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Human rights information bulletin

No. 67, 1 November 2005-28 February 2006

You're not for sale

Talina, one of the characters in *You're not for sale*, the cartoon book published by the Equality Division of the Directorate General of Human Rights.

Produced as part of the Council of Europe's campaign to combat trafficking in human beings, the book is aimed at raising awareness in European states of this sordid trade.

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Treaties and conventions

Signatures and ratifications

Signatures and ratifications of Council of Europe treaties in the field of human rights between 1 November 2005 and 28 February 2006.

See also the simplified table of ratifications, page 69.

Albania

On 22 December 2005 Albania signed the Council of Europe Convention on Action against Trafficking in Human Beings.

On 3 February 2006 Albania ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Andorra

On 17 November 2005 Andorra signed the Council of Europe Convention on Action against Trafficking in Human Beings.

Austria

On 23 January 2006 Austria ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Belgium

On 17 November 2005 Belgium signed the Council of Europe Convention on Action against Trafficking in Human Beings.

Bosnia and Herzegovina

On 19 January 2006 Bosnia and Herzegovina signed the Council of Europe Convention on Action against Trafficking in Human Beings.

Bulgaria

On 17 November 2005 Bulgaria ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Croatia

On 30 January 2006 Croatia ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Cyprus

On 17 November 2005 Cyprus ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Estonia

On 26 January 2006 Estonia ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Georgia

On 22 December 2005 Georgia ratified the Framework Convention for the Protection of National Minorities.

Germany

On 17 November 2005 Germany signed the Council of Europe Convention on Action against Trafficking in Human Beings.

Greece

On 17 November 2005 Greece signed the Council of Europe Convention on Action against Trafficking in Human Beings.

Hungary

On 21 December 2005 Hungary ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Monaco

On 30 November 2005 Monaco ratified:

- the Convention for the Protection of Human Rights and Fundamental

Freedoms, together with its Protocols Nos. 4, 6, 7 and 13;

- the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Netherlands

On 17 November 2005 the Netherlands signed the Council of Europe Convention on Action against Trafficking in Human Beings.

On 2 February 2006 the Netherlands ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention; and on 10 February 2006 Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances.

San Marino

On 2 February 2006 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.

Sweden

On 17 November 2005 Sweden ratified 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 17 November 2005 "the former Yugoslav Republic of Macedonia" signed the Council of Europe Convention on Action against Trafficking in Human Beings.

Turkey

On 20 February 2006 Turkey ratified Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances.

Ukraine

On 17 November 2005 Ukraine signed the Council of Europe Convention on Action against Trafficking in Human Beings.

Reservations and declarations

Monaco

Convention for the Protection of Human Rights and Fundamental Freedoms

Declaration contained in the instrument of ratification deposited on 30 November 2005 – Or. Fr.

The Principality of Monaco recognises the principle of hierarchy of norms, essential guarantee of the rule of law. In the Monegasque legal system, the Constitution, freely granted by the Sovereign Prince – who is its source – to His subjects, constitutes the supreme norm of which He is the guardian and the arbitrator, as well as the other norms of a constitutional value constituted by the special conventions with France, the general principles of international law regarding the sovereignty and independence of States, as well as the Statutes of the Sovereign Family. International treaties and agreements regularly signed and ratified by the Prince are superior in authority to laws. Therefore, the Convention for the protection of Human Rights has an infra-constitutional, yet supra-legislative value.

Declaration contained in the instrument of ratification deposited on 30 November 2005 – Or. Fr.

The Principality of Monaco rules out any implication of its international responsibility with regard to Article 34 of the Convention, concerning any act or any decision, any fact or event prior to the entry into force of the Convention and its Protocols in respect of the Principality.

Reservation contained in the instrument of ratification deposited on 30 November 2005 – Or. Fr.

The Principality of Monaco declares that the provisions of Articles 6, paragraph 1, and 13 of the Convention apply without prejudice to the provisions, on the one hand, of Article 3, sub-paragraph 2, of the Constitution of the Principality according to which the Prince may in no instance be subjected to legal proceedings, His person being sacred and, on the

other hand, of Article 15 of the Constitution relating to the royal prerogatives of the Sovereign, concerning more precisely the right of naturalisation and of reinstatement of nationality.

The provisions of Article 10 of the Convention apply without prejudice to the provisions, on the one hand of Article 22 of the Constitution establishing the principle of the right to respect for private and family life, especially concerning the person of the Prince whose inviolability is guaranteed in Article 3, sub-paragraph 2, of the Constitution and, on the other hand, of Articles 58 to 60 of the Criminal Code concerning the offence against the person of the Prince and His family.

Commentary

Article 3, sub-paragraph 2, of the Constitution establishes: "The person of the Prince is inviolable". Article 15 of the Constitution establishes: "Following the consultation of the Crown Council, the Prince exercises the prerogative of mercy and of amnesty, as well as the prerogative of naturalisation and of reinstatement of nationality".

Article 22 of the Constitution establishes: "Everyone has the right to respect for his private and family life […]". Article 58 of the Criminal Code establishes: "The offence towards the person of the Prince, if committed in public, is sanctioned with imprisonment from six months to five years, and the fine provided for in numeral 4 of Article 26. In the opposite case, it is sanctioned with imprisonment from six months to three years and the fine provided for in numeral 3 of Article 26." Article 59 of the Criminal Code establishes: "The offence towards the Prince's family members, if committed in public, is sanctioned with imprisonment from six months to three years, and the fine provided for in numeral 3 of Article 26. In the opposite case, it is sanctioned with imprisonment from three months to one year and the fine provided for in numeral 2 of Article 26. Article 60 of the Criminal Code establishes: "Any writing aiming to publicly undermine the Prince or his family, and done with the intention to harm, is sanctioned with the fine provided for in numeral 4 of Article 26".

Reservation contained in the instrument of ratification deposited on 30 November 2005 – Or. Fr.

The Principality of Monaco declares that the provisions of Articles 6, paragraph 1, 8 and 14 of the Convention apply without prejudice to the provisions, on the one hand of Article 25, sub-paragraph 2, of the Constitution on the priority of employment for Monegasques and, on the other hand, of Articles 5 to 8 of the Law No. 1144 of 26 July 1991 and of Articles 1, 4 and 5 of the Law No. 629 of 17 July 1957, relating to the prerequisite authorisations for the exercise of a professional activity, as well as of Articles 6, sub-paragraph 1, and 7, sub-paragraph 2, of the same law concerning the order of dismissal and re-employment.

Commentary

Article 25, sub-paragraph 2, of the Constitution establishes: "Priority is secured to Monegasques for the accession to public and private employment, within the conditions provided for by the law or the international conventions". The conditions which secure the priority of employment to Monegasques are specified in the statutes of the public office and in various texts instituting a preferential treatment within certain sectors of activity: Ord. of 1 April 1921 (doctors); Law No. 249 of 24 July 1938 (dental surgeons); Law No. 1047 of 8 July 1982 (lawyers); Law No. 1231 of 12 July 2000 (chartered accountants); Ord.-Law No. 341 of 24 March 1942 (architects); Sovereign Ord. No. 15.953 of 16 September 2003 (shipping brokers); they may also follow from the power of nomination of the Prince: Ord. of 4 March 1886 (notaries). The conditions concerning the priority for employment which are intended to facilitate the exercise, by Monegasques, of a first independent activity are foreseen by Article 3 of the Ministerial Decree No. 2004-261 of 19 May 2003 (assistance and loan for professional settlement).

Article 5 of law No. 1144 of 26 July 1991 concerning the exercise of certain economic and legal activities establishes: "The exercise of the activities foreseen in Article 1 [crafts, commercial, industrial and professional activities carried out on an independent basis] by individual foreign nationals is conditional on the obtaining of an administrative authorisation (sub-paragraph 1). The opening or the running of an agency, a branch or administrative or representative office, a firm or a company whose seat is located abroad is also subordinated to an administrative authorisation (sub-paragraph 2). The authorisation, given by decision from the State Minister, determines restrictively, for the duration it fixes, the activities which may be exercised,

the premises where they will be deployed and indicates, where necessary, the conditions of their exercise (sub-paragraph 3). The authorisation is personal and non-transferable (sub-paragraph 4). Any modification of the activities carried out or any change of the owner of the former authorisation or of the premises requires the issuance of a new authorisation under the conditions provided for by the two preceding sub-paragraphs (sub-paragraph 5)." [The refusal of authorisation shall not be motivated: Article 8, sub-paragraph 2, *a contrario* to law No. 1144].

Article 6 of law No. 1144 establishes: "Any individual foreign national who is the tenant manager of a business is submitted to the provisions of the previous article, in addition to those resulting from the law on tenancy. The effects of the declaration made by the Monegasque lessor or that of the authorisation held by the foreign national lessor, are suspended during the life of the lease".

Article 7 of law No. 1144 establishes: "The partners referred to under numerals 1 and 2 of Article 4 [i.e. partners of a company established in the form of a public company whose purpose is the exercise of professional activities, as well as partners in a commercial partnership or in limited partnership whose purpose is the exercise of commercial, industrial or professional activities], when in possession of a foreign nationality, must obtain an administrative authorisation, issued following a decision from the State Minister".

Article 8 of law No. 1144 establishes: "The provisions of this section apply also to individuals in possession of the Monegasque nationality, who intend to provide, subject to payment and in whichever form, banking, credit, advice or assistance services in the legal, tax, financial and stock exchange fields, as well as brokerage, portfolio management or property management services with a power of disposal; they apply also to the same persons who are partners in one of the companies referred to in Article 4 and whose purpose is the exercise of these same activities (sub-paragraph 1). The administrative decision must be motivated with reference to the professional competencies and to the financial and moral guarantees presented (sub-paragraph 2)".

Article 1 of law No. 629 of 17 July 1957 aiming to settle the conditions of recruitment and dismissal in the Principality establishes: "No foreigner may hold a private job in Monaco without a work permit nor may he or she hold a job in a profession other than that indicated on this permit".

Article 4 of law No. 629 establishes: "Any employer who intends to engage or re-engage a worker with a foreign nationality must obtain, prior to the later taking up his or her duty, a written authorisation from the directorate for labour and employment".

Article 5 of law No. 629 establishes: "For candidates having the necessary ability to work, and in the absence of workers of Monegasque nationality, the authorisation foreseen in the previous article is given according to the following order of priority: 1. foreigners married to a Monegasque having kept her nationality and not legally separated, and foreigners born directly from a Monegasque; 2. foreigners resident in Monaco and having already carried out a professional activity there; 3. foreigners resident in the adjacent communes where they have been authorised to work".

Article 6, paragraph 1, of law No. 629 establishes: "Dismissal for suppression of posts or reduction of staff may be carried out, for a given professional category, only in the following order: 1. foreigners resident outside Monaco and the adjacent communes; 2. foreigners resident in the adjacent communes; 3. foreigners resident in Monaco; 4. foreigners married to a Monegasque […] and foreigners born directly from a Monegasque; 5. Monegasques […]".

Article 7, sub-paragraph 2, of law No. 629 establishes: "Re-engagements are done in the reverse order than the one for dismissals […]".

Reservation contained in the instrument of ratification deposited on 30 November 2005 – Or. Fr.

The Principality of Monaco declares that the provisions of Article 10 of the Convention apply without prejudice to the provisions of Article 1 of law No. 1122 of 22 December 1988 concerning the distribution of radio and television broadcasts and to Sovereign Order No. 13 996 of 18 May 1999 approving the concession of public telecommunication services which entails the establishment of a monopoly in the field of broadcasting. This monopoly does not concern programmes but only the technical means of broadcasting.

Commentary

Article 1 of law No. 1122 of 22 December 1988 establishes: "The distribution, in each building, of radio-electrical waves to users of acoustical or visual broadcasting devices is ensured, under the conditions provided for by this law, by way of a public service installa-

tion which substitutes itself to private external receiving aerials".

Sovereign Order No. 13 996 of 18 May 1999 establishes: "The concession of public broadcasting services signed on 11 May 1999 by Our Domain Administrator and Mr Jean Pastorelli, Deputy President of 'Monaco télécom, SAM', a public limited company with a capital of 10 000 000 F, as well as the terms and conditions of the said concession and their appendices are hereby approved".

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto

Reservation contained in the instrument of ratification deposited on 30 November 2005 – Or. Fr.

The Principality of Monaco declares that the provisions of Article 2, paragraph 1, of Protocol No. 4 apply without prejudice to the provisions of Article 22, sub-paragraph 1, of Order No. 3153 of 19 March 1964 concerning the conditions of entry and stay of foreigners in the Principality, and of Article 12 of the Order on General Police of 6 June 1867.

Commentary

Article 22, sub-paragraph 1, of Order No. 3153 of 19 March 1964 establishes: "The State Minister can, by measure of police or by issuing an expulsion warrant, enjoin any foreigner to leave immediately the Monegasque territory or to forbid him/her to enter it".

Article 12 of the Order on General Police of 6 June 1867 establishes: "Any foreigner disturbing or who may disturb, by his/her presence, public or private safety or peace, will be directed outside the Principality's territory by order of the Governor General [State Minister]. He/she will not be allowed to return without a special authorisation from the Governor General [State Minister]. In case of infringement, he/she will be sanctioned with six days to one month in prison."

Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Declaration contained in the instrument of ratification deposited on 30 November 2005 – Or. Fr.

The Principality of Monaco declares that the superior jurisdiction, within the meaning of Article 2, paragraph 1, of Protocol No. 7 includes the Court of Review and the Supreme Court.

Netherlands

Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances

Declaration contained in the instrument of acceptance deposited on 10 February 2006 – Or. Engl.

The Kingdom of the Netherlands accepts the Protocol for the Kingdom in Europe, the Netherlands Antilles and Aruba.

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

Declaration contained in the instrument of acceptance deposited on 2 February 2006 – Or. Engl.

The Kingdom of the Netherlands accepts the Protocol for the Kingdom in Europe, the Netherlands Antilles and Aruba.

United Kingdom

Convention for the Protection of Human Rights and Fundamental Freedoms

Territorial declaration

Note by the Secretariat: In accordance with the letter from the Permanent Representative of the United Kingdom, dated 14 January 2006, registered at the Secretariat General on 14 January 2006 – Or. Engl. – the current situation of territories for whose international relations the United Kingdom is responsible is the following:

1. Application of the Convention

Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, the Bailiwick of Guernsey, Isle of Man, the Bailiwick of Jersey, Montserrat, St Helena, St Helena Dependencies, South Georgia and South Sandwich Islands, Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, Turks and Caicos Islands.

2. Recognition of the right of individual petition before the European Court of Human Rights

Territorial extension renewed for a period of five years as from 14 January

2006: Anguilla, Bermuda, Bailiwick of Guernsey, Montserrat, St Helena, St Helena Dependencies, Turks and Caicos Islands.

Territorial extension accepted on a permanent basis as from 14 January 2001: Bailiwick of Jersey.

Territorial extension accepted on a permanent basis as from 1 June 2003: Isle of Man.

Territorial extension accepted on a permanent basis as from 1 May 2004: Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus.

Territorial extension accepted on a permanent basis as from 14 January 2006: Falkland Islands, Gibraltar, South Georgia and South Sandwich Islands.

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 November 2005-28 February 2006:

- 480 (510) judgments delivered
- 391 (428) applications declared admissible, of which .115(121) in a separate decision and 276 (307) in a judgment on the merits
- 8 582 (8 585) applications declared inadmissible
- 311 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 Web site: http://www.echr.coe.int/echr/
HUDOC database: http://hudoc.echr.coe.int/

Grand Chamber judgments

Leyla Sahin v. Turkey

Judgment of 10.11.2005
Concerns:
Prohibition for a student to wear the islamic headscarf at university

Principal facts and complaints

The case concerned a prohibition from the Vice-Chancellor of Istanbul University to admit students wearing the Islamic headscarf to courses, tutorials and examinations.

In a judgment of 29 June 2004, a Chamber of the European Court of Human Rights held that there had been no violation of Article 9. Upon the applicant's request, the case was referred to the Grand Chamber.

Decision of the Grand Chamber

Freedom of religion (Article 9)

The Court found that the interference with the applicant's right to manifest her religion:

– had a legal basis and that it would have been clear to the applicant, from the moment she entered the university, that there were restrictions on wearing the Islamic headscarf;

– pursued the legitimate aims of protecting the rights and freedoms of others and of protecting public order;

– was based on the principles of secularism and equality, which served to protect the individual not only against arbitrary interference by the State but from external pressure from extremist movements. There is also an emphasis placed in the Turkish constitutional system on the protection of the rights of women and gender equality.

Right to education (Article 2 of Protocol No. 1)

Having regard, inter alia, to the fundamental importance of the right to education, the Grand Chamber – contrary to the finding of the Chamber – considered that the complaint under Article 2 of Protocol No. 1 could be considered as

separate from the complaint under Article 9.

It accepted that the regulations constituted a restriction on the applicant's right to education, but this was foreseeable, pursued legitimate aims and the means used were proportionate. The measures in question manifestly did not hinder the students in performing the duties imposed by the habitual forms of religious observance. Secondly, the decision-making process for applying the internal regulations satisfied, so far as was possible, the requirement to weigh up the various interests at stake. Lastly, the process also appeared to have been accompanied by safeguards – the rule requiring conformity with statute and judicial review – that were apt to protect the students' interests.

Prohibition of discrimination (Article 14)

The applicant argued that the prohibition on wearing the Islamic headscarf discriminated between believers and non-believers and obliged students to choose between education and religion.

The Court recalled that the regulations were not directed against the applicant's religious affiliation, but pursued the above-stated aims.

[*Note:*
Given the current debate in several member States on secularity and the Islamic headscarf, the Court gives an indication on its approach to the issue, although it did emphasise that it had evaluated the balance between the principle of secularity and that of freedom of religion in the specific context of Turkey, leaving a wide margin of appreciation to the Turkish authorities.
For a different point of view on this topic, see Judge Tulkens's detailed dissenting opinion.]

Kyprianou v. Cyprus

Judgment of 15.12.2005
Concerns:
Defence counsel found in contempt of court; impartiality of the court

Principal facts and complaints

The case concerned a lawyer's conviction to five days' imprisonment for having been found in contempt of court: acting as defence counsel during a murder trial, he was interrupted by the court while cross-examining a prosecution witness and made criticisms on the manner in which the judges were trying the case.

In a Chamber judgment, the Court recognised, unanimously, a violation of the right to a fair trial. The Cypriot government requested that the case be referred to the Grand Chamber.

Decision of the Grand Chamber

Right to a fair trial

The applicant complained that the fact that the same judges of the court in respect of which he allegedly committed contempt tried, convicted and sentenced him, raised doubts as to the impartiality of that court.

The Court found that the confusion of roles between complainant, witness, prosecutor and judge was contrary to the principle that no one should be a judge in his or her own cause.

Although the Court did not doubt that the judges were concerned with the protection of the integrity of the judiciary, it found that they did not succeed in detaching themselves sufficiently from the situation. The Supreme Court also declined to remedy the defect in question in upholding the conviction and sentence.

Freedom of expression

Contrary to the Chamber's findings in 2004, the Grand Chamber considered that, in the circumstances of the case, a separate examination of the complaint under Article 10 was called for.

Whereas the main issue under Article 6 was the impartiality of the court which determined the criminal charge against the applicant, the complaint under Article 10 concerned the impact of the applicant's conviction and sentence on his right to freedom of expression. It was therefore a complaint of a different nature from that under Article 6. As regards the applicability of this Article, it was not disputed by the parties that the freedom of speech guarantee extends to lawyers pleading on behalf of their clients in court.

The Court considered that, albeit discourteous, the applicant's comments

were limited to manner in which the judges were trying the case. The penalty was disproportionately severe and was capable of having a "chilling effect" on the performance by lawyers of their duties as defence counsel.

Therefore, the Assize Court failed to strike the right balance between the need to protect the authority of the judiciary and the need to protect the applicant's right to freedom of expression.

[*Note:*

For the right to freedom of expression in the exercise of lawyers' profession, see also Nikula v. Finland, (21.03.2002) and Steur v. the Netherlands (28.10.2003) judgments.]

Sørensen and Rasmussen v. Denmark

Judgment of 11.1.2006
Concerns:
Obligation to join trade union as condition of employment

Principal facts and complaints

The applications raised the question of compatibility of closed-shop agreements with the right to freedom of association.

Decision of the Court

The Court reiterated that Article 11 encompasses a negative right of association, which is a right not to be forced to join an association.

In view of the sensitive character of the social and political issues involved in achieving a proper balance between the respective interests of labour and management, and given the wide degree of divergence between the domestic systems in the field, the Contracting States enjoy a wide margin of appreciation. However, where a State's domestic law permitted closed-shop agreements between unions and employers which ran counter to the freedom of choice of the individual, the margin of appreciation was reduced.

In the case at issue, the Court found that the applicants were compelled to join SID as a condition of employment. It then considered whether a fair balance had been struck between the competing interests.

The Court observed a trend, in the Contracting States, to consider that the use of closed-shop agreements are not an essential means for securing the interests of trade unions and their members and that due weight is to be given to the right of individuals to join a union of their own choosing without fear of prejudice to their livelihood.

It concluded that Denmark had failed to protect the applicants' negative right to trade union freedom.

A few Chamber judgments

Bader and others v. Sweden

Judgment of 8.11.2005
Concerns:
Expulsion presenting the risk of sentencing to death

Principal facts and complaints

The applicants – Mr Bader, his wife and two children – had made several requests for asylum in Sweden which were all rejected, and a deportation order to Syria was served on them. In the last application they submitted, they referred to a judgment that had been delivered by a Syrian tribunal which stated that Mr Bader had been convicted, *in absentia*, of complicity in a so-said "honour-related" murder and sentenced to death.

The applicants complained that, if deported from Sweden to Syria, Mr Bader would face a real risk of being arrested and executed.

At the time of the Court's judgment, following the European Court of Human Right's indication under Rule 39 (interim measures) of the Rules of Court, a stay of execution of the deportation order was in force.

Decision of the Court

The Court found a violation of Articles 2 and 3 (right to life and prohibition of torture or inhuman or degrading treatment, respectively) in case the expulsion order would be executed.

It attached great importance to the fact that the Swedish government had obtained no guarantees from the Syrian authorities that the applicant would see his case reopened ant that the public prosecutor would not request the death penalty at any retrial. Therefore, the Court found the applicant's fear in this respect well founded. Moreover, it held that, given the absence of public scrutiny and accountability, the circumstances surrounding his execution would expose him to considerable anguish while he and the other applicants would all face intolerable uncertainty about when where and how the execution would be carried out. Furthermore, it transpired from the Syrian judgment that no oral evidence had been taken at the court's hearing, that all the evidence examined had been submitted by the prosecutor and that neither the accused nor even his defence lawyer had been present. This procedure was to be regarded as a flagrant denial of a fair trial which added distress for the applicants as to the outcome of any retrial in Syria.

[*Note:*
For the first time the Court found a violation of both Articles 2 and 3 in connection with the deportation of an alien who risked suffering a flagrant denial of a fair trial in the receiving State, the outcome of which was likely to be the death penalty. In order to come to this conclusion, the Court recalled several principles previously stated in its case-law:
In Öcalan v. Turkey (judgments of 12.3.2003 and 12.5.2005) the Court held that even if the death penalty were still permissible under Article 2, an arbitrary deprivation of life pursuant to capital punishment would be prohibited. It follows from Article 2 (1) – "Everyone's right to life shall be protected by law" – that the most rigorous standards of fairness must be observed in the criminal proceedings leading to a death sentence. Imposition of the death penalty after an unfair trial would generate a significant degree of anguish, bringing it within the scope of Article 3 (it found a violation under this head only and not under Article 2).
The Court also found that an issue may exceptionally be raised under Article 6 by an extradition decision if the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the receiving country (Soering v. United Kingdom (7.7.1989) and Mamatkulov and Askarov v. Turkey (4.2.2005)).
One will note that the Court decided not to examine the case under Protocol No. 13 (prohibition of the death penalty in all times) although it has been ratified by Sweden (see, on this point, Judge Cabral Barreto's concurring opinion)].

Timishev v. Russia

Judgment of 13.12.2005
Concerns:
Prohibition for any person of Chechen ethnic origin to be admitted into the Republic of Kabardino-Balkaria. Elementary schooling interrupted for the applicant's children.

Principal facts and complaints

Mr Timishev is a Russian national of Chechen ethnic origin, who has been living since 1996 in Nalchik, in the Kabardino-Balkaria Republic of Russia, as a forced migrant. According to the applicant, on 19 June 1999 he was travelling by car from Nazran (in the Ingushetia Republic of Russia), to Nalchik when officers from the State Inspectorate for Road Safety refused him entry, referring to an oral instruction from the Republic's Ministry of the Interior not to admit anyone of Chechen ethnic origin. He also complained that in September 2000 his children were refused admission to their school in Nalchik – which they had attended during two years – because he could not produce his migrant's card, a local document confirming his residence in Nalchik and his status as a forced migrant from Chechnya (having had to give it in exchange for compensation, received in December 1999, for property he had lost in the Chechen Republic).

Decision of the Court

Freedom of movement

The Court found a violation of Article 2 of Protocol No. 4, taken alone as well as together with Article 14. On the basis of the applicant's account of facts which were corroborated by independent inquiries, the Court found that he had been prevented from crossing the administrative border between two Russian regions, which constituted an interference with his right to freedom of movement. It noted that the he prosecutor's office had established that the restriction at issue had been imposed by an oral order from the regional authorities and had not been properly formalised or

recorded in some other traceable way, which amounted to a violation of the constitutional right to liberty of movement enshrined in Article 27 of the Russian Constitution. The Court likewise found that the restriction on the applicant's freedom of movement had not been in accordance with the law and had constituted a violation of Article 2 of Protocol No. 4.

Prohibition of discrimination

The order received by the traffic police officers was to admit no "Chechens". As a person's ethnic origin is not listed anywhere in Russian identity documents, the order amounted to barring the passage of any person merely perceived as belonging to the Chechen ethnic group. No other ethnic group was targeted by this order. In the Court's view, no difference in treatment based entirely or to a decisive extent on ethnic origin can be objectively justified in a contemporary democratic society.

Right to education

The Court noted that the applicant's children were refused admission to their school – which they had attended for the previous two years – on the sole ground that the applicant had surrendered his migrant's card and hence forfeited his registration as a resident in the town where they lived. The Government confirmed that Russian law did not allow the exercise of the right to education to be conditional on the registration of their parents' residence. The applicant's children having been denied the right to education provided for by domestic law, there had been a violation of Article 2 of Protocol No. 1.

[*Note:*
It is the first time the Court finds a violation of Article 14 taken together with Article 2 of Protocol No. 4, and one of the few cases where a violation was found under Article 14 on the ground of ethnic origin, the first one being the Aziz v. Cyprus case, in 2004 (violation of Article 14 combined with Article 3 of Protocol No. 3)].

Bekos and Koutropoulos v. Greece

Judgment of 13.12.2005
Concerns:
Police brutality against two Roma gypsies alleged to have been racially motivated, and effectiveness of the investigation

Principal facts and complaints

The applicants, Greek nationals belonging to the Roma ethnic group, alleged that they had been subjected to acts of police brutality while in police detention after they were charged with attempted theft. They complained that the authorities had failed to carry out an adequate investigation into the incident, and alleged that the impugned events had been motivated by racial prejudice.

Decision of the Court

Prohibition of inhuman or degrading treatment

The Court found that the applicants had suffered a serious corporal harm, which had caused sufficient physical and moral severity to constitute a violation of Article 3 of the Convention.

Concerning the administrative enquiry investigation into the credible allegations of ill-treatment and the ensuing judicial proceedings, it did not appear to have produced any tangible results, and the applicants received no redress for their complaints. Having regard to the lack of an effective investigation, the Court held that there had been a violation of Article 3.

Prohibition of discrimination

As to whether the State authorities were responsible for degrading treatment on the basis of the applicants' race or ethnic origin, the Court held that the police officers' behaviour was not sufficient a basis to conclude that it had been racially motivated.

As to the obligation to investigate possible racist motives, the Court concluded that in spite of the plausible information available that the alleged assaults had been racially motivated, there was no evidence that the authorities carried out any investigation. It found that the authorities failed to take all possible steps to investigate whether discrimination had played a role in the events.

[*Note:*
In this case, the Court found for the first time a violation of Article 14 taken together with Article 3. In the same way as in Nachova and Others v. Bulgaria – here under Article 3 rather than Article 2 – the Court has not found a violation under the substantive part

of the provision but only under its procedural aspect. With these two cases, the Court draws the attention of State Parties to their duty to undertake effective investigations into serious allegations of racist behaviour among police forces. It recalled in the Nachova case that "racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. The authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment".]

Mizzi v. Malta

Judgment of 12.1.2006
Concerns:
Impossibility to challenge in court the legal presumption of paternity and of introducing an action for disavowal of paternity

Principal facts and complaints

Living apart from his wife, the applicant was automatically considered to be the father of the child to whom she gave birth on 4 July the same year. Following a DNA test, the tried to bring civil proceedings to repudiate his paternity, unsuccessfully because, according to the Maltese civil code, a husband could challenge the paternity of a child conceived in wedlock if the could prove both the adultery of his wife and that the birth had been concealed from him. This latter condition was dropped when the law was amended in 1993 and a time limit of six months from the day of the child's birth was set as the cut off point for introducing such proceedings. In May 1997 the Civil Court accepted the applicant's request for a declaration that, notwithstanding the provisions of the Civil Code, he had a right to proceed with a paternity action and found that there had been a violation of Article 8 of the European Convention on Human Rights. That judgment was subsequently revoked by the Constitutional Court.

Decision of the Court

Right to a fair hearing within a reasonable time

The Court found that the practical impossibility for the applicant to deny his paternity from the day the child was born until the present day impaired, in essence, his right of access to a court.

Right to respect for private and family life

The Court considered that a fair balance had not been struck between the general interest of the protection of legal certainty of family relationships and the applicant's right to have the legal presumption of his paternity reviewed in the light of the biological evidence. Therefore, the domestic authorities failed to secure to the applicant the respect for his private life, to which he was entitled.

Prohibition of discrimination

The Court observed that in bringing an action to contest his paternity the applicant was subject to time-limits which did not apply to other "interested parties". The Court found that the rigid application of the time-limit along with the Constitutional Court's refusal to allow an exception deprived, in a discriminatory way, the applicant of the exercise of his rights guaranteed by Articles 6 and 8.

Elli Poluhas Döbsbo v. Sweden

Judgment of 17.1.2006
Concerns:
Refusal to permit a person to transfer the urn containing her husband's ashes

Principal facts and complaints

Thirty-three years after her husband's death and burial in the town where he had been living, the applicant asked to be allowed to transfer her husband's urn to another city, where she wanted to be buried herself. Her request was refused out of respect for the notion of "a peaceful rest" under the Funeral Act.

Decision of the Court

The Court found that the Swedish authorities had acted within the wide margin of appreciation afforded to them

in balancing the interest of the individual against society's role in ensuring the sanctity of graves.

Danell and Others v. Sweden

Judgment of 17.1.2006
Concerns:
Right of access to a court concerning requests for exemptions to fishing restrictions

Principal facts and complaints

The applicants, who held private fishing rights in a fishing area, had requested to be granted an exemption for a given season from certain fishing restrictions. The eight professional fishermen in the group were granted authorisation to catch fish, other than trout and salmon, using stationary equipment, but the remainder of their request was rejected. Under a 1971 Frontier Rivers Agreement between Sweden and Finland, no appeal was permitted against the decision.

Friendly settlement

The case was struck out following a friendly settlement in which certain compensation was to be paid to the applicants. Furthermore, the Swedish Government informed the Court that a new Agreement revising the 1971 would enter into force when approved by the respective Parliaments of Sweden and Finland. The new Commission would not in the future be empowered to grant exemptions from fishing provisions, and issues of the kind would be dealt with by domestic authorities and courts in the two States

Aoulmi v. France

Judgment of 17.1.2006
Concerns:
Expulsion to Algeria of an applicant with close links with France; and hindrance of the right of individual application as a result of non-respect by the defending State of the European Court's request to refrain from deporting

Principal facts and complaints

The applicant is an Algerian national, son of a harki (Algerians loyal to France during the Algerian War of Independence). He came to France at the age of four and has six brothers and sisters, all French nationals. He also has a daughter who was born in France. He has been carrying the hepatitis C virus since 1994.

Following various penal convictions, an order was made for his permanent exclusion from French territory. On 11 August 1999 the prefect made an order for the applicant's deportation to Algeria. On the same day Mr Aoulmi applied to the European Court of Human Rights, which immediately informed the French Government that it would be desirable, in the interests of the parties and the proper conduct of the proceedings before it, to refrain from deporting the applicant to Algeria until it had given its decision. However, Mr Aoulmi was put on a boat bound for Algeria on 19 August 1999. The deportation order was set aside by the Lyons Administrative Court in December 2000 on the ground of the exceptionally severe consequences that this measure could have on the applicant's state of health.

Decision of the Court

Prohibition of torture and inhuman or degrading treatment)

The applicant's state of health:
The Court considered that the applicant had not shown that his illness could not have been treated in Algeria.

Risks faced in Algeria:
As to the risks of reprisals on account of the applicant's background as a member of a harki family, the Court reiterated that the mere possibility of ill-treatment on account of the unsettled situation in a particular country was not in itself sufficient to give rise to a breach of Article 3, particularly as political changes were now under way in Algeria.

Right to family life

Despite the strength of the applicant's ties with France, the Court found that the French courts had been legitimately entitled to consider that ordering his permanent exclusion from French territory had been necessary for the prevention of disorder or crime.

Exercise of the right of petition before the Court

By not complying with the interim measures indicated by the Court, France prevented the Court from affording the

applicant the necessary protection from any potential violations of the Convention. Accordingly, France failed to honour its obligations under Article 34 of the Convention.

The consequences of the fact that respondent Governments fail to comply with the measures indicated by the Court under Rule 39 of the Rules of Court raises the issue of were considered, inter alia, by the Court in Mamatkulov and Askarov v. Turkey case (4.2.2000), in which it was recalled that the undertaking not to hinder the effective exercise of the right of individual application precludes any interference with the individual's right to present and pursue his complaint before the Court effectively.

Rodrigues da Silva and Hoogkamer v. Netherlands

Judgment of 31.1.2006
Concerns:
Refusal to allow foreign mother to remain in the Netherlands in order to share in the care of Dutch child born there

Principal facts and complaints

The first applicant, a Brazilian national, entered the Netherlands in 1994 and began cohabiting with a Dutch national. A daughter, Rachael (the second applicant), was born to them in 1997 and was recognised by her father. The applicant and Mr Hoogkamer split up in 1997 and Rachael's father was awarded parental authority. A residence permit having been refused to the applicant – on the ground, *inter alia*, that she did not pay taxes or social security contributions – she was ordered to leave the country. Despite this order, she continues to reside and work in the Netherlands.

The applicants maintained that the refusal to grant Ms Rodrigues da Silva a residence permit could, among other things, lead to Rachael being separated from her mother.

Decision of the Court

The Court considered that it was clearly in Rachael's best interests for her mother to stay in the Netherlands and that the economic well-being of the country did not outweigh the applicants' rights to respect for family life. By attaching such importance to the fact that Ms Rodrigues da Silva was residing illegally in the Netherlands when her daughter was born, the authorities might be considered to have indulged in excessive formalism.

The question to be examined by the Court was whether the authorities had a positive obligation to allow the first applicant to reside in the Netherlands, thus enabling the applicants to maintain and develop family life. The Court recalled that persons who, without complying with the regulations in force, confront the authorities of a Contracting State with their presence in the country as a *fait accompli* do not, in general, have any entitlement to expect that a right of residence will be conferred upon them. However in view of the far-reaching consequences which an expulsion would have on the responsibilities which the first applicant has as a mother, this case fell to be distinguished from others in which the Court considered that the persons concerned could not at any time reasonably expect to be able to continue family life in the host country.

Giniewski v. France

Judgment of 31.1.2006
Concerns:
Conviction for defamation of the Christian community

Principal facts and complaints

The applicant, a journalist, sociologist and historian, had signed, in a newspaper, an article concerning upon an Encyclical issued by Pope John Paul II. The article contained a critical analysis of the Pope's position and sought to develop an argument about the scope of a particular doctrine and its possible links with the origins of the Holocaust. An association lodged a criminal complaint, alleging that they had published racially defamatory statements against the Christian community. The defendants were found guilty of public defamation against a group of people on grounds to their adherence to a religion.

Decision of the Court

The issue for the Court to determine was whether the interference with the applicant's right to freedom of expres-

sion could be regarded as "necessary in a democratic society".

The Court observed that by considering the detrimental effects of a particular doctrine, the article in question had contributed to discussion of the various possible reasons behind the extermination of Jews in Europe, a question of indisputable public interest in a democratic society. While the article in question contained conclusions and phrases that might offend, shock or disturb some people, it had not been "gratuitously offensive" or insulting and had not incited disrespect or hatred. Nor had it cast doubt in any way on clearly established historical facts. In those circumstances, the Court considered that the reasons given by the French courts could not be regarded as sufficient to justify the interference with the applicant's right to freedom of expression.

Moreover, the penalty imposed on the applicant to publish a notice of the ruling in a national newspaper at his own expense, with the mention of the criminal offence of defamation, undoubtedly had a deterrent effect; the sanction thus imposed appeared disproportionate in view of the importance and interest of the debate in which the applicant had legitimately sought to take part.

D.H. and others v. the Czech Republic

Judgment of 7.2.2006
Concerns:
Placement of Roma gypsy children in special schools

Principal facts and complaints

The applicants are Czech nationals of roma origin who had been placed in special schools for children with intellectual deficiencies. They sought a review of the placement on the grounds that the tests performed to measure their intellectual capacity had been unreliable and that their parents had not been sufficiently informed of the consequences of giving consent to the placement. The Education Department found that the placements had been made in accordance with the statutory rules.

In addition, some of them appealed to the Constitutional Court. They argued that their placement in special schools amounted to a general practice that created segregation and racial discrimination through the coexistence of two educational systems. Their appeal was dismissed on the grounds that they had not furnished concrete evidence in support of their allegations, they had not exercised their right of appeal, and that their representatives had not exercised their right of appeal against the decisions to place the applicants in special schools.

Decision of the Court

It was not for the Court to assess the overall social context of Roma children living in the Czech Republic, but to determine whether the reason for the applicants' placement in the special schools had been their ethnic or racial origin.

It observed that the rules governing children's placement in special schools pursued the legitimate aim of adapting the education system to the needs and aptitudes or disabilities of the children, which were identified by experts in educational psychology. Furthermore, the fact that some of the applicants had subsequently been transferred to ordinary schools proved that the situation was not irreversible.

Thus, the Court could not in the circumstances find that the measures taken against the applicants had been the result of racial prejudice.

Christian Democratic People's Party v. Moldova

Judgment of 14.2.2006
Concerns:
Temporary ban on a political party on account of unauthorised gatherings

Principal facts and complaints

As a sign of protest against a government proposal to make the study of Russian compulsory in schools, the Christian Democratic People's party (CDPP), a Parliamentary political party in opposition at the time of the events, organised a meeting with its voters in front of the seat of the Government. Relying on the Law on the Status of deputies, the CDPP did not ask for prior authorisation. Despite the fact that the Municipal Council had classified the

gathering as a demonstration within the meaning of the Assemblies Law and asked the CDPP to hold it in a different location, the CDPP held regular gatherings during one month. The Ministry of Justice imposed a one month ban on the CDPP's activities, making particular reference to the participation of minors at the demonstrations, and the use of slogans which could have been interpreted as a call to public violence and an encroachment on the legal and constitutional order.

Decision of the Court

The Court considered that the grounds relied upon by the domestic authorities were not relevant and sufficient reasons to justify imposing the ban on the CDPP's activities. It stressed that only very serious breaches – such as those which endanger political pluralism or fundamental democratic principles – could justify a ban on the activities of a political party. It further remarked that despite its temporary nature, the ban could reasonably be said to have had a "chilling effect" on the Party's freedom to exercise its freedom of expression and to pursue its political goals.

Even if it noted with satisfaction the readiness of the Moldovan authorities to lift the ban following the Secretary General's enquiry, the Court found that the temporary ban on the CDPP's activities had not been necessary in a democratic society. Accordingly, there had been a violation of Article 11 of the Convention.

Turek v. Slovakia

Judgment of 14.2.2006
Concerns:
Alleged former collaborator with state security agency unable to challenge his registration in agency files

Principal facts and complaints

In response to a request made by his employer to produce a "security certificate" – required for holding certain posts in the public sector – the applicant could not obtain the said certificate because he had been registered by the former State Security Agency (StB) as its collaborator withing the meaning of the 1991 "Lustration Act". The applicant claimed he had never passed on StB agents any confidential information and had not operated as an informer for the agency. He sought from the Federal Ministry, then from the Slovak Intelligence Service, a judicial ruling declaring that his registration as a collaborator with the StB had been wrongful. In pursuance of rules on confidentiality, he was denied access to ex-StB documents. Upholding the regional court's judgment, the Supreme Court dismissed the applicant's action. It found that only unjustified registration in the StB files would amount to a violation of an individual's good name and reputation, which he failed to prove.

Decision of the Court

The Court noted that the domestic courts considered it of crucial importance for the applicant to prove that the State's interference with his rights was contrary to the applicable rules. Those rules were, however, secret and the applicant did not have full access to them. On the other hand, the State – the SIS – did have full access. The Court found that that requirement placed an unrealistic and excessive burden on the applicant and did not respect the principle of equality. There had therefore been a violation of Article 8 concerning the lack of a procedure by which the applicant could seek protection for his right to respect for his private life.

With particular regard to what was at stake for the applicant, the Court found that the length of the proceedings, lasting seven years and some five months for two levels of jurisdiction, was excessive and failed to meet the reasonable time requirement in breach of Article 6.

Tüm Haber Sen and Çinar v. Turkey

Judgment of 21.2.2006
Concerns:
Dissolution of a trade union formed by civil servants

Principal facts and complaints

Tum Haber Sen trade union was founded on 16 January 1992 by 851 public-sector contract staff working in the communications field. On 20 January 1992 the Istanbul Governor's Office sought an order for the suspension of Tüm Haber

Sen's activities and its dissolution on the ground that civil servants could not form trade unions. The dissolution was ordered on the ground that in the absence of any statutory provisions governing the legal status of trade unions for civil servants and public-sector contract workers, the applicant trade union could not claim to have any legal basis.

Decision of the Court

The Court notes that the trade union had been dissolved solely on the ground that it had been founded by civil servants and its members were civil servants. The Turkish Government had provided no explanation as to how the absolute prohibition on forming trade unions, imposed by Turkish law as applied at the time on civil servants and public-sector contract workers in the communications field, had met a "pressing social need". In the absence of any concrete evidence to show that the founding or the activities of Tüm Haber Sen had represented a threat to Turkish society or the Turkish State, the Court was unable to accept that the union's dissolution could be justified by an absolute statutory prohibition. In view of the lack of clear legislative provisions on the subject at the relevant time and the broad manner in which the courts had interpreted the restrictions on civil servants' trade-union rights, Turkey had failed to comply with its positive obligation to secure the enjoyment of the rights under Article 11 of the Convention.

Aydın Eren and others v. Turkey

Judgment of 21.2.2006
Concerns: Disparition of Turkish nationals

Principal facts and complaints

The applicants are Turkish nationals who live in Diyarbakır (Turkey). They are the father, father-in-law and the daughters of Orhan Eren and his wife, Zozan, who both disappeared in 1997.

On 26 September 1997, Mr and Mrs Eren's car was found abandoned in a wooded area next to the Lice-Diyarbakır road, further a Gendarmerie's checkpoint.

The applicants submitted that their relatives had been the victims of extrajudicial executions. In addition, they submitted that because there had been no effective investigation they had been deprived of an effective remedy.

Decision of the Court

As to the obligation for the State to protect the right to life (Article 2)

Having regard to the evidence before it, the Court considered that it had not been established beyond reasonable doubt that a State employee or an individual acting on behalf of the State authorities had been involved in the disappearance of Mr and Mrs Eren, or that Turkey had failed to comply with its positive obligation to protect the couple against a known threat to their lives. Accordingly, it concluded unanimously that there had been no violation of Article 2 concerning the disappearance of Mr and Mrs Eren.

Concerning the absence of an investigation, the Court considered that, although the authorities responsible for the investigation could not be accused of inactivity, the manner in which the investigation had been conducted could not be regarded as thorough or satisfactory. The investigation had lasted more than eight years to date, and the exact circumstances in which Mr and Mrs Eren disappeared had still not been clarified. In addition, it did not appear from the case file that statements had been taken from the gendarmes on duty at the checkpoint or, indeed, from those who had gone through the checkpoint immediately after Mr and Mrs Eren, or from the individuals implicated in certain statements. In those circumstances, the Court concluded unanimously that there had been a violation of Article 2 concerning the investigation.

Prohibition of inhuman or degrading treatment

Concerning a possible violation of Article 3, the Court had no doubt of the profound suffering caused to the applicants by the disappearance of their relatives. However, it pointed out that their allegations that their relatives had been the victims of extrajudicial executions by Turkey had not been substantiated. In addition, examination of the evidence

did not allow for the conclusion that the level of gravity required for a violation of Article 3 in that particular type of situation had been reached in the applicants' case. Accordingly, the Court concluded unanimously that there had been no violation of Article 3.

Right to an effective remedy

The Court pointed out that Turkey could not be considered to have conducted an effective criminal investigation in this case. Consequently, it concluded unanimously that there had been a violation of Article 13.

By way of just satisfaction, the Court awarded the applicants EUR 10 000 for non-pecuniary damage and certain sums for costs and expenses, enshrining freedom of assembly and association.

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 948th and 955th Human Rights (DH)[1] meetings (November 2005 and February 2006) 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 internet site of the Department for the Execution of Judgments of the European Court of Human Rights.

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' Web site.

1. Bimonthly meetings specially devoted to the supervision of the execution of judgments.

Directorate General of Human Rights: http://www.coe.int/human_rights/
Department for the Execution of Judgments of the European Court of Human Rights: http://www.coe.int/T/E/Human_Rights/execution/
Committee of Ministers: http://wcm.coe.int/
HUDOC database: http://hudoc.echr.coe.int/

Cases currently pending

During the 948th and 955th meetings (November 2005 and February 2006), the Committee respectively supervised payment of just satisfaction in some 517 and 542 cases. It also looked at around 77 and 64 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 96/70 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 165/134 new Court judgments. The Committee notably considered:

Individual measures to grant redress for violations of the applicants' rights, notably:

- Italy's and Turkey's responses to Interim Resolutions urging them to reopen domestic proceedings or otherwise redress the situation of the applicants convicted in violation of their right to a fair trial and still serving heavy prison sentences (*Dorigo v. Italy*, ResDH (2005) 85 and *Hulki Günes v. Turkey*, ResDH (2005) 113);
- The execution of the *Ilascu and others v. Russia and Moldova* judgment which found the applicants' detention in the "Moldavian Republic of Transdniestria" to be arbitrary and unlawful and ordered the immediate release of the applicants still in detention.
- The measures to be taken to allow a stateless person, and his family, to return to Bulgaria from which the former had been expelled in violation of the ECHR (*Al-Nashif v. Bulgaria*);
- Remedying the shortcomings in domestic investigations into abuses by police or security forces in Romania (two cases) Russia (three cases concerning violations in Chechnya), Spain (*Martínez Sala and others*), Turkey (several cases), Ukraine (*Afanasyev*) and the United Kingdom (six cases concerning violations in Northern Ireland);
- The measures to be taken to put an end by the Greek and Romanian authorities to non compliance with domestic judgments requiring specific measures regarding the applicants' professional career or property protection (*Castren-Niniou v. Greece*; *Croitoriu v. Romania*);
- Possible reopening of proceedings or other measures to be initiated by Belgium following a violation of the right to a fair trial (*case of Goktepe*);
- Progress achieved by Germany to ensure the father's regular access to his child (*case of Görgülü*) and measures envisaged by Poland in response to a similar violation (*case of Zawadka*);

In the case of *Dorigo v. Italy* mentioned above, for instance, the Committee of Ministers deplored at its 955th DH meeting (February 2006) that its repeated appeals to Italy to abide by its obligation to redress the consequences of the violation of the Convention in the Dorigo case, have not yet led to a satisfactory solution. It has been noted that recent attempts by the judicial authorities aiming at reopening the criminal procedure at issue to ensure respect of the Convention have not yet had the expected outcome and the Committee expressed the wish that these efforts would lead to a solution in conformity with the requirements of the Convention. The Committee insisted on the obligation for Italy under the Convention to ensure as far as possible restitution in integrum for the applicant who is still serving a sentence given in violation of his right to a fair trial.

In the cases concerning the violations of the Convention in Chechnya, also mentioned above, the Committee welcomed the decision taken by the Chief military prosecutor's office, pursuant Article 46 of the Convention, ordering the military prosecutor of the Unified Army Group to conduct new investigations on the cases of *Isayeva, Yusupova and Bazaeva v. Russia* and *Isayeva v. Russia* and the fact that the investigations on the *Khashiev and Akayeva v. Russia case* have also been reopened; the Committee also noted that the aforementioned investigations

have been put under the supervision of the Chief Military Prosecutor's Office and General Prosecutor's office, respectively, and encouraged the competent authorities to make rapid and visible progress in their conduct of the new investigations, thus remedying, to the extent possible, the shortcomings in the earlier ones impugned by the judgments of the European Court (see decision adopted at the 955h DH meeting – February 2006 – in the cases *Isayeva, Isayeva, Yusupova and Bazayeva*, and *Khashiyev and Akayeva v. Russia*)

General measures (constitutional, legislative or other reforms, including the setting up of effective domestic remedies) to prevent new violations similar to those found in the judgments, notably:

- Solutions envisaged to solve the structural problem of non-execution of domestic judicial decisions in Russia and Ukraine, revealed by numerous judgments and complaints before the Court;
- Responses to be given by Russia, Turkey and Ukraine to the Court's findings of violations of Article 38 (obligation to cooperate with the Court in the establishment of the facts) (*Shamayev and others v. Russia*; *Ates Yasin v. Turkey; Nevmerzhitsky v. Ukraine*);
- Further measures required by Greece in order to accelerate proceedings in administrative courts and to introduce an effective domestic remedy against unreasonably long proceedings (*Manios group of cases*);
- The adoption by Cyprus of new legislation allowing Cypriot citizens of Turkish origin residing in the Republic of Cyprus to vote and to be elected in parliament (*Aziz v. Cyprus*);
- The need to bring the conditions of pre-trial detention in Bulgaria in line with the Convention's requirements (*cases of Kehayov; I.I.*);
- Solutions to the problem of excessive length of civil, criminal or administrative proceedings, and/or to provide an effective domestic remedy for this kind of violations, in 13 countries (cases against Belgium, Czech Republic, France, Greece, Hungary, Ireland, Luxembourg, Poland, Romania, Russia, Slovakia, Ukraine, United Kingdom);
- Measures for the protection of the right to liberty of persons detained in psychiatric institutions in the United Kingdom (*case of H.L.*);
- Further progress in the execution of the Cyprus v. Turkey judgment, in particular with regard to the issue of missing persons and freedom of religion;
- The progress of ongoing legislative reform in Moldova to prevent new violations of the freedom of religion (*case of Metropolitan Church of Bessarabia*).

In the above-mentioned *case of Metropolitan Church of Bessarabia*, the Committee thus noted with concern the delay in the full implementation by the Moldovan authorities of the judgment delivered by the European Court of Human Rights on 13 December 2001 in the *case of Metropolitan Church of Bessarabia and Others v. Moldova*. It was noted that, under the legislation currently in force, the executive continued to enjoy a wide discretion in granting, suspending or withdrawing registration of religious denominations, and that the relevant legal provisions fail to adequately reflect the requirement of proportionality of possible restrictions on the exercise of religious freedom. The Committee therefore stressed the need for the Moldovan authorities to accelerate their work on a new law on Religious Denominations, fully respecting the judgment of the European Court of Human Rights and taking into account also the conclusions and recommendations provided by the Council of Europe experts.

Interim resolutions

During the period concerned, the Committee of Ministers furthermore 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 judgement.

Interim Resolution ResDH (2005) 113

concerning the judgment of the European Court of Human Rights of 19 June 2003 in the case of Hulki Günes against Turkey

In an interim resolution adopted on 30 November 2005, the Committee of Ministers called on Turkey, without further delay, to redress the violations of the right to a fair trial found by the European Court of Human Rights.

The Committee noted that the violations found cast serious doubts on the outcome of the applicant's trial and notes the gravity of the life sentence imposed. The Committee therefore called for the reopening of the impugned criminal proceedings or other appropriate ad hoc measures to redress the violations found.

The reopening of the criminal proceedings at issue can so far not be granted due to a lacuna in Turkish law which makes it impossible to reopen any case that was pending before the European Court on 4 February 2003 (date of adoption of the relevant provisions).

Interim Resolution ResDH (2005) 114

2183 cases against Italy relating to the excessive length of judicial proceedings

On 30 November 2005 the Committee of Ministers adopted an Interim Resolution on the problem of delayed justice in Italy at the basis of numerous violations of the European Convention of Human Rights since the 1980's. Having assessed the results achieved over the last years, the Committee called for a new national strategy to solve this problem.

The Committee noted that despite the efforts undertaken by the authorities, a solution will not be found in the near future to this problem which constitutes a real danger for the respect of the rule of law in Italy.

The Committee also stressed that the persistence of the situation clearly highlights the structural and complex nature of the underlying problems and that an interdisciplinary approach and commitment at the highest level, involving the key actors, is required for its solution.

The Committee noted therefore with great interest the ongoing discussion and new initiatives currently pending before the Italian parliament to promote implementation of judgments of the Court and welcomed the renewed efforts made by the Government to that effect.

In conclusion the Committee:

Urged the Italian authorities to enhance their political commitment and make it their effective priority to meet Italy's obligation under the Convention and the Court's judgments, to secure the right to a fair trial within a reasonable time to all persons under Italy's jurisdiction;

Called upon the competent authorities to set up an effective national policy, coordinated at the highest governmental level, with a view to achieving a comprehensive solution to the problem and to present by the end of 2006 at the latest a new plan of action based on a stock-taking of results achieved so far and embodying an efficient approach to its implementation;

Decided to maintain these cases under close supervision and resume consideration of them at its last meeting (DH) in 2006, noting the commitment of the Italian authorities to keep the Council of Europe informed of progress in the preparation of the said action plan.

Interim Resolution ResDH (2006) 1

concerning the violations of the principle of legal certainty through the supervisory review procedure (*nadzor*) in civil proceedings in the Russian Federation – general measures adopted and outstanding issues – Judgments of the European Court in the cases of Ryabykh (24 July 2003) and Volkova (5 April 2005)

In its interim resolution adopted on 8 February 2006, the Committee of Ministers called for further reform of Russian civil procedure to comply with European Court's judgments finding violations of the requirement of legal certainty. The violations of the European Convention on Human Rights were due to the supervisory review ("nadzor") procedure which extensively allowed quashing of judicial decisions that had become binding and enforceable (*Ryabykh v. Russia*, judgment of 24 July 2003).

The Committee welcomed some limitations put on the application of supervisory review since 2003 but expressed doubts that these will prevent new violations similar to those found. It emphasised that in an efficient judicial system errors and shortcomings should primarily be remedied before judicial decisions become binding and enforceable so as to avoid frustrating parties' right to rely on such decisions.

The Committee accordingly called upon Russia to give priority to the reform of civil procedure which must go hand-in-hand with an improvement of the court structure and of the quality of justice. The Russian authorities have undertaken to keep the Committee informed of the results of the ongoing reflection in this respect and to provide, within one year, a plan of action for further reform.

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 41 Final Resolutions, (closing the examination of 67 cases), among which 3 took note of the adoption of new general measures. Some examples follow:

Resolution ResDH (2005) 115

concerning the judgment of the European Court of Human Rights of 8 November 2002 (Friendly settlement) in the case of Sulejmanovic and others and Sejdovic and Sulejmanovic against Italy

On 14 December 2005, the Committee adopted a final resolution in this case that concerned the expulsion of the applicants to Bosnia and Herzegovina in March 2000 (complaints extracted from Articles 3, 8 and 13 of the Convention and under Article 4 of Protocol No. 4 to the Convention).

Within the context of the friendly settlement concluded and in addition to the payment of some sums to the applicants and their lawyer, the Ministry of the Interior committed himself to:

1) revoke the deportation orders in respect of the applicants;

2) permit them to enter Italy with their families;

3) issue them with residence permits on humanitarian grounds,

4) provide them with temporary accommodation, in association with the Rome local authorities, pending the finding of long-term accommodation in an equipped camp and to keep them informed of any development on the subject;

5) arrange with the competent authorities for the children of school age to attend school and be helped to make up

for the school years lost after their expulsion to Bosnia and Herzegovina;

6) arrange with the competent authorities for a sick child to receive necessary medical attention in the framework of the public health system.

Appendix to Resolution ResDH (2005) 115

Information provided by the Government of Italy during the examination of the Sulejmanovic and others and Sejdovic and Sulejmanovic case

In accordance with the friendly settlement concluded before the European Court of Human Rights, Italy has taken the following measures:

1) The deportation orders were revoked on 18 October 2002 and the applicants' names removed from the "Schengen" database;

2) All the applicants re-entered Italy, their travel being paid by the Italian authorities who also accepted to extend the time-frame agreed in the friendly settlement for their return;

3) Residence permits in conformity with the terms of the friendly settlement have been given to all the applicants or put at their disposal;

4) One of the applicant families has been able to settle in an equipped site, together with their grandmother, from November 2002; accommodation in an equipped site was provided for the other applicant families in October 2003 and December 2004;

5) The children of school age are registered for school and remedial tutoring is provided to them on a daily basis by the social services;

6) The applicants have full access to the public health service and specific information has been provided to them on the special medical services available for their sick child;

7) All the sums agreed upon in the framework of the friendly settlement (for a total sum of 161293,60 €) have been paid respectively on 10 February, 17 March and 12 November 2003.

In the view of the foregoing, the Government considers that Italy has complied with the terms of the friendly settlement concluded in the present case before the European Court of Human Rights.

Resolution ResDH (2006) 2

concerning judgments of the European Court of Human Rights in cases pertaining to various violations of the right to a fair trial in proceedings regarding compensation for detention on remand (Szücs against Austria and six other cases)

On 22 February 2006, the Committee adopted a final resolution in this cases that concerned the right to a fair trial in the proceedings brought by the applicants in order to obtain compensation for their detention on remand following the discontinuance of, or the applicants' acquittal in, criminal proceedings at the basis of the detentions and / or their right to the presumption of innocence.

Extract of appendix to Resolution ResDH (2006) 2

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

[…]

II. Individual measures

Except for the Werner case, no request for individual measures has been made known to the government. It is noted that the possibility of reopening, after a judgment of the European Court (see Recommendation of the Committee of Ministers R (2000) 2), is provided by section 363a of the Austrian Code of Criminal Procedure.

In the Werner case, following the European Court's judgment, the Supreme Court, by judgment of 25 November 1998, set aside the decisions of the domestic courts and referred

the case to the Judicial Chamber of the Vienna Regional Court for reopening of the proceedings. On 21 April 1999 the Chamber, after having held a public hearing, dismissed the applicant's claim for compensation under the Criminal Proceedings Compensation Act. The applicant's appeal before the Vienna Court of Appeal was also dismissed on 12 July 1999. As the applicant submitted no further appeal, this judgment became final.

III. General measures

Introduction

The Austrian authorities began work on amending the Compensation (Criminal Proceedings) Law of 1969 following the first judgments of the European Court which were delivered on 24 November 1997. A new Criminal Compensation Law ("Law on compensation of damages resulting from criminal-judicial detention or condemnation –StEG 2005") was issued on 15 November 2004 and entered into force on 1 January 2005. It is available on the Internet at www.ris.bka.gv.at. It was supplemented by the Ministry of Justice Decree No. 34 "on the enforcement of claims for damages against the Federal Government under the Criminal Compensation Law 2005" (08/02/2005).

In the interim, domestic courts' compliance with the European Court's judgments had been ensured by the latter's wide publication and dissemination and their direct effect in Austrian law (see below, interim measures).

New legislation

The new Law mentioned above provides that courts with jurisdiction in civil matters are now competent to adjudicate on claims regarding compensation for detention on remand.

As regards the right to the public hearing and a public pronouncement of judgments, as well as the principle of equality of arms, these are now explicitly safeguarded by the new compensation procedure which is outlined as follows: (a) The procedure is initiated by the injured party who writes to the Federal Government, through the office of the Procurator Fiscal, inviting it to send him or her, within three months, a declaration concerning whether or not it recognises the claim for compensation; (b) Courts with jurisdiction in civil matters are subsequently competent to decide on the claim after a public hearing; they may grant the injured party the assistance of a lawyer, in accordance with the relevant provisions of the Code of Civil Procedure. On application by a party, the public may be excluded from a hearing if there are facts discussed which constitute official secrets.

As regards the presumption of innocence, following final acquittal, the possibility of voicing suspicions, including those expressed in the reasons for acquittal, regarding an accused person's innocence, is no longer possible. Necessary amendments to this effect have been introduced in the new law (see notably Sections 3 and 4).

It is to be noted that according to the new Law, state liability may never be excluded or restricted in cases of illegal detention in custody if the arrest or detention has taken place by a violation of the provisions of Article 5 of the Convention. The relevant judgments of the European Court, as well as every domestic judgment which pronounces the illegality of an arrest or detention, are binding for further proceedings on a claim of compensation.

Interim measures adopted by Austria

The development of domestic case law in conformity with the European Court's judgments was assisted by the prompt publication of all judgments (except Weixelbraun and Demir) in the widely-read law journal *Österreichische Juristenzeitung* (ÖJZ) (1998, 233 ff; 2001, 155 ff and 910 ff; 2003, 196 ff) and/or in the Newsletter of the Österreichisches Institut für Menschenrechte (www.sbg.ac.at/oim), 1997/6 and 2002/5. The European Court's judgments have also been extensively discussed in legal literature (see e.g. relevant articles in ÖJZ 2002, 741 ff and 2003, 410 ff).

The domestic case-law development was notably confirmed by the Austrian Supreme Court's judgment of 05/08/2003 (11Os 44/03), that confirmed, *inter alia*, public hearing and pronouncement in cases similar to the present.

In this context, it is to be noted that all judgments of the European Court relating to criminal proceedings are sent

by the Ministry of Justice to the President of the Higher Regional Court where the violation had occurred, with the request to inform all competent judicial authorities as appropriate. Austrian courts are also systematically informed through summaries in German of all significant judgments of the European Court regarding Austria, which are available on the database of the Ministry of Justice. This database, internally accessible to all judges and public prosecutors, also provides a link to the HUDOC system of the European Court.

IV. The efforts to improve the effectiveness of the implementation of the Convention at domestic level

The government is at present devoting considerable resources to the implementation of the Committee of Ministers' Declaration of 12 May 2004 on ensuring the effectiveness of the implementation of the Convention at national and European levels and the various Recommendations referred to therein, in particular Recommendation Rec(2004)5 on the verification of the compatibility of draft laws, existing law and administrative practice with the standards laid down in the Convention.

V. Conclusion

The government considers, in view of all individual and general measures adopted, that Austria has satisfied its obligation under Article 46, paragraph 1, of the Convention (former Article 53) to abide by the European Courts' judgments in the present cases.

Resolution ResDH (2006) 3

concerning the judgments of the European Court of Human Rights in the case of Kutic and eighteen other cases against Croatia relating to the lack of access to a court in civil proceedings stayed automatically by a provision of law and the excessive length of civil proceedings

On 22 February 2006, the Committee adopted a final resolution in this cases that concerned the lack of access to a court due to legislation of 1996 and 1999 staying all civil proceedings concerning claims for damages in respect of terrorist acts or caused by the members of the Croatian army or police in the context of the Homeland War in Croatia and, in the Culjak and others case, the complaint relating to the excessive length of certain civil proceedings, including one set of proceedings stayed under the above-mentioned legislation.

Appendix II to Resolution ResDH (2006) 3

Information provided by the Government of Croatia during the examination of the Kutic case and eighteen other cases concerning the lack of access to a court in civil proceedings stayed automatically by a provision of law and the excessive length of civil proceedings

I. As regards individual measures

In all these cases the domestic proceedings stayed in accordance with the legislation of 1996 and 1999 have resumed pursuant to the law adopted on 14 July 2003 by the Croatian Parliament (see below).

Furthermore, on 16 October 2003, the Supreme Court adopted a resolution (No. Su-937-IV/03) instructing the competent courts to continue all civil proceedings stayed in accordance of the law of 1996 and 1999 ex officio, without a specific request from the parties. In addition, the President of the Supreme Court and presidents of all County Courts and Municipal Courts in Croatia were urged by the Ministry of Justice (letter of 22 April 2005) to display special diligence in the conduct of the proceedings concerning these cases, in order to speed them up and to erase, as far as possible, the consequences for the applicants of the violations found by the European Court.

As regards civil proceedings relating to the Culjak and others case, which are still pending at national level, the competent court's attention was drawn to the European Court's findings with a view to accelerating the proceedings as

far as possible. The conduct of proceedings in this case is being supervised.

II. As regards general measures

1) Legislative measures providing for the resumption of the stayed proceedings

On 14 July 2003 the Croatian Parliament adopted the Act on the Responsibility of the Republic of Croatia for Damage caused by Members of the Croatian Army and Police during the Homeland War and the Act on the Responsibility of the Republic of Croatia for Damages resulting from Terrorist Acts and Public Demonstrations (*Official Gazette* No. 117 of 23 July 2003). These laws provided the resumption of civil proceedings which had been stayed in accordance with the law of 1996 and 1999.

2) Development in the Constitutional Court's case-law creating a new domestic remedy for alleged violations of the right of access to a court

On 24 March 2004 the Constitutional Court gave a decision No. U-III-829/2004 in the case of a person who had filed a constitutional complaint under section 63 of the 2002 Constitutional Court Act complaining about the length of certain proceedings and of lack of access to a court because his action in the domestic courts had been stayed by statute for an extended period.

In its decision, the Constitutional Court held that there had been a violation of the constitutional rights to a trial within a reasonable time and to access to a court. It ordered the court concerned to give a decision in the case within one year and awarded the plaintiff compensation.

Having regard to this development in the Constitutional Court's case-law, the European Court has already accepted in the case of Pikic against Croatia (see details in Appendix I) that the complaint under Section 63 of the 2002 Constitutional Court Act may be considered an effective remedy in respect of complaints concerning the lack of access to a court.

3) Publication and dissemination of the judgments

The judgment of the European Court in the case of Kutic was translated and published on the official Internet site of the government (www.vlada.hr/dokumenti.html), in the *Collected Papers of the Zagreb Law School* (issue No. 2/2003) and in the journal The Informer (issue No. 5022/2002). Moreover, it has been sent out to the courts of the country. The judgment of the European Court in the case of Multiplex was published in the journal *The Informer* (issue No. 5176/2003). The judgment in the *Acimovic* case was published on the official Internet site of the government, on the Internet site of the Supreme Court (www.vsrh.hr) and in the journal *The Informer* (issue No. 5195/2003). A copy of the judgment has been sent to the courts directly concerned, to the Constitutional Court, to the Supreme Court, to the Parliament (various committees) and to the Legislation Committee of the government. Moreover, the President of the Supreme Court was asked to inform all judges of the content of the judgment.

III. Conclusion

The government believes that the measures taken make it possible first, to erase as far as possible the consequences of the violations found in the present cases and secondly, to prevent new, similar violations of the right to access to a court. The government therefore considers that Croatia has fulfilled its obligations under Article 46, paragraph 1, of the Convention with regard to the present judgments.

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.

Statement by the Romanian Chairmanship of the Committee of Ministers

Strasbourg, 14 December 2005

"The Romanian Chairmanship of the Committee of Ministers of the Council of Europe expresses its deep concern with respect to the situation of human rights in Belarus. The recent decision of the Belarusian National Assembly to pass a bill amending the penal code will further undermine the rights to freedom of assembly, freedom of association and freedom of expression of individuals, non-governmental organisations and political parties in Belarus.

We urge the Belarusian authorities to reconsider their position with respect to this bill and to reject those provisions that might restrict in any way the exercise of human rights and fundamental freedoms.

The Romanian Chairmanship of the Committee of Ministers recalls the final declaration of the Warsaw Summit, stating that the Organisation "looks forward to the day when Belarus is ready to join the Council of Europe" and will become a natural part of the European democratic community."

Romania announces priorities for Committee of Ministers Chairmanship

Strasbourg, 17 November 2005

Romania took over the chairmanship of the Council of Europe Committee of Ministers with a pledge to carry out the political declaration and action plan of the 2005 Warsaw Summit.

Committing itself to stepping up consultation and co-operation with all Council member countries, and to a pragmatic and transparent programme, Romania proposed a four-point programme on democracy, human rights, social inclusivity and European co-operation for its six-month presidency.

Mihai Razvan Ungureanu, Minister for Foreign Affairs of Romania and Chairman of the Committee of Ministers

Work on human rights will concentrate on strengthening the impact of the Euro-

pean Convention on Human Rights and improving its effectiveness, supporting the Group of Wise Persons which is looking into ways to improve the Convention control mechanisms, and promoting ratification of Protocol No. 14 so that it can enter into force by May 2006. Romania will organise a seminar on the excessive length of judicial proceedings, along with a debate on magistrate recruitment at European level. Romania attaches a great importance to the protection of the rights of the persons belonging to national minorities organising several events on the matter, including an international conference on consultative bodies in enhancing the participation of persons belonging to national minorities in decision-making processes. The Romanian Presidency also plans to strengthen the role of the Human Rights Commissioner and to launch a major campaign against trafficking in human beings.

115th Session of the Committee of Ministers

Strasbourg, 16-17 November 2005

On the occasion of its 115th Session held in Strasbourg, under the chairmanship of Mr Freitas do Amaral, Minister for Foreign Affairs of Portugal, the Committee of Ministers reviewed the implementation of all the decisions adopted by the Heads of State and Government of the Council of Europe at the Warsaw Summit on 16 and 17 May 2005. Underlining that the Summit constituted a significant step towards building a Europe without dividing lines centred on the values of human rights, democracy and the rule of law, it expressed the hope that all the European countries without exception would come together around these values. Following the Warsaw Declaration, the Ministers confirmed that they looked forward to the day when Belarus is ready to join the Council of Europe. Wishing to give concrete effect to the political impetus of the Summit as rapidly as possible, they focused on the following political priorities:

- Strengthening the Council of Europe's system of human rights protection;
- Stepping up Council of Europe action to promote democracy;
- Building a more humane Europe;
- Strengthening co-operation between the Council of Europe, the European Union, the Organisation for Security and Co-operation in Europe and the United Nations;
- Implementation of Chapter V of the Action Plan: enhancing transparency and efficiency.

Other texts of interest

Written questions by members of the Parliamentary Assembly to the Committe of Ministers

- CM (2005) 168, 951st meeting, 14 December 2005. Written Questions by members of the Parliamentary Assembly to the Committee of Ministers; No. 478 by Mr Salles: "Interference with freedom of expression in Turkey".

- CM/Del/Dec (2005) 939/3.1d, 950th meeting, 7 December 2005. Written Questions by members of the Parliamentary Assembly to the Committee of Ministers; No. 475 by Mr Lindblad: "Freedom of the media in Russia".

Recommendations

- Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules (Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies).

Replies to Parliamentary Assembly Recommendations

- The rights of children in institutions: follow-up to Recommendation 1601 (2003) of the Parliamentary Assembly. Parliamentary Assembly Recommendation 1698 (2005). (Reply adopted by the Committee of Ministers on 18 January 2006 at the 953rd meeting of the Ministers' Deputies).

- Media and terrorism; Parliamentary Assembly Recommendation 1706 (2005) (Reply adopted by the Committee of Ministers on 18 January 2006 at the 953rd meeting of the Ministers' Deputies).
- Discrimination against women in the workforce and the workplace; Parliamentary Assembly Recommendation 1700 (2005). (Reply adopted by the Committee of Ministers on 1 December 2005 at the 949th meeting of the Ministers' Deputies).
- Freedom of the press and the working conditions of journalists in conflict zones; Parliamentary Assembly Recommendation 1702 (2005). (Reply adopted by the Committee of Ministers on 9 November 2005 at the 945th meeting of the Ministers' Deputies).

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

Parliamentary Assembly

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

Lord Russell-Johnston, former President of the Assembly

Situation in member states

Implementation of Resolution 1415 (2005) on the honouring of obligations and commitments by Georgia

Resolution 1477 (2006)

Text adopted on 24 January 2006. Document 10779.

In its Resolution 1415 (2005), the Parliamentary Assembly reconsidered the deadlines for the fulfilment of Georgia's obligations and commitments to the Council of Europe in order to take into account the extraordinary circumstances resulting from the *Rose Revolution*.

Georgia's progress over the last year can be regarded generally as encouraging but it still is only a first step towards meeting its obligations and commitments. The recommendations to the Georgian authorities contained in the present resolution are therefore similar or stem from those given in Assembly Resolution 1415 (2005).

The Assembly therefore calls on the Georgian authorities to:

With regard to Council of Europe conventions:

- without any further delay, ratify the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and sign and ratify the European Charter for Regional and Minority Languages.

With regard to the functioning of democratic institutions:

- review the constitutional changes of February 2004, by taking into account the opinion of the Venice Commission, especially with regard to the strong powers of the President;
- ensure that the next local elections, scheduled for October 2006, are free and fair, in full compliance with Council of Europe standards.

With regard to the 1990-94 conflicts:

- adopt without further delay a legal framework for the restitution of ownership and tenancy rights or compensation for the property lost during these conflicts;
- ensure the equal rights of internally displaced persons.

With regard to the rule of law:

- complete the reform of the judicial system, the Bar, the Prosecutor General Office and the police in full compliance with European democratic standards and in close co-operation with the Council of Europe experts;
- guarantee a fully transparent and democratic system of replacement of judges and ensure that the new generation of magistrates is independent;
- ensure constitutional and legislative guarantees for the independence of the members of the Supreme and Constitutional Courts;
- adopt a new criminal procedure code in co-operation with the Council of Europe.

With regard to human rights:

- implement the recommendations of the Council of Europe report of the compatibility of Georgian legislation with the provisions of the European Convention on Human Rights;

• ensure that the newly built detention facilities and changes in the criminal legislation will solve the issue of overcrowding in prisons and pre-trial detention centres and consider supplementary measures, where appropriate;

• build on first steps taken to eliminate the culture of violence and torture in prisons and pre-trial detention centres and adopt urgently with special attention to the regions of Georgia outside the capital, in particular in order to secure prompt, independent and thorough investigation of all allegations of torture and ill-treatment and apply a policy of zero tolerance to impunity;

Concerning freedom of expression and information:

• revise legislation to ensure that any fines imposed for defamation are reasonable in quantum; that the presumption of innocence of suspects in media coverage is guaranteed; that media ownership is transparent and governed by democratic rules.

The parliamentarians call on all member states of the Council of Europe to provide the necessary financial resources for the successful implementation of the Committee of Ministers' Action Plan for Georgia.

They further call on all member states of the Council of Europe to get actively involved in the search for a peaceful solution of the conflicts in the breakaway regions of Abkhazia and South Ossetia.

They resolve to pursue its monitoring of the honouring of obligations and commitments by Georgia until they receive evidence of substantial progress, particularly with regard to the issues mentioned in this resolution.

Texts adopted on 25 January 2006. Document 10774.

Human rights violations in the Chechen Republic: the Committee of Ministers' responsibility *vis-à-vis* the Assembly's concerns

Resolution 1479 (2006)
Recommendation 1733 (2006)

The Assembly is deeply concerned that a fair number of governments, member states and the Committee of Ministers of the Council of Europe have failed to address the ongoing serious human rights violations in a regular, serious and intensive manner, despite the fact that such violations still occur on a massive scale in the Chechen Republic and, in some cases, neighbouring regions in a climate of impunity.

In view of the seriousness of the human rights violations in the Chechen Republic, the Assembly is most dissatisfied with the replies of the Committee of Ministers to its recommendations. It regrets in particular that:

• the Committee of Ministers' monitoring of the human rights situation in the Chechen Republic, launched by the Secretary General in June 2000, is now de facto at a standstill since the spring of 2004, despite repeated calls by the Assembly to intensify monitoring efforts;

• the Committee of Ministers did not take any "specific action" by virtue of the 1994 Declaration on compliance with commitments, after the Assembly had formally seized it in Recommendation 1600 (2003). Such an omission is unacceptable, especially as the Assembly had used for the first time the mechanism the Committee of Ministers had itself set up for this purpose.

The Assembly fears that the lack of effective reaction by the Council's executive body in the face of the most serious human rights issue in any of the Council of Europe's member states undermines the credibility of the Organisation.

In its Recommendation 1733 (2006), it urges the Committee of Ministers:

• to confront its responsibilities in the face of one of the most serious human rights issues in any of the Council of Europe's member states, as the lack of effective reaction by the Council's decision-making body has the capacity to seriously threaten the credibility of the whole Organisation;

• to discuss ways and means to prevent new human rights violations and to overcome the climate of impunity in the Chechen Republic and to address appropriate recommendations to the Government of the Russian Federation.

In view of the seriousness of the situation, the Assembly:

• recommends relaunching the Committee of Ministers' monitoring of the

human rights situation in the Chechen Republic;

- invites the Committee of Ministers again to take "specific action" by virtue of the 1994 Declaration on compliance with commitments, after Recommendation 1600 (2003);
- reiterates its call to the Committee of Ministers to discuss the necessary consequences of the public statements of the European Committee for the Prevention of Torture (CPT) on insufficient co-operation of the Russian Federation with this important body, and to urge the Russian authorities to authorise, without delay, the publication of all reports of visits to the region by the Council of Europe's Committee for the Prevention of Torture (CPT);
- calls on the Committee of Ministers to ensure that the Council of Europe supports the authorities in the Russian Federation in taking practical steps to address the issue of missing persons and "disappeared" persons in Chechnya, particularly through introducing effective systems for identification and recording of bodies found, and improvement of the forensic facilities in Chechnya;
- continues to urge the Russian authorities to implement the individual and general measures in relation to all European Court of Human Rights judgments, in particular those relating to violations committed in the course of the armed conflict in Chechnya.

In addition, the Assembly urges the Russian government to fully implement all recommendations made by the bodies and mechanisms of the Council of Europe, as well as those of the UN.

Policy of return for failed asylum seekers in the Netherlands

Resolution 1483 (2006)

Text adopted on 26 January 2006. Document 10741.

The Assembly believes that the effective return of failed asylum seekers who have exhausted all legal remedies, and do not have any right to stay in a Council of Europe member state on other grounds, is necessary to ensure the integrity of the institution of asylum and the credibility of the asylum system both to citizens and to people in need of protection.

The Dutch policy on asylum seekers broadly complies with the recommendations on return made by Council of Europe bodies. However, some features of this policy, however, raise concerns which are also relevant for other Council of Europe member states applying similar return policies.

Furthermore, the Assembly is concerned that, in pursuing the legitimate objective of expediting the return of foreigners who do not have a legal title to remain in the country, the Netherlands may return people to a situation where they might be at risk of serious human rights violations or their safety would be in danger because of the circumstances prevailing in the country or region of origin.

The Assembly, therefore, calls on the Government of the Netherlands and on other Council of Europe member states having similar policies to:

- consider the possible use of amnesties, regularisation procedures or discretionary powers to regulate the situation of asylum seekers awaiting a decision on their asylum application for a long period of time;
- while considering applications to remain in the country from failed asylum seekers, give special attention to the length of time the person concerned has lived in the country, family, as well as his/her level of integration;
- postpone the return of failed asylum seekers to countries or regions of conflict or where the humanitarian situation is volatile, pending improvement of the situation;
- take all necessary steps to ensure that the principle of family unity is respected;
- promote fully the use of voluntary return programmes, including advice and assistance on return, in preference to detention and forced returns;
- use detention only as a last resort and provide for a maximum period of detention. Where detention is considered, limit the period of detention and the use of detention to cases where there is a clear and objective risk that the person concerned would abscond to avoid return, on the basis of an individual assessment of each case;
- provide for an automatic and regular review of all detention decisions;

• avoid in all circumstances detaining children, the elderly, people suffering from trauma or mental illness and people with disabilities;

• grant a residence permit that provides for the right to work and healthcare to failed asylum seekers who cannot be returned due to objective circumstances or to the lack of co-operation of the country of origin. This should translate into a permanent permit if there is no likelihood of return within a reasonable time-frame;

• ensure an appropriate level of access to housing, social benefits and health care for all failed asylum seekers up to the time of their departure from the country.

Text adopted on 26 January 2006. Document 10806, 10814.

Situation in Belarus on the eve of the presidential election

Resolution 1482 (2006)
Recommendation 1734 (2006)

The Parliamentary Assembly recalls that it has followed developments in Belarus since 1992, in connection with Belarus's application for membership to the Council of Europe. It expresses, therefore, its strongest regret that Belarus, unlike all the other European countries, does not meet the conditions to be a member of the Council of Europe in terms of pluralist democracy, compliance with the rule of law and respect for human rights and fundamental freedoms. The responsibility for this state of affairs lies with the present regime.

In that context, the Assembly urges President Lukashenko and the Belarusian authorities to:

• embark resolutely on a path to reform liable to bring Belarus closer to Council of Europe standards in the fields of pluralist democracy, human rights and the rule of law;

• refrain from obstructing the free and fair running of the electoral campaign, and take positive action to ensure that pluralist information can be provided;

• ensure that the elections are held in full compliance with international standards;

• repeal the anti-revolution law;

• conduct an independent investigation into the fate of disappeared persons, as requested by Assembly Resolution 1371 (2004) on Disappeared persons in Belarus;

• comply with Article 19 of the Universal Declaration of Human Rights and the United Nations' International Covenant on Civil and Political Rights and respect freedom of expression in the media in accordance with Assembly Resolution 1372 (2004);

Besides, the Assembly reiterates its recommendation to the Russian Federation 'to make any political or financial assistance to the Government of Belarus conditional on the respect of the human rights and civil liberties of the people of Belarus'.

It invites the European Union to:

• extend the visa-ban to a greater number of high-ranking officials in the Lukashenko regime;

• consider easing visa requirements for ordinary Belarusian citizens, especially students;

• activate immediately financial support which had been allocated to European media broadcasting into Belarus.

In addition, the Parliamentarians call on the OSCE to put pressure on the Lukashenko regime, by appropriate means, to ensure that Belarus upholds commitments stemming from its membership to the OSCE.

They also invite the OSCE Parliamentary Assembly and ODIHR to coordinate their position on the observation of the forthcoming presidential election with the Assembly.

The Assembly calls on the Council of Europe, the European Union and the OSCE to improve information-sharing regarding Belarus and encourage the organisation of joint initiatives.

Text adopted on 25 January 2006. Document 10807.

The challenge of still unratified credentials of the parliamentary delegation of Azerbaijan on substantial grounds

Resolution 1480 (2006)

In its Resolution 1456 (2005) on the functioning of democratic institutions in Azerbaijan, the Assembly had warned that it would regard the 2005 parliamentary elections as a decisive test for the

democratic credibility of the country as all previous ballots held since Azerbaijan's accession to the Council of Europe in 2001 had failed to meet basic democratic standards.

The Assembly deeply regrets that the parliamentary elections in Azerbaijan on 6 November 2005 once again did not meet a number of international standards. The most unacceptable violations found by the ad hoc Committee which observed the elections were: intimidation and arbitrary arrests of opposition candidates and supporters; impediments to the right to peaceful assembly; disproportionate use of force by the police in dispersing unauthorised rallies; ballot stuffing; and serious violations during the counting and tabulation of results.

The way the November elections were conducted clearly shows that there is a persistent failure by Azerbaijan to honour its commitments to the Council of Europe. This must be sanctioned.

In order to restore confidence in the electoral, and more generally the democratic process, Azerbaijan needs to ensure that the rerun in the 10 constituencies fully abides by democratic principles. To this effect, the following measures need to be taken urgently:

- investigations into electoral fraud should be conducted in a totally impartial and professional way, without any political or administrative pressure;
- the results of these investigations should be made public and justice should be administered in an equally impartial and professional way, without any political and administrative pressure;
- the newly elected parliament should amend the electoral legislation in line with the recommendations of the Venice Commission;
- freedom of assembly should be fully guaranteed;
- media pluralism in the electronic media and freedom of expression should also be fully guaranteed.

The Assembly concludes that the conduct of the November 2005 parliamentary elections in Azerbaijan falls within the provisions of Rule 8.2.b of the Assembly Rules of Procedure: "persistent failure to honour obligations and commitments". However, the Assembly decides to ratify the credentials of the parliamentary delegation of Azerbaijan and to observe the re-run elections on 13 May 2006. It instructs its Monitoring Committee to submit to the Assembly a report on the progress made.

Democracy and legal development

Integration of immigrant women in Europe

Recommendation 1732 (2006)

Text adopted on 24 January 2006. Document 10758.

The Heads of State and Government at the Third Summit in Warsaw (16 and 17 May 2005) strongly condemned "all forms of intolerance and discrimination, in particular those based on sex, race and religion, including anti-Semitism and Islamophobia" and undertook to continue to "implement equal opportunity policies in […] member states […] to achieve real equality between women and men in all spheres of our societies."

The Parliamentary Assembly is particularly committed to ensuring the protection of the fundamental rights of immigrant women in the Council of Europe member states. It is for member states to protect women against violations of their rights, to promote and implement full gender equality and accept no cultural or religious relativism in the field of women's fundamental rights. The Assembly expresses its concern at the legal shortcomings identified in relation to the protection of the human rights of immigrant women and compliance with the principle of equality between women and men in immigrant communities.

In this context, the Assembly calls on Council of Europe member states to:

- ensure that the fundamental rights of immigrant women are guaranteed;
- granting immigrant women arriving under family reunification arrangements a legal status independent of that of their spouse;
- establishing a legal framework guaranteeing immigrant women the right to hold their own passport and resident

permit and making it possible to hold a person criminally responsible for taking these documents away;

- rejecting the application of any provision of foreign legislation relating to immigrants which is contrary to the European Convention on Human Rights, Protocol No. 7 to the Convention or the fundamental principle of equality between women and men and/or renegotiating, rejecting or denouncing those sections of bilateral agreements and rules of international private law which violate the fundamental principles of human rights;
- ensuring the protection of immigrant women in an irregular situation from all forms of exploitation, including trafficking;
- take fully into account gender specific forms of persecution when examining women's claims for asylum;
- pay special attention to single women dispersed to areas outside the main hub of traditional refugee settlements, since they face a greater number of problems and issues including isolation and insecurity;
- show resolve in combating all forms of violence suffered by immigrant women and ensure that all administrative measures are taken to protect them;
- promote immigrant women's access to employment;
- promote information and awareness-raising campaigns in the media and in schools to increase the standing and the role of immigrant women in the host societies;
- sign and ratify, if this has not already been done, the European Convention on the Participation of Foreigners in Public Life at Local Level, the European Convention on the Status of Migrant Workers, Protocol No. 12 to the European Convention on Human Rights, the United Nations International Convention on the Protection of the Rights of all Migrant Workers and their Families and the Council of Europe Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

The Parliamentary Assembly invites the European Commission against Racism and Intolerance (ECRI) to ensure the implementation in member states of the recommendations of the Parliamentary Assembly and the Committee of Ministers to promote the integration of immigrant women and to continue examination of the situation of immigrant women in the Council of Europe member states.

Text adopted on 25 January 2006. Document 10765.

Need for international condemnation of crimes of totalitarian communist regimes

Resolution 1481 (2006)

The totalitarian communist regimes which ruled in Central and Eastern Europe in the last century, and which are still in power in several countries in the world, have been, without exception, characterised by massive violations of human rights. The violations have included individual and collective assassinations and executions, death in concentration camps, starvation, deportations, torture, slave labour and other forms of mass physical terror, persecution on ethnic or religious base, violation of freedom of conscience, thought and expression, of freedom of press, and also lack of political pluralism.

The fall of totalitarian communist regimes in Central and Eastern Europe has not been followed in all cases by an international investigation of the crimes committed by them. Moreover, the authors of these crimes have not been brought to trial by the international community.

The Assembly is convinced that the awareness of history is one of the preconditions for avoiding similar crimes in the future. Furthermore, moral assessment and condemnation of crimes committed play an important role in the education of young generations.

Moreover, the Assembly believes that those victims of crimes committed by totalitarian communist regimes who are still alive or their families, deserve sympathy, understanding and recognition for their sufferings.

Therefore, the Parliamentary Assembly strongly condemns the massive human rights violations committed by the totalitarian communist regimes and expresses sympathy, understanding and

recognition to the victims of these crimes.

Furthermore, it calls on all communist or post-communist parties in its member states which have not so far done so to reassess the history of communism and their own past, clearly distance themselves from the crimes committed by totalitarian communist regimes and condemn them without any ambiguity.

The Assembly believes that this clear position of the international community will pave the way to further reconciliation. Furthermore, it will hopefully encourage historians throughout the world to continue their research aimed at the determination and objective verification of what took place.

Draft Protocol on the avoidance of statelessness in relation to state succession

Opinion No 258 (2006)

Text adopted on 27 January 2006. Document 10770.

The right of the person to nationality is a fundamental right recognised by the 1948 Universal Declaration of Human Rights and the 1997 European Convention on Nationality. The Parliamentary Assembly therefore welcomes the draft Protocol on the avoidance of statelessness in relation to State succession which it regards as an essential instrument complementing the existing Conventions.

The Assembly notes that the draft Protocol applies in respect of any succession of states occurring subsequent to its entry into force. But it regrets that the present draft Protocol, limited to cases relating to state succession, does not make it possible to resolve cases of statelessness existing prior to the state succession.

The Assembly recalls a widely accepted principle of law according to which rules that offer a more favourable regime for individuals should have a retroactive effect. This is particularly important in view of the high number of persons deprived of nationality as a result of the cases of state succession that occurred in Europe the late 1980s and early 1990s.

It notes with regret that the draft Protocol allows states to make reservations on at least two fundamental provisions of the Protocol, to the detriment of both the coherence and effectiveness of the Protocol and the necessary harmonisation of national legislation.

The text of the draft protocol as well as the amendments can be consulted on the Web site (see address below).

Consequently, the Assembly recommends that the Committee of Ministers introduce some amendments, which it regards as essential, to the draft Protocol.

The Assembly therefore calls on Council of Europe member states to sign and to ratify this instrument as soon as possible and, taking a proactive approach, to recognise through a declaration that the Protocol will have retroactive effect for existing cases of statelessness. It notes that only 14 states have ratified the European Convention on Nationality (CETS 166) and that another 12 have signed it, figures which are disappointing. It encourages states which have not yet done so to sign and ratify the Convention.

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.

Mandate

In accordance with the mandate which was given to him in 1999, the Commissioner focuses his activity on four main areas:

- The promotion of the education, in member States, in and awareness of human rights.
- The encouragement for the establishment of national human rights structures where they do not exist and facilitation of their activities where they do exist.
- The identification of short-comings in the law and practice with regards to human rights.
- The promotion of the effective respect and full enjoyment of human rights as embodied in the various Council of Europe instruments.

Official visits

Chechen Republic

25-26 February 2005

Mr Alvaro Gil-Robles – accompanied by Mr Thomas Hammarberg, who will take office in April 2006 – paid a seventh official visit to the Chechen Republic, on the invitation of the President of Chechnya, Mr Alkhanov.

Alvaro Gil-Robles, Commissioner for Human Rights and Alu Alkhanov, President of Chechnya, at their meeting in Strasbourg in 2004

He observed the current situation and evaluated the changes that occurred since his first visit, six years earlier.

During this visit, he had meetings with the President Alkhanov, and the Prime Minister. He also met with the Ombudsman of Chechnya, as well as with local NGOs. He visited the Chernokosovo prison, referred to the future forensic medicine laboratory, or the necessity to fight against ill-treatments, disappearances and impunity.

In a speech addressed to the Parliament, he insisted on the necessity to accelerate the politic, material and civic reconstruction of the Republic, and underlined the importance to develop democratic institutions, to support civil society and to ensure the respect of the rule of law.

Seminars

Training seminar for Chechen human rights organisations

Strasbourg, December 2005

The seminar, organised in the context of the Commissioner's efforts to promote the consolidation of civil society in Chechnya, aimed to introduce local Chechen NGOs to the activity of the Council of Europe and advise them on

working methods and funding applications. Relations with local and national authorities, international governmental organisations and NGOs were also discussed.

"Dialogue, Tolerance and Education: concerted action of Council of Europe and Religious communities"

Kazan, February 2006

Since 2000, Mr Gil-Robles has organised annual Round Tables between leaders of the main monotheistic faiths and religious communities in Europe to discuss their rights and responsibilities, their role in the promotion of tolerance and their relations with the state authorities.

Experts and European religious leaders from the Catholic, Protestant, Orthodox, Jewish and Muslim faiths met with government representatives from Council of Europe member states in Kazan, the capital of Tatarstan (Russia), at the invitation of the Commissioner for Human Rights.

Within the broader context of the promotion of inter-religious and church-State dialogue, the seminar – the fifth in the series – focused on teaching religious beliefs as a means of combating the ignorance, intolerance and sometime violence. The participants considered the possibility of establishing a European institute for the teaching of religious facts. The participants also considered ways of strengthening relations between religious faiths and communities and the Council of Europe.

Publications

Visit reports

Following his visit to Member States, the Commissioner prepares reports on the effective respect for Human Rights in these countries. Each report is presented to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, and made public subsequently. The Commissioner reports conclude with recommendations to national authorities.

Spain

In November 2005, the Commissioner presented to the Committee of Ministers his report on the respect for human rights in Spain. The report follows an official visit to the country from 10 to 19 March, during which the Commissioner held official meetings with the national authorities including with the President of the Government, and was received by the King Juan Carols I.

The Commissioner had visited retention centres for foreigners, prisons, a prison psychiatric hospital and a care centre for victims of domestic violence and a centre for unaccompanied foreign minors.

Subsequently, in May, members of the Commissioner's Office travelled to the Canary Islands, Ceuta and Madrid in order to supplement the information gathered during the official visit.

The report examines the treatment of arriving foreigners, expulsion procedures and access to asylum, prison conditions, allegations of police brutality, the effective administration of justice, domestic violence, assistance to the victims of terrorism, the situation of the Roma and the human rights situation in the Basque Country.

Italy

In December 2005 the Commissioner presented his report on the respect for human rights in Italy. The report follows his visit to Italy from 10 to 17 June 2005, during which he travelled to Naples, the Veneto, and the island of Lampedusa in addition to holding official meetings with the national authorities in Rome.

The report identifies a number of shortcomings regarding, in particular, the treatment of arriving foreigners, asylum and expulsion procedures, prison conditions, the administration of justice and the rights of persons with mental disabilities.

Iceland

In December 2005, the Commissioner also presented his report on the respect for human rights in Iceland. In July 2005, he had visited Iceland including the Litla-Hraun prison, a reception centre for asylum-seekers, the Keflavik Airport and a centre for victims of sexual violence, in addition to meetings with the authorities and civil society representatives in Reykjavik.

The report considers, inter alia, the issue of the appointments procedure of judges, the use of isolation in pre-trial detention, prison reform, treatment of asylum seekers, gender equality and data protection.

France

The Commissioner presented, in February 2006, his report on the respect for human rights in France. During his two weeks visit in September 2005, he had visited reception centres for foreigners, police stations, remand centres and prisons, a psychiatric hospital and centres for victims of domestic violence and travelled to Marseille, Avignon, Bastia, Strasbourg, Hautes-Pyrénées and Normandy. He met members of the judiciary, police, local authorities and civil society in addition to holding official meetings with the national authorities in Paris.

The report identifies a number of shortcomings regarding the administration of justice, detention conditions, the treatment of arriving foreigners, asylum and expulsion procedures, discrimination and xenophobia, domestic violence and trafficking in human beings.

Report on the human rights situation of the Roma in Europe

On 15 February 2006, the Commissioner presented his final report on the human rights situation of the Roma, Sinti and Travellers in Europe. The Roma are present in virtually all member states of the Council of Europe and comprise approximately ten million people. In most of the countries the Commissioner has visited, the Roma populations face considerable obstacles to the full enjoyment of their fundamental rights.

In his report, Mr Gil-Robles stresses that the "long history of continued discrimination and persecution experienced by the Roma must finally come to an end." While documenting the principal human rights violations the Roma are subjected to, the 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 report calls for active partnerships of all authorities, institutions and people concerned, including the Roma themselves, for putting into place the measures needed for ensuring the full respect of human rights of Roma, Sinti and Travellers. Protocol No. 12 to the European Convention on Human Rights related to non-discrimination and the Equality Directive of the European Union provide a sound legal foundation for these efforts.

He also welcomed the establishment of the European Roma and Travellers' Forum which will help understand the diversity of Roma communities in Europe and amplify their voices in European and national decision-making.

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.

Alleged secret detentions in Council of Europe member states

Publication of the report under Article 52 of the European Convention on Human Rights

On 1 March 2006 Secretary General Terry Davis made public his report on alleged illegal detentions and rendition flights on European territory. The speaking notes below were prepared for the press conference on this report.

Introduction

[...] I should like to clarify the parameters of my inquiry. We need to bear in mind that the European Convention on Human Rights prohibits secret and unlawful detention, false imprisonment and torture. The Council of Europe member states are obliged to enforce the Convention through law – which means that what has allegedly happened is illegal under the internal law of all our member states. The primary responsibility to prevent, investigate and punish any such violations of human rights therefore lies with the authorities of the member states. Consequently, the focus of my inquiry was on whether our member states comply with their responsibilities in this regard. These obligations are of a positive nature, which means that the member states are obliged to actively prevent such human rights violations from taking place, and not simply react if they stumble upon them accidentally.

I am fully aware that the allegedly committed illegal acts would have taken place in the context of the fight against terrorism, which is one of the priorities of the Council of Europe, but the threat of terrorism cannot justify disregard for the European Convention on Human Rights. Blatant violations of human rights, such as secret detention and torture, are not only morally wrong and illegal, they are dangerous because they undermine the long term effectiveness of our fight against terrorism.

I am also fully aware that most allegations concern alleged activities of agencies belonging to an allied country which is an observer state to the Council of Europe. I strongly support cooperation between Europe and the United States of America on all issues and especially the fight against terrorism but I also insist that European governments should have sufficient confidence to participate in such cooperation as equal partners and not play the role of the proverbial three brass monkeys.

The report which is made public today contains an analysis of the replies received by the governments of the 46 member states to my letter of last November. In the letter I asked the governments to respond to three sets of questions:

- First, how their internal laws ensure that foreign agencies operating on their

Article 52: "On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention."

territory are subject to adequate controls.

- Second, whether their internal laws provide adequate safeguards against unacknowledged, that is secret, deprivation of liberty.
- And third, how their internal laws ensure an adequate response to alleged violations of human rights, especially those committed by foreign agencies.

Against this background, I also asked the governments to respond to the question whether, in the period since 1 January 2002, any of their officials have been involved, by action or omission, in any secret deprivation of liberty or transport of any secretly detained individual, including any such secret deprivation of liberty committed or instigated by a foreign agency. I also asked whether any investigations were under way or finished.

It is certainly encouraging that we have received the replies from all 46 member states. On the other hand, not all replies can be qualified as complete and fully satisfactory, which means that a number of countries will receive follow-up letters with specific further inquiries. The report contains concrete information on which countries failed to reply to which part of the inquiry. I have no doubt that our member states will continue to be cooperative, and that very soon we will not only have a complete picture of where we are today but where we should be going tomorrow in order to ensure that violations of human rights such as those which have been alleged not only do not happen but also cannot happen.

Analysis

Mr Terry Davis, Secretary General of the Council of Europe

For the time being, the analysis of the replies received already indicates that there are several areas of general concern.

First, it would appear that most of Europe is a happy hunting ground for foreign security services. While most of our member states have mechanisms to supervise the activities of their domestic intelligence agencies as well as the presence of foreign police officers on their territory, hardly any country, with the clear exception of Hungary, has any legal provisions to ensure an effective oversight over the activities of foreign security services on their territory. In Hungary, the competent authorities are instructed by law to detect any activities of foreign secret services interfering with or threatening the sovereignty, or the political, economic or other important interest of Hungary.

The second concern is that Europe's skies appear to be excessively open. Very few countries seem to have adopted an adequate and effective way to monitor who and what is transiting through their airports and airspace. Indeed, no member state appears to have established any kind of procedure in order to asses whether civil aircraft are used for purposes which would be incompatible with internationally recognised human rights standards. This is alarming because the explanations provided on the specific point of controls over aircraft allegedly used for rendition show that existing procedures do not provide adequate safeguards against abuse.

The third general concern arising from the analysis of the replies is related to the existing rules on jurisdiction and state immunity, which create considerable obstacles for effective law enforcement in relation to the activities of foreign agents, especially when they are accredited as diplomatic or consular agents. The principle of state immunity is of course recognised under public international law. But this being said, immunity cannot mean impunity. International and national courts have already recognised exceptions to state immunity in the case of torture, and this could be extended to other serious violations of human rights, such as enforced disappearances which, under the Statute of the International Criminal Court, may be qualified as a crime against humanity.

In addition to these more general comments, I should like to mention four countries which have also been highlighted in the preliminary information document of 24 January by Dick Marty, namely Bosnia and Herzegovina, Germany, Italy and former Yugoslav republic of Macedonia. These four coun-

tries were the subject of the most detailed and documented allegations of rendition known so far. Regrettably, with the exception of Germany, they have missed the opportunity to provide complete and adequate replies and dispel all doubts about their alleged misconduct. It is difficult to understand how their replies could omit to mention the cases of alleged renditions which were not only mentioned by Dick Marty, but have also been dealt with by their judiciary or were the subject of requests for legal cooperation by another Council of Europe member state.

Similarly, the reply received from Poland – a country mentioned in the initial allegations on the existence of secret prisons – is disappointing, and with the best of will cannot be qualified as adequate in terms of the inquiry.

Conclusion

I will conclude by stressing that this report is not an end, but rather the beginning of a process. I shall continue with my inquiry in the case of individual countries which provided incomplete or inadequate replies, but I also intend to formulate concrete proposals for action at the Council of Europe level. This could in particular include standard-setting activities in the three areas mentioned above, namely the oversight over the activities of foreign agencies, reinforced safeguards against an abusive use of civil aircraft and possible limitations to state immunity in the case of serious human rights violations.

References

• The full text of the report, the replies received from the governments at http://www.coe.int/T/E/Com/Files/Events/2006-cia/.

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

All of the 46 member states of the Council of Europe have signed either the 1961 Charter or the 1996 revised Charter; and 39 have ratified one or other of these two instruments.

See Appendix, *"Simplified chart of ratifications of European human rights treaties"*, page 69.

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

Conclusions 2006 on the application of the Revised Social Charter, as well as the Conclusions of cycle XVIII-1 on the 1961 Social Charter have been adopted by the ECSR and will be published shortly on the Web site: http://www.coe.int/T/E/Human_Rights/Esc/3_Reporting_procedure/2_Recent_Conclusions/

Collective complaints

A collective complaint (No. 33/2006), registered in the Secretariat on 1 February 2006, was lodged by **ATD Quart Monde against France**. It relates to:

- Article 16: right of the family to social, legal and economic protection,
- Article 30: right to protection against poverty and social exclusion,
- Article 31: right to housing,

in conjunction with Article E of Part V of the Charter: prohibition of discrimination.

It is alleged that the measures taken by France regarding the housing of disadvantaged families are insufficient: not only is there a shortage of council houses, but many families live in inadequate houses and certain are the victims of discriminatory practices. Furthermore, evictions are ordered without the provision of alternative housing and the rights to appeal are not sufficient.

Significant meetings

International Conference on economic, social and cultural rights, Dublin, 9-10 December 2005

The Irish Human Rights Commission organised on 9 and 10 December 2005 in Dublin an international Conference on economic, social and cultural rights. This Conference assembled specialists on the aforementioned rights at European and international level. The discussions centred on the monitoring of their application and their impact, as well as their enforcement.

Exchange of views between the European Committee of Social Rights and the Cypriot government, Nicosia, 31 January-1 February 2006

An exchange of views between the European Committee of Social Rights and the Cypriot government took place on 31 January and 1 February 2006 in Nicosia, with the presence of the Minister of Labour and Social Insurance. It concerned the provisions of the Revised Charter which have not been accepted by Cyprus.

This exchange of views was followed by a Seminar, jointly organised by the Commissioner for Administration, on the collective complaints procedure, which assembled many representatives of non governmental organizations who appreciated the information provided.

Dublin, Ireland

Forthcoming event

The 10th Anniversary of the Revised Social Charter will be celebrated on 3 May 2006. On that occasion a Seminar will be held in order to reflect on the future of the Social Charter and its supervision mechanisms with a view of improving their efficiency and their impact.

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

Slovenia

A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a visit to Slovenia from 31 January to 8 February 2006. It was the Committee's third periodic visit to Slovenia.

In the course of the visit, the CPT's delegation followed up a number of issues examined during previous visits, in particular the fundamental safeguards against ill-treatment offered to persons deprived of their liberty by the police and the situation of foreign nationals held under the aliens legislation. The delegation also examined the situation of prisoners, including women, the treatment of juveniles in Slovenia's only re-education facility and of residents placed in the closed sections of a social care home for elderly persons.

Ad-hoc visits

Spain

In the course of the CPT's one-week visit to Spain, the delegation visited Melilla, in particular to examine procedures for the interception and treatment of foreign nationals by the Civil Guard at Spain's border with Morocco. In this connection, it accompanied the night patrols of the border fence, while also monitoring procedures from the control centre of the Civil Guard.

The delegation also examined the situation of persons deprived of their liberty by law enforcement agencies, focusing particularly on access to a lawyer as a fundamental safeguard for the prevention of ill-treatment. For this purpose, the delegation visited law enforcement establishments in Madrid, Almería province and Melilla. It also conducted interviews at Madrid V (Soto del Real) and Almería (El Acebuche) Prisons, with persons who had recently been in the custody of law enforcement agencies.

Further, the delegation held discussions with judges and consulted judicial files in order to examine the role of the judiciary in protecting persons in the custody of law enforcement agencies.

Turkey

A delegation of the CPT completed a one-week visit to Turkey.

The CPT's delegation focused on three issues:

- the current situation as regards the treatment of persons in the custody of the law enforcement agencies (police and gendarmerie);
- developments in F-type (high security) prisons, in particular with regard to activities for inmates and the regime applied to prisoners serving a sentence of "aggravated life imprisonment";
- procedures for the administration of electroconvulsive therapy (ECT) in psychiatric establishments.

At the end of the visit, during talks in Ankara, the CPT's delegation provided the Turkish authorities with its preliminary observations. Certain issues related to the conditions of detention of Abdullah Öcalan were also discussed.

Germany

The CPT carried out a visit to Germany from 20 November to 2 December 2005. It was the CPT's fifth visit to this country.

In the course of the visit, the CPT's delegation followed up a number of issues examined during previous visits, in particular, the fundamental safeguards against ill-treatment offered to persons deprived of their liberty by the police and the situation of immigration detainees. The delegation also examined the treatment of juvenile prisoners as well as of patients placed in psychiatric establishments. Further, at Berlin-Tegel Prison, the delegation examined the conditions of detention in the Unit for secure custody (Sicherungsverwahrung) and the establishment's high-security unit.

Moldova

The CPT carried out a visit to Moldova from 21 to 25 November 2005.

In the course of the visit, the CPT's representatives held talks with senior officials of the Ministry of Justice and the Ministry of Internal Affairs, as well as with members of the Prosecutor General's Office. These talks focused on the measures taken by the Moldovan authorities in the light of the Committee's findings during its most recent periodic visit to Moldova, in September 2004. In the course of the visit, the CPT's delegation also examined recent developments on the spot concerning prisons and the police.

United Kingdom

During its six-day visit to the United Kingdom, the delegation examined the treatment and conditions of detention of certain persons recently detained under the Immigration Act 1971, with a view to being deported. Particular attention was given to the mental health of the individuals concerned. In this context, the delegation visited Full Sutton and Long Lartin Prisons as well as Broadmoor Special Hospital. It also interviewed two persons currently under house arrest.

In addition, the delegation visited Paddington Green High Security Police Station, and also met persons served with control orders under the Prevention of Terrorism Act 2005.

During the visit, the delegation held an exchange of views with officials from the Home Office and Foreign and Commonwealth Office on the use of diplomatic assurances in the context of deportation proceedings, and related Memoranda of Understanding. Further, certain issues related to the envisaged extension of police custody to a max-

imum of 28 days in terrorism-related cases were explored with the United Kingdom authorities.

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.

Lithuania

Report on the CPT's visit in February 2004, and Government responses (published 23 February 2006)

The CPT has published the report on its visit to Lithuania in February 2004, together with the response of the Lithuanian Government.

During the 2004 visit, the CPT followed up a number of issues examined during its first visit to to the country in 2000. Particular attention was paid to the treatment of persons detained by the police and the legal safeguards provided to such persons, as well as to the conditions of detention in prisons and police establishments. For the first time in Lithuania, the Committee visited a juvenile prison and a psychiatric hospital.

Moldova

Report on the CPT's visit in September 2004, and Government responses (published 16 February 2006)

The Moldovan authorities agreed to the publication of the report of the CPT in relation to its visit to the country in September 2004.

The CPT report examines the situation of persons detained by the police and in prisons, including at a colony for minors and at the unit for life-sentenced prisoners of Prison No. 17 in Rezina. The report also addresses the strategy aimed at controlling and combating tuberculosis within the prison system.

Following the response of the Moldovan Government, representatives of the CPT returned to Moldova at the end of November 2005, to hold talks with the national authorities about concrete measures taken to implement the recommendations made by the Committee. The Committee's representatives also examined recent developments on the spot concerning prisons and the police.

Poland

Report on the CPT's visit in October 2004 (published 3 February 2006)

The CPT has published the report on its third periodic visit to Poland which took place in October 2004.

During the visit, the CPT examined the treatment of persons detained by the police and Border Guard. The report contains recommendations aimed at further strengthening the formal safeguards against ill-treatment offered to such persons and improving the conditions under which they are held.

The CPT also paid visits to three prisons: in Warsaw-Mokotów, Cracow and Wolów. It called upon the Polish authorities to redouble their efforts to combat prison overcrowding. Particular attention was also paid to prisoners classified as "dangerous" ("N" status).

Slovak Republic

Report on the CPT's visit in February/ March 2005, and Government responses (published 2 February 2006)

The CPT has published the report on its visit to the Slovak Republic in February/ March 2005, together with the Slovak Government's response.

During the 2005 visit, the CPT 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 examined the situation in psychiatric establishments.

Iceland

Report on the CPT's visit in June 2005, and Government responses (published 26 January 2006)

The CPT has published the report on its visit to Iceland in June 2004, together with the Icelandic Government's response.

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

Romania

Report on the CPT's visit in June 2004, and Government responses (published 19 January 2006)

The Committee's visit was triggered by information received regarding the death of many patients, due to malnutrition and/or hypothermia, at Poiana Mare Psychiatric Hospital (region of Dolj), an establishment which the CPT had already strongly criticised in the past in respect of the patients' living conditions (particularly food and heating). In the course of this visit, the CPT also examined the situation of the residents at Craiova Recovery and Rehabilitation Centre for Disabled Persons.

The Committee intends to return to Romania in 2006 to carry out a periodic visit.

La Réunion

Report on the CPT's visit in December 2004, and Government responses (published 21 December 2005)

The CPT has published the report on its visit to the administrative district (département) of La Réunion in December 2004, together with the response of the French Government.

The Committee's visit was triggered by information received about a difficult situation prevailing in the département's prisons, as a result in particular of their overcrowding. In the course of the visit, the CPT also examined the treatment of persons placed in police custody on the island of La Réunion. In this connection, the Committee reviewed the implementation of the Ministry of the Interior's instructions on safeguarding the dignity of persons placed in police custody and the issue of fundamental safeguards for such persons, with particular reference to the right of access to a lawyer.

The Committee intends to return to France in 2006 to carry out a periodic visit.

Norway

Publication of preliminary observations on the CPT's visit in October 2005 (published 16 December 2005)

During the visit, the CPT's delegation followed up a number of issues examined during the previous visits, including, in particular, the fundamental safeguards against ill-treatment offered to persons deprived of their liberty by the police, the restrictions imposed upon remand prisoners and the situation in psychiatric hospitals. Further, the delegation examined the treatment of prisoners detained in units with very high security. The preliminary observations made by the delegation at the end of the visit are published with the agreement of the Norwegian authorities.

Turkey

Report on the CPT's visit in March 2004, and Government responses (published 8 December 2005)

The CPT has published the report on its periodic visit to Turkey in March 2004, together with the response of the Turkish Government.

One of the main objectives of the March 2004 visit was to examine the current situation on the ground as regards the treatment of persons held by the law

enforcement agencies and to assess the impact of recent legal reforms concerning police custody. Prison related issues also formed an important part of the visit, particular attention being given to the move towards smaller living units for prisoners, the situation of juveniles held in prisons for adults, and health-care services. The CPT's delegation visited law enforcement and prison establishments in various provinces, with emphasis on Gaziantep and Izmir.

Visits planned for 2006

In 2006, as part of its programme of regular "periodic" visits, CPT intends to examine the treatment of people deprived of their liberty in the following ten countries:

- Armenia
- Azerbaijan
- Bulgaria
- Czech Republic
- France
- Ireland
- Monaco
- Romania
- Slovenia
- "the former Yugoslav Republic of Macedonia"

Other visits that appear to the CPT to be required in the circumstances will also be organised during the year.

Ratifications by Monaco

Mr Georges Grinda, Minister Plenipotentiary to the Minister of State of Monaco, in charge of European affairs, handed over to Mr Terry Davis, Secretary General, the instruments of ratification by his country of the European Convention on Human Rights and of its Protocols 4, 6, 7 and 13.

During the meeting, which took place on 30 November, in the Council of Europe headquarters in Strasbourg, Minister Plenipotentiary Grinda also signed and handed over the instrument of ratification by Monaco of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Monaco acceded to the Council of Europe as its 46th member state on 5 October 2004.

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

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 21 February 2006, ECRI published four new country reports, on **Estonia**, **Lithuania**, **Romania** and **Spain**.

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

Estonia

In Estonia, the number of stateless people who have obtained Estonian citizenship has been steadily increasing. However, Estonia has not developed a consistent policy aimed at bringing the Estonian-speaking and Russian-speaking communities together. Estonia has yet to examine the full extent of the Holocaust in Estonia and to give it its rightful place in the national debate. The Roma community in Estonia is still disproportionately affected by unemployment and discrimination in the field of education.

Lithuania

In Lithuania, the legal framework against racial discrimination has been strengthened by the adoption of the Law on Equal Opportunities. However, the provisions in force to counter racist expression, including incitement to racial hatred, which has notably targeted the Jewish, Roma and Chechen communities, have not been adequately applied. Asylum legislation and practice has undergone an important reform which, in spite of positive elements introduced, has diminished refugee protection in several areas. Instances of antisemitism continue to be a cause of concern to ECRI in Lithuania.

Romania

In Romania, the authorities have adopted an anti-discrimination law and set up the National Council Against Discrimination, which is the body responsible for applying this law. However, ECRI notes that this legislation has hardly been applied at all as neither public officials nor the general public are

aware of its existence. The Roma community continues to be discriminated against in all areas, including the labour market and access to education, public places and decent housing.

Spain

In Spain, there has been a recent willingness on the part of the authorities to move from an aliens policy to an immigration and integration policy. However, lack of awareness of issues of racism and racial discrimination across Spanish society affects the institutional response to these phenomena in a negative way. Racial discrimination in a wide range of areas, including employment, housing and access to public places still affects the daily lives of members of ethnic minority groups, including Roma, North Africans, people from sub-Saharan Africa and South Americans. Racial and xenophobic violence still needs to be adequately recognised and countered.

The published reports received wide coverage in the national media (press, radio, television) 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.

General Policy Recommendations

In December 2005, ECRI decided on the themes of its two future General Policy Recommendations. The first will deal with measures to improve access to school education as a factor for integration as well as the role of school education in combating racism and racial discrimination. The second will be devoted to combating racial discrimination in policing. ECRI's working groups on these themes held their first meetings to prepare the future General Policy Recommendations in February 2006.

Good practices

In February 2006, ECRI published an updated version in its good practices series of its brochure on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. This brochure is updated on a regular basis and now contains a description of 26 such bodies, including their contact details.

Relations with civil society

Seminar with national specialised bodies to combat racism and racial discrimination on mediation and other forms of dispute resolution in cases of racism and racial discrimination

On 16-17 February 2006, ECRI held a seminar with national specialised bodies, ECRI's strategic partners in the fight against racism and racial discrimination, in order to discuss how best to resolve cases of racism and racial discrimination through dispute resolution.

The seminar aimed to provide specialised bodies with a theoretical and methodological framework in the field of mediation. The seminar also addressed other forms of dispute resolution, to help specialised bodies make informed decisions on which method of dispute resolution is the most effective and appropriate for solving cases of racism and racial discrimination. Special emphasis was put on the exchange of good practices, including concrete case studies in this field.

The seminar brought together representatives of national specialised bodies to combat racism and racial discrimination, representatives of general human rights institutions (Ombudsman, Human Rights Commissioner, etc.) whose mandate already covers or will be extended in order to cover racism and racial discrimination. In addition, some experts in the field of mediation and strategic litigation were invited to this seminar.

The seminar took place over one and a half days. The first part of the seminar was devoted to clarifying the concept of mediation and its practical application in different member States of the Council of Europe. The second part of the seminar tried to put mediation in the general context of dispute resolution by comparing it with other methods of conflict resolution, including decision-making by specialised bodies and sentencing by civil, administrative and criminal courts. Special attention was also given to the role of strategic litigation in resolving cases of racism and racial discrimination.

The different themes were introduced by experts on the subjects dealt with and representatives of national specialised bodies with recognised experience in the subjects in question.

ECRI's Round Table in Poland

On 8 November 2005, ECRI held a Round Table in Warsaw. The main themes of this Round Table were:

- ECRI's Third Report on Poland (published on 14 June 2005);
- racism and xenophobia in public discourse and in the public sphere;
- combating racism and racial discrimination against Roma;
- the legislative and institutional framework for combating racism and racial discrimination in Poland.

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 recently established legislative and institutional framework for combating racism and racial discrimination in Poland. A whole session was dedicated to combating racism and racial discrimination against Roma, with a special emphasis on the practical implementation of the Programme for the Roma community in Poland 2004-2013. The dangers of racism and xenophobia in public discourse and in the public sphere were also analysed in more detail by renowned experts in this field.

Co-operation with NGOs

NGOs are ECRI's key partners of in the fight against racism and intolerance. ECRI's aim is to build up a network of NGOs working in partnership with ECRI, including through the exchange of information and organising meetings and consultations. Since the adoption of its Programme of Action on Relations with Civil Society, ECRI holds regular consultation meetings with a number of international NGOs in order to have comprehensive exchanges of views about future co-operation between NGOs and ECRI.

ECRI's last consultation meeting with international NGOs took place on 21 November 2005 in Paris. The consultation meeting reviewed recent developments concerning ECRI and its work, and discussed third round monitoring work, work on general themes and the forthcoming Council of Europe Campaign "All Different, All Equal: European Youth Campaign for Diversity, Human Rights and Participation".

Inter-Agency Co-operation

ECRI hosted an inter-agency working level meeting on possible joint action on the issue of combating racism while fighting terrorism, in Strasbourg, on 9 December 2005. Participants exchanged information on past and future activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Committee on the Elimination of Racial Discrimination (CERD), the Office for Democratic Institutions and Human Rights of the OSCE (ODIHR), the European Monitoring Centre on Racism and Xenophobia (EUMC) and ECRI related to the issue of combating racism while fighting terrorism and identified the main challenges in this field.

Publications

Third Report on Estonia

CRI (2006) 1, 21 February 2006

Third Report on Lithuania

CRI (2006) 2, 21 February 2006

Third Report on Romania

CRI (2006) 3, 21 February 2006.

Third Report on Spain

CRI (2006) 4, 21 February 2006

Examples of good practices: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level

January 2006

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.

Violence against women

The fight against violence against women is a highly important theme for the Council of Europe. This latter is not only a violation of human rights, but also an obstacle to equality between women and men.

"Violence within the family: the place and role of men"

A new subject for a Council of Europe's Conference

The Conference held on this theme (Strasbourg, 6-7 December 2005) explored the rarely approached subject of violence against men, who are generally considered as perpetrators of violence within the family and not as victims of it.

The Conference focused on two themes: men as victims of violence within the family, on the one hand, and the role of men in preventing violence and protecting victims, on the other hand.

The breath of the discussion and the early stage of debate left many outstanding questions, but allowed the sorting out of the controversies and contradictions. As a matter of fact, even the empirical data on which the discussion relied – especially solid studies from Germany, Ireland and Norway – could give rise to diverging interpretations.

Amongst the concluding recommendations, one can note:

- there should be some agency or organisation – non-existent presently – for men to turn when they have been victimised. From this, knowledge about these men's needs would grow, and it would constitute a basis for research;
- there is a great need for dissemination of models of good practice including concrete descriptions of organisational structures, working methods, lessons learned, etc.; time or space;
- preventive work should be developed, for example, proactive intervention with young couples to support basic parenting skills so that children are less likely to become aggressive, and parents less likely to resort to violence, programs through sports organisations or any other scholar or non-scholar framework;
- there is a need for the training of all those who will be needed for implementation of new laws, regulations or policies;
- partnership between women and men towards building a (gender) culture of peace is an essential element of long-term change. It must be based on the most central elements of non-violence, such as taking responsibility for oneself and respecting the limits set by the other, as well as recognising diversity without compromising on basic human rights.

The participants agreed that the Conference was an important step towards a more nuanced and complex dialogue on the many issues that arise in such a partnership. It was suggested that perhaps the time has come for a coalition of the women's and men's organisations that work in different way and in different countries against violence to collaborate on drafting a common agenda.

[*Note:*
The Proceedings of the Conference are published on the Web site of the Equality Division.]

A Task Force to Combat Violence against Women, Including Domestic Violence

A follow-up to the Action Plan adopted during the 3rd Summit of Heads of State and Government of the Council of Europe (May 2005)

Set up in 2006, it is composed of international experts in the field of preventing and combating violence against women. It is in charge of evaluating progress at national level and establishing 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 also be prepared and conducted in 2006 in close co-operation with other European and national actors, including NGOs.

Publication

Cartoon book "You're not for sale"

A cartoon book entitled "You're not for sale" (see cover of this *Bulletin* for illustration) will be published within the framework of the Council of Europe campaign on the fight against trafficking in human beings, launched in 2006. This publication will bring a new element to the work of the Council of Europe in the fight against human trafficking. It will be available free of charge at the following address:

Council of Europe,

Equality Division,

Directorate General of Human Rights,

F-67075 Strasbourg Cedex.

Internet: http://www.coe.int/equality/

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.

The convention

Georgia ratified the Framework Convention for the Protection of National Minorities on 22 December 2005, which brought the total number of States Parties to 38. The Framework Convention will enter into force in respect of Georgia on 1 April 2006.

Focus on Kosovo

The Advisory Committee calls for improvements in the protection of minorities in Kosovo

Interview with Asbjørn Eide, President of the Advisory Committee on the Framework Convention on national minorities

Asbjørn Eide, President of the Advisory Committee on the Framework Convention on National Minorities

What is special about the Advisory Committee's visit to Kosovo?

This is a new departure for the Advisory Committee: for the first time we have carried out monitoring in territory administered by the United Nations. Kosovo has a very particular status – it is still formally part of Serbia and Montenegro, which has ratified the framework convention and had no objections. Our visit was made possible because of an agreement between UNMIK and the Council of Europe.

Why visit Kosovo now?

For us to assess properly whether Kosovo meets the Council of Europe standards in the field of minority protection, we need to check what is the situation on the ground. This is also a very important time to visit Kosovo because its status is up for negotiation. This means it is crucial to gain some perspective on what would be the future for minorities who were very seriously affected by the conflict. We visited various parts of Kosovo and discussed with groups such as the Serbians, the Turks, the Bosniaks and the Roma, as well government representatives and people in the UN administration.

Your report points out some problems: can you tell us more?

We found that although the UN has put laws in place to protect minorities, they are not reflected in practice. This has led to a great deal of insecurity, especially for the Serbs, but also for other minorities such as the Roma. For example, although the use of the Serbian language is protected by law, in practice those speaking it run the risk of becoming the victim of violence. We hope our report will help to point out the problems existing at the moment so that they can be taken into account in the negotiations for the future of Kosovo and by the present authorities.

Extracts from the Opinion of the Advisory Committee on Kosovo: Main conclusions of the Advisory Committee[1]

Protection of national minorities is an area of paramount importance for human rights as well as for peace and stability in Kosovo, and the Agreement

concluded between the Council of Europe and UNMIK related to the monitoring of the Framework Convention is an important step in improving the international accountability of the authorities in Kosovo in this area.

The monitoring process coincides with the decision to commence the crucial status talks on the future of Kosovo, the results of which will also have an impact on the way in which the findings of the present monitoring process are to be followed up. The present complex and ambiguous institutional arrangements, coupled with uncertainty as regards the future status of Kosovo, have at times obscured the respective authorities' responsibilities and accountability for the implementation of the Framework Convention, to the detriment of persons belonging to minority communities. Therefore, whatever the outcome of the status talks, it is essential that the authorities that are effectively in charge in Kosovo, be they international and/or local, clearly assume their responsibilities for the implementation of this treaty.

At the same time, it is clear that, regardless of the institutional arrangements, the implementation of the principles of the Framework Convention remains exceptionally difficult in Kosovo, where inter-ethnic violence has seriously eroded trust between communities.

Various advanced norms, such as the Anti-Discrimination Law, and a commendable Kosovo Standards Implementation Plan have been introduced to tackle many of the key concerns of minority communities.

But the reality in Kosovo remains disconcertingly far from these laudable norms and plans. Hostility between Albanians and Serbs is still very tangible, and this is harming also the protection of other communities in Kosovo.

Serbs outside their compact areas of settlement see their basic rights, such as freedom of movement and freedom of expression, threatened, and discrimination and intolerance towards persons belonging to minority communities continue. Related security concerns, coupled with limited employment opportunities and problems with repossession of property and other factors, are a real obstacle to sustainable return. Security concerns also affect the implementation of the Framework Convention in such fields as education, use of languages and participation. This concerns not only Serbs but also persons belonging to certain other communities, in particular Roma.

In these difficult circumstances certain initiatives that are valuable as such, such as the planned population and housing census, must be pursued with extreme caution and in close consultation with all minority communities.

Sustainable progress towards full and effective equality would require true commitment from the institutions to tackle the problems detected. Some steps forward have been noted in this respect, but shortcomings remain serious as regards both the capacity and the will of local institutions to tackle these issues. At the same time, UNMIK has been at times too slow to react, and, for example, the health emergency in Roma camps in Northern Kosovo has only recently been treated as a priority. Furthermore, the fact that on some issues neither UNMIK nor local authorities have assumed clear responsibility has caused significant difficulties, for example, for Ashkali and Egyptians who have been forcibly returned to Kosovo.

The perceived impunity of actors of violent crime against Serbs, Roma and others, including in relation to the violence of March 2004, is a particularly serious problem that needs to be addressed as a high priority. This requires more assertive efforts, including by local and international bodies involved in law-enforcement.

The judiciary, with its huge backlog and limited minority representation, is one extremely weak element in the current institutional framework, and this has a negative impact on the efforts of persons belonging to minority communities to exercise the right to property restitution and other rights. For many of them, the international Ombudsperson remains the only trusted and accessible remedy.

There are certain positive examples of the regular use of languages of minority communities in official bodies. At the

1. For the full text, see www.coe.int/minorities

same time, lack of political will and capacity has limited the possibility of persons belonging to minority communities to use their languages in relations with public administration in a number of localities. Also, progress reported on the use of topographical indications in minority languages is still too slow.

While commendable initiatives exist, there is no comprehensive approach to the issue of minority education, and this has had a negative impact on numerically smaller communities, including the Bosniac and Turkish communities. The specific needs of pupils from the Roma, Ashkali and Egyptian communities are still to be addressed in a consistent manner. In addition, the on-going educational reforms have created new obstacles to the access to education for some Gorani pupils.

The fact that Albanian and Serbian pupils generally receive their education in separate schools poses great and long term challenges to the building of trust and reconciliation between the two communities. Apart from some limited initiatives of shared schools, there is presently a lack of interaction between these communities within the school system, which reinforces the divided nature of Kosovo society.

The Constitutional Framework contains certain commendable provisions on the participation of persons belonging to minority communities in decision-making processes, but serious obstacles remain in this area at various levels. The participation of communities other than Albanians and Serbs in the status talks is one acute concern in this respect, and another key question is the planned local government reform.

Participation of persons belonging to minority communities in economic and social life is another area where the stated political commitment needs to be more consistently reflected in practice, and the impact of privatisation and other key processes must be carefully monitored.

Recommendations

In addition to taking into account the various comments made in the preceding sections of the present Opinion, the authorities in Kosovo, both international and local, are urged to take the following measures with a view to improving the implementation of the Framework Convention in Kosovo.

General

- Ensure that there is sufficient clarity as regards the responsibilities and accountability for the implementation of various articles of the Framework Convention and that no competences are prematurely delegated to local institutions in the relevant sectors.
- Improve the awareness within the relevant bodies, both international and local, of the principles contained in Article 15 and other articles of the Framework Convention.

Data collection

- Delay the organisation of the population and housing census until a maximum level of participation of all communities can be ensured.
- Take measures to ensure effective protection of personal data relating to community affiliation.
- Set up a permanent system for collecting data on the investigation and prosecution of ethnically-based incidents.

Remedies and law-enforcement

- Step up efforts to improve the functioning of the judiciary and to build the confidence of minority communities in the courts, inter alia, by further recruiting persons belonging to minorities and by improving the speed with which cases are dealt with.
- Keep the Ombudsperson institution under international leadership until it can be assessed with confidence that the said institution can function effectively as a fully local institution, without eroding the trust it has built to date amongst minority communities.
- Address the perceived impunity as regards ethnically motivated crime by giving such crime the highest priority within the law-enforcement and other bodies involved, and take steps to

encourage reporting of everyday manifestations of intolerance.

Return process and security concerns

- Take vigorous practical measures to remove the obstacles to return by seriously addressing security concerns, but also by ensuring the repossession of, and unhindered access to, agricultural and other property and by designing further targeted income generating activities.
- Pursue plans to make the assistance schemes more flexible so as to better guarantee the freedom of choice of place of residence in Kosovo for persons belonging to minority communities.
- Introduce assistance measures, and clearer allocation of institutional responsibilities, to ensure improved integration of those persons belonging to minority communities who have been forcibly returned to Kosovo.
- Take urgent measures to address the alarming health situation of Roma in the lead-contaminated camps in Northern Kosovo, keeping the well-being and health of the Roma at issue as the primary consideration, and take decisive measures to accommodate the return of the Roma and to prevent such health crises in the future.

Minority cultures and media issues

- Expand efforts to protect religious sites from any incidents, while pursuing the crucial process of reconstructing the damaged sites.
- Increase measures to support cultures of minority communities, including numerically smaller ones, and ensure the participation of persons belonging to minority communities in the relevant decision-making process.
- Process rapidly the delayed application for radio and TV licenses, with a view to expanding the scope and diversity of broadcasting for and by minority communities, and take further steps to ensure that all communities have equal access to public service broadcasting.

Language use

- Adopt new language legislation in order to bring clarity and legal certainty as regards the use of languages, including in relations with administrative authorities, topographical indications, and registration of personal names, and closely monitor compliance with language requirements in the relevant sectors, including in the judiciary.
- Ensure that the adoption of new language legislation is coupled with adequate implementation capacity and that procedures, including judicial ones, are in place in case of non-compliance with language requirements, including for any illegal changes of place names.
- Ensure that tangible results are achieved in the efforts to put an end to the feeling of insecurity that prevents Serbs and Roma and persons belonging to certain other minority communities, from using their language in public places.

Education

- Consider ways to create opportunities for interaction between pupils from Serbian and Albanian communities and design a comprehensive plan that would progressively remove barriers, including linguistic ones, between pupils from different communities.
- Accommodate minority concerns and introduce incentives that could reduce the demand for maintaining a parallel educational system.
- Address as a matter of urgency the issue of safe transport of pupils from minority communities to educational facilities.
- Address the existing needs for education in the languages of the minority communities, including by clarifying the threshold for opening a class with instruction in a minority language while aiming to accommodate the requests made by numerically smaller communities and take measure to provide adequate textbooks and qualified teachers for instruction in mother tongue.
- Ensure that decisive steps are taken to address the educational needs of Roma, Ashkali and Egyptian communities, including by ensuring the sustainability of the programmes designed to help pupils from these communities to integrate and stay in the education system.
- Allow for flexibility in the implementation of the educational reforms in relation to those pupils from the Gorani community who have not yet integrated into the new education system.

Participation

- Ensure the meaningful participation and input of persons belonging to all communities in the talks concerning the future status of Kosovo.
- Pursue further efforts to ensure improved participation of persons belonging to minority communities in the PISG structures and processes.
- Introduce regular dialogue between the relevant Government Ministries and the Committee on Rights and Interests of Communities of the Assembly of Kosovo.
- Consider ways to improve the representativeness and effectiveness of the communities committees in municipalities.
- Step up efforts to ensure that persons belonging to all communities can effectively take part in the economic and social life of Kosovo, including by monitoring how the privatisation process and its outcome impacts on, and involves, minority communities.

Protection against population changes

- Ensure that the return process, while guaranteeing the choice of the place of return in Kosovo, is organised in a manner that prevents political manipulations.
- Ensure that any proposed decentralisation plan allows for substantial consultation of members of all minority communities and fully respects the principles of Article 16 of the Framework Convention.

Cross-border contacts

- Pursue efforts to address the difficulties linked with the non-recognition of UNMIK travel documents, including those related to the acceptance of licence plates issued by UNMIK.

First monitoring cycle

Two follow-up meetings on the implementation of the findings of the first monitoring cycle were held in Bosnia and Herzegovina and Azerbaijan during the reference period:

Bosnia and Herzegovina (5-6/12/2005)

Three main areas were examined during this meeting, in the presence of the responsible authorities, minority associations, NGOs as well as international organisations:

- Current stage of implementation of the legislative framework set up for the protection of national minorities: achievements and challenges.
- Participation of persons belonging to national minorities in education and socio-economic life.
- The new National Strategy for Roma; addressing the main problems facing the Roma population

Azerbaijan (19/12/2005)

Three main areas were examined during this meeting, in the presence of the responsible authorities, minority associations, NGOs as well as international organisations:

- Implementation of the principles of non-discrimination and effective participation of persons belonging to minorities in public and socio-economic life;
- Use of minority languages in public and private life, including the media, Rights of persons belonging to minorities in the field of education.

Second monitoring cycle

Romania

A second Opinion on Romania was adopted on 24 November 2005 and made public on 23 February 2006.

Summary of the Advisory Committee's Opinion

Romania has continued to show commitment in the implementation of the Framework Convention and has taken new steps to maintain and develop further the climate of tolerance and intercultural understanding which generally characterises Romanian society. New legislative, institutional and practical measures have been taken to strengthen

the protection of persons belonging to national minorities in fields such as non-discrimination, the use of minority languages in the public sphere, as well as education, where the situation of the Roma has received particular attention, but where the necessary financial resources are not always guaranteed.

Romanian legislation provides important guarantees for the participation of national minorities and the latter, particularly the Hungarian minority, play an active role in Romanian public life. However, access to the existing mechanisms for participation and state support does not extend to all potentially interested organizations and communities.

Further measures are needed to ensure more effective implementation of the anti-discrimination legislation and to raise public awareness and tolerance, especially concerning full and effective equality of the Roma. The social and economic situation of the Roma remains problematic, and increased efforts, including of a financial nature, are needed to address manifestations of discrimination and the difficulties still faced by the Roma in the fields of employment, housing, health and education.

A balanced approach to the concerns of all interested parties should prevail in the current process of property restitution, with due consideration for its impact on the situation of persons belonging to more vulnerable groups.

Slovenia

A second Opinion on Slovenia was adopted on 26 May 2005 and made public on 1 December 2005.

Summary of the Advisory Committee's Opinion

Since the adoption of the first Opinion of the Advisory Committee in September 2002, Slovenia has continued to pay attention to the protection of national minorities. A number of positive steps has been taken in this area, such as the adoption of an Act on Equal Treatment and the setting up of institutional structures for ensuring protection from discrimination. The Hungarian and Italian minorities continue to enjoy, in accordance with the Constitution and the relevant legislation, a high level of protection.

There remain, however, shortcomings in the implementation of the Framework Convention. In respect of the Hungarians and Italians, additional efforts should be made, at the central and, in particular, at the local level, in order to ensure that existing legal framework related to the promotion of their cultural identity, their access to media and the use of their languages in the public sphere, is implemented more effectively.

Further steps should be taken, in co-operation with those concerned, to address the difficulties faced by many Roma in housing, employment and education, where more resolute action is needed to eliminate the persisting practice of segregating Roma children.

Increased efforts should be made to promote tolerance and intercultural dialogue in respect of persons from other parts of the former Yugoslavia (SFRY) living in Slovenia, as well as the integration of these persons into society, in a manner that supports preservation of their identity and culture, and solve remaining problems concerning their legal status.

In addition, there is a need to pursue a more inclusive approach and wider dialogue at the domestic level with regard to the personal scope of application given to the Framework Convention in Slovenia.

Other countries

Resolutions of the Committee of Ministers were adopted in respect of Liechtenstein (7 December 2005), Moldova (7 December 2005), Denmark (14 December 2005), Hungary (14 December 2005), Estonia (15 February 2006), and the Czech Republic (15 March 2006).

Co-operation with civil society

A consultation meeting with non-governmental organisations and national human rights institutions on their input to the monitoring of the Framework

Convention for the Protection of National Minorities was held in Strasbourg on 8 December 2005.

Discussions at the meeting were carried out around topics such as stock-taking of NGOs' experience in using the Framework Convention and critical assessment of their involvement in its monitoring, NGOs' contribution to work on substantive issues related to the protection of national minorities and NGO needs in terms of training. The participants also explored different ways of using the Framework Convention at the domestic level and ways of increasing its visibility in the media.

The report of the meeting including recommendations is available on the Council of Europe minorities Web site.

Conference on participation of national minorities: the role of consultative bodies

In partnership with the Council of Europe, the Romanian authorities held a conference on the role of consultative bodies of national minorities at the hotel ARO Palace, Brasov, on Tuesday 7 March 2006.

The aim of the conference was to foster discussion between consultative bodies of national minorities, government experts, researchers, representatives of civil society and leading figures of the 46 member states of the Council of Europe on the participation of national minorities in public affairs. Discussion focused on the functioning, composition and tasks of consultative bodies, providing an opportunity for the participants to exchange their experiences.

The conference's discussions were instrumental in identifying valuable experiences with regard to the role and the functioning of consultative bodies in Council of Europe Member States. Its results will now contribute to the efforts of the intergovernmental committee of experts relating to the protection of national minorities (DH-MIN) to draw up a manual of best practices. Such a manual could assist Council of Europe member states in developing their policies with regard to the consultation of national minorities, including through the enhancement of their minority consultative mechanisms.

The FCMN on the Internet: http://www.coe.int/minorities/
• e-mail: minorities.fcnm@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.

2nd meeting of the the CDMC

Strasbourg, 29 November-2 December 2005

Following the request made by the Ministers who participated in the 7th European Ministerial Conference on Mass Media Policy, Integration and diversity: The new frontiers of European media and communications policy in Kyiv on 10 and 11 March 2005, 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.

Summary

During its second meeting the CDMC continued discussions on the alignment of legal provisions on defamation with the relevant case-law of the European Court of Human Rights, including the issue of decriminalisation of defamation (see below), made known its views on the future of the European Convention on Transfrontier Television (alignment with the related European Union Directive and desirability of broader ratification of the Convention), and underlined the importance of the Council of Europe bringing a strong human rights dimension to discussions on Internet governance. The CDMC also considered a draft recommendation on the ratification of a UNESCO convention (see below), and held an exchange of views on the situation of freedom of expression and information in Belarus.

The CDMC will hold its next meeting from 30 May to 2 June 2006.

Key issues examined

Defamation, decriminalisation of defamation

Examination of the alignment of the laws on defamation with the relevant case-law of the European Court of Human Rights, including the issue of decriminalisation of defamation;

- Exchange of views; and decision on the approach to follow.
- Text addressed to the Committee of Ministers setting out the CDMC views to be considered at its next meeting.

UNESCO *Convention on the protection and promotion of the diversity of cultural expressions*

Transmission to the Committee of Ministers of a draft recommendation on the ratification of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions.

- Many common points exist between the objectives of the UNESCO Convention and a number of Council of Europe instruments with regard to culture as well as the media.

Work of the CDMC's subordinate bodies

Examination of the work of the CDMC's subordinate bodies;

- Group of Specialists on freedom of expression and information in times of crisis (MC-S-IC);

- Group of Specialists on public service broadcasting in the Information Society (MC-S-PSB);
- Group of Specialists on media diversity(MC-S-MD);
- Group of Specialists on human rights in the Information Society (MC-S-IS).

The full text of the meeting can be found on the Media Web site.

Publications

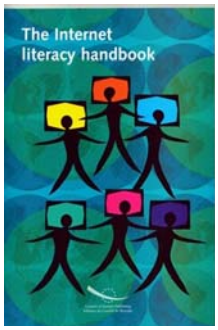
"The Internet literacy handbook"

Compiled by: Janice Richardson (editor), Andrea Milwood Hargrave, Basil Moratille, Sanna Vahtivouri, Dominic Venter and Rene de Vries.

Updated by: Betsy Burdick, Chris Coakley and Janice Richardson.

Contents

- Tips for the reader
- Introduction
- Fact Sheet 1 – Getting connected
- Fact Sheet 2 – Setting up websites
- Fact Sheet 3 – Searching for information
- Fact Sheet 4 – Portals
- Fact Sheet 5 – E-mail
- Fact Sheet 6 – Spam
- Fact Sheet 7 – Chat
- Fact Sheet 8 – Newsgroups
- Fact Sheet 9 – World-wide libraries
- Fact Sheet 10 – Music and images on the Internet
- Fact Sheet 11 – Creativity
- Fact Sheet 12 – Games
- Fact Sheet 13 – Distance learning
- Fact Sheet 14 – Labelling and filtering
- Fact Sheet 15 – Privacy
- Fact Sheet 16 – Security
- Fact Sheet 17 – Bullying and harassment
- Fact Sheet 18 – Shopping online
- Fact Sheet 19 – Becoming an active e-citizen
- Fact Sheet 20 – Mobile technology
- Fact Sheet 21 – Blogs.



Other publications

10 February, 2006

- Publication of the report prepared for the Council of Europe's Group of Specialists on Public Service Broadcasting in the Information Society (MC-S-PSB) by Christian S. Nissen.

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

Human rights co-operation and awareness

Bilateral and multilateral human rights assistance and awareness programmes are being implemented by the Directorate General of Human Rights of the Council of Europe. The aim of these programmes is to facilitate the fulfilment by member states of their commitments in the human rights field, both in respect of the conditions for admission to the Council of Europe as well as the monitoring of their commitments.

Training activities

Turkey

Seminar for law enforcement officials

Ankara, 15-16 December 2005

The seminar covered human rights training and curriculum development for the Turkish Gendarmerie. It concluded a project on human rights training funded by the Government of Denmark. Two previous seminars focused on democratic policing and human rights, and examined the experiences from three study visits carried out to Denmark, the Netherlands and Belgium.

Austria

Pilot training seminar on "Countering terrorism, protecting human rights"

Vienna, 5-7 December 2005

The seminar dealt with human rights issues relevant to counter-terrorism initiatives. It introduced senior public officials to the international and European regulatory frameworks and focused on the role of civil society. It was co-organised with OSCE/ODIHR and hosted by the Austrian Ministry of Interior.

Kosovo

"Training-the-trainers programme" for local judges: last session

Pristina, 1-3 December 2005

The session focused on Article 6 and Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR). It was attended by international experts, local judges and prosecutors, and organised in co-operation with the Kosovo Judicial Institute. The participants selected after the session will go on to train other judges on the ECHR.

Russia

Visit to the Council of Europe of Russian judges

5-9 December, 12-16 December 2005

Two five-day study visits were organised for fifty judges from different regions of the Russian Federation upon the request of the Supreme Court of the Russian Federation, in order for the judges to familiarise themselves with the work of the European Court of human Rights and the Directorate General of Human Rights, notably as regards the execution of judgments.

Conferences and colloquies

Ukraine

UNHCR-COE joint seminar on the protection of refugees and asylum seekers

Kyiv, 23-24 November 2005

The seminar was organised in the light of the legislative developments in Ukraine where a draft law on asylum is being prepared by the Ministry of Justice. It recalled main international and European standards and provided guidance to the Ukrainian authorities on the substantive contents of the draft law,

including issues arising under the articles of the ECHR relevant to the protection of refugees and asylum seekers.

Awareness raising

"Human Rights Days"

Moldova, week of the 6 February 2006

The week of the 6 February 2006 was marked with a strong human rights dimension: seminars on the protection of human rights were run in parallel in Chisinau throughout the week with the participation of Council of Europe experts:

- a training seminar for lawyers on the ECHR and procedures before the European Court of Human Rights,
- an intensive training seminar for judges and prosecutors on the ECHR and its application at the national level,
- an awareness-raising seminar for NGO representatives on the main Council of Europe human rights treaties, such as the ECHR, the European Social Charter and the Framework Convention for Protection of National Minorities.

These seminars are part of the Joint Programme of Co-Operation between the European Commission and the Council of Europe for Moldova: Support to continued democratic reforms 2004-2006 (for more information, see http://jp.coe.int).

Moldova

Translations

New translation in Azerbaijani

The "Human rights Handbooks" are intended as practical guides to how particular articles of the ECHR have been applied and interpreted by the European Court of Human Rights. Originally produced in French and in English, they are progressively translated into other languages. The Azerbaijani version of the handbook on the right to a fair trial is now available on line on our "Training material" database: http://www.humanrights.coe.int/aware/GB/publi/publidtb.asp

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**	**Convention on Action against Trafficking in Human Beings**
Albania	02.10.96	02.10.96	02.10.96	21.09.00	02.10.96	26.11.04		**03.02.06**		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	**23.01.06**	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	**17.11.05**		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	**30.01.06**	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	**17.11.05**	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	**26.01.06**		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		22.08.05	20.06.00	**22.12.05**	
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	05.08.05	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	**21.12.05**	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	07.09.05			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	
Moldova	12.09.97	12.09.97	12.09.97	12.09.97	12.09.97			22.08.05		08.11.01	02.10.97	20.11.96	

	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**	**Convention on Action against Trafficking in Human Beings**
Monaco	**30.11.05**		**30.11.05**	**30.11.05**	**30.11.05**		**30.11.05**				**30.11.05**		
Netherlands	31.08.54	31.08.54	23.06.82	25.04.86		28.07.04	**10.02.06**	**02.02.06**	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		16.08.05	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	**02.02.06**			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	06.09.05			03.03.04	11.05.01	
Slovakia	18.03.92	18.03.92	18.03.92	18.03.92	18.03.92		18.08.05	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	**17.11.05**	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			**20.02.06**		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: 03.03.06
Ratifications between **01.11.05** and **28.02.06** are highlighted

Full information on the state of signatures and ratifications of Council of Europe conventions can be found on the Treaty Office's Internet site: http://conventions.coe.int/

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