Human rights information bulletin

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No. 64,
1 December 2004
to 28 February 2005

29 March-1 April 2005: The René Cassin European Human Rights Competition brought together in Strasbourg 51 teams of students from 15 different countries to take part in this annual moot court contest.
The winner was the team from the University of Poitiers, which beat the team representing the University of Paris Dauphine in the final. The focus this year was on police interrogations and striking a balance between psychiatric detention and personal freedom.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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Internet address: http://www.coe.int/human_rights/.

Treaties and conventions

Signatures and ratifications of Council of Europe treaties in the field of human rights between 1 December 2004 and 28 February 2005. See also the simplified table of signatures and ratifications, page 101.

Armenia

On 17 December 2004 Armenia ratified Protocol No. 12 to the European Convention on Human Rights.

On 7 January 2005 Armenia ratified Protocol No. 14 to the European Convention on Human Rights.

Azerbaijan

On 16 February 2005 Azerbaijan signed Protocol No. 14 to the European Convention on Human Rights.

Cyprus

On 15 December 2004 Cyprus signed Protocol No. 14 to the European Convention on Human Rights.

Finland

On 17 December 2004 Finland ratified Protocol No. 12 to the European Convention on Human Rights.

Liechtenstein

On 7 December 2004 Liechtenstein signed Protocols Nos. 4 and 7 to the European Convention on Human Rights.

On 8 February 2005, Liechtenstein ratified Protocols Nos. 4 and 7 to the European Convention on Human Rights.

Netherlands

On 16 February 2005 the Netherlands ratified the Framework Convention for the Protection of National Minorities.

Portugal

On 20 December 2004 Portugal ratified Protocol No. 7 to the European Convention on Human Rights.

United Kingdom

On 28 January 2005 the United Kingdom ratified Protocol No. 14 to the European Convention on Human Rights.

Further information: http://conventions.coe.int/

European Court of Human Rights

Owing to the large number of judgments delivered by the Court, only those delivered by the Grand Chamber, together with 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.

Between 1 December 2004 and 28 February 2005 the Court dealt with 5 412 (5 422) cases:

- 199 (202) judgments delivered,
- 136 (140) applications declared admissible,
- 4 991 (4 994) applications declared inadmissible,
- 86 applications struck off the list.

Figures are provisional. 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.

HUDOC database: http://hudoc.echr.coe.int/

Grand Chamber judgments

Öneryıldız v. Turkey

Judgment of 30 November 2004. Articles: 2 (right to life), 1 of Protocol No. 1 (protection of property), 13 (right to an effective remedy)

Principal facts and complaints

The applicant, Masallah Öneryıldız, is a Turkish national who was born in 1955. At the material time he was living with 12 close relatives in the slum quarter of Kazim Karabekır in Ümraniye (Istanbul).

The Kazim Karabekır area was part of an expanse of rudimentary dwellings built without any authorisation on land surrounding a rubbish tip which had been used jointly by four district councils since the 1970s, under the authority and responsibility of Istanbul City Council. An expert report drawn up on 7 May 1991 at the request of Üsküdar District Court, to which the matter had been referred by Ümraniye District Council, drew the authorities' attention to, among other things, the fact that no measures had been taken at the tip in question to prevent an explosion of the methane generated by the decomposing refuse. The report gave rise to a series of disputes between the mayors concerned. However, before the proceedings instituted by either of them had been concluded, a methane explosion occurred at the tip on 28 April 1993 and the refuse erupting from the pile of waste engulfed more than ten houses situated below it, including the one belonging to the applicant, who lost nine close relatives.

After criminal and administrative investigations had been carried out into the case, the mayors of Ümraniye and Istanbul were brought before the courts, the former for failing to comply with his duty to order the destruction of the illegal huts surrounding the rubbish tip, and the latter for failing to renovate the tip or order its closure, in spite of the conclusions of the expert report of 7 May 1991. On 4 April 1996 the mayors in question were both convicted of "negligence in the performance of their duties" and were both fined 160 000 Turkish lira (TRL) (at the time the equivalent of around 9.70 euros) and sentenced to the minimum three-month term of imprisonment provided for in Article 230 of the Criminal Code. Their sentences were subsequently commuted to fines, the enforcement of which was suspended.

The applicant subsequently brought an action for damages in his own name and on behalf of his three surviving children in the Istanbul Administrative Court, holding the authorities liable for the death of his relatives and the destruction of his property. In a judgment of 30 November 1995 the authorities were ordered to pay the applicant and his children TRL 100 000 000 for non-pecuniary damage and TRL 10 000 000 for pecuniary damage in respect of the destruction of household goods (equivalent at the material time to approximately 2 077 and 208 euros respectively). Those amounts have yet to be paid to the applicant, and he does not appear to have instituted enforcement proceedings.

In a Chamber judgment of 18 June 2002 the Court held by five votes to two that there had been a violation of Article 2 of the Convention on account of the death of the applicant's relatives and the ineffectiveness of the judicial machinery, and by four votes to three that there had been a violation of Article 1 of Protocol No. 1. By way of just satisfaction, the Court awarded the applicant 154 000 euros for pecuniary and non-pecuniary damage and 10 000 euros for costs and expenses.

Upon request by the Turkish Government, the case was referred to the Grand Chamber, which has given the present judgement.

The applicant alleged that the facts complained of had given rise to violations of Articles 2 (right to life), 13 (right to an effective remedy), 6 § 1 (right to a fair hearing within a reasonable time) and 8 (right to respect for private and family life) of the Convention, and of Article 1 of Protocol No. 1 (protection of property).

Decision of the Court

Article 2

Responsibility borne by the State for the deaths

The Court noted at the outset that there were safety regulations in force in Turkey in both of the fields of activity central to the present case – the operation of household-refuse tips and the rehabilitation of slum areas.

The expert report submitted on 7 May 1991 had specifically referred to the danger of an explosion due to methanogenesis, as the tip had had "no means of preventing an explosion of methane occurring as a result of the decomposition" of household waste. The Court considered that neither the reality nor the immediacy of the danger in question was in dispute, seeing that the risk of an explosion had clearly come into being long before it was highlighted in the report of 7 May 1991 and that, given the site's continued operation in the same conditions, that risk could only have increased over time.

It was impossible for the administrative and municipal departments responsible for supervising and managing the tip not to have known of the risks inherent in methanogenesis or of the necessary preventive measures, particularly as there were specific regulations on the matter. The Court likewise regarded it as established that various authorities had also been aware of those risks, at least by 27 May 1991, when they had been notified of the report of 7 May 1991.

Since the Turkish authorities had known or ought to have known that there was a real or immediate risk to persons living near the rubbish tip, they had had an obligation under Article 2 of the Convention to take such preventive operational measures as were necessary and sufficient to protect those individuals, especially as they themselves had set up the site and authorised its operation, which had given rise to the risk in question. However, Istanbul City Council had not only failed to take the necessary urgent measures but had also opposed the recommendation by the Prime Minister's Environment Office to bring the tip into line with the applicable standards. It had also opposed the attempt in August 1992 by the mayor of Ümraniye to obtain a court order for the temporary closure of the waste-collection site.

As to the Government's argument that the applicant had acted illegally in settling by the rubbish tip, the Court observed that in spite of the statutory prohibitions in the field of town planning, the Turkish State's consistent policy on slum areas had encouraged the integration of such areas into the urban

environment and had thus acknowledged their existence and the way of life of the citizens who had gradually caused them to build up since 1960, whether of their own free will or simply as a result of that policy.

In the present case, from 1988 until the accident of 28 April 1993, the applicant and his close relatives had lived entirely undisturbed in their house, in the social and family environment they had created. It also appeared that the authorities had levied council tax on the applicant and other inhabitants of the Ümraniye slums and had provided them with public services, for which they were charged. Accordingly, the Government could not maintain that they were absolved of responsibility on account of the victims' negligence or lack of foresight.

As to the policy to adopt in dealing with the social, economic and urban problems in that part of Istanbul, the Court acknowledged that it was not its task to substitute its own views for those of the local authorities. However, the timely installation of a gas-extraction system at the Ümraniye tip before the situation became fatal could have been an effective measure which would have complied with Turkish legislation and general practice in such matters without placing an impossible or excessive burden on the authorities. Such a measure would also have been a better reflection of the humanitarian considerations which the Government had relied on before the Court to justify the fact that they had not taken any steps entailing the immediate and wholesale destruction of the slum areas.

The Court further noted that the Government had not shown that any measures had been taken to provide the slum inhabitants with information about the risks they were running. In any event, even if the Turkish authorities had respected the right to information, they would not have been absolved of responsibility in the absence of more practical measures to avoid the risks to the slum inhabitants' lives.

In conclusion, the Court noted that the regulatory framework applicable in the present case had proved defective in that the tip had been allowed to open and operate and there had been no coherent supervisory system. That situation had been exacerbated by a general policy which had proved powerless in dealing with general town-planning issues and had undoubtedly played a part in the sequence of events leading to the accident. The Court accordingly held that there had been a violation of Article 2.

Responsibility borne by the State as regards the nature of the investigation

The Court considered that the administrative remedy used by the applicant to claim compensation could not satisfy the requirement to conduct an effective investigation into the deaths of the applicant's close relatives guaranteed by Article 2.

As to the criminal-law remedies used, the Court considered that the investigating authorities could be regarded as having acted with exemplary promptness and as having shown diligence in seeking to establish the circumstances that had led both to the accident of 28 April 1993 and to the ensuing deaths. Those responsible for the events in question had been identified and prosecuted, eventually being sentenced to the minimum penalty applicable under the Criminal Code.

However, the sole purpose of the criminal proceedings in the present case had been to establish whether the authorities could be held liable for "negligence in the performance of their duties" under Article 230 of the Criminal Code, which provision did not in any way relate to life-endangering acts or to the protection of the right to life within the meaning of Article 2. The judgment of 4 April 1996 had left in abeyance any question of the authorities' possible responsibility for the death of Mr Öneryıldız' close relatives.

Accordingly, it could not be said that the Turkish criminal-justice system had secured the full accountability of State officials or authorities for their role in the tragedy, or the effective implementation of provisions of domestic law guaranteeing respect for the right to life, in particular the deterrent function of criminal law. The Court therefore held that there had also been a violation of Article 2.

Article 1 of Protocol No. 1

The Court rejected the Government's argument that the Turkish authorities had refrained on humanitarian grounds from destroying the applicant's house. The positive obligation on the authorities under Article 1 of Protocol No. 1 had required them to take the practical steps which the Court had already indicated to avoid the destruction of the dwelling.

Admittedly, Mr Öneryildiz had been able to acquire subsidised housing on favourable terms, but any advantages thus obtained could not have caused him to lose his status as a "victim", particularly as there was nothing in the deed of sale to indicate any acknowledgment by the authorities of a violation of his right to the peaceful enjoyment of his possessions.

The Court further noted that the compensation which the Turkish courts awarded the applicant for pecuniary damage had still not been paid even though a final judgment had been delivered.

The Court accordingly held that there had been a violation of Article 1 of Protocol No. 1.

Article 13

As regards the complaint under Article 2

The administrative-law remedy used by the applicant appeared to have been sufficient for him to enforce the substance of his complaint regarding the death of his relatives and had been capable of affording him adequate redress for the violation found of Article 2. However, the Court regarded that remedy as ineffective in several respects and considered it decisive that the damages awarded to Mr Öneryildiz – solely in respect of the non-pecuniary damage resulting from the loss of his close relatives – had never in fact been paid to him.

The Court reiterated that the timely payment of a final award of compensation for anguish suffered should be considered an essential element of a remedy under Article 13 for a bereaved spouse and parent. It further noted that the Administrative Court had taken four years, eleven months and ten days to reach its decision, a period that indicated a lack of diligence on its part, especially in view of the applicant's distressing situation. Those reasons led the Court to conclude that the administrative proceedings had not provided the applicant with an effective remedy in respect of the State's failure to protect the lives of his close relatives. It accordingly held that there had been a violation of Article 13.

As regards the complaint under Article 1 of Protocol No. 1

As had already been noted, the decision on compensation had been long in coming and the amount awarded in respect of the destruction of household goods had never been paid. Consequently, the applicant had been denied an effective remedy in respect of the alleged breach of his right under Article 1 of Protocol No. 1. The Court therefore held that there had also been a violation of Article 13 as regards that complaint.

Article 6 § 1 and Article 8

Having regard to the findings it had already reached, the Court did not consider it necessary to examine the allegations of a violation of Article 6 § 1 and Article 8.

Under Article 41 (just satisfaction), the Court decided unanimously to award the applicant 2 000 United States dollars (corresponding to the reimbursement of funeral expenses), 45 250 euros for pecuniary and non-pecuniary damage and 16 000 euros for costs and expenses (less the 3 993.84 euros already received from the Council of Europe in legal aid). The Court also awarded 33 750 euros to each of the applicant's adult sons for non-pecuniary damage.

Cumpana and Mazare v. Romania

Judgment of 17 December 2004. Article: 10 (freedom of expression)

Principal facts and complaints

The applicants, Constantin Cumpana and Radu Mazare, are Romanian nationals who were born in 1951 and 1968 respectively and live in Constanta (Romania). They are both journalists by profession. Mr Mazare is mayor of Constanta.

In April 1994 the applicants published an article in the *Telegraf* newspaper, of which Mr Mazare was the editor, questioning the legality of a contract in which Constanta City Council had authorised a commercial company, Vinalex, to perform the service of towing away illegally parked vehicles. The article, which appeared under the headline "Former Deputy Mayor D.M. and serving judge R.M. responsible for series of offences in Vinalex scam", was accompanied by, among other things, a cartoon showing the judge, Mrs R.M., on the former deputy mayor's arm, carrying a bag marked "Vinalex" containing banknotes.

Mrs R.M., who had signed the contract with Vinalex on behalf of the city council while employed by the council as a legal expert, brought proceedings against the applicants. She submitted that the cartoon had led readers to believe that she had had intimate relations with the former deputy mayor, despite the fact that they were both married. On 17 May 1995 the applicants were convicted of insult and defamation and sentenced to seven months' imprisonment; they were also disqualified from exercising certain civil rights and prohibited from working as journalists for one year. In addition, they were ordered to pay Mrs R.M. a specified sum for non-pecuniary damage. An appeal by the applicants was dismissed.

The Procurator-General applied to the Supreme Court of Justice to have the judgments in question quashed, submitting that the offence of insult had not been made out, that the amount of damages awarded to Mrs R.M. had been too high and that there had been no justification for prohibiting the applicants from practising their profession. In a final judgment of 9 July 1996 the Supreme Court dismissed the application.

In November 1996 the applicants were granted a presidential pardon dispensing them from having to serve their prison sentence. Mr Mazare continued to work as editor of *Telegraf*, while Mr Cumpana was transferred to another company and was dismissed in 1997 on account of staff cutbacks.

In a Chamber judgment of 10 June 2003 the Court held by five votes to two that there had been no violation of Article 10 of the Convention. Upon request by the applicants, the case was referred to the Grand Chamber which has given the present judgment.

Relying on Article 10, the applicants complained that their freedom of expression had been infringed on account of their criminal conviction following the publication of the article.

Decision of the Court

The Court noted that the article in question had contributed to a debate on a matter of interest to the local community which the applicants had been entitled to bring to the public's attention through the press. It appeared in the light of the article as a whole, including the accompanying cartoon, that the statements about Judge R.M. had contained allegations of specific conduct on her part, namely that she had been complicit in the signing of illegal contracts and had accepted bribes. Such statements had suggested to readers that Mrs R.M. had behaved in a dishonest and self-interested manner, and had been likely to create the impression that the "fraud" of which she and the former deputy mayor had been accused and the bribes they had allegedly accepted were established and uncontroversial facts.

The Court pointed out in this connection that while the press had a duty to inform the public about presumed misappropriation on the part of local elected representatives and public officials, the fact of directly accusing specified individuals by mentioning their names and positions gave rise to an obligation to provide a sufficient factual basis. It further reiterated that, when exercising their freedom of expression, journalists were required to act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. That had not been the case in this instance.

The Romanian courts had found that the applicants' allegations against Mrs R.M. had presented a distorted view of reality and had not been based on actual facts. It was clear from the domestic proceedings that the applicants had been given adequate time and facilities for the preparation of their

defence. Another factor of some significance was their conduct during the criminal proceedings against them. They had displayed a clear lack of interest in their trial, failing to attend the hearings, to state grounds for their appeal and to adduce evidence to substantiate their allegations or provide a sufficient factual basis for them.

In conclusion, the Court considered in the circumstances of the case that the Romanian authorities had been entitled to consider it necessary to restrict the exercise of the applicants' right to freedom of expression and that their conviction for insult and defamation had accordingly met a "pressing social need".

However, the Court observed that the sanctions imposed on the applicants had been very severe. In regulating the exercise of freedom of expression so as to ensure adequate protection by law of individuals' reputations, States should avoid taking measures that might deter the media from fulfilling their role of alerting the public to apparent or suspected misuse of public power.

The imposition of a prison sentence for a press offence was compatible with journalists' freedom of expression only in exceptional circumstances, notably where other fundamental rights had been seriously impaired, as, for example, in the case of hate speech or incitement to violence. In a classic case of defamation, such as the present case, imposing a prison sentence inevitably had a chilling effect.

Furthermore, the order disqualifying the applicants from exercising certain civil rights, which in Romanian law was a secondary penalty imposed automatically, had been particularly inappropriate in their case and had not been justified by the nature of the offences for which they had been held criminally liable.

As regards the order prohibiting the applicants from working as journalists for one year, it had been particularly severe and could not in any circumstances have been justified by the mere risk of their reoffending. The imposition of such a preventive measure of general scope, albeit subject to a time-limit, had contravened the principle that the press must be able to perform the role of a public watchdog in a democratic society.

The Court accordingly considered that, although the interference with the applicants' right to freedom of expression might have been justified, the criminal sanction and the accompanying prohibitions imposed on them by the Romanian courts had been manifestly disproportionate in their nature and severity to the legitimate aim pursued by the applicants' conviction for insult and defamation. The Court therefore held that there had been a violation of Article 10.

Pedersen and Baadsgaard v. Denmark

Judgment of 17 December 2004. Articles: 6 (right to a hearing within a reasonable time), 10 (freedom of expression)

Principal facts and complaints

The applicants, Jørgen Pedersen and Sten Kristian Baadsgaard, both Danish nationals from Copenhagen, were born in 1939 and 1942 respectively. Following Mr Baadsgaard's death in 1999, the Court gave Trine Baadsgaard, his daughter and sole heir, leave to pursue the application.

At the material time the applicants were journalists with *Danmarks Radio*, one of Denmark's two national television stations.

The case concerns the second of two programmes produced by the applicants about the trial of X, who had been sentenced to 12 years' imprisonment after being found guilty of murdering his wife. The programmes criticised Frederikshaven Police's handling of the investigation and explored whether there had been a miscarriage of justice.

The second programme, broadcast on 22 April 1991, highlighted the alleged failure by the investigating authorities to include in a statement taken from a taxi driver that she has seen X at around the time the murder was committed. The commentator on the programme asked: "Why did the vital part of the taxi driver's explanation disappear and who in the police or public prosecutor's office should carry the responsibility for this? Was it [the named Chief Superintendent] who decided that the report should not be included in the case file? Or did he and the Chief Inspector of the Flying Squad conceal the witness's statement from the defence, the judges and

the jury?." The Chief Superintendent and Chief Inspector of the Flying Squad in charge of the investigation were named and photographs of them shown.

On 29 November 1991 the Special Court of Revision decided to reopen the murder case and, on 13 April 1992, X was acquitted.

Following the television programmes, an inquiry was conducted into the police investigation, during which it was revealed that in general the police failed to comply with the statutory requirement for witnesses to be given an opportunity to read through their statements.

The two journalists were charged with defamation of the Chief Superintendent on 19 January 1993 and convicted on 15 September 1995. Their convictions were upheld on appeal to the High Court, which sentenced them to 20 day-fines of 400 Danish kroner (DKK) (approximately 53 euros (EUR)) and ordered them to pay DKK 75 000 (approximately EUR 10 000) compensation to the estate of the Chief Superintendent (who had since died). On 28 October 1998 the Supreme Court upheld their convictions, finding that the applicants lacked a sufficient factual basis for the allegation that the named Chief Superintendent had deliberately suppressed a vital piece of evidence in the murder case and increased the compensation to be paid to DKK 100 000 (approximately EUR 13 400).

In a Chamber judgment of 19 June 2003, the Court held, by six votes to one, that there had been no violation of Article 6 and, by four votes to three, that there had been no violation of Article 10. Upon request by the applicants, the case was referred to the Grand Chamber which has given the present judgment.

The applicants complained about the length of the criminal proceedings against them. They also alleged that the judgment of the Supreme Court amounted to a disproportionate interference with their right to freedom of expression. They relied on Articles 6 § 1 and 10.

The Danish journalists' trade union was given leave to submit written observations.

Decision of the Court

Article 6

The Court considered that the applicants were charged on 19 January 1993 and that the proceedings ended with the Supreme Court's judgment of 28 October 1998. Making an overall assessment of the complexity of the case and the conduct of all concerned, the Court found that the length of the proceedings (five years, nine months and nine days) was not unreasonable and held unanimously that there had been no violation of Article 6 § 1.

Article 10 of the Convention

The Court noted that the applicant journalists were not convicted for alerting the public to possible failings in the criminal investigation made by the police, or for criticising the conduct of the police or of named members of the police force, or for reporting the taxi driver's statements, all of which were legitimate matters of public interest. They were convicted for making the serious accusation that the named Chief Superintendent had committed a criminal offence during the investigation against X, by intentionally suppressing a vital piece of evidence in the murder case.

The applicants presented matters in such a way that viewers were given the impression that it was a fact that the taxi driver had given the explanation as she claimed to have done in 1981; that the police were therefore in possession of this explanation in 1981; and that this report had subsequently been suppressed. The Court noted that the applicants did not leave it open, or at least include an appropriate question, as to whether the taxi driver in 1981 had in fact given the explanation to the police that, nine years later, she claimed she had.

The applicants left the viewers with only two options, namely that the suppression of the vital part of the taxi driver's statement in 1981 had been decided upon either by the Chief Superintendent alone or by him and the Chief Inspector of the Flying Squad jointly. In either case it followed that the named Chief Superintendent had been involved and that he had had therefore committed a serious criminal offence. The

applicants did not leave it open, or at least include the appropriate questions, as to whether a report had been made containing the alleged statement by the taxi driver, and if so, whether anyone had deliberately suppressed it.

The Court further noted that the applicant journalists did not limit themselves to referring to the taxi driver's testimony and to making value judgments based on her statement. The accusation against the named Chief Superintendent was an allegation of fact susceptible of proof. However, the applicants never endeavoured to provide any justification for their allegation, and its veracity had never been proven.

Neither were the applicants convicted for reproducing or reporting the statements of others. They drew their own conclusions from the statements of the witnesses, in particular that of the taxi driver.

The allegation of deliberate interference with evidence, made at peak viewing time on a national TV station, was very serious for the named Chief Superintendent and would have entailed criminal prosecution had it been true. The offence alleged was punishable with up to nine years' imprisonment. It inevitably not only prejudiced public confidence in him, but also disregarded his right to be presumed innocent until proven guilty according to law.

The applicants also relied on just one witness in particular, the taxi driver. Despite the fact that she appeared over nine years after the events took place, they did not check whether there was an objective basis for her timing of events. Neither did the taxi driver at any point during the programme assert that the two police officers had definitely made a report containing her crucial statement; or that a report containing her crucial statement had been suppressed deliberately; or that it was the named Chief Superintendent who had intentionally suppressed the report.

The applicants had obtained a copy of the police report mentioning the taxi driver's statement concerning what she saw on 12 December 1981, which did not contain any indication that something might have been deleted from it. Nor was there any evidence that another report had existed containing the taxi driver's statement that she had seen X on the relevant day.

Notwithstanding a finding of a procedural failure in the conduct of the investigation in X's case, it was not established that the taxi driver when interviewed in December 1981 had claimed to have seen X on the day of the murder; or that a report had been written containing such a statement; or that the existing police report of 1981 had not contained the taxi driver's full statement; or that somebody within Frederikshaven Police had suppressed evidence in X's case. Accordingly, in the Courts' view, the procedural failure in the conduct of the investigation, whether taken alone or together with the taxi driver's statement, could not provide a sufficient factual basis for the applicants' accusation that the Chief Superintendent had actively tampered with evidence.

The applicant journalists submitted that their programmes and the taxi driver's testimony had been a crucial element in the decision to re-try X and in his acquittal. However, counsel for X had already requested a re-opening of the trial on 13 September 1990, four days before the broadcast of the applicants' first programme and more than six months before the second. The Special Court of Revision was also divided when the retrial was granted, in that only two judges out of five found that new testimonial evidence, including the taxi driver's statement, had been produced on which X might have been acquitted had it been available at the trial. The retrial was granted nevertheless because the presiding judge found that in other respects special circumstances existed which made it overwhelmingly likely that the available evidence had not been assessed correctly in 1982. Thus, the assertion that the applicants' programmes or the taxi driver's testimony were a crucial element in the later acquittal of X amounted to speculation.

The Court saw no cause to depart from the Supreme Court's finding that the applicants lacked a sufficient factual basis for the allegation that the named Chief Superintendent had deliberately suppressed a vital piece of evidence in the murder case. The national authorities were thus entitled to consider that

there was a "pressing social need" to take action under the applicable law in relation to that allegation. Neither did the Court find the penalties imposed on the journalists excessive in the circumstances.

Having regard to the foregoing, the Court considered that the conviction of the applicants and the sentences imposed on them were not disproportionate to the legitimate aim pursued, and that the reasons given by the Supreme Court in justification of those measures were relevant and sufficient. Finding that the interference with the applicants' exercise of their right to freedom of expression could reasonably be regarded by the national authorities as necessary in a democratic society for the protection of the reputation and rights of others, the Court held, by nine votes to eight, that there had been no violation of Article 10.

Makaratzis v. Greece

Judgment of 20 December 2004. Articles: 2 (right to life), 3 (prohibition of degrading treatment), 13 (right to an effective remedy)

Principal facts and complaints

The case concerns an application brought by a Greek national, Christos Makaratzis, who was born in 1967 and lives in Athens. The facts are in dispute between the parties.

On 13 September 1995 the police tried to stop the applicant, an unarmed civilian, after he had driven through a red traffic light in the centre of Athens. The applicant did not stop, but accelerated. He was pursued by several police officers in cars and on motorcycles and his car collided with several other vehicles. Two drivers were injured. After the applicant had broken through five police roadblocks, the police officers started firing at his car. Eventually, he stopped his car at a petrol station, but locked the doors and refused to get out. The police officers continued firing. The applicant alleges that they were firing at his car; the Government claim that they were firing into the air. One police officer threw a pot at the car windscreen. Finally, the applicant was arrested by a police officer who managed to break into the car. The applicant was immediately driven to the hospital, where he remained for nine days. He sustained injury to his right arm, his right foot, his left buttock and the right side of his chest. He claims that he was shot in the sole of his foot while being dragged out of his car. The Government contest this allegation. The applicant's mental health has deteriorated considerably since the accident.

Some of the police officers left the scene without revealing their identity and disclosing all necessary information concerning the weapons used. The public prosecutor instituted criminal proceedings against seven officers, which ended in their acquittal. Given that not all the officers involved in the incident had been identified, the criminal court was unable to establish beyond reasonable doubt that the seven accused were the ones who had fired at the applicant.

The request was declared partly admissible on 18 October 2001 and a Chamber hearing was held in Strasbourg on 3 April 2003. On 5 February 2004 jurisdiction was relinquished in favour of the Grand Chamber which has given the present judgment.

The applicant complained, under Articles 2, 3 and 13 of the Convention, that the police officers had used excessive fire-power against him, putting his life at risk. He also complained of the lack of an adequate investigation into the incident.

The *Institut de Formation en Droits de l'Homme du Barreau de Paris* was given leave to submit written observations.

Decision of the Court

Article 2 of the Convention

Having regard to the circumstances of the case and in particular to the degree and type of force used, the Court concluded that, irrespective of whether or not the police had actually intended to kill him, the applicant had been the victim of conduct which, by its very nature, had put his life at risk, even though, in the event, he had survived. Article 2 was thus applicable.

Regarding the authorities' obligation to protect the applicant's right to life by law

Although the Greek State had since passed a new law in 2003 regulating the use of firearms by the police, at the relevant time the applicable legislation dated from the Second World War when Greece had been occupied by the German armed forces. Greek law did not contain any other provisions regulating the use of weapons during police actions or laying down guidelines on planning and control of police operations.

Having regard to the criminal conduct of the applicant and to the climate at the time, marked by terrorist actions against foreign interests, the Court accepted that the use of force against him had been based on an honest belief which had been perceived, for good reasons, to be valid at the time. However, the Court was struck by the chaotic way in which the firearms had actually been used by the police and serious questions arose as to the conduct and the organisation of the operation.

While accepting that the police officers who had been involved in the incident had not had sufficient time to evaluate all the parameters of the situation and carefully organise their operation, the Court considered that the degeneration of the situation had largely been due to the fact that at that time neither the individual police officers nor the chase, seen as a collective police operation, had had the benefit of the appropriate structure which should have been provided by the domestic law and practice.

At the time the use of weapons by State officials had still been regulated by an obsolete and incomplete law for a modern democratic society. The system in place had not afforded to law-enforcement officials clear guidelines and criteria governing the use of force in peacetime. The police officers concerned had thus enjoyed a greater autonomy of action and had been able to take unconsidered initiatives, which would probably not have been the case had they had the benefit of proper training and instructions.

Consequently, the Court found that the Greek authorities had failed to comply with the positive obligation to put in place an adequate legislative and administrative framework and had not done all that could be reasonably expected of them to afford to citizens the level of safeguards required by Article 2. Accordingly, the Court held that there had been a violation of Article 2 of the Convention.

The inadequacy of the investigation

Even though an administrative investigation had been carried out following the incident the Court observed that there had been striking omissions in its conduct. In particular, the Court attached significant weight to the fact that the domestic authorities had failed to identify all the policemen who had taken part in the chase. Some policemen had left the spot without identifying themselves and without handing over their weapons so that some of the firearms which were used had never been reported. It also appeared that nothing had been done to identify the policemen who had been on duty in the area when the incident had taken place. Moreover, it was remarkable that only three bullets had been collected and that other, than the bullet which had been removed from Mr Makaratzis's foot and the one which was still in his buttock, the police had never found or identified the other bullets which had injured the applicant.

Those omissions had prevented the Greek court from making as full a finding of fact as it might otherwise have done and had resulted in the acquittal of the police officers on the ground that it had not been shown beyond reasonable doubt that it was they who had injured the applicant, since many other shots had been fired from unidentified weapons.

In those circumstances the Court concluded that the authorities had failed to carry out an effective investigation into the incident. The incomplete and inadequate character of the investigation was highlighted by the fact that, even before the Court, the Government had been unable to identify all the officers who had been involved in the shooting and wounding of the applicant. The Court concluded that there had accordingly been a violation of Article 2 of the Convention in that respect. Having regard to that conclusion, it did not find it necessary to determine whether the failings identified in this case were part

of a practice adopted by the authorities, as asserted by the applicant.

Articles 3 and 13 of the Convention

The Court considered that no separate issue arose under Articles 3 and 13 of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant, by fifteen votes to two, 15 000 euros (EUR) for non-pecuniary damage.

Mamatkulov and Askarov v. Turkey

Judgment of 4 February 2005. Articles: 2 (right to life), 3 (prohibition of torture or inhuman or degrading treatment or punishment, 6 § 1 (right to a fair trial), 34 (right of individual petition)

Principal facts and complaints

The case concerns two applications brought by two Uzbek nationals, Rustam Sultanovitch Mamatkulov and Zainiddin Abdurasulovic Askarov, who were born in 1959 and 1971 respectively.

The applicants are members of the *ERK* "Freedom" Party (an opposition party in Uzbekistan). They were extradited from Turkey to Uzbekistan on 27 March 1999 and are understood to be currently in custody there.

Mr Mamatkulov arrived in Istanbul from Kazakhstan on 3 March 1999 on a tourist visa. The Turkish police arrested him at Atatürk Airport (Istanbul) and took him into police custody.
Mr Askarov came into Turkey on 13 December 1998 on a false passport. The security forces arrested him and took him into police custody on 5 March 1999.

Both men were suspected of murder, causing injuries by the explosion of a bomb in Uzbekistan, and an attempted terrorist attack on the President of the Republic. They were brought before a judge who ordered them to be remanded in custody. Uzbekistan requested their extradition under a bilateral treaty with Turkey.

Mr Mamatkulov was questioned by a judge at Bakirköy Criminal Court and Mr Askarov was brought before Fatih Criminal Court (Istanbul). The judge and court noted that the offences with which the applicants were charged were neither political nor military in nature, but ordinary criminal offences. They ordered them to be detained pending their extradition.

The applicants lodged applications with the European Court of Human Rights, which on 18 March 1999 indicated to the Turkish Government, under Rule 39 (interim measures) of the Rules of Court, that "it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court not to extradite the applicants to Uzbekistan until the Court had had an opportunity to examine the application further at its forthcoming session on 23 March". On that date the Chamber extended the interim measure until further notice. In the meantime, on 19 March 1999, the Turkish Cabinet had issued a decree for the applicants' extradition. They were handed over to the Uzbek authorities on 27 March 1999.

In a judgment of 28 June 1999 the High Court of the Republic of Uzbekistan found the applicants guilty of the offences as charged and sentenced them to 20 and 11 years' imprisonment respectively.

In a Chamber judgment of 6 February 2003 the Court held, unanimously, that there had been no violation of Article 3; that Article 6 was inapplicable to the extradition procedure in Turkey; and, that no issue arose regarding the second complaint lodged under Article 6. It held that there had been a breach of Article 34 because Turkey had not complied with the interim measures indicated by the Court; and no violation of Articles 6 or 10.

Upon request by the Turkish Government, the case was referred to the Grand Chamber which has given the present judgment.

Relying on Articles 2 and 3, the applicants' representatives submitted that, at the time of the applicants' extradition, they faced a real risk of being tortured or ill-treated.

They also complained, under Article 6, of the unfairness of the extradition procedure in Turkey and of the criminal proceedings in Uzbekistan.

They further maintained that, in extraditing the applicants, Turkey had failed to discharge its obligations under the

Convention by not acting in accordance with the indications given by the Court under Rule 39 of its Rules of Court.

Three non-governmental organisations – the Aire Centre (London), Human Rights Watch (New York) and the International Commission of Jurists (Geneva) – leave to intervene as third parties in the proceedings.

Decision of the Court

Articles 2 and 3 of the Convention

The Court took note of reports from international human-rights organisations denouncing an administrative practice of torture and other forms of ill-treatment of political dissidents in Uzbekistan and the Uzbek regime's repressive policy towards such dissidents. Amnesty International stated in its report for 2001: "Reports of ill-treatment and torture by law enforcement officials of alleged supporters of banned Islamist opposition parties and movements … continued …".

However, the Court found that, although those findings described the general situation in Uzbekistan, they did not support the specific allegations made by the applicants, which required corroboration by other evidence.

The Court took into consideration the date the applicants were extradited (27 March 1999) when assessing whether there was a real risk of their being subjected in Uzbekistan to treatment proscribed by Article 3.

The Turkish Government had contended that the applicants were extradited after an assurance was obtained from the Uzbek Government that "[t]he applicants' property will not be liable to general confiscation, and the applicants will not be subjected to acts of torture or sentenced to capital punishment". The Government also produced medical reports from the doctors of the Uzbek prisons where Mr Mamatkulov and Mr Askarov were being held.

In the light of the material before it, the Court was not able to conclude that substantial grounds existed on 27 March 1999 for believing that the applicants faced a real risk of treatment proscribed by Article 3. Turkey's failure to comply with the indication given under Rule 39 prevented the Court from assessing whether a real risk existed in the manner it considered appropriate in the circumstances of the case. Consequently, no violation of Article 3 could be found.

Having considered the applicants' allegations under Article 3, the Court found it unnecessary to examine them separately under Article 2.

Article 6 § 1 of the Convention

Concerning the applicants' complaint that they had not had a fair hearing before the criminal court that ruled on their extradition, the Court reiterated that decisions regarding the entry, stay and deportation of aliens did not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6 § 1. Consequently, Article 6 § 1 was not applicable.

Concerning the applicants' submission that there was no possibility of their being given a fair trial in Uzbekistan, the Court considered that the risk of a flagrant denial of justice had to be assessed by reference to the facts which the State knew or should have known when it extradited those concerned. When extradition was deferred following an indication by the Court under Rule 39, the risk of a flagrant denial of justice had also be assessed in the light of the information available to the Court when it considered the case.

Although, in the light of the information available, there might have been reasons for doubting at the relevant time that the applicants would receive a fair trial in the State of destination, there was not sufficient evidence to show that any possible irregularities in the trial were liable to constitute a flagrant denial of justice. Consequently, no violation of Article 6 § 1 could be found.

Article 34 of the Convention

The Court noted that the applicants, once extradited, lost contact with their lawyers, and therefore lost an opportunity to gather evidence in support of their allegations under Article 3. As a consequence, the Court was prevented from properly assessing whether the applicants were exposed to a real risk of ill-treatment.

The Court observed that, in a number of recent decisions and orders, international courts and institutions had

stressed the importance and purpose of interim measures and pointed out that compliance with such measures was necessary to ensure the effectiveness of their decisions. In proceedings concerning international disputes, the purpose of interim measures was to preserve the parties' rights.

The Court also stressed that the Convention right to individual application had over the years become of high importance and was now a key component of the machinery for protecting the rights and freedoms set out in the Convention.

In that context, the Court noted that, in the light of the general principles of international law, the law of treaties and international case-law, the interpretation of the scope of interim measures could not be dissociated from the proceedings to which they related or the decision on the merits they sought to protect. The Court reiterated that Article 31 § 1 of the Vienna Convention on the Law of Treaties provided that treaties had to be interpreted in good faith in the light of their object and purpose, and also in accordance with the principle of effectiveness.

The Court observed that the International Court of Justice, the Inter-American Court of Human Rights, the Human Rights Committee and the Committee against Torture of the United Nations had all confirmed in their reasoning in recent decisions that the preservation of the asserted rights of the parties in the face of the risk of irreparable damage represented an essential objective of interim measures in international law. Whatever the legal system in question, the proper administration of justice required that no irreparable action be taken while proceedings were pending.

Under the Convention system, interim measures, as they had consistently been applied in practice, played a vital role in avoiding irreversible situations that would prevent the Court from properly examining the application and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted. Accordingly, in those conditions, a failure by a State which had ratified the Convention to comply with interim measures would undermine the effectiveness of the right of individual application guaranteed by Article 34 and the State's formal undertaking in Article 1 to protect the rights and freedoms in the Convention.

Indications of interim measures given by the Court allowed it, not only to carry out an effective examination of the application, but also to ensure that the protection afforded to the applicant by the Convention was effective; such indications also subsequently allowed the Council of Europe's Committee of Ministers to supervise execution of the final judgment. Such measures therefore enabled the State concerned to discharge its obligation to comply with the final judgment of the Court, which was legally binding by virtue of Article 46 of the Convention.

Consequently, the effects of the indication of an interim measure to a Contracting State – in this case Turkey – had to be examined in the light of the obligations which are imposed by Articles 1, 34 and 46 of the Convention.

The facts of the case clearly showed that the Court was prevented by the applicants' extradition to Uzbekistan from conducting a proper examination of their complaints in accordance with its settled practice in similar cases and ultimately from protecting them, if need be, against potential violations of the Convention as alleged. As a result, the applicants were hindered in the effective exercise of their right of individual application guaranteed by Article 34, which the applicants' extradition rendered meaningless.

Having regard to the material before it, the Court concluded that, by failing to comply with the interim measures indicated under Rule 39 of the Rules of Court, Turkey was in breach of its obligations under Article 34.

Under Article 41 (just satisfaction), the Court awarded each of the applicants 5 000 euros (EUR) for non-pecuniary damage and EUR 15 000, jointly, for costs and expenses (less EUR 2 613.17 received from the Council of Europe in legal aid).

Selected Chamber judgments

Merger and Cross v. France

Judgment of 22 December 2004. Articles: Article 1 of Protocol No. 1 (protection of property) taken together with Article 14 of the Convention and Article 8 of the Convention (right to respect for private and family life) taken together with Article 14.

Principal facts and complaints

The applicants, Hermance Merger and her mother, Clémentine Cros, are French nationals who were born in 1968 and 1936 respectively and live in Paris. Ms Merger was born of a relationship between her mother and a Mr Merger, a married man who already had four children. Her parents had been living together since 1965.

In 1980 Mr Merger drew up a document dividing his movable property between his five children. Subsequently, in 1984 and 1985 he made two wills in which he bequeathed to the first applicant the remainder of his assets which he was legally entitled to dispose of (the disposable portion of his estate) and, among other things, expressed his intention that she should receive an allowance to pay her tuition fees.

Mr Merger died in 1986, leaving as his heirs his wife, their four legitimate children and the first applicant. The deceased's legitimate children and their mother brought proceedings against the applicants, seeking, in particular, an order setting aside the bequest to the first applicant and the gifts made to the second applicant.

In a judgment of 6 November 1992 the Paris *tribunal de grande instance* found in favour of the complainants. It set aside the gifts made to the second applicant, deeming them to have been made to her daughter through an intermediary, set aside the bequest to the first applicant, declared the division of the estate null and void and added, as a secondary point, that the first applicant was entitled to only 10% of the estate. The Dijon Court of Appeal upheld that judgment with regard in particular to the refusal to grant the first applicant identical inheritance rights to the deceased's four legitimate children, and declared inadmissible the request for maintenance payments.

In February 1999 the deceased's estate was liquidated. Under the terms of the deed of division, the first applicant was required to pay a sum equivalent to EUR 236 187 to compensate for the unequal value of the different parts of the estate. As she had no property of her own, her mother sold her home in order to pay the balance required. In a judgment of 3 May 2000 the Court of Cassation dismissed an appeal on points of law by the applicants, and the balance was duly paid to the other heirs.

The applicants complained of the restrictions on Ms Merger inheritance rights and on their capacity to receive lifetime or testamentary gifts from her father. They submitted that they had been discriminated against on account of the first applicant's status as an "adulterine" child.

Decision of the Court

Article 1 of Protocol No. 1 taken together with Article 14

As regards the first applicant's inheritance rights

The Court noted that the first applicant had been penalised in the division of the assets of the estate on account of her status as an adulterine child. It reiterated that in the division of an estate, no grounds could justify discrimination based on birth out of wedlock. The Court accordingly held that there had been a violation of Article 1 of Protocol No. 1 taken together with Article 14.

As regards the capacity of both applicants to receive gifts

The Court reiterated that Article 1 of Protocol No. 1 enshrined the right of everyone to the peaceful enjoyment of "his" possessions but applied only to existing possessions and did not guarantee the right to acquire possessions whether by inheritance or through voluntary dispositions. Accordingly, this provision was not applicable and the Court held that there had been no violation of Article 1 of Protocol No. 1 taken together with Article 14 in that respect.

Article 8 taken together with Article 14

As regards the first applicant's inheritance rights

Having regard to the conclusion it had reached under Article 1 of Protocol No. 1 taken together with Article 14, and to the fact that the parties' submissions were the same as those examined on that point, the Court considered that it was not necessary to examine this complaint under Article 8 taken together with Article 14.

As regards the capacity of both applicants to receive gifts

Ms Merger had been born in 1968, and her parents had been living together since 1965. At the time of her birth she and her parents had manifestly formed a "family" within the meaning of Article 8 of the Convention. The Court reiterated that matters of inheritance and of disposition between near relatives were intimately connected with family life. Family life did not include only social, moral or cultural relations, but also interests of a material kind, as was shown by, among other things, the obligations in respect of maintenance and the position occupied in the domestic legal systems of the majority of the Contracting States by the institution of the reserved portion of an estate.

While inheritance rights were not normally exercised until the estate-owner's death, that is at a time when family life underwent a change or even came to an end, issues concerning such rights could arise before the death: the distribution of the estate, which could be settled by the making of a will or of a gift on account of a future inheritance, as was often the case in practice, was a feature of family life that could not be disregarded.

In the present case, on account of her status as an adulterine child, Ms Merger had had no legal capacity to receive lifetime or testamentary gifts from her father to the value of more than half the share of the estate to which she would have been entitled if she had been a legitimate child. Similarly, on account of this lack of legal capacity, the gifts which her father had made to her mother were deemed by law to have been made to the first applicant herself through an intermediary. Consequently, on her father's death all those gifts had been notionally considered part of his overall estate and, following the relevant calculations, Ms Merger had had to pay the other heirs – her father's legitimate children – a balancing adjustment, so that she had only actually received half of her share of the estate.

As in relation to inheritance rights, the Court could find no ground in the present case to justify such discrimination based on birth out of wedlock and accordingly held that there had been a violation of Articles 8 and 14 taken together in respect of both applicants.

Under Article 41 (just satisfaction), the Court awarded Ms Merger 612 145 euros (EUR) and Mrs Cros EUR 278 634 for pecuniary damage. It also awarded them EUR 3 000 each for non-pecuniary damage. Lastly, it awarded Ms Merger EUR 34 440 and Mrs Cros 17 600 for costs and expenses.

Enhorn v. Sweden

Judgment of 25 January 2005. Article: 5 § 1 (right to liberty and security).

Principal facts and complaints

The applicant is a Swedish national, Eie Enhorn, who was born in 1947. In 1994 it was discovered that he was infected with the HIV virus and that he had transmitted the virus to a 19-year-old man with whom he had first had sexual contact in 1990.

On 2 February 1995 the county medical officer applied to the County Administrative Court (*länsrätten*) for a court order that the applicant be kept in compulsory isolation in a hospital for up to three months pursuant to section 38 of the 1988 Infectious Diseases Act.

In a judgment of 16 February 1995, finding that the applicant had failed to comply with the measures prescribed by the county medical officer, aimed at preventing him from spreading the HIV infection, the County Administrative Court ordered that the applicant should be kept in compulsory isolation for up to three months pursuant to section 38 of the 1988 Act.

Thereafter, orders to prolong his deprivation of liberty were continuously issued every six months until 12 December 2001. Since the applicant absconded several times, his actual deprivation of liberty lasted from 16 March 1995 until 25 April 1995, 11 June 1995 until 27 September 1995, 28 May 1996 until 6 November 1996, 16 November 1996 until 26 February 1997, and 26 February 1999 until 12 June 1999 – almost one and a half years altogether.

On 12 December 2001 an application to further extend the order was turned down by the County Administrative Court, which referred to the fact that the applicant's whereabouts were unknown and that therefore no information was available regarding his behaviour, state of health and so on. It appears that since 2002 the applicant's whereabouts have been known, but that the competent county medical officer has made the assessment that there are no grounds for the applicant's further involuntary placement in isolation.

The applicant complained that the compulsory isolation orders and his involuntary placement in hospital had been in breach of Article 5 § 1 of the Convention.

Decision of the Court

Article 5 § 1 of the Convention

Being satisfied that the applicant's detention had a basis in Swedish law, the Court proceeded to examine whether the deprivation of the applicant's liberty amounted to "the lawful detention of a person in order to prevent the spreading of infectious diseases" within the meaning of Article 5 § 1 (e) of the Convention.

In view of the limited amount of directly relevant case-law, it was necessary to establish which criteria were relevant when assessing whether such a detention was in compliance with the principle of proportionality and the requirement that any detention must be free from arbitrariness.

The Court found that the essential criteria when assessing the "lawfulness" of the detention of a person "for the prevention of the spreading of infectious diseases" were whether the spreading of the infectious disease was dangerous for public health or safety, and whether detention of the person infected was the last resort in order to prevent the spreading of the disease, inasmuch as less severe measures had been considered and found to be insufficient to safeguard the public interest. When those criteria were no longer fulfilled, the basis for the deprivation of liberty ceased to exist.

In the case under review, it was undisputed that the first criterion was fulfilled, in that the HIV virus was and is dangerous for public health and safety.

It thus remained to be examined whether the applicant's detention could be said to be the last resort in order to prevent the spreading of the virus, because less severe measures had been considered and found to be insufficient to safeguard the public interest.

The Court noted that the Government had not provided any examples of less severe measures which might have been considered for the applicant in the period from 16 February 1995 until 12 December 2001, but had turned out to be insufficient to safeguard the public interest.

Among other things, despite his being at large for most of the period from 16 February 1995 until 12 December 2001, there was no evidence or indication that during that period the applicant transmitted the HIV virus to anybody, or that he had sexual intercourse without first informing his partner about his HIV infection, or that he did not use a condom, or that he had any sexual relationship at all for that matter.

In those circumstances, the Court found that the compulsory isolation of the applicant was not a last resort in order to prevent him from spreading the HIV virus after less severe measures had been considered and found to be insufficient to safeguard the public interest. Moreover, by extending over a period of almost seven years the order for the applicant's compulsory isolation, with the result that he had been placed involuntarily in a hospital for almost one and a half years in total, the authorities had failed to strike a fair balance between the need to ensure that the HIV virus did not spread and the applicant's right to liberty.

There had accordingly been a violation of Article 5 § 1 of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 12 000 euros (EUR) for non-pecuniary damage and EUR 2 083 for costs and expenses.

Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania

Judgment of 3 February 2005. Articles: 11 (freedom of assembly and association), 14 (prohibition of discrimination).

Principal facts and complaints

The application was lodged by a political grouping named *Partidul Comunistilor* (*Nepeceristi*) (Party of Communists who have not been members of the Romanian Communist Party, "the PCN"), and by its chairman, Gheorghe Ungureanu, a Romanian national who was born in 1942 and lives in Arges (Romania).

The PCN was founded in March 1996 and its aims, according to its political programme, was to defend workers' interests and to uphold the basic tenets of Communist doctrine. Its representative, Mr Ungureanu, applied to register the PCN on the special register of political parties. In a judgment of 19 April 1996, the Bucharest District Court dismissed his application on the grounds that the PCN was seeking to gain political power in order to establish a "humane State" founded on communist doctrine, meaning that the applicants considered the constitutional and legal order that had been in place since 1989 as inhumane and not based on genuine democracy. That decision was upheld on 28 August 1996 by the Bucharest Court of Appeal.

Mr Ungureanu has since expressed his convictions in various publications, including a newspaper *Pentru socialism* ("For socialism"), of which he was the editor, and a book he published in 2003.

The applicants alleged that the Romanian courts' refusal to grant their application to register the PCN as a political party had infringed their right to freedom of association, as guaranteed by Article 11 of the Convention. In addition, relying they submitted that they had been discriminated against on the basis of their political opinions.

Decision of the Court

Article 11 of the Convention

The Court found that the refusal to register the PCN amounted to interference with the applicants' freedom of association, and was based on Legislative Decree no. 8/1989 of the registration and functioning of political parties. Having regards in particular to Romania's experience of totalitarianism, the Court considered that the measures taken could be regarded as being in the interests of national security and for the protection of the rights and freedoms of others.

Since the Romanian courts had rejected the application for registration of the PCN solely on the basis of its constitution and political programme, the Court said that its assessment of the necessity for the interference would be based on those two documents. It would not take into account statements made by Mr Ungureanu years after the interference, as the Romanian Government had submitted it should; in any event, it had not found in those statements any call for the use of violence for political ends or any political goals that contravened democratic principles.

Having examined the PCN's constitution and political programme, the Court noted that they stressed the importance of upholding the national sovereignty, territorial integrity and legal and constitutional order of the country, and democratic principles including political pluralism, universal suffrage and freedom to participate in politics. They did not contain any passages that might be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles – which was an essential factor to be taken into consideration – or for the "dictatorship of the proletariat". It was true that there were passages criticising both the abuses of the former Communist Party before 1989, from which the PCN distanced itself, and the policy that had been followed subsequently. However, the Court considered that there could be no justification for hindering a political group that complied with the fundamental principles of democracy solely because it had criticised the constitutional and legal order of the country and had sought a public debate in the political arena.

The Court further noted that, owing to the rejection of its application for registration, the PCN had not had time to take concrete action that might have revealed that its pursued aims were contrary to those it proclaimed in public. It had thus been penalised for conduct that related solely to the exercise of freedom of expression.

The Court was prepared to take into account the historical background to cases before it, in this instance Romania's experience of totalitarian communism prior to 1989. However, that context could not by itself justify the need for the interference, especially bearing in mind that communist parties adhering to Marxist ideology had been present in a number of countries that were signatories to the Convention.

In conclusion, the Court considered that a measure as drastic as the refusal to register the PCN as a political party even before it had commenced its activities appeared disproportionate to the aim pursued and, consequently, not necessary in a democratic society. There had therefore been a violation of Article 11.

Article 14 of the Convention

Since the applicants' complaint under Article 14 had the same factual basis as the complaint under Article 11, the Court considered that no separate examination of it was necessary.

Under Article 41 (just satisfaction) of the Convention, the Court awarded Mr Ungureanu 100 euros (EUR) for costs and expenses and held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage he had sustained.

Steel and Morris v. the United Kingdom

Judgment of 15 February 2005. Articles: 6 § 1 (right to a fair hearing), 10 (freedom of expression.

Principal facts and complaints

The case concerns an application brought by two United Kingdom nationals, Helen Steel and David Morris, who were born in 1965 and 1954 respectively and live in London. During the relevant period Mr Morris was unemployed and Ms Steel was either unemployed or on a low wage. Both were associated with London Greenpeace, a small group, unconnected with Greenpeace International, which campaigned principally on environmental and social issues.

In the mid-1980s London Greenpeace began an anti-McDonald's campaign. In 1986 a six-page leaflet entitled "What's wrong with McDonald's?" was produced and distributed as part of that campaign.

On 20 September 1990 McDonald's Corporation ("US McDonald's") and McDonald's Restaurants Limited ("UK McDonald's") issued a writ against the applicants claiming damages for libel allegedly caused by the alleged publication by the defendants of the leaflet. The applicants denied publication, denied that the words complained of had the meanings attributed to them by McDonald's and denied that all or some of the meanings were capable of being defamatory. Further, they contended, in the alternative, that the words were substantially true or else were fair comment on matters of fact.

The applicants were refused legal aid and so represented themselves throughout the trial and appeal, with only some help from volunteer lawyers. They submit that they were severely hampered by lack of resources, not just in the way of legal advice and representation, but also when it came to administration, photocopying, note-taking, and the tracing, preparation and payment of the costs and expenses of expert and factual witnesses. Throughout the proceedings McDonald's were represented by leading and junior counsel, experienced in defamation law and by a one or, at times, two solicitors and other assistants.

The trial took place before a judge sitting alone between 28 June 1994 and 13 December 1996. It lasted for 313 court days and was the longest trial in English legal history. On appeal the Court of Appeal rejected the majority of the applicants' submissions as to general grounds of law and unfairness, but accepted some of the challenges to the trial judge's findings as to the content of the leaflet. The damages awarded by the trial judge were reduced from a total of GBP 60 000 to a total of GBP 40 000.

Leave to appeal to the House of Lords was refused. McDonald's, who had not applied for costs, have not sought to enforce the award.

The applicants complained, under Article 6 § 1 of the Convention, that the proceedings were unfair, principally because they were denied legal aid, and, under Article 10, that the proceedings and their outcome constituted a disproportionate interference with their right to freedom of expression.

Decision of the Court

Article 6 § 1 of the Convention

The applicants' principal complaint under this provision was that they were denied a fair trial because of the lack of legal aid.

The question whether the provision of legal aid was necessary for a fair hearing had to be determined on the basis of the particular facts and circumstances of each case and depended *inter alia* upon the importance of what was at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively.

The Court examined the facts of the case with reference to these criteria.

In terms of what had been at stake for the applicants, although defamation proceedings were not, in this context, comparable to, for instance, proceedings raising important family-law issues, the financial consequences had been potentially severe.

As regards the complexity of the proceedings, the trial at first instance had lasted 313 court days, preceded by 28 interlocutory applications. The appeal hearing had lasted 23 days. The factual case which the applicants had had to prove had been highly complex, involving 40 000 pages of documentary evidence and 130 oral witnesses.

Nor was the case straightforward legally. Extensive legal and procedural issues had to be resolved before the trial judge was in a position to decide the main issue.

Against this background, it was necessary to assess the extent to which the applicants were able to bring an effective defence despite the absence of legal aid. The applicants appeared to have been articulate and resourceful and they had succeeded in proving the truth of a number of the statements complained of. They had moreover received some help on the legal and procedural aspects of the case from barristers and solicitors acting *pro bono*: their initial pleadings were drafted by lawyers. For the bulk of the proceedings, however, including all the hearings to determine the truth of the statements in the leaflet, they had acted alone.

In an action of this complexity, neither the sporadic help given by the volunteer lawyers nor the extensive judicial assistance and latitude granted to the applicants as litigants in person, was any substitute for competent and sustained representation by an experienced lawyer familiar with the case and with the law of libel. The very length of the proceedings was, to a certain extent, a testament to the applicants' lack of skill and experience.

In conclusion, the denial of legal aid to the applicants had deprived them of the opportunity to present their case effectively before the court and contributed to an unacceptable inequality of arms with McDonald's. There had, therefore, been a violation of Article 6 § 1.

In view of its finding of a violation of Article 6 § 1 based on the lack of legal aid, the Court did not consider it necessary to examine separately additional complaints under that provision directed at a number of specific rulings made by the judges in the proceedings.

Article 10 of the Convention

The central issue which fell to be determined was whether the interference with the applicants' freedom of expression had been "necessary in a democratic society".

The Government had contended that, as the applicants were not journalists, they should not attract the high level of protection afforded to the press under Article 10. However, in a democratic society even small and informal campaign groups, such as London Greenpeace, had to be able to carry on their activities effectively. There existed a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas

on matters of general public interest such as health and the environment.

The safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest was subject to the proviso that they acted in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism, and the same principle applied to others who engaged in public debate. In a campaigning leaflet a certain degree of hyperbole and exaggeration could be tolerated, and even expected, but in the case under review the allegations had been of a very serious nature and had been presented as statements of fact rather than value judgments.

The applicants, who, despite the High Court's finding to the contrary, had denied that they had been involved in producing the leaflet, had claimed that it placed an intolerable burden on campaigners such as themselves, and thus stifled public debate, to require those who merely distributed a leaflet to bear the burden of establishing the truth of every statement contained in it. They had also argued that large multinational companies should not be entitled to sue in defamation, at least without proof of actual financial damage. Complaint was further made of the fact that under the law McDonald's were able to bring and succeed in a claim for defamation when much of the material included in the leaflet was already in the public domain.

Like the Court of Appeal, the Court was not persuaded by the argument that the material was in the public domain since either the material relied on did not support the allegations in the leaflet or the other material was itself lacking in justification.

As to the complaint about the burden of proof, it was not in principle incompatible with Article 10 to place on a defendant in libel proceedings the onus of proving to the civil standard the truth of defamatory statements.

Nor should in principle the fact that the plaintiff in the present case was a large multinational company deprive it of a right to defend itself against defamatory allegations or entail that the applicants should not have been required to prove the truth of the statements made. It was true that large public companies inevitably and knowingly laid themselves open to close scrutiny of their acts and the limits of acceptable criticism are wider in the case of such companies. However, in addition to the public interest in open debate about business practices, there was a competing interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good. The State therefore enjoyed a margin of appreciation as to the means it provided under domestic law to enable a company to challenge the truth, and limit the damage, of allegations which risk harming its reputation.

If, however, a State decided to provide such a remedy to a corporate body, it was essential, in order to safeguard the countervailing interests in free expression and open debate, that a measure of procedural fairness and equality of arms was provided for. The more general interest in promoting the free circulation of information and ideas about the activities of powerful commercial entities, and the possible "chilling" effect on others were also important factors to be considered in this context. The lack of procedural fairness and equality which the Court had already found therefore also gave rise to a breach of Article 10.

Moreover, under the Convention, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered. While it was true that no steps had so far been taken to enforce the damages award against either applicant, the fact remained that the substantial sums awarded against them had remained enforceable since the decision of the Court of Appeal. In those circumstances, the award of damages in the present case was disproportionate to the legitimate aim served.

In conclusion, given the lack of procedural fairness and the disproportionate award of damages, the Court found that there has been a violation of Article 10.

Under Article 41 (just satisfaction) of the Convention, the Court awarded 20 000 euros (EUR) to the first applicant and EUR 15 000 to the second applicant for non-pecuniary damage, and EUR 47 311.17 for costs and expenses.

Hutten-Czapska v. Poland

Judgment of 22 February 2004. Article: 1 of Protocol No. 1 (protection of property).

Principal facts and complaints

The applicant, Maria Hutten-Czapska, is a French national of Polish origin, born in 1931 and living in Andresy, France. She owns a house and a plot of land in Gdynia, Poland.

The applicant is one of around 100 000 landlords in Poland affected by a restrictive system of rent control (from which some 600 000 to 900 000 tenants benefit), which originated in laws adopted under the former communist regime. The system imposes a number of restrictions on landlords' rights, in particular, setting a ceiling on rent levels which is so low that landlords cannot even recoup their maintenance costs, let alone make a profit.

During the Second World War the applicant's property was used by the German Army and then, in May 1945, by the Red Army.

On 19 May 1945 part of the house was assigned to A.Z. In June 1945 Gdynia Town Court (*Sąd Grodzki*) ordered that the house be returned to the applicant's parents. They started renovating the house but, shortly afterwards, were ordered to leave. In October 1945 A.Z. moved into the house. The house was taken under state management after the entering into force, on 13 February 1946, of a decree giving the Polish authorities power to assign flats in privately-owned buildings to particular tenants. The applicant's parents tried unsuccessfully to regain possession of their property.

On 1 August 1974 a new regime on the state management of housing entered into force, the so-called "special lease scheme" (*szczególny tryb najmu*). On 8 July 1975 the Gdynia Mayor issued a decision allowing W.P. to exchange the flat he leased under this scheme for the ground-floor flat in the applicant's house. The decision was signed by a civil servant who was subordinate to W.P. In the 1990s the applicant tried to have that decision declared null and void but only succeeded in obtaining a decision declaring that it had been issued contrary to the law.

On 18 September 1990 the court declared that the applicant had inherited her parents' property and, in July 1991, she took over the management of the house.

The applicant subsequently brought several unsuccessful sets of proceedings – civil and administrative – to regain possession of her property and to relocate the tenants.

In 1994 a rent control scheme was applied to private property in Poland, under which landlords were both obliged to carry out costly maintenance work and prevented from charging rents which covered those costs. According to one calculation, rents covered only about 60% of the maintenance costs. Severe restrictions on the termination of leases were also in place.

The 1994 Act was replaced by a new act in 2001, designed to improve the situation, which maintained all restrictions on the termination of leases and obligations in respect of maintenance of property and also introduced a new procedure for controlling rent increases. For instance, it was not possible to charge rent at a level exceeding 3% of the reconstruction value of the property in question. In the applicant's case this amounted to 1 285 Polish zlotys (PLN) in 2004 (equivalent to 316 euros).

The Polish Constitutional Court, in its judgments of 12 January 2000, 10 October 2000 and 2 October 2002, found that the rent-control scheme under both the 1994 Act and the 2001 Act was unconstitutional and that it had placed a disproportionate and excessive burden on landlords. The provisions in question were repealed.

From 10 October 2000 until 31 December 2004 the applicant was able to increase the rent she charged by about 10% to PLN 5.15 a square metre (approximately 1.27 euros).

On 1 January 2005, new provisions (the "December 2004 amendments") entered into force which allowed, for the first time, rents exceeding 3% of the reconstruction value of the property being rented to increase by not more than 10% a year.

The applicant complained that she had neither been able to regain possession of or use her property or charge adequate

rent for its lease. She relied on Article 1 of Protocol No. 1.

Decision of the Court

Article 1 of Protocol No. 1

The Court recalled that it could only consider the possible effect on the applicant's property rights of decisions taken, or laws applicable, from 10 October 1994, the date Poland ratified Protocol No. 1 to the European Convention on Human Rights.

The rent-control scheme in Poland originated in the continued shortage of dwellings, the low supply of flats for rent and the high costs of acquiring a flat. It was implemented to secure the social protection of tenants – especially tenants in a poor financial situation – and to ensure the gradual transition from State-controlled rent to a fully negotiated contractual rent during the fundamental reform of the country following the collapse of the communist regime. The Court accepted that, in the social and economic circumstances of the case, the legislation in question had a legitimate aim in the general interest.

The assessment of the impact which the contested rent-control scheme had on the applicant's right of property from 10 October 1994 to the present day, involved three different laws: the 1994 Act, the 2001 Act and the December 2004 Amendments.

Concerning the 1994 Act, the Court accepted that, given the exceptionally difficult housing situation in Poland and the inevitably serious social consequences involved in the reform of the lease market, the decision to introduce laws restricting levels of rent in privately-owned flats to protect tenants was justified, especially as it put a statutory time-limit on this measure. However, no procedures enabling landlords to recover maintenance costs were available under the 1994 Act and Polish legislation did not secure any mechanism for balancing the costs of maintaining the property and the income from the controlled rent, which covered only 60% of maintenance costs. Against that background and having regard to the consequences that the various restrictive provisions had on the applicant, the Court found that the combination of restrictions under the 1994 Act impaired the very essence of the applicant's right of property.

In addition, the provisions of the 2001 Act, which had been intended to ameliorate the situation by introducing a new procedure for controlling rent increases, unduly restricted the applicant's property rights and placed a disproportionate burden on her, which could not be justified in terms of the legitimate aim pursued by the authorities in implementing the relevant remedial housing legislation.

Concerning the period between 10 October 2002 and 31 December 2004, the Court did not see how the possibility of increasing rent up to the statutory ceiling could ameliorate the situation of the applicant or the other landlords. Nor did the Court consider that it provided them with any relief for the past state of affairs.

Neither did the December 2004 Amendments provide the applicant with any kind of relief that could compensate for the violation that had already occurred, because being able to raise the rent charged by 10% of the current rent did not amount to a significant increase.

The Court acknowledged that the difficult housing situation in Poland, in particular an acute shortage of dwellings and the high cost of acquiring flats on the market, and the need to transform the extremely rigid system of distribution of dwellings inherited from the communist regime, justified not only the introduction of remedial legislation to protect tenants during the reform of the country's political, economic and legal system but also the setting of a low rent, at a level below the market rate. Yet it found no justification for Poland's continued failure to secure to the applicant and other landlords throughout the entire period under consideration the sums necessary to cover maintenance costs, not to mention even a minimum profit from the lease of flats.

Some five years ago the Polish Constitutional Court had found that the reform in question had been effected mainly at the expense of landlords. In the circumstances, it was incumbent on the Polish authorities to eliminate or at least to find a prompt remedy for the problem. Furthermore, the principle of lawfulness in

Article 1 of Protocol No. 1 and of the foreseeability of the law ensuing from that rule required the State to repeal the rent-control scheme, which by no means excluded the adoption of procedures protecting the rights of tenants in a different manner.

Having regard to all the foregoing circumstances and, more particularly, to the consequences which the operation of the rent-control scheme entailed for the exercise of the applicant's right to the peaceful enjoyment of her possessions, the Court held that the authorities imposed a disproportionate and excessive burden on her and that there had, therefore, been a violation of Article 1 of Protocol No. 1.

Article 46 of the Convention

The applicants' case, which – like the case *Broniowski v. Poland* – had been chosen by the Court as a pilot case for determining the compatibility with the Convention of the relevant domestic scheme that affected large numbers of people, revealed an underlying systemic problem, in that Polish housing legislation imposed, and continues to impose, on individual landlords, restrictions on increases in rent for their dwellings, making it impossible for them to receive rent reasonably commensurate with the general costs of property maintenance.

The Court considered that Poland had to, above all, through appropriate legal and/or other measures, secure a reasonable level of rent to the applicant and those similarly affected, or provide them with a mechanism mitigating the consequences of State control over rent increases on their right of property.

It was not for the Court to indicate what would be the "reasonable" level of rent in the present case or in Poland in general, or in what way the mitigating procedures should be set up; under Article 46 Poland remained free to choose the means by which it would discharge its obligations arising from the execution of the Court's judgments.

The Court awarded the applicant 13 000 euros (EUR) for costs and expenses.

Novoseletskiy v. Ukraine

Judgment of 22 February 2005. Articles: 8 (right to respect for private and family life), 1 of Protocol No. 1 (protection of property).

Principal facts and complaints

The applicant, Romuald Nikolayevitch Novoseletskiy, is a Ukrainian national who was born in 1938 and lives at Ussuriysk (Ukraine).

In June 1995 the trade union branch at the Melitopol State Teacher Training Institute, which was then the applicant's employer, granted him a permit of unlimited duration authorising him to occupy a 25 sq. m. apartment in a block of flats in that city. The applicant resigned from the Institute in August 1995 and went to live in Vladimir, Russia, to prepare his doctoral thesis. In October 1995 the Institute annulled its decision of 1995 and granted a permit in respect of the same apartment to T., another employee, who claimed to have taken possession of the empty flat in November. When he returned to Melitopol in January 1996 the applicant and his wife were obliged to move in with relatives in Kotovsk because their flat was occupied.

The applicant brought court proceedings with a view to recovering his flat. At the end of those proceedings, which ended with a judgment of 6 January 1999 upheld on appeal, the Melitopol District Court allowed the applicant's claim in part on the ground that his move to Vladimir had been only temporary and that Melitopol remained his permanent place of residence. Enforcement proceedings were then brought and as a result the applicant was able to take possession of the property on 28 March 2001, after a court bailiff had certified that the apartment was unfit for human habitation.

The applicant also lodged a criminal complaint with the Melitopol branch of the Ministry of the Interior, asserting that his belongings had been removed from the flat. The proceedings, which were closed and reopened several times, ended with a decision to discontinue the criminal proceedings since no offence had been committed.

The applicant submitted that, as a result of the unlawful entry into his apartment during his absence, his belongings had been stolen, and that on account of his eviction from the flat he and his wife had

been obliged to live with the members of another household.

Decision of the Court

Article 8 of the Convention

The Court was not satisfied that the courts which dealt with the case had used all the means at their disposal to protect the applicant's private and family life during the proceedings, which had lasted for three years. It was particularly struck by the fact that the Melitopol District Court had dismissed the applicant's claim for damages on the ground that "compensation for non-pecuniary damage in landlord-and-tenant disputes [was] not provided for by law". But his claim went beyond the strictly landlord-and-tenant aspect of the case since he had asked the courts to deal with the loss he had suffered as a result of the entry into his apartment and his prolonged inability to occupy it. Furthermore, the District Court had not looked into the legality of making the flat available in the applicant's absence, although the importance of that question was clear and undeniable, nor had the prosecution service taken any interest in the matter.

With regard to the part played by the Institute, the Court noted that it performed "public duties" assigned to it by law under the supervision of the authorities, so that it could be considered to be a "governmental organisation". The Court was of the opinion that, as possessor and manager of part of the State's housing stocks, the Institute could have reacted more appropriately, for example by providing the applicant with temporary accommodation, without even waiting for a court order. But, on the contrary, it had agreed to the sale of the flat to T. during the judicial proceedings without informing the District Court. That decision, subsequently declared illegal, had caused enforcement of the judgment of 6 January 1999 to be delayed.

The applicant had recovered a flat unfit for human habitation. However, the Institute had neither undertaken the work needed to repair the damage noted as quickly as possible nor taken steps to establish what had happened and prosecute those responsible for the serious damage to part of its housing stock. That being so, the Court found it difficult to see any trace of the State supervision over housing stocks described in the Ukrainian Housing Code.

In the light of those considerations, the Court held unanimously that there had been a violation of Article 8.

Article 1 of the Protocol

With regard to the disappearance of the applicant's possessions, the situation was that with the authorisation of a public authority – the Institute – two persons had entered the applicant's flat in his absence, one of whom, designated by the Institute, was the person who had just obtained a permit to occupy it, and who could not therefore offer sufficient guarantees of impartiality. Quite obviously, the question of the legality of this entry and that of the liability if any of the two persons involved, deserved more attention than they had received from either the courts or the prosecution service.

The Court reiterated that a prosecution service was one element of a State governed by the rule of law, whose interests were identical with the need for the proper administration of justice, and that, if there were no obligation on that authority to give reasons for its decisions, the rights guaranteed by the Convention would be deprived of their "practical and effective" meaning. Without requiring a detailed reply to each of a complainant's arguments, that obligation did nevertheless presuppose that the injured party could expect attentive and careful examination of his main claims.

The Court found that the State had not maintained a fair balance between the competing interests and had not made the effort which could normally have been expected to conduct an efficient and impartial investigation into the disappearance of the applicant's possessions. It accordingly held unanimously that there had been a violation of Article 1 of Protocol No. 1.

Under Article 41 (just satisfaction), the Court awarded the applicant EUR 8 000 for damage.

Six applications against Russia

Three judgments of 24 February 2005. Articles: 2 (right to life), 3 (prohibition of torture), 13 (right to an effective remedy), 1 of Protocol No. 1 (protection of property).

Principal facts and complaints

- Magomed Khashiyev and Rosa Akayeva, who were born in 1942 and 1955 respectively, were at the material time residents of Grozny, Chechnya. They complained about extra-judicial executions of their relatives by Russian Army personnel in Grozny at the end of January 2000. The bodies of Mr Khashiyev's brother and sister and two of his sister's sons and Ms Akayeva's brother were found with numerous gunshot wounds. A criminal investigation, opened in May 2000, was suspended and reopened several times, but those responsible were never identified. In 2003 a civil court in Ingushetia ordered the Ministry of Defence to pay damages to Mr Khashiyev in relation to the killing of his relatives by unidentified military personnel.
- Medka Isayeva, Zina Yusupova and Libkan Bazayeva, born in 1953, 1955 and 1949 respectively, lived in Grozny until 1999. They complained about the indiscriminate bombing by Russian military planes of civilians leaving Grozny on 29 October 1999. As a result of the bombing, Ms Isayeva was wounded and her two children and her daughter-in-law were killed, Ms Yusupova was wounded and Ms Bazayeva's cars containing the family's possessions were destroyed. A criminal investigation into the bombardment, which confirmed the applicants' version of events, was suspended and reopened several times. It was finally closed in 2004, because the actions of the military pilots were found to have been legitimate and proportionate in the circumstances, as they had been under attack from the ground.
- Zara Isayeva was born in 1954 and lived in Katyr-Yurt, Chechnya, until 2000. She complained about indiscriminate bombing of the village of Katyr-Yurt on 4 February 2000. As a result of the bombing, her son and three nieces were killed. A criminal investigation, opened in September 2000, confirmed the applicant's version of events. The investigation was closed in 2002, as the actions of the military were found to have been legitimate in the circumstances, as a large group of illegal fighters had occupied the village and refused to surrender.

Mr Khashiyev and Ms Akayeva alleged that their relatives had been tortured and murdered by members of the Russian Army, that the investigation into their deaths had been ineffective and that they had had no access to effective remedies at national level. Ms Isayeva, Ms Yusupova and Ms Bazayeva claimed that their relatives' and their own right to life and to protection from inhuman and degrading treatment had been violated. Ms Bazayeva also complained that the destruction of her cars containing the family's belongings constituted an infringement of her property rights. The applicants further argued that the investigation undertaken had been ineffective and that they had had no access to an effective remedy at national level. They relied on Articles 2, 3 and 13 of the Convention and (Ms Bazayeva) Article 1 of Protocol No. 1 (protection of property). Zara Isayeva claimed that her relatives' right to life had been violated, that the investigation had been ineffective and that she had had no access to an effective remedy. She relied on Articles 2 and 13 of the Convention.

Decision of the Court

The Government's preliminary objection in all three cases (exhaustion of domestic remedies)

The Government submitted that Russian law provided two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil procedure and criminal remedies.

As regards a civil action, two possibilities had been advanced: an application to the Supreme Court or filing a complaint with other courts. However, at the date of the admissibility decisions in these three cases, no example had been produced of the Supreme Court or other courts being able, in the absence of results from the criminal investigation, to consider the merits of a claim relating to alleged serious criminal actions.

In the course of the proceedings Mr Khashiyev had brought an action before a district court. However, despite a positive outcome in the form of a financial award, without the benefit of

the conclusions of a criminal investigation, this action was incapable of leading to findings as to the perpetrators of assaults or their responsibility.

The applicants had accordingly not been obliged to pursue the civil remedies, and the preliminary objection was in that respect unfounded.

As to criminal law remedies, the objection raised issues concerning the effectiveness of the criminal investigation and was joined by the Court to the merits.

Alleged violation of Article 2 of the Convention

The applicants in all three cases alleged failure on the part of the State to protect the right to life in breach of Article 2. They also submitted that the authorities had failed to carry out an effective and adequate investigation.

The alleged failure to protect life

The Court set out its case-law in this area and notably the following general principles. First, in assessing evidence as to the violation of Article 2, the relevant standard of proof was "beyond reasonable doubt". The Court recalled, however, that strong presumptions of fact arose in respect of injuries and death occurring during detention. In such circumstances the burden of proof lay with the authorities to provide a satisfactory and convincing explanation. It then noted that, where potentially lethal force was used in pursuit of a permitted aim, the force used had to be strictly proportionate to the achievement of that aim. Operations involving potential use of lethal force had to be planned and controlled by the authorities so as to minimise the risk to life. Authorities had to take all feasible precautions in the choice of means and methods with a view to avoiding and, in any event, minimising incidental loss of civilian life.

Case of Khashiyev and Akayeva

The Court first noted that, in reply to its request, the Government had submitted only about two-thirds of the criminal investigation file. The rest was, in the Government's view, irrelevant. It was inherent in proceedings related to cases of this nature that in certain instances solely the respondent Government had access to information capable of corroborating or refuting the applicant's allegations. A failure on the Government's part to submit such information without a satisfactory explanation could give rise to the drawing of inferences as to the well-founded character of such allegations.

On the basis of the material in its possession the Court found it established that the applicants' relatives had been killed by military personnel. No other plausible explanation as to the circumstances of the deaths had been forthcoming, nor had any justification been relied on in respect of the use of lethal force by the State agents. There had been accordingly a violation of Article 2 of the Convention.

Case of Isayeva, Yusupova and Bazayeva

It was undisputed that the applicants had been subjected to an aerial missile attack, during which the first applicant's two children had been killed and the first and the second applicants wounded.

At the outset the Court noted that its ability to assess the legitimacy of the attack, as well as how the operation had been planned and executed, had been hampered by the failure to submit a copy of the complete investigation file. The documents submitted by the parties, including the part of the investigation file which had been disclosed, nevertheless allowed certain conclusions to be drawn as to whether the operation had been planned and conducted in such a way as to avoid or minimise, to the greatest extent possible, damage to civilians.

The Government had claimed that the aim of the operation, which had resulted in the losses suffered by the applicants, had been to protect persons from unlawful violence within the meaning of Article 2 § 2 (a) of the Convention. In the absence of corroborated evidence that any unlawful violence had been threatened or likely, the Court retained certain doubts as to whether the aim could at all be applicable. However, given the context of the conflict in Chechnya at the relevant time, the Court assumed that the military had reasonably considered that there had been an attack or a risk of attack, and that the air strike had been a legitimate response to that attack.

The applicants and other witnesses to the attack had testified that they had been aware in advance of the "humanitarian corridor" to Ingushetia for Grozny residents on 29 October 1999, and that there had been numerous civilian cars and thousands of people on the road. They also referred to an order from a senior military officer at the roadblock telling them to return to Grozny and to his giving them assurances as to their safety. The result of that order had been a traffic jam several kilometres long.

This should have been known to the authorities who were planning military operations anywhere near the Rostov-Baku highway on 29 October 1999 and should have alerted them to the need for extreme caution as regards the use of lethal force. Yet it did not appear that those responsible for planning and controlling the operation, or the pilots themselves, had been aware of this. This had placed the civilians on the road, including the applicants, at a very high risk of being perceived as suitable targets by the military pilots.

A very powerful weapon had been used - according to the domestic investigation, 12 S-24 non-guided air-to-ground missiles had been fired. On explosion, each missile created several thousand pieces of shrapnel and its impact radius exceeded 300 metres. Anyone who had been at that time on that stretch of road would have been in mortal danger.

In addition, the Government had failed to invoke the provisions of domestic legislation at any level governing the use of force by its agents in such situations, and this was also directly relevant to the proportionality of the response to the alleged attack.

It followed that, even assuming that that the military had been pursuing a legitimate aim, the Court did not accept that the operation of 29 October 1999 had been planned and executed with the requisite care for the lives of the civilians. There had therefore been a violation of Article 2 of the Convention.

Case of Zara Isayeva

It was undisputed that the applicant and her relatives had been attacked when trying to leave Katyr-Yurt through what they had perceived as a safe exit as they fled from heavy fighting. A bomb dropped from a military plane had exploded near their minivan, as a result of which the applicant's son and three nieces had been killed and the applicant and her other relatives had been wounded.

The Government had suggested that the use of force had been justified under paragraph 2 (a) of Article 2 of the Convention.

The Court accepted that the situation that existed in Chechnya at the relevant time called for exceptional measures by the State. The undisputed presence of a very large group of armed fighters in Katyr-Yurt and their active resistance might have justified use of lethal force by the State agents, thus bringing the situation within paragraph 2 of Article 2. A balance nevertheless had to be struck between the aim pursued and the means employed to achieve it.

At the outset the Court observed that its ability to make an assessment had been hampered by the fact that the Government had not disclosed most of the documents related to the military action. The documents submitted by the parties and the investigation file nevertheless allowed certain conclusions to be drawn as to whether the operation had been planned and conducted in such a way as to avoid or minimise, to the greatest extent possible, harm to civilians, as was required by Article 2 of the Convention.

The Court concluded that the military operation in Katyr-Yurt, aimed at either disarmament or destruction of the fighters, had not been spontaneous. The Court regarded it as evident that when the military had contemplated the deployment of aviation equipped with heavy combat weapons within the boundaries of a populated area, they should also have considered the inherent dangers. There was however no evidence to conclude that such considerations played a significant role in the planning.

The military used heavy free-falling high-explosion aviation bombs FAB-250 and FAB-500 with a damage radius exceeding 1,000 metres. Using this kind of weapon in a populated area, outside wartime and without prior evacuation of the civilians, was impossible to reconcile with the degree of caution expected

from a law-enforcement body in a democratic society.

It was further noted that no martial law and no state of emergency had been declared in Chechnya, and no derogation has been entered under Article 15 of the Convention. The operation therefore had to be judged against a normal legal background.

Even when faced with a situation where, as the Government had submitted, the villagers had been held hostage by a large group of fighters, the primary aim of the operation should be to protect lives from unlawful violence. The use of indiscriminate weapons stood in flagrant contrast with this aim and could not be considered compatible with the standard of care prerequisite to an operation of this kind involving the use of lethal force by State agents.

The documents reviewed by the Court confirmed that some information about a safe passage had been conveyed to the population. However, no document or statement by the military referred to an order to stop the attack or to reduce its intensity. While there were numerous references in the servicemen's statements to the declaration of a humanitarian corridor, there was not a single one which referred to its observance.

The military experts' report of 11 February 2002 had concluded that the actions of the commanders had been legitimate and proportionate to the situation. As regards minimising civilian casualties, the report had based this conclusion on two main grounds: organisation and implementation of the exodus of the population and choosing a localised method of fire. The Court did not consider that the documents contained in the case file and reviewed by it could give rise to such conclusions. The report also concluded that the evacuation had probably been prevented by the fighters. Equally, nothing in the documents reviewed supported the conclusion that the fighters had been holding back the villagers or preventing them from leaving.

The Government's failure to invoke the provisions of any domestic legislation governing the use of force by State agents in such situations was, in the circumstances, also directly relevant to the Court's considerations with regard to the proportionality of the response to the attack.

To sum up, accepting that the operation in Katyr-Yurt on 4-7 February 2000 had pursued a legitimate aim, the Court did not find that it had been planned and executed with the requisite care for the lives of the civilian population. There had therefore been a violation of Article 2.

The alleged inadequacy of the investigation

The Court recalled its case-law in this area and notably the need, in cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility. The obligations under Article 2 could not be satisfied merely by awarding damages. The investigation had to be timely, effective and not to be dependent for its progress on the initiative of the survivors or the next of kin.

Case of Khashiyev and Akayeva

An investigation had been carried out into the killings of the applicants' relatives. However, it had been flawed by serious failures once it commenced, which it had done only after a considerable delay. In particular, the investigation did not seem to have pursued the possible involvement of a certain military unit directly mentioned by several witnesses.

The Government pointed out that the applicants could have appealed the results of the investigation. The Court was not persuaded that such appeal would have been able to remedy its defects, even if the applicants had been properly informed of the proceedings and had been involved in it. The applicants must therefore be regarded as having complied with the requirement to exhaust the relevant criminal-law remedies.

The Court accordingly found that the authorities had failed to carry out an effective criminal investigation into the circumstances surrounding the deaths of the applicants' relatives. There had therefore been a violation of Article 2 also in this respect.

Case of Isayeva, Yusupova, Bazayeva

A criminal investigation had been carried out in this case. There had been, how-

ever, a considerable delay before an investigation had been opened into credible allegations of numerous civilian casualties and an attack on the Red Cross vehicles. The Court also noted a number of serious and unexplained failures to act once the investigation had commenced.

It did not appear for example that an operations record book, mission reports and other relevant documents produced immediately before or after the incident had been requested or reviewed. There appeared to have been no efforts to establish the identity and rank of the senior officer at the "Kavkaz-1" military roadblock who had ordered the refugees to return to Grozny and allegedly promised them safety on the route, and to question him. No efforts had been made to collect information about the declaration of the "safe passage" for 29 October 1999, or to identify someone among the military or civil authorities who would have been responsible for the safety of the exit. The investigation had not taken sufficient steps to identify other victims and possible witnesses of the attack. There had also been a considerable delay before the applicants were questioned and granted victim status in the proceedings.

The authorities had therefore failed to carry out an effective investigation into the circumstances of the attack on the civilian convoy on 29 October 1999. The Court accordingly dismissed the Government's preliminary objection in this respect and held that there had been a violation of Article 2 under this head as well.

Case of Zara Isayeva

An investigation had been opened only upon communication of the complaint to the respondent Government in September 2000. There had thus been an unexplained delay of several months before an investigation into credible allegations of dozens of civilian deaths commenced. However, the Court also noted the significant amount of work carried out by the investigation in an attempt to put together an account of the assault.

The Court nevertheless observed several serious flaws in the part of the investigation file submitted to it, such as the lack of reliable information about the declaration of the "safe passage" for civilians. No persons had been identified among the military or civil authorities as responsible for the declaration of the corridor and for the safety of those using it. No clarification has been provided on the absence of coordination between the announcements of a "safe exit" and the apparent lack of consideration given to this by the military in planning and executing their mission.

Information about the decision of 13 March 2002, by which the proceedings had been closed and the decisions to grant victim status quashed, had not been communicated to the applicant and other victims directly, as the domestic relevant legislation prescribed. The Court thus did not accept that the applicant had been properly informed of the proceedings and could have challenged its results.

The decision to close the investigation had been based on the military experts' report of February 2002. The applicant had not had any realistic possibility of challenging its conclusions and, ultimately, those of the investigation.

The authorities had therefore failed to carry out an effective investigation into the circumstances of the assault on Katyr-Yurt on 4-7 February 2000. The Court accordingly dismissed the Government's preliminary objection in this respect and held that there had been a violation of Article 2 under this head too.

Alleged violation of Article 3 of the Convention

Case of Khasiyev and Akayeva

The Court was unable to find that beyond all reasonable doubt the applicants' relatives had been subjected to treatment contrary to Article 3 of the Convention.

On the other hand, having regard to the lack of a thorough and effective investigation into credible allegations of torture, the Court held that there has been a violation of the procedural requirements of Article 3.

Case of Isayeva, Yusopova and Bazayeva

The Court considered that the consequences described by the applicants had been a result of the use of lethal force by the State agents in breach of Article 2. The Court did not find that separate issues arose under Article 3.

Alleged violation of Article 1 of Protocol No. 1 (Bazayeva)

Mrs Bazayeva had been subjected to an aerial attack, which had resulted in destruction of her family's vehicles and household items. This constituted grave and unjustified interference with her peaceful enjoyment of her possessions. There had thus been a violation of Article 1 of Protocol No. 1.

Alleged violation of Article 13 of the Convention in conjunction with Articles 2 and 3 (Khashiyev and Akayeva), Article 2 of the Convention and Article 1 of Protocol No. 1 (Isayeva, Yusopova and Bazayeva) and Article 2 of the Convention (Zara Isayeva)

In view of the findings in respect of the relevant provisions, the applicants' complaints were clearly "arguable" for the purposes of Article 13. They should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13.

In the present cases the criminal investigation had been ineffective in that it lacked sufficient objectivity and thoroughness, and the effectiveness of any other remedy, including the civil remedies, had been consequently undermined. The Court therefore found that the State had failed in its obligation under Article 13 of the Convention.

Under Article 41 of the Convention (just satisfaction), the Court awarded:

- to Ms Khashiyev: 15 000 euros for non-pecuniary damages;
- to Ms Akayeva: 20 000 euros for non-pecuniary damages
- to Ms Isayeva: 25 000 euros for non-pecuniary damages
- to Ms Yusupova: 15 000 euros for non-pecuniary damages
- to Ms Bazayeva: 5 000 euros for non-pecuniary damages and 12 000 euros in respect of pecuniary damages
- to Ms Zara Isayeva: 25 000 euros for non-pecuniary damages and 18 710 euros in respect of pecuniary damages

and certain sums for costs and expenses at all the applicants.

Execution of the Court's judgments

In accordance with Article 46 of the Convention, the Committee of Ministers supervises the execution of the Court's final judgments by ensuring that all the necessary measures are adopted by the respondent states in order to redress the consequences of the violation of the Convention for the victim and to prevent similar violations in the future.

The documentation for these meetings, in the form of the Annotated Agenda and Order of Business, is available to the public on the Internet site of the Committee of Ministers.

In view of the large number of cases reviewed by the Committee of Ministers, only a section of those appearing on the agendas of the 906th and 914th Human Rights (DH) meetings is presented here.

Further information is available from the Directorate General of Human Rights, on the Internet site of the Committee of Ministers and in the HUDOC database.

Directorate General of Human Rights: http://www.coe.int/human_rights/
Committee of Ministers: http://wcm.coe.int/
HUDOC database: http://hudoc.echr.coe.int/

Cases currently pending

[Although a case may concern violations of several articles of the Convention, it is mentioned only under one of these articles.]

Cases concerning Article 2 of the Convention (right to life)

Öneryıldız v. Turkey

Judgment of the Grand Chamber of 30 November 2004

This is the first case where the Court has found a violation of Article 2, on the grounds of failure to protect the right to life before the occurrence of an environmental disaster and the state's responsibility as to the nature of the investigation.

The case is presented in the section "European Court of Human Rights", page 2 of the present Bulletin.

Makaratzis v. Greece

Judgment of the Grand Chamber of 20 December 2004

The case concerns the authorities' failure in the exercise of their positive obligation to protect by law the applicant's right to life, and to investigate effectively the circumstances of the incident. The case is presented in the section "European Court of Human Rights", page 10 of the present Bulletin.

As regards *individual measures*, information is awaited on the possibility of remedying the shortcomings of the administrative investigation into the incident.

As regards *general measures*:

(i) as regards the substantive violation of Article 2, the defendant State has already adopted a series of measures in the form of legislation regarding the use of force and firearms by the police and of police awareness in human rights protection. However, information is still awaited on the following main issues:

- the existence of a new administrative framework regulating similar police operations (hot pursuit of suspects), pro-

viding in particular clear chains of command;

- the promulgation of the decisions provided by Law No. 3169/2003 regarding ongoing training of police officers in the use of firearms and the criteria for certifying their ability to hold them, as well as on new police shooting galleries.

(ii) As regards the procedural violation of Article 2, information is awaited on measures already taken or envisaged to prevent new, similar violations.

Cases relating to Article 3 of the Convention (prohibition of torture and inhuman or degrading treatment)

Batı and others v. Turkey

Judgment of 3 June 2004, final on 3 September 2004

The case concerns a series of violations suffered by the 15 applicants following their arrest in the context of a police operation directed in February and March 1996 against an illegal Marxist organisation. All the applicants except one were released between November 1996 and October 2001. The proceedings against them are still pending.

As regards the torture inflicted on the applicants, the European Court found it established that the applicants had been subjected to treatment which amounted to torture, in particular suspension by the arms, beatings, being hosed with water, deprivation of sleep, insults and assaults likely to cause mental suffering.

As regards the flaws in the investigation of the applicants' allegations of ill-treatment, the Court found it striking that one of the accused police officers, who had not appeared before the assize court, had been acquitted of torture on the ground that he had not been identified by the applicants, when those applicants had never had the opportunity to see him during the proceedings. Furthermore, although medical examinations had been ordered for three of the applicants with a view to establishing the causes of the injuries observed on their bodies, the examinations had never been carried out and the shortcomings had not been remedied in the course of the proceedings.

As regards the lack of reasonable promptness and diligence and failure to punish the accused, the Court noted that the investigation as a whole had been very lengthy and the proceedings were still pending before the Court of Cassation eight years after the events. The flaws in the investigation and the failure to conduct it with the necessary promptness and diligence had resulted in granting virtual impunity to the accused police officers, which rendered the criminal remedy ineffective.

As regards the length of the detention on remand of four of the applicants, the Court found that, in ordering the applicants' continued detention, the domestic court used stereotyped phrases, such as "taking into account the nature of the crime and the state of evidence" and on at least two occasions had not given any grounds.

In March 1996, the applicants lodged a criminal complaint alleging ill-treatment, in particular on the part of six officers responsible for them during their time in police custody. In February 2003 the Istanbul Assize Court discontinued the proceedings against four of the accused because the limitation period had expired, and against a fifth because he had died. It found another officer guilty of torture in respect of two applicants and sentenced him to two years' imprisonment and prohibited him from holding public office for six months, but acquitted him on the other charges. On 20 December 2004 the applicants informed the Secretariat of a decision of the Court of Cassation which decided on 16 April 2004 to discontinue the proceedings against all accused police officers because the limitation period had expired. According to the applicants, the accused police officers are still employed by the Police Force.

The Turkish authorities are expected to clarify whether or not any disciplinary proceedings have already been or will be initiated against the accused police officers following the judgment of the European Court and whether or not the

accused police officers are still employed by the Police Force.

A. v. the United Kingdom

Judgment of 23 September 1998, Interim Resolution ResDH (2004) 39

The case concerns the failure of the state 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.

Before the Court, the government undertook to change the relevant law, and this was taken into account by the Court when assessing the just satisfaction. However, no change in relevant English law had taken place since the Court's judgment of 23 September 1998. The government argued that there was no need to introduce specific legislation in view of the entry into force of the Human Rights Act 1998 and the subsequent development of the case-law. Legislation had, however, been passed in Scotland, introducing the notion of "justifiable assault".

In June 2004 the Committee of Ministers adopted Interim Resolution (2004) 39, taking note of the developments outlined above and concluding that it was not able at that stage to conclude whether United Kingdom law complied with the judgment. It decided to resume consideration of the case in the light of subsequent developments, at the latest with twelve months of the adoption of the interim resolution.

On 15 November 2004 the Children Act 2004 was enacted. Under section 58 of this Act, which applies to England and Wales, the battery of a child can no longer be justified on the grounds that it constituted reasonable punishment where the accused is charged with wounding, causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to persons under 16. Nor can the battery of a child causing actual bodily harm to the child be justified in any civil proceedings on the ground that it constituted reasonable punishment. The effect of this provision is that the defence of reasonable punishment remains available in England and Wales, but is restricted to cases where the charge is one of common assault.

The Committee has not been informed of any changes to the law in Northern Ireland and it is understood that the present situation is therefore the same as that which prevailed in England and Wales prior to the enactment of the Children Act 2004.

Cases concerning Article 6 of the Convention (right to a fair trial)

Ryabykh v. Russia

Judgment of 24 July 2003, final on 3 December 2003

The case concerns a violation of the applicant's right to a court in that in March 1999 the Presidium of the Belgorod Regional Court quashed a final judicial decision in the applicant's favour, following an application for supervisory review (*nadzor*) lodged by the President of the same Court under Articles 319 and 320 of the Code of Civil Procedure then in force. These provisions gave the President discretionary powers to challenge final court decisions at any moment. The European Court found that the use of supervisory review by the Presidium infringed the principle of legal certainty and thus the applicant's right to a court (violation of Article 6 § 1).

General measures: The Russian Federation has subsequently adopted general measures to remedy the systemic problem at the basis of the violation. According to the new Code of Civil Procedure (in force since 1 February 2003), the time-limit for lodging an application for supervisory review has been limited to one year (Article 376) and the list of state officials empowered to make such applications has been significantly narrowed (Article 377).

While these measures were welcomed by the Committee of Ministers, doubts were expressed as to whether the measures taken are sufficient to prevent new, similar violations of the principle of legal

certainty. The Russian authorities were thus invited to continue the reform of the supervisory review procedure to bring it into line with the Convention's requirements, as highlighted, *inter alia*, by the Ryabykh judgment. Certain avenues for further reforms have been suggested in the Secretariat's letter of 22 March 2004 to the Russian delegation.

High-level seminar in Strasbourg

Given the complexity of this issue and the ongoing reflection on this matter in Russian legal circles, it was proposed, at the 906th meeting (December 2004), to hold a high-level seminar involving representatives of the Russian supreme courts, executive, *Prokuratura* and advocates to take stock of the current *nadzor* practice and discuss the prospects for further reform of this procedure in conformity with the Convention's requirements. This seminar was thus organised on 21-22 February 2005 in Strasbourg by the Directorate General of Human Rights (DGII) in close co-operation with the Russian authorities. The seminar allowed a unique and constructive exchange between the main representatives of the Russian legal community and of the Council of Europe and the assessment of the existing *nadzor* practice in criminal, civil and commercial (arbitration) proceedings in the light of the Convention's requirements. The progress achieved so far in reforming the *nadzor* procedure was acknowledged and the outstanding questions calling for further measures identified, most importantly in the domain of civil procedure.

The conclusions of the seminar together with other selected materials appear on the Web site of the Department for the execution of judgments of the Court.

Judgment of 19 June 2003, final on 19 September 2003

Hulki Günes v. Turkey

The case concerns the lack of independence and impartiality of the Diyarbakır State Security Court on account of the presence of a military judge (violation of Article 6§1) and the unfairness of the proceedings before that court: the applicant was sentenced to death (subsequently commuted to life imprisonment) mainly on the basis of statements made by gendarmes who had never appeared before the court. Furthermore, the applicant's confessions, upon which the trial court had relied, had been obtained when he was being questioned in the absence of a lawyer and in the circumstances which led the European Court to find a violation under Article 3.

It also concerns the ill-treatment inflicted on the applicant while in police custody in 1992 which the European Court found to be inhuman and degrading (violation of Article 3).

In view of the seriousness of the violation of the applicant's right to a fair trial, the adoption of specific individual measures aimed at erasing it as well as its consequences for the applicant is urgent. In this respect the case is similar to Sadak, Zana, Dicle and Doğan (Sub-section 6.2) where the proceedings had been reopened following the coming into force of Law 4793 of 23/01/2003. However, the applicant, in the present case, cannot obtain reopening of the impugned proceedings under Law 4793 as this law does not apply to proceedings which were pending before the Court at the date of its entry into force (same situation as many other cases against Turkey concerning the State Security Courts pending in sub-section 4.1).

The applicant's petition challenging the constitutionality of this law on account of the discriminatory character of its scope of application was rejected twice and the applicant thus is still serving his life-time sentence.

The Chairman of the Committee addressed a letter to the Minister of Foreign Affairs of Turkey on 21 February 2005, indicating that the Court's judgment required that the Turkish authorities grant the applicant adequate redress through either reopening of the proceedings or ad hoc measures to erase the consequences of the violations for the applicant.

Cases relating to Article 8 of the Convention (protection of private life and right to private and family life)

Von Hannover v. Germany

Judgment of 24 June 2004, final on 24 September 2004

The case concerns a breach right to respect for private life of the applicant, Princess Caroline von Hannover, the eldest daughter of Prince Rainier III of Monaco, on account of German courts' refusal of her requests to prohibit photographs of her, in scenes from her daily life and not in her official duties, on the ground that she was a contemporary "public figure". The European Court considered that the German courts had not struck a fair balance between the competing interests and that there had been a violation of the applicant's right to respective for private life.

If similar photos are again published, the applicant may sue and, in such a case, courts will be expected to change their case-law in view of the European Court's judgment.

Haase v. Germany

Judgment of 8 April 2004, final on 8 July 2004

The case concerns the violation of the applicants' right to respect for their family life, due in particular to a decision of a District Court temporarily withdrawing the applicants' parental rights in respect of seven of their children. The children were placed in three different foster homes which were not disclosed to the parents, and the seven-day-old baby in a foster family.

The European Court underlined the procedural shortcomings which the Constitutional Court had itself denounced as well as the methods used to implement the care orders at issue. As regards the applicants' parental rights, this question is still pending nationally and is also the subject of a separate application to the European Court. It should be noted in this connection that another child was born in 2003 and lives with the applicants.

As regards their right of access to the children, she applicant could meet certain of her children, for very brief periods, in the presence of a paediatrician and representatives of the social services department.

The district court order forbidding contact of the parents with their five other children expired in June 2004. Under these circumstances, the German authorities are expected to ensure rapid access of the parents to their children or provide information on possible obstacles. On 15 December 2004, the Secretariat requested information on the above issues including a plan of action for the execution of this judgment.

Sylvester v. Austria

Judgment of 24 April 2003

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

The European Court found that the Austrian authorities had failed to take, without delay, all measures that could have been reasonably expected to enforce the return order, and thereby breached the father's and daughter's right to respect for their family life, by

allowing the passage of time to determine the outcome of the custody proceedings.

Individual measures: The Austrian delegation indicated that the first applicant has instead enjoyed visiting rights in Austria, and currently regularly visits his daughter on the basis of an out-of-court agreement with the child's mother (approximately 12 days a year).

The first applicant has stressed that he does not intend to lodge new court proceedings. He maintains that under Austrian law the mother of the child may lodge appeals suspending the execution of visiting rights obtained and that if he were eventually to obtain a final decision he has no effective way of enforcing it against the will of the mother. Secondly, he complains that it would be futile for him to repeat his request for the daughter's return to the United States at the present time. Moreover, he expresses his fear that the mother will abrogate the out-of-court agreement and will deny him the possibility to meet the child if such court proceedings are instituted.

The first applicant also complains that he has never been permitted to have unsupervised contacts with the child or take her to visit the United States with the eventual aim of having visits to the United States established on a regular basis. On this latter point the Austrian authorities have pointed at the fact that in the United States, an arrest warrant against the mother and a US custody order granting sole custody to the father are in force, making such visiting arrangements impossible.

The Austrian authorities have stressed that such proactive action to assist the first applicant is excluded and that he has to lodge a request before the domestic authorities to obtain a change (either in the form of a request to the Federal Ministry of Justice based on Article 21 of he Hague Convention or in the form of an application lodged with the competent District Court for Civil Affairs for obtaining a visitation order).

General measures: The Austrian delegation pointed to a number of new measures aiming at ensuring the prompt enforcement of return orders or visitation rights under the 1980 Hague Convention.

Bilateral consultations were proposed by the secretariat concerning possible individual measures to be taken.

Cases relating to Article 10 of the Convention (freedom of expression)

Judgment of 17 July 2001, final 17 October 2001

Association Ekin v. France

The case concerns an infringement of the freedom of expression of the applicant (a Basque association) in that Section 14 of the Law of 29 July 1881 on press freedom as amended by a decree of 6 May 1939, which empowers the Minister of the Interior to ban the publication of foreign publications, was applied to one of its books in 1988.

The European Court considered that the discriminatory system established by this provision was not necessary in a democratic society, the more so considering that the conditions for imposing such a ban are not indicated in the law and that the existing judicial review procedures provide insufficient guarantees against abuse (violation of Article 10). The case also concerns the excessive length (9 years, 1 month, 5 days) of the proceedings concerning civil rights and obligations before administrative courts aimed at quashing the Minister of the Interior's decree.

Individual measure: By a judgment of the Conseil d'Etat dated 9 July 1997, the Minister of the Interior's decree banning the publication was quashed.

General measures:

- By decree No. 2004/1044 of 4 October 2004 the impugned provision was repealed (decree of 6 May 1939, integrated in Article 14 of the Law of 29 July 1881).
- Before taking this final measure, the French delegation had already stated that no more individual decisions had been taken since the judgment at issue concerning foreign publications

Cases relating to Article 1 of Protocol No. 1 to the Convention (protection of property)

Doğan and others v. Turkey

Judgment of 29 June 2004, final on 10 November 2004, rectified on 18 November 2004

There are approximately 1 500 similar cases from South-East of Turkey (in which the applicants complain about their inability to return to their villages) registered before the European Court. This figure constitutes 25% of the total applications filed in respect of Turkey.

The case concerns the denial to the applicants of access to their property in South-East of Turkey since 1994 on the basis of security concerns. The applicants allege that security forces forcibly evicted them from their village in October 1994 and destroyed their property. Many of the applicants moved with their families to Istanbul, where they currently live in difficult conditions.

The European Court observed that it was unable to determine the exact cause of the applicants' displacement because of insufficient evidence and the absence of an independent investigation into the alleged events. However, the fact that they were denied access to their village deprived them of all their resources from which they derived their living and thus constituted an interference with their right to the peaceful enjoyment of their possessions. The Court further observed that applicants live in conditions of extreme poverty, with inadequate heating, sanitation and infrastructure in other areas of Turkey and that the authorities had not provided them with alternative housing, employment or financial help. While the Court acknowledged the government's efforts to remedy the situation of the internally displaced generally, for the purposes of the present case it considered them inadequate and ineffective in that the return to village and rehabilitation project has not been converted into practical steps to facilitate the return of the applicants to their village. In the light of the above findings, the Court concluded that the refusal of access to the applicants' home and livelihood constituted a serious and unjustified interference with the right to respect for family life and home. Lastly, it found that the applicants did not have available an effective remedy in respect of their complaints.

The Court reserved the question of the application of Article 41 and considered that, in determining the further procedure, it will have due regard to the possibility of agreement being reached between the Government and the applicant.

Cases relating to Article 3 of Protocol No. 1 to the Convention (right to free elections)

Aziz v. Cyprus

Judgment of 22 June 2004, final on 22 September 2004

The case concerns the violation of the right of the applicant (a Cypriot of Turkish origin having resided all his life in the part of Cyprus controlled by the government) to vote in the parliamentary elections of May 2001, in that the constitutional provisions providing for two separate (Greek and Turkish) electoral lists were rendered ineffective due to the special political situation in Cyprus and to the absence of legislation giving effect to the right to vote of Turkish Cypriots residing in the Republic of Cyprus. The European Court also found that these facts constituted discrimination on the ground of the applicant's ethnic origin.

The Cypriot government has indicated that legislative arrangements are envisaged for the benefit of the applicant's community and the issues surrounding reform of the electoral system. The Committee of Ministers awaits information on the progress of these and other possible legislative developments that would give effect to the right to vote of Cypriot nationals of Turkish origin residing in the Republic of Cyprus, thus preventing new similar violations.

Interim resolutions

Italy

Interim Resolution ResDH (2004) 71

concerning the judgment of the European Court of Human Rights of 2 August 2001, final on 12 December 2001, in the case of Grande Oriente d'Italia di Palazzo Giustiniani against Italy

The case concerns a violation of Article 11 of the Convention, on the grounds that Section 5 of Law No. 34 passed by the Marches Region in 1996 required candidates for public office in the Marches Region to declare that they were not members of the freemasons, and that this interference was unnecessary in a democratic society and moreover unjustified in view of the nature of the public posts mentioned in appendices A and B to the Act.

The Committee of Ministers notes that three years after the Court's judgment, the legal provisions at the origin of the violation are still in force and that no appropriate measure has yet been presented to prevent similar violations in the future, for example by revoking the provision concerned or its applicability to the posts referred to in appendices A and B to the Act, or replacing it with a more general provision not aimed specifically at freemasons but making it the duty of persons holding public office to refrain from any act incompatible with the exercise of such office.

It then urges the competent Italian authorities to take the necessary measures to guarantee the rights enshrined in Article 11 of the Convention concerning appointment to certain posts in the Marches Region.

Romania

Interim resolution ResDH (2005) 2

concerning the judgment of the European Court of Human Rights of 28 September 1999 in the case of Dalban against Romania

The case concerns the unfairness of criminal proceedings conducted against the applicant, the trial court not having examined documents submitted in his defence and to the unjustified interference with his freedom of expression due to the applicant's conviction for libel.

The Committee of Ministers satisfied itself that the government of the respondent state paid the applicant's widow the sum provided for in the judgment for non pecuniary damage, and noted the information provided by the Romanian authorities concerning individual measures as well as the measures which have been taken so far to prevent new, similar violations.

It noted

- the explanations given by the Romanian authorities for the time taken to reform the law, the efforts they have undertaken to enhance the direct effect of Strasbourg judgments and the ongoing reflection on ways to improve legislative procedures in the light of Committee of Ministers' 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;
- that the European Court's judgment was promptly published in the *Official Journal*, to ensure that Romanian courts and authorities give it direct effect in applying existing law so as to avoid, as far as possible, new, similar violations;
- that the Romanian authorities have provided examples of domestic court decisions on criminal libel charges in which the courts, often referring to the European Court's case-law, subsequently acquitted the defendants not least in view of their intention to transmit information and ideas on issues of public interest;
- that this development has been strengthened by the adoption, in June 2004, of the new Criminal Code, the relevant provisions of which allow those accused of criminal libel to invoke good-faith as a defence, to make more extensive use of the defence of truth and remove imprisonment as a punishment

for this offence; these reforms being due to enter into force on 29 June 2005.

In view of the preceding, it invited the Romanian authorities to pursue their efforts in the area of freedom of expression, and declared that it has provisionally exercised its functions in this case, and that it will resume consideration of it at the end of 2005.

Appendix to Interim Resolution ResDH (2005) 2

Information provided by the government of Romania

The Romanian government recalls that the violation found by the European Court in the present case concerned the applicant's criminal conviction for libel for articles which he had published in the press, without being given by the competent court a proper opportunity to adduce evidence in support of his statements.

As regards *individual measures*, the government recalls that the applicant died on 13 March 1998. It also points out that Romanian law offers the possibility to request reopening of criminal proceedings on the basis of judgments of the European Court of Human Rights, to obtain the annulment of a conviction contrary to Article 10 as in the present case. In any event, as regards some of the statements published by the applicant and resulted in his conviction, he was acquitted by the Supreme Court of Justice in March 1999, in extraordinary proceedings instituted by the Prosecutor-General.

In response to the *Dalban* judgment, the Romanian authorities initiated a reflection process concerning the necessary *general measures* and concluded that criminal law needed to be amended to stress the possibility for those accused of criminal libel to invoke good faith in their defence.

However, recognising that the legislative element in the changes to Romanian law required by the Court's judgment would take more time, the amendments to the Criminal Code being incorporated in the overall criminal law reform conducted in the last years, the government in the meantime issued Order No. 58/2002 reducing the penalties for criminal libel.

The government stresses that efforts have been made throughout the legislative process to ensure that judges interpret the relevant legal provisions in line with the Strasbourg standards. In this respect, the government recalls that criminal libel is an offence requiring the defamed party to lodge a criminal complaint directly with the court, thus excluding the public prosecutors' competence in this field.

Following the publication of the European Court's judgment in the *Official Journal* in June 2000, several conferences, training courses and seminars for judges and public prosecutors have been organised, specifically dealing with issues related to the freedom of expression as guaranteed by Article 10 of the Convention.

Moreover, a course on the "Court's case-law" was introduced as early as 2000 into the initial training of new judges and prosecutors conducted by the National Institute of Magistrates. Possible further development of these courses is being considered in the light of the Committee of Ministers' Recommendation Rec (2004) 4 on the European Convention on Human Rights in university education and professional training.

As a result of these efforts, Romanian courts are increasingly taking into account the Strasbourg case-law concerning the freedom of expression when applying domestic law, as reflected in several recent judgments which have been provided to the Committee of Ministers.

In addition, the new Criminal Code was adopted on 28 June 2004, and included provisions stressing that journalists may publish statements of public interest in accordance with the principles enshrined in the European Court's case-law. According the new Code, insult is no longer a criminal offence. As for defamation, imprisonment has been removed as a punishment and the possible use of the defence of truth has been widened, particularly by introducing the defence of good faith.

The new relevant provisions are [information not reproduced]:

[…].

In the Romanian government's view, the new provisions of the Criminal Code confirm the developing practice of the domestic courts to refrain from applying criminal sanctions to journalists who exercise their freedom of expression in good faith in order to transmit information and ideas of public interest, in accordance with the principles enshrined in Article 10 of the Convention. Therefore, new similar violations of Article 10 of the Convention will be prevented in the future.

Moreover, further measures are being considered, in the light of Committee of Ministers' 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, in order

to improve legislative procedures so that laws necessary to ensure Romania's compliance with the European Convention on Human Rights are rapidly adopted, particularly if this is necessary to prevent new violations similar to those already found.

United Kingdom

Interim resolution ResDH (2005) 20

Action of the Security Forces in Northern Ireland (case of McKerr against the United Kingdom and five similar cases). Measures taken or envisaged to ensure compliance with the judgments of the European Court of Human Rights in the cases against the United Kingdom

In all these cases the applicants complained of violations of their right to an effective investigation into the death of their next-of-kin at the hands of the police or armed forces in Northern Ireland or in circumstances giving rise to allegations of collusion between the security forces and the killers. The Court held that there had been a violation of Article 2 of the Convention in respect of failings in the investigative procedures concerning the death of the applicants' next-of-kin (these findings are summarised in Appendix III to this resolution) and in the McShane case, it also held that there had been a failure by the State to comply with its obligations under Article 34.

The Committee of Ministers has satisfied itself that the government has paid the applicants the sums provided for in the present judgments;

It noted that:

- from the outset of the examination of the present cases, the government of the respondent State has reiterated its commitment to abide by the Court's judgments in these cases;
- it has provided the Committee with information about the general measures taken so far or envisaged to this effect (Appendix I to the resolution);
- it has also provided information regarding the issue of individual measures to erase the consequences of the violations found for the applicants (Appendix II);

In conclusion:

The Committee of Ministers welcomed with satisfaction the firm commitment of the government of the respondent State to abide by the judgments of the Court in the present cases.

It noted nonetheless that certain general measures remain to be taken and that further information and clarifications are outstanding with regard to a number of other measures, including, where appropriate, information on the impact of these measures.

It noted in this connection that the assessment of measures taken so far or envisaged covers the range of issues referred to in the appended information, *inter alia*:

(i) ("calling in") the arrangements for police investigations;

(ii) the role of the Serious Crimes Review Team;

(iii) the possibility of judicial review of decisions not to prosecute;

(iv) new practices with respect to the verdicts of coroners' juries at inquests;

(v) developments regarding disclosure at inquests;

(vi) the legal aid for inquests under the previous *ex gratia* scheme;

(vii) the measures to give effect to recommendations following reviews of the coroners' system;

(viii) the Inquiries Bill intended to serve as a basis for a further inquiry in one of these cases.

The Committee of Ministers called on the government of the respondent State to take rapidly all outstanding measures and to continue to provide the Committee with all necessary information and clarifications to allow it to assess the efficacy of the measures taken, including, where appropriate, their impact in practice. This obligation is all the more pressing in cases – such as these – where procedural safeguards surrounding investigations into cases raising issues under Article 2 are concerned.

It recalls, in connection of the individual measures, the respondent State's obligation under the Convention to conduct an investigation that is effective "in the

sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible", and the Committee's consistent position that there is a continuing obligation to conduct such investigations inasmuch as procedural violations of Article 2 were found in these cases.

In view of the preceding, the Committee of Ministers decides to pursue the supervision of the execution of the present judgments until all necessary general measures have been adopted and their effectiveness in preventing new, similar violations has been established and the Committee has satisfied itself that all necessary individual measures have been taken to erase the consequences of the violations found for the applicants. It decides also to resume consideration of these cases, as far as individual measures are concerned, at each of its DH meetings, and, as far as outstanding general measures are concerned, at the latest within nine months from today.

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Information provided by the Government of the United Kingdom to the Committee of Ministers on general measures taken so far or envisaged to comply with the European Court's judgments

The Government of the United Kingdom has provided the following information with respect to general measures taken so far or envisaged to comply with the European Court's judgments in the present cases. Furthermore, in order to demonstrate its firm commitment to abide by the judgments and to allow a transparent and open debate on these measures, the Government wishes to point out that the most recent memorandum prepared for the Committee of Ministers' examination of the present cases (document CM/Inf/DH (2004) 14 rev2) was made public on 6 January 2005.

Independence of police investigators investigating an incident from the officers or members of the security forces implicated in the incident

Investigations into deaths allegedly caused by the police

1. Police Ombudsman

Since November 2000, there has been an independent Police Ombudsman in Northern Ireland, established by virtue of the Police (Northern Ireland) Act 1998, with the power to investigate all complaints against the police, including deaths alleged to have been caused by police officers acting in the course of their duty. Where it appears that the conduct of a member of the police service may have resulted in the death of a person the Chief Constable is required, under section 55(2) of the Act, to refer the matter to the Police Ombudsman. The Ombudsman is an independent authority and has her own team of independent investigators. She can recommend criminal or disciplinary proceedings against police officers and may direct that disciplinary proceedings be brought where the Chief Constable refuses to do so. The Ombudsman does not adjudicate on guilt or punishment.

Where the Ombudsman considers that the report of the investigation indicates that a criminal offence may have been committed by a police officer, the Ombudsman is required to send a report, together with any appropriate recommendations, to the Director of Public Prosecutions, who carefully considers the evidence, information and recommendations of the Ombudsman. It is for the DPP to decide if a prosecution should be commenced; this decision is based on the application of the test for prosecution, namely whether there is sufficient, admissible evidence to afford a reasonable prospect of conviction and, if there is, whether prosecution is in the public interest. In all cases, the DPP informs the Ombudsman by letter of the decision taken and the reasons for it. The principles governing the giving of reasons for decisions not to prosecute, described below (see under "Public scrutiny…"), apply.

2. "Calling-in" arrangements

In addition, under the Police Act 1996, where one police service may provide aid to another, the Chief Constable of the Police Service of Northern Ireland (PSNI) may request that an incident be investigated by officers from a police service from Great Britain. It is a matter for the professional judgment of the Chief Constable to decide if the assistance of another police service is required in an investigation, taking account of local knowledge, interpretation of any intelligence, or any specialised skills that may be required. When such assistance is required, an appropriate police service is identified in discussion with Her Majesty's Inspector of Constabulary.

Cases identified by the Chief Constable as potentially requiring the appointment of an external service are monitored and discussed with the Policing Board. Moreover, the Chief Constable, as a public authority within the meaning of the Human Rights Act 1998, would, under section 6 (1) of the Act, be acting unlawfully if he acted in a manner incompatible with a Convention right. His

decision whether or not to call in an outside force may accordingly be subject to judicial review.

Investigations into deaths allegedly caused by the armed forces

In accordance with the relevant legislation and the Queen's Rules, military law does not apply to certain criminal offences, including murder, manslaughter, genocide, aiding, abetting, counselling or procuring suicide and various other offences. In Article 2 cases, therefore, as a matter of law, it is not the military but the civil authorities that investigate and prosecute. Accordingly, investigations into deaths caused by members of the armed forces are carried out by the police, who are separate from the armed forces and who are subject to scrutiny by the Police Ombudsman. The police investigation is subject to the Chief Constable's discretion to ask that the incident be investigated by another police force.

Allegations of collusion involving members of the armed forces and the police

Where there is an allegation of collusion involving members of the armed forces and the police, the Chief Constable of the PSNI may use his above-mentioned powers to bring in an outside police force to investigate.

Steps taken in response to defects identified in police investigations

On 28 March 2003, the Chief Constable of the PSNI established the Serious Crimes Review Team (SCRT), whose remit is "to review a number of unsolved major crimes, including murder and rape, where it is thought that new evidential leads may be developed". More than 2 000 cases of unresolved deaths are to be examined by the SCRT. If, as a result of this review, it appears that new evidence might come to light, re-investigation of any of the present cases might follow. The passage of time remains an influencing factor in that it can inevitably affect the availability of witnesses, exhibits and documentation, but it cannot be used in itself as a bar to re-investigation.

The PSNI has adopted a three-stage approach to "historical" cases. First, a preliminary case assessment is carried out to ascertain if any potential evidential opportunities exist to move the investigation forward. Second, where these are identified then a full deferred case review will be commissioned by the Assistant Chief Constable. Subsequently, as the third stage of the process, the case may be referred to a murder investigation team for further investigation subject to the accepted recommendations of the Review.

The work of the SCRT is painstaking and places significant demands on police resources. As a consequence the Government have been discussing with the PSNI how this work might be expanded to process greater numbers of unresolved deaths and to do so in a way that commands the confidence of the wider community.

Public scrutiny of and information to victims' families on reasons for decisions of the Director of Public Prosecutions not to prosecute any officer in respect of relevant allegations

Judicial review of a failure to give detailed reasons for a decision not to prosecute in Article 2 cases would now be possible under the Human Rights Act 1998, based on the failure to conduct an Article 2-compliant investigation. This amounts to a claim of unlawfulness and already exists, independently of any further measures taken.

In addition, on 1 March 2002 the Attorney General tabled a statement in the House of Lords which recognised that there may be cases arising in the future where an expectation will arise that a reasonable explanation will be given for not prosecuting where death is, or may have been, occasioned by the conduct of agents of the State. The statement indicated that the Director of Public Prosecutions accepted that in such cases it would be in the public interest to reassure a concerned public, including the families of victims, that the rule of law had been respected by the provision of a reasonable explanation. The Director would reach a decision as to the provision of reasons, and their extent, having weighed the applicability of public interest considerations material to the particular facts and circumstances of each individual case.

A draft Code for Prosecutors in Northern Ireland was published for consultation in March 2004. Section 4.11 of the Code sets out the DPP's policy on the giving of reasons, which notes that in many cases the reason for non-prosecution is a technical one, lists the main interests at stake in striking a balance between the proper interest of victims, witnesses and other concerns, and reiterates almost verbatim the statement of the Attorney General referred to above. As regards the giving of reasons for not prosecuting where death is, or may have been, caused by state agents, this text clearly reflects the policy announced by the Attorney General in 2002 and is not subject to change. The final Code, like the drafts, will be public. It is intended that the final Code will be produced in spring 2005.

In accordance with a well developed doctrine in domestic law in the United Kingdom, if a public body states that it will follow a given policy, this creates a legitimate expectation that the body will follow that policy unless there exist compelling reasons not to do so. Judicial review of decisions not to prosecute in Article 2 cases would therefore be possible

on the basis of the legitimate expectation arising out of the Attorney General's statement of 1 March 2002, and will in future be possible on the basis of legitimate expectations arising out of the Code.

In addition, as regards information to victims' families more generally, both the PSNI and the Police Ombudsman now have family liaison officers, whose duty is to keep in contact with a victim's family during the course of an investigation.

Role of the inquest procedure in securing a prosecution in respect of any criminal offence that may have been disclosed

The inquest provides a public forum for the investigation of a death. The inquest is heard in a courtroom open to the public. It is the practice of coroners to sit with a jury in inquests into the deaths of persons alleged to have been killed by the security forces (although this is not a statutory obligation). It is a statutory requirement under the Coroners Act (Northern Ireland) 1959 that the inquest determine who the deceased was and how, when and where he or she came to his or her death.

Under Article 6 of the Prosecution of Offences (Northern Ireland) Order 1972, the coroner is required to send to the Director of Public Prosecutions a written report where the circumstances of any death appear to disclose that a criminal offence may have been committed. The report will include all the evidence before the coroner together with a full record of the proceedings. Upon receipt of such a report, the Director of Public Prosecutions for Northern Ireland considers the evidence then available to him to determine whether to prosecute. Such a report will either result in a prosecution or in the Director applying the new policy on the giving of reasons.

In addition, the House of Lords delivered judgment on 11 March 2004 in the *Middleton* case (*R v. Her Majesty's Coroner for the Western District of Somerset (Respondent) and another (Appellant) ex parte Middleton (FC) (Respondent)* [2004] UKHL 10). This judgment makes clear that in order to provide an Article 2-compliant investigation, an inquest is required, when examining "how" the deceased came by their death, to determine not only "by what means" but also "in what circumstances" the deceased came by their death. This means that inquests are now required to examine broader circumstances surrounding the death than was previously the case.

Following this judgment, the Court of Appeal in Northern Ireland found on 10 September 2004 in the case of Jordan ([2004] NICA 29 and [2004] NICA 30) that Rule 16 of the Coroners' Rules for Northern Ireland could and must be read in such a manner as to allow the inquest to set out its findings regarding the contested relevant facts that must be determined to establish the circumstances of the death. This could be achieved either in the form of a narrative verdict or of a verdict giving answers to a list of specific questions asked by the coroner.

By way of example of the application of these principles in practice, the United Kingdom authorities have provided a copy of a verdict on inquest delivered in the County Court Division of Greater Belfast on 24 August 2004, in which the jury made detailed findings of fact in response to a list of specific questions asked by the coroner.

Scope of examination of inquests

It is the duty of the coroner to decide on the scope of an inquest. The coroner is a "public authority" for the purposes of section 6(1) of the Human Rights Act 1998, and it is thus unlawful for him to act in a manner incompatible with the Convention rights. Accordingly, if an issue is now raised at an inquest which, under Article 2 of the Convention, ought to be the subject of investigation (such as an allegation of collusion by the security forces), it is the duty of the coroner to act in a manner compatible with Article 2 and in particular to ensure that the scope of the inquest is appropriately wide. The judgments of the European Court, as applied through the Human Rights Act, will thus allow inquest procedures which can play a role in securing a prosecution for any criminal offences that may have been revealed.

To ensure that coroners are fully aware of this duty, copies of four of the judgments have been circulated to all coroners in Northern Ireland. Moreover, training sessions for coroners have been organised both by the Judicial Studies Board for Northern Ireland and by the Home Office in London.

Compellability of witnesses at inquests

The Lord Chancellor has brought forward an amendment to the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 so that, in future, witnesses suspected of involvement in a death can be compelled to attend the inquest, although they cannot be compelled to give self-incriminating answers.

The Government considered whether to replace the protection against self-incrimination under the amendment to the Coroners Rules with a rule which required a witness to provide incriminatory answers but which prevented those answers from being adduced in evidence at the criminal trial. However, as the principal objective of the procedural requirements of Article 2 is to ensure that criminal conduct is identified with a view to

prosecution, it seems that compelling the giving of self-incriminating answers which could not themselves assist in the bringing of any prosecution would go beyond the purposes of the Article 2 investigation. Moreover, if such answers were required to be given under compulsion in the public inquest proceedings, that would itself be likely to jeopardise the possibility of there being a fair trial of the state agents themselves, and so would actually have the effect of undermining the effectiveness of the Article 2 procedures in holding state agents to account for their conduct.

Disclosure of witness statements prior to the appearance of a witness at the inquest

A Home Office Circular of April 1999 dealing with deaths in police custody and deaths at the hands of the police has been implemented by the Chief Constable of the Royal Ulster Constabulary (now the PSNI) by a Force Order, issued under the Chief Constable's statutory authority to direct and control the Police Force under Section 33 of the Police Act (NI) 2000. While the Home Office Guidelines, on which the Force Order is based, are restricted to deaths in custody and deaths at the hands of the police, the Chief Constable has chosen to interpret the latter flexibly, so that the Force Order would apply, for example, to events such as those in the McShane case, where an army vehicle was ordered towards a barricade by a member of the police force.

As a result of the implementation of this circular, the Chief Constable normally will disclose to interested persons, including the family of the deceased, the statements sent to the coroner where the death occurred in police custody or where it resulted from the actions of a police officer acting in the course of his duty. The Chief Constable has followed this practice in all current cases relating to deaths caused by the security forces. The Chief Constable considers that he is obliged to provide to the coroner all statements concerning the death obtained by him in the course of an investigation, whether from police, security forces or civilian sources. Where he is also obliged to disclose statements to the next of kin or family, then the same situation pertains.

The application of the above practice is enforceable by judicial review, and has been enforced by the courts in Northern Ireland in the cases of McClory (judgment of the Queen's Bench division of the High Court of 8 January 2001) and Thompson.

As regards disclosure by the Ministry of Defence, it is the policy and practice of the Ministry of Defence to co-operate fully with all police inquiries. There are no circumstances in which the armed forces or the Ministry of Defence can avoid disclosure to the Chief Constable in the course of a criminal investigation. All relevant information and persons are made available to the police in the execution of their investigation. However, this is subject to the right of the Secretary of State for Defence, like other Government departments and agencies, to seek public interest immunity when disclosable information may be made available to other persons, the disclosure of which would cause harm to the public interest. This might take the form of damage to national security or the lives of individuals being threatened.

As witnesses, members of the armed forces are no different from any other government agent. The Ministry of Defence, on behalf of the armed forces, exercises its public interest duties in the same manner as any other government department. The assessment of the public interest in allowing the disclosure of witness statements by members of the armed forces is no different from that for any other witness.

As regards documents, before deciding whether to claim public interest immunity in respect of a document which is otherwise disclosable, the Secretary of State will have to balance the public interest in the administration of justice against the public interest in maintaining the confidentiality of the document of which the disclosure would be damaging to the public interest. He may decide to assert public interest immunity where he considers that disclosure would cause real damage or harm to the public interest. Where a claim for public interest immunity is made in an inquest and is challenged, it is for a court to decide where the balance lies between the interests of justice and, for example, the interests of national security. The Minister is never the final arbiter in relation to a claim for public interest immunity.

Public interest immunity certificates

Since the domestic proceedings described in the McKerr judgment of the European Court, there have been significant developments in the law and practice in relation to public interest immunity. First, since the 1994 case of *R v Chief Constable of West Midlands*, ex-parte Wiley, it has been clear that where a minister examines material which is subject to public interest immunity and considers that the overall public interest does not favour its disclosure, or is in doubt as to whether to disclose the information, then the minister should put the matter to the courts. It is therefore the courts, and not the executive, which determine whether a public interest immunity certificate is necessary.

Second, in December 1996, the Attorney General announced to Parliament changes in the Government's practice in relation to public interest immunity. In particular, the Government would no longer apply the division of claims into class and contents claims, but would in future focus on the damage caused by disclosure.

Although these changes were addressed to England and Wales, the Government has indicated that Ministers in the Northern Ireland Office have already applied the Wiley approach, and the new approach focusing on damage was also quickly adopted in Northern Ireland. Several examples of cases have been provided in which the claim of public interest immunity was at issue and in which the fairness of the trial was not found to be at risk. The approach taken was first to examine the necessity of the claim of public interest immunity and second to balance the competing interests of open justice and real damage to the public interest if full disclosure were made.

As regards the discharging of procedural obligations under Article 2 through inquests, the position on public interest immunity in respect of inquests has changed following the judgment of 20 January 2004 of the High Court in the judicial review case of McCaughey and Grew. It is now clear that the Police or Ministry of Defence are under a duty to disclose all documents to the coroner, and that it is then for the coroner to assess their relevance. At this stage the coroner will be aware of any public interest concerns that the Police or Ministry of Defence have in relation to the disclosure of the documents. If the documents that the coroner decides are relevant contain information which causes concern to the Police or Ministry of Defence, it is for them to decide whether to present to the coroner public interest immunity certificates setting out their concerns. If they do so, it will then fall to the coroner to conduct the balance for and against disclosure.

Legal aid for the representation of the victim's family

Following the judgments in the present cases, an *ex gratia* scheme was established by the Lord Chancellor to provide for legal representation at certain exceptional inquests in Northern Ireland where the applicant had a sufficiently close relationship to the deceased to warrant the funding of representation. In deciding whether to grant legal aid under this Scheme, the Lord Chancellor was obliged, by virtue of the Human Rights Act, to act in a manner compatible with the Convention.

The scheme governing legal aid for inquests is now on a statutory footing. The relevant legislation came into operation on 2 November 2003. The scheme is supported by ministerial and administrative guidance. While there have been a number of judicial review applications concerning legal aid for the representation of the victim's family at inquests, the questions raised in these cases are essentially technical, in the Government's view, in that the question at stake is the scheme under which legal aid is available to families for preparatory work for inquests, rather than whether legal aid is available at all.

Steps taken to ensure that inquest proceedings are commenced promptly and pursued with reasonable expedition

In accordance with the Human Rights Act 1998, coroners are now required to act in a manner compatible with Article 2 of the Convention to ensure that inquest proceedings are commenced promptly and pursued with reasonable expedition.

An additional full-time Deputy coroner has been appointed for Belfast to expedite business, so that in Belfast there are now one full-time coroner, one full-time deputy coroner and one part-time deputy coroner. The Northern Ireland Court Service is also providing additional administrative support to part-time coroners. The coroners in Belfast have an administrative support team of five staff and a computer system to facilitate their work. The coroners also have a dedicated legal resource and, in more difficult cases, counsel is instructed.

While a backlog of 40 inquests into deaths occurring prior to the judgments of the European Court of 4 May 2001 had built up at the office of the coroner for Greater Belfast, these deaths are cases to which Article 2 may apply and consequently had not been listed for hearing because the coroners were awaiting the outcome of the Middleton judicial review and not because of lack of judicial resources. Without prejudice to their judicial independence in that regard, coroners would take steps to list inquests for hearing once the Court of Appeal had given judgment in the Jordan case, which had also been adjourned pending the outcome of the Middleton case.

Two major inquiries have been conducted into the functioning of coroners' inquests in the United Kingdom. The report of the Fundamental Review of Death Certification and Coroner Services in England, Wales and Northern Ireland (Luce Review), which made a number of recommendations in relation to the inquest system for England, Wales and Northern Ireland, was published in June 2003. In addition, the Shipman Inquiry, established to investigate allegations of the murder by a doctor of at least 15 of his patients, issued its third report in July 2003, dealing with death certification and the

investigation of deaths by coroners in England and Wales.

Following extensive consultation on the Luce Review, the Northern Ireland Court Service (NICtS) published a Consultation Paper outlining its proposals for the administrative redesign of the Coroners Service in Northern Ireland. The aim of the proposals is to modernise and improve the service by administrative means for all users, particularly the relatives of the deceased. The paper outlines the steps which might be taken to improve the inquest system in Northern Ireland in these areas and which can be implemented without primary legislation. The Home Office has also issued a position paper outlining the Government's response to the Luce and Shipman Reports.

In Northern Ireland, an interdepartmental working group has now been set up to consider and make recommendations for improving the arrangements for death certification and investigation in Northern Ireland having particular regard to the Luce Report, the Shipman Inquiry Third Report, the NICtS Proposals for Administrative Redesign and the Home Office position paper. The responses to the proposals of the NICtS, which were the subject of a period of public consultation, have been collated, and Ministerial approval will be sought to publish the full results of the consultation and a timetable for the introduction of the new proposals. It is hoped that the majority of the proposals can be introduced during 2005.

Individual right of petition

As to the violation of Article 34 in the McShane case, the Government's firm policy is to ensure that its obligations under this Article are respected. The Government has drawn the terms of the McShane judgment to the attention of all responsible for litigation in Northern Ireland on behalf of the Security Forces. In a recent case, where an undertaking was sought not to use documents disclosed by the Royal Ulster Constabulary, the undertaking was modified to ensure that disclosure to the European Court would not constitute a breach of that undertaking. Thus the solicitor from whom the undertaking was sought would not commit a disciplinary offence if the documents were disclosed to the European Court.

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Information provided by the Government of the United Kingdom to the Committee of Ministers on individual measures taken so far or envisaged to comply with the European Court's judgments

In terms of the obligations incumbent on the United Kingdom under the Convention, the Government has confirmed its commitment to abide by the judgments of the Court in these cases and to implement the judgments, in accordance with Article 46. This commitment is not affected by the findings of the House of Lords in the *McKerr* judgment of 11 March 2004 that the Human Rights Act 1998 does not have retrospective effect and that under domestic law, there was no continuing breach of Article 2 in that case. The House of Lords' judgment does not prejudge the question of the international obligations arising under Article 46. In the latter respect, different factors are at issue in each case and some reveal more problems than others. Further proceedings have been conducted and the Government considers that any measures required are under way in each case. The main question, in the Government's view, is whether, on the facts in each case, a fresh investigation is actually possible. The Government concedes that new investigations in the present cases could not satisfy the Convention requirements in respect of promptness and expedition.

Information regarding the proceedings conducted prior to the judgment in each case is contained in the relevant judgments. The following information, provided by the Government, concerns the measures currently under way in each case:

In the *Jordan* case, the inquest opened in January 1995 experienced a serious of adjournments relating, inter alia, to a number of judicial review applications by the applicants or in similar cases. Following the judgment of the Court of Appeal for Northern Ireland of 10 September 2004 in the *Jordan* judicial review application, however, the Coroner for Greater Belfast has indicated his intention to list the inquest in early 2005.

Civil proceedings were also instituted in 1992 alleging death by wrongful act. The applicant wishes to await the outcome of the inquest before pursuing civil action further.

In the *McKerr* case, the family of Mr *McKerr* brought legal proceedings seeking to compel the Government to provide a fresh investigation into his death. These proceedings concluded with the House of Lords' judgment, delivered on 11 March 2004 (In re *McKerr*, [2004] UKHL 12, on appeal from [2003] NICA 1). In that case, the House of Lords declined to order a fresh investigation, as it considered that no right to an investigation in accordance with the procedural requirements of Article 2 of the Convention existed under domestic law at the time of the relevant events and that as such, there could be no continuing right under domestic law to

such an investigation at present, even after the Human Rights Act came into force on 2 October 2000. The House of Lords left open, however, the question whether such a continuing obligation existed under international law in this case, observing that it was for the Committee of Ministers to decide on this issue, in exercise of its functions under Article 46 § 2 of the Convention.

Without fresh evidence, there is, in the Government's view, no scope for reopening the investigation into the death of Gervaise McKerr. This case is, however, among the more than 2000 cases of unresolved deaths that will be reviewed by the SCRT to re-examine whether there are any evidentiary opportunities.

The *Kelly and others* case concerned a single incident in which nine men were killed. These deaths, like those in the McKerr and Shanaghan cases, fall within the terms of reference of the SCRT and will be among the more than 2000 cases of unresolved deaths to be re-examined.

As regards civil actions, the family of Anthony Hughes issued proceedings against the Ministry of Defence in 1988 and the case was settled in 1991. Six other families, including the Kelly family, issued proceedings in 1990 but the families have not set down the cases for hearing.

The *Shanaghan* case also falls within the terms of reference of the SCRT, since the perpetrator of the shooting was never identified. The applicant has taken no steps for 9 years in the civil proceedings commenced in 1994.

In the *McShane* case, an inquest was opened in May 1998 but adjourned pending the outcome of various legal proceedings and decisions at domestic level. However, a full-time coroner has now been assigned to this inquest and it is expected to commence in early 2005. The coroner remains under an obligation to report to the Director of Public Prosecutions any evidence that comes to light at the inquest that appears to disclose that a criminal offence may have been committed.

The applicant has not moved forward with civil proceedings brought against the Ministry of Defence and the Chief Constable of the Royal Ulster Constabulary.

In the Finucane case, two special police inquiries (the first two Stevens inquiries) were instituted to respond to concerns arising out of allegations of collusion between loyalist organisations and the security forces. The first of these two inquiries led to the reporting or charging of 59 people and the conviction of one person of conspiracy to murder persons other than Patrick Finucane. The second inquiry did not lead to the prosecution of any person. The third Stevens inquiry is squarely concerned with the Finucane murder and has led to a criminal prosecution being brought. One person was successfully prosecuted for the murder. This investigation continues.

The Government announced on 23 September 2004 that steps could now be taken to implement the decision to hold a new inquiry into this death. The inquiry will be held on the basis of new legislation, which is currently pending before the Parliament (Inquiries Bill).

Final resolutions

Final resolution ResDH (2004) 73

Austria

Application No. 17291/90 – Hortolomei v. Austria

This case concerns violations of Article 6, paragraph 1, of the Convention on account of excessive length of the proceedings by which the applicant contested the expiry of his fixed-term contract and the lack of independence and impartiality of the Regional Appeals Commission (four of its members having been nominated by the specialised bodies which had adopted the guidelines concerning inter alia fixed-term contracts).

The Committee of Ministers, having satisfied itself that the government of the respondent state had paid the applicant as just satisfaction the sum of 540 000 Austrian schillings, and having noted the information below about the measures taken to avoid such violations, declared that it had exercised its functions in this case.

Appendix

Information provided by the Government of Austria

Due to the particular circumstances of the case, the Austrian Government considers that only the second violation, i.e. that of Article 6, paragraph 1, of the Convention in respect of the lack of independence and impartiality of the Regional Appeals Commission required general measures.

The Government recalls that this violation was due to the fact that the four assessors sitting in the Regional Appeals Commission had been nominated by - and had close links with - the specialised bodies (i.e. the local Medical Association and the Association of Insurance Boards) which had adopted the Guidelines in 1985, providing for fixed-term contracts.

In order to avoid new similar violations, Austria has amended Article 345, paragraph 1, of the General Law of Social Insurance, which governs the composition of the Regional Appeals Commissions. The new article provides as follows:

The Chairman of the Commission shall henceforth be a judge to be appointed by the Federal Minister of Justice and, at the time of his nomination, be a member of a court in charge of matters of labour and social affairs. The Commission shall be composed of a Chairman (judge) and four members. The Federal Minister of Justice shall appoint its four members of which two are proposed by the Austrian Chamber of Physicians and two by the General Association of Social Insurance. Representatives and employees of the insurance company as well as the members and employees of the Chamber of Physicians who are parties to the contract challenged by the individual, may not sit as Commission members in the relevant proceedings. This provision aims at guaranteeing the full independence and impartiality of the Regional Appeals Commissions in every single case.

The Government of Austria therefore considers that there is no longer any risk of new violation similar to that found by the Court in this case and that Austria has thus fulfilled its obligations under former Article 32, paragraph 4, of the Convention.

Bulgaria

Resolution ResDH (2004) 78

concerning the judgment of the European Court of Human Rights of 2 October 2001 (final on 2 January 2002) in the case of Stankov and the United Macedonian Organisation Ilinden against Bulgaria

The case concerns a breach of the applicant's right to freedom of opinion due to the prohibition by the Bulgarian authorities of a number of commemorative meetings planned by the applicants between 1994 and 1997.

Having satisfied itself that the government of the respondent state had paid the applicants a sum of 40 000 French francs in respect of non-pecuniary damage and the sums in respect of costs and expenses, and having noted the measures taken in order to avoid new violations of the same kind as that found in the present judgment, the Committee of Ministers declared that it had exercised its functions in this case.

Appendix

Information provided by the Government of Bulgaria

With regard to individual measures, since 2001 the applicants have no longer been prevented from holding their commemorative meetings. The Bulgarian authorities have thus put an end to the violation found by the Court.

The Government recalled that according to Article 5, paragraph 4 of the Bulgarian Constitution, the European Convention on Human Rights, ratified by Bulgaria on 7 September 1992, is part of the domestic legal order and its provisions take priority over provisions of domestic legislation. Several examples of national courts' decisions were submitted to the Committee of Ministers to show the development of the direct effect of the Convention and of the case-law of the European Court at national level, and in particular of judgments concerning Bulgaria directly.

Thus, following the judgments in the cases of *Assenov* (28 October 1998) and *Nikolova* (25 March 1999), national courts began directly to apply the Convention law with respect to grounds and length of pre-trial detention (e.g. decisions of Plovdiv Regional Court No. 1558/2001 and No. 1515/2001, of Bourgas District Court No. 285/2002 and No. 559/2002, of Sofia Regional Court No. 4306/2001).

This development has been strengthened following the Al-Nashif judgment (of 20 June 2002). In this case the Supreme Administrative Court decided to reopen the domestic proceedings impugned by the European Court and indicated to national courts that they must apply the European Convention directly, as interpreted by the Strasbourg Court (decisions of 8 and 12 May 2003). Moreover, domestic courts in general apply the case-law of the European Court, inter alia concerning freedom of expression (e.g. decisions of the Sofia Regional Court No. 2082/2000 and 10154/2000 concerning prosecution of journalists for libel and slander).

The Government considers that the direct effect of the case-law of the European Court, which is starting to be recognised in increasingly varied fields, will in the future prevent new violations similar to that found in the present case, in particular by ensuring that the Law on Meetings and Marches of 1990, in particular its Article 12, which regulates the prohibition of certain meetings and the right to effective access to courts in case of refusal by mayors to authorise meetings, is interpreted in conformity with the requirements of the European Convention.

With a view to facilitating this development, the Deputy Minister of Justice sent the judgment of the European Court, translated into Bulgarian and accompanied by a circular letter, to the mayors of the towns of Petrich and Sandanski, directly concerned by this case. Moreover, in order to inform the courts and the public of the new interpretation of the law, which is binding, the Ministry of Justice published the judgment of the Court, in Bulgarian, on its Internet site: http://www.mjeli.government.bg/.

Resolution ResDH (2004) 81

Greece

concerning the judgments of the European Court of Human Rights relating to non-execution of domestic judicial decisions in Greece (case of Hornsby against Greece and other cases)

These cases concerned complaints relating to the administration's non-enforcement of final domestic judicial decisions (see Appendix II) and amounted by the Court to violations of Articles 6, paragraph 1 or 13 of the Convention and/or of Article 1 of Protocol No. 1 (see details in Appendix II).

The Committee of Ministers satisfied itself that the Greek government had paid all the applicants the sums awarded by the European Court as just satisfaction (see Appendix I, chapter I). It considered the information provided by the Greek government as regards the individual measures adopted in the Hornsby case (to allow the applicants to establish and operate an English-language school in Rhodes in conformity with domestic judicial decisions), and the individual measure adopted in the *Pialopoulos and others* case (to revoke the impugned expropriation decision of the Prefect in conformity with the domestic judicial decision), and satisfied itself that the consequences of the violations found in the other five cases were fully repaired through payment to the applicants of the compensation awarded either by the European Court or by the competent domestic authorities (see Appendix I, chapter II).

The Committee of Ministers considered the extensive information provided by the Greek government as regards the general measures taken to prevent new violations of the same kind as those found in the present judgments (see Appendix I, chapter III) and noted with satisfaction that following these judgments of the European Court, Greece has adopted a number of comprehensive constitutional, statutory and regulatory reforms to remedy the structural problem of the administration's non-enforcement of domestic judicial decisions and, in particular, that these reforms have introduced a new domestic procedure including specific remedies to ensure that judicial decisions are effectively complied with by all authorities.

In view of the preceding, it declared that it had exercised its functions in these present cases.

Information provided by the Government of Greece concerning the measures taken to comply with the European Court's judgments

Appendix I

I. Payment of just satisfaction

[…]

II. Individual measures to achieve restitutio in integrum

In the *Hornsby* case, the violation of Article 6 found by the European Court was due to the authorities' failure to comply with judicial decisions granting the applicants a licence to establish and operate an English language school. Following the Court's judgments on the merits and just satisfaction, the Prefecture of the Dodecanese (Rhodes) granted the applicants, on 14 November 1998, the licence to establish the school at issue. Shortly afterwards, the applicants also received the necessary licences to operate their school. Thus, the consequences of the violation found were completely erased.

In the *five other cases*, the violations found by the European Court only resulted in pecuniary losses which were fully compensated through payment of compensation awarded either by the domestic authorities or by the European Court under Article 41 of the Convention. No further individual measures were thus required. In the Pialopoulos and others case, moreover, the impugned expropriation decision of the Prefect was revoked on 2 July 2002.

III. General measures

A. Introduction

The violations found by the European Court in these cases all highlighted a structural problem of non-execution of domestic judicial decisions by the Greek administration. Compliance with the European Court's judgments thus required the adoption, under the supervision of the Committee of Ministers, of comprehensive reforms with a view to preventing new violations similar to those found in these cases (violations of Articles 6 or 13 of the Convention and/or of Article 1 of Protocol No. 1).

B. Constitutional amendments to reinforce and extend the administration's obligation to comply with judicial decisions

At the time of the events in all these cases, Article 95, paragraph 5, of the Constitution already provided that the public administration was under an obligation to comply with judgments of the Supreme Administrative Court setting aside administrative decisions. A breach of this obligation, in principle, engaged the liability of any competent agent as specified by law. However, this constitutional guarantee proved to be insufficient in practice, as shown by a number of violations found by the European Court against Greece in 1997-2002.

In April 2001, Article 95, paragraph 5, of the Constitution was amended in order to highlight and reinforce the administration's obligation to comply with all judicial decisions. This provision now requires that the administration shall comply with judgments of courts of all jurisdictions and that the competent agents' liability as well as the measures necessary for ensuring the public administration's compliance with judicial decisions shall be specified by law.

Furthermore, according to new Article 94, paragraph 4, of the Constitution, some formerly executive functions, including the adoption of measures to ensure the administration's compliance with judicial decisions, may be assigned by law to civil or administrative courts. (see chapter C.1 below).

New Article 94, paragraph 4, also allows compulsory execution of judgments against the state, local authorities and legal entities of public law (see chapter C.2 below).

C. Legislative amendments implementing the constitutional obligation of the public administration to comply with judicial decisions

Following the above-mentioned constitutional amendment, a number of new statutory and regulatory provisions were adopted in order to implement the constitutional requirement that the administration must comply with judicial decisions.

1. New procedure to ensure the administration's proper compliance with judicial decisions

On 14 November 2002 a new Law 3068/2002 entered into force, which provides a special procedure to ensure the execution of domestic judicial decisions (*Official Journal* of the Hellenic Republic A 274). The effective application of this Law began with the promulgation of Presidential Decree 61/2004 (OJHR A 54) on 19 February 2004. The relevant provisions of the Law appear below [not reproduced here].

[…]

2. Introduction of compulsory execution against the state and legal entities of public law

Article 8 of Law 2095/1952, formerly in force, did not allow compulsory execution against the state, local authorities and legal entities of public law.

Following the European Court's judgment in the Hornsby case, domestic courts set aside Article 8 of Law 2095/1952 as unconstitutional and accepted the possibility for individuals to request compulsory execution

against the state, local authorities and legal entities of public law, in order to satisfy their financial claims (see judgment of 25/05/1998 of the plenary of the Court of Audit; judgment 3684/1998 of the first instance court of Athens; judgment 360/1998 of the first-instance court of Thiva; judgment 1212/1999 of the first-instance court of Piraeus).

This change in the case-law was later confirmed by the above-mentioned constitutional amendment allowing for compulsory enforcement of judgments against the state, local authorities and legal entities of public law (new Article 94, paragraph 4). Subsequently, the plenary Court of Cassation followed in substance the European Court's jurisprudence stating that Article 6 of the Convention also guarantees "the right to compulsory execution without which access to a tribunal would be devoid of its value and usefulness" (judgment 21/2001).

Article 4 of Law 3068/2002 further specified that financial claims against the state, local authorities and all other legal entities of public law may be satisfied through seizure of their property. These new legal provisions read as follows: [not reproduced here].

[…]

3. Increased civil liability on the part of the state

A person injured by the state's or other public entities' non-compliance with a judicial decision is entitled to lodge a civil action for damages on the basis of Articles 104, 105 and 106 of the Introductory Law to the Civil Code. These Articles provide that the state shall be liable in accordance with the provisions of the Civil Code concerning legal persons, "for acts or omissions of state organs, pertaining to legal relations governed by private law, or to state property". They also provide that the state is under a duty to make good any damage caused by the unlawful acts or omissions of its organs in the exercise of public authority, and that the person responsible shall be jointly and severally liable, without prejudice to the special provisions on ministerial responsibility.

While acknowledging difficulties in application of these provisions at the time of the events in Hornsby and other similar cases, the government stresses that the situation has changed with the constitutional revision and adoption of Law 3068/2002. The state's, local authorities' and other public legal entities' civil liability can henceforth be more easily established due to the extension of the administration's obligation to comply with all judicial decisions, and more effectively enforced due to new possibilities of compulsory execution against them. This is in particular so, taking into account the direct effect granted since the late 1990s to the Convention and the European Court's jurisprudence in Greek law (see, *inter alia*, the Committee's Resolution DH (99) 714 in the case of *Papageorgiou* against Greece).The aforementioned provisions of the Civil Code can therefore henceforth more effectively contribute to deter against – and compensate for – the non-execution of judicial decisions.

4. Reinforced disciplinary and civil liability of public servants

The disciplinary liability of civil servants responsible for the non-execution of judicial decisions has also been reinforced by Article 5 of Law 3068/2002, which reads as follows: [not reproduced here].

[…]

D. Conclusion

The government believes that the aforementioned measures introduce effective and workable procedures to prevent similar violations of Articles 6, 13 or of Article 1 of Protocol No. 1 in the future. It appears, in particular, that the establishment of the special judicial councils, their independent status, as well as their powers to impose sanctions and to provide the necessary guidance to the administration, guarantee an effective control of the latter's compliance with decisions of all courts.

Accordingly, the government considers, in view of all individual and general measures adopted, that Greece has satisfied its obligations under Article 46, paragraph 1, of the Convention (former Article 53) to abide by the Court's judgments in the present cases.

Appendix II

Details concerning specific facts of the cases, the Commission's or Court's decisions on admissibility and judgments

[…].

Resolution ResDH (2004) 82

concerning the judgments of the European Court of Human Rights in cases concerning unlawful detention of ministers of Jehovah's Witnesses and unfair compensation proceedings (Tsirlis and Kouloumpas v. Greece, Georgiadis v. Greece, judgments of 29 May 1997)

The cases originated in applications against Greece lodged by Greek nationals and ministers of Jehovah's Witnesses, relating notably on the one hand to unlawful detention for two of them following their refusal to abide by the orders of the Greek military authorities exempting ministers of a known religion from military service and on the other hand to the fairness of subsequent proceedings lodged by three applicants before the Greek courts with a view to obtaining compensation for unlawful detention.

Having satisfied itself that the Greek government paid the applicants the sums awarded as just satisfaction by the European Court and having noted the individual and general measures taken by the Government of Greece to erase the consequences of the violations found et to avoid new violations of the same kind as those found in the present judgments, the Committee of Ministers declared that it has exercised its functions in these cases.

Annexe

Information provided by the Government of Greece

I. Payment of just satisfaction

[…]

II. Individual measures to allow restitutio in integrum

In the case of *Tsirlis and Kouloumpas*, the European Court awarded the applicants just satisfaction for their unlawful detention covering both pecuniary and non-pecuniary damage. No further measure was thus necessary.

In the case of *Georgiadis*, where the European Court only found a violation of Article 6 paragraph 1, due to unfairness of domestic proceedings, the question of reopening of these proceedings with a view to the adequate compensation of the applicant arose.

On 19 December 2000 Law 2865/2000 was promulgated and amended the Code of Criminal Proceedings to allow the reopening of domestic criminal proceedings in cases where the European Court has found a violation of a right concerning the fairness of a trial or of a substantive provision of the law (new Article 525, paragraph 1 (5), of the Code). However, this new provision only applied to convicted persons and did not allow the reopening in the applicants' cases, since the competent military courts quashed the applicant's conviction in 1991 and 1992 respectively.

On 11 October 2002 the Code of Criminal Procedure was further amended by Law 3060/2002 which introduced new Article 525A allowing all those acquitted, such as the applicants, to ask for the reopening of the domestic proceedings concerning their compensation for illegal detention in cases where the European Court has found a violation of the Convention due to the lack of fairness of domestic proceedings. As a result of the latter amendment, Mr Georgiadis has been entitled to a reopening of the impugned criminal proceedings concerning compensation for detention so as to erase the consequences of the violation found by the European Court in his case.

III. General measures

Preventing unlawful detention

As regards the problem of unlawful detention of ministers of Jehovah's Witnesses raised by the present cases, the Government recalls that this violation was caused by the military authorities' failure in early 1990s to recognise these persons' right to be exempted from military service as ministers of a "known religion" in accordance with the Greek Supreme Administrative Court's case law. Following the wide dissemination of the European Court's judgments (see below), the military authorities' practice in this respect was changed and put in full conformity with the Supreme Administrative Court's case-law stating that no minister of Jehovah's Witnesses is under an obligation to perform military service. As a result, the problem of detention of ministers of Jehovah's Witnesses for their refusal to comply with military authorities' orders does no longer exist.

Constitutional and legal reforms ensuring adequate compensation for unlawful detention

As regards the violations of Article 5, paragraph 5, and Article 6, paragraph 1, found by the European Court, they largely resulted from the application of the provisions of the Code of Criminal Procedure then in force, namely:

- Article 535, paragraph 1, providing that the state did not have any obligation to pay compensation if the person concerned was, intentionally or by gross negligence, responsible for his or her own detention;
- Article 536, paragraphs 1 and 2, allowing courts to decide *proprio motu* the question of compensation for unlawful detention without a hearing and with inadequate reasoning.

Following the European Court's judgments, Greece adopted constitutional and statutory reforms to remedy the above problems.

As regards the absence of reasoning in judicial decisions, Article 93, paragraph 3, of the Constitution was amended in April 2001 to explicitly require that judicial decisions be supported by detailed reasoning and to authorise the law to provide for sanctions in case of non-respect for this rule.

As regards the fairness of the proceedings, new Law (2915/2001) amended Articles 535 and 536 of the Code of Criminal Procedure: the new provisions no longer exclude the possibility of compensation in cases of detention due to the detainee's "gross negligence" and obligate criminal courts to give reasons for their decisions after having heard the persons concerned and the public prosecutor.

These new provisions together with the direct effect of the Convention and the European Court's judgments in Greek law (see in particular Resolution ResDH (99) 714 concerning the case of Papageorgiou against Greece and Resolution ResDH (2004) 2 concerning the case of Agoudimos and Cefallonian Sky Shipping Co. against Greece) should effectively prevent new similar violations of the Convention.

Publication and dissemination of the judgments

The European Court judgment in *Tsirlis and Kouloumpas* was disseminated to the Presidents and Prosecutors of all military courts of Greece, in order to draw these authorities' attention to their obligations under the Convention. It was also published in *Diki*, 29/1998 (p. 915) and a commentary on it was published in *Poiniki Dikaiosyni*, 6/1998 (p. 665), both journals widely read by lawyers and judges. The judgment of Georgiadis was disseminated through a Ministry of Defence circular to presidents and public prosecutors of the domestic military tribunals and recruitment offices, and through a Ministry of Justice circular to the president and public prosecutor of the Court of Cassation, as well as to the presidents and public prosecutors of the appeal and first instance courts.

IV. Conclusion

The government considers that, given the individual and general measures mentioned above, Greece has satisfied its obligations under former Article 53 (new Article 46, paragraph 1) of the Convention to erase the consequences of the violations found and prevent new similar violations in the future.

Final Resolution ResDH (2004) 83

concerning the unfairness proceedings for compensation, following acquittal, for detention on remand (Applications No. 32397/96, Sinnesael v. Greece, and No. 34373/97, Goutsos v. Greece)

The cases concerned the unfairness of proceedings before the appeal courts of Thrace and Crete, which gave final decisions, *proprio motu*, without hearing the applicants and without giving sufficient reasons for their judgments. These decisions were refusals to compensate the applicants, who had been acquitted at the outcome of criminal proceedings, for the detention on remand that they had been subject to.

The Greek government informed the Committee of Ministers that both individual and general measures taken to annul the consequences for the applicants of the violation and to avoid comparable violations in the future were similar to the measures taken after the *Tsirlis* and *Kouloumpas* cases (see above).

In view of this information, and having established that the Greek government had paid the applicant the sums awarded by the European Court as just satisfaction, the Committee of Ministers declared that it had fulfilled its obligations in these cases.

Liechtenstein

Resolution ResDH (2004) 84

concerning the judgment of the European Court of Human Rights of 28 October 1999 in the case of Wille against Liechtenstein

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. The case also concerned the lack of an effective remedy available to the applicant to defend his reputation and to seek protection of his personal rights to challenge the action taken by the Prince.

Having satisfied itself that the government of the respondent state had paid the applicant the sums as just satisfaction and having noted the measures taken preventing new violations of the same kind as those found in the present judgment, the Committee of Ministers declared that it had exercised its functions in this case.

Appendix

Information provided by the Government of Liechtenstein

In order to remedy the causes of the violations found in this case, the State Court Act (*Gesetz über den Staatsgerichtshof, StGHG*) was modified on 27 November 2003 (in force as of 20 January 2004) in order to clarify the competence of the State Court to hear cases of alleged violations of the Convention by any public authority.

Article 15 of the new Act introduces a right of individual application (*Individualbeschwerde*) to this Court for review of the conformity with the Convention of any exercise of state power (*öffentliche Gewalt*). According to the explanatory report to the Act, this new remedy was created *inter alia* to meet the requirements of Article 13 of the Convention and also covers individual acts of the Prince.

The Government of Liechtenstein emphasises that there is no contradiction between this provision and Article 7, paragraph 2, of the Constitution, concerning the Prince's immunity. In fact this immunity only applies to the Prince in his person as Head of State, but not to his acts.

Following this change, the State Court is now competent to examine complaints similar to those of Mr Wille.

Moreover, the State Court gives direct effect to the Convention and to the European Court's case-law (see e.g. the State Court judgment of 4 October 1994 giving direct effect to Article 10 of the Convention; case no. StGH 1994/6, published in *LES* 1995, p.23).

In this context, the Government notes that the European Court's judgment was published in German in the *Liechtensteinische Juristen-Zeitung*, December 2000 edition.

Considering the nature of the violation, the Government does not consider, with regard to the applicant's individual situation, that other measures apart from the payment of the just satisfaction are necessary.

Accordingly, the Government is of the opinion that the aforementioned measures will prevent new violations similar to those found by the European Court, and that Liechtenstein has thus fulfilled its obligations under Article 46, paragraph 1, of the Convention in the present case.

Russian Federation

Resolution ResDH (2004) 85

concerning the judgment of the European Court of Human Rights of 7 May 2002 (final on 4 September 2002) in the case of Burdov against the Russian Federation

The case concerned the non-execution over several years by the Russian social authorities of final judicial decisions ordering them to pay certain compensations and allowances (with subsequent indexation) for health damage sustained

during emergency operations at the Chernobyl nuclear plant.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicant the sums as just satisfaction. It noted the measures taken by the government to prevent violations of the same kind as those found and, in particular, the measures taken in respect of the category of persons in the applicant's position; and recalls that the more general problem of non-execution of domestic court decisions in the Russian Federation is being addressed by the authorities, under the Committee's supervision, in the context of other pending cases.

In view of the preceding, the Committee of Ministers declared that it had exercised its functions in this case.

Appendix

Information provided by the Government of the Russian Federation

The Government of the Russian Federation recalls that the present case concerns the non-execution of final decisions delivered in 1997-2000 by the Shakhty City Court (Rostov region), which ordered the Russian social authorities to pay the applicant a fixed compensation and a monthly allowance (with subsequent indexation) for damage to his health sustained during his participation in emergency operations at the Chernobyl nuclear plant.

With regard to individual measures, the amounts due under the domestic judicial decisions were paid to the applicant on 5 March 2001, i.e. before the European Court of Human Rights delivered its judgment (see paragraph, 22 of the judgment). Subsequently, a fresh indexation of the monthly allowance was ordered by the Shakhty City Court on 11 July 2003 (final on 1 October 2003). The social authorities continue to comply with the domestic judicial decisions by regularly paying the sums awarded.

In addition, the following general measures were adopted by the Russian authorities to comply with the European Court's judgment.

a) Resolving similar cases

At the outset, the government paid the arrears accumulated as a result of the non-execution, as in the present case, of domestic judgments ordering the payment of compensation and allowances for the Chernobyl victims in the applicant position (a total of 2 846 million roubles were paid between January and October 2002).

5 128 other domestic judgments concerning the indexation of the allowances for the victims of Chernobyl were executed by the authorities.

The government has also improved its budgetary process to ensure that the necessary budgetary means are allocated to social security bodies (2 152 071 000 roubles were allocated for 2003, 2 538 280 500 roubles for 2004, and 2 622 335 000 for 2005) to allow them continuously to meet their financial obligations arising inter alia from similar judgments.

In addition, in the spirit of the reform engaged to guarantee the long-term effectiveness of the Convention system, specific measures were adopted which successfully resolved a great number of similar cases lodged with the European Court. As a result, the Court has struck out many of them under Article 37 of the Convention, having been satisfied with the Government's acknowledging the violations, paying the damages and costs to the victims and adopting general measures under the Committee's supervision in accordance with Article 46 (see, *inter alia*, *Aleksentseva and 28 others v. the Russian Federation*, decision of 4 September 2003).

b) New indexation system introduced through legislation

As regards the obligation of continuous indexation of the amounts awarded by domestic courts, the legislation in force at the relevant time provided for the cost of living as index for calculation of allowances. By decision of 19 June 2002, the Constitutional Court declared the relevant legislative provisions unconstitutional, insofar as this system was found to lack clarity and predictability; in this decision, the Constitutional Court referred, *inter alia*, to the conclusions of the European Court in the Burdov judgment. Consequently, on 2 April 2004, the Russian Parliament amended the legislation governing the social insurance of Chernobyl victims. The new law, which has been in force since 29 April 2004, provides for a new system of indexation of allowances, which is based on the inflation rate used for calculation of the federal budget for the next financial year.

c) Publication and dissemination of the judgment

The European Court's judgment in the *Burdov* case has been published in *Rossijskaia Gazeta* (on 4 July 2002), the main official periodical publishing all laws and regulations of the Russian Federation and widely disseminated to all authorities. The judgment has

also been published in a number of Russian legal journals and Internet databases, and is thus easily available to the authorities and the public.

d) Conclusion

In view of the foregoing, the Russian Government considers that the measures adopted following the present judgment will prevent new similar violations of the Convention in respect of the category of persons in the applicant's position and that the Russian Federation has thus fulfilled its obligations under Article 46, paragraph 1, of the Convention in the present case.

The government also believes that the measures adopted constitute, moreover, a noticeable step towards resolving the more general problem of non-enforcement of domestic court decisions in various areas, as highlighted in particular by other cases brought before the European Court against the Russian Federation. The government continues to take measures to remedy this problem, not least in the context of the execution, under the Committee's supervision, of other judgments of the European Court.

Turkey

Final Resolution ResDH (2004) 86

concerning the judgment of the European Court of Human Rights of 17 July 2001 in the case of Sadak, Zana, Dicle and Doğan against Turkey

The case concerned the lack of independence and impartiality of the Ankara State Security Court which convicted the applicants in 1994 to 15 years' imprisonment for belonging to an armed organisation; it concerned also the lack of information, in good time, on the alteration of the charges against them and the lack of possibility to examine or have examined the witnesses against them as well as the discriminatory violation of their right of freedom of expression and freedom of association.

The Committee of Ministers satisfied itself that the government of the respondent state had paid the applicants the sums provided for as just satisfaction and notes the measures taken in order to erase the consequences of the violations found and to prevent new violations of the same kind as those found.

As far as individual measures are concerned, it requested the reopening of the criminal proceedings against the applicants or the adoption of other *ad hoc* measures to erase the consequences of their unfair conviction, stressing the importance of the presumption of innocence, and requesting that the applicants be released pending the outcome of their new trial in the absence of any compelling reasons justifying their continued detention.

It noted with satisfaction: that, on 14 July 2004, the Court of Cassation had quashed the judgment of 21 April 2004 of the Ankara State Security Court confirming the applicants' previous conviction; that, since June 2004, the applicants had no longer been in detention following the suspension of the execution of their sentence; that restrictions on their travel abroad were removed on 16 September 2004; that the applicants are no longer deemed to be convicted; and that a new trial is currently pending before the Ankara 11th Criminal Court.

Since the violation found by the European Court concerned the fairness of the incriminated proceedings and not their outcome, the Committee of Ministers considered that it was not necessary to await the outcome of the new trial.

It declared that it had exercised its functions in this case.

Appendix

Information provided by the Government of Turkey

As regards individual measures

On 4 February 2003 a new law entered into force allowing the reopening of domestic proceedings in all cases which had already been decided by the European Court of Human Rights and in all new cases which would be brought before the European Court as from that day.

On the basis of this new law, the applicants' request for retrial was accepted by the State Security Court of Ankara on 28 February 2003. The court upheld the applicants' initial conviction on 21 April 2004. The applicants appealed to the Court of Cassation, which suspended the execution of the sentence on 9 June 2004 and ordered their release. Subsequently, the Court of Cassation quashed the

aforementioned judgment of the State Security Court and remitted the case to trial before an ordinary court, as the State Security Courts had been abolished in the meantime. In so doing, the Court of Cassation stressed several shortcomings which had affected the re-trial proceedings, such as the fact that some witnesses for the defence had not been heard and the fact that the shortcomings identified by the European Court in its judgment of 17 July 2001 had not been properly redressed. The Government of Turkey stresses that the judgment of the Court of Cassation has marked a new development of Turkish law inasmuch as it was also based on the new Article 90 of the Turkish Constitution, according to which international human rights treaties prevail over conflicting domestic law.

The new criminal proceedings are currently pending before the 11th Criminal Court of Ankara.

In view of the fact that the criminal proceedings against the applicants have been reopened and that the applicants have been released and the restrictions on their travel abroad were removed on 16 September 2004, the Government of Turkey considers that all the measures needed in order to remedy the consequences of the violations of the Convention in this case have been adopted, as required by Article 46, paragraph 1, of the Convention.

With regard to general measures

Concerning the violation of Article 6 resulting from the lack of independence and impartiality of the tribunal due to the presence of a military judge on the bench of the State Security Court, the Government of Turkey recalls that the Turkish Constitution was already changed in 1999, following several judgments by the European Court, in order to replace the military judge in State Security Courts by a civil judge (see e.g. the case Çiraklar against Turkey, judgment of 28 October 1998, Resolution DH (99) 555). Furthermore, following the constitutional reform of May 2004, the State Security Courts have since been abolished.

As far as the other violations of Article 6 found by the European Court in this present case are concerned, the Government of Turkey recalls the important contribution to the prevention of new similar violations of the right to a fair trial which is being made as a result of the increase in the direct effect being given to the European Convention on Human Rights and the Strasbourg case-law in Turkish law (see in this respect Resolution ResDH (2001) 70 in the case of Aka against Turkey, judgment of 23 September 1998) and through the extensive training efforts undertaken through the Council of Europe/European Commission Joint Initiatives and similar efforts. The Government of Turkey also underlines that the adoption of the new Article 90 of the Turkish Constitution and its implementation, as evidenced notably by the Court of Cassation judgment of 17 July 2004 in this case, will further consolidate such direct effect.

In view of the above developments, the Government considers that Turkey has also respected its obligations under Article 46, paragraph 1, of the Convention as far as general measures are concerned.

Resolution ResDH (2004) 87

concerning the judgment of the European Court of Human Rights of 5 April 2000 (friendly settlement) in the case of Denmark against Turkey

The case concerns the alleged ill-treatment suffered by the applicant during his detention in Turkey from 8 to 16 August 1996. It concludes by a friendly settlement in which the Government of the respondent state has agreed to pay to the applicant Government an amount and has expressed the acknowledgement and regret concerning occasional and individual cases of torture and ill-treatment in Turkey. The applicant Government welcomes the steps taken by Turkey in order to combat ill-treatment and torture since the filing of the application on 7 January 1997 the voluntary participation of the respondent government in the Council of Europe open-ended project aiming the re-organisation of the content of the basic, in-service and management training of the police in the member countries in which it made a significant financial contribution. It declares to finance a bilateral project which aims the training of Turkish police officers, in order to achieve further knowledge and practical skills in the field of human rights. On the basis of the Action Plan for the Development of the Bilateral Relations Between Turkey and Denmark which was agreed by the Minister for Foreign Affairs of Denmark and the Minister of Foreign Affairs of Turkey in Copenhagen on 26 November 1999, the

Government of Denmark and the Government of Turkey have decided to establish a continuous bilateral Danish-Turkish political dialogue. This dialogue will also focus on human rights issues with a view to improving the human rights situation in concrete fields. The parties have agreed that individual cases, including cases concerning allegations of torture or ill-treatment, as well as general issues – such as the issues mentioned in the declaration by the Government of Turkey – may be raised by either party within the framework of this dialogue.

The Committee of Ministers satisfied itself that both governments have declared their satisfaction with the measures taken to meet the obligations under the friendly settlement, as specified in the appendix to this resolution and declares that it has exercised its functions with respect to the commitments subscribed to in this case.

Information provided by the Government of Turkey and the Government of Denmark during the examination of the case of Denmark against Turkey

Appendix

As regards point 1 of the friendly settlement

The Turkish Government has paid the applicant Government the sum provided for in the friendly settlement and the Government of Denmark has expressed its satisfaction with this payment.

As regards the other points of the friendly settlement

The Turkish authorities have co-operated in the implementation of the Council of Europe's programme "Police and Human Rights – Beyond 2000", not least in the context of the Joint Council of Europe/European Commission Initiative: "Professionalism and respect for Human Rights in the Turkish National Police and Gendarmerie in their behaviour and relations with the public", which comprised:

- translation of police training material prepared by the Council of Europe;
- train-the-trainers courses; and
- expertise on the curricula for basic training of Turkish Police and Gendarmerie.

The Joint Initiative was implemented up until the end of 2003.

The Danish authorities made funds and experts available in the context of the Joint Initiative, in particular through the participation of the Danish Police College in the Joint Initiative under a bilateral project. 155 000 Danish kroner were made available to cover the costs for the training of a group of Turkish police officers visiting Denmark.

In view of the positive assessment of the Joint Initiative, it was agreed with the Turkish authorities that further activities in this field would consolidate the achievements accomplished under the Initiative in the longer term.

Following meetings in March 2004 (in Strasbourg) and September 2004 (in Ankara) to consider and agree on future activities and the participation of the Danish authorities therein, the Danish authorities have paid and transferred a contribution of 100 000 euros to the Council of Europe for activities involving the review of the curriculum for the Gendarmerie and further human rights training sessions for police and gendarmerie officers.

Furthermore, during the period 2004-2007, the Danish authorities will contribute on a bilateral basis to additional projects relating, among others, to police services.

In view of the foregoing, the Government of Turkey and the Government of Denmark consider that the terms of the friendly settlement have been complied with in accordance with Article 46, paragraph 2, of the Convention.

United Kingdom

Resolution ResDH (2004) 88

Two judgments of the European Court of Human Rights against the United Kingdom concerning violations of the right not to incriminate oneself: judgment of 17 December 1996 in the case of Saunders v. the United Kingdom; and judgment of 19 September 2000 (final on 19 December 2000) in the case of I.J.L., G.M.R. and A.K.P. v. the United Kingdom

The cases concerned the violation, in the framework of criminal proceedings, of the right not to incriminate themselves in view of the use made by the prosecution of incriminatory statements which they had given under statutory compul-

sion to inspectors appointed by the Department of Trade and Industry.

The Committee of Ministers satisfied itself that the Government of the respondent State had paid all the applicants the sums awarded as just satisfaction. During the examination of the case, the Committee was informed of the outcome of the domestic proceedings engaged by the applicants to have their convictions quashed and the measures taken by the United Kingdom authorities to prevent new violations of the same kind as that found in the present judgments. It considered, as regards the United Kingdom's obligation to ensure, as far as possible, *restitutio in integrum* for the applicants, that the reasons advanced by the respondent government for not reopening the proceedings at issue did not dispense the Committee from examining, from the point of view of the Convention, whether such a measure, or other measures to erase the consequences of the violation, would be called for. The specific circumstances under which the impugned evidence was taken and used did not appear to cast any serious doubts on its reliability, and no other elements appeared to suggest that the convictions were erroneous or otherwise arbitrary; and the Committee of Ministers was satisfied that the violation established by the European Court was not such as to present serious doubts regarding the outcome of the proceedings at the basis of the applicants' complaints (cf. Recommendation No. R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights).

It concluded that the United Kingdom was not called upon, under Article 46 of the Convention, to adopt any measures over and above the just satisfaction awarded by the Court in order to erase the consequences for the applicants of the violations found; and, recalling as regards the general measures which the respondent state was called upon to adopt without delay to prevent new, similar violations of the Convention, that such measures had been adopted following the Court's judgment in the Saunders case (see Interim Resolution DH (2000) 27 and the supplementary information contained in Appendix II), the Committee of Ministers declared that it had exercised its functions in these cases.

Appendix I

Information provided by the Government of the United Kingdom

As regards individual measures

The Government recalls that all applicants were convicted of criminal offences, notwithstanding the fact that, in the view of the Court of Appeal, a significant part of the prosecution case against them consisted of transcripts of interviews which they had given, under statutory compulsion, to Inspectors appointed by the Department of Trade and Industry, and that the European Court found that the use made of this evidence in the criminal proceedings violated the applicants' right to silence and not to incriminate oneself.

Since such use of evidence was specifically permitted by the legislation in force at the relevant time (Section 434 of the Companies Act 1985), the request submitted by the applicants in these cases to have their convictions quashed following the Strasbourg judgment was rejected by domestic courts (the Court of Appeal and the House of Lords), which stressed that the safety of criminal convictions must be examined according to the law as it stood at the time of the trial, since neither the legislative reform of 1999 (see general measures below) nor the enactment of the 1998 Human Rights Act had had retrospective effect.

The Government further notes that, according to the finding of the Court of Appeal, a substantial body of evidence existed against the applicants besides the interviews given to inspectors appointed by the Department of Trade and Industry, and it was thus impossible to speculate on what the outcome of the trial would have been in the absence of the impugned evidence. In addition, the House of Lords underlined that if there were any other allegations of unfairness besides those relating to the use of evidence obtained under statutory compulsion, the trial court could have examined these under section 78 of the Police and Criminal Evidence Act 1984. Moreover, the Court of Appeal referred to the fact that a new jury trial more than 10 years after the original trial and more than 14 years after the events with which the trial would be concerned was not appropriate, particularly in the light of the appellants' age and state of health.

In such circumstances, the Government considers that further measures such as quashing the criminal convictions or otherwise erasing

their consequences would place the applicants in a better position than they were in before the violations occurred, a situation which would go beyond the United Kingdom's obligations under Article 46 of the Convention.

As regards general measures

Interim measures were adopted by the Attorney General in February 1998 to prevent as far as possible under the existing legislation new similar violations of the Convention. The measures took the form of a guidance note to prosecuting authorities about the handling of cases where the evidence available to the prosecution included answers obtained by the exercise of compulsory powers.

According to the note, answers obtained pursuant to a procedure which included the power to compel answers, whatever the investigative or regulatory regime, could not be used in subsequent criminal proceedings as part of the prosecution case, except for the very limited purposes of proceedings for offences arising out of the giving of evidence (e.g. perjury). The guidance note therefore covered not only evidence obtained by the exercise of powers under Section 434 of the Companies Act 1985, which was at issue in the case of Saunders against the United Kingdom, but also evidence obtained under analogous powers. In addition, the guidance restricted the use by prosecutors of compulsorily acquired answers for the purposes of cross-examination.

Legislative work also started, leading to the Youth Justice and Criminal Evidence Act 1999 which entered into force in 2000. This Act added a new provision to Section 434 of the 1985 Companies Act, providing that no evidence relating to the answers given to inspectors appointed by the Department of Trade and Industry by persons under investigation can be adduced in criminal proceedings against them, except for limited purposes.

The Government of the United Kingdom considers in view of the measures taken that the violations of Article 6, paragraph 1, of the Convention found by the European Court in the present cases have been fully remedied and that the United Kingdom has therefore complied with its obligations under Article 46, paragraph 1, of the Convention.

[Recapitulation of the facts and the decisions of the European Court of Human Rights]

Appendix II

[…].

On 24 March 2002, within the time-limit set, the government of the respondent state paid the applicants the sum provided for in the judgment of 25 September 2001.

Committee of Ministers

The Council of Europe's decision-making body comprises the Foreign Affairs Ministers of all the member states, who are represented – outside the annual ministerial sessions – by their Deputies in Strasbourg, the Permanent Representatives to the Council of Europe.

It is both a governmental body, where national approaches to problems facing European society can be discussed on an equal footing, and a collective forum, where Europe-wide responses to such challenges are formulated. In collaboration with the Parliamentary Assembly, it is the guardian of the Council's fundamental values, and monitors member states' compliance with their undertakings.

Recommendations

Romas and Travellers in Europe

Living conditions

Addressed to the governments of the Organisation's 46 member states, the Recommendation suggests ways to improve the often inhuman living conditions faced by Romas/Gypsies and Travellers, and to prevent and combat discrimination.

The text deals with the problem as a whole, underlining clear links with areas such as education, health, the environment, employment, infrastructure and civil rights. It covers all types of accommodation, and all different lifestyles: sedentary, semi-nomadic or nomadic.

Recommendation Rec (2005) 4
23 February 2005
916th meeting of the Ministers' Deputies

Movement and encampment

The Committee of Ministers considers that those among the Roma/Gypsy and Traveller communities who wish to continue to lead a traditional nomadic or semi-nomadic lifestyle should have the opportunity, in law and in practice, to do so, by virtue of the freedom of movement and settlement guaranteed to all citizens of member states and the right to preserve and develop specific cultural identities. This liberty implicates setting-up a coordinated, coherent system of legal safeguards, which should include also other improvements in the living conditions of Roma/Gypsies and Travellers.

In order that the existence, in member States, of different structures, legal traditions and legislations do not lead to various ways of implementing policies towards this population, the Recommendation proposes to member States to take as a basis certain principles in the field of freedom of movement, establishment of place of residence, facilities, right of encampment, and protection against evictions.

Recommendation Rec (2004) 14
1 December 2004
907th meeting of the Ministers' Deputies

Right to reply for online media

The Recommendation on the right to reply in the new media environment urges member states to extend the right to reply – which until now applied to the written press, radio and television – to online communication services providing information edited in a journalistic manner.

The right to reply is a particularly appropriate remedy in the online environment, as contested information can be

Recommendation Rec (2004) 16
15 December 2004,
909th meeting of the Ministers' Deputies

instantly corrected and replies from those concerned can easily be attached.

The text specifically states that if contested information remains available to the public, and if a right to reply has been granted, a link should be established between the two items in order to draw users' attention to the fact that the information has triggered a response.

[The drafting of the Recommendation by the Steering Committee on the Mass Media was the subject of a widespread public consultation process, which took place via the Council of Europe website. A large number of observations were duly taken into account.]

Judicial review of administrative acts

Recommendation Rec (2004) 20
15 December 2004
909th meeting of the Ministers' Deputies

The Committee of Ministers considers that effective judicial review of administrative acts is an essential element of the system of protection of human rights. It is also convinced that other methods of control of administrative acts – internal appeal, ombudsman, alternatives to litigation – are useful for improving the functioning of jurisdictions and for the effective protection of everyone's rights.

It recommends that the governments of member states apply, in their national legal system and in practice, certain principles on the scope of judicial review, access to it, the procedure's conduct, guaranteeing a fair hearing, and the effectiveness of the review.

Replies from the Committee of Ministers to Assembly Written Questions

Written Question No. 451 by Mr Masson
Reply adopted on 7 December 2004 (908th meeting of Ministers' Deputies)

European Union approval for transfer of airline passengers' personal data to the United States

Extracts from the Question

Mr Masson wishes to point out to the Committee of Ministers that the European Union recently gave its approval for airlines to supply the United States with personal data concerning passengers purchasing a ticket to fly to that country. [...]

The agreement in question shows all the more disregard for personal freedoms in that data collected in a commercial capacity are being used for security purposes, which breaches the principles of the European Convention on Human Rights. [...]

The agreement identifies 34 categories of personal data, transfer of which would seem to break European law. [...]

Since the Council of Europe's role is to defend freedoms, Mr Masson asks the Committee of Ministers if the matter should not be referred to the European Court of Human Rights for a ruling as to whether the above-mentioned agreement violates the guarantees contained in the European Convention on Human Rights.

Extracts from the Reply

[...] The Committee of Ministers refers to its Guidelines on human rights and the fight against terrorism adopted on 11 July 2002 and in particular to Guideline V on Collection and processing of personal data by any competent authority in the field of State security which states: "Within the context of the fight against terrorism, the collection and the processing of personal data by any competent authority in the field of State security may interfere with the respect for private life only if such collection and processing [meet, in particular, certain conditions, enumerated].

As to the question whether the matter should be referred to the European Court of Human Rights, the Committee of Ministers notes that the agreement of 28 May 2004 has been reached between the EU and the United States, neither of which is a party to the European Convention on Human Rights. Moreover, the European Parliament has seized the European Court of Justice with the question of the legality of the agree-

ment. The Committee of Ministers therefore considers that it would be inappropriate to request a ruling from the Court at this stage.

The Committee of Ministers would like to refer to Convention ETS No. 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data [...]. It has been informed that the Consultative Committee of the Convention discussed the issue of transfer of airline passengers' personal data to the United States on several occasions in 2003, but was unable to reach a consensus.

The Committee of Ministers has been informed that the European Union's Article 29 Data Protection Working Party (composed by data protection commissioners and ombudsmen of the EU member states), has found that among the 34 categories of data transferred under the agreement, only 19 were compatible with European standards on data protection. In the light of this and of the fact that the case brought before the European Court of Justice is still pending, the Committee of Minister is not at this stage able to examine any possible follow-up.

Replies from the Committee of Ministers to Assembly Recommendations

- Challenge of terrorism in Council of Europe member states – Recommendation 1677 (2004) of the Assembly (912th meeting of Ministers' Deputies, 19 January 2005)

- The political situation in the Chechen Republic: measures to increase democratic stability - democratic in accordance with Council of Europe standards - The human rights situation in the Chechen Republic – Recommendations 1678 et 1679 (2004) of the Assembly (912th meeting of Ministers' Deputies, 19 January 2005)

- Domestic slavery: servitude, au pairs and "mail-order brides" – Recommendation 1663 (2004) of the Assembly (911th meeting of the Ministers' Deputies, 12 January 2005)

- Rights of national minorities – Recommendation 1623 (2003) of the Assembly (909th meeting of Ministers' Deputies, 15 December 2004)

- Honouring of obligations and commitments by Bosnia and Herzegovina – Recommendation 1664 (2004) of the Assembly (908th meeting of Ministers' Deputies, 7 December 2004)

- Colonisation by Turkish settlers of the occupied part of Cyprus – Recommendation 1608 (2003) of the Assembly (908th meeting of the Ministers' Deputies, 7 December 2004)

Other texts of interest

- Recommendation Rec (2004) 17 to member states on the impact of information technologies on health care – The patient and Internet (15 December 2004, 909th meeting of the Ministers' Deputies)

- Resolution Res (2004) 50: Status and conditions of service of judges of the European Court of Human Rights (15 December 2004, 909th meeting of the Ministers' Deputies)

- Reply to Written Question No. 452 by Mr Masson: "Refusal by the United Kingdom and the United States to allow people of the island of Diego García to return to their ancestral island" (21 January 2005, 912th meeting of the Ministers' Deputies)

- Reply to Recommendation 1681 (2004) of the Assembly – Campaign to combat domestic violence against women in Europe (2 February 2005, 913th meeting of the Ministers' Deputies)

- Reply to Recommendation 1667 (2004) of the Assembly – Situation of refugees and displaced persons in the Russian Federation and some other CIS countries (19 January 2005, 912th meeting of the Ministers' Deputies).

Internet site : http://wcm.coe.int/

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

3rd Summit of Heads of State and Government of the Council of Europe

Text adopted on 26 January 2005. Documents 10381, 10391, 10417, 10395, 10435, 10421, and 10404.

Parliamentary Assembly's contribution to the 3rd Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005)

Recommendation 1693 (2005)

The Assembly is of the opinion that the European Union's accession to the European Convention on Human Rights (ECHR) would ensure a unified policy of human rights across Europe;

It wishes, *inter alia*, the enhancing of the synergies between the Council of Europe's unique mechanisms for the protection and monitoring of human rights – including social rights and minority rights, as well as the fight against racism and intolerance – with the ECHR and the European Court of Human Rights as the Organisation's paramount achievement; secondly, that be initiated a Europe-wide programme to promote professional training so as to improve further the implementation of European human rights standards at the national level and thereby, in particular, relieve the excessive workload of the Court; and, thirdly, implementing fully and without delay the broad package of ECHR reform adopted in May 2004.

Situation in member States

Text adopted on 23 November 2004. Document 10251.

Persons unaccounted for in the Balkans

Resolution 1414 (2004)

The Assembly is concerned by the lack of a clear strategy on the part of the United Nations Interim Administration Mission in Kosovo in addressing the issue of persons missing in connection with the events in Kosovo.

It urges the authorities of Bosnia and Herzegovina, Croatia, and Serbia and Montenegro, as well as the Kosovo provisional administration, to fulfil the obligations stemming from the European Convention on Human Rights regarding enforced disappearances.

Text adopted on 24 January 2005. Document 10383.

Honouring of obligations and commitments by Georgia

Resolution 1415 (2005)

The Assembly welcomes the Georgian authorities should maintain, and even accelerate, the pace of reforms in accordance with Council of Europe standards and principles. The list of remaining commitments contains obligations related to virtually every major challenge Georgia is facing today, from the fight against corruption, the protection of human rights and rights of minorities and the reform of the judiciary, to the efforts to restore the territorial integrity of Georgia through peaceful means.

As a result of the extraordinary events that occurred in the country, the Assembly reconsidered deadlines for, *inter alia*, signing and ratifying a number

of European treaties, restoring ownership and tenancy rights, improving the functioning of the judiciary and the police, fighting corruption, alleviating dramatic overcrowding in prisons and pre-trial detention centres, and eradicating the culture of violence and torture in prisons.

Protection of human rights in Kosovo

Resolution 1417 (2005) and Recommendation 1691 (2005)

Texts adopted on 25 January 2005. Document 10393.

Although Kosovo is part of Serbia and Montenegro, which has, since 3 March 2004, been a party to the European Convention on Human Rights (ECHR), Serbia and Montenegro's obligations under international conventions do not apply effectively to it. The fact that it is currently under interim administration should not deprive its inhabitants of the effective protection of European human rights standards.

The Assembly further recommends that Unmik and Kfor-Nato, in accordance with United Nations Security Council Resolution 1244, commence work, in co-operation with the Council of Europe, towards establishing a human rights court for Kosovo, which should be competent to examine complaints alleging violations of the rights contained in the ECHR and its additional protocols by Unmik, Kfor and Kfor national contingents. It also asks them to co-operate with the Council of Europe, in association with other interested parties, in particular Serbia and Montenegro, on a study of possible interim extension of the jurisdiction of the European Court of Human Rights to all the inhabitants of Kosovo. Lastly, it recommends that Unmik commence work towards establishing a number of legal institutions and instruments to improve the state of legal certainty – *inter alia* concerning detention and expropriation of property – and reinforce the judicial system.

Russian Federation: Arrest and prosecution of leading Yukos company's executives

Resolution 1418 (2005) and Recommendation 1692 (2005)

Texts adopted on 25 January 2005. Document 10368.

The Assembly is concerned by the shortcomings of the judicial process in the Russian Federation revealed by the cases of several former Yukos executives: shortcomings in medical attention in prison, denial of access of lawyers to the court room during the hearing, delays having prevented the lawyers from entering into contact with their clients, search and seizure of documents in the defence lawyers' offices, alleged eavesdropping against defence lawyers, unjustified restrictions on the publicity of certain court proceedings, etc.

It calls upon the Russian authorities to vigorously pursue and implement reform of the legal and judicial system and of law-enforcement agencies with a view to strengthening the rule of law and the protection of human rights.

Application of the principle of protection against expropriation to the deposits made in some offices of the Ljubljanska Bank between 1977 and 1991

Resolution 1410 (2004)

Text adopted on 23 November 2004. Document 13315.

The Assembly does not consider it to be its task to take sides in the legal dispute between Slovenia and some of the savers who deposited their savings in Ljubljanska Bank offices located in other former Yugoslav republics, a dispute which has been brought before the European Court of Human Rights by a group of depositors in Croatia. It is primarily for the Court to decide, in case the applications be declared admissible, on the expediency of invoking the principle of protection against expropriation guaranteed by the European Convention on Human Rights.

However, the Assembly considers that the matter of compensation for so many thousands of individuals would best be solved politically, between the successor states, instead of an already overburdened Court.

Democracy and legal development

Opinion No 253 (2005) adopted on 26 January 2005. Documents 10397 and 10433.

Trafficking in human beings: Opinion by the Assembly on draft Council of Europe convention

The Assembly demanded over forty changes, which it considers essential, in the text of the draft Council of Europe Convention on action against trafficking in human beings, to give greater protection to victims and make the treaty more binding.

It estimates that the draft convention, provisionally agreed in December 2004, had become weaker in the course of negotiations.

The main changes demanded include:

- a minimum period of thirty days during which victims of trafficking can recover, stay in the country they have arrived in, and decide whether or not to co-operate with the judicial authorities;
- a guarantee that victims of trafficking who may have been forced to commit crimes – such as prostitution, or illegally entering a country – should not have to face prosecution;
- all the provisions of the convention should be binding.

The 46-nation Council of Europe was seen as the best forum for negotiating such a treaty since it covers both countries of origin and destination countries.

Text adopted on 23 November 2004. Documents 10123 and 10179.

Human mobility and the right to family reunion

Recommendation 1686 (2004)

The Assembly recalls that the right to respect for family life is a fundamental right belonging to everyone and one which is secured by a number of international legal instruments.

It notes with some concern that certain member states have shown a tendency to revise their immigration policy and impose tighter restrictions on the right to family reunion.

It wishes that the Committee of Ministers increase its monitoring of compliance by member states with international legal instruments regarding family reunion, particularly compliance with the European Convention on Human Rights and the relevant recommendations of the Committee of Ministers in this field, and draw up proposals for the harmonisation and implementation of family reunion policies in member states. In the meantime, it asks the Committee of Ministers to address a recommendation to member states, urging them, inter alia, to apply a broad and humanitarian interpretation of the concept of family, and to review the matter of the "double penalty".

European Court of Human Rights

Text adopted on 23 November 2004. Document 10351.

Implementation of the Court's decisions

Resolution 1411 (2004)

After a first examination of the reasons why certain decisions of the Court had not been executed, and proposals to remedy the situation, the Assembly pursues its debate on judgments' implementation.

Using the following three criteria: (i) the time elapsed since the Court's decision, (ii) existence of an interim Resolution of the Committee of Ministers, and (iii) the importance of the issues raised, the Assembly wrote to eight national delegations, concerning twenty-one Court decisions, asking them to prevail upon their respective governments to implement the unexecuted decisions, setting a two-month deadline for replies.

The overall assessment of this new exercise once again illustrates the excessive length of time taken to implement the Court's decisions, and to interpret them, in a number of cases, or even unwillingness from national authorities to take action.

The Assembly welcomed the possibility of the Committee of Ministers asking the Court to clarify its decisions in cases of disputes concerning the requested measures – as established by Protocol No. 14 – but regrets that its proposal to

establish a system of "astreintes" has been rejected. It is, however, still convinced that pressure could usefully be put on governments and a debate organised to discuss this matter, if only to ensure that such cases are brought to public attention and enable other governments to benefit from the experience thus acquired.

Italy: Implementation of Court's decisions

Text adopted on 23 November 2004. Document 10351.

Recommendation 1684 (2004)

The Assembly urges the Committee of Ministers:

- to ensure without further delay that the Italian authorities rapidly take the necessary execution measures in respect of all outstanding judgments older than five years and in all cases where individual measures are urgently expected;
- to ensure that Italy adopts adequate legislation allowing the reopening of proceedings in order to give effect to findings of violations of the European Convention on Human Rights and do the necessary to implement general measures required by the Court's judgments;
- not to stop monitoring execution of a judgment until all the measures designed to remedy the situation responsible for the violation ascertained have been taken.

Further information: http://assembly.coe.int/

Commissioner for Human Rights

The Commissioner for Human Rights is an independent institution within the Council of Europe that aims to promote awareness of and respect for human rights in its member states.

Official visits

Special attention to the situation of foreigners, independence of justice and protection of victims of domestic violence

Switzerland (29 November-3 December 2004)

During his visit to the Helvetic Confederation, the Commissioner for Human Rights met with High authorities of Federal bodies and cantonal officials.

As usual, the Commissioner met with human rights NGOs at the very outset of his visit. An exchange of views was also organised with regional ombudspersons and the Federal Commission against Racism.

Visits to prisons, asylum-seeker centres and shelters for women who are victims of violence were made in different cantons.

The Commissioner raised the issues of the situation of foreigners within the Confederation and especially the treatment of asylum-seekers, the administration of justice and its independence and the protection of victims of domestic violence.

On the agenda: the place of foreigners, trafficking in human beings, discrimination, the institution of the ombudsperson

Liechtenstein (9-10 December 2004)

During the course of his visit, the Commissioner met, *inter alia*, with the Prime Minister and members of his Government, the President of the Constitutional Court and members of the judiciary, police forces and civil society representatives. An audience with H.S.H. Prince Alois von und zu Liechtenstein was also organised during the visit. In addition to these meetings, the Commissioner visited the prison of Vaduz and the reception centre for asylum seekers.

The place of foreigners and their integration in Liechtenstein society, trafficking in human beings, racism, discrimination and gender equality were the main issues raised during the visit. The possibility of establishing an ombudsperson was also discussed.

The resulting reports on the respect for human rights in these two countries will be presented to the Committee of Ministers and will be made available on the Commissioner's website.

Seminars

Trafficking in human beings, human rights and terrorism, system of human rights protection within the Council of Europe

3rd Round Table of National Human Rights Institutions

Berlin, 25-26 November 2004, jointly organised with the German Institute for Human Rights

It was for the first time the Human Rights Commissioner's responsibility to organise the biannual meeting of National Human Rights Institutions in accordance with Resolution (97) 11 of the Committee of Ministers. The 3rd Round Table, organised jointly with the *Deutsches Institut für Menschenrechte*, brought together representatives from national European human rights institutions as well as international experts, NGOs and representatives of the OSCE, the United Nations and the European Union. High-level civil servants representing governments interested in creating national institutions in accordance with the Paris Principles also participated. The Round Table aimed to strengthen links between these institu-

tions and to develop their relations with the Council of Europe.

Three topical issues were discussed: trafficking in human beings, the protection of human rights in the context of terrorism and recent developments in the system of human rights protection within the Council of Europe. For each of these themes, a Council of Europe expert, a member of a national institution and an NGO representative made a presentation in order to initiate the discussions. The Round Table was concluded by the adoption by all the participants of the Berlin Declaration. The Declaration is available on the Commissioner's website.

Seminars on the institutions of Regional Ombudspersons in the Russian Federation

In the framework of his programme, supported by the European Union, to develop and reinforce regional ombudspersons institutions in Russia, the Commissioner has organised a series of seminars.

Briansk, 7-8 February 2005

On 7 and 8 February, the Commissioner chaired a conference in Briansk on the development of regional ombudspersons institutions in Central Russia.

St Petersburg, 8-14 February 2005

From 8-14 February, he organised a training Seminar for the staff of the Chechen Interim Ombudsman. The seminar aimed to introduce the staff of the new institution to the activities and practises of other Russian and European regional ombudsman institutions.

Opinions and Recommendations

Human Rights Commissioner opinion of the draft Convention on the Prevention of Terrorism (2 February 2005)

On the invitation of the Committee of Ministers, the Commissioner presented his opinion on the draft Convention on the Prevention of Terrorism currently being elaborated within the Council of Europe. In order to prepare this opinion and in response to a request formulated in the Berlin Declaration, the Commissioner organized a written and oral consultation with European National Human Rights Institutions and NGOs competent in this field.

In his opinion, the Commissioner referred to general observations raised in his previous reports. The opinion continues with an article by article analysis of the draft convention, suggesting a number of amendments or modifications. The opinion notably recommends to the Committee in charge of drafting the convention (the CODEXTER) to specify some of the definitions of the crimes contained in the draft Convention, to strengthen the references to the principles of the European Convention on Human Rights and to create a specific section in the text dedicated the protection of victims of terrorism, recognising their rights to protection and defining guarantees in this respect.

The opinion of the Commissioner is available on his website.

Publications

On 15 December 2004, the Commissioner presented to the Committee of Ministers the *annual report* on his activities for the period January to December 2003. It was transmitted to the Parliamentary Assembly of the Council of Europe for discussion at a later stage.

The introductory section of the report presents the Commissioner's relations

with Council of Europe bodies, international organisations and NGOs. The report then analyses a number of the salient human rights challenges in Europe, with respect to European migration policies, the protection of national minorities and the respect for human rights in the new member States of the European Union.

The annual report is available on the Commissioner's website.

Internet site of the Commissioner for Human Rights: http://www.coe.int/commissioner/

The Fundamental Rights Agency of the European Union

A Council of Europe perspective

Contribution by the Secretary General of the Council of Europe

In December 2003, the member States of the European Union meeting within the European Council decided to convert the European Monitoring Centre on Racism and Xenophobia into a Fundamental Rights Agency. In October 2004, the European Commission prepared a communication on the future Agency with a view to launching a public consultation (COM (2004) 693 Final). This memorandum presents the contribution of the Secretary General of the Council of Europe to the dialogue on the Agency.

1. Introduction

1. From the Council of Europe's perspective, the decision to establish a Fundamental Rights Agency ("the Agency") within the European Union (EU) is to be welcomed, as it reflects the commitments of the EU to respect fundamental rights. The Joint Declaration on cooperation and partnership between the Council of Europe and the European Commission of 3 April 2001 recognised that our organisations share the same values and pursue common aims, in particular with regard to the protection of human rights and fundamental freedoms is concerned. As a pan-European organisation which now comprises 46 European member States, including all EU member States, the Council of Europe is working to promote and protect these values throughout Europe. Instead of duplicating activities, we must enhance the complementarity of our actions and ensure maximum benefit for all countries and citizens concerned.

2. It is in this spirit that the following observations and ideas for the future relationship between the Council of Europe and the Agency are presented. This memorandum addresses certain key questions raised in the Commission's communication:

- the Agency's field of action;
- its tasks;
- its operational structures;
- its relationship with the Council of Europe.

3. Based on its rich experience in the field of human rights protection, the Council of Europe stands ready to bring its full support to help ensure that the Agency leads to genuine progress in the protection of fundamental rights throughout Europe.

2. Defining a useful field of action for the Agency: opportunities and risks

4. The European Union has gradually acquired more and more competences in areas affecting the daily lives – and the fundamental rights – of individuals. Both the integration of the EU Charter of Fundamental Rights in the Treaty establishing a Constitution for Europe and the commitment to accede to the European Convention on Human Rights (ECHR) are responses to this develop-

ment. These steps ensure that the legal protection of human rights is strengthened internally – within the legal order of the EU – as well as externally, by making that legal order subject to the judicial review of the European Court of Human Rights. It is the combination of these measures that will ensure legal certainty and coherence in fundamental rights protection all over Europe. It is against this background that the role and functions of the proposed Fundamental Rights Agency should be considered.

2.1. The fields covered by Council of Europe human rights mechanisms and standards

5. The Council of Europe and the European Union share the same values and pursue common aims with regard to the protection of democracy, respect for human rights and fundamental freedoms and the rule of law.[1] On the basis of common standards, which go even beyond the rights of the EU Charter of Fundamental Rights, the Council of Europe already carries out general human rights monitoring of its member States, including all EU member States. The Council of Europe's *acquis*, which served as a basis for the drafting of the EU Charter of Fundamental Rights[2], includes in particular, standards on civil and political rights, social, cultural and economic rights, minority rights, the treatment of persons deprived of their liberty and the fight against racism and intolerance. Over the past five decades, a broad arsenal of human rights mechanisms, functioning with recognised expertise and professionalism have been developed:

- the European Convention on Human Rights and its protocols;
- the Revised European Social Charter;
- the European Convention for the Protection of Torture and Inhuman or Degrading Treatment or Punishment;
- the European Commission against Racism and Intolerance;
- the Framework Convention for the Protection of National Minorities;

6. Independent human rights bodies, most of them treaty-based, actively monitor respect for common European standards on a country-by-country basis, including through country visits and on-the-spot investigations and, increasingly, also thematically. They identify issues of non-compliance, address recommendations and, in the case of the European Court of Human Rights, binding judgments to the member States in case of non-respect of these standards. In addition, the Parliamentary Assembly, the Committee of Ministers and the Congress of Local and Regional Authorities of the Council of Europe, carry out political monitoring, both thematic and country-specific, in which issues relating to human rights, democracy and the rule of law play a predominant role. The work of the European Commission for Democracy through Law ("Venice Commission") which assists the organs of the Council of Europe as well as member States in constitutional matters, also encompasses these issues.

7. Since 1999, the work of these bodies is being complemented and supported by the work of the **Council of Europe Commissioner for Human Rights** who has a general mandate to promote the effective respect for, awareness of and education in human rights standards in the member States, notably through visits, dialogue and the preparation of reports, opinions and recommendations.[3]

8. The work of the Council of Europe in the field of human rights does not only follow a country-by-country approach but also a thematic one. This is true not only in the framework of intergovernmental and parliamentary activities (adoption of recommendations, guidelines, reports, studies, etc.) but also, and more and more often, in the work of the various independent human rights mechanisms (see, for instance, general policy recommendations of the

1. Joint Declaration on Co-operation and Partnership between the Council of Europe and the European Commission of 3 April 2001, § 2.
2. According to the Charter's Preamble: "This Charter reaffirms […] the rights as they result, in particular, from the […] European Convention for the Protection of Human Rights and Fundamental Freedoms, the social charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.
3. Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999 at its 104th Session.

European Commission against Racism and Intolerance, the thematic sections in the annual reports of the European Committee for the Protection of Torture and Inhuman or Degrading Treatment or Punishment). The case-law of the European Court of Human Rights as well as that of the European Committee of Social Rights, under the Social Charter, are also often considered from a thematic angle. This case-law as well as the results of the work of the various independent human rights mechanisms in general are instrumental in identifying problematic areas which are regularly taken up by the Parliamentary Assembly and the Committee of Ministers. This may lead to the adoption of new standard-setting instruments or other activities, such as cooperation programmes, aiming at assisting countries in achieving the required standards.

2.2. The Agency as an independent EU human rights institution

9. The establishment of the Agency must respond to an actual need. Being part of the EU framework, the Agency can usefully contribute to the promotion and protection of human rights within the European Union, exercising functions, which are to some extent similar to those carried out by independent national human rights institutions in several European countries. The Council of Europe encourages its member States to set up such human rights institutions since it is convinced that there is a role to be played by non-judicial institutions in providing objective information and advice to national authorities in relation to human rights issues and in raising awareness about human rights in society.[1]

10. In theory, there would be no particular reason to prevent the Agency from covering the entire range of human rights and fundamental freedoms coming within the field of application of EU law. It could be expected that the Charter of Fundamental Rights serves as the main reference document for the Agency. While the Charter is not yet formally binding *per se*, the European Parliament, the Council and the Commission have committed themselves to observing its standards and it has already started to play a certain role in the case-law of the European Court of Justice, the Court of First Instance as well as the European Court of Human Rights. The Charter has now been integrated into the Treaty establishing a Constitution for Europe, which was signed in Rome on 29 October 2004. Taking into account the broad scope of the rights covered, this would constitute a qualitative leap compared to the rather limited remit of the existing Monitoring Centre. It will, no doubt, be necessary to determine priorities in the Agency's work, reflecting the main policy areas of the European Union, such as the fight against racism and xenophobia. A thematic approach, concentrating on areas having a special connection with Community policies or the Union (immigration, asylum, non-discrimination), would make the Agency's action more focused and effective.

11. The data collected and supplied by the Agency would provide information for the work of all EU institutions – each acting within its own competences – and make a useful contribution to mainstreaming human rights standards in the definition of EU legislation and policies. The European Union would thus, like several EU and Council of Europe member States have done, be filling a gap in its internal "human rights infrastructure" by creating an Agency whose role would be complementary to those of the Luxembourg Courts and of the European Ombudsman.

2.3. Should the Agency cover action by member States within the scope of EU competences?

12. In accordance with consistent case-law of the European Court of Justice, EU member States are bound to comply with the Union's fundamental rights standards whenever they act within the context of EU law.[2] It could thus be considered legitimate for the Agency to cover to some extent the implementation of EU law and policies by the

1. See Recommendation No. R (97) 14 of the Committee of Ministers to member States on the establishment of independent national institutions for the promotion and protection of human rights. See also Resolution 48/134 of the General Assembly of the United Nations on national institutions for the promotion and protection of human rights.

2. ECJ, judgment of 13 July 1989, Case 5/88 Wachauf, [1989] ECR 2609, judgment of 18 June 1991, ERT, [1991] ECR I-2925. See also Article II-111 of the Constitutional Treaty.

member States. In this area, the Agency could collect and analyse information and data communicated to it by the member States, including national human rights institutions and ombudspersons, non-governmental organisations as well as by the EU institutions and the Council of Europe.

13. That being said, there would be no particular added value in the Agency advising EU member States directly. The various Council of Europe human rights bodies already monitor the situation in EU member States irrespective of whether a specific matter can be regarded as implementation of EU law or a "purely" domestic issue. Every State party to the European Convention on Human Rights is required to guarantee to everyone within its jurisdiction effective observance of the protection laid down by the Convention, including protection *vis-à-vis* the effects of EU law in its domestic legal system.[1] It must be emphasised that human rights questions have typically a transversal character, transcending the lines according to which competences are distributed between the European Union and its member States. They call for a broad and comprehensive approach, which is precisely the approach followed by the relevant human rights bodies of the Council of Europe. Close collaboration with the monitoring mechanisms of the Council of Europe would not only be a useful complement for the Agency, but a real necessity.

14. Moreover, the scrutiny of member States may raise concerns about the reach of EU competences in the field of fundamental rights. The Commission has no doubt rightly suggested to follow a thematic approach, which would avoid extending the remit of the Agency to matters outside the scope of EU competence. Concentrating on matters which are of special relevance to the Union, the Agency's reports and opinions could thus inform EU institutions, drawing attention to human rights concerns which have been identified in the implementation of EU law and policies. Any problems or deficiencies noted would no doubt have to be brought to the attention of and addressed by the competent EU institutions, in particular the Commission, through the applicable procedures. From that perspective, it would not seem advisable that the Agency's mandate extends to issuing recommendations addressed directly to EU member States.

2.4. Should the Agency monitor member States outside the remit of EU competences?

15. The Commission's Communication mentions Article 7 of the Union Treaty as a possible legal basis to monitor the general human rights situation in EU member States, even in areas where the latter act autonomously, outside the remit of EU competences. Article 7 TEU provides for an exceptional procedure to be applied in extreme situations: a clear threat of a serious breach of the common values on which the Union is founded (according to Article 6 TEU, liberty, democracy, respect for human rights and fundamental freedoms and the rule of law). As the Commission itself points out, these values go well beyond the traditional area of fundamental rights protection which the European Council described as the Agency's field of action. Even assuming that it were possible to construe a competence for the Agency under Articles 6 and 7 TEU, the question arises whether it would make sense to monitor all EU member States routinely in order to identify very exceptional situations of the scale and dimension envisaged in this provision?

16. There can be no doubt that the existing Council of Europe mechanisms are sufficient to ensure that situations such as those contemplated in Article 7 TEU are identified at an early stage. In addition to the above-mentioned human rights mechanisms (§ 6), the human rights situation in all member States receives close attention from the Committee of Ministers, the Parliamentary Assembly and the Secretary General, who may also use his powers of inquiry under Article 52 of the ECHR.[2] The EU Commission itself has recognised the

1. *Cantoni v. France*, judgment of 15 November 1996; *Matthews v. the United Kingdom*, judgment of 18 February 1999; *T.I. v. the United Kingdom*, Decision of 7 March 2000.

2. "On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention."

role of the Commissioner for Human Rights in securing respect for and promotion of common values on the basis of Article 7 TEU.[1] The various Council of Europe bodies may usefully assist the EU Commission and Council in the exercise of their functions under this provision.

17. It would appear evident that Article 7 TEU is an exceptional provision to be applied only in extreme situations. As such, it could not serve as a basis for the Agency to monitor regularly and routinely respect for human rights by EU member States acting within their own domestic legal orders. As the Commission rightly acknowledges, such an approach would duplicate the work already being done, notably by the Council of Europe. Indeed, the duplication of monitoring mechanisms runs the risk of weakening the overall protection offered and undermining legal certainty in this field. It would be unfortunate if assessments by the Agency were to diverge from, or even contradict, assessments made by Council of Europe bodies. Indeed, such diverging or conflicting assessments relating to the same human rights would not only result in great confusion for citizens and member States, but could even provide opportunities for forum shopping, with one assessment being set against the other. All this is hardly conducive to ensuring compliance with human rights standards. It risks weakening the authority and diluting the credibility of the respective EU and Council of Europe bodies, thereby affecting the overall effectiveness of fundamental rights protection in Europe. Both citizens and member States have a right to see clearly who is responsible.

18. There is also a broader political dimension to this question. Having parallel monitoring systems operating for the 25 countries making up the European Union on the one hand, and for the 46 countries making up the Council of Europe on the other, could create new dividing lines in Europe in the human rights field, an area *par excellence* where Europe should be united by the same common standards and values. If Europe wishes to be convincing and credible when it defends the universality of human rights or ethical globalisation, it must also prove itself capable of uniting around those common standards and values.

2.5. Geographical scope of the Agency's activities

19. The Commission's Communication rightly emphasises that the remit of the Agency should not extend to third countries. Indeed, confining the Agency's scope to the Union would underline the will to emphasise the importance of fundamental rights within the internal functioning of the Union and would be an effective means of reminding its institutions of their responsibilities in the field of fundamental rights.

1. Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union, COM (2003) 606 final of 15 October 2003, point 2.3.

3. A clear definition of the Agency's tasks

20. The Agency's success will depend to a large extent on a clear definition of its tasks and functions. Although some inspiration may be drawn from the principles set out in Resolution 48/134 of the General Assembly of the United Nations, it would neither be appropriate nor materially possible for the Agency to exercise all the responsibilities mentioned therein, in particular those relating to quasi-judicial functions. On the one hand, the effective functioning of the existing Council of Europe human rights mechanisms must be preserved. On the other hand, due regard must be paid to the specific characteristics of the Union and Union law. It would therefore appear appropriate for the Agency to concentrate on the core functions of data collection, analysis, awareness raising as well as the preparation of opinions and studies for the EU institutions.

3.1. Data collection, analysis and awareness raising

21. The European Council Conclusions stressed "the importance of human rights data collection and analysis with a view to defining Union policy in this field" as the main functions of the Agency. As indicated by the Commission, the Agency should primarily focus on collecting and disseminating data on

fundamental rights at European level to enable the Union to take these rights fully into account when drafting and implementing its policies.[1] It will be of paramount importance to ensure that such data are objective and reliable. The Agency could use a wide variety of sources, including independent national human rights institutions, ombudspersons, non-governmental organisations and research centres. The Council of Europe will be a reliable partner in this respect. A fruitful exchange of information and data takes already place between the European Commission against Racism and Intolerance and the Monitoring Centre on Racism and Xenophobia on the basis of an Agreement concluded in 1998.[2] Such exchange should be extended to cover all Council of Europe human rights mechanisms. Their data are based not only on governmental sources, but also on information provided by non-governmental organisations and social partners and have been verified by independent experts.

22. The Agency could also play an important role in generally raising awareness of the general public, member States and the relevant EU institutions about the importance of human rights for the work of the European Union. The Council of Europe, which has a proven track record of awareness raising and education activities in the area of human rights, stands ready to collaborate actively in the development of the Agency's communications and dialogue strategy. This is an ideal area for synergy and for possible joint Council of Europe/European Union initiatives, which could be used to stress that both our organisations defend the same values and standards.

3.2. Opinions and views intended for EU institutions

23. The Commission's Communication mentions the possibility of addressing opinions and views to the EU institutions. The Agency might indeed play a useful advisory role whenever human rights questions arise in the preparation or application of EU legislation or policies. More and more EU legislation directly affects fundamental rights. One only needs to look, for example, at the numerous legislative proposals made or under preparation with a view to establishing an area of freedom, security and justice (in particular in the context of the common asylum and immigration policies, access to justice, combating crime and terrorism, procedural safeguards for suspects and defendants in criminal proceedings throughout the Union, etc.) to realise that the proposed Agency could play a useful role in providing independent information about the relevant human rights standards to the EU institutions. This could possibly extend to giving advice to the EU institutions on draft EU legislation, notably as regards its compatibility with the EU Charter of Fundamental Rights and the European Convention on Human Rights as well as with the Revised European Social Charter. By carrying out research and studies, the Agency could, in this context, usefully support the work already carried out in particular by the EU Commission. The Council of Europe recommends that member States verify regularly the compatibility of draft legislation with human rights standards with a view to preventing human rights violations.[3] In many countries, national human rights institutions perform this task and make recommendations in order to ensure that legislative and administrative provisions conform to national and international human rights standards.

3.3. Opinions and views intended for member States

24. For the reasons explained above (§§ 13 to 18), there would appear to be no added value for the Agency to address opinions and views directly to individual EU member States.

1. Communication point 5.1.
2. Agreement between the European Community and the Council of Europe for the purpose of establishing, in accordance with Article 7 (3) of Council Regulation (EC) No. 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia, close co-operation between the Centre and the Council of Europe, *Official Journal* of the EC, L 44/33 of 18 February 1999. The text is also contained in Doc. CM/Inf (99) 5 of 18 January 1999.
3. See 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.

4. Synergy with the Council of Europe

25. Close co-operation and synergies with the Council of Europe will be key factors for the Agency's success. This would be particularly necessary if the Agency were to collect information and provide advice about human rights issues that arise in the EU member States acting in the context of EU law. The Agency must not only be aware that such issues are already covered by the various Council of Europe monitoring mechanisms and institutions operating in the human rights field. It should also use the standards developed by them and other substantive results of their work. The Agency's mandate should contain a general provision to the effect that its tasks and activities shall not duplicate the role and functions of Council of Europe institutions and mechanisms operating in the human rights field, but on the contrary co-operate actively with them.

26. Exchange of information and data would clearly not be sufficient to ensure meaningful cooperation between the Agency and the Council of Europe. Practical experience concerning relations with the European Monitoring Centre on Racism and Xenophobia ("the Centre") has underscored the importance of direct participation of Council of Europe representatives in the Centre's institutional structure. Under the agreement on cooperation between the Centre and the European Commission against Racism and Intolerance (ECRI),[1] an independent person from among ECRI's members serves on the Centre's management board, together with a deputy. The current arrangements with ECRI, which also include joint conferences and regular meetings of the respective bureaux, should be used as a basis for developing the future relationship between the Agency and the Council of Europe. We would propose concluding a co-operation agreement between the European Union and the Council of Europe, building upon and expanding the example of the existing agreement concerning relations between the Centre and ECRI.

27. In drawing up its programme of activities, it would be essential that the Agency take account of activities already carried out by the Council of Europe and avoids unnecessary *duplication in practice*, that is in its operational activities. It will thus be essential for the Agency to consult with Council of Europe institutions and mechanisms operating in the human rights field, including on a day-to-day technical basis. Every opportunity for concrete cooperation activities between the Agency and the relevant Council of Europe institutions should be seized (for example joint activities in the field of human rights education and awareness).

1. See footnote 2, page 77.

5. The Agency's operational structures

28. In the light of the Council of Europe's experience, and taking into account in particular the above-mentioned Committee of Ministers' Recommendation No. R (97) 14, there is no single model for the institutional arrangements of national human rights institutions. Irrespective of the organisational arrangements and management structure eventually chosen, the inherent characteristics of such institutions and thus of the Agency are that they are independent, impartial, pluralistic in their composition and possess sufficient human rights expertise.

29. As acknowledged by the EU Commission, the Agency would only benefit from the participation of Council of Europe representatives in its management bodies. Taking into account the broadened remit of the Agency, all Council of Europe human rights mechanisms, including the Commissioner for Human Rights, should be represented in those bodies.

6. Concluding remarks

30. From the Council of Europe's perspective, the decision to set up a Fundamental Rights Agency is to be welcomed as a further sign of the European Union's

commitment to human rights. In order for the Agency to play a useful role in filling existing gaps in the promotion and protection of human rights in Europe and avoid unnecessary duplication with the work of the Council of Europe, it should be conceived as an "independent human rights institution" of the European Union. Such a body, whose remit would be limited to matters falling within EU competence, could usefully contribute to mainstreaming and promoting human rights in EU decision making. Its main task would be to collect, record and analyse information, in particular from independent national human rights institutions, ombudspersons, non-governmental organisations, member States, EU institutions, the Council of Europe and other international governmental organisations. In cooperation with national authorities and the Council of Europe, it should develop a communications and dialogue strategy aimed at raising awareness among the public about the importance of human rights in the policies, legislation and other activities of the European Union. It may also usefully be given the task of assisting the EU Commission in examining the compatibility of draft EU legislation with the Charter of Fundamental Rights, the European Convention on Human Rights and the Revised European Social Charter.

31. There will be a need for close co-ordination with the Council of Europe and its mechanisms operating in the human rights field, including the Commissioner for Human Rights, in order to avoid duplication and guarantee the best possible use of resources. This needs to be reflected in the Agency's mandate, its organisational structures (direct participation of Council of Europe representatives), and in a cooperation agreement to be concluded between the European Union and the Council of Europe.

32. The Council of Europe and the European Union must use all possible synergies and enhance the complementarity of their activities in the field of human rights protection, thereby ensuring maximum benefit for all citizens and countries concerned. The increased convergence in membership between the two organisations calls for a coherent system of fundamental rights protection for the whole of Europe. The setting up of the Agency provides an excellent opportunity for synergy, which must find its expression in the definition of the Agency's remit and organisational structures as well as in the conclusion of a co-operation agreement with the Council of Europe. Instead of creating new dividing lines in an area of such vital importance as the protection of human rights and fundamental freedoms, Europe should be united by the same common standards and values.

Appendix

Reply to the questionnaire prepared by the European Commission

(1) How can the remit of the Agency be defined in order to ensure both added value for the EU institutions and Member States and its efficient operation?

The Fundamental Rights Agency ("Agency") could usefully contribute to the promotion and protection of human rights within the European Union ("EU"), in a similar way as independent national human rights institutions (NHRIs) do in this field in several European countries by providing information and advice to national authorities in relation to human rights and increasing awareness of human rights in society.

The Agency's remit should respond to an actual need and therefore focus primarily on the EU institutions themselves. In view of the numerous legislative proposals having a direct impact on human rights and fundamental freedoms, in particular those made or under preparation with the view to establishing an area of freedom, security and justice, the Agency could play a useful role in providing independent information about relevant human rights standards to the EU institutions. This might also extend to giving advice to the EU institutions on draft EU legislation, notably as regards compatibility of draft legislation with the EU Charter of Fundamental Rights, the European Convention on Human Rights and with the Revised European Social Charter, thus complementing the work of the EU Commission. The information collected and provided by the Agency could provide information useful to the work of the EU institutions – each acting within its

own competence – and make a helpful contribution to mainstreaming human rights standards in the definition of internal EU policies.

The Agency's field of action might also extend to the implementation of EU law by the member States. In this area, the Agency could collect and analyse information and data communicated to it by the member States, including national human rights institutions and ombudspersons, non-governmental organisations and by the EU institutions. Following a thematic approach and concentrating on matters which are of special relevance to the Union, the Agency's reports and opinions could provide information to the EU institutions, drawing their attention to human rights concerns which have been identified in the implementation of EU law and policies. Any problems or deficiencies noted will have to be addressed by the competent EU institutions, in particular the Commission, through the applicable procedures.

It would not be advisable to give the Agency a general mandate to monitor regularly and routinely the respect for human rights by EU member States acting within their own domestic legal orders. Since these are already monitored by the various human rights mechanisms of the Council of Europe, such a role would create an obvious risk of overlap and unnecessary duplication of as well as potential contradictions with the work being already carried out by the Council of Europe. Indeed, the duplication of monitoring mechanisms runs the risk of weakening the overall protection offered and undermining legal certainty in this field. Assessments by the Agency might diverge from, or even contradict, assessments made by Council of Europe bodies. Such diverging or conflicting assessments relating to the same human rights would not only result in great confusion for citizens and member States, but could even provide opportunities for forum shopping, with one assessment being set against another. All this is hardly conducive to ensuring compliance with human rights standards, but might also weaken the authority and dilute the credibility of the respective bodies, thereby affecting the overall effectiveness of fundamental rights protection in Europe. Finally, on a broader political level, the existence of two parallel monitoring systems operating, one operating for the 25 member States of the EU and the other for the 46 member States of the Council of Europe could create new dividing lines in Europe in the human rights field, an area *par excellence* where Europe should be united by the same common standards and values.

Furthermore, with regard to the procedure under Article 7 TEU and given that the Council of Europe and the EU share the same values and pursue common aims notably of respect for human rights and fundamental freedoms, the existing Council of Europe mechanisms are sufficient to ensure that situations of serious violations of human rights such as those contemplated in this provision will be identified at an early stage.

(2) In which areas should the Agency operate? Should these areas be defined in relation to the Charter of Fundamental Rights of the Union and if so how (by article or by chapter?). Should certain priorities be established? If so how? How can we ensure that the current remit of the EUMC (racism and xenophobia) is maintained and built on?

The Agency's mandate could cover the entire range of human rights and fundamental freedoms coming within the field of application of EU law with the Charter of Fundamental Rights as the main reference document. While the Charter is not yet formally binding per se, the European Parliament, the Council and the Commission have committed themselves to observe its standards and it has already started to play a certain role in the case-law of the European Court of Justice, the Court of First Instance as well as the European Court of Human Rights. Moreover, it has now been integrated into the Treaty establishing a Constitution for Europe.

Taking into account the broad scope of the rights covered by the Charter, it would no doubt be necessary to determine priorities in the Agency's work, reflecting the main policy areas of the European Union, such as the fight against racism and xenophobia. In doing so, the Agency should take account of already existing studies and other activities (conferences, seminars, ongoing research) both nationally and on the level of the Council of Europe in order to avoid duplication and to guarantee the best possible use of resources.

(3) How can the geographic coverage of the Agency be best defined, bearing in mind the need to avoid overlap with existing organisations and the need to ensure that the Agency operates in the most efficient manner possible?

The Agency's field of action should be confined to the European Union, thus underlining both the importance of fundamental rights protection in the Union and the corresponding responsibility of EU institutions in this field.

(4) Which tasks should the Agency be given? How can the Agency gather objective, reliable and comparable data at European level? How can co-operation with Member States and civil society to obtain this information be best assured? How should the Agency present its conclusions and recommendations? How should the work of the Agency be disseminated?

The Agency's main task would be to collect, record and analyse information. It will be of paramount importance to ensure that such data are objective and reliable. The Agency should use a wide variety of sources, including independent national human rights institutions, ombudspersons, non-governmental organisations and research centres. The Council of Europe will be a reliable partner in this respect.

A fruitful exchange of information and data takes already place between the European Commission against Racism and Intolerance and the Monitoring Centre on Racism and Xenophobia on the basis of the 1998 agreement between the Council of Europe and the European Community. Such exchange should be extended to cover all Council of Europe human rights monitoring mechanisms. Their data are based not only on governmental sources, but also on information provided by non-governmental organisations and social partners and have been verified by independent experts. In co-operation with national authorities and the Council of Europe, it should develop a communication and dialogue strategy aimed at raising awareness among the public about the importance of human rights for EU policies and legislation. It may also usefully be given the task of assisting the Commission in examining the compatibility of draft EU legislation with the Charter of Fundamental Rights and the European Convention on Human Rights.

As said under (1), the information collected and provided by the Agency could provide information useful to the work of the EU institutions and make a helpful contribution to mainstreaming human rights standards in the definition of internal EU policies.

(6) How can close co-operation with other stakeholders be assured, notably with the Council of Europe? How can the agency capitalise on the wealth of experience of the national bodies for the protection and promotion of fundamental rights and other similar national agencies? Following the creation of the Agency, how can the added value of the Network of Independent Experts be assured?

(7) Which structures should be put in place to ensure that the Agency operates in an independent and efficient manner? Who should be represented on the Management Board of the Agency? Should a scientific advisory committee be established?

Close co-operation with the Council of Europe will be a key factor for the Agency's success, especially if it is to collect information and provide advice about human rights issues that arise in EU member States. The Agency should be fully aware of and draw on the substantive results of the various Council of Europe monitoring mechanisms and institutions and the standards developed by them. In drawing up its programme of activities, it should avoid duplicating the human rights work carried out by the Council of Europe.

There will be many opportunities for concrete co-operation activities (for example joint activities in the field of human rights education and awareness) between the Agency and the relevant bodies of the Council of Europe and mutual exchange of information wherever possible.

The mandate of the Agency should contain a general provision to the effect that its tasks and activities shall not duplicate the role and functions of Council of Europe institutions and mechanisms operating in the human rights field but on the contrary cooperate actively with them.

In order to achieve synergies and avoid duplication in practice, it would be essential, analogous to the current arrangements concerning the EUMC and the European Commission against racism and Intolerance (ECRI), for the human rights bodies of the Council of Europe to be represented in the management structures to be created for the Agency and to conclude a cooperation agreement between the EU and the Council of Europe, which provides for active cooperation with the Council of Europe institutions and mechanisms, including on a day-to-day technical basis.

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: the Revised European Social Charter, which came into force in 1999, is gradually replacing the initial 1961 treaty.

Signatures and ratifications

Since the recent signature of the Revised Social Charter by Serbia and Montenegro, and its ratification by "the Former Yugoslav Republic of Macedonia", all the 46 member States of the Council of Europe have signed either the 1961 Charter or the 1996 revised Charter. 38 States have ratified one or the other of these two instruments.

See the appendix, page 101, for the current state of ratifications.

About the Charter

Rights guaranteed

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.

National reports

The State 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. On the basis of these reports, the European Committee of Social Rights – composed of fifteen members elected by the Council of Europe's Committee of Ministers – decides, in "conclusions", whether or not the States complied with their obligations. In the second hypothesis, if a State takes no action on a decision of non-conformity, the Committee of Ministers addresses it a recommendation asking it to change the situation.

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 by certain organisations. The Committee's decision is forwarded to the parties concerned and the Committee of Ministers, which adopts a resolution, by which it may recommend that the state concerned take specific measures to bring the situation into line with the Charter.

Conclusions of the European Committee of Social Rights

Articles 7, 8, 11, 14 and 18

The Conclusions (cycle XVII-2) regarding the application of these Articles by:

- Denmark
- Germany
- Hungary
- Latvia
- Malta
- Poland
- Portugal
- Spain
- and Turkey

are published on the Charter Web site.

Collective complaints

France: entitlement to medical assistance for foreign nationals

The decision on the merits of the Collective Complaint No. 14/2003: International Federation of Human Rights v. France was published. It was alleged that the introduction in the framework of the state medical assistance of a flat rate (*ticket modérateur*) and of a daily charge (*forfait journalier*) for in-patient hospital treatment for illegal immigrants and for nationals who usually reside outside French territory, and the exclusion from the Universal Medical Coverage of minors and of "isolated minors" (*les mineurs isolés*) are contrary to Article 13 §§1 and 4 and to Article 17 § 1 combined with Articles E (non-discrimination) and G (restrictions) of the Revised Charter

Referring to the contents and the aim of the Charter and to its links with the European Convention on Human Rights, the ECSR considered that, since these restrictions concern health care, they directly affect the right to life and consequently the very dignity of the human being which is the fundamental value and indeed the core of positive European human rights law. The ESCR held that denying entitlement to medical assistance to foreign nationals, even if they are there illegally, is contrary to the Charter.

As such, the ECSR considered that French legislation did not deprive illegal immigrants of all entitlement to medical assistance and that consequently France did not violate the right to emergency assistance (Article 13 § 4 of the Revised Charter). However, the Committee considered that France violated the right of young people to protection, i.e. Article 17 directly inspired by the United Nations Convention on the Rights of the Child, because children of illegal immigrants and isolated minors have the right to medical assistance only in case of situations that involve an immediate threat to life and the former have this right only after a certain uninterrupted period of residence on the territory.

France: working hours of certain managers

The decision on the merits of the Collective Complaint No 16/2003, lodged by the "Confédération Française de l'Encadrement – CFE-CGC" v. France, was also published. It was alleged that the provisions relating to the working hours of certain managers (cadres) contained in Act No 2003-47 of 17 January 2003 violate Articles 2 (the right to just conditions of work), 4 (the right to a fair remuneration), and 6 (the right to bargain collectively including the right to strike).

The ECSR concluded that the situation of managerial staff in the annual working days system constitutes a violation of Article 2 § 1 of the Revised Charter given the excessive length of weekly working time permitted and the absence of adequate guarantees. Likewise, the assimilation of "périodes d'astreinte" to rest periods constitutes a violation of the right to reasonable working time provided in Article 2 § 1 of the Revised Charter. Furthermore, the ECSR held that the number of working hours performed by managers who come under the annual working days system and who do not benefit from a higher rate for overtime is abnormally high. The situation is therefore contrary to Article 4 § 2 of the Revised Charter.

France: right to organise

The Collective Complaint No 29/2005: Syndicat des hauts fonctionnaires (SAIGI) v. France, lodged on 7 February 2005, relates to Article 5 (right to organise) of the Revised Charter. It is alleged that there are no effective remedies in the event of a breach of the right to organise where the State is acting as an employer.

Website: http://www.coe.int/T/E/Human_Rights/Sce/

Convention for the Prevention of Torture

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.

Co-operation with the national authority is at the heart of the Convention, since the aim is to protect persons deprived of their liberty rather than to condemn states for abuses.

European Committee for the Prevention of Torture (CPT)

The CPT was set up under the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Secretariat of the CPT forms part of the Council of Europe's Directorate General of Human Rights. The CPT's members are elected by the Committee of Ministers of the Council of Europe from a variety of back-grounds: lawyers, doctors – including psychiatrists – prison and police experts, 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 the 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 number of *ad hoc* visits is constantly increasing and now exceeds that of periodic 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.

Periodic visits

Cyprus

During this visit, the Committee's fourth periodic visit to Cyprus, the CPT's delegation examined the treatment of persons detained by the police (including immigration detainees) and the effectiveness of the formal safeguards against ill-treatment which are available to such persons. It also reviewed developments at the Central Prisons and Athalassa Psychiatric Hospital and, for the first time in Cyprus, examined the situation in places accommodating children in the care of the authorities.

Italy

During the Committee's fourth periodic visit to Italy, the delegation examined the conditions of detention and the safeguards offered to foreign nationals held at the temporary holding centres in Sicily. Further, it examined for the first time, the practical implementation in Italy of the procedure for applying an "involuntary medical treatment" (TSO) to psychiatric patients. The delegation also reviewed the conditions of detention during police custody, as well as the safeguards offered to persons detained by law enforcement agencies. In addition, it followed up the CPT's recommendations concerning prison overcrowding and prisoners subject to the so-called "Article 41-bis regime".

San Marino

A delegation of the CPT carried out a visit to San Marino from 8 to 11 February 2005. It was the Committee's third periodic visit to San Marino.

During the visit, the delegation followed up the recommendations the CPT had made after the visits in 1992 and 1999, in particular, as regards the conditions of detention at San Marino Prison and the safeguards offered to persons detained by law enforcement agencies. Further, it examined in detail the procedures for involuntary hospitalisation and "obligatory medical treatment" (TSO) of psychiatric patients. For the first time in San Marino, the delegation also visited two homes for the elderly.

Ad hoc visits

Bosnia and Herzegovina

A delegation of the CPT carried out a four-day visit to Bosnia and Herzegovina. The visit began on 14 December 2004. It was the Committee's second visit to this country.

The CPT's delegation re-examined the situation in certain psychiatric establishments, which were found to display major deficiencies when the Committee first visited them in the Spring of 2003. The delegation also had a general dialogue with the authorities of Bosnia and Herzegovina and with representatives of international organisations regarding the implementation of the CPT's recommendations.

France

The main purpose of this visit was to assess the situation in the prisons in the French *département* of La Réunion. The delegation also examined the treatment of persons placed in police custody on the island of La Réunion.

Russian Federation

This visit was the seventh organised by the Council of Europe's anti-torture body to the North Caucasian region of the Russian Federation since 2000.

In June 2003, the CPT issued a public statement concerning the Chechen Republic. The latest visit was an opportunity to review progress made in tackling issues raised in that statement, in particular resort to torture and other forms of ill-treatment by members of the law enforcement agencies and federal forces, forced disappearances and impunity. In addition, the Committee examined for the first time the treatment of persons deprived of their liberty in the Republic of Ingushetia.

At the outset of the visit, the delegation went to School No. 1 in Beslan (North Ossetia-Alania) and paid homage to the victims of the terrorist attack which took place there in early September 2004.

High-level talks

Representatives of the CPT had talks in Moscow and Rostov-on-Don with senior Russian officials. The talks, held from 26 to 28 January 2005, focused on the CPT's findings during its most recent visit to the North Caucasian region, which was organised from 24 November to 1 December 2004 and covered places of deprivation of liberty in the Chechen Republic and Ingushetia.

Reports to the governments following visits

After each visit, the CPT draws up a report which sets out its findings and includes recommendations and other advice, on the basis of which a dialogue is developed with the state concerned. The Committee's visit report is, in principle, confidential; however, almost all states chose to waive the rule of confidentiality and publish the report.

Azerbaijan

Report on the CPT's visit in November/December 2002 and Government's responses (published on 7 December 2004)

In the report, the CPT concludes that people detained by the police in Azerbaijan run a significant risk of being ill-treated. The Committee recommends that a high priority be given to professional training for police officers and that the legal safeguards against ill-treatment (such as notification of custody, access to a lawyer and access to a doctor) be applied as from the very outset of deprivation of liberty. The report also highlights serious shortcomings in the conditions of detention at several police detention centres, especially in Lenkoran.

As regards prisons, the CPT acknowledges the efforts made to improve conditions of detention. However, at Investigative isolators No. 1 in Baku and No. 2 in Ganja, the CPT observed overcrowding and a lack of constructive activities for inmates. A number of shortcomings were also found as regards material conditions at the psychiatric ward of the Central Penitentiary Hospital in Baku.

In their responses to the report, the Azerbaijani authorities highlight the measures taken to improve police training and step up control of police activities. Reference is also made to the refurbishment of police detention centres. Various steps aimed at reducing the prison population and improving detention conditions are also reportedly under way.

Bosnia and Herzegovina

Report on the CPT's visit in April/May 2003 and Government's responses (published 21 December 2004)

In its report, the CPT calls upon the authorities to ensure that a thorough, independent and impartial investigation is carried out into allegations of large-scale ill-treatment following a riot in Zenica Prison in February 2003. The report also draws attention to inadequate staffing levels, which constitute a major problem throughout the prison system of Bosnia and Herzegovina, as well as to the total lack of out-of-cell activities offered to remand prisoners.

The CPT recommends that the Zenica Prison Forensic Psychiatric Annexe be relocated, and highlights major deficiencies at Sokolac Psychiatric Hospital and Jakeš Institution for Chronic Mental Patients.

Many people indicated to the CPT that they had been treated correctly whilst detained by the police. Nevertheless, some persons did allege that they had been physically ill-treated by police officers. The Committee emphasises the importance of strict selection criteria during recruitment of police officers and of professional training.

In their response to the report, the authorities of Bosnia and Herzegovina refer to progress in the field of legislative reform, including as regards the development of a new State Law on the Execution of Criminal Sentences, and to measures taken to improve police training and to step up the control of police activities. However, they also make reference to significant budgetary difficulties, which pose an obstacle to tackling problems such as those observed in psychiatric institutions.

Finland

Anti-Torture Committee publishes Finnish response to 2003 visit report (8 November 2004)

In a response published on 8 November 2004 at its request, the Finnish Government provides information concerning issues raised by the CPT following its third periodic visit to Finland in September 2003.

The response makes reference to several draft laws in the areas of police detention and imprisonment. These drafts, which will address many of the CPT's recommendations, are expected to enter into force in January 2006. In particular, the detention of remand prisoners in police establishments will be subject to strict criteria and limited in time. Further, restrictions on remand prisoners' contact with the outside world will be applied only in exceptional cases. The Finnish authorities also refer to concrete steps taken to prevent and combat inter-prisoner violence and to improve the situation of prisoners segregated for their own protection.

As regards the detention of persons under the Aliens Act, the Finnish authorities announce the opening in December 2004 of a new facility in Metsälä, said to offer better material conditions and activities to the foreign nationals held there. Reference is also made to plans to draw up detailed provisions concerning the enforcement of deportation decisions, including the use of force and means of restraint.

Concerning Niuvanniemi Psychiatric Hospital, the Finnish authorities inform the Committee of the opening of a new unit for juvenile patients, which will offer activities corresponding to their specific needs.

Sweden

Report on the CPT's visit in January/ February 2003 and Government's responses (published 18 November 2004)

During the visit, the CPT's delegation received no allegations of ill-treatment by the police from the detained persons it interviewed. However, the report raises questions as regards the effectiveness of the investigation into complaints lodged against the police and involving allegations of assault by police officers. In their response, the Swedish authorities refer to a number of proposals designed to strengthen the existing complaints mechanism.

Despite legislative changes in recent years, the CPT's report finds that the imposition of restrictions on remand prisoners' contact with the outside world and other prisoners continues to raise a number of issues in practice. The Swedish authorities' response indicates that prosecutors in Gothenburg have been made aware of the Committee's concerns and instructed to comply with the relevant provisions when imposing such restrictions.

The report also draws attention to allegations received at the Bärby Home for Young Persons concerning the excessive use of force to control violent or recalcitrant residents. In their response, the authorities highlight that additional guidelines on the use of physical force have been drawn up and distributed to all institutions for young persons.

Switzerland

Report on the CPT's visit in October 2003 and Government's responses (published 13 December 2004)

The main purpose of this fourth visit was to assess the implementation in practice of the measures adopted by the Swiss authorities after the CPT's visit in 2001, in particular as regards the procedures and means of restraint applied in the context of forcible removals by air. The delegation also reviewed the treatment of foreign nationals refused entry into Switzerland (whether asylum seekers or not), whilst held in the transit zone at Zürich International Airport, and of foreign nationals detained at Kloten Airport Prison No. 2, pending their removal from the country.

As regards the removal by air of foreign nationals, the CPT noted the considerable work carried out by the Swiss authorities, at all levels, to implement both the letter and the spirit of the recommendations made by the Committee. That said, the CPT formulated some specific recommendations and comments, in particular as regards the systematic offer of a medical examination to every foreign national who had been the subject of a failed removal attempt, as well as the integration into the general police training programme of information concerning the risk of positional asphyxia during the physical restraint of recalcitrant persons.

In its response, the Federal Council indicated numerous measures taken to implement the CPT's recommendations concerning forcible removal operations, as well as the situation at Kloten Airport Prison No. 2 and the transit zone at Zürich International Airport. The Federal Council also referred to the new draft Law on the Use of Means of Restraint, which is currently subject to an external consultation process.

Ukraine

Report on the CPT's visit in November/December 2002 and Government's responses (published on 1 December 2004)

In its report, the CPT emphasises that it cannot modify the conclusion it had reached in the past, that persons

deprived of their liberty by the Militia run a significant risk of being ill-treated at the time of their apprehension and/or in custody, particularly when being questioned. Several recommendations are made, including one with a view to issuing directives to encourage public prosecutors to adopt a much more proactive approach in combating ill-treatment. In their response, the authorities refer to certain measures, including an assessment of the causes of human rights violations, the obligation for those responsible for the operational units of the Militia to carry out regular inspections, and a pilot project aimed at improving the professional and psychological selection of candidates to be employed by the police.

The material conditions in which persons are detained by law enforcement agencies leave a great deal to be desired. Concerning more particularly Militia central holding facilities (ITTs), the CPT calls upon all governmental agencies concerned to provide support, including of a financial nature, to the efforts of the Ministry of Internal Affairs to improve the conditions of detention. In this context, it recommends that a high priority be given to the swift removal of all shutters on cell windows in ITTs throughout the country, and to the creation of exercise yards. The response of the authorities enumerates several measures on this point; in particular, that 84.5% of these facilities are currently equipped with exercise yards.

The CPT severely criticises the conditions of detention of foreign nationals detained under aliens legislation. It recommends that sufficient financial resources be allocated to the agencies responsible for the centres for foreign nationals to meet the detained persons' basic needs (sufficient food, adequate bedding and appropriate clothing). The Ukrainian authorities indicate that funds have been allocated to equip and renovate the detention centres, as well as to build new ones.

With regard to penitentiary establishments, the CPT welcomes the measures taken to reduce overcrowding and improve material conditions. However, in the face of the still-rampant overcrowding in the SIZOs, it stresses that the highest priority should be to ensure that detention on remand is used only exceptionally and for the minimum duration compatible with the interests of justice. The authorities make reference to concerted efforts of the Department for the Execution of Sentences, the Prosecutor General's Office, the Supreme Court, and regional instances, which have enabled a decrease in the number of prisoners held in pre-trial establishments.

Internet site: http://www.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.

New ratification of the Framework Convention

The Netherlands ratified the Framework Convention for the Protection of National Minorities on 16 February 2005. It will enter into force for the Netherlands on 1 June 2005.

The Netherlands is the 36th Contracting Party to the Framework Convention.

Declarations

The Netherlands introduced the following declarations deposited with the instrument of acceptance:

"The Kingdom of the Netherlands will apply the Framework Convention to the Frisians.

The Government of the Netherlands assumes that the protection afforded by Article 10, paragraph 3, does not differ, despite the variations in wording, from that afforded by Article 5, paragraph 2, and Article 6, paragraph 3 (a) and (e), of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Kingdom of the Netherlands accepts the Framework Convention for the Kingdom in Europe."

First monitoring cycle

Opinions of the Advisory Committee

"The former Yugoslav Republic of Macedonia"

The first Opinion of the Advisory Committee of the Framework Convention for the Protection of National Minorities on measures taken in this field by "the former Yugoslav Republic of Macedonia" was made public at the country's initiative. The Opinion and the Comments on it are available on-line.

Below is a short summary of the Opinion of the Advisory Committee:

"The Advisory Committee welcomes the fact that the constitutional and legislative changes made so far, in accordance with the Ohrid Agreement, lay the foundations for greater protection for minorities, *inter alia*, in such fields as the use of minority languages, education and participation, with the introduction of the principle of equitable representation for minorities at all levels of public administration.

The authorities should resolutely pursue the reforms begun in relation to the protection of minorities: the conclusion of the decentralisation process, the use of languages and alphabets and the adoption of additional guarantees in the field of non-discrimination should be among the main areas of work, so that the existing legal framework is completed and consolidated. In this context, the authorities should ensure that due account is taken of the situation of numerically smaller minorities.

The fostering of mutual understanding and intercultural dialogue remains vital to the future of social cohesion in the country, which has been adversely affected by the armed conflict of 2001. The interethnic tensions observed, particularly in the younger population groups, continue to give cause for great concern and bear witness to the existence of significant barriers between the

different communities, and particularly between Albanians and Macedonians. Additional efforts should be made to encourage interaction between the different components of society, particularly in the sphere of education, where individuals' knowledge of the languages spoken in their region could be promoted.

Additional measures should be adopted so as to take better account of the needs for teaching in minority languages, as expressed by various communities, notably the Turkish and Albanian communities. In this connection, the prohibition on establishing private primary education should be reviewed.

The discrimination suffered by persons belonging to the Roma community occurs in various fields and bears witness to considerable socio-economic differences between them and the rest of the population. Difficulties are particularly obvious in the realms of employment, housing, health care and education. It is important that the authorities take all the necessary steps to improve the situation of persons belonging to this community, within the framework of the national strategy currently being drawn up.

Further measures are needed in relation to the media, so as to foster access to the media for persons belonging to minorities. In the cultural sphere, measures to support the preservation and development of minority cultures, particularly the Vlach culture, should be strengthened.

Consideration should be given to measures enabling regular consultation at an institutional level with minorities on issues of concern to them in view of shortcomings noted in this field."

Follow-up meetings

Ireland

The Irish authorities and the Council of Europe organised a "follow-up seminar" on 28 February 2005 to discuss how the findings of the monitoring bodies of the Council of Europe's Framework Convention for the Protection of National Minorities are being implemented in Ireland.

The seminar focused on the situation of Travellers in Ireland and the participants discussed how to proceed with the preparation of the second State report of Ireland, due in September 2005.

Second monitoring cycle

Second State Reports received

The Second State Reports of the following countries were received between December 2004 and February 2005: Malta, Finland, Slovakia. They are available from the Framework Convention's Web site.

Country visits

Italy

A delegation of the Advisory Committee on the Council of Europe's Framework Convention for the Protection of National Minorities visited Trieste, Udine and Rome between 10 and 14 January 2005 in the context of the monitoring of the implementation of this convention in Italy. The visit was the 6th country visit conducted by the Advisory Committee in the second cycle of monitoring.

Italy submitted its second State report under the Framework Convention in May 2004, and the delegation of the Advisory Committee was in Italy in order to seek further information. The delegation met with representatives of the Region Friuli-Venezia Giulia, as well as representatives of the Government and other relevant sources, including members of Parliament, representatives of minorities and NGOs.

Adoption of Opinions under the second monitoring cycle

The Advisory Committee on the Framework Convention for the Protection of National Minorities adopted six country-specific Opinions under the second cycle of monitoring between December 2004 and February 2005. The Opinions adopted relate to the Czech Republic, Denmark, Estonia, Hungary, Italy and Moldova. The Opinions were submitted to the Committee of Ministers, which is to adopt conclusions and recommendations in respect of these States.

The Opinions of the Advisory Committee shall be made public at the same time as the conclusions and recommendations of the Committee of Ministers, unless in a specific case the Committee of Ministers decides otherwise. The States concerned can however agree to make the Opinion public at an earlier date.

Awareness-raising and information meetings

Kosovo

A consultation meeting was organised on 3 and 4 December 2004 in Pristina, Kosovo, in order to discuss the preparation of a report on the implementation of the Framework Convention for the Protection of National Minorities.

The submission of such a report is required under the Agreement signed between the United Nations Interim Mission in Kosovo (UNMIK) and the Council of Europe on 23 August 2004: in accordance with the Agreement, UNMIK shall transmit a report to the Council of Europe on the legislative and other measures that have been taken to give effect to the principles set forth in the Framework Convention. The report was due in February 2005.

The meeting brought together all relevant stakeholders, including representatives of the Provisional Institutions of Self-Government (PISG) and international organisations working in Kosovo, NGOs and representatives of all communities in Kosovo.

The Council of Europe delegation to the meeting included Professor Rainer Hofmann, former President of the Advisory Committee on the Framework Convention.

Georgia

A meeting organised by the Ministry of Foreign Affairs of Georgia and the Council of Europe took place in Tbilisi on 14 February 2005: it focused on the ratification of the Framework Convention for the Protection of National Minorities by Georgia. The meeting brought together all relevant stakeholders, including representatives of the government and parliament, NGOs and minority associations as well as international organisations. Asbjørn Eide, President of the Advisory Committee, and Boriss Cilevics, member of the Parliamentary Assembly, participated in the discussions: they introduced the role and practical importance of this human rights treaty.

The ratification of the Framework Convention is one of the commitments undertaken by Georgia upon its accession to the Council of Europe. Georgia signed this treaty in 2000 and its ratification is now expected to take place by the end of September 2005.

Training for NGOs on the FCNM – Strasbourg

A training seminar for NGOs was organised by the Secretariat of the Framework Convention in co-operation with Minority Rights Group International, in Strasbourg on 24-27 February 2005. The objectives of the training were to provide information on the content of the Convention and its monitoring mechanism and to discuss and identify ways in which NGOs can best contribute to the monitoring of the implementation of the Convention, both at the domestic level and at the level of the Council of Europe.

Publications

A brochure on the Framework Convention is available in the following languages: Albanian, Armenian, Azerbaijani, Bulgarian, Czech, English, French, Georgian, Hungarian, Romanian, Serbian, Polish, Romany, Russian, Slovak, Slovenian and Ukrainian.

Many of them are also available on-line. Brochures in Greek, Dutch, Latvian and Turkish will be available soon.

The FCMN on the Internet: http://www.coe.int/minorities/

European Commission against Racism and Intolerance (ECRI)

The European Commission against Racism and Intolerance (ECRI) is an independent human rights body monitoring issues related to racism and racial discrimination in the 46 member States of the Council of Europe.

ECRI's programme of activities comprises three inter-related aspects: country-by-country approach; work on general themes; and activities in relation to civil society.

Country-by-country approach

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

In 2003, ECRI started work on the third round of this country-specific monitoring. The third round reports focus on implementation, by examining whether and how effectively the recommendations contained in ECRI's previous reports have been implemented. The reports also examine specific issues, chosen according to the situation in each country, in more depth in each report. ECRI's country-by-country approach concerns all Council of Europe member States on an equal footing and usually covers 10 to 12 countries per year.

On 15 February 2005, ECRI published five country reports, on Austria, Bosnia and Herzegovina, France, "the Former Yugoslav Republic of Macedonia" and Turkey.

In these reports, ECRI recognised both positive developments and continuing grounds for concern in all five of these Council of Europe member countries.

Austria

In Austria, ECRI found that the continuing marked differentiation in law and practice between, on the one hand, Austrian and other EU citizens and, on the other, non-EU citizens, negatively affects the social and political integration of all segments of Austrian society. Racism and racial discrimination still affect the daily lives of members of minority groups, and particularly of Black Africans, Muslims and Roma. Manifestations of antisemitism were still an issue of concern for ECRI.

Bosnia and Herzegovina

In Bosnia and Herzegovina, ECRI found that severe problems of racism and racial (including ethnic and religious) discrimination persist, often as a result of nationalist policies pursued by ethnically based political parties. Such problems aggravate the situation of certain groups within a society which is globally affected by very difficult post-war socio-economic conditions. Problems of direct and indirect discrimination are pervasive in several areas of life and particularly in education, employment, housing and access to health services.

France

In France, ECRI found that law enforcement officials and members of the judicial service who receive complaints are not always sufficiently alert to the racist aspect of offences, and the victims are not always adequately informed or assisted when dealing with formalities. Muslims are up against an increase in

racist acts and statements and access to education for children of immigrants and Travellers still needs to be improved. Antisemitism has increased alarmingly in France, notably in the school environment.

"The Former Yugoslav Republic of Macedonia"

In "the Former Yugoslav Republic of Macedonia" the Roma community continues to experience, on a wide scale, particularly poor living conditions and to suffer from an accumulation of economic and social disadvantage, aggravated by changing economic conditions, discrimination and insufficient attention from the authorities. ECRI also raises a number of issues relating to the situation of smaller minority groups, as well as of asylum-seekers, and continuing problems in the area of citizenship.

Turkey

In Turkey, ECRI found that despite the reforms, there are still some gaps in the constitution and in criminal, civil and administrative laws as regards action against racism and racial discrimination. There is still room for improvement in the matter of religious freedom, in particular as regards removing the reference to religion on identity cards and abolishing compulsory religious education in schools. No sanctions have been taken against intolerant expressions and acts directed at minority groups by sections of the media and members of the public and there is still no national specialised body to combat racism and intolerance.

Media coverage

The published reports received wide coverage in the national media (press, radio, television) of all the countries concerned.

The publication of ECRI's country-by-country reports is an important 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

ECRI's work on general themes covers important areas of current concern in the fight against racism and intolerance, frequently identified in the course of ECRI's country monitoring work. This work has often taken the form of General Policy Recommendations addressed to the governments of member States intended to serve as guidelines for policy makers and compilations of good practices to also serve as a source of inspiration in the fight against racism.

ECRI's most recent work on general themes has included the following issues:

- the use of racist, antisemitic and xenophobic elements in political discourse;
- ethnic data collection.

Information on ECRI's most recent work on the issue of ethnic data collection is covered under the section on "relations with civil society" below.

The use of racist, antisemitic and xenophobic elements in political discourse

On 17 March 2005, ECRI adopted a Declaration condemning the use of racist, antisemitic and xenophobic elements in political discourse, the use of which, including by mainstream political parties, has been increasing lately. ECRI also commissioned and published an independent study carried out by the political scientist Jean-Yves Camus. This study provides evidence of numerous cases in which European or national elections have given rise to the use of racist,

antisemitic and xenophobic rhetoric, which have an impact on racism and xenophobia in public opinion in many Council of Europe Member States.

Immigrants and refugees, especially those from Muslim countries, are primary targets of politicians who exploit feelings of insecurity in an increasingly complex and multicultural world. At the same time, antisemitism also continues to be encouraged either openly or in a coded manner by certain political leaders and parties.

According to ECRI, institutional responses to political parties that resort to racist or xenophobic discourse should include:

- effective implementation of the ordinary criminal law provisions against racist offences and racial discrimination, which are applicable to all individuals;
- the adoption and implementation of provisions penalising the leadership of any group that promotes racism, as well as support for such groups and participation in their activities;
- the establishment of an obligation to suppress public financing of organisations which promote racism, including public financing of political parties;
- self-regulatory measures which can be adopted by political parties or national parliaments, such as adherence to the Charter of European Political Parties for a Non-Racist Society.

ECRI organised a public presentation in Paris on the use of racist, antisemitic and xenophobic elements in political discourse on 21 March 2005, the International Day for the Elimination of Racial Discrimination. This presentation took the form of a high-level panel meeting, with the participation of the Secretary General of the Council of Europe, Mr Terry Davis, the Chair of ECRI, Mr Michael Head and members of the Parliamentary Assembly of the Council of Europe, representatives of intergovernmental and non-governmental organisations, research centres and academics.

Relations with civil society

Seminar on ethnic data collection (17-18 February 2005)

On 17-18 February 2005, ECRI organised a seminar with national specialised bodies to combat racism and racial discrimination, on the issue of ethnic data collection.

The aim of the Seminar was to provide national specialised bodies with a forum for comparing different national practices in order to identify good practices in the field of ethnic data collection. Special emphasis was placed on the practical use of data broken down by categories such as nationality, national or ethnic origin, language and religion for the adoption of positive measures and on the establishment of indirect discrimination in complaint procedures. The Seminar also explored the role of specialised bodies in monitoring the implementation of legal provisions and other measures aimed at combating racism and racial discrimination, as well as the monitoring of racist incidents.

The Seminar brought together representatives of national specialised bodies to combat racism and racial discrimination, representatives of general human rights institutions (Ombudsman, Human Rights Commissioner, etc.) whose mandate already covers or will be extended in order to cover racism and racial discrimination. Representatives of international governmental and non-

governmental organisations with whom ECRI is closely co-operating on the issue of ethnic data collection also participated in the Seminar.

Discussions highlighted the challenges and controversies surrounding the issue of ethnic data collection. It was pointed out that since 1996 ECRI has, both in its General Policy Recommendations and its country reports, consistently called on Governments to gather data based on categories such as national and ethnic origin, language, religion and nationality, and on the implementation of specific policies in fields such as employment and education.

Various speakers shared their experiences of ethnic data collection in their own countries. Most governments are now beginning to address this question in the framework of an on-going debate on how to best combat discrimination and ensure equality of opportunities for all. It was also clear from the discussions that there is a legal framework in most countries which allows for the collection of ethnic data in one form or another.

As pointed out by several participants and speakers, collecting ethnic data is necessary for several reasons, which are crucial to the fight against discrimination. Firstly, States can only protect the rights of minority groups if they have statistics. Secondly, ethnic data helps to monitor discrimination and the implementation of anti-discrimination policies that have been put in place by Governments. It was pointed out that collecting ethnic data not only serves to monitor the implementation of specific policies, but to also assess whether they are effective, so that any necessary changes and adjustments may be made. It was therefore emphasised that collecting ethnic data for monitoring purposes is not an end in itself; it helps shape sound policies.

Publications

Third Report on Austria

(CRI (2005) 1), 15 February 2005

Report on Bosnia and Herzegovina

(CRI (2005) 2), 15 February 2005

Third Report on France

(CRI (2005) 3), 15 February 2005

Third Report on "the Former Yugoslav Republic of Macedonia"

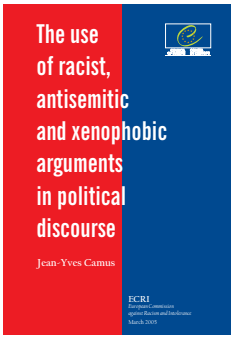
(CRI (2005) 4),15 February 2005

Third Report on Turkey

(CRI (2005) 5), 15 February 2005

The use of racist, antisemitic and xenophobic arguments in political discourse

Jean-Yves Camus, March 2005



ECRI's Internet site: http://www.coe.int/ecri/

Equality between women and men

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

Activities

A Convention ready to be adopted

Trafficking in human beings

The draft Convention on action against trafficking in human beings was finalised, after having integrated amendments emanating from the Parliamentary Assembly. It is now before the Committee of Ministers for examination and adoption.

The main added value of the Convention is to be its human rights perspective, its focus on victim protection and its monitoring mechanism.

10 years after the Beijing Conference

Equality between women and men

The Council of Europe prepared a contribution to the "10-year Review and Appraisal of the Implementation of the Beijing Platform for Action" which took place during the 49th Session on the Commission on the Status of Women (New York, 28 February-11 March 2005).

A joint side event on "Gender Equality in Europe: Institutional mechanisms and balanced participation" was organised, on 3 March 2005, by the Council of Europe in co-operation with the Permanent Mission of Slovenia to the United Nations.

A study on parental leave

Gender-balanced participation in decision-making

In the framework of the follow up to Recommendation Rec (2003) 3 to member States on the balanced participation of women and men in political and public decision-making, the CDEG published a study on parental leave in Council of Europe member states. It analyses the main trends deriving from the use of this parental leave by women and men and explores in particular the use of parental leave in practice, as regards paid and unpaid leave, and how it affects the careers of both women and men.

Implementation of the recommendation

Violence against women

A group of specialists finalised a report on the Implementation of and follow-up to Recommendation Rec (2002) 5 on the protection of women against violence. It contains a framework for monitoring implementation of the recommendation, an analytical study on the Protection of women against violence in Council of Europe member states and selected examples of good practices.

Gender budgeting

Gender mainstreaming

A group of specialists finalised a report on gender budgeting containing guidelines for member states on the introduction of gender budgeting or when considering reforms in this field and practical examples of gender budgeting initiatives.

Women and peacebuilding

The role of women in conflict prevention and resolution

A group of specialists finalised a report on "the Role of Women and Men in intercultural and inter-religious dialogue for the prevention of conflict, for peace building and for democratisation". It defines the respective roles of women and men in conflict prevention and resolution, identifies obstacles for the full participation of women and develops strategies to reduce or abolish these obstacles.

Co-operation

Trafficking in human beings

Russia

A seminar to combat trafficking in human beings, organised in co-operation with the Russian NGO Association of Crisis Centres for Women "Stop Violence" and the Ministry of Foreign Affairs, was held in Moscow on 15 and 16 December 2004.

Violence against women

Bosnia and Herzegovina

A seminar on the protection of women against violence, organised in co-operation with the Gender Centre of the Federation of Bosnia and Herzegovina, was held in Sarajevo on 16-17 February 2004. It aimed to assess the draft law on the protection of women against violence, to advise the authorities on its implementation and to exchange good practices for concrete actions and policies to combat violence against women.

Publications

- Council of Europe activities since 1995 in the field of equality between women and men related to the strategic objectives in the Beijing and Vienna Platforms for Action and the "Beijing + 5" measures and initiative (EG (2004) 3)
- National machinery, action plans and gender mainstreaming in Council of Europe Member States since the 4th World Conference on Women (Beijing, 1995) (EG (2004) 4)
- Stocktaking study of the effective functioning of national mechanisms for gender equality in Council of Europe member states (CDEG) (2004)19)
- Parental Leave in Council of Europe member states (CDEG (2004)14)
- Promoting Gender Mainstreaming in Schools (EG-S-GS (2004) RAP FIN)
- Legislation in the member states of the Council of Europe in the field of violence against women, Vol. I and II (EG (2004) 2)
- Proceedings of the regional seminar, Tbilisi, 6-7 November 2002: Co-ordinated action against trafficking in human beings in South Caucasus: towards a regional plan of action (English only)
- Annual Report for 2003 (EG (2004) 1)
- Compilation of texts in Russian: Equality between Women and Men – Human Rights and Democracy – main Council of Europe texts

Internet: http://www.coe.int/equality/
http://www.coe.int/trafficking/

Co-operation and awareness

Compatibility of legislation

Conference on the compatibility of Georgian legislation with the ECHR

Tbilisi, 22 February 2005

The Human Rights Co-operation and Awareness Division of the Directorate General of Human Rights organised in co-operation with the Council of Europe Information Office in Tbilisi and the Parliament of Georgia a Conference on the compatibility of Georgian legislation with the European Convention on Human Rights (ECHR). Before the opening of the Conference a 559-page bilingual English-Georgian Report on the compatibility of Georgian legislation with the ECHR was presented.

The report, written by three eminent Georgian experts, contains a detailed analysis of the compatibility of domestic Georgian legislation and administrative practice with regard to Articles 1 to 12 of the ECHR, and specific recommendations were made. The experts have recommended, in particular, that steps be taken:

- to provide for a right of appeal in administrative proceedings involving administrative imprisonment;
- to amend the disciplinary law of the armed forces to ensure that deprivation of liberty of servicemen is determined by a court by due process;
- to remove the fact of commission of a grave or especially grave crime from the enumeration of grounds for the application of detention as a preventive measure as provided for the Code of Criminal Procedure;
- to amend the Code of Criminal Procedure to ensure that an accused is brought before a judge in connection with any application of a preventive measure;
- to include in the procedural legislation provisions requiring the proceedings to be carried out within a reasonable time and allowing for a right to appeal against undue delay.
- to take effective measures to eliminate the practical obstacles to securing the protection of the rights of conscientious objectors.

The conference which followed the presentation of the report proved to be a useful forum for discussion of the remaining shortcomings of the Georgian legislation and the steps which should be taken by the government and the parliament of Georgia to address them. The conference was attended by the representatives of all key ministries, parliamentary committees and the judiciary.

Training

Ukraine

Study visit of 23 judges of the Supreme Court of Ukraine

Strasbourg, 21-24 February 2005

The visit was organised in co-operation with the Supreme Court of Ukraine and the Ukrainian NGO "The Centre for Judicial Studies". The judges attended a hearing before the European Court of Human Rights. The study visit was a follow-up to the systematic training on the ECHR, in which 5 000 Ukrainian judges took part in 2002 and 2003. It was financed within a voluntary contribution from the Government of Italy.

Serbia and Montenegro

Training on the ECHR for judges

As in previous years, the Directorate general of Human Rights continued its training programme, carried out in co-operation with the AIRE Centre,

London, aimed at magistrates in Serbia and Montenegro and the effective implementation of the European Convention on Human Rights at national level. The training courses are closely linked to the need to understand current legislative reforms in the light of the requirements of the European Convention on Human Rights and the case-law of the Strasbourg Court, all within the context of the completion of the commitments entered into by Serbia and Montenegro on joining the Council of Europe.

A series of nine training activities began in February with the organisation of two seminars. The first, taking as its subject the reform of the Montenegrin code of family law, took place in Igalo. Participants studied the relevant Council of Europe conventions (European Convention on the Adoption of Children, European Convention on the Legal Status of Children born out of Wedlock, Convention on Contact concerning Children, European Convention on the Exercise of Children's Rights).

Emphasis was laid on the positive obligations of states stemming from Articles 2, 3, 6 and 8 of the European Convention on Human Rights to protect the family and children's rights (prevention of domestic violence and the lives of children, procedural guarantees in family disputes, contact concerning children).

The second seminar, held in Belgrade, dealt both with the draft amendments to Serbian legislation concerning freedom of religion and freedom of association, and with the application by national judges of Articles 9 and 11 of the European Convention on Human Rights.

Website: http://www.coe.int/awareness/

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** European Convention for the Prevention of Torture	**Framework Conv. for the Protection of National Minorities**
Albania	02.10.96	02.10.96	02.10.96	21.09.00	02.10.96	26.11.04				14.11.02	02.10.96	28.09.99
Andorra	22.01.96			22.01.96			26.03.03			12.11.04	06.01.97	
Armenia	26.04.02	26.04.02	26.04.02	29.09.03	26.04.02	**17.12.04**		**07.01.05**		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					02.09.04	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		02.07.04		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	10.11.04	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	**17.12.04**	29.11.04		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	10.11.04			20.06.00	
Germany	05.12.52	13.02.57	01.06.68	05.07.89			11.10.04		27.01.65		21.02.90	10.09.97
Greece	28.11.74	28.11.74		08.09.98	29.10.87		**01.02.05**		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		10.11.04		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	10.11.04	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	**08.02.05**	15.11.90	**08.02.05**		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	04.10.04	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** European Convention for the Prevention of Torture	**Framework Conv. 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
Monaco												
Netherlands	31.08.54	31.08.54	23.06.82	25.04.86		28.07.04			22.04.80		12.10.88	**16.02.05**
Norway	15.01.52	18.12.52	12.06.64	25.10.88	25.10.88			10.11.04	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	**20.12.04**		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	13.07.04	13.07.04		31.03.05		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	**28.01.05**	11.07.62		24.06.88	15.01.98

Updated: 20.04.05
Ratifications between **01.12.04** and **28.02.05** 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/

Human rights and the fight against terrorism - The Council of Europe Guidelines *(2005)*

ISBN 92-871-5694-8, Format A5, 60 pages, € 8 / US$ 12

Terrorism, or the threat of it, is a burden shared by most countries in the world. The Council of Europe believes that an effective fight against terrorism fully respecting human rights is possible.

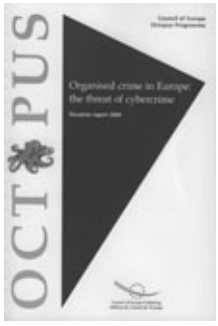
The guidelines affirm states' obligation to protect everyone against terrorism, and reiterate the need to avoid arbitrariness. They also stress that all measures taken by states to combat terrorism must be lawful, and that tenure must be prohibited. The legal framework set out in the guidelines concerns, in particular, the collecting and processing of personal data, measures which interfere with privacy, arrest, police custody and pre-trial detention, legal proceedings, extradition and compensation of victims.

The guidelines on the protection of victims of terrorist acts recognise the suffering endured by the victims and consider that they must be shown national and international solidarity and support. States are encouraged by these guidelines to provide to victims and. in appropriate circumstances, to their close family, an emergency and continuing assistance. In addition, the guidelines deal with key issues, such as the need for granting a fair and appropriate compensation to victims, facilitating their access to the law and to justice, as well as protecting their private and family life, their dignity and security.

Organised crime in Europe: the threat of cybercrime - Situation report 2004 *(2005)*

Octopus Programme

ISBN 92-871-5682-4, 16 x 24 cm, 200 pages, € 30 / US$ 45

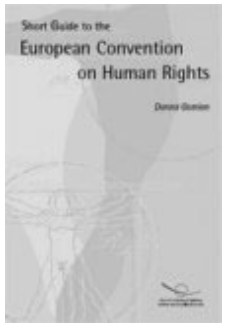


Organised crime and other forms of economic and serious crime are likely to remain priority concerns of European societies for the foreseeable future. As the nature of crime changes, policies against crime will need to adjust. This situation report indicates new and emerging threats and priority issues of concern and aims to help policy makers in Europe make more informed decisions on anti-crime strategies.

The publication provides an overview of the organised crime situation in Europe in 2004. A topical chapter is dedicated to the challenge of cybercrime with a detailed analysis of different forms of cybercrime, its links to organised crime and terrorism, and its impact on societies.

Short guide to the European Convention on Human Rights *(2005)*

ISBN 92-871-5670-0, 16 x 24 cm, 200 pages, € 17 / US$ 42



This book provides a concise overview of the basic rights guaranteed by the Council of Europe's Convention on Human Rights, and the case-law relating to these rights, the procedures followed by the European Court of Human Rights when handling applicatior under the Convention, and the role of the Committee of Ministers as a supervisory organ in giving force to the judgments of the Court.

This third edition of the Short Guide, which covers developments to the end of 2003, will be an excellent guide for students, international and human rights lawyers, non-governmental organisations and all those who are trying to know and understand the European Convention on Human Rights.

Introduction to the European Convention on Human Rights - The rights guaranteed an the protection mechanism

(Human Rights Files No. 1) *(2005)*

ISBN 92-871-5715-4, Format A5, 120 pages, € 15 / US$ 23

The model system created by the European Convention on Muman Rights is internationally renowned.

The rights it protects are among the most important, covering not only civil and political rights, but also certain social and economic rights.such as the right to respect for personal possessions.

The European Court of Human Rights stands at the heart of the protection mechanism guaranteeing these rights. An entirely judicial system since the adoption and entry into force Protocol No. 11, it is to be made even more effective by the improvements provided for by Protocol No. 14.

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