only help to reduce the number of well-founded individual applications by ensuring that national laws are compatible with the Convention, or by making findings of violations or remedying them at national level, they will also alleviate the Court's work in that well-reasoned judgments already given on cases at national level make adjudication by the Court easier. It goes without saying, however, that these effects will be felt only in the medium term.

Measures to be taken concerning execution of judgments

16. Execution of the Court's judgments is an integral part of the Convention system. The measures that follow are designed to improve and accelerate the execution process. The Court's authority and the system's credibility both depend to a large extent on the effectiveness of this process. Rapid and adequate execution has, of course, an effect on the influx of new cases: the more rapidly general measures are taken by States Parties to execute judgments which point to a structural problem, the fewer repetitive applications there will be. In this regard, it would be desirable for states, over and above their obligations under Article 46, paragraph 1, of the Convention, to give retroactive effect to such measures and remedies. Several measures advocated in the above-mentioned recommendations and resolutions (see footnote 4) pursue this aim. In addition, it would be useful if the Court and, as regards the supervision of the execution of judgments, the Committee of Ministers, adopted a special procedure so as to give priority treatment to judgments that identify a structural problem capable of generating a significant number of repetitive applications, with a view to securing speedy execution of the judgment. The most important Convention amendment in the context of execution of judgments of the Court involves empowering the Committee of Ministers to bring infringement proceedings in the Court against any state which refuses to comply with a judgment.

17. The measures referred to in the previous paragraph are also designed to increase the effectiveness of the Convention system as a whole. While the supervision of the execution of judgments generally functions satisfactorily, the process needs to be improved to maintain the system's effectiveness.

Effectiveness of filtering and of subsequent processing of applications by the Court

18. Filtering and subsequent processing of applications by the Court are the main areas in which Protocol No. 14 makes concrete improvements. These measures are outlined in Chapter III below, and described in greater detail in Chapter IV, which comments on each of the provisions in the protocol.

19. During the preparatory work on Protocol No. 14, there was wide agreement as to the importance of several other issues linked to the functioning of the control system of the Convention which, however, did not require an amendment of the Convention. These are the need to strengthen the registry of the Court to enable it to deal with the influx of cases whilst maintaining the quality of the judgments, the need to encourage more frequent third party interventions by other states in cases pending before the Court which raise important general issues, and, in the area of supervision of execution, the need to strengthen the department for the execution of judgments of the General Secretariat of the Council of Europe and to make optimum use of other existing Council of Europe institutions, mechanisms and activities as a support for promoting rapid execution of judgments.

II. Principal stages in the preparation of Protocol No. 14

20. The European Ministerial Conference on Human Rights, held in Rome in November 2000 to mark the 50th anniversary of the signing of the Convention, found that "the effectiveness of the Convention system […] is now at issue" because of "the difficulties that the Court has encountered in dealing with the ever-increasing volume of applications" (Resolution I on *institutional and functional arrangements for the protection of human rights at national and European level*).[5] It accordingly called on the Committee of Ministers to "initiate, as soon as possible, a thorough study of the different possibilities and options with a view to ensuring the effectiveness of the Court in the light of this new situation".[6] The conference also thought it "indispensable, having regard to the ever-increasing number of applications, that urgent measures be taken to assist the Court in carrying out its functions and that an in-depth reflection be started as soon as possible on the

various possibilities and options with a view to ensuring the effectiveness of the Court in the light of this new situation".[7]

21. As a follow-up to the ministerial conference, the Ministers' Deputies set up, in February 2001, an Evaluation group to consider ways of guaranteeing the effectiveness of the Court. The group submitted its report to the Committee of Ministers on 27 September 2001.[8]

22. Concurrently, the Steering Committee for Human Rights (CDDH) set up its own Reflection Group on the Reinforcement of the Human Rights Protection Mechanism. Its activity report was sent to the Evaluation group in June 2001, so that the latter could take it into account in its work.[9]

23. To give effect to the conclusions of the Evaluation group's report, the Committee of Ministers agreed in principle to additional budgetary appropriations for the period from 2003 to 2005, to allow the Court to recruit a significant number of extra lawyers, as well as administrative and auxiliary staff. It took similar action to reinforce the Council of Europe Secretariat departments involved in execution of the Court's judgments.

24. The Court also took account of the Evaluation group's conclusions and those of its Working party on working methods.[10] On this basis it adopted a number of measures concerning its own working methods and those of the registry. It also amended its Rules of Court in October 2002 and again in November 2003.

25. At its 109th session (8 November 2001) the Committee of Ministers adopted its declaration on "*The protection of Human Rights in Europe - Guaranteeing the long-term effectiveness of the European Court of Human Rights*".[11] In this text it welcomed the Evaluation group's report and, with a view to giving it effect, instructed the CDDH to:

– carry out a feasibility study on the most appropriate way to conduct the preliminary examination of applications, particularly by reinforcing the filtering of applications;
– examine and, if appropriate, submit proposals for amendments to the Convention, notably on the basis of the recommendations in the report of the Evaluation group.

26. In the light of the work done, particularly by its Reflection Group on the Reinforcement of the Human Rights Protection Mechanism (CDDH-GDR) and its Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR), the CDDH reported on progress in these two areas in an interim report, adopted in October 2002 (document CM (2002) 146). It focused on three main issues: preventing violations at national level and improving domestic remedies, optimising the effectiveness of filtering and subsequent processing of applications, and improving and accelerating the execution of the Court's judgments.

27. In the light of this interim report, and following the declaration, "*The Court of Human Rights for Europe*", which it adopted at its 111th session (6-7 November 2002),[12] the Committee of Ministers decided that it wished to examine a set of concrete and coherent proposals at its ministerial session in May 2003. In April 2003, the CDDH accordingly submitted a final report, detailing its proposals in these three areas (document CM (2003) 55). These served as a basis for preparation of the Committee of Ministers' recommendations to the member states and for the amendments made to the Convention.

28. In its declaration, "*Guaranteeing the long-term effectiveness of the European Court of Human Rights*", adopted at its 112th session (14-15 May 2003), the Committee of Ministers welcomed this report and endorsed the CDDH's approach. It instructed the Ministers' Deputies to implement the CDDH's proposals, so that it could examine texts for adoption at its 114th session in 2004, taking account of certain issues referred to in the declaration. It also asked them to take account of other questions raised in the report, such as the possible accession of the European Union to the Convention, the term of office of judges of the Court, and the need to ensure that future amendments to the Convention were given effect as rapidly as possible.

29. The CDDH was accordingly instructed to prepare, with a view to their adoption by the Committee of Ministers, not only a draft amending protocol to the Convention with an explanatory report, but also a draft declaration, three draft recommendations and a draft resolution. Work on the elaboration of Protocol No. 14 and its explanatory report was carried out within the CDDH-GDR (renamed Drafting Group on the Reinforcement of the Human Rights Protection Mechanism),while work concerning the other texts was undertaken by the DH-PR.

30. The Committee of Ministers also encouraged the CDDH to consult civil society, the Court and the Parliamentary Assembly. With this in view, the CDDH carefully examined the opinions and proposals submitted by the Parliamentary Assembly's Committee on Legal Affairs and Human Rights, the Court, the Council of Europe Commissioner for Human Rights and certain member states, as well as non-governmental organisations (NGOs) and national institutions for the promotion and protection of human rights. The CDDH-GDR and CDDH have benefited greatly from the contributions of representatives of the Parliamentary Assembly, the Court's registry and the Commissioner's office, who played an active part in its work. The reports and draft texts adopted by the CDDH and the CDDH-GDR were public documents available on the Internet, and copies were sent directly to the Court, Parliamentary Assembly, Commissioner for Human Rights and NGOs. The CDDH-GDR also organised two valuable consultations with NGOs and the CDDH benefited from the contribution of the NGOs accredited to it. The Ministers' Deputies were closely involved throughout the process. Protocol No. 14 is thus the fruit of a collective reflection, carried out in a very transparent manner.

31. After an interim activity report in November 2003 (document CM(2003)165, Addendum I), the CDDH sent the Committee of Ministers its final activity report (document CM(2004)65) in April 2004. This contained the draft amending protocol to the Convention. The Parliamentary Assembly adopted an opinion on the draft protocol (Opinion No. 251 (2004) of 28 April 2004).

32. As well as adopting the amending protocol at the 114th ministerial session, held on 12 and 13 May 2004, the Committee of Ministers adopted the declaration "*Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels*". In that declaration, the member states recognised the urgency of the re-

form, and committed themselves to ratifying Protocol No. 14 within two years.

33. The text of the amending protocol was opened for signature by Council of Europe member states, signatory to the European Convention on Human Rights on 13 May 2004.

III. Overview of the changes made by Protocol No. 14 to the control system of the European Convention on Human Rights

34. During the initial reflection stage on the reform of the Convention's control system, which started immediately after the European Ministerial Conference on Human Rights in 2000, a wide range of possible changes to the system were examined, both in the Evaluation group and the CDDH's Reflection group. Several proposals were retained and are taken up in this protocol. Others, including some proposals for radical change of the control system, were for various reasons rejected during the reflection stage.[13] Some of these should be mentioned here. For example, the idea of setting up, within the framework of the Convention, "regional courts of first instance" was rejected because, on the one hand, of the risk it would create of diverging case-law and, on the other hand, the high cost of setting them up. Proposals to empower the Court to give preliminary rulings at the request of national courts or to expand the Court's competence to give advisory opinions (Articles 47-49 of the Convention) were likewise rejected. Such innovations might interfere with the contentious jurisdiction of the Court and they would, certainly in the short term, result in additional, not less, work for the Court. Two other proposals were rejected because they would have restricted the right of individual application. These were the proposal that the Court should be given discretion to decide whether or not to take up a case for examination (system comparable to the *certiorari* procedure of the United States Supreme Court) and that it should be made compulsory for applicants to be represented by a lawyer or other legal expert from the moment of introduction of the application (see however Rule 36, paragraph 2, of the Rules of Court). It was felt that the principle according to which anyone had the right to apply to the Court should be firmly upheld. The proposal to create a separate filtering body, composed of persons other than the judges of the Court, was also rejected. In this connection, the protocol is based on two fundamental premises: filtering work must be carried out within the judicial framework of the Court and there should not be different categories of judges within the same body. Finally, in the light of Opinion No. 251 (2004) of the Parliamentary Assembly, it was decided not to make provision for permitting an increase of the number of judges without any new amendment to the Convention.

35. Unlike Protocol No. 11, Protocol No. 14 makes no radical changes to the control system established by the Convention. The changes it does make relate more to the functioning than to the structure of the system. Their main purpose is to improve it, giving the Court the procedural means and flexibility it needs to process all applications in a timely fashion, while allowing it to concentrate on the most important cases which require in-depth examination.

36. To achieve this, amendments are introduced in three main areas:

– reinforcement of the Court's filtering capacity in respect of the mass of unmeritorious applications;
– a new admissibility criterion concerning cases in which the applicant has not suffered a significant disadvantage; the new criterion contains two safeguard clauses;
– measures for dealing with repetitive cases.

37. Together, these elements of the reform seek to reduce the time spent by the Court on clearly inadmissible applications and repetitive applications so as to enable the Court to concentrate on those cases that raise important human rights issues.

38. The filtering capacity is increased by making a single judge competent to declare inadmissible or strike out an individual application. This new mechanism retains the judicial character of the decision-making on admissibility. The single judges will be assisted by non-judicial rapporteurs, who will be part of the registry.

39. A new admissibility requirement is inserted in Article 35 of the Convention. The new requirement provides the Court with an additional tool which should assist it in concentrating on cases which warrant an examination on the merits, by empowering it to declare inadmissible applications where the applicant has not suffered a significant disadvantage and which, in terms of respect for human rights, do not otherwise require an examination on the merits by the Court. Furthermore, the new requirement contains an explicit condition to ensure that it does not lead to rejection of cases which have not been duly considered by a domestic tribunal. It should be stressed that the new requirement does not restrict the right of individuals to apply to the Court or alter the principle that all individual applications are examined on their admissibility. While the Court alone is competent to interpret the new admissibility requirement and decide on its application, its terms should ensure that rejection of cases requiring an examination on the merits is avoided. The latter will notably include cases which, notwithstanding their trivial nature, raise serious questions affecting the application or the interpretation of the Convention or important questions concerning national law.

40. The competence of the committees of three judges is extended to cover repetitive cases. They are empowered to rule, in a simplified procedure, not only on the admissibility but also on the merits of an application, if the underlying question in the case is already the subject of well-established case-law of the Court.

41. As for the other changes made by the protocol, it should be noted, first of all, that the Court is given more latitude to rule simultaneously on the admissibility and merits of individual applications. In fact, joint decisions on admissibility and merits of individual cases are not only encouraged but become the norm. However, the Court will be free to choose, on a case by case basis, to take separate decisions on admissibility.

42. Furthermore, the Committee of Ministers may decide, by a two-thirds majority of the representatives entitled to sit on the Committee, to bring proceedings before the Grand Chamber of the Court against any High Contracting Party which refuses to comply with the Court's final judgment in a case to which it is party, after having given it notice to do so. The purpose of such proceedings would be to obtain a ruling from the Court as to whether that Party has failed to fulfil its obligation under Article 46, paragraph 1, of the Convention.

43. The Committee of Ministers will in certain circumstances also be able to request the Court to give an interpretation of a judgment.

44. Friendly settlements are encouraged at any stage of the proceedings. Provision is made for supervision by the Committee of Ministers of the execution of decisions of the Court endorsing the terms of friendly settlements.

45. It should also be noted that judges are now elected for a single nine-year term. Transitional provisions are included to avoid the simultaneous departure of large numbers of judges.

46. Finally, an amendment has been introduced with a view to possible accession of the European Union to the Convention.

47. For all these, as well as the further amendments introduced by the protocol, reference is made to the explanations in Chapter IV below.

IV. Comments on the provisions of the Protocol[14]

Article 1 of the amending protocol

Article 22 – Election of judges

48. The second paragraph of Article 22 has been deleted since it no longer served any useful purpose in view of the changes made to Article 23. Indeed, there will be no more "casual vacancies" in the sense that every judge elected to the Court will be elected for a single term of nine years, including where that judge's predecessor has not completed a full term (see also paragraph 51 below). In other words, the rule contained in the amended Article 22 (which is identical to paragraph 1 of former Article 22) will apply to every situation where there is a need to proceed to the election of a judge.

49. It was decided not to amend the first paragraph of Article 22 to prescribe that the lists of three candidates nominated by the High Contracting Parties should contain candidates of both sexes, since that might have interfered with the primary consideration to be given to the merits of potential candidates. However, Parties should do everything possible to ensure that their lists contain both male and female candidates.

Article 2 of the amending protocol

Article 23 – Terms of office and dismissal

50. The judges' terms of office have been changed and increased to nine years. Judges may not, however, be re-elected. These changes are intended to reinforce their independence and impartiality, as desired notably by the Parliamentary Assembly in its Recommendation 1649 (2004).

51. In order to ensure that the introduction of a non-renewable term of office does not threaten the continuity of the Court, the system whereby large groups of judges were renewed at three-year intervals has been abolished. This has been brought about by the new wording of paragraph 1 and the deletion of paragraphs 2 to 4 of former Article 23. In addition, paragraph 5 of former Article 23 has been deleted so that it will no longer be possible, in the event of a casual vacancy, for a judge to be elected to hold office for the remainder of his or her predecessor's term. In the past this has led to undesirable situations where judges were elected for very short terms of office, a situation perhaps understandable in a system of renewable terms of office, but which is unacceptable in the new system. Under the new Article 23, all judges will be elected for a non-renewable term of nine years. This should make it possible, over time, to obtain a regular renewal of the Court's composition, and may be expected to lead to a situation in which each judge will have a different starting date for his or her term of office.

52. Paragraphs 6 and 7 of the former Article 23 remain, and become paragraphs 2 and 3 of the new Article 23.

53. In respect of paragraph 2 (the age limit of 70 years), it was decided not to fix an additional age limit for candidates. Paragraphs 1 and 2, read together, may not be understood as excluding candidates who, on the date of election, would be older than 61. That would be tantamount to unnecessarily depriving the Court of the possibility of benefiting from experienced persons, if elected. At the same time, it is generally recommended that High Contracting Parties avoid proposing candidates who, in view of their age, would not be able to hold office for at least half the nine-year term before reaching the age of 70.

54. In cases where the departure of a judge can be foreseen, in particular for reasons of age, it is understood that the High Contracting Party concerned should ensure that the list of three candidates (see Article 22) is submitted in good time so as to avoid the need for application of paragraph 3 of the new Article 23. As a rule, the list should be submitted at least six months before the expiry of the term of office. This practice should make it possible to meet the concerns expressed by the Parliamentary Assembly in its Recommendation 1649 (2004), paragraph 14.

55. Transitional provisions are set out in Article 21 of the protocol.

56. For technical reasons (to avoid renumbering a large number of Convention provisions as a result of the insertion of a new Article 27), the text of former Article 24 (Dismissal) has been inserted in Article 23 as a new fourth paragraph. The title of Article 23 has been amended accordingly.

Article 3 of the amending protocol

57. For the reason set out in the preceding paragraph, former Article 24 has been deleted; the provision it contained has been inserted in a new paragraph 4 of Article 23.

Article 4 of the amending protocol

Article 24 – Registry and rapporteurs

58. Former Article 25 has been renumbered as Article 24; it is amended in two respects. First of all, the second sentence of former Article 25 has been deleted since the legal secretaries, created by Protocol No. 11, have in practice never had an existence of their own, independent from the registry, as is the case at the Court of Justice of the European Communities. Secondly, a new paragraph 2 is added so as to introduce the function of rapporteur as a means of assisting the new single-judge formation provided for in the new Article 27. While it is not strictly necessary from a legal point of view to mention rapporteurs in the Convention text, it was none the less considered important to do so because of the novelty of rapporteur work being carried out by persons other than judges and because it will be indispensable to create these rapporteur functions in order to achieve the significant potential increase in filtering capacity which the institution of single-judge formations aims at. The members of the registry exercising rapporteur functions will assist the new single-judge formations. In principle, the single judge should be assisted by a rapporteur with knowledge of the language and the legal system of the respondent Party. The function of rapporteur will never be carried out by a judge in this context.

59. It will be for the Court to implement the new paragraph 2 by deciding, in particular, the number of rapporteurs needed and the manner and duration of appointment. On this point, it should be stressed that it would be advisable to diversify the recruitment channels for registry lawyers and rapporteurs. Without prejudice to the possibility to entrust existing registry lawyers with the rapporteur function, it would be desirable to reinforce the registry, for fixed periods, with lawyers having an appropriate practical experience in the functioning of their respective domestic legal systems. Since rapporteurs will form part of the Court's registry, the usual appointment procedures and relevant staff regulations will apply. This would make it possible to increase the work capacity of the registry while allowing it to benefit from the domestic experience of these lawyers. Moreover, it is understood that the new function of rapporteur should be conferred on persons with a solid legal experience, expertise in the Convention and its case-law and a very good knowledge of at least one of the two official languages of the Council of Europe and who, like the other staff of the registry, meet the requirements of independence and impartiality.

Article 5 of the amending protocol

Article 25 – Plenary Court

60. A new paragraph f has been added to this article (formerly Article 26) in order to reflect the new function attributed to the plenary Court by this protocol. It is understood that the term "Chambers" appearing in paragraphs b and c refers to administrative entities of the Court (which in practice are referred to as "Sections" of the Court) as opposed to the judicial formations envisaged by the term "Chambers" in new Article 26, paragraph 1, first sentence. It was not considered necessary to amend the Convention in order to clarify this distinction.

Article 6 of the amending protocol

Article 26 – Single-judge formation, committees, Chambers and Grand Chamber

61. The text of Article 26 (formerly Article 27) has been amended in several respects. Firstly, a single-judge formation is introduced in paragraph 1 in the list of judicial formations of the Court and a new rule is inserted in a new paragraph 3 to the effect that a judge shall not sit as a single judge in cases concerning the High Contracting Party in respect of which he or she has been elected. The competence of single judges is defined in the new Article 27. In the latter respect, reference is made to the explanations in paragraph 67 below.

62. Adequate assistance to single judges requires additional resources. The establishment of this system will thus lead to a significant increase in the Court's filtering capacity, on the one hand, on account of the reduction, compared to the old committee practice, of the number of actors involved in the preparation and adoption of decisions (one judge instead of three; the new rapporteurs who could combine the functions of case-lawyer and rapporteur), and, on the other hand, because judges will be relieved of their rapporteur role when sitting in a single-judge formation and, finally, as a result of the multiplication of filtering formations operating simultaneously.

63. Secondly, some flexibility as regards the size of the Court's Chambers has been introduced by a new paragraph 2. Application of this paragraph will reduce, for a fixed period, the size of Chambers generally; it should not allow, however, for the setting up of a system of Chambers of different sizes which would operate simultaneously for different types of cases.

64. Finally, paragraph 2 of former Article 27 has been amended to make provision for a new system of appointment of *ad hoc* judges. Under the new rule, contained in paragraph 4 of the new Article 26, each High Contracting Party is required to draw up a reserve list of *ad hoc* judges from which the President of the Court shall choose someone when the need arises to appoint an *ad hoc* judge. This new system is a response to criticism of the old system, which allowed a High Contracting Party to choose an *ad hoc* judge after the beginning of proceedings. Concerns about this had also been expressed by the Parliamentary Assembly. It is understood that the list of potential *ad hoc* judges may include names of judges elected in respect of other High Contracting Parties. More detailed rules on the implementation of this new system may be included in the Rules of Court.

65. The text of paragraph 5 is virtually identical to that of paragraph 3 of former Article 27.

Article 7 of the amending protocol

Article 27 – Competence of single judges

66. Article 27 contains new provisions defining the competence of the new single-judge formation.

67. The new article sets out the competence of the single-judge formations created by the amended Article 26, paragraph 1. It is specified that the competence of the single judge is limited to taking decisions of inadmissibility or

decisions to strike the case out of the list "where such a decision can be taken without further examination". This means that the judge will take such decisions only in clear-cut cases, where the inadmissibility of the application is manifest from the outset. The latter point is particularly important with regard to the new admissibility criterion introduced in Article 35 (see paragraphs 77 to 85 below), in respect of which the Court's Chambers and Grand Chamber will have to develop case-law first (see, in this connection, the transitional rule contained in Article 20, paragraph 2, second sentence, of this protocol, according to which the application of the new admissibility criterion is reserved to Chambers and the Grand Chamber in the two years following the entry into force of this protocol). Besides, it is recalled that, as was explained in paragraph 58 above, single-judge formations will be assisted by rapporteurs. The decision itself remains the sole responsibility of the judge. In case of doubt as to the admissibility, the judge will refer the application to a committee or a Chamber.

Article 8 of the amending protocol

Article 28 – Competence of committees

68. Paragraphs 1 and 2 of the amended Article 28 extend the powers of three-judge committees. Hitherto, these committees could, unanimously, declare applications inadmissible. Under the new paragraph 1.b of Article 28, they may now also, in a joint decision, declare individual applications admissible and decide on their merits, when the questions they raise concerning the interpretation or application of the Convention are covered by well-established case-law of the Court. "Well-established case-law" normally means case-law which has been consistently applied by a Chamber. Exceptionally, however, it is conceivable that a single judgment on a question of principle may constitute "well-established case-law", particularly when the Grand Chamber has rendered it. This applies, in particular, to repetitive cases, which account for a significant proportion of the Court's judgments (in 2003, approximately 60%). Parties may, of course, contest the "well-established" character of case-law before the committee.

69. The new procedure is both simplified and accelerated, although it preserves the adversarial character of proceedings and the principle of judicial and collegiate decision-making on the merits. Compared to the ordinary adversarial proceedings before a Chamber, it will be a simplified and accelerated procedure in that the Court will simply bring the case (possibly a group of similar cases) to the respondent Party's attention, pointing out that it concerns an issue which is already the subject of well-established case-law. Should the respondent Party agree with the Court's position, the latter will be able to give its judgment very rapidly. The respondent Party may contest the application of Article 28, paragraph 1.b, for example, if it considers that domestic remedies have not been exhausted or that the case at issue differs from the applications which have resulted in the well-established case-law. However, it may never veto the use of this procedure which lies within the committee's sole competence. The committee rules on all aspects of the case (admissibility, merits, just satisfaction) in a single judgment or decision. This procedure requires unanimity on each aspect. Failure to reach a unanimous decision counts as no decision, in which event the Chamber procedure applies (Article 29). It will then fall to the Chamber to decide whether all aspects of the case should be covered in a single judgment. Even when the committee initially intends to apply the procedure provided for in Article 28, paragraph 1.b, it may declare an application inadmissible under Article 28, paragraph 1.a. This may happen, for example, if the respondent Party has persuaded the committee that domestic remedies have not been exhausted.

70. The implementation of the new procedure will increase substantially the Court's decision-making capacity and effectiveness, since many cases can be decided by three judges, instead of the seven currently required when judgments or decisions are given by a Chamber.

71. Even when a three-judge committee gives a judgment on the merits, the judge elected in respect of the High Contracting Party concerned will not be an *ex officio* member of the decision-making body, in contrast with the situation with regard to judgments on the merits under the Convention as it stands. The presence of this judge would not appear necessary, since committees will deal with cases on which well-established case-law exists. However, a committee may invite the judge elected in respect of the High Contracting Party concerned to replace one of its members as, in some cases, the presence of this judge may prove useful. For example, it may be felt that this judge, who is familiar with the legal system of the respondent Party, should join in taking the decision, particularly when such questions as exhaustion of domestic remedies need to be clarified. One of the factors which a committee may consider, in deciding whether to invite the judge elected in respect of the respondent Party to join it, is whether that Party has contested the applicability of paragraph 1.b. The reason why this factor has been explicitly mentioned in paragraph 3 is that it was considered important to have at least some reference in the Convention itself to the possibility for respondent Parties to contest the application of the simplified procedure (see paragraph 69 above). For example, a respondent Party may contest the new procedure on the basis that the case in question differs in some material respect from the established case-law cited. It is likely that the expertise of the "national judge" in domestic law and practice will be relevant to this issue and therefore helpful to the committee. Should this judge be absent or unable to sit, the procedure provided for in the new Article 26, paragraph 4 *in fine* applies.

72. It is for the Court, in its rules, to settle practical questions relating to the composition of three-judge committees and, more generally, to plan its working methods in a way that optimises the new procedure's effectiveness.

Article 9 of the amending protocol

Article 29 – Decisions by Chambers on admissibility and merits

73. Apart from a technical change to take into account the new provisions in Articles 27 and 28, paragraph 1 of the amended Article 29 encourages and establishes the principle of the taking of joint decisions by Chambers on the admissibility and merits of individual applications. This article merely endorses the practice which has already developed within the Court. While separate decisions on

admissibility were previously the norm, joint decisions are now commonly taken on the admissibility and merits of individual applications, which allows the registry and judges to process cases faster whilst respecting fully the principle of adversarial proceedings. However, the Court may always decide that it prefers to take a separate decision on the admissibility of a particular application.

74. This change does not apply to interstate cases. On the contrary, the rule of former Article 29, paragraph 3, has been explicitly maintained in paragraph 2 of Article 29 as regards such applications. Paragraph 3 of former Article 29 has been deleted.

Article 10 of the amending protocol

Article 31 – Powers of the Grand Chamber

75. A new paragraph b has been added to this article in order to reflect the new function attributed to the Grand Chamber by this protocol, namely to decide on issues referred to the Court by the Committee of Ministers under the new Article 46, paragraph 4 (question whether a High Contracting Party has failed to fulfil its obligation to comply with a judgment).

Article 11 of the amending protocol

Article 32 – Jurisdiction of the Court

76. A reference has been inserted to the new procedures provided for in the amended Article 46.

Article 12 of the amending protocol

Article 35 – Admissibility criteria

77. A new admissibility criterion is added to the criteria laid down in Article 35. As explained in paragraph 39 above, the purpose of this amendment is to provide the Court with an additional tool which should assist it in its filtering work and allow it to devote more time to cases which warrant examination on the merits, whether seen from the perspective of the legal interest of the individual applicant or considered from the broader perspective of the law of the Convention and the European public order to which it contributes. The new criterion therefore pursues the same aim as some other key changes introduced by this protocol and is complementary to them.

78. The introduction of this criterion was considered necessary in view of the ever-increasing caseload of the Court. In particular, it is necessary to give the Court some degree of flexibility in addition to that already provided by the existing admissibility criteria, whose interpretation has become established in the case-law that has developed over several decades and is therefore difficult to change. This is so because it is very likely that the numbers of individual applications to the Court will continue to increase, up to a point where the other measures set out in this protocol may well prove insufficient to prevent the Convention system from becoming totally paralysed, unable to fulfil its central mission of providing legal protection of human rights at the European level, rendering the right of individual application illusory in practice.

79. The new criterion may lead to certain cases being declared inadmissible which might have resulted in a judgment without it. Its main effect, however, is likely to be that it will in the longer term enable more rapid disposal of unmeritorious cases. Once the Court's Chambers have developed clear-cut jurisprudential criteria of an objective character capable of straightforward application, the new criterion will be easier for the Court to apply than some other admissibility criteria, including in cases which would at all events have to be declared inadmissible on another ground.

80. The main element contained in the new criterion is the question whether the applicant has suffered a significant disadvantage. These terms are open to interpretation (this is the additional element of flexibility introduced); the same is true of many other terms used in the Convention, including some other admissibility criteria. Like those other terms, they are legal terms capable of, and requiring, interpretation establishing objective criteria through the gradual development of the case-law of the Court.

81. The second element is a safeguard clause to the effect that, even where the applicant has not suffered a significant disadvantage, the application will not be declared inadmissible if respect for human rights as defined in the Convention or the protocols thereto requires an examination on the merits. The wording of this element is drawn from the second sentence of Article 37, paragraph 1, of the Convention where it fulfils a similar function in the context of decisions to strike applications out of the Court's list of cases.

82. A second safeguard clause is added to this first one. It will never be possible for the Court to reject an application on account of its trivial nature if the case has not been duly considered by a domestic tribunal. This clause, which reflects the principle of subsidiarity, ensures that, for the purposes of the application of the new admissibility criterion, every case will receive a judicial examination whether at the national level or at the European level.

83. The wording of the new criterion is thus designed to avoid rejection of cases warranting an examination on the merits. As was explained in paragraph 39 above, the latter will notably include cases which, notwithstanding their trivial nature, raise serious questions affecting the application or interpretation of the Convention or important questions concerning national law.

84. As explained in paragraph 67 above, it will take time for the Court's Chambers or Grand Chamber to establish clear case-law principles for the operation of the new criterion in concrete contexts. It is clear, having regard to the wording of Articles 27 and 28, that single-judge formations and committees will not be able to apply the new criterion in the absence of such guidance. In accordance with Article 20, paragraph 2, second sentence, of this protocol, single-judge formations and committees will be prevented from applying the new criterion during a period of two years following the entry into force of this protocol.

85. In accordance with the transitional rule set out in Article 20, paragraph 2, first sentence, of this protocol (see also paragraph 105 below), the new admissibility criterion may not be applied to applications declared admissible before the entry into force of this protocol.

Article 13 of the amending protocol

Article 36 – Third party intervention

86. This provision originates in an express request from the Council of Europe Commissioner for Human Rights,[15] supported by the Parliamentary Assembly in its 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), adopted on 26 January 2004.

87. It is already possible for the President of the Court, on his or her own initiative or upon request, to invite the Commissioner for Human Rights to intervene in pending cases. With a view to protecting the general interest more effectively, the third paragraph added to Article 36 for the first time mentions the Commissioner for Human Rights in the Convention text by formally providing that the Commissioner has the right to intervene as third party. The Commissioner's experience may help enlighten the Court on certain questions, particularly in cases which highlight structural or systemic weaknesses in the respondent or other High Contracting Parties.

88. Under the Rules of Court, the Court is required to communicate decisions declaring applications admissible to any High Contracting Party of which an applicant is a national. This rule cannot be applied to the Commissioner, since sending him or her all such decisions would entail an excessive amount of extra work for the registry. The Commissioner must therefore seek this information him- or herself. The rules on exercising this right of intervention, and particularly time limits, would not necessarily be the same for High Contracting Parties and the Commissioner. The Rules of Court will regulate practical details concerning the application of paragraph 3 of Article 36.

89. It was not considered necessary to amend Article 36 in other respects. In particular, it was decided not to provide for a possibility of third party intervention in the new committee procedure under the new Article 28, paragraph 1.b, given the straightforward nature of cases to be decided under that procedure.

Article 14 of the amending protocol

Article 38 – Examination of the case

90. Article 38 incorporates the provisions of paragraph 1.a of former Article 38. The changes are intended to allow the Court to examine cases together with the Parties' representatives, and to undertake an investigation, not only when the decision on admissibility has been taken, but at any stage in the proceedings. They are a logical consequence of the changes made in Articles 28 and 29, which encourage the taking of joint decisions on the admissibility and merits of individual applications. Since this provision applies even before the decision on admissibility has been taken, High Contracting Parties are required to provide the Court with all necessary facilities prior to that decision. The Parties' obligations in this area are thus reinforced. It was not considered necessary to amend Article 38 (or Article 34, last sentence) in other respects, notably as regards possible non-compliance with these provisions. These provisions already provide strong legal obligations for the High Contracting Parties and, in line with current practice, any problems which the Court might encounter in securing compliance can be brought to the attention of the Committee of Ministers so that the latter take any steps it deems necessary.

Article 15 of the amending protocol

Article 39 – Friendly settlements

91. The provisions of Article 39 are partly taken from former Article 38, paragraphs 1.b and 2, and also from former Article 39. To make the Convention easier to read with regard to the friendly settlement procedure, it was decided to address it in a specific article.

92. As a result of the implementation of the new Articles 28 and 29, there should be fewer separate decisions on admissibility. Since under the former Article 38, paragraph 1.b, it was only after an application had been declared admissible that the Court placed itself at the disposal of the parties with a view to securing a friendly settlement, this procedure had to be modified and made more flexible. The Court is now free to place itself at the parties' disposal for this purpose at any stage in the proceedings.

93. Friendly settlements are therefore encouraged, and may prove particularly useful in repetitive cases, and other cases where questions of principle or changes in domestic law are not involved.[16] It goes without saying that these friendly settlements must be based on respect for human rights, pursuant to Article 39, paragraph 1, as amended.

94. The new Article 39 provides for supervision of the execution of friendly settlements by the Committee of Ministers. This new provision was inserted to reflect a practice which the Court had already developed. In the light of the text of former Article 46, paragraph 2, the Court used to endorse friendly settlements through *judgments* and not – as provided for in former Article 39 of the Convention – through *decisions*, whose execution was not subject to supervision by the Committee of Ministers. The practice of the Court was thus in response to the fact that only the execution of *judgments* was supervised by the Committee of Ministers (former Article 39). It was recognised, however, that adopting a judgment, instead of a decision, might have negative connotations for respondent Parties, and make it harder to secure a friendly settlement. The new procedure should make this easier and thus reduce the Court's workload. For this reason, the new Article 39 gives the Committee of Ministers authority to supervise the execution of *decisions* endorsing the terms of friendly settlements. This amendment is in no way intended to reduce the Committee's present supervisory powers, particularly concerning the strike-out decisions covered by Article 37. It would be advisable for the Committee of Ministers to distinguish more clearly, in its practice, between its supervision function by virtue of the new Article 39, paragraph 4 (friendly settlements), on the one hand and that under Article 46, paragraph 2 (execution of judgments), on the other.

Article 16 of the amending protocol

Article 46 – Binding force and execution of judgments

95. The first two paragraphs of Article 46 repeat the two paragraphs of the former Article 46. Paragraphs 3, 4 and 5 are new.

96. The new Article 46, in its paragraph 3, empowers the Committee of Ministers to ask the Court to interpret a final judgment, for the purpose of facilitating the supervision of its execution. The Committee of Ministers' experience of supervising the execution of judgments shows that difficulties are sometimes encountered due to disagreement as to the interpretation of judgments. The Court's reply settles any argument concerning a judgment's exact meaning. The qualified majority vote required by the last sentence of paragraph 3 shows that the Committee of Ministers should use this possibility sparingly, to avoid over-burdening the Court.

97. The aim of the new paragraph 3 is to enable the Court to give an interpretation of a judgment, not to pronounce on the measures taken by a High Contracting Party to comply with that judgment. No time-limit has been set for making requests for interpretation, since a question of interpretation may arise at any time during the Committee of Ministers' examination of the execution of a judgment. The Court is free to decide on the manner and form in which it wishes to reply to the request. Normally, it would be for the formation of the Court which delivered the original judgment to rule on the question of interpretation. More detailed rules governing this new procedure may be included in the Rules of Court.

98. Rapid and full execution of the Court's judgments is vital. It is even more important in cases concerning structural problems, so as to ensure that the Court is not swamped with repetitive applications. For this reason, ever since the Rome ministerial conference of 3 and 4 November 2000 (Resolution I),[17] it has been considered essential to strengthen the means given in this context to the Committee of Ministers. The Parties to the Convention have a collective duty to preserve the Court's authority – and thus the Convention system's credibility and effectiveness – whenever the Committee of Ministers considers that one of the High Contracting Parties refuses, expressly or through its conduct, to comply with the Court's final judgment in a case to which it is party.

99. Paragraphs 4 and 5 of Article 46 accordingly empower the Committee of Ministers to bring infringement proceedings in the Court (which shall sit as a Grand Chamber – see new Article 31, paragraph b), having first served the state concerned with notice to comply. The Committee of Ministers' decision to do so requires a qualified majority of two thirds of the representatives entitled to sit on the Committee. This infringement procedure does not aim to reopen the question of violation, already decided in the Court's first judgment. Nor does it provide for payment of a financial penalty by a High Contracting Party found in violation of Article 46, paragraph 1. It is felt that the political pressure exerted by proceedings for non-compliance in the Grand Chamber and by the latter's judgment should suffice to secure execution of the Court's initial judgment by the state concerned.

100. The Committee of Ministers should bring infringement proceedings only in exceptional circumstances. None the less, it appeared necessary to give the Committee of Ministers, as the competent organ for supervising execution of the Court's judgments, a wider range of means of pressure to secure execution of judgments. Currently the ultimate measure available to the Committee of Ministers is recourse to Article 8 of the Council of Europe's Statute (suspension of voting rights in the Committee of Ministers, or even expulsion from the Organisation). This is an extreme measure, which would prove counter-productive in most cases; indeed the High Contracting Party which finds itself in the situation foreseen in paragraph 4 of Article 46 continues to need, far more than others, the discipline of the Council of Europe. The new Article 46 therefore adds further possibilities of bringing pressure to bear to the existing ones. The procedure's mere existence, and the threat of using it, should act as an effective new incentive to execute the Court's judgments. It is foreseen that the outcome of infringement proceedings would be expressed in a judgment of the Court.

Article 17 of the amending protocol

Article 59 – Signature and ratification

101. Article 59 has been amended in view of possible accession by the European Union to the Convention. A new second paragraph makes provision for this possibility, so as to take into account the developments that have taken place within the European Union, notably in the context of the drafting of a constitutional treaty, with regard to accession to the Convention. It should be emphasised that further modifications to the Convention will be necessary in order to make such accession possible from a legal and technical point of view. The CDDH adopted a report identifying those issues in 2002 (document DG-II (2002) 006). This report was transmitted to the Committee of Ministers, which took note of it. The CDDH accepted that those modifications could be brought about either through an amending protocol to the Convention or by means of an accession treaty to be concluded between the European Union, on the one hand, and the States Parties to the Convention, on the other. While the CDDH had expressed a preference for the latter, it was considered advisable not to refer to a possible accession treaty in the current protocol so as to keep all options open for the future.

102. At the time of drafting of this protocol, it was not yet possible to enter into negotiations – and even less to conclude an agreement – with the European Union on the terms of the latter's possible accession to the Convention, simply because the European Union still lacked the competence to do so. This made it impossible to include in this protocol the other modifications to the Convention necessary to permit such accession. As a consequence, a second ratification procedure will be necessary in respect of those further modifications, whether they be included in a new amending protocol or in an accession treaty.

Final and transitional provisions

Article 18 of the amending protocol

103. This article is one of the usual final clauses included in treaties prepared within the Council of Europe. This protocol does not contain any provisions on reservations. By its very nature, this amending protocol excludes the making of reservations.

Article 19 of the amending protocol

104. This article is one of the usual final clauses included in treaties prepared within the Council of Europe. The period of three months mentioned in it corresponds to the period which was chosen for protocols Nos 12 and 13. As the implementation of the reform is urgent, this period was chosen rather than one year, which had been the case for Protocol No. 11. For Protocol No. 11, the period of one year was necessary in order to allow for the setting up of the new Court, and in particular for the election of the judges.

Article 20 of the amending protocol

105. The first paragraph of this transitional provision confirms that, upon entry into force of this protocol, its provisions can be applied immediately to all pending applications so as not to delay the impact of the system's increased effectiveness which will result from the protocol. In view of Article 35, paragraph 4 *in fine* of the Convention it was considered necessary to provide, in the second paragraph, first sentence, of Article 20 of the amending protocol, that the new admissibility criterion inserted by Article 13 of this protocol in Article 35, paragraph 3.b, of the Convention shall not apply to applications declared admissible before the entry into force of the protocol. The second sentence of the second paragraph explicitly reserves, for a period of two years following the entry into force of this protocol, the application of the new admissibility criteria to the Chambers and the Grand Chamber of the Court. This rule recognises the need to develop case-law on the interpretation of the new criterion before the latter can be applied by single-judge formations or committees.

Article 21 of the amending protocol

106. This article contains transitional rules to accompany the introduction of the new provision in Article 23, paragraph 1, on the terms of office of judges (paragraphs 2 to 4 of new Article 23 are not affected by these transitional rules). The terms of office of the judges will not expire on the date of entry into force of this protocol but continue to run after that date. In addition, the terms of office shall be extended in accordance with the rule of the first or that of the second sentence of Article 21, depending on whether the judges are serving their first term of office on the date of the entry into force of this protocol or not. These rules aim at avoiding a situation where, at any particular point in time, a large number of judges would be replaced by new judges. The rules seek to mitigate the effects, after entry into force of the protocol, of the existence – for election purposes – under the former system of two main groups of judges whose terms of office expire simultaneously. As a result of these rules, the two main groups of judges will be split up into smaller groups, which in turn will lead to staggered elections of judges. Those groups are expected to disappear gradually, as a result of the amended Article 23 (see the commentary in paragraph 51 above).

107. For the purposes of the first sentence of Article 21, judges completing their predecessor's term in accordance with former Article 23, paragraph 5, shall be deemed to be serving their first term of office. The second sentence applies to the other judges, provided that their term of office has not expired on the date of entry into force of the protocol.

Article 22 of the amending protocol

108. This article is one of the usual final clauses included in treaties prepared within the Council of Europe.

The Collected texts on the Reform of the European Convention on Human Rights are scheduled for publication in September 2004.

1 In early 2004, Belarus and Monaco were the only potential or actual candidates for membership still outside the Council of Europe.

2 Unless otherwise stated, the figures given here are taken from the document "Survey of Activities 2003" produced by the European Court of Human Rights or based on more recent information provided by its registry.

3 As at 1 January 2004, there have only been 20 interstate applications.

4 The Committee of Ministers has adopted a series of specific instruments for this purpose:

– Recommendation No. R (2000) 2 of the Committee of Ministers on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;

– Recommendation Rec (2002) 13 of the Committee of Ministers on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights;

– Recommendation Rec (2004) 4 of the Committee of Ministers on the European Convention on Human Rights in university education and professional training;

– Recommendation Rec (2004) 5 of the Committee of Ministers on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down by the European Convention on Human Rights;

– Recommendation Rec (2004) 6 of the Committee of Ministers on the improvement of domestic remedies;

– Resolution Res (2002) 58 of the Committee of Ministers on the publication and dissemination of the case-law of the European Court of Human Rights;

– Resolution Res (2002) 59 of the Committee of Ministers concerning the practice in respect of friendly settlements;

– Resolution Res (2004) 3 of the Committee of Ministers on judgments revealing an underlying systemic problem.

All these instruments, as well as this protocol, are referred to in the general declaration of the Committee of Ministers "*Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels*", adopted on 12 May 2004.

5 Paragraph 16 of the resolution.

6 Paragraph 18 ii. of the resolution.

7 Declaration of the Rome Ministerial Conference on Human Rights: "The European Convention on Human Rights at 50: what future for the protection of human rights in Europe?".

8 "*Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights",* Strasbourg, Council of Europe, 27 September 2001, published in the *Human Rights Law Journal* (*HRLJ*), 22, 2001, pp. 308 ff.

9 The "*Report of the Reflection Group on the Reinforcement of the Human Rights Protection Mechanism*" is contained in Appendix III to the "*Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights*" (op. cit.).

10 "*Three years' work for the future. Final report of the Working Party on Working Methods of the European Court of Human Rights*", Strasbourg, Council of Europe, 2002.

11 Declaration published in French in the *Revue universelle des droits de l'homme* (*RUDH*) 2002, p. 331.

12 Declaration published in French in the *Revue universelle des droits de l'homme* (*RUDH*) 2002, p. 331.

13 See, for a fuller overview, the activity report of the CDDH's Reflection group (document CDDH-GDR (2001) 10, especially its Appendices I and II), the report of the Evaluation group (see footnote 8 above) as well as the CDDH's interim report of October 2002 (document CM (2002) 146) which contains a discussion of various suggestions made at the Seminar on Partners for the Protection of Human Rights: Reinforcing Interaction between the European Court of Human Rights and National Courts (Strasbourg, 9-10 September 2002).

14 Unless otherwise specified, the references to articles are to the Convention as amended by the protocol.

15 The Council of Europe Commissioner for Human Rights was established by Resolution (99) 50, adopted by the Committee of Ministers on 7 May 1999.

16 See, in this connection, Resolution Res (2002) 59 concerning the practice in respect of friendly settlements (adopted by the Committee of Ministers on 18 December 2002, at the Deputies' 822nd meeting.

17 See paragraphs 19 to 22 of the resolution.

Declaration of the Committee of Ministers "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels"

(adopted by the Committee of Ministers on 12 May 2004, at its 114th Session)

The Committee of Ministers,

Referring to the Declaration *The European Convention on Human Rights at 50: what future for the protection of human rights in Europe?* adopted by the European Ministerial Conference on Human Rights, held in Rome to commemorate the 50th anniversary of the Convention on 4 November 2000;

Reaffirming the central role that the Convention must continue to play as a constitutional instrument of European public order, on which the democratic stability of the Continent depends;

Recalling that the Ministerial Conference Declaration emphasized that it falls in the first place to the Member States to ensure that human rights are respected, in full implementation of their international commitments;

Considering that it is indispensable that any reform of the Convention aimed at guaranteeing the long-term effectiveness of the European Court of Human Rights be accompanied by effective national measures by the legislature, the executive and the judiciary to ensure protection of Convention rights at the domestic level, in full conformity with the principle of subsidiarity and the obligations of Member States under Article 1 of the Convention;

Recalling that, according to Article 46, paragraph 1 of the Convention, "the High Contracting Parties undertake to abide by the final judgments of the Court in any case to which they are parties";

Recalling the various Recommendations it adopted to help Member States to fulfil their obligations:

– Recommendation Rec (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;
– Recommendation Rec (2002) 13 on the publication and dissemination in the Member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights;
– Recommendation Rec (2004) 4 on the European Convention on Human Rights in university education and professional training;
– Recommendation Rec (2004) 5 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;
– Recommendation Rec (2004) 6 on the improvement of domestic remedies;
– Recalling that the following Resolutions were brought to the attention of the Court:
– Resolution Res (2002) 58 on the publication and dissemination of the case-law of the European Court of Human Rights;
– Resolution Res (2002) 59 concerning the practice in respect of friendly settlements;
– Resolution Res (2004) 3 on judgments revealing an underlying systemic problem;

Recalling that, on 10 January 2001, it adopted new Rules for the supervision of the execution of the Court's judgments under Article 46, paragraph 2 of the Convention, following the instructions given at the Ministerial Conference;

Considering that the Ministerial Conference Declaration gave the decisive political impetus for a determined initiative of Member States aimed at guaranteeing the long-term effectiveness of the Court so as to enable it to continue to protect human rights in Europe;

Welcoming the fact that the work which began immediately after the Conference has made it possible for the Committee of Ministers, at its 114th Session on 12-13 May 2004, to open for signature amending Protocol No. 14 to the Convention;

Considering that the reform introduced by the Protocol aims at preserving the effectiveness of the right of individual application in the context of steadily growing numbers of applications;

Considering, in particular, that the Protocol addresses the main problems with which the Court is confronted, on the one hand, the filtering of the very numerous individual applications and, on the other hand, the so-called repetitive cases;

Considering that a new provision has been introduced by the Protocol to ensure respect for the Court's judgments and that the Ministers' Deputies are developing their practices under Article 46, paragraph 2 of the Convention with a view to helping Member States to improve and accelerate the execution of the judgments, notably those revealing an underlying systemic problem;

Considering that these texts, measures and provisions are interdependent and that their implementation is necessary for ensuring the effectiveness of the Convention at national and European levels;

Paying tribute to the significant contribution to this work made by the Court, the Parliamentary Assembly and the Council of Europe Commissioner for Human Rights, as well as by representatives of national courts, national institutions for the promotion and protection of human rights and non-governmental organisations;

I. Urges Member States to:

– take all necessary steps to sign and ratify Protocol No. 14 as speedily as possible, so as to ensure its entry into force within two years of its opening for signature;
– implement speedily and effectively the above-mentioned Recommendations;

II. Asks the Ministers' Deputies to:

– take specific and effective measures to improve and accelerate the execution of the Court's judgments, notably those revealing an underlying systemic problem;

– undertake a review, on a regular and transparent basis, of the implementation of the above-mentioned Recommendations;
– assess the resources necessary for the rapid and efficient implementation of the Protocol, in particular for the Court and its registry in the framework of the new mechanism for the filtering of applications, and to take measures accordingly;

III. Invites the Secretary General of the Council of Europe and the States concerned to take the necessary steps to disseminate appropriately, in the national language(s), this Declaration and the various instruments mentioned in it.

Recommendation Rec (2004) 4 of the Committee of Ministers to member states on the European Convention on Human Rights in university education and professional training

(adopted by the Committee of Ministers on 12 May 2004, at its 114th Session)

The Committee of Ministers, in accordance with Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") must remain the essential reference point for the protection of human rights in Europe, and recalling its commitment to take measures in order to guarantee the long-term effectiveness of the control system instituted by the Convention;

Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all states parties;

Stressing the preventive role played by education in the principles inspiring the Convention, the standards that it contains and the case-law deriving from them;

Recalling that, while measures to facilitate a wide publication and dissemination in the member states of the text of the Convention and of the case-law of the European Court of Human Rights (hereinafter referred to as "the Court") are important in order to ensure the implementation of the Convention at national level, as has been indicated in Recommendation Rec (2002) 13, it is crucial that these measures are supplemented by others in the field of education and training, in order to achieve their aim;

Stressing the particular importance of appropriate university education and professional training programmes in order to ensure that the Convention is effectively applied, in the light of the case-law of the Court, by public bodies including all sectors responsible for law enforcement and the administration of justice;

Recalling the resolutions and recommendations it has already taken on different aspects of the issue of human rights education, in particular: Resolution (78) 41 on the teaching of human rights; Resolution (78) 40 containing regulations on Council of Europe fellowships for studies and research in the field of human rights; Recommendation No. R (79) 16 concerning the promotion of human rights research in the member states of the Council of Europe; Recommendation No. R (85) 7 on teaching and learning about human rights in schools, as well as its appendix containing suggestions for teaching and learning about human rights in schools;

Recalling the role that may be played by the national institutions for the promotion and protection of human rights and by non-governmental organisations, particularly in the field of training of personnel responsible for law enforcement, and welcoming the initiatives already undertaken in this area;

Taking into account the diversity of traditions and practice in the member states as regards university education, professional training and awareness-raising regarding the Convention system;

Recommends that member states:

I. ascertain that adequate university education and professional training concerning the Convention and the case-law of the Court exist at national level and that such education and training are included, in particular:
– as a component of the common core curriculum of law and, as appropriate, political and administrative science degrees and, in addition, that they are offered as optional disciplines to those who wish to specialise;
– as a component of the preparation programmes of national or local examinations for access to the various legal professions and of the initial and continuous training provided to judges, prosecutors and lawyers;
– in the initial and continuous professional training offered to personnel in other sectors responsible for law enforcement and/or to personnel dealing with persons deprived of their liberty (for example, members of the police and the security forces, the personnel of penitentiary institutions and that of hospitals),

as well as to personnel of immigration services, in a manner that takes account of their specific needs;

II. enhance the effectiveness of university education and professional training in this field, in particular by:

– providing for education and training to be incorporated into stable structures –public and private – and to be given by persons with a good knowledge of the Convention concepts and the case-law of the Court as well as an adequate knowledge of professional training techniques;

– supporting initiatives aimed at the training of specialised teachers and trainers in this field;

III. encourage non-state initiatives for the promotion of awareness and knowledge of the Convention system, such as the establishment of special structures for teaching and research in human rights law, moot court competitions, awareness-raising campaigns;

Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of those states parties to the European Cultural Convention which are not members of the Council of Europe.

Appendix to Recommendation Rec (2004) 4

Introduction

1. The Ministerial Conference held in Rome on 3 and 4 November 2000 to commemorate the 50th anniversary of the European Convention on Human Rights (hereinafter referred to as "the Convention"), invited the member states of the Council of Europe to "take all appropriate measures with a view to developing and promoting education and awareness of human rights in all sectors of society, in particular with regard to the legal profession".[1]

2. This effort that national authorities are requested to make is only a consequence of the subsidiary character of the supervision mechanism set up by the Convention, which implies that the rights guaranteed by the Convention be fully protected in the first place at national level and applied by national authorities.[2] The Committee of Ministers has already adopted resolutions and recommendations dealing with different aspects of this issue[3] and encouraging initiatives that may be undertaken notably by independent national human rights institutions and NGOs, with a view to promoting greater understanding and awareness of the Convention and the case-law of the European Court of Human Rights (hereinafter referred to as "the Court").

3. Guaranteeing the long-term effectiveness of the Convention system is among the current priorities of the Council of Europe and, in this context, the need for a better implementation of the Convention at national level has been found to be vital. Thus, it appears necessary that all member states ensure that adequate education on the Convention is provided, in particular concerning legal and law enforcement professions. This might contribute to reducing, on the one hand, the number of violations of rights guaranteed by the Convention resulting from insufficient knowledge of the Convention and, on the other hand, the lodging of applications which manifestly do not meet admissibility requirements.

4. This recommendation refers to three complementary types of action, namely:

i. the incorporation of appropriate education and training on the Convention and the case-law of the Court, notably in the framework of university law and political science studies, as well as professional training of legal and law enforcement professions;

ii. guaranteeing the effectiveness of the education and training, which implies in particular a proper training for teachers and trainers; and

iii. the encouragement of initiatives for the promotion of knowledge and/or awareness of the Convention system.

5. Bearing in mind the diversity of traditions and practice in the member states in respect of university education, professional training and awareness-raising regarding the Convention, it is the member states' responsibility to shape their own education programmes according to their respective national situations, in accordance with the principle of subsidiarity, while ensuring that the standards of the Convention are fully presented.

University education and professional training

6. Member states are invited to ensure that appropriate education on the Convention and the case-law of the Court is included in the curricula of university law degrees and Bar examinations as well as in the continuous training of judges, prosecutors and lawyers.

University education

7. It is essential that education on the Convention be fully incorporated into faculty of law programmes, not only as an independent subject, but also horizontally in each legal discipline (criminal law, civil law, etc.) so that law students, whatever their specialisation, are aware, when they graduate, of the implications of the Convention in their field.

8. The creation of post-graduate studies specialised in the Convention, such as certain national master's degrees or the European Master in Human Rights and Democratisation (E.MA) which involves twenty-seven universities over fifteen European states, as well as shorter university programmes such as the summer courses of the Institut international des droits de l'homme René Cassin (Strasbourg) or those of the European University Institute (Florence), should be encouraged.

Professional training

9. Professional training should facilitate a better incorporation of Convention standards and the Court's case-law in the reasoning adopted by domestic courts in their judgments. Moreover, legal advice which would be given to potential applicants by lawyers having an adequate knowledge of the Convention could prevent applications that manifestly do not meet the admissibility requirements. In addition, a better knowledge of the Convention by legal professionals should contribute to reducing the number of applications reaching the Court.

10. Specific training on the Convention and its standards should be incorporated in the programmes of law schools and schools for judges and prosecutors. This could entail the organisation of workshops as part of the profes-

sional training for lawyers, judges and prosecutors. In so far as lawyers are concerned, such workshops could be organised at the initiative of Bar associations, for instance. Reference may be made to a current project within the International Bar Association to set up, with the assistance of the Court, training for lawyers on the rules of procedure of the Court and the practice of litigation, as well as the execution of judgments. In certain countries, the Ministry of Justice has the task of raising awareness and participating in the training of judges on the case-law of the European Court: judges in post may take advantage of sessions of one or two days organised in their jurisdiction and of a traineeship of one week every year; "justice auditors" (student judges) are provided with training organised within the judges' national school (Ecole nationale de magistrature). Workshops are also organised on a regular basis within the framework of the initial and continuous training of judges.

11. Moreover, seminars and colloquies on the Convention could be regularly organised for judges, lawyers and prosecutors.

12. In addition, a journal on the case-law of the Court could be published regularly for judges and lawyers. In some member states, the Ministry of Justice publishes a supplement containing references to the case-law of the Court and issues relating to the Convention. This publication is distributed to all courts.

13. It is recommended that member states ensure that the standards of the Convention be covered by the initial and continuous professional training of other professions dealing with law enforcement and detention, such as security forces, police officers and prison staff but also immigration services, hospitals, etc. Continuous training on the Convention standards is particularly important given the evolving nature of the interpretation and application of these standards in the Court's case-law. Staff of the authorities dealing with persons deprived of their liberty should be fully aware of these persons' rights as guaranteed by the Convention and as interpreted by the Court in order to prevent any violation, in particular of Articles 3, 5 and 8. It is therefore of paramount importance that in each member state there is adequate training within these professions.

14. A specific training course on the Convention and its standards and, in particular, aspects relating to rights of persons deprived of their liberty should be incorporated in the programmes of police schools, as well as schools for prison warders. Workshops could also be organised as part of continuous training of members of the police forces, warders and other authorities concerned.

Effectiveness of university education and professional training

15. For this purpose, member states are recommended to ensure that university education and professional training in this field are carried out within permanent structures (public and private) by well-qualified teachers and trainers.

16. In this respect, training teachers and trainers is a priority. The aim is to ensure that their level of knowledge corresponds with the evolution of the case-law of the Court and meets the specific needs of each professional sector. Member states are invited to support initiatives (research in fields covered by the Convention, teaching techniques, etc.) aimed at guaranteeing a quality training of specialised teachers and trainers in this sensitive and evolving field.

Promotion of knowledge and/or awareness of the Convention system

17. Member states are finally recommended to encourage initiatives for the promotion of knowledge and/or awareness of the Convention system. Such initiatives, which can take various forms, have proved very positive in the past where they have been launched and should therefore be encouraged by member states.

18. One example could be the setting-up of moot court competitions for law students on the Convention and the Court's case-law, involving at the same time students, university professors and legal professionals (judges, prosecutors, lawyers), for example the Sporrong and Lönnroth competition organised in the Supreme Courts of the Nordic countries, and the pan-European French-speaking René Cassin competition, organised by the association Juris Ludi in the premises of the Council of Europe.

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1 European Ministerial Conference on Human Rights, H-Conf (2001) 001, Resolution II, paragraph 40.

2 See Article 1 of the Convention.

3 In particular: Resolution (78) 41 on the teaching of human rights; Resolution (78) 40 containing regulations on Council of Europe fellowships for studies and research in the field of human rights; Recommendation No. R (79) 16 concerning the promotion of human rights research in the member states of the Council of Europe; Recommendation No. R (85) 7 on teaching and learning about human rights in schools, as well as its appendix containing suggestions for teaching and learning about human rights in schools.

Recommendation Rec (2004) 5 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

(adopted by the Committee of Ministers on 12 May 2004 at its 114th Session)

The Committee of Ministers, in accordance with Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") must remain the essential reference point for the protection of human rights in Europe, and recalling its commitment to take measures in order to guarantee the long-term effectiveness of the control system instituted by the Convention;

Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all states parties and noting in this respect the important role played by national courts;

Recalling that, according to Article 46, paragraph 1, of the Convention, the high contracting parties undertake to abide by the final judgments of the European Court of Human Rights (hereinafter referred to as "the Court") in any case to which they are parties;

Considering however, that further efforts should be made by member states to give full effect to the Convention, in particular through a continuous adaptation of national standards in accordance with those of the Convention, in the light of the case-law of the Court;

Convinced that verifying the compatibility of draft laws, existing laws and administrative practice with the Convention is necessary to contribute towards preventing human rights violations and limiting the number of applications to the Court;

Stressing the importance of consulting different competent and independent bodies, including national institutions for the promotion and protection of human rights and non-governmental organisations;

Taking into account the diversity of practices in member states as regards the verification of compatibility;

Recommends that member states, taking into account the examples of good practice appearing in the appendix:

I. ensure that there are appropriate and effective mechanisms for systematically verifying the compatibility of draft laws with the Convention in the light of the case-law of the Court;

II. ensure that there are such mechanisms for verifying, whenever necessary, the compatibility of existing laws and administrative practice, including as expressed in regulations, orders and circulars;

III. ensure the adaptation, as quickly as possible, of laws and administrative practice in order to prevent violations of the Convention;

Instructs the Secretary General of the Council of Europe to ensure that the necessary resources are made available for proper assistance to member states which request help in the implementation of this recommendation.

Appendix to Recommendation Rec(2004)5

Introduction

1. Notwithstanding the reform, resulting from Protocol No. 11, of the control system established under the European Convention on Human Rights (hereinafter referred to as "the Convention"), the number of applications submitted to the European Court of Human Rights (hereinafter referred to as "the Court") is increasing steadily, giving rise to considerable delays in the processing of cases.

2. This development reflects a greater ease of access to the European Court, as well as the constantly improving human rights protection in Europe, but it should not be forgotten that it is the parties to the Convention, which, in accordance with the principle of subsidiarity, remain the prime guarantors of the rights laid down in the Convention. According to Article 1 of the Convention, "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". It is thus at national level that the most effective and direct protection of the rights and freedoms guaranteed in the Convention should be ensured. This requirement concerns all state authorities, in particular the courts, the administration and the legislature.

3. The prerequisite for the Convention to protect human rights in Europe effectively is that states give effect to the Convention in their legal order, in the light of the case-law of the Court. This implies, notably, that they should ensure that laws and administrative practice conform to it.

4. This recommendation encourages states to set up mechanisms allowing for the verification of compatibility with the Convention of both draft laws and existing legislation, as well as administrative practice. Examples of good practice are set out below. The implementation of the recommendation should thus contribute to the prevention of human rights violations in member states, and consequently help to contain the influx of cases reaching the Court.

Verification of the compatibility of draft laws

5. It is recommended that member states establish systematic verification of the compatibility with the Convention of draft laws, especially those which may affect the rights and freedoms protected by it. It is a crucial point: by adopting a law verified as being in conformity with the Convention, the state reduces the risk that a violation of the Convention has its origin in that law and that the Court will find such a violation. Moreover, the state thus imposes on its administration a framework in line with the Convention for the actions it undertakes vis-à-vis everyone within its jurisdiction.

6. Council of Europe assistance in carrying out this verification may be envisaged in certain cases. Such assistance is already available, particularly in respect of draft laws on freedom of religion, conscientious objection, freedom of information, freedom of association, etc. It is none the less for each state to decide whether or not to take into account the conclusions reached within this framework.

Verification of the compatibility of laws in force

7. Verification of compatibility should also be carried out, where appropriate, with respect to laws in force. The evolving case-law of the Court may indeed have repercussions for a law which was initially compatible with the Convention or which had not been the subject of a compatibility check prior to adoption.

8. Such verification proves particularly important in respect of laws touching upon areas where experience shows that there is a particular risk of human rights violations, such as police activities, criminal proceedings, conditions of detention, rights of aliens, etc.

Verification of the compatibility of administrative practice

9. This recommendation also covers, wherever necessary, the compatibility of administrative regulations with the Convention, and therefore aims to ensure that human rights are respected in daily practice. It is indeed essential that bodies, notably those with powers enabling them to restrict the exercise of human rights, have all the necessary resources to ensure that their activity is compatible with the Convention.

10. It has to be made clear that the recommendation also covers administrative practice which is not attached to the text of a regulation. It is of utmost importance that states ensure verification of their compatibility with the Convention.

Procedures allowing follow-up of the verification undertaken

11. In order for verification to have practical effects and not merely lead to the statement that the provision concerned is incompatible with the Convention, it is vital that member states ensure follow-up to this kind of verification.

12. The recommendation emphasises the need for member states to act to achieve the objectives it sets down. Thus, after verification, member states should, when necessary, promptly take the steps required to modify their laws and administrative practice in order to make them compatible with the Convention. In order to do so, and where this proves necessary, they should improve or set up appropriate revision mechanisms which should systematically and promptly be used when a national provision is found to be incompatible. However, it should be pointed out that often it is enough to proceed to changes in case-law and practice in order to ensure this compatibility. In certain member states compatibility may be ensured through the non-application of the offending legislative measures.

13. This capacity for adaptation should be facilitated and encouraged, particularly through the rapid and efficient dissemination of the judgments of the Court to all the authorities concerned with the violation in question, and appropriate training of the decision makers. The Committee of Ministers has devoted two specific recommendations to these important aspects: one on the publication and the dissemination in member states of text of the Convention and the case-law of the Court (Rec (2002) 13) and the other on the Convention in university education and professional training (Rec (2004) 4).

14. When a court finds that it does not have the power to ensure the necessary adaptation because of the wording of the law at stake, certain states provide for an accelerated legislative procedure.

15. Within the framework of the above, the following possibilities could be considered.

Examples of good practice

16. Each member state is invited to give information as to its practice and its evolution, notably by informing the General Secretariat of the Council of Europe. The latter will, in turn, periodically inform all member states of existing good practice.

I. Publication, translation and dissemination of, and training in, the human rights protection system

17. As a preliminary remark, one should recall that effective verification first demands appropriate publication and dissemination at national level of the Convention and the relevant case-law of the Court, in particular through electronic means and in the language(s) of the country concerned, and the development of university education and professional training programmes in human rights.

II. Verification of draft laws

18. Systematic supervision of draft laws is generally carried out both at the executive and at the parliamentary level, and independent bodies are also consulted.

By the executive

19. In general, verification of conformity with the Convention and its protocols starts within the ministry which initiated the draft law. In addition, in some member states, special responsibility is entrusted to certain ministries or departments, for example, the Chancellery, the Ministry of Justice and/or the Ministry of Foreign Affairs, to verify such conformity. Some member states entrust the agent of the government to the Court in Strasbourg, among other functions, with seeking to ensure that national laws are compatible with the provisions of the Convention. The agent is therefore empowered, on this basis, to submit proposals for the amendment of existing laws or of any new legislation which is envisaged.

20. The national law of numerous member states provides that when a draft text is forwarded to parliament, it should be accompanied by an extensive explanatory memorandum, which must also indicate and set out possible questions under the constitution and/or the Convention. In some member states, it should be accompanied by a formal statement of compatibility with the Convention. In one member state, the minister responsible for the draft text has to certify that, in his or her view, the provisions of the bill are compatible with the Convention, or to state that he or she is not in a position to make such a statement, but that he or she nevertheless wishes parliament to proceed with the bill.

By the parliament

21. In addition to verification by the executive, examination is also undertaken by the legal services of the parliament and/or its different parliamentary committees.

Other consultations

22. Other consultations to ensure compatibility with human rights standards can be envisaged at various stages of the legislative process. In some cases, consultation is optional. In others, notably if the draft law is likely to affect fundamental rights, consultation of a specific institution, for example the Conseil d'Etat in some member states, is compulsory as established by law. If the government has not consulted as required, the text will be tainted by procedural irregularity. If, after having consulted, it decides not to follow the opinion received, it accepts responsibility for the political and legal consequences that may result from such a decision.

23. Optional or compulsory consultation of non-judicial bodies competent in the field of human rights is also often foreseen. In particular these may be independent national institutions for the promotion and protection of human rights, the ombudspersons, or local or international non-governmental organisations, institutes or centres for human rights, or the Bar, etc.

24. Council of Europe experts or bodies, notably the European Commission for Democracy through Law ("the Venice Commission"), may be asked to give an opinion on the compatibility with the Convention of draft laws relating to human rights. This request for an opinion does not replace an internal examination of compatibility with the Convention.

III. Verification of existing laws and administrative practice

25. While member states cannot be asked to verify systematically all their existing laws, regulations and administrative practice, it may be necessary to engage in such an exercise, for example as a result of national experience in applying a law or regulation or following a new judgment by the Court against another member state. In the case of a judgment that concerns it directly, by virtue of Article 46, the state is under obligation to take the measures necessary to abide by it.

By the executive

26. In some member states, the ministry that initiates legislation is also responsible for verifying existing regulations and practices, which implies knowledge of the latest developments in the case-law of the Court. In other member states, governmental agencies draw the attention of independent bodies, and particularly courts, to certain developments in the case-law. This aspect highlights the importance of initial education and continuous training with regard to the Convention system. The competent organs of the state have to ensure that those responsible in local and central authorities take into account the Convention and the case-law of the Court in order to avoid violations.

By the parliament

27. Requests for verification of compatibility may be made within the framework of parliamentary debates.

By judicial institutions

28. Verification may also take place within the framework of court proceedings brought by individuals with legal standing to act or even by state organs, persons or bodies not directly affected (for example before the Constitutional Court).

By independent non-judicial institutions

29. In addition to their other roles when seized by the government or the parliament, independent non-judicial institutions, and particularly national institutions for the promotion and protection of human rights, as well as ombudspersons, play an important role in the verification of how laws are applied and, notably, the Convention which is part of national law. In some countries, these institutions may also, under certain conditions, consider individual complaints and initiate enquiries on their own initiative. They strive to ensure that deficiencies in existing legislation are corrected, and may for this purpose send formal communications to the parliament or the government.

Recommendation Rec (2004) 6 of the Committee of Ministers to member states on the improvement of domestic remedies

(adopted by the Committee of Ministers on 12 May 2004, at its 114th Session)

The Committee of Ministers, in accordance with Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") must remain the essential reference point for the protection of human rights in Europe, and recalling its commitment to take measures in order to guarantee the long-term effectiveness of the control system instituted by the Convention;

Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all states parties;

Emphasising that, as required by Article 13 of the Convention, member states undertake to ensure that any individual who has an arguable complaint concerning the violation of his rights and freedoms as set forth in the Convention has an effective remedy before a national authority;

Recalling that in addition to the obligation of ascertaining the existence of such effective remedies in the light of the case-law of the European Court of Human Rights (hereinafter referred to as "the Court"), states have the general obligation to solve the problems underlying violations found;

Emphasising that it is for member states to ensure that domestic remedies are effective in law and in practice, and that they can result in a decision on the merits of a complaint and adequate redress for any violation found;

Noting that the nature and the number of applications lodged with the Court and the judgments it delivers show that it is more than ever necessary for the member states to ascertain efficiently and regularly that such remedies do exist in all circumstances, in particular in cases of unreasonable length of judicial proceedings;

Considering that the availability of effective domestic remedies for all arguable claims of violation of the Convention should permit a reduction in the Court's workload as a result, on the one hand, of the decreasing number of cases reaching it and, on the other hand, of the fact that the detailed treatment of the cases at national level would make their later examination by the Court easier;

Emphasising that the improvement of remedies at national level, particularly in respect of repetitive cases, should also contribute to reducing the workload of the Court;

Recommends that member states, taking into account the examples of good practice appearing in the appendix:

I. ascertain, through constant review, in the light of case-law of the Court, that domestic remedies exist for anyone with an arguable complaint of a violation of the Convention, and that these remedies are effective, in that they can result in a decision on the merits of the complaint and adequate redress for any violation found;

II. review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court;

III. pay particular attention, in respect of aforementioned items I and II, to the existence of effective remedies in cases of an arguable complaint concerning the excessive length of judicial proceedings;

Instructs the Secretary General of the Council of Europe to ensure that the necessary resources are made available for proper assistance to member states which request help in the implementation of this recommendation.

Appendix to Recommendation Rec (2004) 6

Introduction

1. The Ministerial Conference[1] held in Rome on 3 and 4 November 2000 to commemorate the 50th anniversary of the European Convention on Human Rights (hereinafter referred to as "the Convention") emphasised that it is states parties who are primarily responsible for ensuring that the rights and freedoms laid down in the Convention are observed and that they must provide the legal instruments needed to prevent violations and, where necessary, to redress them. This necessitates, in particular, the setting-up of effective domestic remedies for all violations of the Convention, in accordance with its Article 13.[2] The case-law of the European Court of Human Rights (hereinafter referred to as "the Court")[3] has clarified the scope of this obligation which is incumbent on the states parties to the Convention by indicating notably that:

– Article 13 guarantees the availability in domestic law of a remedy to secure the rights and freedoms as set forth by the Convention.

– this article has the effect of requiring a remedy to deal with the substance of any "arguable claim" under the Convention and to grant appropriate redress. The scope of this obligation varies depending on the nature of the complaint. However, the remedy required must be "effective" in law as well as in practice;

– this notably requires that it be able to prevent the execution of measures which are contrary to the Convention and whose effects are potentially irreversible;
– the "authority" referred to in Article 13 does not necessarily have to be a judicial authority, but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy it provides is indeed effective;
– the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant; but it implies a certain minimum requirement of speediness.

2. In the recent past, the importance of having such remedies with regard to unreasonably long proceedings has been particularly emphasised,[4] as this problem is at the origin of a great number of applications before the Court, though it is not the only problem.

3. The Court is confronted with an ever-increasing number of applications. This situation jeopardises the long-term effectiveness of the system and therefore calls for a strong reaction from contracting parties.[5] It is precisely within this context that the availability of effective domestic remedies becomes particularly important. The improvement of available domestic remedies will most probably have quantitative and qualitative effects on the workload of the Court:

– on the one hand, the volume of applications to be examined ought to be reduced: fewer applicants would feel compelled to bring the case before the Court if the examination of their complaints before the domestic authorities was sufficiently thorough;
– on the other hand, the examination of applications by the Court will be facilitated if an examination of the merits of cases has been carried out beforehand by a domestic authority, thanks to the improvement of domestic remedies.

4. This recommendation therefore encourages member states to examine their respective legal systems in the light of the case-law of the Court and to take, if need be, the necessary and appropriate measures to ensure, through legislation or case-law, effective remedies as secured by Article 13. The examination may take place regularly or following a judgment by the Court.

5. The governments of member states might, initially, request that experts carry out a study of the effectiveness of existing domestic remedies in specific areas with a view to proposing improvements. National institutions for the promotion and protection of human rights, as well as non-governmental organisations, might also usefully participate in this work. The availability and effectiveness of domestic remedies should be kept under constant review, and in particular should be examined when drafting legislation affecting Convention rights and freedoms. There is an obvious connection between this recommendation and the recommendation on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the Convention.

6. Within the framework of the above, the following considerations might be taken into account.

The Convention as an integral part of the domestic legal order

7. A primary requirement for an effective remedy to exist is that the Convention rights be secured within the national legal system. In this context, it is a welcome development that the Convention has now become an integral part of the domestic legal orders of all states parties. This development has improved the availability of effective remedies. It is further assisted by the fact that courts and executive authorities increasingly respect the case-law of the Court in the application of domestic law, and are conscious of their obligation to abide by judgments of the Court in cases directly concerning their state (see Article 46 of the Convention). This tendency has been reinforced by the improvement, in accordance with Recommendation Rec(2000)2,[6] of the possibilities of having competent domestic authorities re-examine or reopen certain proceedings which have been the basis of violations established by the Court.

8. The improvement of domestic remedies also requires that additional action be taken so that, when applying national law, national authorities may take into account the requirements of the Convention and particularly those resulting from judgments of the Court concerning their state. This notably means improving the publication and dissemination of the Court's case-law (where necessary by translating it into the national language(s) of the state concerned) and the training, with regard to these requirements, of judges and other state officials. Thus, the present recommendation is also closely linked to the two other recommendations adopted by the Committee of Ministers in these areas.[7]

Specific remedies and general remedy

9. Most domestic remedies for violations of the Convention have been set up with a targeted scope of application. If properly construed and implemented, experience shows that such systems of "specific remedies" can be very efficient and limit both the number of complaints to the Court and the number of cases requiring a time-consuming examination.

10. Some states have also introduced a general remedy (for example before the Constitutional Court) which can be used to deal with complaints which cannot be dealt with through the specific remedies available. In some member states, this general remedy may also be exercised in parallel with or even before other legal remedies are exhausted. Some member states add the requirement that the measure being challenged would grossly infringe constitutional rights and that a refusal to deal with the appeal would have serious and irreparable consequences for the appellant. It should be pointed out that states which have such a general remedy tend to have fewer cases before the Court.

11. This being said, it is for member states to decide which system is most suited to ensuring the necessary protection of Convention rights, taking into consideration their constitutional traditions and particular circumstances.

12. Whatever the choice, present experience testifies that there are still shortcomings in many member states concerning the availability and/or effectiveness of domestic

remedies, and that consequently there is an increasing workload for the Court.

Remedies following a "pilot" judgment

13. When a judgment which points to structural or general deficiencies in national law or practice ("pilot case") has been delivered and a large number of applications to the Court concerning the same problem ("repetitive cases") are pending or likely to be lodged, the respondent state should ensure that potential applicants have, where appropriate, an effective remedy allowing them to apply to a competent national authority, which may also apply to current applicants. Such a rapid and effective remedy would enable them to obtain redress at national level, in line with the principle of subsidiarity of the Convention system.

14. The introduction of such a domestic remedy could also significantly reduce the Court's workload. While prompt execution of the pilot judgment remains essential for solving the structural problem and thus for preventing future applications on the same matter, there may exist a category of people who have already been affected by this problem prior to its resolution. The existence of a remedy aimed at providing redress at national level for this category of people might allow the Court to invite them to have recourse to the new remedy and, if appropriate, declare their applications inadmissible.

15. Several options with this objective are possible, depending, among other things, on the nature of the structural problem in question and on whether the person affected by this problem has applied to the Court or not.

16. In particular, further to a pilot judgment in which a specific structural problem has been found, one alternative might be to adopt an ad hoc approach, whereby the state concerned would assess the appropriateness of introducing a specific remedy or widening an existing remedy by legislation or by judicial interpretation.

17. Within the framework of this case-by-case examination, states might envisage, if this is deemed advisable, the possibility of reopening proceedings similar to those of a pilot case which has established a violation of the Convention, with a view to saving the Court from dealing with these cases and where appropriate to providing speedier redress for the person concerned. The criteria laid out in Recommendation Rec (2000) 2 of the Committee of Ministers might serve as a source of inspiration in this regard.

18. When specific remedies are set up following a pilot case, governments should speedily inform the Court so that it can take them into account in its treatment of subsequent repetitive cases.

19. However, it would not be necessary or appropriate to create new remedies, or give existing remedies a certain retroactive effect, following every case in which a Court judgment has identified a structural problem. In certain circumstances, it may be preferable to leave the cases to the examination of the Court, particularly to avoid compelling the applicant to bear the further burden of having once again to exhaust domestic remedies, which, moreover, would not be in place until the adoption of legislative changes.

Remedies in the case of an arguable claim of unreasonable length of proceedings

20. The question of effective remedies is particularly topical in cases involving allegations of unreasonable length of proceedings, which account for a large number of applications to the Court. Thus the Court has emphasised in the *Kudla* v. *Poland* judgment of 26 October 2000 that it is important to make sure there is an effective remedy in such cases, as required by Article 13 of the Convention. Following the impetus given by the Court in this judgment, several solutions have been put forward by member states in order to provide effective remedies allowing violations to be found and adequate redress to be provided in this field.

Reasonable length of proceedings

21. In their national law, many member states provide, by various means (maximum lengths, possibility of asking for proceedings to be speeded up) that proceedings remain of reasonable length. In certain member states, a maximum length is specified for each stage in criminal, civil and administrative proceedings. The integration of the Convention into the domestic legal systems of member states, particularly the requirement of trial within a reasonable time, as provided for in Article 6, has reinforced and completed these national law requirements.

Preventing delays, accelerating proceedings

22. If time limits in judicial proceedings – particularly in criminal proceedings – are not respected or if the length of proceedings is considered unreasonable, the national law of many member states provides that the person concerned may file a request to accelerate the procedure. If this request is accepted, it may result in a decision fixing a time limit within which the court – or the prosecutor, depending on the case – has to take specific procedural measures, such as closing the investigation or setting a date for the trial. In some member states, courts may decide that the procedure has to be finished before a certain date. Where a general remedy exists before a Constitutional Court, the complaint may be submitted, under certain circumstances, even before the exhaustion of other domestic remedies.

Different forms of redress

23. In most member states, there are procedures providing for redress for unreasonable delays in proceedings, whether ongoing or concluded. A form of redress which is commonly used, especially in cases already concluded, is that of financial compensation. In certain cases, the failure by the responsible authority to issue a decision within the specified time limit means that the application shall be deemed to have been granted. Where the criminal proceedings have exceeded a reasonable time, this may result in a more lenient sentence being imposed.

Possible assistance for the setting-up of effective remedies

24. The recommendation instructs the Secretary General of the Council of Europe to ensure that the necessary resources

are made available for proper assistance to member states which request help in setting up the effective remedies required by the Convention. It might take the form, for instance, of surveys carried out by expert consultants on available domestic remedies, with a view to improving their effectiveness.

1. European Ministerial Conference on Human Rights, see paragraph 14.i of Resolution No. 1 on institutional and functional arrangements for the protection of human rights at national and European levels, section A ("Improving the implementation of the Convention in member states").
2. Article 13 provides: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority". It is noted that this appendix does not contain particular reference to the procedural guarantees resulting from substantive rights, such as Articles 2 and 3.
3. See for instance, *Conka* v. *Belgium* judgment of 5 February 2002 (paragraphs 64 et seq.).
4. *Kudla* v. *Poland* judgment of 26 October 2000.
5. See Declaration of the Committee of Ministers of the Council of Europe of 14 May 2003 "Guaranteeing the long-term effectiveness of the European Court of Human Rights".
6. Recommendation Rec (2000) 2 of 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, adopted on 19 January 2000, at the 694th meeting of the Ministers' Deputies.
7. Recommendation Rec (2002) 13 of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights (adopted by on 18 December 2002 at the 822nd meeting of the Ministers' Deputies), as well as Recommendation Rec (2004) 4 of the Committee of Ministers on the European Convention on Human Rights in university education and professional training, adopted on 12 May 2004 at the 114th Session of the Committee of Ministers.

Resolution Res (2004) 3 of the Committee of Ministers on judgments revealing an underlying systemic problem

(adopted by the Committee of Ministers on 12 May 2004, at its 114th Session)

The Committee of Ministers, in accordance with Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") must remain the essential reference point for the protection of human rights in Europe, and recalling its commitment to take measures in order to guarantee the long-term effectiveness of the control system instituted by the Convention;

Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all states parties;

Recalling that, according to Article 46 of the Convention, the high contracting parties undertake to abide by the final judgment of the European Court of Human Rights (hereinafter referred to as "the Court") in any case to which they are parties and that the final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution;

Emphasising the interest in helping the state concerned to identify the underlying problems and the necessary execution measures;

Considering that the execution of judgments would be facilitated if the existence of a systemic problem is already identified in the judgment of the Court;

Bearing in mind the Court's own submission on this matter to the Committee of Ministers session on 7 November 2002;

Invites the Court:

I. as far as possible, to identify, in its judgments finding a violation of the Convention, what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist states in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments;

II. to specially notify any judgment containing indications of the existence of a systemic problem and of the source of this problem not only to the state concerned and to the Committee of Ministers, but also to the Parliamentary Assembly, to the Secretary General of the Council of Europe and to the Council of Europe Commissioner for Human Rights, and to highlight such judgments in an appropriate manner in the database of the Court.

European human rights institutes

This report updates the information contained in the supplement to Human rights information bulletin, No. 61 (French version only).

Centre de recherche sur les droits de l'homme et le droit humanitaire (CRDH) de l'Université Panthéon-Assas Paris II
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Le Centre de recherche sur les droits de l'homme et le droit humanitaire (CRDH) de l'Université Panthéon-Assas Paris II, créé en 1995 par le doyen Mario Bettati et le doyen Gérard Cohen-Jonathan, constitue le premier pôle universitaire parisien de formation, d'information et de recherche dans les différents champs du droit international des droits de l'homme. Il est dirigé depuis 2003 par le professeur Emmanuel Decaux. Le CRDH est une des principales composantes du Pôle de droit international et européen de l'Université Paris II, mis en place en 2003.

Activités de formation

Le CRDH sert de support au DESS droits de l'homme et droit humanitaire de l'Université Panthéon-Assas Paris II (www.u-paris2.fr), créé en 1995 et dirigé par Mario Bettati et Emmanuel Decaux. Il accueille de nombreux doctorants, français et étrangers, préparant une thèse dans le domaine des droits de l'homme.

L'équipe de l'Université Paris II a remporté la XX^{e} édition du concours européen des droits de l'homme René Cassin qui s'est tenue à Strasbourg du 13 au 16 avril 2004.

Activités d'information

En dehors de la gestion d'un fonds de documentation spécialisé ouvert aux étudiants et aux chercheurs, le CRDH :

- organise un cycle mensuel de conférences d'actualité ;
- a organisé avec le Centre culturel irlandais de Paris et l'*Irish Centre for Human Rights* une série d'événements culturels, les 22-23-24 janvier 2004 marquant le centième anniversaire de la naissance de Sean McBride, sous le titre « vers l'abolition de la peine de mort ».
- publie depuis 2000 une revue francophone enligne sur « Droits fondamentaux », avec le soutien de l'AUF (www.droits-fondamentaux.org).

Publications

Le CRDH a récemment organisé plusieurs journées d'études qui ont fait l'objet de publications :

- « La peine capitale et le droit international des droits de l'homme (21 et 22 septembre 2001) », sous la direction de Gérard Cohen-Jonathan et William Schabas. Publication des actes du colloque aux éditions Panthéon-Assas, Paris, 2003, 275 pages.
- « Constitution européenne, démocratie et droits de l'homme (13 et 14 mars 2003) », sous la direction de Gérard Cohen-Jonathan et Jacqueline Dutheil de la Rochere. Publication des actes du colloque : Bruylant, coll. Droit et Justice, 2003, 307 pages.
- « La réforme de la Cour européenne des droits de l'homme (28 mars 2003) », sous la direction de Gérard Cohen-Jonathan et Christophe Pettiti.
- « Publication des actes du colloque sur la réforme de la Cour européenne des Droits de l'Homme », Bruylant, coll. Droit et Justice, 2004, 194 pages.
- Il assure (en collaboration avec le CREDHO) la responsabilité de la chronique annuelle de jurisprudence de la Cour européenne des Droits de l'Homme (Clunet).

Colloques

Le CRDH a également pour projet d'organiser chaque année un grand colloque international :

- un colloque sur les Nations Unies et les droits de l'homme les 30 septembre et 1er octobre 2004. Ce colloque, organisé sous les auspices du ministère des Affaires étrangères, doit être l'occasion d'une réflexion d'ensemble sur la réforme du système onusien.
- un colloque sur l'OSCE pour marquer le 30^{e} anniversaire de l'Acte final d'Helsinki en 2005, également sous les auspices du ministère des Affaires étrangères.

Réseaux

Le CRDH participe en tant que pôle français – au réseau universitaire sur l'application des deux pactes internationaux mis en place par l'Union européenne et la Chine (2002-2004), ainsi qu'au réseau européen sur la discrimination à l'égard des personnes handicapées.

Il a créé, en 2004, une « Clinique juridique » en partenariat avec l'Institut en Formation en Droits de l'Homme du Barreau de Paris, pour préparer en commun des interventions au titre d'*amicus curiae* devant les juridictions nationales et internationales, notamment la Cour européenne des Droits de l'Homme.

Dans ce cadre, le CRDH et l'IFDHBP organisent une journée d'étude le 18 juin 2004 sur « L'intervention devant la Cour européenne des droits de l'homme ».

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	Protocol No. 14	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	29.07.03				12.07.02	24.02.00
Bulgaria	07.09.92	07.09.92	04.11.00	29.09.99	04.11.00		13.02.03			07.06.00	03.05.94	07.05.99
Croatia	05.11.97	05.11.97	05.11.97	05.11.97	05.11.97	03.02.03	03.02.03		26.02.03		11.10.97	11.10.97
Cyprus	06.10.62	06.10.62	03.10.89	19.01.00	15.09.00	30.04.02	12.03.03		07.03.68	27.09.00	03.04.89	04.06.96
Czech Republic	18.03.92	18.03.92	18.03.92	18.03.92	18.03.92				03.11.99		07.09.95	18.12.97
Denmark	13.04.53	13.04.53	30.09.64	01.12.83	18.08.88		28.11.02		03.03.65		02.05.89	22.09.97
Estonia	16.04.96	16.04.96	16.04.96	17.04.98	16.04.96		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	Protocol No. 14	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				22.06.98		11.05.94	14.09.95
Slovenia	28.06.94	28.06.94	28.06.94	28.06.94	28.06.94		04.12.03			07.05.99	02.02.94	25.03.98
Spain	04.10.79	27.11.90		14.01.85					06.05.80		02.05.89	01.09.95
Sweden	04.02.52	22.06.53	13.06.64	09.02.84	08.11.85		22.04.03		17.12.62	29.05.98	21.06.88	09.02.00
Switzerland	28.11.74			13.10.87	24.02.88		03.05.02				07.10.88	21.10.98
"the former Yugoslav Republic of Macedonia"	10.04.97	10.04.97	10.04.97	10.04.97	10.04.97						06.06.97	10.04.97
Turkey	18.05.54	18.05.54		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: 30.08.04
Ratifications between **01.03.04** and **31.07.04** 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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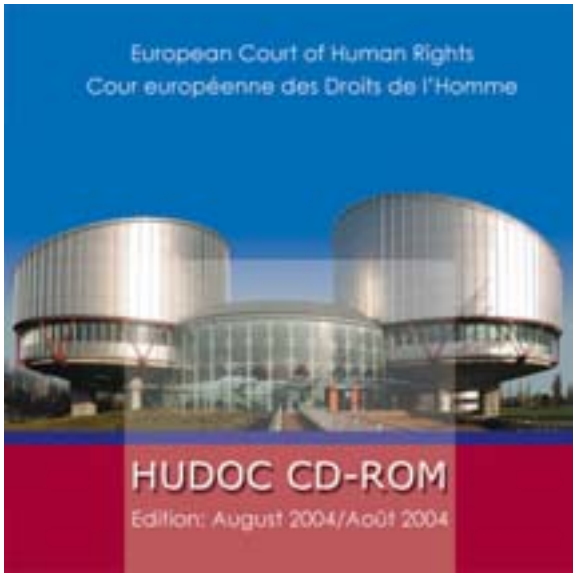

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