ISSN 1608-9618
H/Inf (2005) 4

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Human rights information bulletin

No. 65, 1 March-30 June 2005

Warsaw, 16 and 17 May 2005

Heads of state and government come together for the Council of Europe's third summit.

Human rights information bulletin, No. 65

1 March-30 June 2005

Contents

The *Human rights information bulletin* is published three times a year by the Directorate General of Human Rights, Council of Europe, F-67075 Strasbourg Cedex. This issue published October 2005. Date of next issue: January 2006.

ISSN: 1608-9618 (print edition) and 1608-7372 (electronic edition).

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

Treaties and conventions

Council of Europe Convention on action against trafficking in human beings

New treaty opened for signature at the Council of Europe's 3rd summit (Warsaw, 15-16 May 2005)

A first fundamental principle outlined in detail in the new convention is that the protection and promotion of the rights of the victims shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The main added value of this convention is its human rights perspective, its focus on victim protection and its independent monitoring mechanism guaranteeing parties' compliance with its provisions.

It was signed on 16 May by Armenia, Austria, Croatia, Cyprus, Iceland, Luxembourg, Malta, Moldova, Norway, Poland, Portugal, Romania, Serbia and Montenegro, and Sweden and on 8 June 2005 by Italy. It will enter into force after 10 ratifications.

See also the section "Equality between women and men" on page 79 of this *Bulletin*.

The aim of the convention is to prevent and combat trafficking in human beings in all its forms, national or international, whether or not it is linked with organised crime.

Signatures and ratifications

Signatures and ratifications of Council of Europe treaties in the field of human rights between 1 March and 30 June 2005. See also the simplified table of ratifications, page 85.

Belgium

On 20 April 2005 Belgium signed Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

On 11 May 2005 Belgium signed Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Czech Republic

On 29 June 2005 the Czech Republic signed Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Hungary

On 7 April 2005 Hungary signed Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

On 1 June 2005 Hungary ratified the Additional Protocol to the European Social Charter.

Iceland

On 16 May 2005 Iceland ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Latvia

On 6 June 2005 Latvia ratified the Framework Convention for the Protection of National Minorities.

Romania

On 16 May 2005 Romania ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

San Marino

On 16 May 2005 San Marino ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Serbia and Montenegro

On 22 March 2005 Serbia and Montenegro signed the European Social Charter (revised).

Slovakia

On 16 May 2005 Slovakia ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Slovenia

On 29 June 2005 Slovenia ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Spain

On 10 May 2005 Spain signed Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

"The former Yugoslav Republic of Macedonia"

On 31 March 2005 "the former Yugoslav Republic of Macedonia" ratified the European Social Charter and the Protocol amending the European Social Charter.

On 15 June 2005 "the former Yugoslav Republic of Macedonia" ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

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.

The summaries of cases presented here are produced for the purposes of the *Bulletin*, and do not engage the responsibility of the Court.

Case-load statistics, 1 March-30 June 2005

- 374 (394) judgments delivered
- 374 (385) applications declared admissible, of which 197 (200) in a separate decision and 177 (185) in a judgment on the merits
- 9 062 (9 067) applications declared inadmissible
- 262 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.

Court's website: http://www.echr.coe.int/echr
HUDOC database: http://hudoc.echr.coe.int/

Grand Chamber judgments

Von Maltzan and others, Von Zitzewitz and others, Man Ferrostaal & Alfred Töpfer Stiftung v. Germany

Inadmissibility decision of 30 March 2005
Concerns principally:
– Compensation conditions of the heirs of persons who were victims of expropriations during the communist regime.
– Length of constitutional proceedings related to these expropriations.

Principal facts and complaints

The applications were lodged by sixty-eight German nationals, a Swedish national and two entities incorporated under German law.

The cases concern one of the major issues to arise after the reunification of Germany: the indemnification and compensation terms for those whose property was expropriated either after 1949 in the GDR or – as in the vast majority of cases – between 1945 and 1949 in the former Soviet Occupied Zone of Germany. The terms of indemnification and compensation are set out in the Indemnification and Compensation Act (Entschädigungs- und Ausgleichsleistungsgesetz) of 27 September 1994.

On 29 June 1995 some of the applicants applied to the Federal Constitutional Court arguing, among other things, that the provisions of that Act were incompatible with the Basic Law in that they generally prescribed amounts that were less than the current market value of the expropriated property. On 22 November 2000 the First Division (erster Senat) of the Federal Constitutional Court delivered its leading judgment on the issue and dismissed the application. Those of the applicants who had not been parties to the proceedings nonetheless referred to that leading judgment.

Before the European Court of Human Rights, the applicants submitted that the Property Act of 23 September 1990, the Indemnification and Compensation Act of 27 September 1994 and the leading judgment of the Federal Constitutional Court of 22 November 2000 had infringed the rights of property guaranteed by Article 1 of Protocol No. 1 (protection of property) to the Convention

that had been theirs at the time of German reunification. The amount of compensation they had received was, they alleged, far less than the real value of the property that had been illegally expropriated.

They also considered that they had been discriminated against in breach of Article 14 of the Convention taken together with Article 1 of Protocol No. 1 because, unlike other categories of people, they had been unable to claim a right to restitution of their property.

The applicants also complained of the Administrative Rehabilitation Act of 23 June 1994 and the decisions of the Federal Administrative Court and the Federal Constitutional Court of 16 May and 12 August 2002 respectively. They relied on Article 1 of Protocol No. 1 taken alone and Article 14 of the Convention taken together with Article 1 of Protocol No. 1, and with Article 8 of the Convention.

Lastly, the applicants who had lodged an application with the Federal Constitutional Court submitted that the length of the proceedings before it had exceeded the reasonable time provided for in Article 6 § 1 of the Convention.

Decision of the Court

Article 1 of Protocol No. 1

The Court found that the FRG did not have any responsibility for acts committed at the instigation of the Soviet occupying forces or for those perpetrated by another State against its own nationals, even though the GDR had subsequently been succeeded by the FRG, for it was "political" obligations that were at issue in the present case. Accordingly, the Court lacked competence to examine the circumstances in which the expropriations had been carried out or the continuing effects produced by them up to the present date.

The Court therefore had the task of examining whether the applicants had a "legitimate expectation" of realising a current and enforceable claim, that is, obtaining either the restitution of their property or compensation (for the 1945-1949 expropriations) or indemnification (for the post-1949 expropriations) of a particular amount commensurate with the real value of their possessions.

Regarding the expropriations carried out between 1945 and 1949 in the Soviet Occupied Zone in Germany

Any right to restitution had been expressly ruled out by the Joint Declaration signed by the FRG and the GDR on 15 June 1990 which stipulated that "expropriations carried out by the occupying authorities [between 1945 and 1949] can no longer be revoked". Moreover, the Federal Constitutional Court had confirmed that that exclusion of any right to restitution did not breach the Basic Law.

In those conditions the applicants did not have any legal basis on which to ground a legitimate expectation of securing the restitution of their property.

In the Court's view, the applicants' rights regarding the amount of compensation they could legitimately expect to receive had been clearly established in the Indemnification and Compensation Act of 27 September 1994. Neither the Joint Declaration nor the Federal Constitutional Court's judgments could allow them to expect higher compensation. The claims of Alfred Töpfer Stiftung and Man Ferrostaal clearly fell outside the provisions of the Indemnification and Compensation Act as they were not entitled to any compensation under that Act.

With regard to rehabilitation coupled with restitution, the Court noted that the legislature had passed two laws in that connection: the Criminal Rehabilitation Act of 29 October 1992 and the Administrative Rehabilitation Act of 23 June 1994. The applicants' claims fell outside the provisions of the Criminal Rehabilitation Act and it was clear from the provisions of the Administrative Rehabilitation Act taken in conjunction with the Property Act that any right to administrative rehabilitation coupled with restitution of property confiscated between 1945 and 1949 had been ruled out.

In those circumstances the Court found that the applicants did not have a legitimate expectation of being entitled to administrative rehabilitation coupled with restitution of their property.

Regarding the expropriations carried out after 1949 in the GDR

The conditions in which restitution of property could be obtained had been

clearly established in the Property Act. If those conditions were not satisfied, because restitution was impossible in practice or third parties had acquired the property in good faith, the applicants' claims clearly fell outside the scope of the Property Act.

The same was true of the applicants' rights regarding the amount of indemnification that they could legitimately expect to receive, which had been clearly established in the Indemnification and Compensation Act of 27 September 1994.

In conclusion, the Court reiterated that in a number of cases brought before it relating to German reunification it had referred to the exceptional context of that reunification and the enormous task faced by the legislature in dealing with all the complex issues which had inevitably arisen at the time of transition from a communist regime to a democratic, market-economy system. By choosing to make good injustices or damage resulting from acts committed at the instigation of a foreign occupying force or by another sovereign State, the German legislature had had to make certain choices in the light of the public interest. Where a State elected to redress the consequences of certain acts that were incompatible with the principles of a democratic regime but for which it was not responsible, it had a wide margin of appreciation in the implementation of that policy.

In challenging the constitutionality of the statutes enacted after German reunification, the applicants had hoped to obtain either restitution of their property or compensation or indemnification commensurate with the real value of their property. However, the belief that the laws then in force would be changed to the applicants' advantage could not be regarded as a form of legitimate expectation for the purposes of the Convention.

There was a difference between a mere hope, however understandable that hope might be, and a legitimate expectation, which had to be of a more concrete nature and be based on a legal provision or have a solid basis in the domestic case-law.

In those circumstances the Court held that the applicants had not shown that they had claims that were sufficiently established to be enforceable, and they therefore could not argue that they had "possessions" within the meaning of Article 1 of Protocol No. 1. Accordingly, the Court declared that complaint inadmissible.

Articles 1 of Protocol No. 1 and 8 of the Convention (right to respect for private and family life) taken in conjunction with Article 14 (prohibition of discrimination)

The complaints were rejected for incompatibility ratione materiae.

Article 6 § 1 (right to a fair trial)

The Court noted that the proceedings had lasted nearly five years and five months. Having regard to the circumstances of the case, and particularly the exceptional context of German reunification, the Court found that the "reasonable time" prescribed by Article 6 § 1 had not been exceeded and that there had therefore not been an appearance of a violation of that provision on this point. Consequently, it rejected that complaint.

Öcalan v. Turkey

Judgment of 12 May 2005
Concerns principally:

Death penalty:
– non-violation of the right to life,
– imposition of death sentence following an unfair trial amounting to inhuman treatment.

Applicant's treatment:
– non-violation of the prohibition of inhuman or degrading treatment concerning the conditions in which the applicant had been transferred from Kenya to Turkey, and the conditions of his detention on the island of Imrali.

Detention:
Violations of the
– right to have lawfulness of detention decided speedily by a court,
– prohibition of unlawful deprivations of liberty,
– right to be brought promptly before a judge after arrest.

Violations of the right to a fair trial in that:
– there had been a military judge on the bench of a state security court during part of the trial,
– restrictions had been imposed on the detainee's access to his criminal file, and disclosed lately to his lawyers,
– the applicant was denied access to a lawyer during custody, and, subsequently, suffered limitations of this right.

Right of individual petition to the European Court: non-violation.

Principal facts and complaints

The application, brought by Abdullah Öcalan, former leader of the Workers' Party of Kurdistan (PKK), incarcerated in Imrali Prison (Bursa, Turkey), had already given rise to a Chamber judgment of 12 March 2003 in which the Court held, among other things, that there had been a violation of Article 5 §§ 3 and 4, Article 6 §§ 1 and 3 (b) and (c), and also of Article 3 on account of the fact that the death penalty had been imposed after an unfair trial.

The case was referred to the Grand Chamber at the request of the applicant and the Government.

At the time of the events in question, the Turkish courts had issued seven warrants for Mr Öcalan's arrest and a wanted notice (red notice) had been circulated by Interpol. He was accused of founding an armed gang in order to destroy the integrity of the Turkish State and of instigating terrorist acts resulting in loss of life.

On 9 October 1998 he was expelled from Syria, where he had been living for many years. From there, he went to different countries before going to Kenya, where, on the evening of 15 February 1999, in disputed circumstances, he was taken on board an aircraft at Nairobi airport and arrested by Turkish officials. He was then flown to Turkey, being kept blindfolded for most of the flight.

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

On 23 February 1999 the applicant appeared before an Ankara State Security Court judge, who ordered him to be placed in pre-trial detention.

The first visit from his lawyers was restricted to twenty minutes and took place with members of the security forces and a judge present in the same room. Subsequent meetings between the applicant and his lawyers took place within the hearing of members of the security forces. After the first two visits from his lawyers, the applicant's contact with them was restricted to two one-hour visits a week. The prison authorities did not authorise the applicant's lawyers to provide him with a copy of the documents in the case file, other than the indictment. It was not until the hearing on 2 June 1999 that the State Security Court gave the applicant permission to consult the case file under the supervision of two registrars and his lawyers permission to provide him with a copy of certain documents. It was not until the hearing on 4 June 1999 that the State Security Court gave the applicant permission to consult the case file under the supervision of two registrars and authorised his lawyers to provide him with a copy of certain documents.

On 29 June 1999 Ankara State Security Court found the applicant guilty of carrying out actions calculated to bring about the separation of a part of Turkish territory and of forming and leading an armed gang to achieve that end. It sentenced him to death, under Article 125 of the Criminal Code. That decision was upheld by the Court of Cassation.

Under Law No. 4771, published on 9 August 2002, the Turkish Assembly resolved to abolish the death penalty in peacetime. On 3 October 2002 Ankara State Security Court commuted the applicant's death sentence to life imprisonment.

An application to set aside the provision abolishing the death penalty in peacetime for persons convicted of terrorist offences was dismissed by the Constitutional Court on 27 December 2002.

Before the European Court of Human Rights, Mr Öcalan complained, in particular, that: the imposition and/or execution of the death penalty was or would be in violation of Articles 2 (right to life), 3 (prohibition of torture) and 14 (prohibition of discrimination) of the Convention; and that the conditions in which he was transferred from Kenya to Turkey and detained on the island of Imrali – in

particular that the Turkish authorities failed to facilitate transport to and from the island, making it difficult for his family and lawyers to visit him – amounted to inhuman treatment in breach of Article 3. He also complained that he was not brought promptly before a judge and that he did not have access to proceedings to challenge the lawfulness of his detention, in breach of Article 5 §§ 1, 3 and 4 (right to liberty and security). On the ground of Article 6 (right to a fair trial), he claimed he did not have a fair trial because he was not tried by an independent and impartial tribunal (given the presence of a military judge on the bench of the State Security Court), that the judges were influenced by hostile media reports and that his lawyers were not given sufficient access to the court file to enable them to prepare his defence properly. Furthermore, he complains that his legal representatives in Amsterdam were prevented from contacting him after his arrest and that the Turkish Government failed to reply to the request of the European Court of Human Rights for them to supply information, in violation of Article 34 (right of individual application). He also relied on Articles 7 (no punishment without law), 8 (right to respect for private and family life), 9 freedom of thought, conscience and religion), 10 (freedom of expression), 13 (right to an effective remedy), 14 (prohibition of discrimination), and 18 (limitation on use of restrictions on rights) of the Convention.

European Court of Human Rights hearing in the case of Öcalan v. Turkey, June 2004.

Decision of the Court

Detention

Right to have lawfulness of detention decided speedily by a court

The Government had raised a preliminary objection that the applicant had failed to exhaust his domestic remedies under this head. However, the Grand Chamber saw no reason to depart from the Chamber's findings in this respect (judgment of the European Court of Human Rights of 12 March 2003), notably as to the impossibility for the applicant in the circumstances in which he found himself while in police custody to have effective recourse to the remedy indicated by the Government. Nor could the possibility of obtaining compensation satisfy the requirement of a judicial remedy to determine the lawfulness of detention. The applicant did not therefore have an effective remedy available to him and there had accordingly been a violation of Article 5 § 4 of the Convention.

No unlawful deprivation of liberty

The Grand Chamber agreed with the Chamber that the applicant's arrest on 15 February 1999 and his detention had been in accordance with "a procedure prescribed by law" and that there had, therefore, been no violation of Article 5 § 1.

Right to be brought promptly before a judge

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

Fair trial

Whether Ankara State Security Court was independent and impartial

The Grand Chamber noted that the military judge on the bench of Ankara State Security Court which convicted the applicant had been replaced on 23 June 1999. However, the replacement of the military judge before the end of the proceedings could not dispose of the applicant's reasonably held concern about the trial court's independence and impartiality. There had been a violation of Article 6 § 1 in this respect.

Whether the proceedings before the State Security Court were fair

The Grand Chamber agreed with the Chamber's findings that the applicant's trial was unfair because: he had no

assistance from his lawyers during questioning in police custody; he was unable to communicate with his lawyers out of the hearing of third parties; he was unable to gain direct access to the case file until a very late stage in the proceedings; restrictions were imposed on the number and length of his lawyers' visits; and his lawyers were not given proper access to the case file until late in the day.

The Grand Chamber found that the overall effect of those difficulties taken as a whole had so restricted the rights of the defence that the principle of a fair trial, as set out in Article 6, had been contravened. This amounted to a violation of Article 6 § 1, taken together with Article 6 § 3 (b) and (c).

The Grand Chamber further held that it was unnecessary to examine the other complaints under Article 6 relating to the fairness of the proceedings.

Death penalty

Implementation of the death penalty

The Grand Chamber noted that the death penalty had been abolished in Turkey and the applicant's sentence had been commuted to one of life imprisonment. Furthermore, on 12 November 2003, Turkey had ratified Protocol No. 6 to the Convention concerning the abolition of the death penalty. Accordingly, there had been no violation of Articles 2, 3 or 14 on account of the implementation of the death penalty.

Legal significance of the practice of Contracting States regarding the death penalty

The Grand Chamber shared the Chamber's view that capital punishment in peacetime had come to be regarded as an unacceptable form of punishment which was no longer permissible under Article 2.

The fact that there were still a large number of States which had yet to sign or ratify Protocol No. 13 concerning the abolition of the death penalty in all circumstances might prevent the Court from finding that it was the established practice of the Contracting States to regard the implementation of the death penalty as inhuman and degrading treatment contrary to Article 3, since no derogation might be made from that provision, even in times of war. However, the Grand Chamber agreed with the Chamber that it was not necessary to reach any firm conclusion on this point since it would be contrary to the Convention, even if Article 2 were to be construed as still permitting the death penalty, to implement a death sentence following an unfair trial.

Death penalty following an unfair trial

The Grand Chamber agreed with the Chamber that in considering the imposition of the death penalty under Article 3, regard had to be had to Article 2, which precluded the implementation of the death penalty concerning a person who had not had a fair trial.

In the Grand Chamber's view, to impose a death sentence on a person after an unfair trial was to subject that person wrongfully to the fear that he would be executed. The fear and uncertainty as to the future generated by a sentence of death, in circumstances where there existed a real possibility that the sentence would be enforced, inevitably gave rise to a significant degree of human anguish. Such anguish could not be dissociated from the unfairness of the proceedings underlying the sentence which, given that human life was at stake, became unlawful under the Convention.

The Grand Chamber noted that there had been a moratorium on the implementation of the death penalty in Turkey since 1984 and that, in the applicant's case, the Turkish Government had complied with the Court's interim measure under Rule 39 of the Rules of Court to stay the execution. It was further noted that the applicant's file had not been sent to Parliament for approval of the death sentence as was then required by the Turkish Constitution.

However, the Grand Chamber agreed with the Chamber that the applicant's background as the leader and founder of the PKK, an organisation which had been engaged in a sustained campaign of violence causing many thousands of casualties, had made him Turkey's most wanted person. In view of the fact that the applicant has been convicted of the most serious crimes existing in the Turkish Criminal Code and of the general political controversy in Turkey – prior to the decision to abolish the death penalty – surrounding the question of whether he should be executed, there

was a real risk that the sentence might be implemented. In practical terms, the risk remained for more than three years of the applicant's detention in Imrali from the date of the Court of Cassation's judgment of 25 November 1999 affirming the applicant's conviction until Ankara State Security Court's judgment of 3 October 2002 which commuted the death penalty to which the applicant had been sentenced to one of life imprisonment.

Consequently, the Grand Chamber concluded that the imposition of the death sentence on the applicant following an unfair trial by a court whose independence and impartiality were open to doubt amounted to inhuman treatment in violation of Article 3.

Treatment and conditions suffered by the applicant

Conditions of the applicant's transfer from Kenya to Turkey

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

Detention conditions on Imrali

While concurring with the Council of Europe's Committee for the Prevention of Torture's recommendations that the long-term effects of the applicant's relative social isolation should be attenuated by giving him access to the same facilities as other high security prisoners in Turkey, such as television and telephone contact with his family, the Grand Chamber agreed with the Chamber that the general conditions in which the applicant was being detained at Imrali Prison had not reached the minimum level of severity required to constitute inhuman or degrading treatment within the meaning of Article 3. Consequently, there had been no violation of Article 3 on that account.

Other complaints

Right of individual application to the European Court on Human Rights

The Grand Chamber noted that there was nothing to indicate that the applicant had been hindered in the exercise of his right of individual petition to any significant degree. And, while regrettable, the Turkish Government's failure to supply information requested by the Court earlier had not, in the special circumstances of the case, prevented the applicant from setting out his complaints about the criminal proceedings that had been brought against him. There had accordingly been no violation of Article 34.

Articles 7, 8, 9, 10, 13, 14 and 18

The Grand Chamber considered that no separate examination of the complaints under these Articles was necessary.

Article 46 (binding force and execution of judgments)

The Grand Chamber reiterated that the Court's judgments were essentially declaratory in nature and that, in general, it was primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order in order to discharge its legal obligation under Article 46.

However, exceptionally, with a view to assisting the State concerned to fulfil its obligations under Article 46, the Court had sought to indicate the type of measure that might be taken in order to put an end to a systemic situation. In such circumstances, it might propose various options and leave the choice of measure and its implementation to the discretion of the State concerned. In other exceptional cases, the nature of the violation found might be such as to leave no real choice as to the measures required to remedy it and the Court might decide to indicate only one such measure.

In the specific context of cases against Turkey concerning the independence and impartiality of the state security courts, Chambers of the Court had indicated in certain judgments that were delivered after the Chamber judgment in the applicant's case that, in principle, the most appropriate form of redress would

be for the applicant to be given a retrial without delay if he or she so requested.

The Grand Chamber endorsed this general approach. It considered that, where an individual, as in the applicant's case, had been convicted by a court which did not meet the Convention requirements of independence and impartiality, a retrial or a reopening of the case, if requested, represented in principle an appropriate way of redressing the violation.

However, the specific remedial measures, if any, required of a respondent State in order to discharge its obligations under Article 46 had to depend on the particular circumstances of the individual case and be determined in the light of the terms of the Court's judgment in that case, and with due regard to the above case-law of the Court.

Jahn and others v. Germany

Judgment of 30 June 2005

Concerns principally: in the unique context of German reunification, obligation on heirs of agricultural lands, if not fulfilling certain conditions, to reassign their property without compensation: non-violation of the right to protection of property.

Principal facts and complaints

The application concerns the obligation on the five applicants, German nationals living in Germany, to reassign without compensation the inherited land that had been allocated to their ascendants following the land reform implemented in the Soviet Occupied Zone of Germany in 1945. On 16 March 1990 the Modrow Law came into force in the German Democratic Republic. That law lifted the restrictions on the disposal of land that had been applicable until then, whereupon those in possession of the land acquired full title to it.

After German reunification, however, some heirs – including the applicants – of persons who had acquired land under the land reform were compelled to reassign their property to the tax authorities of their respective Land without compensation in accordance with the second Property Rights Amendment Act, passed on 14 July 1992 by the German federal parliament. That law provided that the heirs of owners of land that had been acquired under the land reform had to reassign it to the tax authorities if, on 15 March 1990, they were not carrying on an activity in the agriculture, forestry or food-industry sectors in the GDR, had not carried on an activity in one of those sectors during the previous ten years or were not members of an agricultural cooperative in the GDR.

In its Chamber judgment of 22 January 2004 a Chamber of the Court had found that even if the circumstances pertaining to German reunification had to be regarded as exceptional, the lack of any compensation for the State's taking of the applicants' property had upset, to the applicants' detriment, the fair balance which had to be struck between the protection of the right of property and the requirements of the general interest. Accordingly, the Chamber had concluded, unanimously, that there had been a violation of Article 1 of Protocol No. 1 to the Convention.

Upon request by the federal Government, the case was referred to the Grand Chamber.

In the applicants' submission, the obligation on them to reassign their land without compensation had infringed their right to the peaceful enjoyment of their possessions guaranteed by Article 1 of Protocol No. 1. They also alleged that they had been the victims of discrimination contrary to Article 14 of the Convention taken together with Article 1 of Protocol No. 1.

Decision of the Court

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

The Grand Chamber, like the Chamber, found that the interference in question had to be regarded as a deprivation of property and that it had been "provided for by law" in accordance with Article 1 of Protocol No. 1. It also agreed with the Chamber's opinion that the impugned measures had been "in the public interest", namely, to correct the – in the view of the German authorities unfair – effects of the Modrow Law.

The question for the Court was whether a "fair balance" had been struck between the demands of the general interest of the community and the requirements of the protection of the individual's property rights. In that connection the Court reiterated that the taking of property

without any compensation whatsoever could be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances. It therefore had to examine, in the light of the unique context of German reunification, whether the special circumstances of the present case could be regarded as exceptional circumstances justifying the lack of any compensation.

In the first place the Court took account of the circumstances of the enactment of the Modrow Law, which had been passed by a parliament that had not been democratically elected, during a transitional period between two regimes that had inevitably been marked by upheavals and uncertainties. In those conditions, even if the applicants had acquired a formal property title, they could not be sure that their legal position would be maintained.

The Court also took into consideration the fairly short period of time that had elapsed between German reunification and the enactment of the second Property Rights Amendment Act. Having regard to the huge task facing the German legislature when dealing with, among other things, all the complex issues relating to property rights during the transition to a democratic, market-economy regime, including those relating to the liquidation of the land reform, the German parliament could be deemed to have intervened within a reasonable time to correct the – in its view unjust – effects of the Modrow Law.

Lastly, the Court held that the reasons for passing the second Property Rights Amendment Act were also a decisive factor to be taken into consideration. The FRG parliament could not be deemed to have been unreasonable in considering that it had a duty to correct the effects of the Modrow Law for reasons of social justice so that the acquisition of full ownership by the heirs of land acquired under the land reform did not depend on the action or non-action of the GDR authorities at the time. Given the "windfall" from which the applicants had undeniably benefited as a result of the Modrow Law under the rules applicable in the GDR to the heirs to land acquired under the land reform, the fact that this had been done without paying any compensation had not been disproportionate.

In those circumstances and having regard, in particular, to the uncertainty of the legal position of heirs and the grounds of social justice relied on by the German authorities, the Court concluded that in the unique context of German reunification, the lack of any compensation did not upset the "fair balance" which had to be struck between the protection of property and the requirements of the general interest.

There had therefore been no violation of Article 1 of Protocol No. 1.

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

The Court noted that the purpose of the second Property Rights Amendment Act of 14 July 1992 had been to correct the effects of the Modrow Law in order to ensure equality of treatment between heirs to land acquired under the land reform, that is, those whose land had been allocated to third parties or returned to the pool of state-owned land in the GDR before the Modrow Law came into force and those who did not satisfy the conditions for allocation, but in respect of whom the GDR authorities had at the relevant time omitted to effect the transfers and enter them in the land register.

As the provisions of the law of 1992 had been based on an objective and reasonable justification, the Court concluded that there had not been a breach of Article 14 taken together with Article 1 of Protocol No. 1.

Bosphorus Airways v. Ireland

Judgment of 30 June 2005
Concerns:
Seizure of an aircraft under the UN sanctions regime against the Federal Republic of Yugoslavia: non-violation of the right to the protection of property.

Principal facts and complaints

The case concerns an application brought by an airline charter company registered in Turkey, "Bosphorus Airways".

In May 1993 an aircraft leased by Bosphorus Airways from Yugoslav Airlines ("JAT") was seized by the Irish authorities. It had been in Ireland for maintenance by TEAM Aer Lingus, an aircraft maintenance company owned by the Irish State, and it was seized under EC Council Regulation 990/93 which, in turn, had implemented the UN sanctions regime against the Federal Republic of Yugoslavia (Serbia and Montenegro).

Bosphorus Airways' challenge to the retention of the aircraft was initially successful in the High Court, which held in June 1994 that Regulation 990/93 was not applicable to the aircraft. However, on appeal, the Supreme Court referred a question under Article 177 of the EEC Treaty to the European Court of Justice (ECJ) on whether the aircraft was covered by Regulation 990/93. The ECJ found that it was and, in its judgment of November 1996, the Supreme Court applied the decision of the ECJ and allowed the State's appeal.

By that time, Bosphorus Airways' lease on the aircraft had already expired. Since the sanctions regime against the Federal Republic of Yugoslavia (Serbia and Montenegro) had also been relaxed by that date, the Irish authorities returned the aircraft directly to JAT. Bosphorus Airways consequently lost approximately three years of its four-year lease of the aircraft, which was the only one ever seized under the relevant EC and UN regulations.

Bosphorus Airways complained that the manner in which Ireland implemented the sanctions regime to impound its aircraft was a reviewable exercise of discretion within the meaning of Article 1 of the Convention and a violation of Article 1 of Protocol No. 1.

Decision of the Court

Article 1 of the Convention (jurisdiction of the States)

It was not disputed that the impoundment of the aircraft leased by Bosphorus Airways was implemented by the Irish authorities on its territory following a decision by the Irish Minister for Transport. In such circumstances Bosphorus Airways fell within the "jurisdiction" of the Irish State.

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

Legal basis for the impoundment of the aircraft

The Court observed that, once adopted, EC Regulation 990/93 was "generally applicable" and "binding in its entirety" (under Article 189, now Article 249, of the EC Treaty), so that it applied to all Member States, none of whom could lawfully depart from any of its provisions. In addition, its "direct applicability" was not, and in the Court's view could not be, disputed. The Regulation became part of Irish domestic law with effect from 28 April 1993, when it was published in the *Official Journal*, prior to the date of the impoundment and without the need for implementing legislation.

The Court considered it entirely foreseeable that a Minister for Transport would implement the impoundment powers contained in Article 8 of EC Regulation 990/93. The Irish authorities rightly considered themselves obliged to impound any departing aircraft to which they considered Article 8 of EC Regulation 990/93 applied. Their decision that it did so apply was later confirmed, among other things, by the ECJ.

The Court also agreed with the Irish Government and the European Commission that the Supreme Court had no real discretion to exercise, either before or after its preliminary reference to the ECJ.

The Court concluded that the impugned interference was not the result of an exercise of discretion by the Irish authorities, either under EC or Irish law, but rather amounted to compliance by the Irish State with its legal obligations

flowing from EC law and, in particular, Article 8 of EC Regulation concerned.

Was the impoundment justified?

The Court found that the protection of fundamental rights by EC law could have been considered to be, and to have been at the relevant time, "equivalent" to that of the Convention system. Consequently, a presumption arose that Ireland did not depart from the requirements of the Convention when it implemented legal obligations flowing from its membership of the EC. Such a presumption could be rebutted if, in a particular case, it was considered that the protection of Convention rights was manifestly deficient. In such cases, the interest of international co-operation would be outweighed by the Convention's role as a "constitutional instrument of European public order" in the field of human rights.

The Court took note of the nature of the interference, of the general interest pursued by the impoundment and by the sanctions regime and of the ruling of the ECJ, a ruling with which the Supreme Court was obliged to and did comply. It considered it clear that there was no dysfunction of the mechanisms of control of the observance of Convention rights.

In the Court's view, therefore, it could not be said that the protection of Bosphorus Airways' Convention rights was manifestly deficient. It followed that the presumption of Convention compliance had not been rebutted and that the impoundment of the aircraft did not give rise to a violation of Article 1 of Protocol No. 1.

Broniowski v. Poland: recent developments

Concerns: property abandoned as a result of boundary changes following the Second World War.

The case, which gave rise to a judgment of the Court's Grand Chamber on 22 June 2004, concerns Poland's failure to implement compensatory measures in respect of persons repatriated from the "territories beyond the Bug River" in the aftermath of the Second World War who had had to abandon their property. According to the Polish Government, the anticipated total number of people entitled to such measures is nearly 80 000.

At the request of the Polish Government, the Registry of the Court has agreed to help the parties reach a friendly settlement concerning just satisfaction (Article 41 of the Convention).

In view of the importance of the matters involved and the consequences which a possible settlement might have for numerous other applicants with similar cases, the President of the Court, Luzius Wildhaber, has adjourned the case pending the outcome of the friendly settlement negotiations.

Selected Chamber judgments

Meriakri v. Moldova

Principal facts and complaints

Case struck out of the list on 1 March 2005
Concerns: Censorship of a prisoner's correspondence with the European Court on Human Rights.

In July 1997, the applicant was convicted of conspiracy to commit aggravated robbery and, as a dangerous recidivist, sentenced to 12 years' imprisonment, to be served in a labour camp with a severe regime. The applicant appealed. He was released on 11 November 2004 following a general amnesty brought in by Parliament.

Before the European Court on Human Rights, he complained that, while he was in prison, the prison authorities opened his correspondence with, among others, the European Court of Human Rights. He relied on Article 8 (right to respect for correspondence) of the Convention.

In a letter dated 28 October 2003 the Moldovan Government informed the Court that, in order to settle the case, they would pay the applicant the equivalent (at the exchange rate then applying) of 890 euros (EUR) (14 000 Moldovan Lei (MDL)), as compensation for any non-pecuniary damage caused to him by the interference with his correspondence with the Court and with his

lawyer. (The Government mentioned that the minimum monthly salary in Moldova was MDL 100.) They also offered the applicant an official apology concerning the interference with his correspondence by the prison authorities and submitted that they had already amended the relevant legislation to give a higher level of protection to the rights of prisoners.

The applicant asked the Court to reject the offer.

Decision of the Court

Having regard to the scope and extent of the various undertakings in the Government's declaration, together with the amount of compensation proposed, the European Court of Human Rights considered that it was no longer justified to continue the examination of the application and that respect for human rights as defined in the Convention and its Protocols did not require it to continue to do so. The Court therefore decided, unanimously, to strike out the case and awarded the applicant 2 000 euros (EUR) for costs and expenses.

Akkum and others v. Turkey

Judgment of 24 March 2005

Concerns principally:
– Killing of civilians during military operation: violation of the obligation for the State to protect the right to life and to conduct an effective investigation
– Obligation for the government to provide the European Court with the necessary facilities to enable it to establish the facts in the case.

Principal facts and complaints

The applicants, Zülfü Akkum, Hüseyin Akan and Rabia Karakoç, are all Turkish citizens of Kurdish origin, born in 1944, 1928 and 1930 respectively. They are the father, brother and mother of Mehmet Akkum, Mehmet Akan and Dervis Karakoç, who were killed – aged, respectively, 29, 70 and 33 – on 10 November 1992.

Before the European Court of Human Rights, the applicants alleged that their relatives had been killed unlawfully by the security forces and that the authorities had failed to carry out an adequate investigation into the killings. Zülfü Akkum also submitted that his son's ears had been cut off after his death and that he had had to bury an incomplete and mutilated body. The applicants further complained that the soldiers had killed a horse, a dog and livestock. They maintained that there was a practice of conducting inadequate investigations into the killings of individuals in south-east Turkey, where agents of the State were alleged to have been involved, and of failing to prosecute those responsible. The applicants also complained that, because of their Kurdish origin, they and their deceased relatives had been subjected to discrimination.

The Government denied that soldiers had been responsible for the killing of Mr Karakoç and maintained that Mr Akkum and Mr Akan had been killed in crossfire between soldiers and members of the Kurdistan Workers' Party (PKK) and that it had not been possible to establish who had shot them.

Decision of the Court

Establishing the facts

The Court regretted the absence of a thorough domestic judicial investigation in the case and that the Turkish Government had withheld key documentary evidence – in particular the operation plan of 8 November 1992 and the "final report/detailed operation report" – which were indispensable for the correct and complete establishment of the facts of the case. The reports from 11 November that had been made available were full of omissions and contradictions and information provided by State agents and relating to the facts of the case was contradictory and, at least as regards statements made by a number of those agents, could not be accepted as truthful.

Concerning Dervis Karakoç:

In the absence of any explanation, let alone a satisfactory one, for such a state of affairs, and bearing in mind its assessment of the written evidence and that of the oral evidence given by the other witnesses, the Court considered that the situation justified the drawing of inferences as to the well-foundedness of Rabia Karakoç's allegations. The Court therefore found it established that Dervis Karakoç, his horse and his dog were killed by the soldiers in the circumstances alleged by Rabia Karakoç.

Concerning Mehmet Akkum and Mehmet Akan:

The Court considered it legitimate to draw a parallel between the situation of detainees, for whose well-being the State was held responsible, and the situation of people found injured or dead in an area within the exclusive control of the State authorities. In both situations, information about the events in question lied wholly, or to a large extent, within the exclusive control of the authorities. The Court found it appropriate, therefore, in cases where the non-disclosure by the Government of crucial documents in their exclusive possession was preventing the Court from establishing the facts, that the Government either argue conclusively why the documents in question could not serve to corroborate the allegations made by the applicants, or provide a satisfactory and convincing explanation of how the events in question occurred, failing which an issue under Article 2 and/or Article 3 would arise.

The Court observed that the Turkish Government had failed to adduce any argument from which it could be deduced that the documents withheld by them contained no information bearing on the applicant's claims.

The Court also concluded that no meaningful investigation had been conducted at domestic level capable, firstly, of establishing the true facts surrounding the killings of Mehmet Akkum and Mehmet Akan and the mutilation of Mehmet Akkum's body, and, secondly, of leading to the identification and punishment of those responsible. The Turkish Government had therefore failed to account for the killing of Mehmet Akkum and Mehmet Akan or for the mutilation of Mehmet Akkum's body.

Article 38 (examination of the case)

The Court stressed that it was of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications. It was inherent in proceedings relating to cases where an individual applicant accused State agents of violating his rights under the Convention, that, in certain instances, solely the respondent Government had access to information capable of corroborating or refuting those allegations. A failure on a Government's part to submit such information which was in their hands without a satisfactory explanation might not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but might also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a).

The Court noted that the Turkish Government had failed to submit at any point a copy of, among other key documents, a "final report/detailed operation report" or the Sancak-1 Operation Plan, drafted on 8 November 1992. Neither had they provided an explanation for their failure to do so.

The Court therefore found that Turkey had fallen short of its obligation under Article 38 § 1 (a) to furnish all necessary facilities to the Commission and to the Court in their task of establishing the facts.

Article 2 (right to life)

Having established that Dervis Karakoç was killed by soldiers on 10 November 1992 and that the Turkish Government had failed to account for the killing of Mehmet Akkum and Mehmet Akan, the Court found that there had been a violation of Article 2 concerning the killing of all three men.

Having regard to those findings of violations of Article 2, the Court did not consider it necessary to reach any separate finding concerning the alleged lack of care in the planning and control of the operation.

The Court also concluded that the domestic authorities had failed to carry out an adequate and effective investigation into the killings of the applicants' three relatives, in a further violation of Article 2.

Article 3 (prohibition of torture)

The Court had no doubts that the anguish caused to Mr Akkum as a result of the mutilation of the body of his son amounted to degrading treatment contrary to Article 3. There had, therefore, been a violation of Article 3 in relation to Zülfü Akkum.

Article 13 (right to an effective remedy)

The Court reiterated that no criminal investigation could be considered to have been conducted in accordance with Article 13. The applicants had therefore been denied an effective remedy in respect of the deaths of their relatives and the mutilation of the body of Mehmet Akkum, and had thereby been denied access to any other available remedies at their disposal, including a claim for compensation. Consequently, there had been a violation of Article 13.

Having regard to its findings under Articles 2 and 13, the Court did not find it necessary to determine whether the failings identified in the case were part of a practice adopted by the Turkish authorities.

Article 14 (prohibition of discrimination)

Noting its findings of a violation of Articles 2 and 13, the Court did not consider it necessary also to consider those complaints in conjunction with Article 14.

Article 18 (limitation on use of restrictions of rights)

Having regard to its above findings, the Court did not consider it necessary to examine the complaint raised under Article 18 separately.

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

The Court reiterated that it had already found it established that the soldiers killed the dog and the horse belonging to Dervis Karakoç. Considering that the killing of the horse and the dog constituted an unjustified interference with Mr Karakoç's right to the peaceful enjoyment of his possessions, the Court concluded that there had been a violation of Article 1 of Protocol No. 1.

Regarding the killing of the livestock, the Court observed that Mehmet Akkum and Mehmet Akan were shepherding the animals owned by the villagers from Kursunlu, which were found dead in the operation area. However, the Court observed that no evidence was submitted by the applicants concerning the number of killed animals belonging to them and the Court had been unable to establish the circumstances in which they were killed. In those circumstances, the Court did not find it established that there had been a violation in that respect.

Under Article 41 (just satisfaction), the Court awarded Rabia Karakoç 57 300 euros (EUR) for pecuniary damage, to be held by her for the wife and children of her son, Dervis Karakoç. The Court awarded EUR 81 100 for non-pecuniary damage to the three applicants and the heirs of their deceased relatives and EUR 20 000 to the applicants jointly for costs and expenses, less EUR 3 000 granted as legal aid.

Frizen v. Russia

Judgment of 24 March 2005

Concerns: Confiscation order of the applicant's property following her husband's conviction: violation of the right to protection of property.

In 1996, TMS – a company founded by the applicant's husband – granted her an interest-free loan to buy a car. The total amount was transferred directly to the bank account of the car dealer. In 1998, the applicant's husband was convicted of large-scale fraud. The court sentenced him to four years' imprisonment and issued confiscation orders in respect of his property. The applicant's car and certain household items in her flat were seized.

Before the European Court the applicant complained that her car had been confiscated for offences for which she had not been convicted and without any legal basis.

Decision of the Court

The Court considered that the existence of public-interest considerations for the forfeiture of the applicant's vehicle, however relevant or appropriate they might have appeared, did not dispense the domestic authorities from the obligation to cite a legal basis for such decision. It observed that the domestic courts did not refer to any legal provision authorising the forfeiture, either in the criminal proceedings against the applicant's husband or in the civil proceedings which she initiated. Furthermore, the Russian Government had not invoked, explicitly or by reference, any domestic legal provision on which the decision to confiscate the applicant's car had been based.

The Court recalled that its power to review compliance with domestic law was limited, as it was in the first place for the national authorities to interpret and apply that law. Having regard to the Russian authorities' consistent failure to indicate a legal provision that could be construed as the basis for the forfeiture of the applicant's property, the interference with the applicant's property rights could not be considered "lawful" and held, unanimously, that there had been a violation of Article 1 of Protocol No. 1.

Ukrainian Media Group v. Ukraine

Judgment of 29 March 2005.
Concerns:
Press freedom of expression: violation of the Convention.

Principal facts and complaints

The applicant is the CJSC – "Ukrainian Media Group" [translation] –, a privately-owned legal entity, based in Kyiv. It owns a daily newspaper, "The Day" [translation].

The case concerns two articles about the 1999 Ukrainian presidential campaign – published in The Day on 21 August and 14 September 1999 – in which the author made a number of critical statements about two politicians, Natalia Vitrenko (leader of the Progressive Socialist Party of Ukraine) and Petro Symonenko (leader of Ukraine's Communist Party), both of whom were presidential candidates. The applicant company maintained that the articles commented on the personal and managerial abilities of the two presidential candidates, their abilities to form a team, to deliver their promises and provide national leadership.

In August and December 1999, respectively, Ms Vitrenko lodged a complaint against The Day concerning the first article, and so did Mr Symonenko concerning the second article. They complained that information contained in the articles was untrue and damaged their dignity and reputation.

On 3 March 2000 Minsky District Court of Kyiv found the first article to be untruthful, as the Ukrainian Media Group had failed to prove the truth of the statements published. The court ordered The Day to pay Ms Vitrenko 2 000 Ukrainian hrivnas (UAH) (equivalent to EUR 369.68 at the time) and to publish a correction in the paper, alongside the operative part of the judgment. On 8 June 2000 the court partly allowed Mr Symonenko's complaints and ordered The Day to pay him UAH 1 000 (EUR 184.84) in compensation for non-pecuniary damage, and to publish a correction with the operative part of the judgment.

On 2 July 2004 the parties submitted a friendly settlement proposal to the Court, which was rejected for reasons here-under exposed.

The applicant company complained that the Ukrainian courts had not been able to distinguish between value judgments and facts in their assessment of the two newspaper articles at issue and that the courts' decisions were a form of political censorship, which interfered with the company's right to impart information freely.

Decision of the Court

Continued examination of the case

Concerning the settlement reached by the Ukrainian Government and the applicant company, the Court took note of the serious nature of the complaints made by the applicant company regarding the alleged interference with its freedom of expression and did not, therefore, find it appropriate to strike the application out of its list of cases. It considered that there were special circumstances regarding respect for human rights as defined in the Convention and its Protocols which required the further examination of the application on its merits (Articles 37 § 1 in fine and 38 § 1 (b) of the Convention).

Article 10 of the Convention (freedom of expression)

The Court found that the interference with the applicant company's right to freedom of expression was prescribed by law and that it was intended to pursue a legitimate aim – the protection of the reputation and rights of others, namely Mr Symonenko and Ms Vitrenko. It then considered whether Ukrainian law and practice was in itself compatible with Convention law and practice under

Article 10 § 1 and whether, as a consequence, the domestic courts failed to ensure the applicant company's freedom of expression.

The Court observed that Ukrainian law on defamation made no distinction, at the time, between value judgments and statements of fact, in that it referred uniformly to "statements" [translation], and proceeded from an assumption that any statement was amenable to proof in civil proceedings.

The Court also took note of recent recommendations, reports and resolutions from international bodies and non-governmental organisations which had all expressed grave concerns about the state of freedom of expression in Ukraine.

Under Article 7 of the Ukrainian Civil Code, the "person who disseminated the [contested] information has to prove its truthfulness". The same burden of proof was required for published value judgments. Section 37 of the Printed Mass Media (Press) Act required the media to rectify disseminated statements if they had not been proved to be true. If the right to a good reputation of a person was violated, even though a defamatory statement was a value judgment, the courts could award compensation for non-pecuniary damage. Domestic law therefore presumed that the protection of the honour, dignity and reputation of a public person was more important than the possibility of openly criticising him or her. The Court concluded that Ukrainian law and practice clearly prevented the courts in the applicant company's case from making distinctions between value judgments, fair comment or statements that were not susceptible of proof. Domestic law and practice therefore contained inflexible elements which in their application could lead to decisions incompatible with Article 10.

In the applicant company's case, the Court considered that the statements made in both newspaper articles were value judgments, used in the context of political rhetoric, which were not susceptible of proof.

The Court observed that the publications contained criticism of the two politicians in strong, polemical, sarcastic language. No doubt the plaintiffs were offended and might even have been shocked. However, in choosing their profession, they laid themselves open to robust criticism and scrutiny; such was the burden which had to be accepted by politicians in a democratic society.

Considering the relevant texts as a whole and balancing the conflicting interests, the Court found that finding the applicant guilty of defamation was clearly disproportionate to the aim pursued. The interference with the applicants' right to freedom of expression did not correspond to a pressing social need outweighing the public interest in the legitimate political discussion of the electoral campaign and the political figures involved in it. Moreover, the standards applied by the Ukrainian courts in the case were not compatible with the principles embodied in Article 10, and the reasons put forward to justify the interference could not be regarded as "sufficient". The Court therefore held, unanimously, that there had been a violation of Article 10.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 588.12 euros (EUR) for pecuniary damage, EUR 33 000 for non-pecuniary damage and EUR 5 521.07 for costs and expenses.

Nevmerzhitsky v. Ukraine

Judgment of 5 April 2005
Concerns principally:
–Degrading conditions of detention (in particular no respect for basic hygiene and conditions of the detainee's force feeding): violation of the Convention.
– Prolongation of detention on remand without judicial decisions and despite the detainee's state of health): violation of the right to liberty and security.
– Failure by the Government to provide all necessary facilities to enable the Court to establish the facts in the case.

Principal facts and complaints

The applicant, Yevgen Ivanovych Nevmerzhitsky, an Ukrainian national, was formerly the manager of a branch of the Poltava Bank in Kyiv.

From 8 April 1997 to 22 February 2000 he was detained in the Kyiv Region Temporary Investigative Isolation Unit (SIZO No. 1), charged with making unlawful currency transactions, theft, tax evasion, abuse of power by an official and fraud and forgery committed by an official.

The applicant's detention was initially ordered by the investigator of the Ministry of the Interior on 8 April 1997 and a warrant for his arrest was confirmed by the Kyiv City Prosecutor on 11 April 1997 and reviewed by a court on 28 May 1997. The applicant's detention was extended five times by the relevant prosecutors, by six to 18 months. On 1 November and 16 December 1999 Kyiv City Court and the Supreme Court rejected the applicant's requests for release, even though the maximum statutory period of permitted detention had expired.

During his time in detention the applicant went on hunger strike on a number of occasions and was subjected to force feeding.

He complained that he was placed in a 7-square-metre cell with 12 other detainees, which had no drinking water or access to water for washing and that he caught microbic eczema and scabies because the cell was infested with bedbugs and head lice. On 1 April 1999 he was placed in the isolation cell of the detention centre for 10 days while still on hunger strike. The 7-square-metre cell was damp, with wet concrete walls, it was not ventilated and he was not allowed to have regular outdoor walks. The cell had no toilet and the water only turned on a few times a day.

On 19 February 2001 the applicant was convicted of, among other things, forgery committed by an official, aggravated forgery and abuse of power. He was sentenced to five years and six months' imprisonment and all his personal property was confiscated. On the basis of the Amnesty Law of 11 May 2000, and because the applicant had already been detained for two years, ten months and fifteen days, he was exempted from serving his sentence.

Following his release on 23 February 2000, the applicant was admitted to Kyiv City Hospital, where he stayed until 17 March 2000. He has subsequently continued to receive medical treatment under the general supervision of a psychiatrist.

Relying on Article 3 (prohibition of torture or inhuman or degrading treatment), the applicant complained about the conditions of his detention, especially in the isolation cell. In particular he alleged that he was denied adequate medical treatment and that he was force-fed while on hunger strike. He also complained in relation to the length and lawfulness of his detention, relying on Article 5 § 1(c) (right to liberty and security) and Article 5 § 3 (right to be brought promptly before a judge).

Decision of the Court

Article 38 (examination of the case)

The Court noted that the Ukrainian Government had failed to provide it with a number of important documents concerning the applicant's health and the decisions to prolong his detention and to force-feed him.

The Government had also failed to provide any convincing explanation for their refusal to comment on particular questions raised by the Court or to provide relevant documents and decisions and medical reports in the case. The Court therefore considered that it could draw inferences from the Government's conduct.

Bearing in mind the difficulties arising from the establishment of the facts in the case and in cases similar to it, and in view of the importance of a Government's cooperation in Convention proceedings, the Court found that the Ukrainian Government had failed to fulfil their obligation under Article 38 § 1 (a) to provide all necessary facilities to enable the Court to establish the facts in the case.

Article 3 (prohibition of torture)

Concerning the conditions of the applicant's detention

The Court noted that it could not establish with certainty the conditions of the applicant's detention, which occurred quite some time ago. However, taking into account that the applicant's submissions were consistent, thorough and corresponded in general to the inspections of the pre-trial detention centres in Ukraine conducted by the Council of Europe's Committee for the Prevention of Torture and the Commissioner of Human Rights of the Ukrainian Parliament and that the Ukrainian Government had made no comment on those submissions, the Court concluded that the applicant was detained in unacceptable conditions and that such detention amounted to degrading treatment in breach of Article 3.

The Court further found that the applicant's situation was aggravated by the fact that he was subjected to disciplinary punishment in an isolation cell of the detention centre in conditions that were totally unacceptable under Article 3.

Moreover, the Court noted that the medical reports submitted by the parties showed that in the course of his detention the applicant contracted various skin diseases (in particular, scabies and eczema). Clearly the applicant's health significantly deteriorated, judging by his medical examinations and his further placement in hospital after his release on 23 February 2000. While it was true that the applicant received some medical treatment for those diseases, their initial contraction, recurrence, aggravation and the applicant's further medical treatment after release, demonstrated that he was detained in an insanitary environment, with no respect for basic hygiene. Those conditions had such a detrimental effect on his health and well-being that the Court considered that they amounted to degrading treatment, in violation of Article 3.

Concerning the force-feeding of the applicant

The Court reiterated that a measure which was considered to be medically necessary – such as force-feeding a detainee to save her/his life – could not in principle be regarded as inhuman and degrading. However, such a measure had to have been proved to be medically necessary and the procedural guarantees for the decision to force-feed had to be complied with. Moreover, the manner in which the person concerned was subjected to force-feeding during the hunger strike should not go beyond a minimum level of severity envisaged by the Court's case law under Article 3.

In the applicant's case, the Court reiterated that the Ukrainian Government had failed to provide it with a written medical report or the decision of the head of the detention institution, both of which were obligatory under the decree setting out the procedure to follow on force-feeding detainees. As the Government had not demonstrated that force-feeding the applicant was medically necessary, it could only be assumed that it was arbitrary. Procedural safeguards were therefore not respected in the face of the applicant's conscious refusal to take food and the Ukrainian authorities did not act in the applicant's best interests in subjecting him to force-feeding.

As to the manner in which the applicant was fed, the Court assumed that the authorities complied with the instructions in the relevant decree. However, the restraints (handcuffs, a mouth-widener and a special rubber tube inserted into the food channel) which were applied – in the event of resistance using force – could amount to torture within the meaning of Article 3, if there was no medical necessity.

Concerning the medical care available to the applicant

The Court reiterated that the force-feeding administered to the applicant in itself demonstrated that the domestic authorities did not provide him with appropriate medical treatment and assistance during his detention. On the contrary, the force-feeding had not been shown to have been related to his particular state of health or to the strict medical necessity of saving his life.

The Court also noted that the applicant was examined by a doctor for the first time one-and-a-half months after he had been detained. Prior to his detention, the applicant had not suffered from any skin disease and his state of health was normal. An independent medical exami-

nation of 8 May 1998 recommended that the applicant be given treatment in a specialised hospital for microbic eczema. However, the recommendation was not followed. In addition, the applicant was not examined or attended by a doctor from 5 August 1998 to 10 January 2000. In the Court's view, that could not be deemed to be adequate and reasonable medical attention, given the applicant's hunger strike and the diseases from which he was suffering. Furthermore, the Government had provided no written records concerning the force-feeding throughout the hunger strike, the kind of nutrition used or the medical assistance the applicant received.

In those circumstances, the Court considered that there had been a violation of Article 3 concerning the lack of adequate medical treatment and assistance provided to the applicant while he was detained, which amounting to degrading treatment.

Article 5 § 1 (c)

The lawfulness of the applicant's continued detention

The Court noted that a period of detention was, in principle, "lawful" if based on a court order. However, there were no court decisions taken as to the applicant's continued detention from 29 May 1997 to 1 November 1999. The decisions to prolong the applicant's detention were taken by prosecutors, who were a party to the proceedings, and could not in principle be regarded as "independent officers authorised by law to exercise judicial power". In view of their role and status, they could not carry out the appropriate review of the lawfulness of the decision to prolong the applicant's detention.

The courts only reviewed the decisions of the prosecution for the applicant's continued detention on 1 November and 16 December 1999, when they refused the applicant's request for release, without giving any particular reasons and without specifying the period of further detention, even though the maximum statutory period of detention in the applicant's case had already expired on 30 September 1998. Further investigations were ordered on 1 November 1999 by the Kyiv City Court and 16 December 1999 by the Supreme Court.

The Court concluded that three periods of the applicant's detention were unlawful, within the meaning of Article 5 § 1 (c), namely [...].

Article 5 § 3

Whether the applicant was brought promptly before a court to review his prolonged detention

The Court observed that the applicant was held in pre-trial detention from 8 April 1997 to 23 February 2000. Even though the investigation of economic offences presented the authorities with special problems, the Court could not accept that it was necessary to detain the applicant for so long in pre-trial detention without either prompt or regular judicial supervision. The Court therefore found that there had been a breach of Article 5 § 3.

Length of the applicant's detention

The Court found that the applicant's detention lasted a total of two years, ten months and fifteen days, of which the Court could take into consideration two years, five months and twelve days, from 11 September 1997, when the Convention entered into force in respect of Ukraine.

The Court considered that the original reasons given by the prosecution – possible interference with the investigation and suspicion that the applicant had committed the offences with which he was charged – might have sufficed to warrant the applicant's initial detention on remand. However, as the proceedings progressed and the collection of the evidence neared completion, that ground would have inevitably become less relevant. Given its conclusions regarding the applicant's state of health and conditions of detention, the Court considered that he should not have been subjected to prolonged detention. In the absence of any concrete evidence to the contrary from the Government, the Court found that the applicant's continued detention was neither necessary nor justified by special circumstances. Moreover, the Court noted that no alternative measures were effectively considered by the domestic authorities to ensure the applicant's appearance at trial.

In sum, the Court found that the reasons relied on by the authorities to justify the applicant's continued detention for

more than two years and five months, although possibly relevant and sufficient initially, lost these qualities as time passed. There had accordingly been a violation of Article 5 § 3.

Under Article 41 (just satisfaction), the Court awarded the applicant 1 000 euros (EUR) for pecuniary damage, EUR 20 000 for non-pecuniary damage and EUR 5 000 for costs and expenses.

Rainys and Gasparavicius v. Lithuania

Judgment of 7 April 2005
Concerns: Restrictions to employment for former KGB officers: violation of the Convention.

Principal facts and complaints

The applicants, Raimundas Rainys and Antanas Gasparavicius, are two Lithuanian nationals.

– From 1975 to October 1991 Mr Rainys was employed by the Lithuanian branch of the Soviet Security Service (the KGB). He then worked as a lawyer in a private telecommunications company. On 23 February 2000 he was dismissed from his job after being found to have the status of a "former KGB officer" as defined by Article 2 of the Law on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Permanent Employees of the Organisation ("the Act"). He appealed unsuccessfully and has been unemployed ever since.

– From 1971 until October 1991 Mr Gasparavicius worked for the KGB. He then started practising as a barrister. On an unspecified date in 2000 he was found to have the status of a "former KGB officer". He appealed unsuccessfully and, on 29 May 2001, was disbarred. He now works in the business sector.

The applicants complained that the loss of their jobs and the ban on their finding employment in various private-sector spheres until 2009 breached Article 8 (right to respect for private life), Article 14 (prohibition of discrimination) and Article 10 (right to freedom of expression).

Decision of the Court

The Court noted that the applicants' complaints were very similar to those raised in the case Sidabras and Džiautas v. Lithuania, albeit wider: they related not only to their hypothetical inability to apply for various private-sector jobs until 2009, but also their actual dismissal from existing employment in that sector. Nevertheless, that extra element did not prompt the Court to depart from the reasoning developed in Sidabras and Džiautas.

The Court emphasised that the State-imposed restrictions on a person's opportunity to find employment with a private company for reasons of lack of loyalty to the State could not be justified from the Convention perspective in the same manner as restrictions on access to their employment in the public service. Moreover, the very belated nature of the Act, imposing the impugned employment restrictions on the applicants a decade after Lithuanian independence had been re-established and the applicants' KGB employment had been terminated, counted strongly in favour of a finding that the application of the Act vis-à-vis the applicants amounted to a discriminatory measure.

The Court therefore held, unanimously, that there had been a violation of Article 14, in conjunction with Article 8, to the extent that the Act precluded those applicants from employment in the private sector on the basis of their "former KGB officers" status under the Act. The Court further considered that, since it had found a breach of Article 14 taken in conjunction with Article 8, it was not necessary also to consider whether there had been a violation of Article 8 taken alone.

The Court found no violation of Article 10 (freedom of expression) taken in conjunction with Article 14.

Under Article 41 (just satisfaction), the Court awarded Mr Rainys and Mr Gasparavicius EUR 35 000 and EUR 7 500 respectively for pecuniary damage, EUR 5 000 each for non-pecuniary damage and EUR 4 000 jointly for costs.

Shamayev and 12 others v. Georgia and Russia

Judgment of 12 April 2005
Concerns principally:

Extradition:
– Alleged risks of death penalty and ill-treatment if an extradition order of Chechen origin persons to Russia were to be enforced.
– Physical and psychological suffering as a result of the manner in which extradition orders were enforced.
– Extradition despite provisional indication by the Court.

State's attitude:
– Hindering of the effective exercise of the right of petition.
– Obstacles to the carrying out of a fact-finding mission by the Court.

Principal facts and complaints

The applicants are thirteen Russian and Georgian nationals of Chechen origin.

Between 3 and 5 August 2002 the applicants were arrested by the Georgian border police at a checkpoint in the village of Guirevi and charged with crossing the border illegally, carrying offensive weapons and arms trafficking. They were remanded in custody. On 6 August 2002 the Russian authorities applied to the Georgian authorities for their extradition, asserting that the persons detained were terrorist rebels who had taken part in the fighting in Chechnya.

On 4 October 2002, Mr Shamayev, Mr Adayev, Mr Aziev, Mr Khadjiev and Mr Vissitov were extradited from Georgia to Russia where they are apparently detained in a remand prison.

The applicants who had not been extradited continued to be detained in Georgia. Subsequently, Mr Margoshvili was released after being acquitted on 8 April 2003, Mr Guelogayev was released following a judgment of 6 February 2004, and Mr Khanchukayev, Mr Issayev, Mr Magomadov and Mr Kushtanashvili were released in January and February 2005. After disappearing in Tbilisi on 16 or 17 February 2004, Mr Khashiev and Mr Baymurzayev were arrested by the Russian authorities on 19 February 2004; they are apparently now detained in Russia, at the Essentuki remand prison.

The applicants submitted that their extradition to Russia, where capital punishment had not been abolished, exposed them to a real danger of death or torture contrary to Articles 2 and 3 of the Convention. They further complained of the treatment inflicted on them in the night of 3 to 4 October 2002. Their lawyers also asserted that Mr Aziev had died while being extradited. They also put forward some other complaints.

On 4 and 9 October 2002 the applicants sent to the European Court of Human Rights a preliminary application contesting their imminent extradition to Russia. Applying Rule 39 (interim measures) of its Rules of Court, the Court indicated to the Georgian Government that it was desirable, as an interim measure, not to extradite the applicants to Russia before the Chamber had had the opportunity to examine the application in the light of the information to be supplied by the Georgian Government. The Russian Government were notified of the application as a matter of urgency under Rule 40. On 26 November 2002 the Court decided not to extend the application of Rule 39 in the light of the undertakings given by Russia.

A hearing was held on 16 September 2003, following which the Chamber declared the application admissible. From 23 to 25 February 2004 a delegation of the Court took oral evidence in Tbilisi from six applicants who had not been extradited and 12 witnesses. A fact-finding visit due to be made to Russia had to be cancelled on 4 May 2004 on account of the uncooperative attitude of the Russian authorities.

Decision of the Court

As regards Georgia

Articles 2 and 3 of the Convention

The alleged death of Mr Aziev

There was no evidence justifying the conclusion that Mr Aziev had died before, during or after his extradition. Moreover, he had lodged a further application in August 2003, directed solely against Russia, in which he had not made any complaint about alleged ill-treatment. That being so, the Court held unanimously that there had been no violation of Article 2 in his respect.

The alleged risks of being sentenced to death and of ill-treatment following extradition

– With regard to the five extradited applicants: the Court concluded that in the light of the material in its possession the facts of the case did not support "beyond a reasonable doubt" the assertion that at the time when the Georgian authorities took the decision there were serious and well-founded reasons to believe that extradition would expose the applicants to a real personal risk of suffering inhuman or degrading treatment, within the meaning of Article 3 of the Convention. There had accordingly

been no violation of that provision by Georgia.

– With regard to the applicants against whom no extradition order had been made: namely Mr Issayev, Mr Khantchukayev, Mr Magomadov, Mr Kushtanashvili and Mr Margoshvili, the Court declared their complaint inadmissible because to date there had been no decision to extradite them. Moreover, Mr Kushtanashvili and Mr Margoshvili were not at risk of extradition on account of their Georgian nationality.

– With regard to the applicants against whom an extradition order had been made:

(i) Concerning Mr Baimurzayev and Mr Khashiev, the Court noted that they were currently detained in Russia after disappearing in Georgia; it took the view on that account that it was not necessary to determine whether there would have been a violation of Articles 2 and 3 of the Convention if the extradition order made against them on 28 November had been enforced.

(ii) Concerning Mr Gelogayev, the extradition order made against him had been suspended but might be enforced when the proceedings concerning his refugee status ended. In order to determine whether his extradition could entail a violation of the Convention, the Court had to take account of the present circumstances. Having regard to the material placed before it, the Court considered that the assessments on which the decision to extradite Mr Gelogayev had been founded two years before no longer sufficed to exclude all risk of ill-treatment prohibited by the Convention being inflicted on him. The Court noted in particular the new extremely alarming phenomenon of persecution and killings of persons of Chechen origin who had lodged applications with it. According to reports by human rights organisations, there had been a sudden rise in 2003 and 2004 in the number of cases of persecution of persons who had lodged applications with the Court, in the form of threats, harassment, detention, enforced disappearances and killings. Consequently, the Court considered that if the decision of 28 November 2002 to extradite Mr Gelogayev were to be enforced on the basis of the assessments made on that date, there would be a violation of Article 3 of the Convention.

The risk of extrajudicial execution

The Court noted that governmental and non-governmental organisations had reported numerous cases of killings of persons of Chechen origin or their arbitrary detention followed by their disappearance in the Republic of Chechnya. However, in the present case there was nothing to justify the assertion that at the time when the Georgian authorities took the relevant decision there were serious and well-founded reasons to believe that extradition would expose the applicants to a real risk of extrajudicial execution, contrary to Article 2 of the Convention. Accordingly, there had been no violation of that provision.

The events of the night of 3 to 4 October 2002

The Court considered that it had been established that force had been used to make 11 applicants leave the cell in which they were all being held with a view to the extradition of some of their number and that that use of force had been preceded by peaceful attempts to persuade the prisoners to comply with the order to leave the cell. There was no doubt that the applicants had put up a hostile resistance to the prison officers and special forces, by arming themselves with various objects. In those circumstances the Court considered that the intervention of fifteen special forces officers, armed with truncheons, could reasonably be considered necessary to ensure the safety of the prison staff and prevent disorder spreading through the rest of the prison.

However, it appeared that the applicants had been informed only that the extradition of some of them was imminent, without being told which ones, that this information had not been given to them until 3 October 2002 in the middle of the night, and that a few hours later prison officers ordered them to leave their cell giving fictitious reasons. Such conduct on the part of the authorities amounted to attempted deception. In the Court's view the attitude of the Georgian authorities and the way in which they had managed the extradition enforcement procedure had incited the applicants to resist, so that the recourse to

physical force had not been justified by the prisoners' conduct.

As a result of this confrontation the applicants received various wounds and fractures which were noted in a medical report dated 4 October 2002, as regards the non-extradited applicants at least. Four of the applicants had been found guilty of injuring members of the special forces and sentenced in Georgia to two years and five months' imprisonment. However, no inquiry had been conducted into the disproportionate nature of the intervention.

Having regard to the unacceptable circumstances of the procedure for the enforcement of the extradition orders against four applicants by the Georgian authorities, and in view of the injuries inflicted on some of the applicants by the special forces, followed by the lack of appropriate medical treatment in good time, the Court considered that the 11 applicants detained in Tbilisi no. 5 prison that night were subjected to physical and mental suffering of such a nature that it amounted to inhuman treatment. It accordingly held that there had been a violation of Article 3.

Article 5 of the Convention

Lawfulness of the detention

The Court considered that the detention of the applicants in Georgia from 3 August to 4 October 2002 was justified in principle by virtue of Article 5 § 1 (f) of the Convention and that there had accordingly been no violation of Article 5 § 1 of the Convention.

The detention of Mr Khashiev and Mr Baimurzayev following their disappearance

As the disappearance of these two applicants had occurred after it had delivered its admissibility decision in the case, the Court did not have jurisdiction to examine or comment on their arrest or detention by the Russian authorities.

Alleged violation of Article 5§§ 2 and 4

The Court noted that ten of the applicants had met trainee prosecutors from the Georgian procurator-general's office but had not received sufficient information about their detention pending extradition. It accordingly held that there had been a violation of Article 5 § 2. In the light of that finding, it did not consider it necessary to examine Mr Khadjiev's complaint under Article 5 § 2 of the Convention from the standpoint of Article 6 § 3 also.

As the applicants had not been informed that they were being detained pending extradition, and as they had not been given copies of any of the documents in the file, their right to appeal against their detention had been deprived of all substance. The Court accordingly held that there had been a violation of Article 5 § 4 of the Convention.

Article 13 taken together with Articles 2 and 3 of the Convention

The Court considered that the applicants extradited on 4 October 2002 and their lawyers had not been informed of the extradition orders made against them on 2 October 2002 and that the relevant authorities had unjustifiably hindered their exercise of the right to seek a remedy that should, at least in theory, have been available to them. In that connection, the Court made it clear that it found it unacceptable for a person to learn that he was to be extradited only moments before being taken to the airport, when his reason for fleeing the receiving country had been his fear of breaches of Articles 2 and 3 of the Convention. The Court accordingly held that there had been a violation of Article 13 with regard to the five extradited applicants in that they had not had any opportunity of submitting to a national authority their complaints under Articles 2 and 3. In the light of that finding, it considered that it was not necessary to examine the same complaint by Mr Khadjiev under Article 2 § 1 and Article 4 of Protocol No. 4.

Article 34 of the Convention

On 4 October 2004, between 3.35 and 4.20 p.m. the Court received by fax from 11 of the applicants requests that it indicate interim measures to ensure that they would not be extradited. At 6 p.m. on the same day, and again at 7.59 p.m., the Court informed the Georgian Government that it had decided to indicate such measures in the case. However, at 7.10 p.m. the Georgian authorities extradited five of the applicants. Once extradited they had been held in isolation, without contact with their representatives. The Russian Government had

even maintained that they did not wish to lodge an application against Russia and that examination of the case was impossible from the procedural point of view.

The principle of equality of arms, inherent in the effective exercise of the right of petition during the proceedings before the Court, had thus been unacceptably infringed. In addition, the Court itself had not been able to carry out the fact-finding visit to Russia it had decided to undertake by virtue of Article 38 § 1 (a) of the Convention, and, on the sole basis of a few written communications with the extradited applicants, had not been in a position to complete its examination of the merits of their complaints against Russia. The gathering of evidence had thus been frustrated. As a result, the applicants' exercise of their right of petition had therefore been seriously obstructed, and the Court concluded that Georgia had failed to discharge its obligations under Article 34 of the Convention as regards the extradited applicants.

As regards Russia

Article 38 of the Convention

The Court reiterated the fundamental importance of the principle that Contracting States must cooperate with it. In addition to that obligation, the Russian Government had a duty to comply with the specific undertakings it had given the Court on 19 November 2002, notably the undertaking to allow the Court access without any hindrance to the extradited applicants, including the possibility of a fact-finding visit. On the basis of those undertakings the Court had decided to lift the interim measure indicated to Georgia and to hold an on-the-spot investigation in Georgia and Russia. However, it had been able to carry out only the Georgian part of the inquiry.

Faced with the refusal of access to the applicants, the Court had repeatedly urged the Russian Government to permit it to conduct the investigation in order to establish the facts and thus to discharge its obligations under Article 38 § 1 (a) of the Convention. The Russian Government had not responded favourably to those requests and none of the reasons it had given was capable of absolving the Russian State from its obligation to cooperate with the Court in its attempts to establish the truth.

By obstructing the Court's fact-finding visit and denying it access to the applicants detained in Russia the Russian Government had unacceptably hindered the establishment of part of the facts in the case and had therefore failed to discharge its obligations under Article 38 § 1 (a) of the Convention.

Article 34 of the Convention

The Court observed that in addition to its obligations under Article 34 the Russian Government had a duty to comply with the specific undertakings it had given the Court on 19 November 2002, including the undertaking to ensure that all the applicants, without exception, would have unobstructed access to the Court. On the basis of those unequivocal undertakings the Court had lifted the interim measure indicated to Georgia.

Yet despite the Court's requests the applicants' representatives had not been able to enter into contact with them and even the Court had been refused permission to interview them. In addition, the Russian Government had several times expressed doubt as to the extradited applicants' intention to apply to the Court, and as to the authenticity of their applications and the authority they had given their representatives to act on their behalf. They had asserted in reply to one letter sent by the Court to the applicants' Russian lawyers that the applicants had complained about the Court's attempts to contact them. Moreover, the Russian Government had submitted at first that a letter sent by the Court to the extradited applicants directly in prison had not been received. They had also contended that those applicants had never sent the Court any complaint against Russia, an assertion which four of the persons concerned unequivocally denied later.

That being so, the Court considered that there was reason for serious doubt as to the freedom of the extradited applicants to correspond with it without hindrance and to put forward their complaints in greater detail, which they had been prevented from doing by the haste with which they had been extradited.

As regards Mr Baimurzayev and Mr Khashiev, the two respondent Governments had not yet supplied any convincing explanation of either their disappearance a few days before the arrival of the Court's delegation in Tbilisi or their arrest three days later by the Russian authorities.

In conclusion, the Court considered that the effective examination of the applicants' complaints against Georgia had been detrimentally affected by the conduct of the Russian Government, and examination of the admissible part of the application against Russia had been impossible. It considered that the measures taken by the Russian Government had hindered the effective exercise by Mr Shamayev, Mr Aziev, Mr Vissitov, Mr Khadjiev, Mr Adayev, Mr Khashiev and Mr Baimurzayev of the right to apply to the Court, as guaranteed by Article 34 of the Convention. There had therefore been a violation of that provision.

Other complaints

The Court considered that it did not have jurisdiction to examine the complaints under Articles 2, 3, and 6 §§ 1, 2 and 3 of the Convention.

Under 41 (just satisfaction) the Court held by six votes to one that Georgia was to pay the 13 applicants, for non-pecuniary damage, the overall sum of 80 500 euros (EUR), in awards ranging from EUR 2 500 to EUR 11 000, and EUR 4 000 to the applicants jointly for costs and expenses. The Court also held unanimously that the finding of a potential violation of Article 3 provided Mr Gelogayev with sufficient just satisfaction for any non-pecuniary damage he might have sustained.

In addition, the Court held by six votes to one that Mr Shamayev, Mr Aziev, Mr Khadjiev, Mr Adayev, Mr Vissitov, Mr Khashiev, and Mr Baimurzayev should receive from Russia EUR 6 000 each for non-pecuniary damage, and EUR 2 000 jointly for costs and expenses.

Lastly, the Court held unanimously that Russia was to pay into the budget of the Council of Europe EUR 1 580.70 in respect of the Court's operational expenditure, that sum corresponding to the costs incurred by the Court for the planned fact-finding visit to Russia.

Chmelír v. the Czech Republic

Judgment of 7 June 2005
Concerns:
Impartiality of High Court judges: violation of the Convention.

Principal facts and complaints

The applicant, against whom criminal proceedings had been brought in 1997, had been arrested and placed in pre-trial detention on 12 February 1998. On 3 March 1999 he and two other co-defendants were found guilty of several charges, including robbery, trespass and the unlawful carrying of weapons; he was sentenced to eight years' imprisonment. He lodged an appeal. R.T., one of the members of the High Court Division which was to examine the appeal, was withdrawn because he was acquainted with the family of one of the applicant's co-defendants. However, he continued to deal with Mr Chmelír's case, which had been severed. In December 1999, the applicant called for the withdrawal of M.V., presiding judge in the High Court Division, alleging that he had previously had an intimate relationship with him. On 15 February 2000 M.V. imposed a fine of 50 000 Czech korunas (about 1 674 euros (EUR)) on the applicant, on the ground that he had insulted the court through false allegations which represented an insolent and unprecedented attack on M.V. and were intended to delay the proceedings. In the meantime, on 7 February 2000, the applicant brought an action for the protection of personality rights against M.V. for having obliged him to attend a hearing in spite of a bomb alert. The applicant's request was dismissed. A second application by the applicant for M.V.'s withdrawal was subsequently dismissed by the Division on the ground that it amounted to provocative obstruction and a fresh attack on the judge's moral integrity.

Relying on Article 6 § 1 of the Convention (right to an independent and impartial tribunal), the applicant challenged the impartiality of the High Court judges who had examined his appeal.

Decision of the Court

The Court noted that when the applicant brought the action for the protection of personality rights against M.V. the criminal proceedings were pending before the high court on whose bench M.V. sat as presiding judge. Accordingly, the two sets of proceedings overlapped for almost seven months. For that reason, it could not be excluded that the applicant had reason to apprehend that he continued to be perceived as an opponent by M.V. In addition, when dismissing the second application for withdrawal, the court referred only to the content of that application, M.V.'s statement in reaction to the first application and the applicant's previous attempts to frustrate the criminal proceedings. The judge concerned made no formal statement capable of dispelling any of the applicant's doubts.

The applicant's fears had been strengthened by M.V.'s decision to impose a fine. The Court recognised that domestic courts were entitled to impose disciplinary sanctions on litigants. In the present case, however, it noted that it was not the applicant's conduct that had given rise to the penalty imposed, but the fact that he had insulted the court. While the insult in question resulted from an insolent and unprecedented attack on the presiding judge, the applicant's conduct had been evaluated by the judge concerned in relation to his personal understanding, his feelings, his sense of dignity and his standards of behaviour, since he felt personally targeted and insulted. Thus, his own perception and evaluation of the facts and his own judgment had been involved in the procedure to determine whether the court had been insulted in that specific case.

In that connection, the Court also noted the severity of the penalty imposed, which consisted of the highest possible fine, and the warning given to the applicant to the effect that any similar attack in future was likely to be classified as a criminal offence. In the Court's view, those elements testified to the judge's exaggerated reaction to the applicant's conduct.

In those circumstances, the Court considered that the applicant's fear that M.V. lacked impartiality had been objectively justified. Having regard to that conclusion, it considered that it had dealt with all the complaints concerning the High Court's impartiality and that it was not necessary to rule on an alleged lack of impartiality on the part of R.T.

Accordingly, the Court concluded unanimously that there had been a violation of Article 6 § 1 of the Convention. It held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant and awarded him EUR 1 000 for costs and expenses.

Fadeyeva v. Russia

Judgment of 9 June 2005
Concerns principally: Operation of a steel-plant in close proximity to the applicant's home having endangered her health and well-being: violation of the right to respect for private life.

Principal facts and complaints

The case concerns an application brought by a Russian national, Nadezhda Mikhai Fadeyeva, who lives in Cherepovets, a major steel-producing centre situated around 300 km north-east of Moscow. The Severstal steel plant was built in Soviet times and owned by the Ministry of Black Metallurgy of the Russian Soviet Federative Socialist Republic (RSFSR). The plant was – and remains – the largest iron smelter in Russia and the main employer of approximately 60 000 people. In order to delimit the areas in which pollution caused by steel production could be excessive, the authorities established a buffer zone around the Severstal premises – "the sanitary security zone". This zone was first delimited in 1965. It covered a 5 000 metre-wide area around the territory of the plant (reduced to 1 000 metres in 1992). The applicant has lived in a council flat within this zone with her family since 1982. Although this zone was, in theory, supposed to separate the plant from the town's residential areas, in practice thousands of people lived there. A Decree of the Council of Ministers of the RSFSR, dated 10 September 1974, obliged the Ministry of Black Metallurgy to resettle the inhabitants of the sanitary security zone who lived in certain districts by 1977. However, this has not been done. In the following years the Government adopted several new programs, always in force, aimed at the improvement of

the environmental situation in Cherepovets.

In 1993 the steel-plant was privatized and the apartment buildings owned by the steel-plant and situated within the zone were transferred to the local council. According to a letter from the Mayor of Cherepovets dated 3 June 2004, in 1999 the plant was responsible for more than 95 per cent of industrial emissions into the town's air. According to the State Report on the Environment for 1999, the Severstal plant was the largest contributor to air pollution of all metallurgical plants in Russia. Pollution levels are officially monitored within the security zone. The applicant submitted that, from 1990-1999 the average concentration of dust in the air was 1.6 to 1.9 times higher than the "maximum permitted limit" (MPL); the concentration of carbon disulphide, 1.4 to 4 times higher; and, the concentration of formaldehyde, 2 to 4.7 times higher. Atmospheric pollution from 1997-2001 was rated as "high" or "very high". In particular, an excessive concentration of hazardous substances (such as hydrogen sulphide, ammonia and carbolic acid) was registered.

In 1995 the applicant and other people living within the zone brought a court action against the steel works, seeking resettlement outside the security zone in an environmentally-safe area. On 17 April 1996 Cherepovets Town Court found that, under domestic law, the applicant had the right in principle to be resettled at the local authority's expense. However, the court made no specific resettlement order, but required the local authorities to place her on a "priority waiting list" for new accommodation, making her resettlement conditional on the availability of funds. The decision was upheld on appeal, but the reference to the availability of funds as a condition for resettlement was taken out. An execution warrant was issued. However, on 10 February 1997, the enforcement proceedings were discontinued on the ground that there was no "priority waiting list" for people living in the security zone to obtain new housing. The applicant was put on the general waiting list for new housing; she was no. 6820 on that list.

In 1999 the applicant brought new proceedings against the local council, seeking her immediate resettlement in accordance with the judgment of 17 April 1996. However, Cherepovets Town Court dismissed her action as there was no "priority waiting list" and no allocated council housing. The court concluded that, as the applicant had been put on the general waiting list, the judgment of 17 April 1996 had been executed. This decision was upheld by the regional court on 17 November 1999.

The applicant complained, in particular, that the operation of a steel-plant in close proximity to her home endangered her health and well-being. She relied on Article 8 of the Convention.

Decision of the Court

Applicability of Article 8

Both parties agreed that the applicant's place of residence was affected by industrial pollution. Neither was it disputed that the main cause of pollution was the Severstal steel-plant. The degree of disturbance caused by Severstal and the effects of pollution on the applicant were disputed by the parties, however.

The Court observed that, over a significant period of time, the concentration of various toxic elements in the air near the applicant's house seriously exceeded the MPLs, defined, under Russian legislation, as safe concentrations of toxic elements. Consequently, where the MPLs were exceeded, the pollution was potentially harmful to the health and well-being of those exposed to it. Moreover, Russian legislation defined the zone, where the applicant's house was situated, as unfit for human habitation. That was a presumption, which might not be true in a particular case. It was also conceivable, despite the excessive pollution and its proven negative effects on the population as a whole, that the applicant did not suffer any special and extraordinary damage.

In the applicant's case, however, the very strong combination of indirect evidence and presumptions made it possible to conclude that the applicant's health deteriorated as a result of her prolonged exposure to the industrial emissions from the Severstal steel-plant. Even assuming that the pollution did not

cause any quantifiable harm to her health, it inevitably made the applicant more vulnerable to various diseases. Moreover, there could be no doubt that it adversely affected her quality of life at home. Therefore, the Court accepted that the actual detriment to the applicant's health and well-being reached a level sufficient to bring it within the scope of Article 8.

Legitimate aim?

The Court observed that the essential justification offered by the Russian Government for the refusal to resettle the applicant was the protection of the interests of other residents of Cherepovets who were entitled to free housing under domestic legislation. Since the local council had only limited resources to build new housing for social purposes, the applicant's immediate resettlement would inevitably breach the rights of others on the waiting lists. Further, the Government referred, at least in substance, to the economic well-being of the country. The Court agreed that the continuing operation of the steel-plant in question contributed to the economic system of the Vologda region and, to that extent, served a legitimate aim within the meaning of § 2 of Article 8.

Necessary in a democratic society?

The Court noted that Russia authorised the operation of a polluting enterprise in the middle of a densely populated town. Since the toxic emissions from that enterprise exceeded the safe limits established by domestic legislation and might have endangered the health of those living nearby, the State established that a certain territory around the plant should be free of any dwelling. However, those legislative measures were not implemented in practice.

It would be going too far to state that the State or the polluting enterprise were under an obligation to provide the applicant with free housing, and, in any event, it was not the Court's role to dictate precise measures which should be adopted by the States which had ratified the Convention in order to comply with their positive duties under Article 8. In the applicant's case, however, although the situation around the plant called for a special treatment of those living within the zone, the State did not offer her any effective solution to help her move from the dangerous area. Furthermore, although the polluting enterprise at issue operated in breach of domestic environmental standards, there was no information that the State designed or applied effective measures which would take into account the interests of the local population, affected by the pollution, and which would be capable of reducing the industrial pollution to acceptable levels.

The Court concluded that, despite the wide margin of appreciation left to the respondent State, it had failed to strike a fair balance between the interests of the community and the applicant's effective enjoyment of her right to respect for her home and her private life. The Court therefore held, unanimously, that there had been a violation of Article 8.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 6 000 euros (EUR) for non-pecuniary damage and EUR 6 500 (of which EUR 1 732 in legal aid) for costs and expenses, and 5 540 pounds sterling (GBP) (approximately EUR 8 182.80) in respect of costs and expenses incurred by the applicant's British lawyers and advisers.

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 Convention entrusts the Committee of Ministers with the supervision of the execution of the European Court of Human Rights' (ECHR) judgments (Article 46, paragraph 2). The measures to be adopted by the respondent State in order to comply with this obligation vary from case to case in accordance with the conclusions contained in the judgments.

Applicant's individual situation

With regard to the applicant's individual situation, the measures comprise notably the effective payment of any just satisfaction awarded by the Court (including interests in case of late payment). Where such just satisfaction is not sufficient to redress the violation found, the Committee ensures, in addition, that specific measures are taken in favour of the applicant. These measures may, for example, consist in granting of a residence permit, reopening of criminal proceedings and/or striking out of convictions from the criminal records.

Preventing new violations

The obligation to abide by the judgments of the Court also comprises a duty of preventing new violations of the same kind as that or those found in the judgment. General measures, which may be required, include notably constitutional or legislative amendments, changes of the national courts' case-law (through the direct effect granted to the European Court's judgments by domestic courts in their interpretation of the domestic law and of the Convention), as well as practical measures such as the recruitment of judges or the construction of adequate detention centres for young offenders, etc.

In view of the large number of cases reviewed by the Committee of Ministers, only a thematic selection of those appearing on the agendas of the 922nd and 928th Human Rights (DH) meetings (April and June 2005) is presented here. Further information on the below mentioned cases as well as on all the others is available from the Directorate General of Human Rights, as well as on the on the Internet site of the Department for the Execution of Judgments of the European Court of Human Rights (DG II) (see below).

As a general rule, following the adoption in 2001 of the new Rules for the application of Article 46, § 2, of the Convention (notably Rule 5), information concerning the state of progress of the adoption of the execution measures required is published some ten days after each DH meeting in the document called "annotated agenda and order of business" available on the Committee of Ministers' website.

Further information is also available from 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

During the 922nd and 928th meetings (April and June 2005), the Committee respectively supervised payment of just satisfaction in some 463 and 495 cases. It

	also looked at around 60 and 54 cases of individual measures (or groups of cases) to erase the consequences of violations (such as striking out convictions from criminal records, re-opening domestic judicial proceedings, etc.) and at 84 and 89 cases (or groups of cases) involving general measures to prevent similar violations (e.g. constitutional and legislative reforms, changes of domestic case-law and administrative practice). The Committee also started examining 153 (April 2005) and 105 (June 2005) new Court judgments and considered 58 (April 2005) and 41 (June 2005) draft final resolutions concluding that States have complied with the Court's judgments. The Committee notably considered:
Cases of Dorigo v. Italy and Hulki Günes v. Turkey	Measures to be taken by Italy and Turkey to grant the applicants in two cases rapid and adequate redress for their conviction and imprisonment on the basis of unfair trials, following the Committee's Interim Resolutions in the Dorigo case, and the Chairman's recent letters to the Foreign Affairs Ministers of Italy and Turkey calling for appropriate measures to erase the consequences of the violations, which were found in 1999 and 2003 respectively.
Ilascu and Others judgment (08/07/2004)	Measures to be taken by Moldova and Russia following the judgment, which considered the applicants' detention in the "Moldavian Republic of Transdnies-tria" to be arbitrary and unlawful and ordered the immediate release of the applicants still in detention.
Cyprus v. Turkey judgment (10/05/2001)	General measures to be taken by Turkey to comply with the judgment, with a primary focus at these meetings on the issues of missing persons, on some specific questions concerning the living conditions of the Greek Cypriots in the northern part of Cyprus, in particular those related to education and freedom of religion, as well as on the question of the powers of military courts regarding civilians.
Görgülü v. Germany judgment (26/02/2004)	Progress achieved by Germany following the judgment in effectively implementing a father's right of regular access to his 5-year-old child born out of wedlock.
Judgments concerning actions of security forces in Northern Ireland	Individual measures to comply with a number of judgments concerning actions of security forces in Northern Ireland, including issues relating to the absence of effective investigations into alleged abuses.
Sovtransavto v. Ukraine judgment (06/11/2002)	Measures to be adopted by Ukraine to erase the consequences of interferences by the Executive in the independence of the judiciary, as required by the judgment (see Interim Resolution DH (2004) 14).
Dougos and Peers judgments v. Greece (6/03/2001 and 19/04/2001)	General measures adopted or being taken by Greece to remedy poor conditions of detention revealed by the judgments.
Ryabykh v. Russian Federation judgment of 24/07/2003	Further reforms of the supervisory review (*nadzor*) procedure in Russia, allowing final domestic judgments to be quashed, notably in the light of the conclusions of the high-level Council of Europe seminar of 21-22/02/2005, which involved representatives of senior judiciary, *prokuratura*, executive authorities and lawyers from the Russian Federation.
Lavents v. Latvia judgment (28/11/2002)	Legal reforms taken or to be taken by Latvia following the judgment to prevent new violations on account of the applicant's pre-trial detention and the monitoring of his correspondence.

Progress achieved and further measures envisaged by Italy and Portugal in the reform of their judicial systems to prevent new violations as regards the excessive length of judicial proceedings.

Excessive length of judicial proceedings

Individual measures to be taken by Latvia to comply with the judgment finding a violation of the right to private life because of the deportation of the applicants, a mother and a daughter, former Latvian permanent residents of Russian origin, to Russia in connection with the withdrawal of Russian military personnel from Latvia.

Slivenko v. Latvia judgment (09/10/2003)

Legislative reform in the United Kingdom to remedy the unpredictable effects of "binding over" orders arising from the vague notion of "behaviour contra bonos mores", at the basis of the violation of the right to freedom of expression found in the judgment.

Hashman and Harrup judgment (25/11/99)

Interim resolutions

During the period concerned, the Committee of Ministers encouraged by different means the adoption of many reforms and also adopted 3 interim resolutions. These resolutions may notably provide information on adopted interim measures and planned further reforms, or encourage the authorities of the State concerned to make further progress in the adoption of relevant execution measures, or provide indications on the measures to be taken. Interim resolutions may also express the Committee of Ministers' concern as to adequacy of measures undertaken or failure to provide relevant information on measures undertaken, urge States to comply with their obligation to respect the Convention and to abide by the judgments of the Court or even conclude that the respondent State has not complied with the Court's judgment.

Interim Resolution ResDH (2005) 21

concerning the issue of conditions of detention in Greece, raised in the cases Dougoz v. Greece (judgment of 6 March 2001, final on 6 June 2001) and Peers v. Greece (judgment of 19 April 2001)

By these two judgments the European Court of Human Rights found in 2001 violations of Article 3 of the European Convention on Human Rights on account of degrading conditions of detention. These violations were due to the serious overcrowding and absence of sleeping facilities, combined with the inordinate length of the period of detention in such conditions in the Dougoz case, and to poor sanitary conditions of the applicant's detention (no natural light or ventilation, absence of adequate toilet facilities) diminishing the applicant's human dignity in the Peers case.

By the above Interim Resolution the Committee of Ministers welcomed comprehensive legislative, regulatory and infrastructure measures adopted or being taken by Greece in response to these judgments so as to improve the conditions of detention in both police facilities and prisons.

Considering, however, that further measures are called for to remedy the structural problems highlighted by the judgments, the Committee invited the Greek authorities to continue and intensify their efforts to align the conditions of detention to the Convention requirements and to ensure the availability of effective domestic remedies in this regard. The Committee in particular encouraged the Greek authorities to conclude rapidly the ongoing projects of construction of new detention centres and prisons.

The Greek authorities have been invited to keep the Committee informed of the implementation of these projects and of the practical effects of the measures adopted, in particular by providing relevant statistics relating to the over-

crowding and sanitary and health conditions in detention facilities. The Committee has decided to reconsider, not later than October 2006, further progress achieved in the adoption of the measures necessary to prevent this kind of violation of the Convention in Greece.

It is to be noted that the Court had also found in the case of Dougoz violations of Article 5 of the Convention on account of the applicant's unlawful detention pending expulsion and of the lack of judicial review of lawfulness of this detention, and in the case of Peers, a violation of Article 8 of the Convention due to the opening by prison administration of the applicant's correspondence with the former European Commission of Human Rights. Greece has adopted general measures (see appendix to the Interim Resolution available on the website of the Department for the execution of judgments of the Court) that may be considered as providing guarantees for the effective prevention of similar violations.

Interim Resolution ResDH (2005) 43

Action of security forces in Turkey

Progress achieved in the adoption of general measures and outstanding problems (Follow-up of Interim Resolutions DH (99) 434 and DH (2002) 98)

This resolution concerns some 74 judgments of the European Court of Human Rights delivered between 1996 and 2004 relating to numerous breaches of the Convention by the Turkish security forces due notably to homicides, torture and ill-treatment, disappearances and destruction of property. All these cases also highlighted the lack of effective domestic remedies against the State officials responsible for these abuses.

Whilst noting that most of these violations took place against the background of the fight against terrorism in the first half of the 1990s, the Committee recalls that each Contracting State, in combating terrorism, must act in full respect of its obligations under the Convention, as set out in the Court's judgments, and developed in the Council of Europe Guidelines on human rights and the fight against terrorism.

The Committee expresses satisfaction at the results of the numerous reforms adopted in response to the aforementioned Court's judgments and the Committee's two previous Interim Resolutions of 1999 and 2002, which highlighted the need for comprehensive general measures to prevent new similar violations. The Committee welcomes the authorities' "zero tolerance" policy against torture and ill-treatment, as evidenced in particular by the introduction of additional procedural safeguards and of deterrent minimum prison sentences for torture. The Committee also welcomes the recent constitutional reform reinforcing the status of the Convention and of the Court's judgments in Turkish law.

The Committee stresses the need for strict implementation of the new legislation and encourages Turkey to adopt further measures to that effect and, in particular: to consolidate their efforts to mainstream human rights into initial and in-service training of the security forces, judges and prosecutors; to ensure that the new constitutional principle of the Convention's supremacy in Turkish law be translated into daily practice of all authorities; to ensure the prompt and efficient implementation of the new Law on Compensation of the Losses Resulting from Terrorism and to reconsider its present limited time-frame; to remove any ambiguity regarding the fact that administrative authorisation is no longer required to prosecute any serious crimes allegedly committed by members of security forces.

Interim Resolution ResDH (2005) 44

concerning the judgment of the European Court of Human Rights of 10 May 2001 in the case Cyprus v. Turkey

This resolution concerns the judgment of the European Court of Human Rights of 10 May 2001 in the case Cyprus v. Turkey, finding several violations of the Convention in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in July and August 1974.

Having noted the measures already adopted by the respondent State on the issues on which the debates focused during the last meetings (see appendix to the resolution), the Committee requested Turkey to intensify its efforts with a view to the full and complete execution of the present judgment.

Concerning the issue of missing persons, the Committee invited Turkey "to ensure that its contribution to the work of the CMP facilitates the achievement of concrete and convincing results"; it also underlined that "should such results not be achieved in the near future, it will be incumbent on Turkey to take other measures to enable the fate of missing persons to be determined" and called upon Turkey, "in any event, to envisage the necessary further measures so that the effective investigations required by the Court's judgment can be conducted as soon as possible".

As far as issues relating to education are concerned, the Committee invited Turkey "to submit all relevant information regarding any screening procedure for schoolbooks, to ensure full secondary education for enclaved Greek Cypriot and Maronite children and to provide a stable and lasting basis for the functioning of the Rizokarpaso school, by legislative or other appropriate means".

Concerning issues relating to freedom of religion, the Committee invited Turkey "to provide details regarding the reasons for the rejection of the latest request by the Cypriot authorities for the appointment of a second priest and regarding the further developments of this issue".

Lastly, on the issues relating to military courts, the Committee noted the information provided by Turkey demonstrates that military officers are no longer entitled to serve on the military courts; it further noted that the jurisdiction of these courts has been limited and that all the cases that were removed from the military courts as a result have been transferred to civilian courts; consequently, the Committee decided to close the examination of the issues relating to military courts.

Final resolutions

Once the Committee has ascertained that the necessary measures have been taken by the respondent state, it closes the case by a Resolution in which it takes note of the overall measures taken to comply with the judgment.

During the period concerned, the Committee adopted in all 30 Final Resolutions, (closing the examination of 101 cases), among which 8 took note of the adoption of new general measures. Some examples follow:

Resolution ResDH (2005) 24

concerning the judgment of the European Court of Human Rights of 30 July 1998 in the case of Aerts against Belgium, adopted on 25 April 2005 at the 922nd meeting of the Ministers' Deputies

This case concerns on one hand the applicant's unlawful detention, for seven months, in the psychiatric wing of an ordinary prison instead of a Social Protection Centre as requested by the Mental Health Board and, on the other hand, to the applicant's lack of access to the Cour de Cassation, to have the lawfulness of his detention examined, as a result of the refusal by the Legal Aid

Board of the Cour de Cassation to grant the applicant legal aid. Concerning in particular the second point, the Committee noted that, after communication of the judgment to the competent authorities, the system of legal aid at the Cour de Cassation was subsequently amended by Parliament in November 1998 (Law No. 98/3417) with a view to put it in conformity with the Convention (see inadmissibility decision of 9/07/2002 in the case Debeffe against Belgium, application No. 6461/01). As regards the excessive waiting times for transferring prisoners with mental disorders, ad hoc measures to increase the number of places available in social protection centres were quickly introduced.

Resolution ResDH (2005) 25

concerning the judgment of the European Court of Human Rights of 1 February 2000 (final on 1 May 2000) in the case of Mazurek against France adopted on 25 April 2005 at the 922nd meeting of the Ministers' Deputies

This case concerns the inheritance rights of adulterine children. The Committee noted that Law No. 2001-1135 of 3 December 2001 (published in the *Journal officiel* of 4 December 2001) on the reform of succession rights of the surviving spouse and adulterine child, removed existing discrimination between adulterine children and other children. Now, pursuant to its first article (which constitutes a new Article 733 of the Civil Code), the law does not distinguish between legitimate and natural filiation in relation to questions of inheritance.

Resolution ResDH (2005) 26

concerning the judgment of the European Court of Human Rights of 29 April 1999 (Grand Chamber) in the case of Chassagnou and others against France adopted on 25 April 2005 at the 922nd meeting of the Ministers' Deputies

This case relates to the obligation imposed on landowners, opposed to hunting, to join approved hunting associations (ACCA). The Committee noted that Act No. 2000-698 on hunting, adopted on 26 July 2000, amended Act No. 64-696 of 10 July 1964 ("the Verdeille Act"), impugned by the Court, giving those opposed to hunting the right to object to it on grounds of conscience.

Resolution ResDH (2005) 28

concerning the judgment of the European Court of Human Rights of 5 December 2002 (final on 5 March 2003) in the case of Craxi No. 2 against Italy adopted on 25 April 2005 at the 922nd meeting of the Ministers' Deputies

This case deals with the unfairness of criminal proceedings due to the applicant's conviction exclusively based on pre-trial statements made by co-accused persons whom he was not allowed to cross-examine. The Committee noted that according to the law now in force (article 111 of the Italian Constitution, as amended in November 1999 and article 513 of the Code of Criminal Procedure), pre-trial statements made without respecting the adversarial principle by co-accused persons cannot be used in proceedings against a person without his consent (unless the judge establishes that the co-accused person's refusal to be cross-questioned in the proceedings is the result of bribery or threats).

Resolution ResDH (2005) 29

concerning the judgment of the European Court of Human Rights of 8 July 2003 (Grand Chamber) in the case of Hatton and others against the United Kingdom adopted on 25 April 2005 at the 922nd meeting of the Ministers' Deputies

This case relates to the lack of an effective remedy in respect of the applicants' complaint about the nuisance caused by the night flights at Heathrow airport. The violation of Article 13 in this case was due to a narrow scope of judicial the scope of judicial review of administrative acts by the domestic courts, which was limited to alleged violations of domestic law. As a result, some alleged violations of the Convention, which were not necessarily violations of domestic law, could not be challenged before a judge or any other authority, thus leading to violations of Article 13 of the Convention. The Committee noted that on 2 October 2000 the Human Rights Act 1998 came into force. This Act provides for the possibility of challenging government acts before domestic courts on the basis of the Convention. National courts are thus empowered to conduct judicial review of administrative policies (including those dating from before the enactment of the Human Rights Act 1998) in accordance with the Convention's requirements.

Warsaw Summit

The Council of Europe member states agreed on 8 July 2004 to hold a Summit of Heads of State and Government in Warsaw on 16 and 17 May 2005, at the invitation of the Polish government. This was the third summit organised by the Council of Europe, following those in Vienna in 1993 and Strasbourg in 1997.

While Vienna was the summit embodying outreach to the East, and Strasbourg the summit of consolidation of democracy in the new member states, the Warsaw Summit was the first to bring together all the countries of Europe (with the exception of Belarus). Europe was finally united under one roof, sharing common values and objectives.

The Third Summit of Heads of State and Government of the Council of Europe concluded its work by adopting a political declaration and an Action Plan laying down the principal tasks of the Council of Europe in the coming years.

Warsaw Declaration

We, Heads of State and Government of the Member States of the Council of Europe, gathered in Warsaw on 16-17 May 2005 for our Third Summit, bear witness to unprecedented pan-European unity. Further progress in building a Europe without dividing lines must continue to be based on the common values embodied in the Statute of the Council of Europe: democracy, human rights, the rule of law.

Since its Vienna (1993) and Strasbourg (1997) Summits, the Council has grown to encompass almost the whole continent. We welcome the valuable contribution which the Parliamentary Assembly and the Congress of Local and Regional Authorities have made to this achievement. We look forward to the day when Belarus is ready to join the Council of Europe.

60 years after the end of the Second World War, 30 years after the Helsinki Final Act, 25 years after the founding of "Solidarity" and 15 years after the fall of the Berlin wall, we pay tribute to all those who have made it possible to overcome painful divisions and enlarge our area of democratic security. Today, Europe is guided by a political philosophy of inclusion and complementarity and by a common commitment to multilateralism based on international law.

However, we remain concerned by unresolved conflicts that still affect certain parts of the continent, putting at risk the security, unity and democratic stability of member states and threatening the populations concerned. We shall work together for reconciliation and political solutions in conformity

with the norms and principles of international law.

This Summit gives us the opportunity to renew our commitment to the common values and principles which are rooted in Europe's cultural, religious and humanistic heritage – a heritage both shared and rich in its diversity. It will also strengthen the Council of Europe's political mandate and enhance its contribution to common stability and security as Europe faces new challenges and threats which require concerted and effective responses.

We can now focus on these challenges and continue to build a united Europe, based on our common values and on shared interests, by strengthening co-operation and solidarity between member states. We will remain open to co-operation with Europe's neighbouring regions and the rest of the world.

During the summit, the chairmanship of the Council of Europe's Committee of Ministers passed from Poland to Portugal. Polish foreign minister, Adam Daniel Rotfeld (right), hands over to his Portuguese counterpart, Diogo Freitas do Amaral.

1. The Council of Europe shall pursue its core objective of preserving and promoting human rights, democracy and the rule of law. All its activities must contribute to this fundamental objective. We commit ourselves to developing those principles, with a view to ensuring their effective implementation by all member states. In propagating these values, we shall enhance the role of the Council of Europe as an effective mechanism of pan-European co-operation in all relevant fields. We are also determined to strengthen and streamline the Council of Europe's activities, structures and working methods still further, and to enhance transparency and efficiency, thus ensuring that it plays its due role in a changing Europe.

2. Taking into account the indispensable role of the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights in formulating, promoting and implementing human rights standards, it is essential to guarantee their effectiveness. We are therefore strongly committed in the short term to implementing the comprehensive set of measures adopted at the 114th Session of the Committee of Ministers which address the Court's rapidly increasing case-load, including the speedy ratification and entry into force of Protocol No.14 to the Convention. Furthermore we are setting up a Group of wise persons to draw up a comprehensive strategy to secure the effectiveness of the system in the longer term, taking into account the initial effects of Protocol No.14 and the other decisions taken in May 2004.

3. We are convinced that effective democracy and good governance at all levels are essential for preventing conflicts, promoting stability, facilitating economic and social progress, and hence for creating sustainable communities where people want to live and work, now and in the future. This can only be achieved through the active involvement of citizens and civil society. Member states must therefore maintain and develop effective, transparent and accountable democratic institutions, responsive to the needs and aspirations of all. The time has come to intensify our work within the Council of Europe to this effect, in particular through the establishment of the Forum for the Future of Democracy.

4. We are committed to strengthening the rule of law throughout the continent, building on the standard setting potential of the Council of Europe and on its contribution to the development of international law. We stress the role of an independent and efficient judiciary in the member states in this respect. We will further develop legal co-operation within the Council of Europe with a view to better protecting our citizens and to realising on a continental scale the aims enshrined in its Statute.

5. We are resolved to ensure full compliance with our membership commitments within the Council of Europe. Political dialogue between member states, which are committed to promoting democratic debate and the rule of law, evaluation, sharing of best practices, assistance and monitoring – for which we renew our firm support – will be fully used for that purpose. We shall work for the widest possible acceptance of Council of Europe's conventions, promoting their implementation with a view to strengthening common standards in the fields of human rights, democracy and the rule of law.

6. We shall foster European identity and unity, based on shared fundamental values, respect for our common heritage and cultural diversity. We are resolved to ensure that our diversity becomes a source of mutual enrichment, inter alia, by fostering political, inter-cultural and inter-religious dialogue. We will continue our work on national minorities, thus contributing to the development of democratic stability. In order to develop understanding and trust among Europeans, we will promote human contacts and exchange good practices regarding free movement of persons on the continent, with the aim of building a Europe without dividing lines.

7. We are determined to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable social groups. We acknowledge the importance of the European Social Charter in this area and support current efforts to increase its impact on the framing of our social policies. We are resolved to strengthen the cohesion of our societies in its social, educational, health and cultural dimensions.

8. We are determined to ensure security for our citizens in the full respect of human rights and fundamental freedoms and our other relevant international obligations. The Council of Europe will continue to play an active role in combating terrorism, which is a major threat to democratic societies and is unjustifiable under any circumstances and in any culture. It will also further develop its activities in combating corruption, organised crime – including money laundering and financial crime – trafficking in human beings, cybercrime, and the challenges attendant on scientific and technical progress. We shall promote measures consistent with our values to counter those threats.

9. We strongly condemn all forms of intolerance and discrimination, in particular those based on sex, race and religion, including antisemitism and islamophobia. We affirm our determination to further develop, within the Council of Europe, rules and effective machinery to prevent and eradicate them. We will also further implement equal opportunity policies in our member states and we will step up our efforts to achieve real equality between women and men in all spheres of our societies. We are committed to eradicating violence against women and children, including domestic violence.

10. We are determined to ensure complementarity of the Council of Europe and the other organisations involved in building a democratic and secure Europe:

- We are resolved to create a new framework for enhanced co-operation and interaction between the Council of Europe and the European Union in areas of common concern, in particular human rights, democracy and the rule of law.

We entrust our colleague, Jean-Claude Juncker, to prepare, in his personal capacity, a report on the relationship between the Council of Europe and the European Union, on the basis of the decisions taken at the Summit and taking into account the importance of the human dimension of European construction.

Jean-Claude Juncker, seen here addressing the Parliamentary Assembly in April 2005, is asked to prepare a report.

- We are also resolved to secure improved practical co-operation between the Council of Europe and the OSCE and welcome the prospect of enhanced synergy opened up by the

joint declaration endorsed at this Summit.

- We express our commitment to fostering co-operation between the Council of Europe and the United Nations, and to achieving the Millennium Development Goals in Europe.

To launch the Organisation on this new course, we adopt the attached Action Plan.

- We commit our States to promoting the tasks and objectives reflected in the decisions of this Summit, both within the Council of Europe and in other international forums and organisations of which we are members.

As we conclude this Summit in Poland, we pay tribute to the memory of Pope John Paul II.

- We call on Europeans everywhere to share the values which lie at the heart of the Council of Europe's mission – human rights, democracy and the rule of law – and to join us in turning Europe into a creative community, open to knowledge and to diverse cultures, a civic and cohesive community.

Action plan (extracts)

I. Promoting common fundamental values: human rights, rule of law and democracy

1. Ensuring the continued effectiveness of the European Convention on Human Rights

We shall ensure the long-term effectiveness of the Convention for the Protection of Human Rights and Fundamental Freedoms by all appropriate means. To this end we shall provide the European Court of Human Rights with the necessary support and implement all the reform measures adopted at the 114th Session of the Committee of Ministers in May 2004, in accordance with all the modalities foreseen. This includes, as envisaged, the ratification of Protocol No. 14 to the Convention, which is essential for the future effectiveness of the European Convention on Human Rights.

At national level, we shall ensure that:

- there are appropriate and effective mechanisms in all member states for verifying the compatibility of legislation and administrative practice with the Convention;
- effective domestic remedies exist for anyone with an arguable complaint of a Convention violation;
- adequate training in Convention standards is fully integrated in university education and professional training; therefore, we decide to launch a European programme for human rights education for legal professionals and call on member states to contribute to its implementation.

The Committee of Ministers shall review implementation of these measures on a regular and transparent basis.

We establish a group of wise persons to consider the issue of the long-term effectiveness of the ECHR control mechanism, including the initial effects of Protocol 14 and the other decisions taken in May 2004. We ask them to submit, as soon as possible, proposals which go beyond these measures, while preserving the basic philosophy underlying the ECHR.

We underline that all member states must accelerate and fully execute the judgments of the Court. We instruct the Committee of Ministers to elaborate and implement all the necessary measures to achieve this, notably with regard to judgments revealing structural problems including those of a repetitive nature.

2. Protecting and promoting human rights through the other Council of Europe institutions and mechanisms

As the primary forum for the protection and promotion of human rights in Europe, the Council of Europe shall – through its various mechanisms and institutions – play a dynamic role in protecting the right of individuals and promoting the invaluable engagement of non-governmental organisations, to actively defend human rights.

We undertake to strengthen the institution of the Council of Europe

Commissioner for Human Rights, which has proven its effectiveness, by providing the necessary means for the Commissioner to fulfil his/her functions, particularly in the light of the entry into force of Protocol No. 14 to the European Convention on Human Rights.

We shall continue to support the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the unique role it plays, through its visits to places of detention, in improving the conditions of detained persons. We also ask for regular updates of the European prison rules as the basis for the setting-up of standards in prisons. The Council of Europe will assist member states to ensure their implementation.

We will intensify the fight against racism, discrimination and every form of intolerance, as well as attempts to vindicate nazism. We shall therefore give the European Commission against Racism and Intolerance (ECRI) the means to carry out its work, in close co-operation with national authorities and institutions as well as civil society in member states. We welcome ECRI's role in identifying good practices as well as its general policy recommendations, and we decide to disseminate them widely. We will ensure coordination of its activities with equivalent ones in the European Union and the OSCE and other relevant international bodies.

We recall the decision taken at the Strasbourg Summit "to step up co-operation in respect of the protection of all persons belonging to national minorities". Europe's chequered history has shown that the protection of national minorities is essential for the maintenance of peace and the development of democratic stability. A society that considers itself pluralist must allow the identities of its minorities, which are a source of enrichment for our societies, to be preserved and to flourish. We therefore encourage the Council of Europe to continue its activities to protect minorities, particularly through the Framework Convention for the Protection of National Minorities and to protect regional languages through the European Charter for Regional or Minority Languages.

3. Strengthening democracy, good governance and the rule of law in member states

We will strive for our common goal of promoting democracy and good governance of the highest quality, nationally, regionally and locally for all our citizens and pursue our ongoing fight against all forms of totalitarianism.

[…]

At the summit: Terry Davis, Council of Europe Secretary General; Marek Belka, Prime Minister of Poland; and Aleksander Kwasniewski, President of Poland.

II. Strengthening the security of European citizens

1. Combating terrorism

We strongly condemn terrorism, which constitutes a threat and major challenge to our societies. It requires a firm, united response from Europe, as an integral part of the worldwide anti-terrorist efforts under the leadership of the United Nations. We welcome the new Council of Europe Convention on the prevention of terrorism opened for signature during the Summit and draw attention to other instruments and documents that the Council of Europe has drawn up so far to combat terrorism. We call on all member states to respect human rights and to protect victims when combating this scourge, in accordance with the guidelines drawn up by the Council of Europe in 2002 and 2005 respectively.

We will identify other targeted measures to combat terrorism and ensure close co-operation and coordination of common anti-terrorist efforts with other international organisations, in particular the United Nations.

2. Combating corruption and organised crime

The Group of States against Corruption (GRECO) has proved its effectiveness. Accordingly, we urge those member

states that have not already joined it to do so as soon as possible and to ratify the criminal and civil law conventions on corruption. Since corruption is a worldwide phenomenon, the Council of Europe will step up its co-operation with the OECD and the United Nations to combat it on a global level. An increase in the membership of GRECO and its further enlargement to non-member states of the Council of Europe would help achieve this goal.

We also commend the work undertaken by MONEYVAL for monitoring anti-money-laundering measures, including the financing of terrorism. MONEYVAL should continue to strengthen its ties with the Financial Action Task Force on Money Laundering (FATF) under the aegis of the OECD.

We welcome the revision of the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the opening for signature of the revised Convention at the Summit. We call for its signature and ratification.

The Council of Europe will continue to implement its technical assistance programmes for interested member states. It will also support strengthened international co-operation in the fight against transnational organised crime and drug trafficking.

3. Combating trafficking in human beings

We firmly condemn trafficking in human beings which undermines the enjoyment of human rights and is an offence to the dignity and integrity of the human being. We welcome the opening for signature at the Summit of the Council of Europe Convention on action against trafficking in human beings and call for its widest possible ratification and swift entry into force. This is a major step in the fight against trafficking. It will strengthen the prevention of trafficking, the effective prosecution of its perpetrators and the protection of the human rights of the victims. The independent monitoring mechanism set up by the Convention will ensure its effective implementation by the Parties. We will ensure close co-operation between the Council of Europe, the United Nations, the European Union and the OSCE in this field.

4. Combating violence against women

The Council of Europe will take measures to combat violence against women, including domestic violence. It will set up a task force to evaluate progress at national level and establish instruments for quantifying developments at pan-European level with a view to drawing up proposals for action. A pan-European campaign to combat violence against women, including domestic violence, will be prepared and conducted in close co-operation with other European and national actors, including NGOs.

5. Combating cybercrime and strengthening human rights in the information society

We confirm the importance of respect for human rights in the information society, in particular freedom of expression and information and the right to respect for private life.

The Council of Europe shall further elaborate principles and guidelines to ensure respect for human rights and the rule of law in the information society. It will address challenges created by the use of information and communication technologies (ICT) with a view to protecting human rights against violations stemming from the abuse of ICT.

We will also take initiatives so that our member states make use of the opportunities provided by the information society. In this connection the Council of Europe will examine how ICT can facilitate democratic reform and practice. The Council of Europe shall also continue its work on children in the information society, in particular as regards developing their media literacy skills and ensuring their protection against harmful content.

We condemn all forms of ICT use in furthering criminal activity. We therefore urge all member states to sign and ratify the Convention on Cybercrime and to consider signature of its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, the first binding international instruments on the subject.

6. Promoting ethics in biomedicine

The Council of Europe shall continue its standard-setting work on bioethics. We encourage the signing of the Protocol on

Transplantation, the adoption of provisions corresponding to the recommendations on xenotransplantation and further work on the use of genetic testing outside the medical field, entailing discrimination in access to employment and insurance.

[…]

III. Building a more humane and inclusive Europe

1. Ensuring social cohesion.

The Council of Europe will step up its work in the social policy field on the basis of the European Social Charter and other relevant instruments. The central task is to jointly define remedies and solutions which could be effective in fighting poverty and exclusion, ensuring equitable access to social rights and protecting vulnerable groups. The Council of Europe, acting as a forum for pan-European co-operation in the social field, will work out recommendations and promote exchange of best practices in these areas as well as strengthen assistance to member states. […]

2. Building a Europe for children

We are determined to effectively promote the rights of the child and to fully comply with the obligations of the United Nations' Convention on the Rights of the Child. A child rights perspective will be implemented throughout the activities of the Council of Europe and effective co-ordination of child-related activities must be ensured within the Organisation.

[…]

V. Implementing the action plan: a transparent and efficient Council of Europe

We instruct the Committee of Ministers to take steps to ensure that this Action Plan is rapidly implemented by the various Council of Europe bodies, in conjunction where applicable with other European or international organisations.

As an urgent priority, we task the Committee of Ministers and the Secretary General, assisted by independent expertise, to give fresh impetus to the reform process of the Council of Europe's organisational structures and working methods. Building on efforts already in hand, the process shall aim at an efficient functioning of the Organisation according to its objectives and keeping fully in mind the need for budgetary restraints. Special attention should be paid to initiatives that will further secure transparency, cost-efficiency as well as internal co-operation and knowledge sharing.

This reform process will be subject to regular progress reports to the Committee of Ministers. It will be discussed at the Ministerial Meeting in May 2006.

Youth Summit Warsaw, 15-16 May 2005

Participants in the Youth Summit

The participants in the Youth Summit, gathered in Warsaw on 15 and 16 May, called for recognition of "the crucial role of the Council of Europe in the European architecture and for support for the role of young people and youth organisations as key actors in European construction."

A final Declaration was handed to the Heads of State and Government on Tuesday 17 May.

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

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.

Three major conventions adopted

On 3 May 2005 the Committee of Ministers adopted three major conventions concerning the fights against terrorism and trafficking in human beings

Convention on the prevention of terrorism

The Council of Europe has adopted this new convention to increase the effectiveness of existing international texts on the fight against terrorism. It aims to strengthen member states' efforts to prevent terrorism and sets out two ways to achieve this objective:

- by establishing as criminal offences certain acts that may lead to the commission of terrorist offences, namely: public provocation, recruitment and training;

- by reinforcing co-operation on prevention both internally (national prevention policies), and internationally (modification of existing extradition and mutual assistance arrangements and additional means).

The convention contains a provision on the protection and compensation of victims of terrorism. A consultation process is planned to ensure effective implementation and follow up.

Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism

The Council of Europe decided to update and widen its 1990 convention to take into account the fact that not only could terrorism be financed through money laundering from criminal activity, but also through legitimate activities.

This new convention is the first international treaty covering both the prevention and the control of money laundering and the financing of terrorism. The text addresses the fact that quick access to financial information or information on assets held by criminal organisations, including terrorist groups, is the key to successful preventive and repressive measures, and, ultimately, is the best way to stop them.

The convention includes a mechanism to ensure the proper implementation by parties of its provisions.

Convention on action against trafficking in human beings

The aim of this convention is to prevent and combat trafficking in human beings

in all its forms, namely national or international, whether or not it is linked with organised crime.

A first fundamental principle outlined in detail in the new convention is that the protection and promotion of the rights of the victims shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The main added value of this convention is its human rights perspective, its focus on victim protection and its independent monitoring mechanism guaranteeing parties' compliance with its provisions.

For further information, see "Equality between women and men" on page 79.

Adopted texts

Protection of victims of terrorist acts

The Committee of Ministers adopted Guidelines on the protection of victims of terrorist acts. Recognising the suffering endured by victims and their close families, the Committee considers that they should be shown national and international solidarity and support.

The aim of the guidelines is to identify the means that should be used to help victims of terrorism and protect their fundamental rights, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment.

The *Guidelines on the protection of victims of terrorist acts* are an extension of the *Guidelines on human rights and the fight against terrorism*, adopted on 11 July 2002.

- *"Human rights and the fight against terrorism – The Council of Europe Guidelines", Council of Europe Publishing, ISBN: 92-871-5692-1.*

Two key texts in the fights against terrorism

The Committee of Ministers adopted two key texts in the fight against terrorism: one covering the protection of witnesses and collaborators of justice, the second on special investigation techniques for serious crimes including terrorism.

These two themes are amongst Council of Europe priority areas in its action against terrorism.

Witnesses and collaborators of justice can be intimidated and dissuaded from giving evidence freely and openly in investigations into serious crimes including terrorism. The first of the recommendations gives them protection against pressure and guarantees their security.

The closed nature of criminal and terrorist groups strongly reduces the chances of success of traditional investigation techniques. The second recommendation aims to promote the effective use of special investigation techniques by the competent authorities in the framework of criminal investigations into serious crimes, including terrorist acts, whilst strictly respecting individual rights and freedoms.

Conferences

Protection of children

A two-day conference in Lisbon concerning the rights of the child

A two-day conference on "The protection of the rights of the child, in particular against trafficking and violence", organised by the Portuguese Ministry for Foreign Affairs and the Office of the Prosecutor General of Portugal, was launched in Lisbon on 1 June. It was opened by José Adriano Souto Moura, Portuguese Prosecutor General, Maud de Boer-Buquicchio, Council of Europe

Deputy Secretary General and Alvaro Gil-Robles, the Council of Europe's Commissioner for Human Rights.

Diogo Freitas do Amaral, Portuguese Minister of State and Foreign Affairs and Chairman of the Committee of Ministers of the Council of Europe, addressed participants at the closing ceremony on Thursday 2 June.

This conference was organised in the framework of activities by the Portuguese chairmanship of the Committee of Ministers of the Council of Europe.

Declarations

Human rights and the rule of law in the information society, 13 May 2005

The Committee of Ministers adopted a declaration that will set standards for human rights and the rule of law in the information society of mobile phones, the Internet and computer communication.

The declaration is the first international attempt to draw up a framework on the issue and breaks ground by updating the principles of the European Convention on Human Rights for the cyber-age. It also looks at how all the stakeholders such as Internet service providers, hardware and software manufacturers, governments and civil society can co-operate both nationally and internationally on the issue.

The declaration covers issues such as state and private censorship, protection of private information such as content and traffic data, education to help people assess quality information, media ethics, the use of information technology for democracy and freedom of assembly in cyberspace.

The media and the fight against terrorism: Council of Europe reaffirms the principle of freedom of expression, 7 March 2005

The Committee of Ministers stated that the fight against terrorism does not justify any limits on the freedom of expression or information other than those already set out in the European Convention on Human Rights.

In a newly adopted Declaration, the Committee of Ministers stressed that freedom of expression is one of the very pillars of the democratic societies that terrorists aim to destroy, and can also be one of the most effective ways to promote tolerance and understanding, thereby removing important causes of terrorism.

Whilst reminding media professionals of their particular responsibilities with regard to the fight against terrorism, the Committee of Ministers called on public authorities in the 46 Council of Europe member states to guarantee journalists' access to information, to respect their right not to reveal their sources, and to firmly support the editorial independence of media organisations.

Terrorism does not justify any limits on the freedom of expression or information other than those already set out in the Convention

The Committee of Ministers will monitor anti-terrorism measures taken by member governments which could have an effect on media freedom.

Other texts of interest

- Recommendation Rec (2005) 10 to member states on "special investigation techniques" in relation to serious crimes including acts of terrorism. (Adopted by the Committee of Ministers on 20 April 2005 at the 924th meeting of the Ministers' Deputies)

- Recommendation Rec (2005) 7 to member states concerning identity and travel documents and the fight against terrorism. (Adopted by the Committee of Ministers on 30 March 2005 at the 921st meeting of the Ministers' Deputies)

- Recommendation Rec (2005) 5 to member states on the rights of children living in residential institutions. (Adopted by the Committee of Ministers on 16 March 2005 at the 919th meeting of the Ministers' Deputies).

- Statement by the Chairman of the Committee of Ministers on the situation in Belarus, 14 May 2005. "The Chairman of the Committee of Ministers … is deeply concerned about the repeated infringements by the Belarusian authorities of the rights and freedoms protected by international instruments."

Warsaw Summit, 16-17 May 2005

The third Council of Europe Summit of Heads of State and Government was held on 16 and 17 May in the Polish capital, Warsaw – a city with a symbolic importance in the history of Europe.

For further information, see the special section on the Summit in this bulletin, page 39.

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

Situation in member states

Current situation in Kosovo

Recommendation 1708 (2005) and Resolution 1453 (2005)

The present undecided status of Kosovo casts uncertainty over the further political stabilisation of the entire region, including its perspectives of European integration and economic recovery. The Assembly calls on the Government of Serbia and Montenegro, the political forces of Kosovo Serbs and other minorities, the Provisional Institutions of Self-Government and Kosovo Albanian political parties "to engage in a genuine dialogue with a view to reaching a peaceful and mutually acceptable solution which requires concessions from both sides". The Assembly asked the Committee of Ministers "to support the role of the Council of Europe as a facilitator of political dialogue between the parties concerned, in preparation of status talks".

Text adopted on 21 June 2005.
Document 10572.

Honouring of obligations and commitments by the Russian Federation

Recommendation 1710 (2005) and Resolution 1455 (2005)

The Parliamentary Assembly urges Russia to improve its democracy, calling for more power for the Russian parliament, pluralist and impartial broadcasting and normal conditions for civil society.

The Assembly in session, April 2005

In a reference to the reforms of autumn 2004, the Assembly declares: "In order for democracy to function properly, power must not only be vertically reinforced but also horizontally shared."

While acknowledging that the authorities had to deal with serious problems which threatened the country – such as terrorism, corruption or irregular privatisations which led to oligarchic control – the parliamentarians say the solutions, even if adapted to Russia's realities, should be in line with Council of Europe principles.

They call on the Russian authorities to "adjust the direction" of recent reforms, and significantly accelerate the pace of compliance with remaining commitments to the Council of Europe, which Russia joined in 1996.

Other demands included immediate abolition of the death penalty, an end to human rights violations in Chechnya, improvements to the judiciary and "zero tolerance" for the abuse of soldiers. Russia is also asked to cease activities which may undermine the territorial integrity of neighbouring countries, and in particular to withdraw its military forces from Moldova.

Text adopted on 22 June 2005.
Document 10568.

The Assembly also says existing Council of Europe assistance to Russia was insufficient, given its size and diversity, and calls for significantly more funds to help it honour its commitments.

Texts adopted on 22 June 2005.
Document 10564.

Follow-up to Resolution 1359 (2004) on political prisoners in Azerbaijan

Resolution 1457 (2005) and Recommendation 1711 (2005)

In its Resolution 1359 (2004) the Assembly "formally ask[ed] the Government of Azerbaijan for the immediate release on humanitarian grounds of political prisoners whose state of health is very critical, prisoners whose trials were illegal, prisoners having been political activists or eminent members of past governments, and members of their families, friends or persons who were linked to them … [and] the remaining political prisoners already identified on the experts' list."

The Assembly regrets that, in spite of its repeated requests, the Azerbaijani authorities have continued to arrest and convict hundreds of persons for clearly political reasons:

It asks the Azerbaijani authorities to either release these persons conditionally or organise as soon as possible an appeal trial, a cassation trial or a retrial, provided these procedures comply fully with the requirements of a fair trial as laid down in the European Convention on Human Rights.

It calls on the Azerbaijani authorities to implement speedily the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

It welcomes the undertaking by the Azerbaijani authorities to 'make use of every legal remedy (amnesty, review of cases by higher-instance courts, conditional release, release on health condition, pardon) to settle this problem'.

The Assembly urges the Azerbaijani authorities to work actively and fully with the Council of Europe on reforming the judicial system and, in particular, to forward to it without delay the Criminal Code in order to check its compatibility with the European Convention on Human Rights and the Court's case-law.

Lastly, the Assembly renews its request to the Azerbaijani Parliament to pass without delay a law granting a general amnesty, as a measure of national reconciliation, to groups of persons involved in certain events. Such a measure is the only means of securing the release of presumed political prisoners and terminating the proceedings against those who have fled the country and who, as political exiles, now wish to return to Azerbaijan and are prevented from participating in the public life in their country.

Texts adopted on 22 June 2005.
Document 10569.

Functioning of democratic institutions in Azerbaijan

Resolution 1456 (2005)

In November 2005, Azerbaijan will hold parliamentary elections. The Parliamentary Assembly recalls that all previous ballots held since Azerbaijan's accession to the Council of Europe in 2001 failed to meet basic democratic standards.

The Assembly therefore calls on the Azerbaijani authorities and opposition to recognise the importance of the forthcoming elections for the democratic future of the country and publicly and officially to commit themselves to non-violence and respect for basic human rights.

The Assembly therefore resolves to:

– observe the November 2005 parliamentary elections in close co-operation with the OSCE Parliamentary Assembly and the European Parliament and send an important number of observers;

– provide all parliamentary assistance that joint discussions with the Azerbaijani delegation identify as essential, such as training seminars for parliamentarians on the functions of a democratic parliament, the role of the opposition and the rules of procedure of parliament and organise exchanges of views with the participation of the political groups represented in the Assembly in order to share their experience of political dialogue in a democratic society with Azerbaijani parliamentarians and leading extra-parliamentary opposition members;

– co-ordinate its action in this field with the OSCE and the European Union.

Constitutional reform process in Armenia

Resolution 1458 (2005)

The Parliamentary Assembly is "deeply concerned" by the fact that the delay in the adoption of the constitutional amendments is "holding back Armenia's progress towards European democratic norms and standards in key areas of political life". According to the Assembly, the revision of the Constitution is a pre-condition for the fulfilment of some of the most important commitments that Armenia undertook upon its accession to the Council of Europe. These include the separation and balance of powers, the reform of the judicial system and local self-government reform.

At the end of an urgent debate, the Assembly calls on the Armenian authorities and the parliamentary majority to fully implement the recommendations of the Venice Commission, to undertake clear and meaningful steps in order to resume an immediate dialogue with the opposition and to adopt the text at second reading "no later than August 2005", in view of the referendum that should be held "no later than November 2005".

The Assembly calls on the opposition "to stop its parliamentary boycott and do everything possible to promote the recommendations of the Council of Europe with regard to the constitutional reform". The parliamentarians decided to observe the constitutional referendum and, in the meantime, declared their readiness to provide any assistance that might be needed for its preparation.

Text adopted on 22 June 2005.
Document 10601.

Democracy and legal development

Discrimination against women in the workforce and the workplace

Recommendation 1700 (2005)

One of the basic rights of women is not to be discriminated against in the workforce and in the workplace. This right is enshrined in international law, such as United Nations conventions, International Labour Organization (ILO) conventions and the revised European Social Charter, as well as in the national law of all Council of Europe member states and in European Community law. Unfortunately, however, reality does not always comply with the law, and even in Europe women continue to be discriminated against in manifold ways, both in the workforce and in the workplace.

The Parliamentary Assembly thus recommends that the Committee of Ministers:

– entrust the competent intergovernmental committee to set up a project to combat discrimination against women in the workforce and the workplace

– head an awareness-raising campaign to stamp out gender stereotypes and preconceptions relating both to the economic cost of hiring and employing women and to women's roles and abilities, commitment and leadership style in the workplace.

Text adopted on 27 April 2005.
Document 10483.

Discrimination against women and girls in sport

Recommendation 1701 (2005)

Almost ten years after its Resolution 1092 (1996) on discrimination against women in the field of sport and more particularly in the Olympic Games, the Assembly is distressed to observe that women still suffer frequent discrimination in their access to, and practice of, both amateur and professional sport. This discrimination manifests itself in the persistence of stereotyping, the lack of a back-up and support structure for sportswomen and for girls who show potential in their sport, the difficulty of reconciling work/sport and family life.

The Parliamentary Assembly therefore calls on the Committee of Ministers to:

– instruct the CDDS to continue, in co-operation with other relevant bodies, to

Text adopted on 27 April 2005.
Document 10483.

promote the participation of women and girls in sport, to combat discrimination against women and girls in sport and to conduct an in-depth study of national sport policies and their impact on women's and girls' participation in sports activities and to work out a European strategy for women and sport;

– organise a European ministerial conference to launch this strategy.

Text adopted on 28 April 2005.
Document 10521.

Freedom of the press and the working conditions of journalists in conflict zones

Resolution 1438 (2005) and Recommendation 1702 (2005)

The Parliamentary Assembly of the Council of Europe recalls the importance of freedom of expression and information in the media for democratic societies and for each individual. It constitutes a core value guaranteed throughout Europe by the European Convention on Human Rights. Situations of war or conflict do not make the adequate provision of information through the media any less important; on the contrary, they enhance its relevance.

The Assembly recalls and reaffirms that journalists must be considered civilians under Article 79 of Protocol I to the Geneva Conventions of 1949, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents, who are accredited to the armed forces and accompany them without actually being members thereof, to the status of prisoner of war under Article 4.A.4 of Geneva Convention III once fallen into the power of the enemy.

The Assembly recalls also the Committee of Ministers' Declaration and Recommendation No. R (96) 4 on the protection of journalists in situations of conflict and tension, and calls on all member and observer states to comply fully with them.

Furthermore, the Assembly calls on Council of Europe member and observer states to set up compulsory training and information programmes for war correspondents embedded in military forces, to be provided prior to departure.

Finally, the Assembly asks the Secretary General of the Council of Europe to pay particular attention to the fate of journalists in situations of conflict and tension and to regularly follow cases of journalists who are missing, detained or have been wounded or killed in the exercise of their profession in member or observer states or in connection with military or peace-keeping operations conducted by Council of Europe member or observer states abroad.

Text adopted on 28 April 2005.
Document 10477.

Protection and assistance for separated children seeking asylum

Recommendation 1703 (2005)

The Parliamentary Assembly considers the situation of separated children seeking asylum in Council of Europe member states a matter of urgent concern. National legislation, policies and practices fail to address in a coherent manner the threefold protection needs of this group: as children, as children without parents or legal care-givers and as children in the asylum process.

The Assembly therefore recommends that the Committee of Ministers:

– instruct one or more of the specialised committees to conduct in-depth studies on access to the territory and to the asylum procedure for separated children seeking asylum in Council of Europe its member states, as well as on the availability of a system of legal guardianship;

– instruct one or more of the specialised committees to conduct a study to review the practice of member states as regards child-specific forms of persecution;

– draw up, in co-operation and co-ordination with the UNHCR, the Save the Children Alliance and the Separated Children in Europe Programme, a recommendation urging member states to:

– recognise the primacy of the principle of the best interests of the child in all asylum or immigration decisions, procedures, practices or legislative measures affecting minors;

– recognise and fully implement in practice the principle of non-discrimination, ensuring that all rights apply to all children on their territory or within their jurisdiction without exception;

– refrain from refusing entry to their territories to separated children, on any grounds;

–amend their legislation and remove any administrative obstacle so as to ensure that separated children can have a legal guardian and a legal representative appointed as a matter of urgency and not later than two weeks of their presence coming to the knowledge of the authorities;

– ensure that separated children are heard in the context of the asylum procedure, either directly or through their legal guardian, and that they are questioned in a manner in keeping with their age, maturity and psychological situation;

– amend their legislation so as to exempt separated children from accelerated or admissibility asylum procedures;

– recognise child-specific forms of persecution as persecution within the meaning of the 1951 Geneva Convention relating to the Status of Refugees;

– grant special or humanitarian residence permits to children who have been subjected to child-specific forms of persecution and who are not recognised as refugees;

– facilitate family reunification on behalf of separated children, as indicated in Assembly Recommendation 1596 (2003) on the situation of young migrants in Europe;

– allow the detention of separated children only as a last resort and for the shortest possible time, as indicated in Recommendation Rec (2003) 5 of the Committee of Ministers to member states;

– ensure that the return of separated children to their country of origin is implemented only if this is in the best interest of the child;

– call on member states to continue their co-operation with the UNHCR and the Separated Children in Europe Programme in order to introduce a uniform format for registering information on separated children as regards age, gender and country of origin.

Media and terrorism

Recommendation 1706 (2005)

Text adopted on 20 June 2005.
Document 10557.

The Assembly considers it necessary for the public and media to be aware of the fact that terrorists direct their action towards the public and thus utilise the media in order to have the strongest possible impact.

The Assembly invites media professionals to develop through their professional organisations "a code of conduct for journalists, photographers and editors dealing with terrorist acts and threats, in order to keep the public informed without contributing unduly to the impact of terrorism".

It asks the media professionals to refrain from disseminating shocking pictures or images of terrorist acts "which violate the privacy and human dignity of victims or contribute to the terrorising effect of such acts on the public as well as on the victims and their families".

The parliamentarians call on European governments "to abstain from prohibiting or even restricting unduly the provision of information and opinions in the media about terrorism as well as about the reaction by state authorities to terrorist acts and threats under the pretext of fighting terrorism".

The Assembly also calls on the organisation's Committee of Ministers to prepare, under the guidance and in close co-operation with media professionals, a handbook for journalists reporting on terrorist acts and violence and initiate work towards an additional protocol to the Convention on Cyber Crime setting up a framework for security co-operation between member and observer states for the prevention of cyber terrorism, in the form of large-scale attacks on computer systems and through computer systems which threaten national security, public safety or the economic well-being of a state.

Democratic oversight of the security sector in member states

Recommendation 1713 (2005)

Text adopted on 23 June 2005.
Document 10567.

The Council of Europe is concerned about certain practices that have been adopted, particularly in the fight against terrorism, such as the indefinite imprisonment of foreign nationals on no pre-

cise charge and without access to an independent tribunal, degrading treatment during interrogations, the interception of private communications without subsequently informing those concerned, extradition to countries likely to apply the death penalty or the use of torture, and detention and assaults on the grounds of political or religious activism, which are contrary to the European Convention on Human Rights and the Protocols thereto, the Convention against Torture and the Framework Decision of the Council of the European Union.

The Parliamentary Assembly, conscious of the fact that the proper functioning of democracy and respect for human rights are the Council of Europe's main concern, recommends that the Committee of Ministers prepare and adopt guidelines for governments setting out the political rules, standards and practical approaches required to apply the principle of democratic supervision of the security sector in member states.

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

Spain (10-19 March 2005)

The Commissioner for Human Rights of the Council of Europe was received by the King Juan Carlos I and met with the President of the Government, the Ministers for Foreign Affairs, Interior and Justice, the Presidents of the Senate and the Congress of Deputies, the President of the Constitutional Court, the President of the General Council of the Judiciary and the Defensor del Pueblo among others.

He also travelled to Catalonia, the Basque Country and Andalusia, where he had meetings with the Presidents and members of the Governments of each of these Autonomous Communities as well as with the leaders of other prominent regional institutions.

The Commissioner, as usual, held preparatory meetings with representatives of non-governmental organisations in Madrid and in each of the Autonomous Communities visited.

The Commissioner's programme included visits to prisons, police stations, centres for foreigners and unaccompanied minors, and centres for victims of domestic violence.

During his visit in Spain, the Commissioner focused on asylum procedure, situation of migrants, domestic violence, police behaviour, prison conditions, the administration of justice and the respect for human rights in the Basque Country.

Italy (10-17 June 2005)

During his visit, the Commissioner met with the Ministers of Interior, Justice, Labour and Social Affairs, and the Minister for Equal Opportunity as well as the Undersecretary of State of the Foreign Affairs. He also met with the Vice-Chairmen of the Senate and Parliament, Presidents of Constitutional and Supreme Courts, the General Prosecutor, local authorities, NGOs and civil society representatives.

With the aim to gain a personal opinion of the effective respect of human rights, the Commissioner visited a number of sites throughout the country including prisons for minors and adults, two detention centres for migrants – Lampedusa and Ponte Galeria (Rome) – a Roma settlement, a centre for victims of violence, assistance centres for children and a judicial psychiatric hospital.

The main issues of concern for the Commissioner during his visit were the treatment of regular and irregular migrants and asylum seekers as well as their social integration, conditions of detention, the administration of justice, the situation of Roma/Sinti in Italy and the care of mentally ill persons.

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

Publications

Preliminary report on the Roma, Sinti and Travellers situation

The Commissioner published his preliminary report on the human rights situation of the Roma, Sinti and Travellers in Europe on 4 May 2005.

While documenting the principal human rights violations the Roma are subjected to, the preliminary report also presents a series of recommendations for overcoming discrimination in housing, education, employment and health care as well as the treatment of Roma by public authorities.

The preliminary report calls for the active cooperation between and engagement and of all authorities, institutions and people concerned, including the Roma themselves, to ensure the full respect of human rights of Roma, Sinti and Travellers. Protocol No. 12 of the European Convention on Human Rights related to non-discrimination and the Equality Directive of the European Union provides a sound legal foundation for these efforts.

The Commissioner also welcomes the establishment of the European Roma and Travellers' Forum which will contribute to a greater understanding of the diversity and needs of the Roma communities in Europe and amplify their voices in European and national decision-making.

The preliminary report is available on the website of the Commissioner. Governments, associations and civil society are invited to submit comments. The Commissioner will subsequently issue a consolidated version in the light of these comments.

Reports on country visits

Russian Federation

On 20 April 2005 the Commissioner presented his report on the respect for human rights in the Russian Federation to the Committee of Ministers. The report was forwarded to the Parliamentary Assembly of the Council of Europe.

The report was prepared in the light of two extensive visits to the Russian Federation, between the 15 and 31 July and 19 and 29 September 2004. The Commissioner travelled to 6 of the 7 Russian Federal Districts, including visits to the regions of Khabarovsk, Irkutsk and Sverdlovsk, the Republic of Tatarstan, the region of Krasnodar, the Okrug of Khanty-Mansiisk, the region of Stavropol and the Chechen Republic, before concluding with Ministerial meetings in Moscow.

During his visits the Commissioner held meetings with representatives of the federal and regional authorities, the judiciary, and the forces of law and order. 39 establishments were visited, including hospitals, schools, courts, military barracks, police stations, orphanages, old people's homes and 11 detention facilities of different types. The Commissioner met with representatives of NGOs in each of the regions visited.

The resulting report pays particular attention to the administration of justice, police behaviour, prison conditions, the respect for human rights within the armed forces, freedom of the press, the rights of national and religious minorities, the fight against racism and xenophobia, the rights of foreigners, the enjoyment of social rights, the activity of NGOs and human rights institutions, the situation of vulnerable groups such as children, women, in the context of the recent social reform, the elderly and the disabled, and the respect for human rights in the Chechen Republic. It concludes with recommendations to the Russian authorities.

On 27 May 2005 the Commissioner presented his report to the Russian Federation President, Mr Vladimir Putin, during a meeting in Moscow.

Croatia

On 4th May 2005, the Commissioner presented to the Committee of Ministers his reports on the respect for human rights in Croatia and Liechtenstein.

The Commissioner's report on Croatia, following his visit in June 2004, addresses in particular the large backlog of judicial cases, prison conditions, the

issue of missing persons, and the situation of the Roma. The Commissioner also emphasises the need to facilitate the return of displaced persons and refugees to their regions of origin, which requires further efforts in respect of housing, security and employment.

Liechtenstein

The report on Liechtenstein, following the Commissioner's visit in December 2004, focuses on the rights of foreigners in Liechtenstein, trafficking in human beings, the functioning of the judiciary and the police.

United-Kingdom

On 8th June 2005, the Commissioner presented his reports following his official visits to United Kingdom and Switzerland in November 2004.

The Commissioner's report on the United Kingdom examines amongst other issues the recently adopted anti-terrorism legislation in addition to the asylum system, the juvenile justice system, prison conditions and the human rights impact of anti-social behaviour orders. The respect for human rights in Northern Ireland is also examined.

Switzerland

The Commissioner's report on Switzerland examines the asylum system, the treatment of rejected asylum seekers, trafficking in human beings, racism and xenophobia, the independence of the judiciary and domestic violence amongst other issues.

All the visit reports are available on the Commissioner's website.

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

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

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

Steering Committee for Human Rights (CDDH)

Towards the elaboration of a draft legally binding instrument on access to official documents.

Access to official documents

At their 925th meeting (3-4 May 2005), the Ministers' Deputies adopted ad hoc terms of reference requesting the Steering Committee for Human Rights (CDDH) to prepare a legally binding instrument on access to official documents. The content of this instrument should be based on the provisions of Recommendation Rec (2002) 2 on access to official documents (adopted by the Committee of Ministers on 21 February 2002).

The CDDH entrusted its Group of Specialists on Access to Official Documents (DH-S-AC) with the task of making precise proposals. This Group, which will meet from 18 to 20 January 2006, is composed of representatives of the following member States: Belgium (Chair), Bulgaria, Denmark, France, Germany, Italy, the Netherlands, Norway, Poland, Portugal, Russian Federation, Spain, Sweden, Turkey and the United Kingdom. Several bodies may also be represented as observers: the European Committee on Legal Co-operation (CDCJ), the Steering Committee on the Media and New Communication Services (CDMC), the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD), the European Commission, the International Council on Archives as well as the NGOs Article XIX and Open Society Justice Initiative.

The CDDH will submit an interim report by 30 April 2006 in which it will indicate the Committee's preference concerning the form of the instrument and of a possible follow-up mechanism. The Ministers' Deputies will then give their position on these proposals so that the CDDH and its Group of Specialists can pursue their work.

Protecting human rights while fighting terrorism

Implementation of the Guidelines on the fight against terrorism and the Guidelines on the protection of victims of terrorist acts.

The Council of Europe considered that, after the adoption of the Guidelines on Human Rights and the Fight against Terrorism in July 2002 the very specific nature of the situation of victims of terrorist acts also needed to be taken into account. Guidelines on the Protection of Victims of Terrorist Acts were therefore adopted by the Committee of Ministers on 2 March 2005. These Guidelines are of the same type as those of July 2002, that is to say based on existing legal standards arising, in particular, from the case-law of the European Court of Human Rights. These Guidelines recognise the suffering endured by victims and consider that they must benefit from national and international solidarity and support. States are encouraged to provide to victims and, in appropriate circumstances, to their close family, emergency and continuing assistance. Moreover, these Guidelines deal with key issues such as the need to grant

fair and appropriate compensation, to facilitate access to the law and to justice, as well as to protect their private and family life, their dignity and security.

The Council of Europe considers that it is not sufficient to elaborate legal instruments to deal with the issue of human rights and the fight against terrorism. There is indeed also a strong need to look at their implementation at national level. In this context, the CDDH organised a High Level Seminar on "Protecting Human Rights while fighting Terrorism" on 13 and 14 June 2005. The aim of this Seminar was to assist those persons involved in the fight against terrorism to apply the Guidelines and to exchange views with national experts in the fight against terrorism, as well as with representatives of civil society, of various Council of Europe bodies and other international organisations, as well as a large number of members of the CDDH.

The conclusions of this Seminar were presented by the Rapporteur General, Mr Egbert Myjer, Judge at the European Court of Human Rights. These conclusions highlighted various proposals for possible activities suggested at the Seminar, to be carried out both at national and at the Council of Europe levels.

As a follow-up to this, the CDDH decided to begin reflection on some of the issues raised during the Seminar, notably on the human rights issues raised by "diplomatic assurances" given by certain national authorities in the framework of the fight against terrorism (extradition, return ("refoulement"), international judicial co-operation in criminal matters, etc.). To this end, it decided to reconvene the Group of Specialists on Human Rights and the Fight against Terrorism (DH-S-TER) which will hold a first meeting from 7 to 9 December 2005.

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

In June 2005 Hungary ratified the 1988 Additional Protocol and procedures of ratification of the Revised European Social Charter have been achieved in Malta and Georgia. Malta deposited the instruments of signature and ratification on 27 July and Georgia deposited the instrument of ratification on 22 August.

In total, all of the 46 member States of the Council of Europe have signed the 1961 Charter or the 1996 revised Charter and 39 have ratified one or other of these two instruments.

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

The Conclusions (cycle XVII-2) concerning the application of the 1961 Social Charter by:

- Austria
- Denmark
- Germany
- Greece
- Hungary
- Latvia
- Malta
- Poland
- Portugal
- Spain
- Turkey

and the Conclusions of 2005 concerning the application of the Revised Social Charter by:

- Estonia
- France
- Lithuania
- Moldova
- Romania
- Slovenia
- and Sweden

are published on the Charter web site.

Collective complaints

Greece: the right of the family to social, legal and economic protection

Collective complaint No. 15/2003 was lodged by the European Roma Rights Centre. It was alleged that the Greek legislation discriminated against the Roma who were denied an effective right to housing and that in practice there was widespread discrimination against Roma who furthermore were often the subject of forced eviction.

The European Committee of Social Rights concluded that there was a violation of Article 16 of the Charter on three grounds:

- the insufficiency of permanent dwellings,
- the insufficiency of adequate temporary stopping facilities,
- the evictions and other excessive sanctions towards Roma.

Greece, Ireland, Italy, Portugal, Belgium: the right of children and young persons to social, legal and economic protection

Five collective complaints (No. 17 to 21/2003) were lodged against Greece, Ireland, Italy, Portugal and Belgium by the World Organisation Against Torture (OMCT). It was alleged that, in these States, the law had not effectively prohibited corporal punishment of children, nor had it prohibited other forms of degrading punishment or treatment of children, neither did they provide adequate sanctions in penal or civil law.

As regards Italy and Portugal (complaints No. 19 and No. 20), the European Committee of Social Rights considered that the polls used by the OMCT in support of its allegations did not provide sufficient evidence that corporal punishment inflicted on children was common practice in these two countries and concluded that there was no violation of Article 17 of the Charter.

However, the Committee concluded that there was violation of Article 17 by Belgium, Greece and Ireland on the ground that there was no explicit prohibition of all forms of violence against children

- in the family or in non-institutional childcare facilities (in Belgium),
- in most of the institutions and forms of care for children (in Greece),
- as regards the situation of children in foster care, residential care and certain childminding settings (in Ireland).

France: right to just conditions of work: right to safe and healthy working conditions and right to protection of health

Complaint No. 22/2003 was lodged against France by the Confédération Générale du Travail (CGT). It was alleged that the regulations concerning "périodes d'astreinte", the "annual working days" system and the annual quota of overtime amended by the law No. 2003-47 of 17 January 2003 (referred to as "loi Fillon II") relating to wages, working time and development of employment violated Articles 2, 3 and 11 of the Charter.

The Committee concluded that the assimilation of "périodes d'astreinte" to rest periods constituted a violation of reasonable working time as provided for in Article 2 § 1 and that, as far as these "périodes d'astreinte" could be on Sundays, paragraph 5 was not respected either.

Furthermore, the situation of managerial staff covered by the annual working days systems constituted a violation of Article 2 § 1, given the excessive length of weekly working time permitted as well as the absence of adequate guarantees in collective bargaining.

Two collective complaints were declared inadmissible by the European Committee of Social Rights:

- Complaint No. 28/2004 lodged by the Syndicat national des dermato-vénérologues (SNDV) against France (Article 1 § 2)
- Complaint No. 29/2005 lodged by the Syndicat des hauts fonctionnaires (SAIGI) against France (Article 5).

Three collective complaints were lodged recently:

- Complaint No. 30/2005 was lodged against Greece by the Marangopoulos Foundation for Human rights (MFHR). It is alleged that, in the main areas where lignite is mined, the State has not adequately prevented the impact for the environment nor has developed an appropriate strategy in order to prevent and respond to the health hazards for the population. It is also alleged that there is no legal framework guaranteeing security and safety of persons working in lignite mines and that the latter do not benefit from reduced working hours or additional holidays;

- Complaint No. 31/2005 was lodged against Bulgaria by the European Roma Rights Center (ERRC). It is alleged that the situation of Roma amounts to a violation of the right to adequate housing;

- Complaint No. 32/2005 was lodged against Bulgaria by the European Trade Union Confederation (ETUC), the Confederation of Independent Trade Unions in Bulgaria (CITUB) and the Confederation of Labour "Podkrepa" (CL "Podkrepa"). It is alleged that the right to strike is restricted in several sectors of the economy in a manner that is not in conformity with the Revised Charter.

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

Albania

During this visit, the Committee's sixth visit to Albania, the delegation followed up a number of issues examined during the previous visits concerning, in particular, the treatment of persons detained by law enforcement agencies and the conditions of detention in pre-trial detention facilities, as well as in high-security prisons. In addition, the delegation reviewed the efficacy of legal remedies in a number of individual cases involving allegations of police ill-treatment. For the first time, the delegation examined in detail the situation of mentally ill prisoners and persons who have been declared criminally irresponsible. The delegation also carried out a follow-up visit to Vlora Psychiatric Hospital.

Belgium

During the Committee's fourth periodic visit to Belgium, the CPT's delegation followed up a number of issues examined during previous visits, in particular the treatment of persons deprived of their liberty by the police, the procedures and methods applied during the repatriation by air of foreign nationals, as well as the situation in prisons and psychiatric hospitals. It also visited for the first time "De Grubbe" Closed Centre for the temporary placement of minors in Everberg and the Forensic Psychiatric Departments at the Sint-Kamillus University Psychiatric Centre in Bierbeek.

CPT Video-Kit

International Day in support of Victims of Torture

To mark the International Day in support of Victims of Torture on Sunday 26 June 2005, the Council of Europe has released video pictures that show what can happen to detainees. They are based on the field experience of the CPT. Through the CPT, which has the right to visit any detention site without prior warning, the 46-nation Council of Europe works for better treatment of detainees in prisons, police stations and other places of detention.

Contents

The video contains a series of reconstructions, using actors and actresses, including:

- Police arresting a suspect in the street
- Police officers forcibly removing a deportee from his cell to an aircraft
- Prison officers transferring a prisoner to a disciplinary cell
- Health care staff restraining an agitated psychiatric patient
- Another reconstruction – the first of its kind – shows a typical CPT inspection to a prison (for reasons of confidentiality, cameras are never allowed to film a real CPT visit).

Further information

The pictures do not represent any particular country, but are typical of the kinds of situations that the CPT may observe in Europe. Detailed content descriptions and downloadable extracts from the video are available at: http://www.cpt.coe.int/en/press.htm.

The videokit, primarily aimed at TV journalists, has been produced by the Council of Europe's Directorate of Communication (DC). Broadcast standard pictures are available from the European Broadcasting Union in Geneva: http://www.eurovision.net/ or by unilateral transmission from the Council of Europe. The CPT videokit (BETA format) is available from the Council of Europe's Communications and Research Directorate, Multimedia and Audiovisual: audiovisual@coe.int

Some of the scenes can be used for training purposes. The CPT has a number of copies available on DVD and VHS, in PAL format. A copy can be obtained from Patrick Müller, contact: cptdoc@coe.int

Hungary

A delegation of the CPT carried out a ten-day visit to Hungary. This visit was the Committee's third periodic visit to Hungary.

During the visit, the CPT's delegation followed up a number of issues examined during previous visits, in particular the holding of remand prisoners on police premises, the treatment of foreign nationals held under the aliens legislation, as well as the situation in prisons and social care homes. The delegation also visited for the first time the only high-security psychiatric hospital in Hungary, accommodating patients undergoing compulsory psychiatric treatment by court order.

Russian Federation

The CPT recently carried out a visit to the Russian Federation. It was the Committee's fourth periodic visit to Russia.

The visit focused on the City and Region of Moscow, the Republic of Mordovia and Rostov Region. In addition to Internal Affairs and penitentiary establishments, places of detention visited included detention facilities run by the Federal Security Service and holding cells in Moscow courts. Further, for the first time in Russia, the CPT examined the

treatment of children and adults placed in psycho-neurological homes ("internats").

Slovak Republic

During the committee's third periodic visit to the Slovak Republic, the CPT's delegation followed up a number of issues examined during previous visits, in particular the treatment of persons deprived of their liberty by the police, as well as the situation in prisons and social services homes. For the first time in the Slovak Republic, the CPT visited psychiatric establishments.

Ad hoc visits

Azerbaijan

A delegation of the CPT carried out an *ad hoc* visit to Azerbaijan from 16 to 20 May 2005. It was the CPT's third visit to Azerbaijan.

The main purpose of the visit was to examine the situation at Gobustan Prison, which holds all of the country's life-sentenced prisoners as well as other long-term prisoners. The CPT's delegation also visited Strict regime penitentiary establishment No. 15 in Baku. In addition, the visit was an opportunity to take stock of recent developments in the Azerbaijani prison system.

Malta

The CPT carried out an *ad hoc* visit to Malta from 15 to 21 June 2005. It was the Committee's fifth visit to that country.

The main purpose of the visit was to follow up the implementation by the Maltese authorities of the recommendations made by the CPT concerning the detention centres for foreigners visited in January 2004. The delegation also sought information concerning the enquiry ordered by the prime minister, Mr Lawrence Gonzi, into incidents at Safi Barracks in January 2005.

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.

Czech Republic

Government's follow-up response to the CPT's visit in September 2003 (published 14 April 2005)

In a follow-up response published with its agreement, the Czech Government provides additional information concerning the implementation of recommendations of the CPT after a visit to the Czech Republic in April 2002. In its visit report, the CPT focused on the safeguards offered to persons detained by the police and examined, for the first time in the Czech Republic, the conditions of stay in holding facilities for foreigners, as well as the treatment of psychiatric patients.

Building on its initial response, which covered the period 2003, the Czech Government indicates the steps taken in the year 2004 to further implement the CPT's recommendations and highlights planned action for the future.

Estonia

Report on the CPT's visit in September 2003 and Government's responses (published 27 April 2005)

The CPT has published the report on its visit to Estonia in September 2003, together with the Estonian Government's response. These documents have been made public with the agreement of the Estonian authorities.

During this visit, the CPT's delegation reviewed measures taken by the Estonian authorities in response to the rec-

ommendations made by the Committee after the 1999 visit, in particular as regards the safeguards offered to persons detained by the police and conditions of detention in police arrest houses. In addition, visits were carried out to a psychiatric hospital as well as a social welfare home for persons with severe learning disabilities.

Georgia

Report on the CPT's visit in November 2003 and May 2004 (published 30 June 2005)

The CPT has published its second report on Georgia. The report concerns the CPT's periodic visit to that country which took place in two parts: in November 2003 and in May 2004.

In the report, the CPT concluded that criminal suspects continued to run a significant risk of being ill-treated by the police. To prevent ill-treatment, the Committee has proposed measures concerning in particular the integration of human rights concepts into practical professional training and the stepping up of the training of investigators and police operational staff in modern interrogation and investigation techniques. The CPT has also recommended that the legal safeguards against ill-treatment (such as notification of custody, access to a lawyer and access to a doctor) be rendered fully effective in practice.

As regards prisons, the CPT has expressed concern at the lack of progress in numerous areas of the Georgian penitentiary system. The increase in the prison population and the very poor state of the existing prison estate rendered conditions in many establishments in clear violation of the provisions of both Georgian legislation and international standards. On the positive side, the CPT noted that considerable progress had been made in the area of combating the spread of tuberculosis. The Georgian government, which requested the publication of the CPT's report, is preparing its response to the points raised by the Committee.

Latvia

Report on the CPT's visit in September/October 2002, and Government responses (published 10 May 2005)

The CPT has published the report on its visit to Latvia in September/October 2002, together with the Latvian Government's response. These documents have been made public with the agreement of the Latvian authorities.

During this visit, the CPT's delegation reviewed the measures taken by the Latvian authorities following the recommendations made by the Committee after the 1999 visit. Particular attention was paid to the treatment of persons detained by the police and border guards, as well as the conditions of detention of life-sentenced prisoners and of juveniles on remand held in prison. For the first time in Latvia, a visit was carried out to a social welfare home.

United Kingdom

A follow-up report on the CPT's visit in March 2004, and Government responses (published 9 June 2005)

In this report the CPT re-assesses the treatment of foreigners detained in the United Kingdom pursuant to the Anti-Terrorism, Crime and Security Act 2001 (ATCSA).

The visit of the CPT in March 2004 focused on the impact of the conditions of detention on the mental and physical health of the detainees. It found that many of them were in a poor mental state as a result of their detention, and some were also in poor physical condition. Detention had caused mental disorders in the majority of persons detained under the ATCSA. For those who had been subjected to traumatic experiences in the past, it had clearly reawakened the experience. The absence of control resulting from the indefinite character of detention, the uphill difficulty of challenging the detention and the fact of not knowing what evidence was being used against them had a detrimental effect on their health. The CPT concluded that for some of them, their situation at the time of the visit could be considered as amounting to inhuman and degrading treatment.

In its response the United Kingdom Government rejects this conclusion and

maintains that throughout their detention under the ATCSA powers, the individuals concerned received humane and decent treatment and appropriate levels of medical and psychological care. The Government also responds to other points raised in the CPT's report, most notably in relation to the organisation and provision of health care services for prisoners and the operation of special advocates.

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

Latvia ratified the Framework Convention for the Protection of National Minorities on 6 June 2005. It will enter into force for Latvia on 1 October 2005.

Latvia is the 37th state to ratify the Framework Convention.

Declaration

The Republic of Latvia,

- Recognising the diversity of cultures, religions and languages in Europe, which constitutes one of the features of the common European identity and a particular value;
- Taking into account the experience of the Council of Europe member States and the wish to foster the preservation and development of national minority cultures and languages, while respecting the sovereignty and national-cultural identity of every State;
- Affirming the positive role of an integrated society, including the command of the State language, to the life of a democratic State;
- Taking into account the specific historical experience and traditions of Latvia,

Declares that the notion "national minorities" which has not been defined in the Framework Convention for the Protection of National Minorities, shall, in the meaning of the Framework Convention, apply to citizens of Latvia who differ from Latvians in terms of their culture, religion or language, who have traditionally lived in Latvia for generations and consider themselves to belong to the State and society of Latvia, who wish to preserve and develop their culture, religion or language. Persons who are not citizens of Latvia or another State but who permanently and legally reside in the Republic of Latvia, who do not belong to a national minority within the meaning of the Framework Convention for the Protection of National Minorities as defined in this declaration, but who identify themselves with a national minority that meets the definition contained in this declaration, shall enjoy the rights prescribed in the Framework Convention, unless specific exceptions are prescribed by law.

Statement on Article 10 of the Framework Convention for the Protection of National Minorities

The Republic of Latvia declares that it will apply the provisions of Article 10, paragraph 2, of the Framework Convention without prejudice to the Satversme (Constitution) of the Republic of Latvia and the legislative acts governing the use of the State language that are currently into force.

Statement on Article 11 of the Framework Convention for the Protection of National Minorities

The Republic of Latvia declares that it will apply the provisions of Article 11, paragraph 2, of the Framework Convention without prejudice to the Satversme (Constitution) of the Republic of Latvia and the legislative acts governing the use of the State language that are currently into force.

First monitoring cycle

Opinions of the Advisory Committee

Slovenia

The first Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities on measures taken in this field by Slovenia was made public on 14 March at the country's initiative. The Opinion and the Government's Comments on it are available on-line.

Below is a short summary of the Opinion of the Advisory Committee:

"Following the receipt of the initial State Report of Slovenia on 29 November 2000 (due on 1 July 1999), the Advisory Committee commenced the examination of the State Report at its 10th meeting from 2 to 6 April 2001. In the context of this examination, a delegation of the Advisory Committee visited Slovenia, from 11 to 14 January 2002, in order to seek further information on the implementation of the Framework Convention from representatives of the Government as well as from NGOs and other independent sources. The Advisory Committee adopted its opinion on Slovenia at its 15th meeting on 12 September 2002.

As concerns the implementation of the Framework Convention, the Advisory Committee considers that Slovenia has made particularly commendable efforts in respect of the Hungarian minority, notably as regards its status in such fields as education and participation in public affairs. Similarly, particularly commendable efforts have been made in respect of the Italian minority, inter alia, in the fields of media and participation in public affairs.

At the same time, efforts will have to be made to ensure the full realisation in practice of the Framework Convention. There is scope for improvement in the media sector concerning the Hungarian minority for which public radio and TV broadcasts should be significantly extended. In the field of education, efforts by the Italian minority to recruit and train qualified staff should be further supported. As regards the use of Hungarian and Italian in relations with administrative authorities, there remain shortcomings in the practical implementation of existing legal provisions.

Problems remain in respect of the implementation on the Framework Convention as concerns all the different groups of Roma, especially as regards housing, employment, the existence of important socio-economic differences as well as acts of discrimination. Further measures to promote equal opportunities in the access of Roma to education should be taken given their unsatisfactory status in this field."

Bosnia and Herzegovina

The first Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities on measures taken in this field by Bosnia and Herzegovina was made public on 11 May. The Opinion and the Government's Comments on it are available on-line.

Below is a short summary of the Opinion of the Advisory Committee:

"The Advisory Committee received the initial State Report of Bosnia and Herzegovina on 20 February 2004 (due on 1 June 2001), i.e. after the Ministers' Deputies had authorised the Advisory Committee to start its monitoring in respect of Bosnia and Herzegovina on 3 September 2003. In the context of the examination of the State Report, a delegation of the Advisory Committee visited Bosnia and Herzegovina from 23 to 27 February 2004 in order to seek further information on the implementation of the Framework Convention from representatives of the Government as well as from NGOs and other independent sources. The Advisory Committee adopted its opinion on Bosnia and Herzegovina at its 19th meeting on 27 May 2004.

The Advisory Committee notes with satisfaction that national minorities' issues have recently received some attention by the authorities, as evidenced by the adoption of a Law on the Protection of Rights of Persons Belonging to National Minorities and amendments to the Election Law. Furthermore, the har-

monisation of legislation by the Entities has, inter alia, allowed for further development of minority language education.

The Advisory Committee considers that the implementation of relevant norms in practice remains a major problem. This is particularly so in relation to the Law on the Protection of Rights of Persons Belonging to National Minorities. The provisions on teaching minority languages, on media broadcasting for national minorities and on proportional representation in public authorities and in the civil service have not prompted substantial changes in practice. New consultation structures for national minorities, such as the proposed Council of National Minorities and corresponding bodies at the level of the Entities, have not been set up despite concrete legal obligations. These shortcomings need to be addressed as a matter of priority by the authorities both at the State and Entity levels.

As regards access to political posts, rigid rules are still in force at the State level but progress has recently been made at Entity level in terms of widening access to certain authorities. Further consideration should therefore be given by the authorities to finding ways and means of addressing the exclusion of, inter alia, persons belonging to national minorities from certain posts at State and Entity levels. Consideration should also be given to developing specific parliamentary mechanisms to better protect the interests of national minorities. Greater attention should be paid to tackling discrimination in practice, notably in access to employment, a problem affecting all those not belonging to the constituent people in a numerical majority in the area concerned.

Despite progress in the reconciliation process, there remains a lack of trust among ethnic groups and hostility related to the return of refugees and displaced persons. Efforts are needed to promote interethnic dialogue and to encourage wider acceptance of those currently referred to as "Others" as part of the society of Bosnia and Herzegovina.

Given the needs and the demands in this matter, the possibility to give greater support for initiatives coming from national minorities to promote their languages and cultures should be considered.

Serious problems remain in the application of the Framework Convention with regard to the Roma. Full and effective equality has not been secured for Roma, who continue to be exposed to discrimination and face particular difficulties in fields such as housing, health care, employment and education. A comprehensive national strategy is needed to improve their situation, drawing on the experience gained in the recent elaboration of an Action Plan on their educational needs. In this context, particular attention should be paid to ensuring improved participation of Roma in public affairs."

Adoption of Committee of Ministers' Resolutions

The Committee of Ministers adopted conclusions and recommendations in respect of Albania, Bosnia and Herzegovina and "the former Yugoslav Republic of Macedonia". These texts are available on-line.

Follow-up meetings

Sweden

The Swedish authorities and the Council of Europe organised a "follow-up seminar" on 25 April 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 Sweden.

Second monitoring cycle

Second State Reports received

The Second State Reports of the following countries were received between 1 March and 30 June 2005: Germany, Russian Federation, Romania.

They are available from the Framework Convention's Web site (Monitoring mechanism).

Country visits

Slovenia

A delegation of the Advisory Committee on the Council of Europe's Framework Convention for the Protection of National Minorities visited Ljubljana, Murska Sobota, Lendava and Koper-Capodristria from 4 to 8 April in the context of the monitoring of the implementation of this convention in Slovenia.

Slovakia

A delegation of the Advisory Committee on the Council of Europe's Framework Convention for the Protection of National Minorities visited Bratislava and Košice from 4 to 6 April in the context of the monitoring of the implementation of this convention in Slovakia.

Adoption of Opinions under the second monitoring cycle

Slovakia
Slovenia

The Advisory Committee on the Framework Convention for the Protection of National Minorities adopted two country-specific Opinions under the second cycle of monitoring between March and June. The Opinions adopted relate to Slovakia and Slovenia. 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.

Publication of Opinions of the Advisory Committee

Croatia

The second Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities on measures taken in this field by Croatia was made public on 13 April at the country's initiative. The Opinion and the Government's Comments on it are available on-line.

Below is a short summary of the Opinion of the Advisory Committee:

"Croatia has taken a number of steps to improve the implementation of the Framework Convention following the adoption of the first Opinion of the Advisory Committee in April 2001 and the Committee of Ministers' Resolution in February 2002. This process has included important changes in both legislation and practice, and it has been facilitated by an increased dialogue between the authorities and representatives of national minorities.

There remain nevertheless problems in putting the new legal guarantees into practice. For example, the participation of national minorities in the judiciary and in administrative bodies is not yet adequate. The authorities should also pay more attention to the protection of minority languages in particular at the local level.

The work to remove obstacles to the return of persons belonging to the Serbian national minority to Croatia must be continued, and ethnic discrimination needs to be tackled more vigorously. Roma continue to face various problems and therefore the commendable initia-

tives in the National Programme for the Roma should be carried out without any undue delays."

Denmark

The second Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities on measures taken in this field by Denmark was made public on 11 May at the country's initiative. The Opinion is available on-line.

Below is a short summary of the Opinion of the Advisory Committee:

"The German minority in Denmark enjoys a commendable level of protection in terms of the system of German minority schools and day care facilities and the consultative structure established for the German minority through the Secretariat of the German Minority in Copenhagen and the Liaison Committee concerning the German minority.

There are, however, current concerns, which need to be addressed by the authorities, about proposed administrative reforms and the impact that these could have on the political representation of persons belonging to the German minority at municipal and regional levels as well as at the level of the Region South-Jutland Schleswig.

There have been significant improvements to the anti-discrimination legal framework in Denmark, notably through the adoption of the Act on Ethnic Equal Treatment. Intolerance, however, remains an issue which needs to be addressed further, inter alia, in the political arena as well as in certain media. Legislation such as the reform of the Aliens Act, and policy, such as the Government's policy towards integration, may contribute to a climate of intolerance towards different ethnic and religious groups and should be reviewed as necessary, taking into account, at the same time, the need to tackle discrimination.

The Government is encouraged, following discussions with those concerned, to re-consider its position concerning the personal scope of application of the Framework Convention."

Moldova

The second Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities on measures taken in this field by Moldova was made public on 24 May at the country's initiative. The Opinion and the Government's Comments on it are available on-line.

Below is a short summary of the Opinion of the Advisory Committee:

"Following the adoption of the first Opinion of the Advisory Committee in March 2002 and the Resolution of the Committee of Ministers in January 2003, Moldova has taken new measures to improve the situation of persons belonging to national minorities in various areas affecting preservation of their culture, language and traditions.

Nevertheless, significant problems remain, some of them connected to the unsolved issue of Transnistria and to difficulties to find a solution, in accordance with the principles of territorial integrity and national sovereignty of Moldova.

The authorities should pay more attention to the multicultural and intercultural dimension of education, as well as to the quality of the teaching provided for persons belonging to national minorities. They should also try to expand teaching in and of the various minority languages, and find ways of ensuring a more balanced presence of those languages in the media and in relations with the administrative authorities. To meet the specific needs of different national minorities, the participation of the representatives of national minorities in decision-making should be re-enforced.

Increased efforts should also be made to promote tolerance and intercultural dialogue, including a more effective monitoring of the situation in this area.

The situation of the Roma, who are still faced with discrimination, social exclusion and marginalisation, remains a source of serious concern. Increased action is needed to improve their social, economic and educational situation, as well as their participation in public life."

UNMIK report in respect of Kosovo

On 8 June, the UN Interim Administration in Kosovo (UNMIK) submitted its Report in conformity with the agreement signed on 23 August 2004 by UNMIK and the Council of Europe related to the Framework Convention for the Protection of National Minorities.

According to the agreement, the Committee of Ministers of the Council of Europe, assisted by the Advisory Committee on the Framework Convention, shall monitor the implementation of this treaty in Kosovo. The Advisory Committee on the Framework Convention will adopt an Opinion and the Committee of Ministers its conclusions concerning the adequacy of the measures taken to give effect to the principles of the Framework Convention.

The agreement emphasises that it does not make UNMIK a Party to the Framework Convention and that it is without prejudice to the future status of Kosovo to be determined in accordance with Security Council resolution 1244 (1999).

Inter-governmental Expert Committee on national minorities

The Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN) met in Strasbourg from 10 to 12 May. The decision to re-establish this committee was taken by the Council of Europe's Committee of Ministers in November 2004.

Under its terms of reference, the DH-MIN is:

- to act as a forum for the exchange of information, views and experience on policies and good practices for the protection of national minorities at the domestic level and in the context of relevant international legal instruments;
- to carry out a reflection on transversal issues relevant to member states;
- to identify and assess ways and means of further enhancing European cooperation on issues relating to the protection of national minorities;
- to prepare draft opinions for the Steering Committee on Human Rights (CDDH) on relevant issues.

During its first meeting, the Committee discussed various themes that it could examine in its future activities, including the role of consultative bodies of national minorities. The Committee elected Mr Detlev Rein (Germany) as Chairperson and Mr Eero Aarnio (Finland) as Vice-Chairperson of the Committee.

Awareness-raising and information meetings

A training seminar for non-governmental organisations was held in April in the Russian Federation. The seminar provided information on the Framework Convention and in particular on the results of the first monitoring cycle and the priorities of the second monitoring cycle.

Russian Federation

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 in more depth specific issues, chosen according to the situation in each country. ECRI's country-by-country approach concerns all Council of Europe member states on an equal footing and covers 10 to 12 countries per year.

On 14 June 2005, ECRI published five country reports, on Albania, Croatia, Poland, Sweden and the United Kingdom.

In these reports, ECRI recognised both positive developments and continuing grounds for concern in all five of these Council of Europe member countries.

Albania

In Albania, a "National Strategy for the Improvement of Living Conditions of the Roma" has been developed that aims to eliminate discrimination towards Roma in different fields of life. However, ECRI is of the opinion that there have been few detectable improvements in the situation of Roma and Egyptians who suffer from a situation of particular marginalisation and neglect in Albanian society. The disproportionate number of Roma and Egyptian children who are victims of trafficking is also a problem of particular concern to ECRI.

Croatia

In Croatia, a Commission of Experts Working on Combating Discrimination began its work in 2004 and has prepared a national strategy against all forms of discrimination. But the problems surrounding the acquisition of nationality encountered by persons of non-Croatian origin who have lived in the country for a long time have not yet been fully resolved. Substantial progress remains to be made concerning the return of refugees and displaced persons, especially in the matter of housing.

Poland

In Poland, some measures have been taken in favour of the cultural and linguistic rights of national and ethnic minorities. However, there is still no comprehensive body of civil and administrative legislation prohibiting discrimination in all fields of life. ECRI is concerned that cases of racial hatred are

rarely investigated and prosecuted while publications containing racist, and particularly antisemitic material are still available on the market.

Sweden

In Sweden, a system to monitor progress towards the achievement of integration objectives has been put in place. But the situation of de facto segregation in residential areas and schools still runs counter to efforts to promote an integrated society. The active presence of racist organisations in Sweden and their activities, including the widespread dissemination of racist propaganda, notably through the Internet, are still of concern to ECRI.

United Kingdom

In the United Kingdom, a strategy has been launched to promote community cohesion and race equality throughout the country. But, in spite of initiatives taken, members of ethnic and religious minority groups continue to experience racism and discrimination. Asylum seekers and refugees are particularly vulnerable to those phenomena, partly as a result of changes in asylum policies and of the tone of the debate around the adoption of such changes.

Contact visits

In Spring 2005, ECRI carried out contact visits to Estonia, Lithuania, Romania and Spain, as part of the process of preparing third round reports on these countries. The aim of ECRI's contact visits is to obtain as detailed and complete a picture as possible of the situation regarding racism and intolerance in the respective countries, prior to the elaboration of the country reports. The visits provide an opportunity for ECRI's rapporteurs to meet officials from ministries and national public authorities, as well as representatives of NGOs and anyone concerned with issues falling within ECRI's remit.

Media coverage

The published reports received wide coverage in the national media (press, radio, television) of most of 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. ECRI has also produced compilations of good practices to serve as a source of inspiration in the fight against racism.

The use of racist, antisemitic and xenophobic elements in political discourse

Deeply concerned by the increasing use of racist, antisemitic and xenophobic elements in political discourse, including by mainstream political parties, ECRI adopted on 17 March 2005 a Declaration condemning this alarming trend which has been observed in many member states of the Council of Europe.

At the same time ECRI commissioned and published an independent study carried out by the political scientist Jean-Yves Camus, which 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.

In its Declaration, which has also been publicly presented on the International Day for the Elimination of Racial Discrimination on 21 March 2005, ECRI suggests concrete legal and policy measures, including self-regulatory measures which can be taken by political parties or national parliaments, to be adopted in all Council of Europe member states.

Work on the issue of ethnic data collection

ECRI has regularly recommended to the governments of member states of the Council of Europe to collect relevant information broken down according to categories such as nationality, national or ethnic origin, language and religion, given that accurate data is a precondition for devising effective antidiscrimination policies.

In order to further develop its approach in this respect, ECRI undertook a consultation and deliberation process on the issue of ethnic data collection. A consultation meeting with international NGOs was held and a seminar with national specialised bodies to combat racism and racial discrimination was organised. As a result ECRI decided to conduct a mapping exercise in order to establish a grid giving an overview of the existing legal and practical framework for ethnic data collection in the Council of Europe member states.

Relations with civil society

Round Table in Turkey (14 June 2005)

On 14 June 2005, ECRI organised a Round Table in Turkey. This Round Table, held in Istanbul, is part of a series of national round tables held in the member states of the Council of Europe, which are organised in the framework of ECRI's Programme of Action on Relations with Civil Society.

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

The main themes of ECRI's Round Table in Turkey were: ECRI's Third Report on Turkey (published on 15 February 2005); the legislative and institutional framework for combating racism and racial discrimination in Turkey; the situation

of vulnerable groups; asylum seekers and refugees in Turkey.

These issues were discussed with representatives of the responsible governmental agencies and victims of discrimination in the light of ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and the existing legislative and institutional framework for combating racism and racial discrimination in Turkey. A whole session was dedicated to the situation of vulnerable groups in Turkey and the challenges they face living in a diverse society. Discussions also focused on the future creation of a specialised body for combating racism and intolerance, as recommended in ECRI's report on Turkey.

The Round Table aimed to involve all the relevant actors in an open debate on these issues in order to identify together ways of better implementing existing initiatives and also to provide the impetus for further reform in Turkey.

Publications

The use of racist, antisemitic and xenophobic arguments in political discourse

Jean-Yves Camus, March 2005

Third Report on Albania

(CRI (2005) 23), 14 June 2005

Third Report on Croatia

(CRI (2005) 24), 14 June 2005

Third Report on Poland

(CRI (2005) 25), 14 June 2005

Third Report on Sweden

(CRI (2005) 26),14 June 2005

Third Report on the United Kingdom

(CRI (2005) 27), 14 June 2005

Annual report on ECRI's activities covering the period from 1 January to 31 December 2004

(CRI (2005) 36), 14 June 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.

Trafficking in human beings

A Convention adopted

At their 925th meeting (3 May 2005), the Ministers' Deputies have adopted the Council of Europe Convention on Action against Trafficking in Human Beings. This treaty has been opened for signature by Council of Europe member states at the 3rd Summit of Heads of State and Government (Warsaw, 16-17 May 2005).

The aim of this convention is to prevent and combat the trafficking in human beings in all its forms, namely national or international, whether or not it is linked with organised crime.

A first fundamental principle outlined in detail in the new convention is that the protection and promotion of the rights of the victims shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Scope of the Convention

The Convention covers:

- all forms of trafficking: both national and transnational, irrespective of whether or not it is related to organised crime.
- all victims: women, men or children
- all forms of exploitation: sexual exploitation, forced labour or services, etc.

The main added value of this convention is its human rights perspective, its focus on victim protection and its independent monitoring mechanism guaranteeing parties' compliance with its provisions. This mechanism should be an effective aid to combating the complex phenomenon of trafficking and should be characterised by independence, expertise and co-operation with the Parties.

The Council of Europe Convention and the other international instruments

In adopting a Convention on the issue of trafficking, the Council of Europe does not seek to compete with other instruments adopted at a global level, but to improve the protection afforded by them and develop the standards contained therein.

Indeed, developments in international law over the years have demonstrated that regional instruments are often a useful complement to global ones, and can influence in a positive manner developments at global level.

Accordingly, the Convention reiterates the definition of trafficking in persons set out in the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime.

This Convention has, to date, been signed by 15 Member States of the Council of Europe.

The text of the Convention and its explanatory report can be consulted on the Treaty Office web site.

Internet: http://www.coe.int/equality/
http://www.coe.int/trafficking/
Treaty Office: http://conventions.coe.int/

Media

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

European Ministerial Conference

7th European Ministerial Conference on Mass Media Policy, Integration and diversity: The new frontiers of European media and communications policy

Kyiv, 10 and 11 March 2005

Defining the rights and responsibilities of the media in times of crisis, protecting media diversity in the face of globalisation and defending human rights in the Information Society were the three main sub-themes of the 7th European Ministerial Conference on Mass Media Policy, which took place on 10 and 11 March in Kyiv.

Viktor Yuschenko, President of Ukraine

The Conference was opened by the President of Ukraine, Mr Viktor Yuschenko, who assured the media and communications ministers from across Europe of his government's will to create a partner relationship with the mass media: "Today, we are cleaning Ukraine from the dirt and shame of the past. This Conference is like the first swallow heralding the onset of spring in our country", he said.

In her introductory speech, Council of Europe Deputy Secretary General, Mrs Maud de Boer-Buquicchio, stated that "The themes of this Conference reflect the major socio-political currents which have an impact on present day European media policy".

Krzysztof Kocel, Chairperson of the Committee Ministers' Deputies, Council of Europe (below) and Josef Jařab (Czech Republic, LDR), Vice-Chairperson of the Parliamentary Assembly's Culture Committee also addressed the Conference at the opening session.

Programme of the Conference

10 March, 2005

- Opening of the conference. Address by Mr Viktor Yuschenko, President of Ukraine and Mrs Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe.
- Sub-theme 1: Freedom of expression and information in times of crisis.
- Sub-theme 2: Cultural diversity and media pluralism in times of globalisation.

- Sub-theme 3: Human rights and regulation of the media and new communication services in the Information Society.

"Holding this conference here in Ukraine means that none of us lose sight of the ultimate aim of our discussions...which is to create, maintain or improve a media environment in which freedom of expression and information is available to all and generates the essential debate our democracies thrive on." Pierre-Henri Imbert, Director General of Human Rights, Council of Europe

11 March, 2005

- "The future activities of the Council of Europe in the media field: which orientations and which priorities?"

Presentation of a report on the implementation of the Action Plan adopted at the Cracow Ministerial Conference by Mrs Alessandra Paradisi, outgoing Chairperson of the Steering committee on the Mass Media (CDMM).

Presentation of the draft Political Declaration, the draft Resolutions and the draft Action Plan by Mr Karl Jakubowicz, incoming Chairperson of the Steering Committee on the Mass Media.

- Adoption of the Political Declaration, the Resolutions and the Action Plan by the Ministers.
- Close of the Conference. Address by Mr Pierre-Henri Imbert, Director General of Human Rights, Council of Europe.

Keynote speakers

Kate Adie, keynote speaker

Other keynote speakers included Miss Kate Adie, author and reporter, BBC (sub-theme 1 on freedom of expression and information in times of crisis), Mr Ben Haig Bagdikian, Professor Emeritus at the University of California (sub-theme 2 on cultural diversity and media pluralism in times of globalisation) and Ms Rachel O'Connell, Director of Research at the University of Lancashire (sub-theme 3 on human rights and regulation of the media and new communication services in the information society).

Interview

Karol Jakubowicz, Chairperson of the Council of Europe's Steering Committee on the Mass Media

Mr Karol Jakubowicz (Poland), Chairperson of the Council of Europe's Steering Committee on the Mass Media was interviewed in Strasbourg a few days before the Conference about the relevance of Council of Europe standards for Ukraine: "In the last 15 years, the Council has devoted a lot of effort to helping the new member states develop their media legislation. Of course, the desire and determination to respect the principles and standards of guaranteeing freedom of expression and of the media must come from within the country concerned. But we know the value of international documents because they are not formulated by one or another party to political battles inside the country, but by the international community which is not involved in those battles. That gives them more credibility and authority."

Action Plan

Mykola Tomenko, Deputy Prime Minister of Ukraine, at the closing session of the Conference

The Ministers adopted an Action Plan at the end of the Conference, in which they decided, inter alia, the following:

- to set up a regular forum allowing government experts and media professionals to exchange views on the rights and responsibilities of journalists in times of crisis;
- to ask the Council of Europe to create a new award for media organisations which have played a major role either in preventing or resolving conflicts, or in promoting understanding and dialogue;
- to call on the Council of Europe to design strategies to help its member states encourage the media – in particular public service broadcasters – to actively promote participation in demo-

cratic processes, especially through new forms of communication technology.

The Ministers also adopted a political declaration and three separate resolutions – one on each of the main themes of the Conference – as well as a separate resolution calling on the Council of Europe to draw up a new action plan for assisting media reform in Ukraine.

NGO Forum, 8 March 2005

Gabril Nissim, President of the Human Rights Grouping of the INGOs enjoying participatory status with the Council of Europe

Two days prior to the Conference, Tuesday 8 March, a wide range of regional, national and international NGOs specialising in media and human rights-related issues took part in a forum dedicated to making a concerted contribution to the discussions on and drafting of the political texts to be considered by the Ministers. The findings of the NGO forum were presented to the Ministerial Conference on Thursday 10 March. This was the first time that NGOs have been asked to contribute directly to a ministerial conference in this way and it highlights the Council of Europe's recognition of the role of NGOs in its decision-making process.

New mandate of the CDMM

Following the request made by the Ministers who participated in this Ministerial Conference, the Committee of Ministers broadened the mandate of the Steering Committee on the Mass Media (CDMM), and renamed it Steering Committee on the Media and New Communication Services (CDMC) to emphasise the growing importance of the media's use of new information and communication technologies.

Further information: http://www.coe.int/Com/Files/Ministerial-Conferences/2005-kiev/
Internet: http://www.coe.int/media/

Human rights co-operation and awareness

Training

Russian Federation

Seminar on dialogue between the media and NGOs in Chechnya

Russian Federation, 23 and 24 May 2005

The objective of the seminar, which formed part of the 2005 Programme of Co-operation Activities of the Council of Europe and the Russian Federation in the Chechen republic, was to promote improved communication between human rights NGOs and the media in Chechnya. The participation of Chechen authorities made it possible to engage the parties in a tripartite dialogue: NGOs – media – authorities. The seminar did not attempt to cover the wider structural or financial issues associated with the media, such as challenges to its plurality and to its independence from government and other power groups. Rather, consistent with the selected objective, group work and targeted exercises were organised, which aimed to strengthen the capacity of the different parties to communicate effectively with each other. During those exercises, NGOs and authorities improved their understanding of the motivation of journalists and the functioning of newspapers, radio and television, as well as of how to package stories so as to appeal to journalists, how to create media strategies, and not least how to deal with journalists. Journalists in turn enhanced their knowledge of freedom of information and freedom of expression standards and of ethical norms related to their own work, such as accuracy and objectivity of reporting, means of obtaining information and preserving their credibility.

Bosnia and Herzegovina

Training programme on the ECHR for lawyers and civil servants

Bosnia and Herzegovina, 20-22 April and 24-26 May 2005

Under the Joint Programme between the European Commission and the Council of Europe, a series of 20 training workshops on human rights issues for lawyers and civil servants in Bosnia and Herzegovina has been implemented. The last two seminars were held in Jahorina on 20-22 April 2005 and in Mostar on 24-26 May 2005 and involved the responsible staff from all Ministries dealing with social and labour issues in the country, both at entity and cantonal level. These two seminars were devoted to the ECHR and the European Social Charter. The participants were introduced to human rights provisions which have direct relevance for their work, such as the right to fair trial, to work and form trade unions, to be free to decide whether to join the latter, etc. With the help of interactive training, such as simulation case-studies, the civil servants learned how the theoretical standards are applied in practice in the domestic legal order.

One follow-up "Train-the-Trainers" session for lawyers with relevance to the completed programme took place in Mostar from 27 June to 1 July 2005. Ten local trainers received extensive training on substantive rights of the ECHR and on methodology of training.

Police

Training courses on human rights standards for the Police and the Gendarmerie in Turkey

Turkey

Ankara, 16-20 May 2005

A human rights training course for 10 National Police and 10 Gendarmerie officers, all trainers at National Police or Gendarmerie Academies or in-service-trainers, was held on 16 to 20 May 2005 in Ankara. The seminar, which was hosted by the Gendarmerie Schools Command, marked the start of a series of Council of Europe human rights activities for Turkish law enforcement officials in 2005. The overall aim of the train-the-trainers course was to widen the knowledge on human rights standards and their effects on every-day work in the Turkish Police and Gendarmerie and to offer participants the opportunity to exchange information with international experts. Special attention was paid to practice-orientation, given that the values of the ECHR should be the guiding principles for the participants in their daily work.

One focal point of the seminar was community policing. A practical exercise required participants to play the role of citizens seeking to communicate their specific requests and complaints concerning security to the National Police and Gendarmerie in their municipality. The objective of this exercise was to sensitise participants to the varied demands on law enforcement agencies in a democratic society. Police and Gendarmerie should be fully integrated into civil society and there should be a constant dialogue between law enforcement and citizens. As a pre-requisite for this, law enforcement officials must respect and protect human rights, and guarantee transparency and accountability. In this process of confidence-building, the attitude of each individual officer and his/her commitment to human rights is essential.

A second such course, hosted by the National Police, was held in Ankara from 6 to 10 June 2005. Study visits to Western European Police Academies for law enforcement officials concerned with curriculum development are foreseen for September and October 2005.

Awareness-raising

Production of CD-ROM comprising training materials on the ECHR, Turkey, June 2005

A CD-ROM comprising training materials on the ECHR has been published in Turkish and in English. The CD-ROM was prepared in the framework of the 2002-2004 Joint Initiative between the European Commission, the Council of Europe and the Turkish Ministry of Justice. It contains "Powerpoint" presentations on each substantive article of the ECHR, together with speaker notes. It also contains handbooks on various articles of the ECHR as well as the text of the ECHR itself. The CD-ROM (10 000 copies were produced) is being distributed to judges, prosecutors, lawyers, ministries and non-governmental organisations throughout Turkey. The content of the CD-ROM will soon be available on line.

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	**16.05.05**	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	**06.06.05**
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	01.07.05		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	27.07.05	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**
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	**16.05.05**		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			**16.05.05**	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	**29.06.05**		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	**15.06.05**	**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: 01.08.05
Ratifications between **01.03.05** and **30.06.05** 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/

Understanding the Human Rights in Europe

Introduction to the European Convention on Human Rights - The rights guaranteed and the protection mechanism *(2005)*

(Human Rights Files, No. 1)

ISBN 92-871-5715-4, Format A5, 120 pages, € 15 / US$ 23

The model system created by the European Convention on Human Rights is internationally renowned.

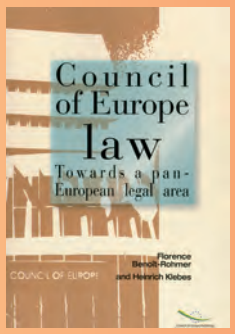
The rights it protects are among the most important, covering not only civil and political rights, but also certain social and economic rights, such as the right to respect for personal possessions.

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.

Council of Europe law- Towards a pan-European legal area *(2005)*

Authors: Florence Benoît-Rohmer, Heinrich Klebes

ISBN 92-871-5594-1, 16 x 24 cm, 247 pages, € 28 / US$ 42



Since its foundation, the Council of Europe has established a common legal system for European states, based on democracy, the rule of law and human rights. Its standard-setting texts helped its member states to meet the challenges of changing societies and these now apply all over Europe. In this connection, the Council of Europe has played a key role in the accession of the new member states to the European Union.

The first section of the book deals with the "constitutional" law of the Council of Europe, namely its internal statutes in the broad sense. It covers the 1949 Statute, which, along with related texts, lays down the Council's aims and determines its membership and operating methods.

The second section concerns the role played by the Council of Europe - which has always been very active in standard-setting - in the harmonisation of domestic law within the European states.

The third section places Council of Europe law in the European context. For instance, it studies the extent to which Council of Europe conventions have been incorporated into domestic law and how Council of Europe law and European Union law coexist.

Key case-law extracts - European Court of Human Rights *(2004)* - Author: Gilles Dutertre

ISBN 92-871-5055-9, 16 x 24 cm, 468 pages, € 39 / US$ 59

For each article of the Convention, the book offers key passages from Court judgments and from some of the Commission's decisions, together with commentary on each passage. The aim is to provide as many quotes from judgments as possible in one clear, easy to consult introduction to the Council of Europe's human rights court.

Short guide to the European Convention on Human Rights *(2005)*

ISBN 92-871-5670-0, 16 x 24 cm, 200 pages, € 17 / US$ 26

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 applications 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.

The execution of judgments of the European Court of Human Rights *(2003)*

Author: Elisabeth Lambert-Abdelgawad

(Human Rights Files, No. 19)

ISBN 92-871-5017-6, Format A5, 54 pages, € 8 / US$ 12

In this study, Elisabeth Lambert-Abdelgawad examines both individual measures and general measures taken by states in accordance both with the Court's judgments and with the supervisory proceedings of the Committee of Ministers, as published in its human rights (DH) resolutions.

These measures usually take the form of a change in legislation, or recognition of the Court's judgment in national case-law, or take the form of the appointment of extra judges or magistrates to absorb a backlog of cases, the construction of detention centres suitable for juvenile delinquents, the introduction of training for the police, or other similar steps.

A detailed table of contents and a comprehensive index are provided to aid the reader making this an essential tool for beginner and Convention specialist alike.

Council of Europe Publishing / Editions du Conseil de l'Europe
Palais de l'Europe - F-67075 Strasbourg Cedex
Tel.: + 33 (0)3 88 41 25 81
Fax: + 33 (0)3 88 41 39 10
E-mail: publishing@coe.int
Web Site: http://book.coe.int