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Human rights information bulletin

No. 68, 1 March-30 June 2006

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The 6th European Ministerial Conference on Equality between Women and Men took as its theme *Human rights and economic challenges in Europe – Gender equality*. At the end of the conference, participants adopted a resolution on "Achieving gender equality: a challenge for human rights and a prerequisite for economic development".

Full report inside.

Photo: Jens Orback, Swedish Minister for Democracy, Metropolitan Affairs, Integration and Gender Equality

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Comment

Philippe Boillat was appointed to head the Council of Europe's Directorate General of Human Rights (DGII) in May 2006. In the first *Bulletin* published since his taking up the post, he outlines the challenges facing the directorate in the near future.

The daily work of DGII is dominated by its reponsibility for the different monitoring functions that ensure the implementation of the Council's human rights treaties: the supervision of the execution of the Court's judgments, the European Committee of Social Rights, the European Committee for the Prevention of Torture, the European Commission against Racism and Intolerance, and the Advisory Committee for the Protection of National Minorities. But in addition, DGII is entrusted with diverse tasks connected with the promotion and protection of human rights.

Two Council of Europe campaigns

"Human being: not for sale"

Member states of the Council of Europe include countries of origin, transit and destination of victims of trafficking in human beings.

Not surprisingly, therefore, the Council has been a focus of activity in the fight against trafficking since the end of the 1980s. This role has been strengthened by the 3rd Summit (Warsaw, May 2005) and by the opening for signature of the Council of Europe Convention on Action against Trafficking in Human Beings.

The **Council of Europe Campaign to Combat Trafficking in Human Beings** was launched in 2006. It aims to promote the widest possible signature and ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, which will enter into force after ten ratifications.

The fight against trafficking commands the attention of the whole world, because trafficking is a threat both to the person and to the fundamental values of our democratic societies. The Council of Europe plays a major role in combating this new form of slavery.

"Stop domestic violence against women"

Preventing violence against women, and protecting them against violence, has long been a priority for the Council of Europe. In 2006, however, it has intensified its efforts.

The **Campaign to Combat Violence against Women, including Domestic Violence** will be launched at a high-level conference in Madrid on 24 November 2006.

The message of the campaign comes in four parts:

- the fight against domestic violence requires concerted action on the part of public authorities;
- domestic violence is a violation of human rights;
- domestic violence causes serious injury to women, and is harmful to the whole of society, including future generations;
- combating violence against women requires the active participation of men.

Member states are encouraged to participate, and also to carry out national campaigns which take their inspiration from the programme of the Council of Europe campaign.

Treatment of terrorist suspects

In September 2006 the Secretary General made public his proposals (document SG (2006) 01) for concrete follow-up action to the inquiry initiated in November 2005 under Article 52 of the European Convention on Human Rights.

The proposals are based on the results of the inquiry, taking account also of the Parliamentary Assembly's work and of the Venice Commission's opinion of March 2006.

Without prejudging the form of the instruments to be eventually adopted, the Secretary General made the following recommendations to the Committee of Ministers:

- define basic principles and guidelines for the legislative and administrative framework of security services, including specific principles governing the activities of foreign security services;
- identify existing possibilities to enforce human rights obligations in respect of transiting civil and state aircraft and to draft model human rights clauses which could be used by member states in bilateral or multilateral agreements granting overflight rights for state aircraft or in overflight authorisations;
- define common procedures for obtaining waivers of immunity in cases of serious human rights violations.

Preventive action

The purpose of the proposed action will be preventive. We cannot undo what has happened, but we must make sure that it does not happen again. The aim is to agree on common European positions which will help member states to protect human rights while respecting their obligations under existing international treaties. Relying on common European positions will strengthen the negotiating position of our member states in international fora and *vis-à-vis* third countries.

The inquiry was launched against the background of reports alleging involvement by States Parties in unlawful deprivation of liberty of terrorist suspects and their transport in or through their territory by or at the instigation of foreign agencies ("secret detention", "extraordinary rendition"). Member states were asked to explain how their internal law ensured the effective implementation of the European Convention on Human Rights.

Human rights defenders

In line with the Action Plan adopted at the Warsaw Summit, and on the initiative of the Secretary General and the Commissioner for Human Rights, a colloquy, **"Protecting and supporting human rights defenders in Europe"**, will be held in Strasbourg on 13 and 14 November 2006.

Bringing together more than eighty participants representing both states and civil society, the colloquy will examine the challenges and difficulties faced by human rights defenders all over Europe with a view to identifying concrete measures which the Council of Europe could take to support their action and afford them better protection.

The Action Plan adopted at the 3rd Summit of Heads of State and Government underlines the crucial role which the Council of Europe must play "in protecting the right of individuals and promoting the invaluable engagement of non-governmental organisations, to actively defend human rights".

Human rights and the information society

Rights and freedoms in on-line environments are important for those who use and increasingly rely on the Internet in their everyday lives to express themselves, and to receive and impart information and ideas.

It is therefore important for users, including younger users and their educators (i.e. parents and teachers), to acquire the skills to create, produce and distribute online content and communications in a manner which is both respectful of, and conducive to, their rights and freedoms. Such skills also enable users to better understand and deal with both content (violence and self-harm, pornography, discrimination and racism) and behaviours (grooming, bullying, harassment or stalking) carrying a risk of harm.

DGII has prepared an online version of its *Handbook on internet literacy – a guide for parents, teachers and young people*, which explains and advises on the trends and terminology of the Internet. A cartoon version for young children is in preparation. This is being complemented by a recommendation on empowering children and young people in the new information and communications environment, and by a Pan-European Forum on empowering children and young people, held in Armenia in October 2006.

The challenge for DGII is to raise awareness and promote the exercise of rights and freedoms online, in particular by developing and promoting the education, literacy and the skills of users.

Treaties and conventions

Signatures and ratifications

Signatures and ratifications of Council of Europe treaties in the field of human rights between 1 March and 30 June 2006.

See also the simplified table of ratifications, page 104.

Armenia

On 19 May 2006 Armenia signed 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.

Azerbaijan

On 19 May 2006 Azerbaijan ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Bosnia and Herzegovina

On 19 May 2006 Bosnia and Herzegovina ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Czech Republic

On 19 May 2006 the Czech Republic ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Finland

On 7 March 2006 Finland ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

France

On 7 June 2006 France ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

On 22 May 2006 France signed the Council of Europe Convention on Action against Trafficking in Human Beings.

Germany

On 11 April 2006 Germany ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Italy

On 7 March 2006 Italy ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Latvia

On 28 March 2006 Latvia ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

On 19 May 2006 Latvia signed the Council of Europe Convention on Action against Trafficking in Human Beings.

Luxembourg

On 21 March 2006 Luxembourg ratified:

- Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms;
- 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;
- and Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Moldova

On 19 May 2006 Moldova ratified the Council of Europe Convention on

Action against Trafficking in Human Beings.

Monaco

On 10 March 2006 Monaco ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Netherlands

On 3 May 2006 the Netherlands ratified the European Social Charter (revised), together with the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.

Portugal

On 19 May 2006 Portugal ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Russia

On 4 May 2006 Russia signed Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

San Marino

On 19 May 2006 San Marino signed the Council of Europe Convention on Action against Trafficking in Human Beings.

Slovakia

On 19 May 2006 Slovakia signed the Council of Europe Convention on Action against Trafficking in Human Beings.

Slovenia

On 3 April 2006 Slovenia signed the Council of Europe Convention on Action against Trafficking in Human Beings.

Spain

On 15 March 2006 Spain ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Switzerland

On 25 April 2006 Switzerland ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Ukraine

On 27 March 2006 Ukraine ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

Reservations and declarations

Latvia

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 a Notification from the Minister of Foreign Affairs of Latvia, dated 6 March 2006, deposited with the instrument of ratification, on 28 March 2006 – Or. Engl.

Bearing in mind Article 20, paragraph 2, of Protocol No. 14 to the Convention (hereinafter referred to as "this Protocol"), the Republic of Latvia interprets Article 12 of this Protocol amending Article 35 of the Convention (hereinafter referred to as "the Convention"), in the following manner:

1. The new admissibility criterion may not be applied to reject such applications, which examination would otherwise be important for the protection of human rights and fundamental freedoms as defined in the Convention and the Protocols thereto, as well as to reject such applications, which have not been duly considered by a domestic tribunal.

2. The single-judge formations and committees will be able to apply the new admissibility criterion only after the Court's Chambers and Grand Chamber develop their case-law on this subject.

3. The new admissibility criterion will not be applied to the applications declared admissible before the entry into force of this Protocol in accordance with the general principle of non-retroactivity

of treaties, contained in Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969.

Moldova

Council of Europe Convention on Action against Trafficking in Human Beings

Declaration contained in the instrument of ratification deposited on 19 May 2006 – Or. Eng.

Moldova declares that, until the full re-establishment of the territorial integrity of the Republic of Moldova, the provisions of the Convention shall be applied only on the territory controlled effectively by the authorities of the Republic of Moldova.

Netherlands

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints

Declaration contained in the instrument of acceptance deposited on 3 May 2006 – Or. Eng.

The Kingdom of the Netherlands accepts the Protocol for the Kingdom in Europe.

European Social Charter (revised)

Reservation contained in the instrument of acceptance deposited on 3 May 2006 – Or. Eng.

The Netherlands will consider itself bound by Article 6, paragraph 4, of the European Social Charter (revised), except with respect to military personnel in active service and civil servants employed by the Ministry of Defence.

Reservation contained in the instrument of acceptance deposited on 3 May 2006 – Or. Eng.

The Netherlands will not consider itself bound by Article 19, paragraph 12, of the Charter (revised).

Declaration contained in the instrument of acceptance deposited on 3 May 2006 – Or. Eng.

The Kingdom of the Netherlands accepts the European Social Charter (revised) for the Kingdom in Europe.

Russia

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 full powers of signature deposited on 4 May 2006 – Or. Engl/Fr.

The Russian Federation declares that, signing the Protocol under the condition of its subsequent ratification, it proceeds from the following:

- the Protocol will be applied in accordance with the understanding contained in the Declaration on "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels" adopted by the Committee of Ministers of the Council of Europe at its 114th session on 12 May 2004;

- the provisions of the Protocol and their application will be without prejudice to further steps aimed at reaching a full consensus between member states of the Council of Europe on issues of strengthening the control mechanism of the Convention for the Protection of Human Rights and Fundamental Freedoms and of the European Court of Human Rights, including elaboration of a new additional protocol to the Convention based on the proposals of the "Group of Wise Persons" established to consider the issue of the long-term effectiveness of the Convention control mechanism;

- the application of the Protocol will be without prejudice to the process of improving the modalities of functioning of the European Court of Human Rights, first of all to strengthening the stability of its Rules, not excluding supplementary measures to be adopted by the Committee of Ministers of the Council of Europe aimed at reinforcing the control over the use of financial means allocated to the European Court of Human Rights and at ensuring the quality of staff of its Registry, with the understanding that procedural rules relating to examination of applications by the European Court of Human Rights must be adopted in the form of an international treaty subject to ratification or to another form of expression by a State of its consent to be bound by its provisions.

Declaration contained in the full powers of signature deposited on 4 May 2006 – Or. Eng./Fr.

The Russian Federation declares that, signing the Protocol under the condition of its subsequent ratification, it proceeds from the following:

- the application of Article 28, paragraph 3, of the Convention as amended by Article 8 of the Protocol does not exclude the right of a High Contracting Party concerned, if the judge elected in its respect is not a member of the committee, to request that he or she be given the possibility to take the place of one of the members of the committee.

Declaration contained in the full powers of signature deposited on 4 May 2006 – Or. Eng./Fr.

The Russian Federation declares that, signing the Protocol under the condition of its subsequent ratification, it proceeds from the following:

- no provision of the Protocol will be applied prior to its entry into force in accordance with Article 19.

United Kingdom

Convention for the Protection of Human Rights and Fundamental Freedoms

Withdrawal of derogation contained in a letter from the Permanent Representative of the United Kingdom, transmitted by the Permanent Representation and registered by the Secretariat General on 5 May 2006 – Or. Eng.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council of Europe, and has the honour to refer to Article 15, paragraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, as well as to the notification made by the United Kingdom under that provision dated 23 December 1988 and 23 March 1989, and to the further communication in that regard made on 12 November 1998.

By a letter from the then Permanent Representative of the United Kingdom to the then Secretary General dated 19 February 2001, the derogation referred to in the above-mentioned notifications was withdrawn as from that date in respect of the United Kingdom of Great Britain and Northern Ireland only.

It has now also become possible to withdraw the derogation referred to in those notifications and in the above-mentioned letter of 12 November 1998 in respect of the Crown Dependencies, that is the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man. Accordingly, the derogation is withdrawn in respect of those territories with immediate effect, and the Government of the United Kingdom confirm that the relevant provisions of the Convention will again be executed there.

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 HUDOC database of the case-law of the Convention.

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

Case-load statistics, 1 March-30 June 2006:

- 599 (631) judgments delivered
- 580 (632) applications declared admissible, of which 485 (500) in a judgment on the merits and 95 (132) in a separate decision
- 11 538 (12 117) applications declared inadmissible
- 333 (334) applications struck off the list.

Figures are provisional. The difference between the first figure and the figure in parentheses is due to the fact that a judgment or decision may concern more than one application.

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

Grand Chamber judgments

Sejdovic v. Italy

Judgment of 1.3.2006
Concerns:
Conviction in absentia of an applicant declared a runaway without being informed

Principal facts and complaints

The applicant is a national of former Yugoslavia, who lives in Germany.

In October 1992 an investigating judge made an order for the applicant's detention pending trial on account of his suspected involvement in the killing of a person at a travellers' encampment in Rome. As the applicant was untraceable, the authorities considered that he had deliberately sought to evade justice and declared him to be a "fugitive". A lawyer was assigned to represent him in his trial. Mr Sejdovic was sentenced to twenty-one years and eight months' imprisonment. The lawyer did not appeal, and the conviction accordingly became final.

Two and a half years later, the applicant was arrested in Germany. The German authorities refused a request by Italy for his extradition, on the ground that Italian law did not guarantee with sufficient certainty that the proceedings conducted in his absence could be reopened. He was released two months later.

Relying on Article 6 of the Convention, the applicant complained that he had been convicted in absentia without having had the opportunity to present his defence before the Italian courts.

In a judgment of 10 November 2004 the Court held that there had been a violation of Article 6 of the Convention and that the violation had originated in a systemic problem connected with the malfunctioning of Italian legislation and practice in that persons convicted in absentia were unable to obtain a fresh court ruling on the merits of the charge against them.

The Italian Government having requested that the case be referred to the Grand Chamber, the present judgment was given.

Decision of the Court

Article 6 (right to a fair trial)

The Court reiterated that anyone convicted in absentia was subsequently

entitled to obtain a fresh determination of the merits of the charge by a court which had heard him, where it was not established that he had waived his right to appear and to defend himself.

The Italian Government maintained that the applicant had lost his entitlement to a new trial as he had sought to evade justice. However, that argument was not based on any objective factors other than the applicant's absence from his usual place of residence, viewed in the light of the evidence against him, and assumed that he had been involved in, or indeed responsible for, the killing. The Court was unable to accept that argument, which also ran counter to the presumption of innocence. The establishment of the applicant's guilt had been the purpose of criminal proceedings which, at the time when he was deemed to be a fugitive, had been at the preliminary investigation stage.

In those circumstances, the Court considered that it had not been shown that the applicant had had sufficient knowledge of his prosecution and of the charges against him. It was therefore unable to conclude that he had sought to evade trial or had unequivocally waived his right to appear in court.

As to whether Italian legislation had afforded the applicant the opportunity of appearing at a new trial, the Court noted that the Italian Government had asserted that two remedies had been available to him. The Court considered that the remedy provided for in Article 670 of the Code of Criminal Procedure, by which a convicted person could lodge an "objection to execution" in order to contest the validity of the conviction, would have had no prospect of success. With regard to the possibility for the applicant to apply for leave to appeal out of time under Article 175 of the said Code, the Court considered that that remedy would have been bound to fail at the material time and that there had been objective obstacles to his using it, such as the requirement for him to prove that he had not deliberately refused to take cognisance of the procedural steps or sought to escape trial.

In conclusion, the Court considered that the applicant had not had the opportunity to obtain a fresh determination of the merits of the charge against him by a court which had heard him in accordance with his defence rights.

Article 46 (binding force and execution of judgments)

The violation of the applicant's right to a fair trial had originated in a problem deriving from the Italian legislation on trial in absentia and resulted from the wording of the provisions of the Code of Criminal Procedure in force at the material time on the conditions for applying for leave to appeal out of time.

The Court noted that after the applicant's trial had ended, legislative reforms had been implemented in Italy. In particular, Law No. 60/2005 had amended Article 175 of the Code of Criminal Procedure. However, it would be premature at this stage, in the absence of any domestic case-law concerning the application of those new provisions, to examine whether the reforms had achieved the result required by the Convention. The Court therefore considered it unnecessary to indicate any general measures at national level that could be called for in the execution of its judgment in this case.

The Court further reiterated its case-law to the effect that where, as in the applicant's case, an individual had been convicted following proceedings that had entailed breaches of the requirements of Article 6 of the Convention, a retrial or the reopening of the case, if requested, in principle represented an appropriate way of redressing the violation found.

Blečić v. Croatia

Judgment of 8.3.2006
Concerns:
Alleged violation based on facts occurring before ratification of the Convention

Principal facts and complaints

The case concerned the termination of the applicant's tenancy – a specially protected tenancy – on the ground that she had been absent from the flat for more than six months without justification. At that time, the town of Zadar was exposed to constant shelling, the supply of electricity and water was disrupted, and the applicant decided to prolong her stay with her daughter, in Rome.

In a judgment of 29 July 2004 the Court held that there had been no violation of Article 8 of the European Convention on Human Rights (right to respect for home) nor Article 1 of Protocol No. 1 thereto (protection of property). The applicant having requested that the case be referred to the Grand Chamber, the present judgment was given.

Decision of the Grand Chamber

The Croatian Government had raised in particular a preliminary objection concerning the Court's lack of temporal jurisdiction.

When Croatia ratified the Convention on 5 November 1997 it had recognised the Convention institutions' competence to examine any individual petitions based on facts occurring after the Convention and its Protocols came into force in respect of Croatia. Accordingly, the Court was not competent to examine applications against Croatia in so far as the alleged violations were based on facts having occurred before the date of ratification. However, difficulties arose where, as in the present case, the facts relied on fell partly within and partly outside the period of the Court's competence.

In the present case the Court accepted that the termination of the applicant's tenancy had been the fact constitutive of the alleged interference, but it remained to be determined when the termination had occurred. In that connection, the Court noted that the judgment by which the tenancy was terminated had become final on 15 February 1996 when the Supreme Court reversed the County Court's judgment. It had therefore been at that moment that the applicant lost her tenancy. It followed that the alleged interference with the applicant's rights lay in the Supreme Court's judgment of 15 February 1996. The subsequent Constitutional Court decision only resulted in allowing the interference allegedly caused by that judgment – a definitive act which was by itself capable of violating the applicant's rights – to subsist. Consequently, the Court found that the interference fell outside its temporal jurisdiction.

Ždanoka v. Latvia

Judgment of 16.3.2006
Concerns:
Former leading member of Soviet-era Communist party disqualified as a parliamentary candidate

Principal facts and complaints

The case concerned the fact that the applicant had been ruled ineligible to stand for election in Latvia on account of her former membership of the Communist Party of Latvia ("the CPL"), and her activities within it, a party which had been declared unconstitutional and dissolved for having taken part in two attempted coups d'état after the declaration of Latvia's independence. The Central Electoral Commission ruled that her candidature was incompatible with the electoral legislation making persons who had "actively participated" in the CPL's activities after 13 January 1991 ineligible.

In a Chamber judgment of 17 June 2004, the Court held that there had been a violation of Article 3 of Protocol No. 1 (right to free elections) and of Article 11 of the Convention (freedom of assembly and association).

The Government having requested that the case be referred to the Grand Chamber, the present judgment was given.

Decision of the Court

The Court considered that the impugned electoral legislation was not primarily intended to punish those who had been active within the CPL, but rather to protect the integrity of the democratic process by excluding from participation in the work of a democratic legislature those individuals who had taken an active and leading role in a party which was directly linked to the attempted violent overthrow of the newly-established democratic regime. In view of the critical events for the survival of democracy in Latvia which occurred after 13 January 1991, it was reasonable for the Latvian legislature to presume that the leading figures of the CPL had held an anti-democratic stance, unless by their actions or statements they had rebutted this presumption.

In the Court's opinion, the impugned measure can be considered acceptable in

a country which must build confidence in the new democratic institutions, including the national Parliament. In this respect, the Court also attached weight to the fact that the Latvian Parliament had periodically reviewed section 5 (6) of the 1995 Act. In addition, the Court noted that the Constitutional Court had carefully examined the historical and political circumstances which had given rise to the enactment of the electoral law in Latvia, finding the restriction to be neither arbitrary nor disproportionate at that point in time, i.e. nine years after the events in question. It was to be noted that the Constitutional Court had observed that the Latvian Parliament was to establish a time-limit on the restriction. In the light of this warning, the Latvian Parliament had a duty to keep the statutory restriction under constant review, with a view to bringing it to an early end. In view of the greater stability which Latvia now enjoyed, failure by the Latvian legislature to take active steps in this connection could result in a different finding by the Court.

The Court considered that no separate examination of the applicant's complaints under Article 11 nor under Article 10 was necessary.

Nine cases of length of proceedings v. Italy: Scordino (No. 1), Riccardi Pizzati, Musci, Giuseppe Mostacciuolo (Nos. 1 and 2), Cocchiarella, Apicella, Ernestina Zullo, Giuseppina and Orestina Procaccini

Judgment of 29.3.2006
Concerns:
Effectiveness of the new remedies against excessive length of proceedings

Principal facts and complaints

The cases all concerned the effectiveness of Law No. 89 of 24 March 2001, known as the "Pinto Act", which introduced the possibility of lodging a complaint with the Italian courts in respect of excessively long proceedings. Scordino v. Italy (No. 1) also concerned the right to receive expropriation compensation.

Scordino case

The case concerned proceedings to dispute the amount of expropriation compensation, introduced in 1990, which came to a conclusion with a judgment of the Court of Cassation in 1998. The applicants applied to the Court of Appeal under the "Pinto Act", seeking compensation for the length of proceedings to which they had been parties. They were awarded EUR 2 450 for non-pecuniary damage alone.

The eight other cases

The applicants lodged applications with the Italian courts complaining of the excessive length of the proceedings to which they had been parties, seeking compensation for the loss sustained as a result of the slowness of the proceedings. In each case the Italian courts concluded that the proceedings had exceeded a reasonable time.

In Chamber judgments of 10 November 2004 the Court held unanimously in each of these cases that there had been a breach of Article 6 § 1. The nine cases were referred to the Grand Chamber at the request of the Italian Government and the present judgment was given.

The applicants complained of the excessive length of the proceedings to which they had been parties and of the derisory amount of damages awarded by the Italian courts – ranging from EUR 1 000 to 5 000. In the Scordino case the applicants also complained of the unfairness of the compensation proceedings following expropriation of their land. They further complained, under Article 1 of Protocol No. 1, of interference with their right to the peaceful enjoyment of their possessions as a result of the amount of expropriation compensation paid, and of the retrospective application of Law No. 359/1992 (which introduced new criteria to determine the expropriation compensation for the land).

Decision of the Court

Article 6 § 1 (length of proceedings)

Preliminary objections

The Italian Government raised, among other things, a preliminary objection relating to the victim status of the applicants. In their submission, by awarding the applicants compensation the Italian

courts had not only acknowledged the violation of the right to a hearing within a reasonable time but had also made good the loss sustained.

The Court held in the nine cases that, even if the statutory period for giving a ruling had sometimes been exceeded, the length of the proceedings had nonetheless been reasonable. However, it found it unacceptable that – apart from in the Scordino case – the applicants had had to wait months, and sometimes even bring enforcement proceedings, before receiving the compensation awarded them.

The Court stressed the fact that, in order to be effective, a compensatory remedy had to be accompanied by adequate budgetary provision so that effect could be given within six months of their being deposited with the Court to decisions of the courts of appeal awarding compensation, which, in accordance with the Pinto Act, were immediately enforceable. Similarly, as regards procedural costs, certain fixed expenses (such as the fee for registering the judicial decision) could significantly hamper the efforts made by the applicants to obtain compensation. The Court drew the Government's attention to these various points with a view to eradicating at the source problems that could give rise to further applications.

With regard to the assessment of the amount of compensation awarded by the Italian courts, the Court had regard to what it would have awarded in the same situation. It noted that in the nine cases the sums awarded by the Italian courts were at the lowest 8% and at the highest 27%, according to the case, of what it generally awarded in similar Italian cases.

In conclusion, the Court found that various requirements had not been satisfied and that the redress was therefore insufficient. Accordingly, it considered that the applicants could still claim to be "victims" of a breach of the "reasonable-time" requirement and dismissed the preliminary objection raised by the Government.

Compliance with Article 6 § 1

The Court wished to reaffirm the importance of administering justice without delays which might jeopardise its effectiveness and credibility. Italy's position in that respect had not changed sufficiently to call into question the conclusion that the accumulation of breaches constituted a practice that was incompatible with the Convention.

The Court found, in the nine cases, that the length of the proceedings in question was excessive and failed to satisfy the "reasonable-time" requirement.

Complaints raised in Scordino v. Italy

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

The Court held that the interference with the applicants' right to the peaceful enjoyment of their possessions had been in accordance with the law and had pursued an aim in the public interest. Regarding the proportionality of the interference, the Court found that the compensation awarded to the applicants was far lower than the market value of the property in question and not justified by any public-interest consideration. Accordingly, the applicants had had to bear a disproportionate and excessive burden which could not be justified by a legitimate aim in the public interest pursued by the authorities.

Article 6 § 1 (fairness of proceedings)

The Court recalled that, before the 1992 Act came into force, the law applicable to Scordino v. Italy had provided for a right to compensation to the full market value of the property. Thus, as result of the application of the 1992 Act, the applicants had been deprived of a substantial part of their compensation.

The Government had not shown that the considerations to which they referred, namely, budgetary considerations and the legislature's intention to implement a political programme, amounted to an "obvious and compelling general interest" required to justify the retrospective effect that the Court had acknowledged in certain cases.

In the nine cases, under Article 46 (binding force and execution of judgments), the Court observed with regard to the excessive length of the proceedings that hundreds of cases were currently pending before it in respect of awards made by the courts of appeal in "Pinto" proceedings. Italy was invited to take all measures necessary to ensure

that the domestic decisions were not only in conformity with the Court's case-law but also executed within six months of being deposited with the Court.

Moreover, in the Scordino case, the Court found that the violation of Article 1 of Protocol No. 1 that had occurred on account of the inability to obtain expropriation compensation "reasonably related to the value of the property" was the result of a systemic problem. The Court, to which several dozen similar cases had already been referred, could in future receive many well-founded applications since the situation concerned a large number of people. In order to satisfy its obligations under Article 46, the Court held that Italy should, above all, remove every obstacle to the award of compensation reasonably related to the value of the expropriated property, and thus guarantee by appropriate statutory, administrative and budgetary measures that the right in question be guaranteed effectively and rapidly in respect of other claimants affected by expropriated property.

The Court awarded: in the Scordino case, EUR 580 000 in respect of pecuniary damage, and EUR 12 400 in respect of non-pecuniary damage; in the other eights cases, sums ranging from EUR 4 100 to 12 800, and certain sums for costs and expenses.

Achour v. France

Judgment of 29.3.2006
Concerns:
Retroactive application of more severe provisions of a new law on repeat offending

Principal facts and complaints

In 1984 the applicant was found guilty of drug trafficking and sentenced to three years' imprisonment. In 1997 he was found again guilty of a drug offence and sentenced to eight years' imprisonment and excluded from French territory for ten years. In November of the same year, his sentence was increased to twelve years due to the entry into force of more severe provisions on recidivism. Article 132-9 of the new Criminal Code stipulated that where a person who had already been convicted with final effect of a serious crime or offence punishable by ten years' imprisonment committed, within ten years of the expiry of the previous sentence or of the time allowed for its enforcement, a further offence carrying a similar sentence, the maximum sentence and fine should be doubled.

In a judgment of 10 November 2004 the Court held that there had been a violation of Article 7. The case was referred to the Grand Chamber at the Government's request and the present judgment was given.

The applicant complained about the application of the new law on recidivism which led to an increase in his sentence. He relies on Article 7 (no punishment without law).

Decision of the Court

The Court considered that States were free to determine their own criminal policy and to amend it where appropriate by increasing the penalties applicable for criminal offences. Accordingly, a State's choice of criminal-justice system was outside the scope of the Court's supervision, provided that it did not contravene the principles set out in the Convention.

The Court had to ascertain, in particular, whether the relevant French statute law and case-law had been accessible and foreseeable as to its effect at the material time.

The Court first observed that Article 132-9 of the new Criminal Code provided that the maximum prison sentence and fine that could be imposed were to be doubled in the event of recidivism and that the applicable period was no longer five years, as prescribed by the former legislation, but ten years from the expiry of the previous sentence or of the time allowed for its enforcement. As the new statutory rules had come into force on 1 March 1994, they had been applicable when the applicant had committed fresh offences in 1995, so that he had been a recidivist in legal terms as a result of those offences.

The Court further noted that the Court of Cassation had taken a clear and consistent position since the late nineteenth century to the effect that where a law

introduced new rules on recidivism, for them to apply immediately it was sufficient for the second offence to have been committed after the law's entry into force. Accordingly, there was no doubt that the applicant was able able to foresee the legal consequences of his actions and to adapt his conduct.

In addition, the Court pointed out that, contrary to what the applicant maintained, the expiry of the relevant period for the purposes of recidivism, as provided for at the time of his first offence, had not given him the right to have that offence disregarded and that no issue arose as to the retrospective application of the law since the case merely concerned successive laws designed to apply solely with effect from their entry into force. Admittedly, the French courts had taken the applicant's initial conviction into consideration, but that approach, made possible because his 1984 conviction remained in his criminal record, was not contrary to the Convention, since the offence for which he was prosecuted and punished had taken place after the entry into force of Article 132-9 of the new Criminal Code.

Three cases concerning restitution of property v. Romania: Smoleanu, Lindner and Hammermayer, Popovici and Dumitrescu

Judgment of 6.4.2006
Concerns:
Recovery of possession of nationalised property

Principal facts and complaints

The applicants, Romanian nationals, complained about their inability to obtain restitution of their property that had been nationalised by the Romanian State and of the domestic courts' refusal to recognise that they had jurisdiction to determine an action for recovery of possession.

In Chamber judgments given in 2003 and 2003, the Court held that there had been a breach of the right to a fair trial and and no breach of the right to protection of property.

The applicants requested that the cases be referred to the Grand Chamber.

Decision of the Court

The Court noted that a new law on restitution had been enacted in Romania, namely Law No. 247 of 22 July 2005, which extended the types of compensation available and provided that compensation should be equivalent to the market value, at the time of the award, of property that could not be returned.

Moreover, the Court observed that it had already specified the nature and extent of the obligations which arose for the Romanian Government in cases which related either to delays in, or the impossibility of, obtaining a final domestic decision on claims of unlawful confiscation of property by the former communist regime or to the sale by the State of such property to third parties. The question of the fulfilment of those obligations is currently pending before the Committee of Ministers of the Council of Europe, which deals with the execution of the Court's judgments.

Friendly settlements having been concluded with the Romanian Government – in which a global sum has been awarded to the applicants in each case, ranging from EUR 8 600 to 13 000 – the Court declared itself satisfied that they were reached on the basis of respect for human rights, and struck out all three cases.

Martinie v. France

Judgment of 12.4.2006
Concerns:
Equity of proceedings before the Court of Audit and the Conseil d'Etat

Principal facts and complaints

At the material time the applicant was the accountant for a Lycée. In June 1987 the Lycée set up a Sport National Training Centre (CNEA). The headmaster of the school was the director of the CNEA and authorising officer in respect of expenditure, and the applicant, who was appointed general secretary, was the accountant. The headmaster set up a fixed monthly allowance in favour of the CNEA's director (i.e. himself) and general secretary (i.e. the applicant).

In October 1997 the Regional Audit Office considered that the applicant owed the school more than FFR 221 000 in payments he had made as the school's public accountant between 1989 and 1993. Those payments concerned, among other things, the fixed monthly allowance and holiday compensation paid to the headmaster as director of the CNEA and the applicant as general secretary. In its judgment the regional audit office noted that those allowances had not been authorised by the board of governors of the Lycée.

On appeal to the Court of Audit, the amount payable was reduced to about FRF 191 900. An appeal by the applicant on points of law was declared "inadmissible" by the Conseil d'Etat.

Relying on Article 6 § 1 of the Convention, the applicant complained that the proceedings before the Court of Audit had been unfair because the reporting judge's report had not been sent to him prior to the hearing (whereas it had been sent to State Counsel) and the reporting judge had participated in the court bench's deliberations. He complained further that he had neither been summoned to the hearing nor invited to submit his observations, nor even informed of the date of the hearing, which, moreover, was not public. Lastly, the applicant also complained that the Government Commissioner had participated in the deliberations of the Conseil d'Etat.

Decision of the Court

Applicability of Article 6 § 1

The Government raised a preliminary objection based on the inapplicability of Article 6 § 1. They referred to the Pellegrin judgment in which the Court held that "no disputes between administrative authorities and employees who occupy posts involving participation in the exercise of powers conferred by public law attract the application of Article 6 § 1". In their submission, public accountants "had responsibilities affecting matters of general interest and participated in the exercise of powers conferred by public law, wielding a portion of the sovereign power of the State". They pointed out that the internal rules of procedure followed by the public finance courts when auditing accounts were distinct from those followed in cases of *de facto* management of public funds, having regard to the difference in nature and subject of those two types of procedure. In the Government's submission, the position of a public accountant was not comparable to that of a tort-feasor. They observed in that connection that judicial audits of accounts were merely intended to check that the accounts rendered were in order.

The Government added that a judicial audit of accounts rendered by a public accountant involved only an indirect pecuniary issue for the public accountant in question. The judgment was limited to noting the expenditure paid by the accountant – or the outstanding sums due and not collected by him – without proper or adequate reasons and requesting him, not to repay the amounts in question, but to put the accounts in order. Making good the deficit recorded in the judgment from the accountant's own assets was only one method of putting the accounts in order. The accountant's financial position was not determined until a later stage, and then, not by the public finance courts, but by the Minister of Finance, who had a statutory power to discharge accountants in respect of their accounts or grant them remission, on a non-contentious application, in respect of the deficit in the event of force majeure or if there had been no negligence, after assessing any professional failings on the part of the accountant in the exercise of his duties and his ability to contribute to settling the amounts in question. The Government argued on that basis that it was only at that stage, and not when the accounts were being objectively assessed by the public finance courts, that a civil obligation of the applicant could be regarded as being in issue.

The Court emphasised that the issue raised in the present case was, specifically, the applicability of Article 6 § 1 of the Convention to proceedings before the Court of Audit on an appeal from a judgment of a regional audit office levying a surcharge against a public accountant.

It pointed out in this connection that it was common ground that there was a "dispute" (contestation) regarding an "obligation" of the applicant. The ques-

tion that therefore needed to be determined was whether the "obligation" in question was a "civil" one within the meaning of Article 6 § 1. In order to determine that question, the proper approach, in theory, was to weigh the features of private law and public law present in the case against each other, and to ascertain whether the applicant's post entailed direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities.

The case involved a civil servant in the employ of the State education service who had been appointed as accountant of a school and was responsible, in that capacity, for the accounts of a secondary school and of those of a centre attached to it that had no separate legal personality. Neither the nature of the duties carried out by the applicant, nor the responsibilities attached to them, support the view that he "participated in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities", unless these concepts are to be construed broadly. The correct approach, however, in accordance with the object and purpose of the Convention, is to adopt a restrictive interpretation of the exceptions to the safeguards afforded by Article 6 § 1.

Accordingly, the Court concluded that Article 6 § 1 was applicable in the present case and it dismissed the French Government's preliminary objection in that regard.

The proceedings before the Court of Audit

Lack of a public hearing

The Court accepted that, given the technical nature of the exercise of scrutinising accounts, it was in principle better dealt with in writing than in oral argument. Thus, as long as the proceedings were limited to the scrutiny of accounts Article 6 § 1 did not prohibit them from being conducted in private.

However, it considered it essential that public accountants were able to request a public hearing before the Court of Audit on appeal from a judgment of the regional audit office levying a surcharge against them. As Mr Martinie had not been able to request a public hearing before the Court of Audit, the Court held that there had been a breach of Article 6 § 1.

Fairness of the proceedings

The Court considered that there was an imbalance in the proceedings that was detrimental to public accountants on account of State Counsel's position: unlike the accountant, he was present at the hearing, was informed beforehand of the reporting judge's point of view, heard the latter's submissions (and those of the counter-reporting judge) at the hearing, fully participated in the proceedings and could express his own point of view orally without being contradicted by the accountant.

In the Court's view, that imbalance was accentuated by the fact that the hearing was not public.

The Court accordingly concluded that there had been a breach of Article 6 § 1 in that respect as well.

The proceedings before the Conseil d'Etat

Regarding the Government Commissioner's participation in the deliberations of the bench of the Conseil d'Etat, the Court confirmed its settled case-law on the subject, according to which that participation gave rise to a breach of Article 6 § 1.

Stec and others v. the United Kingdom

Judgment of 12.4.2006
Concerns: Differences in the entitlement for men and women to certain industrial injuries social security benefits

Principal facts and complaints

The applicants all complained about sex-based differences in eligibility for reduced earnings allowance (REA) and retirement allowance (RA), which are earnings-related benefits payable to employed or formerly employed people who have suffered an impairment of earning capacity from a work-related injury or disease.

Before 1986 there was a continued right to REA after retirement, which was payable concurrently with the State pen-

sion. From 1986 a succession of legislative measures attempted to remove or reduce the REA being received by claimants no longer of working age, by imposing cut-off or limiting conditions at 65 for men and 60 for women (the ages used by the statutory old-age pension scheme).

All the applicants received REA, which was subsequently frozen for life, or replaced by RA, when, in the same situation, a person of the other sex would not have suffered this restriction.

All five applicants' cases were joined by the Social Security Commissioner who referred two questions to the European Court of Justice (ECJ). The ECJ gave judgment on 23 May 2000, finding that the discriminatory criteria in relation to REA were not incompatible with European Community law because they were linked to receipt of old-age benefit and thus fell outside the scope of Directive 79/7/EEC on the implementation of the principle of equal treatment in matters of social security. On 31 July 2000 the Commissioner, following the ECJ's ruling, struck out the applicants' cases where they were the appellants.

Decision of the Court

The Court considered that both the United Kingdom Government's policy decision to stop paying REA to those who would otherwise have retired from paid employment, and the decision to achieve that aim by linking the cut-off age for REA to the notional "end of working life", or State pensionable age, pursued a legitimate aim and were reasonably and objectively justified.

It remained to be examined whether or not the underlying difference in treatment between men and women in the State pension scheme was acceptable under Article 14.

Differential pensionable ages were first introduced for men and women in the United Kingdom in 1940, well before the Convention had come into existence. The difference in treatment was adopted in order to mitigate financial inequality and hardship arising out of the woman's traditional unpaid role of caring for the family in the home rather than earning money in the workplace. At their origin, therefore, the differential pensionable ages were intended to correct "factual inequalities" between men and women. It followed that the difference in pensionable ages continued to be justified until such time that social conditions had changed so that women were no longer substantially prejudiced because of a shorter working life. That change, had, by its very nature, to have been gradual, and it would be difficult or impossible to pinpoint any particular moment when the unfairness to men caused by differential pensionable ages began to outweigh the need to correct the disadvantaged position of women. In the light of the original justification for the measure as correcting financial inequality between the sexes, the slowly evolving nature of the change in women's working lives, and in the absence of a common standard among European States, the Court found that the United Kingdom could not be criticised for not having started earlier on the road towards a single pensionable age. The Court did not consider it unreasonable of the Government to carry out a thorough process of consultation and review, nor could Parliament be condemned for deciding in 1995 to introduce the reform slowly and in stages, given the extremely far-reaching and serious implications, for women and for the economy in general.

In conclusion, the Court found that the difference in State pensionable age between men and women in the United Kingdom continued to be reasonably and objectively justified on that ground until such time that social and economic changes removed the need for special treatment for women. The United Kingdom Government's decisions as to the precise timing and means of putting right the inequality were not manifestly unreasonable. Similarly, the decision to link eligibility for REA to the pension system was reasonably and objectively justified, given that the benefit was intended to compensate for reduced earning capacity during a person's working life. There had not, therefore, been a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

Sürmeli v. Germany

Judgment of 8.6.2006
Concerns:
Excessive length of proceedings and lack of remedy in respect of it

Principal facts and complaints

In 1982 the applicant – a Turkish national living in Germany – was involved in an accident with a cyclist while on the way to school and sustained injuries including a broken left arm. After negotiations with the cyclist's insurance company had failed, the applicant applied to the Hanover Regional Court in September 1989, in particular seeking damages and a monthly pension. The proceedings comprised two phases. The first ended when the Hanover Regional Court held that the applicant was entitled to damages, and the second concerned the assessment of the amount of the damages and pension to be awarded to the applicant. On October 2005 only, the Regional Court delivered its final judgment. The applicant subsequently appealed to the Celle Court of Appeal, before which the proceedings are still pending. Moreover, in 2001 and 2002, the applicant lodged a constitutional complaint about the excessive length of the proceedings, which was dismissed. In May 2002 the applicant applied to the Hanover Regional Court for legal aid in order to bring an action for damages against the Land of Lower Saxony on account of the length of the proceedings in the Regional Court. His application was refused at first instance and on appeal.

Decision of the Court

The German Government raised a preliminary objection to the effect that domestic remedies had not been exhausted in respect of the complaint under Article 6 § 1, and cited four remedies that the applicant could have used.

The Court observed that in its admissibility decision in the present case the Chamber had joined to the merits the objection that domestic remedies had not been exhausted, on the ground that the question was closely linked to that of the existence of an effective remedy within the meaning of Article 13. It therefore decided to examine the Government's objection under that article.

Article 13

Constitutional complaint

The Court observed that the right to expeditious proceedings was guaranteed by the German Basic Law and that a violation of that right could be alleged before the Federal Constitutional Court. Where that court found that proceedings had taken an excessive time, it declared their length unconstitutional and requested the court concerned to expedite or conclude them.

However, the German Federal Constitutional Court was not empowered to set deadlines for the lower court or to order other measures to speed up the proceedings in issue; nor was it able to award compensation. The only means available for it to ensure that pending proceedings were expedited was to declare that their length was in breach of the Basic Law and to call upon the court concerned to take the steps necessary for their progress or conclusion.

That being so, the Court found that the German Government had not shown that a constitutional complaint was capable of affording redress for the excessive length of pending civil proceedings. Accordingly, the applicant had not been required to raise before that court his complaint about the length of the proceedings in his case.

Appeal to a higher authority

The Court noted that the Government had not advanced any relevant reasons to warrant the conclusion that an appeal to a higher authority, as provided for in section 26 (2) of the German Judges Act, would have been capable of expediting the proceedings in the Regional Court.

Special complaint alleging inaction

This remedy had no statutory basis in German law. Although a considerable number of courts of appeal had accepted it in principle, the admissibility criteria for it were variable and depended on the circumstances of the particular case. The Federal Court of Justice, for its part, had yet to give a ruling on the admissibility of such a remedy. The Government had not given any details as to the effect on the proceedings where such a complaint had been declared admissible. Having

regard to the uncertainty about the admissibility criteria for this remedy and to its practical effect on the proceedings in the applicant's case, the Court considered that no particular relevance should be attached to the fact that the Celle Court of Appeal had not ruled out such a remedy in principle. Moreover, the Federal Constitutional Court had not declared the applicant's constitutional complaints inadmissible for failure to exhaust domestic remedies.

Accordingly, the Court concluded that a special complaint alleging inaction could not be regarded as an effective remedy in the applicant's case.

Action for damages

The Court noted that even if the courts before which an action for damages was brought were to conclude that there had been a breach of judicial duties on account of excessively lengthy proceedings, they would not in any event be able to make an award in respect of non-pecuniary damage, whereas in cases concerning the length of civil proceedings the applicants above all sustained damage under that head.

The Court considered that none of the four remedies advocated by the Government could be considered effective. The Court therefore held that there had been a violation of Article 13 and dismissed the German Government's objection of failure to exhaust domestic remedies.

Article 6 § 1

The Court noted that the proceedings in question, which had begun on 18 September 1989 and were still pending in the German courts, had lasted more than 16 years and seven months to date.

Notwithstanding both the conduct of the applicant, who had repeatedly asked for extensions of the time he had been given and had objected several times to the Regional Court judges dealing with his case, and the arguments put forward by the Government, the Court considered that the length of the proceedings had exceeded a reasonable time. It therefore held that there had been a violation of Article 6 § 1.

Article 46

As the Court had noted, German law did not afford litigants an effective means of complaining of the length of pending civil proceedings. In accordance with Article 46 (binding force and execution of judgments) of the Convention, Germany therefore had a legal obligation to select, subject to supervision by the Committee of Ministers, the general measures to be adopted in its legal order to put an end to the violation found by the Court and to redress so far as possible the effects.

The Court took note in that connection of a Bill, tabled shortly before the parliamentary elections of 18 September 2005, to introduce in German written law a new remedy in respect of inaction. According to the Government, that remedy would ease the Federal Constitutional Court's caseload in that complaints about the length of proceedings would in future have to be submitted to the court dealing with the case or, if that court refused to take steps to expedite the proceedings, to an appellate court. The Court welcomed such an initiative and encouraged the speedy enactment of a law containing the proposals set out in the Bill.

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

Hutten-Czapska v. Poland

Judgment of 19.6.2006
Concerns:
Interference with property rights due to a restrictive system of rent control

Principal facts and complaints

The applicant is one of around 100 000 landlords in Poland affected by a restrictive system of rent control, which originated in laws adopted under the former communist regime.

After having been used by the German Army and then by the Red Army, the house was taken under state management after the entering into force, on 13 February 1946, of a decree giving the Polish authorities power to assign flats in privately-owned buildings to particular tenants. On 1 August 1974 a new regime on the state management of housing entered into force, the so-called "special lease scheme", under which a tenant was

imposed by the state on the applicant. Mrs Hetten-Czapska did not succeed in regaining possession of her property nor in having the tenants relocated.

Besides, in 1994, a rent control scheme was applied to private property in Poland, under which landlords were both obliged to carry out costly maintenance work and prevented from charging rents which covered those costs. Successive legislation, designed to improve partially the situation, maintained all restrictions on the termination of leases and obligations in respect of maintenance of property and also introduced a new procedure for controlling rent increases. The Constitutional Court found that the rent-control scheme had placed a disproportionate and excessive burden on landlords. The provisions in question were repealed as unconstitutional.

The applicant's property has now been vacated.

On 22 February 2005 a Chamber of the Court held that there had been a violation of Article 1 of Protocol No. 1 and considered that the violation originated in a systemic problem linked to the malfunctioning of Polish legislation.

The applicant having requested that the case be referred to the Grand Chamber, the present judgment was given.

The applicant complained that she had neither been able to regain possession of or use her property nor charge adequate rent for its lease.

Decision of the Court

Article 1 of Protocol No. 1

The Grand Chamber of the Court agreed with the assessment of the applicant's situation set out in the Court's Chamber judgment, which found that the Polish authorities had imposed a "disproportionate and excessive burden" on the applicant, which could not be justified by any legitimate community interest.

The Grand Chamber added, however, that the violation of the right of property in the applicant's case was not exclusively linked to the question of the levels of rent chargeable but, rather, consisted in the combined effect of defective provisions on the determination of rent and various restrictions on landlords' rights in respect of termination of leases, the statutory financial burdens imposed on them and the absence of any legal ways and means making it possible for them either to offset or mitigate the losses incurred in connection with maintenance of property or to have the necessary repairs subsidised by the State in justified cases.

The Court referred to its case-law confirming that in many cases involving limitations on the rights of landlords – which were and are common in countries facing housing shortages – the limitations applied had been found to be justified and proportionate to the aims pursued by the State in the general interest. However, in none of those cases had the authorities restricted the applicants' rights to such a considerable extent as in Ms Hutten-Czapska's case. It was true that the Polish State, which inherited from the communist regime an acute shortage of flats available for lease at an affordable level of rent, had to balance the exceptionally difficult and socially sensitive issues involved in reconciling the conflicting interests of landlords and tenants. Nevertheless, the legitimate interests of the community in such situations called for a fair distribution of the social and financial burden involved in the transformation and reform of the country's housing supply. That burden could not, as in the applicant's case, be placed on one particular social group, however important the interests of the other group or the community as a whole.

In the light of the foregoing, the Court held that there had been a violation of the right to property.

Article 46

Application of the pilot-judgment procedure

The Grand Chamber agreed with the Chamber's conclusion that the applicant's case was suitable for the application of the pilot-judgment procedure as established in the Court's Broniowski v. Poland judgments.

It was common ground that the operation of the impugned housing legislation potentially entailed consequences for the property rights of a large number of people whose flats (some 600 000, or 5.2% of the entire housing resources of the country) were let under the rent-

control scheme. Eighteen similar applications were pending before the Court, including one lodged by an association of some 200 landlords. The Court noted however that the identification of a "systemic situation" justifying the application of the pilot-judgment procedure did not necessarily have to be linked to, or based on, a given number of similar applications already pending. In the context of systemic or structural violations the potential inflow of future cases was also an important consideration in terms of preventing the accumulation of repetitive cases on the Court's docket, which hindered the effective processing of other cases giving rise to violations, sometimes serious, of the rights it was responsible for safeguarding.

Although the Polish Government maintained that the rent-control scheme no longer existed in Poland, the Court reiterated its view that the general situation had not yet been brought into line with the Convention standards.

The Grand Chamber shared the Chamber's general view that the problem underlying the violation of Article 1 of Protocol No.1 consisted in "the malfunctioning of Polish housing legislation". However, it saw the underlying systemic problem as a combination of restrictions on landlords' rights – including defective provisions on the determination of rent – rather than as an issue solely related to the State's failure to secure to landlords a level of rent reasonably commensurate with the costs of property maintenance.

General measures

The Court noted that one of the implications of the pilot-judgment procedure was that its assessment of the situation complained of in a "pilot" case necessarily extended beyond the sole interests of the individual applicant and required it to examine that case from the perspective of the general measures that needed to be taken in the interest of other people who might be affected. Given the systemic nature of the underlying problem, the fact that the applicant's property had been vacated did not prevent the Court from ascertaining whether the cause of the violation for other people had been removed.

The Court considered that the Polish State had to, above all, through appropriate legal and/or other measures, secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community – including the availability of sufficient accommodation for the less well-off – in accordance with the principles of the protection of property rights under the Convention.

It was not for the Court to specify what would be the most appropriate way of setting up such remedial procedures or how landlords' interest in deriving profit should be balanced against the other interests at stake. However, the Court observed in passing that the many options open to the State certainly included the measures indicated by the Constitutional Court in its June 2005 Recommendations, setting out the features of a mechanism balancing the rights of landlords and tenants and criteria for what might be considered a "basic rent", "economically justified rent" or "decent profit".

The Court held unanimously that the question of the application of Article 41 (just satisfaction) was not ready for decision in so far as the applicant's claim for pecuniary damage was concerned and awarded the applicant EUR 30 000 in respect of non-pecuniary damage and certain sums for costs and expenses.

Draon v. France and Maurice v. France (just satisfaction)

Judgment of 21.6.2006
Concerns:
Expulsion presenting the risk of sentencing to death

Principal facts and complaints

These two cases were struck out of the Court's list following friendly settlements under the terms of which Mr and Mrs Draon are to receive EUR 2 488 113.27, and Mr and Mrs Maurice EUR 2 440 279.14.

These judgments do not change in any way the Court's findings in its judgments on the merits of the two cases, delivered on 6 October 2005, in which it

held that there had been a violation of Article 1 of Protocol No. 1 to the Convention (protection of property) and no violation of Article 13 (right to an effective remedy) or of Article 8 (right to respect for private and family life), even supposing that the latter provision was applicable. The Court also considered that it was not necessary to examine the complaints raised under Article 14 (prohibition of discrimination) and Article 6 § 1 (right to a fair hearing).

The applicants are the parents of children with severe congenital disabilities which, due to medical errors, were not discovered during prenatal examinations. They brought proceedings against the hospital authorities concerned. However, the Law of 4 March 2002, better known as the "Kouchner Law" – which applied to pending proceedings – came into force while their actions were pending. They were therefore awarded compensation only for non-pecuniary damage and disruption to their lives, and not for the special burdens arising from their child's disability.

New provisions have since been introduced, by the Law of 11 February 2005, to reform the disability compensation system in France.

A few Chamber judgments

Léger v. France

Judgment of 11.4.2006
Concerns: imprisonment during an exceptionally lengthy period

Articles 3 (prohibition of inhuman or degrading treatment) and 5 (right to liberty and security)

Principal facts and complaints

In 1966, the applicant was sentenced to life imprisonment. He was granted release on licence only in 2005.

The applicant complained that his continued detention had become arbitrary and that in practice it was tantamount to a whole-life sentence and therefore constituted inhuman and degrading treatment.

Decision of the Court

The arbitrary nature of the detention (Article 5)

Having regard to the extreme gravity of the offence committed by the applicant – the abduction and murder of a child – the Court considered that his sentence of life imprisonment had not been arbitrary for the purposes of Article 5. It noted that the sentence imposed had not prevented the applicant from being released.

As regards whole-life sentences, the Court considered that, once the punitive element of the sentence had been served, continued detention should be grounded on considerations relating to risk and dangerousness. In that connection, it noted that the French courts had refused the applicant's 2001 application for release on licence because "the experts could not exclude the possibility that he was still dangerous and might re-offend" and because "the paranoid tendencies noted again by the last expert require psychiatric treatment, which the offender does not intend to undergo". Although those grounds placed more emphasis on improving the applicant's conduct than on his social rehabilitation, the Court observed that they were not unconnected to the question of his dangerousness, which the courts had a duty to assess. Moreover, the applicant had been granted release on licence in 2005 because his conduct no longer stood in the way of his release and the risk of his re-offending had dwindled almost to nothing.

In the Court's opinion, the grounds given by the French courts for keeping Mr Léger in prison were not unwarranted, in view of both the initial purpose of punishment and the persistence of reasons militating against his release. Although the courts had decided to release him only in 2005, after 41 years in prison – an exceptionally lengthy period which raised serious questions regarding the management of prisoners serving life

sentences – it did not appear that the reasons they had previously given had been "unreasonable".

Consequently, the Court held that there had been no violation of that provision.

The inhuman or degrading treatment (Article 3)

The applicant had been released after an exceptionally lengthy period of imprisonment, resulting from a sentence imposed at a time when the tariff system (*périodes de sûreté*) did not exist. However, from 1979 onwards, that is after the first 15 years, he had been able to request his release on licence at regular intervals and had been protected by procedural safeguards. He could not therefore assert that he had been deprived of all hope of obtaining partial remission of his sentence, which was not irreducible. The Court accordingly took the view that the applicant's prolonged detention did not as such, however long it had been, constitute inhuman or degrading treatment.

While accepting that a life sentence like that imposed on and served by the applicant necessarily entailed anxiety and uncertainty linked to prison life and, after release, to the measures of assistance and supervision and the possibility of being re-incarcerated, the Court did not consider that the applicant's sentence had reached such a level of severity as to be contrary to Article 3. It could see no other circumstance, in terms of some aggravation of the suffering inherent in imprisonment, warranting the conclusion that the applicant had undergone an exceptional ordeal capable of constituting treatment contrary to Article 3.

Consequently, the Court held that there had been no violation of the said Article.

Menesheva v. Russia

Articles 3 (prohibition of torture), 5 (right to liberty and security), 6 (right to a fair trial) and 13 (right to an effective remedy)

Judgment of 9.3.2006
Concerns:
Ill-treatment by police officers, and effectiveness of the investigation. Lack of records concerning the arrest of applicant, and ensuing five days' detention without procedural guarantees

Principal facts and complaints

On 13 February 1999 the applicant was arrested by three plain clothes policemen and bundled into an unmarked car after refusing them entry into her flat. She claimed that the police officers, who were investigating a murder in which they believed her supposed boyfriend, L., was a suspect, rough handled her and made threats against her and her family during the arrest. Without being given any reason for her arrest she was taken to a police station, where she claimed that she was ill-treated: in particular she described how she was throttled and beaten with sticks by several police officers; they also insulted her and threatened her with rape and violence against her family. Her requests for medical assistance and access to a lawyer were also refused. Later in the day she was taken home but then re-arrested and suffered more ill-treatment. She was kept in detention until 2.30 p.m. the next day. No record of her detention was kept.

She was then brought before a judge of Zheleznodorozhnyy District Court of Rostov who, without introducing himself or explaining his ruling, sentenced her to five days detention for resisting arrest (an administrative offence). She was released four days later. In the meantime her keys were taken from her and her flat was searched.

On 19 February 1999 she was examined by a medical expert who established that she had multiple bruises on the face and legs, abrasions on the face, jaw, neck and legs, and a traumatic oedema of the soft tissues of the head.

The applicant brought proceedings against her ill-treatment by the police and her unlawful detention and lodged a claim for damages. On 22 December 1999 Bataysk Town Court of the Rostov Region examined her claim and held that the search of her flat, the initial arrest and the five days' detention had been lawful. As to the allegations of ill-treatment, the court relied on the fact that the prosecutor had refused to open a criminal investigation in respect of the police officers and that an internal police inquiry had concluded that no ill-treatment had been established. It dismissed the forensic report as irrelevant and held that the allegations of ill-treatment were

unsubstantiated. The applicant appealed unsuccessfully.

On 15 March 1999 the applicant attempted to challenge her five days' detention before Rostov Regional Court. In reply she was informed that no appeal against a decision on administrative detention was provided for by law. Her subsequent appeals were all rejected on the ground that the courts lacked jurisdiction over the subject matter.

In March 2003 the President of the Rostov Regional Court quashed the decision of 14 February 1999 on the grounds that the judge who had convicted the applicant had not examined the circumstances of the case and had not established whether she was guilty of any administrative offence. It was found that no forceful resistance had taken place, because the police were carrying out an investigation and not safeguarding public order when the applicant resisted. It was also held that the police had acted in violation of the procedural law.

On 3 March 2004 the Office of the Prosecutor General ordered the District Prosecutor's Office to complete a criminal investigation of the alleged ill-treatment and unlawful arrest and detention under the supervision of the Prosecutor General within thirty days.

The parties have not provided any update concerning the criminal investigation since 19 April 2004.

The applicant alleged ill-treatment by the police, the absence of an effective investigation of her complaints in that respect, unlawful arrest and detention and the absence of effective domestic remedies.

Decision of the Court

Torture

Ill-treatment by the police

The Court held that it was common ground that the applicant's injuries were not sustained before she was taken into police custody and that, having regard to the applicant's consistent and detailed allegations, corroborated by the forensic report, the Court accepted that she was ill-treated by the police.

The Court observed that the applicant was only 19 years old at the time and, being a female confronted with several male policemen, was particularly vulnerable. Furthermore, the ill-treatment had lasted for several hours during which she had been twice beaten up and subjected to other forms of violent physical and moral impact.

In these circumstances, the Court concluded that, taken as a whole and having regard to its purpose and severity, the ill-treatment at issue amounted to torture within the meaning of Article 3.

Failure to carry out an effective investigation

The Court found that an obligation arose to investigate the applicant's allegation of ill-treatment as soon as she had brought the matter before the competent authorities; however, no investigation followed. The inquiry that took place in the Internal Affairs Department of the Rostov Region, although it had resulted in some disciplinary charges, had not disclosed the names of those charged or the grounds for their punishment. For that reason alone it could not qualify as an effective investigation. The investigation was only opened almost four years after the events complained of, when the matter was brought to the attention of the domestic authorities in connection with the applicant's proceedings before the Court. However, the investigation had not been satisfactory, as it had failed to establish the material circumstances and to address the questions put before it, such as the origin of the applicant's injuries.

Therefore the Court could not but conclude that in the past three years the authorities had not remedied the shortfalls of which they had been acutely aware. Accordingly the Court held that there had been a violation of Article 3 on account of the lack of an effective investigation into the applicant's allegations of ill-treatment.

Right to an effective remedy

Since no effective investigation had been carried out, any other remedy available to the applicant, including the claim for damages, had limited chances of success.

The domestic civil courts did not make an independent assessment of the facts

and simply endorsed the prosecutor's opinion that the applicant's claim was unmeritorious. Therefore the action for damages was not capable of affording redress to the applicant. The Court therefore found that the applicant had been denied an effective domestic remedy in respect of the ill-treatment by the police.

Right to liberty and security

Arrest and overnight detention

The Court noted that the applicant's charge with the administrative offence had clearly been a mere pretext to ensure her availability in order to force her to give information on L's case and to make her surrender the key to her flat.

The Court observed that for some 20 hours after her initial arrest there existed no records as to the applicant's identity or the reason for and expected duration of her detention. That fact in itself had to be considered a most serious failing and was incompatible with the requirement of lawfulness and with the very purpose of Article 5. The Court therefore concluded that the period of the applicant's detention until her appearance before a judge on 14 February 1999 did not comply with the guarantees of Article 5 § 1.

Five days' detention on the charge of forceful resistance to the police

The Court found that the judge had exercised his authority in manifest opposition to the procedural guarantees provided for by the Convention. Therefore the ensuing detention order was inconsistent with the general protection from arbitrariness guaranteed by Article 5.

Right to a fair trial

The Government accepted that the proceedings at issue had been defective both under domestic law and the Convention. The applicant's allegations that there had been no adversarial proceedings as such, and that even the appearances of a trial had been neglected to the extent that she did not even have a chance to find out the purpose of her brief appearance before the judge, were corroborated in the court ruling quashing that judgment. It followed that there had been a violation of Article 6 § 1.

Under Article 41 (just satisfaction), the Court awarded the applicant EUR 0.75 for pecuniary damage, EUR 35 000 for non-pecuniary damage and certain sums for costs and expenses.

Melnik v. Ukraine

Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy) of the Convention

Judgment of 28.3.2006
Concerns:
Prisoner suffering from tuberculosis wrongly diagnosed and kept in inadequate conditions

Principal facts and complaints

The applicant complained that his tuberculosis was not detected in time while serving his sentence. The applicant also alleged that he was detained in dirty overcrowded conditions which he had to share with prisoners who had tuberculosis and AIDS. He claimed that he had no access to adequate supply of food and drinking water.

Decision of the Court

Prohibition of inhuman or degrading treatment

The Court noted that there was 1-2.5 square meters of space per inmate, which the Court found to be severely overcrowded.

It also noted that the applicant had not been provided with adequate or timely medical care, given the seriousness of the disease and its consequences for his health.

The Court also noted that the applicant's conditions of hygiene and sanitation were unsatisfactory and would have contributed to the deterioration of his health. It considered such conditions must have caused him considerable mental and physical suffering, and held that there had been a violation of Article 3.

Right to an effective remedy

The Court found that the Government had not shown that it was possible

under Ukrainian law for the applicant to complain about the conditions of his detention or that the remedies available to him were effective. It therefore concluded that there had been a violation of Article 13.

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

Ambruszkiewicz v. Poland

Article 5 (right to liberty and security)

Judgment of 4.5.2006
Concerns:
Detention ordered without sufficient reasoning, no consideration given to less intrusive measures

Principal facts and complaints

In 2002 the applicant was placed under judicial investigation for making false accusations about certain local police officers and judges to their superiors. He was summoned to appear before the district court and was remanded in custody for three months for obstructing the proceedings, as he had failed to reappear after an adjournment of the hearing.

He was arrested on 19 May 2003 and detained until 23 July 2003. The proceedings against him are still pending before the Polish courts.

The applicant complained that his detention on remand had been arbitrary and unlawful.

Decision of the Court

The Court noted that the offence with which he was charged carried a possible prison sentence of two years under Article 234 of the Criminal Code, and that his detention therefore had a statutory basis in Polish law.

In remanding and maintaining the applicant in custody, the authorities had referred, among other things, to the need to guarantee the proper conduct of the criminal proceedings and, more especially, to the fear that the applicant might attempt to abscond. However, it was difficult to identify any evidence in support of the allegation that he might have absconded: the applicant had been remanded in custody after the very first hearing in his case because he had left the courtroom without authorisation, and neither the complexity of the case nor his potential sentence would have made him more likely to abscond.

Moreover, in view of the subject-matter of the proceedings, the court dealing with the case was under a particular obligation to act without showing any sign of bias. In addition, in spite of a number of applications lodged by the applicant's counsel, the authorities had failed to consider applying any of the less intrusive measures available under Polish law.

Under those circumstances, the Court held, unanimously, that there had been a violation of Article 5 § 1 and awarded the applicant EUR 3 000 in respect of non-pecuniary damage.

Stankiewicz v. Poland

Article 6 (right to a fair trial)

Judgment of 6.4.2006
Concerns:
The privileged position of the prosecuting authorities in respect of the litigation costs

Principal facts and complaints

The applicants purchased a property from the State Treasury in 1992. In accordance with the Land Administration and Expropriation Act of 29 April 1985, the equivalent of the value of the property left by the applicants' ancestors in the former eastern territories of Poland was counted towards the purchase price.

In 1996 the Boleslawiec District Prosecutor brought an action against them on behalf of the State Treasury, claiming that the applicants had acted to the detriment of the State Treasury by inflating the value of the property they had left behind. The prosecutor claimed a sum of PLN 111 046 (approximately EUR 30 855) as an alleged loss of the State due to the erroneously calculated price.

The Nowy Sacz Regional Court dismissed the prosecutor's claim against the applicants, and ordered the State Treasury to reimburse to the applicants the costs of litigation they had borne in

the proceedings. The prosecuting authorities appealed.

In April 1998 Kraków Court of Appeal dismissed the prosecutor's appeal as regards the purchase price for the property but overturned the regional court's decision to award the applicants their costs.

Decision of the Court

The Court noted that under Article 98 of the Code of Civil Procedure, the party losing a civil case is normally obliged to reimburse the litigation costs to the successful party. However, the situation of the prosecutor in respect to the litigation costs in Polish civil procedure constitutes an exception this principle.

The Court noted that the case-law of the Supreme Court made it possible for the courts to apply the Code of Civil Procedure in such a manner as to mitigate the privileged position of the prosecuting authorities in respect of the litigation costs, thus better taking into account the particularities of each individual case and the legitimate interests of an individual. The appellate court, however, overturned the decision in respect of costs simply because the opponents in the case were the prosecuting authorities, and despite the fact that the lower courts had found against the public prosecutor concerning the merits of the case.

The Court noted that from the outset the prosecuting authorities enjoyed a privileged position with respect to the costs of civil proceedings. In that connection, the Court also noted the applicants' argument that the prosecuting authorities had in any event at their disposal legal expertise and ample financial means exceeding those available to any individual. While it was true that such a privilege might be justified for the protection of the legal order, the Court held that it should not be applied so as to put a party to civil proceedings to undue disadvantage vis-à-vis the prosecuting authorities.

The Court, having noted the complexity of the case and, also, the substantial amount of money involved in the case, was of the view the applicants' decision to have professional legal representation could not be said to be unwarranted. It further found that the Government had not shown that that the legal fees incurred in the case were inconsistent with those practised at the time in cases of a similar character.

The Court held unanimously that there had been a violation of Article 6 § 1 and awarded the applicant EUR 12 828 in respect of pecuniary damage, EUR 2 500 in respect of non-pecuniary damage and EUR 1 283 for costs and expenses.

Sukhobokov v. Russia

Article 6 (right to a fair trial)

Principal facts and complaints

On 22 April 1999 the applicant brought proceedings against his local labour and social development authority, arguing that his pension should be increased. A judgment was made in his favour which became final in December 1999. The judgment was not enforced initially due to lack of funds from the State budget. The judgment was finally quashed on 29 September 2000 following the discovery of a ministerial instruction which interpreted the Pensions Law in a way different from that in the judgment.

The applicant complained about the non-enforcement of the judgment. He relied on Article 6 (access to a court).

Decision of the Court

The Court reiterated that it was not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt. Furthermore, the Court found that the quashing of the judgment, which did not respect the principle of legal certainty and the applicant's "right to a court", could not be accepted as a reason to justify the non-enforcement of the judgment. Accordingly, the Court held unanimously that there had been a violation of Article 6 § 1 and awarded the applicant EUR 150 for pecuniary damage and EUR 1 000 for non-pecuniary damage.

Judgment of 13.4.2006
Concerns:
Non-enforcement of the final judgment quashed following a ministerial instruction which interprets the Law in a different way

Ergin v. Turkey

Articles 6 (right to a fair trial) and 10 (freedom of expression) of the Convention

Judgment of 4.5.2006
Concerns:
Freedom of expression of a journalist; independence and impartiality of the military court which judged him

Principal facts and complaints

The applicant, who was the editor of a newspaper, published in September 1997 an article which formed a critique of the now-traditional ceremony to mark the departure of soldiers leaving to perform their military service.

On 20 October 1998 the General Staff Court found him guilty of incitement to evade military service.

Decision of the Court

Freedom of expression

The Court considered that the reasons given by the Turkish courts could not be regarded in themselves as sufficient to justify the interference with the applicant's right to freedom of expression. It observed, among other things, that, although the words used in the offending article gave it a connotation hostile to military service, they did not exhort the use of violence or incite armed resistance or rebellion, and they did not constitute hate-speech, which, in the Court's view, was the essential element to be taken into consideration.

The Court found that the applicant's criminal conviction did not correspond to a pressing social need and had therefore not been "necessary in a democratic society". It constituted a violation of Article 10.

The independence and impartiality of the Court

The Court first took formal note of the information supplied by the Turkish Government to the effect that Turkish legislation had been amended to bring it into line with Convention requirements.

It considered that the determination of criminal charges against civilians by courts composed, if only in part, of members of the armed forces could be held to be compatible with Article 6 only in exceptional circumstances; it derived support in that approach from developments at international level in recent years. It expressed the view that the power of military criminal justice should not extend to civilians unless there were compelling reasons justifying such a situation, and if so only on a clear and foreseeable legal basis.

It further considered that it was understandable that the applicant, a civilian standing trial before a court composed exclusively of military officers, charged with offences relating to propaganda against military service, should have been apprehensive about appearing before judges belonging to the army, which could be identified with a party to the proceedings. The applicant's doubts about the independence and impartiality of that court could therefore be regarded as objectively justified. The Court therefore held unanimously that there had been a violation of Article 6 § 1.

By way of just satisfaction, the Court awarded the applicant EUR 2 000 for non-pecuniary damage and certain sums for costs and expenses.

Saday v. Turkey

Articles 6 (right to a fair trial) and 10 (freedom of expression)

Judgment of 30.3.2006
Concerns:
Conviction for contempt of court; independence and impartiality of the state security court

Principal facts and complaints

In 1995 the applicant was charged with being a member of an illegal armed organisation and committed for trial in Izmir State Security Court. At one of the hearings, he read out a speech in which he criticised the Turkish judiciary, whom he described among other things as "torturers in robes". He was given six months' solitary confinement for contempt of court. He served two months, the state security court having decided to suspend the remainder of the term.

In November 1998 he was sentenced to life imprisonment.

The applicant complained of procedural unfairness, owing to the presence of a military judge on the bench of the state security court. He further alleged a violation of Article 10 (freedom of expression) on account of his conviction for contempt of court.

Decision of the Court

The Court held unanimously that there had been a violation of Article 6 § 1 on account of the lack of independence and impartiality of the state security court. As to the other complaints of procedural unfairness, it pointed out that a court whose lack of independence and impartiality had been established could not, in any circumstances, guarantee a fair trial to the persons subject to its jurisdiction, so that it was unnecessary to examine them.

As to the remarks made by the applicant in his speech the Court considered them to have been particularly acerbic. Constituting as they did a direct attack on the dignity of the judges, the Court was able to accept that the state security court should have deemed it necessary to impose a penalty. However, the length and severity of the sentence which the applicant had received appeared to be disproportionate to the aims pursued and, therefore, not "necessary in the democratic society". Consequently, the Court held unanimously that there had been a violation of Article 10.

As regards just satisfaction, the Court awarded the applicant EUR 3 000 for pecuniary damage and certain sums for costs and expenses.

Buj v. Croatia

Articles 6 and 13 of the Convention (length of the proceedings, lack of an effective remedy) and 1 of Protocol No. 1 (protection of property)

Judgment of 1.6.2006
Concerns:
Excessive length of inheritance proceedings

Principal facts and complaints

On 1 May 1994 the applicant's mother died and inheritance proceedings were started. In a decision issued by Stari Grad Municipal Court, the property was distributed between the applicant and his brother. Ownership of the property was to be registered after the decision became final. The applicant's ownership of the inherited property has to date not been recorded in the land register.

The applicant complained about the excessive length of the proceedings and the lack of an effective remedy in relation to that grievance. He further alleged that the length of proceedings had infringed his right to the peaceful enjoyment of his possessions.

The Government claimed that the lengthy period of time necessary for the registration of the applicant's ownership in the land register was a systemic problem in Croatia and that the system was currently undergoing reform.

Decision of the Court

The European Court of Human Rights noted that the enforcement of the decision given in the inheritance proceedings, in the form of registration of property in the applicant's name, had been pending for more than four years, without a single decision to that end. Having regard to its previous case-law on the subject, the Court considered that the length of the proceedings was excessive.

Furthermore, the Court noted the lack of a remedy under domestic law whereby the applicant could have complained about the excessive length of the land registry proceedings and held unanimously that there had been a violation of Article 13.

Having regard to its finding of a violation of Article 6 § 1, the Court also held unanimously that it was not necessary to examine whether there had been a violation of Article 1 of Protocol No. 1. The applicant was awarded EUR 2 400 for non-pecuniary damage.

Fedotova v. Russia

Articles 6 (right to a fair trial) and 34 (right of individual petition)

Judgment of 13.4.2006
Concerns:
– Non-compliance with rules on participation of lay judges
– Police inquiry into the payment of taxes by the applicant's translator and representative before the European Court of Human Rights

Principal facts and complaints

On 16 October 2000 the Taganrog Town Court of the Rostov Region, composed of a presiding judge and two lay judges, dismissed the applicant's claims in a civil suit to which she was a party and ordered her to bear costs and expenses.

The applicant appealed alleging, among other things, a breach of the rules on the appointment of lay judges in that they had not been drawn by lot, contrary to the requirements of the Lay Judges Act. The court rebutted the argument claiming that the judges were exempted from the requirements of the Lay Judges Act.

In 2004 the European Court of Human Rights declared Ms Fedotova's application partly admissible and she submitted her claim for just satisfaction. Shortly afterwards, an officer of the Taganrog police department formally requested the applicant's representative and translator in the Court proceedings to submit evidence that they had paid taxes on the amounts disbursed by the applicant.

The applicant alleged, in particular, that the court that had given the judgment of 16 October 2000 had not been composed in accordance with the domestic law. She also alleged that the police inquiry into the tax matters of her representative and translator in the proceedings before the European Court of Human Rights amounted to a hindrance to the exercise of her right to individual petition.

Decision of the Court

The Court noted that the parties disagreed whether at the time of the passing the judgment of 16 October 2000 the status of lay judges S. and L. had been governed by the USSR Judiciary Act of 1981 or by the more recent Russian Lay Judges Act. The Court noted that in either case essential requirements of the procedure for selection of lay judges were not respected. The Court therefore concluded that the Taganrog Town Court that issued the judgment could not be considered as a tribunal established by law.

Concerning the police inquiry in connection with the applicant's claim for just satisfaction, the Court saw no plausible reason as to why, in the absence of any apparent indication of a criminal offence, the questioning had been conducted by the regional police rather than by a competent tax authority. It found that the moves made by the Russian Government to investigate the applicant's disbursements to her representatives had to be considered an interference with the exercise of the applicant's right of individual petition.

The Court awarded the applicant EUR 1 000 in respect of non-pecuniary damage and certain sums for costs and expenses.

Segerstedt-Wiberg and others v. Sweden

Articles 8 (right to respect for private and family life), 10 (freedom of expression, 11 (freedom of assembly and association) and 13 (right to an effective remedy)

Judgment of 6.6.2006
Concerns:
Storage of information concerning the applicants by the Security Police and refusal to grant them full access to it

Principal facts and complaints

The applicants all made unsuccessful requests to view in their entirety the records held about them by the Swedish Security Police. Their requests were refused on the ground that making them available might jeopardise crime prevention or national security.

Decision of the Court

Article 8: Storage of the information released to applicants

The Court was satisfied that the storage of the information at issue had a legal basis in the 1998 Police Data Act. It noted in particular that Section 33 of the Act allowed the Security Police register

to include personal information concerning a person suspected of a crime threatening national security or a terrorist offence, or undergoing a security check or where "there are other special reasons". While the Security Police had some discretion in deciding what constituted "special reasons", that discretion was not unfettered. For example, under the Swedish Constitution, no entry regarding a citizen could be made in a public register exclusively on the basis of that person's political opinion, without his or her consent. And, among other things, a general prohibition of registration on the basis of political opinion was set out in section 5 of the Police Data Act. Against that background, the Court found that the scope of the discretion conferred on the competent authorities and the manner of its exercise was indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference. Accordingly, the interference with the respective applicants' private life was "in accordance with the law", within the meaning of Article 8.

The Court also accepted that the storage of the information in question pursued legitimate aims, namely the prevention of disorder or crime, in the case of Ms Segerstedt-Wiberg, and the protection of national security, for the other applicants.

While the Court recognised that intelligence services might legitimately exist in a democratic society, it reiterated that powers of secret surveillance of citizens were tolerable under the Convention only in so far as strictly necessary for safeguarding democratic institutions. Such interference had to be supported by relevant and sufficient reasons and be proportionate to the legitimate aim or aims pursued. In the applicants' case, Sweden's interest in protecting national security and combating terrorism had to be balanced against the seriousness of the interference with the respective applicants' right to respect for private life.

- Concerning Ms Segerstedt-Wiberg, the Court found no reason to doubt that the reasons for keeping on record the information relating to bomb threats in 1990 against her were relevant and sufficient as regards the aim of preventing disorder or crime. The measure was at least in part intended to protect her; there was therefore no question of any disproportionate interference with her right to respect for her private life.

- However, as to the information released to Mr Nygren (his participation in a political meeting in Warsaw in 1967), the Court, bearing in mind the nature and age of the information, did not find its continued storage to be supported by reasons which were relevant and sufficient as regards the protection of national security.

- Similarly, the storage of the information released to Mr Schmid (that he, in 1969, had allegedly advocated violent resistance to police control during demonstrations) could in most part hardly be deemed to correspond to any actual relevant national security interests for Sweden. Its continued storage, though relevant, could not be deemed sufficient 30 years later.

- The information released to Mr Ehnebom and Mr Frejd raised more complex issues in that it related to their membership of the KPML(r), a political party which, the Swedish Government stressed, advocated the use of violence and breaches of the law in order to bring about change in the existing social order. The Court observed that the relevant clauses of the KPML(r) party programme rather boldly advocated establishing the domination of one social class over another by disregarding existing laws and regulations. However, the programme contained no statements amounting to an immediate and unequivocal call for the use of violence as a means of achieving political ends. Clause 23, for instance, which contained the most explicit statements on the matter, did not propose violence as either a primary or an inevitable means in all circumstances. Nonetheless, it affirmed the principle of armed opposition.

The Court reiterated its position that the constitution and programme of a political party could not be taken into account as the sole criterion for determining its objectives and intentions; the contents of the programme had to be compared with the actions of the party's leaders and the positions they defended.

The KPML(r) party programme was the only evidence relied upon by the Government, however. Beyond that they did not point to any specific circumstance indicating that the impugned programme clauses were reflected in actions or statements by the party's leaders or members or that they constituted an actual or even potential threat to national security when the information was released in 1999, almost 30 years after the party had come into existence. The reasons for the continued storage of the information about Mr Ehnebom and Mr Frejd, although relevant, could not be considered sufficient and therefore amounted to a disproportionate interference with their right to respect for private life.

The Court concluded that the continued storage of the information that had been released was necessary concerning Ms Segerstedt-Wiberg, but not for any of the remaining applicants. Accordingly, the Court found that there has been no violation of Article 8 concerning Ms Segerstedt-Wiberg, but that there had been a violation concerning the other four applicants.

Article 8: Refusal to grant applicants full access to information stored about them by Security Police

The Court reiterated that a refusal of full access to a national secret police register was necessary where the State might legitimately fear that the provision of such information might jeopardise the efficacy of a secret surveillance system designed to protect national security and to combat terrorism. In the applicants' case the national administrative and judicial authorities involved had all found that full access would jeopardise the purpose of the system. The Court did not find any ground on which it could arrive at a different conclusion.

The Court concluded that Sweden was entitled to consider that the interests of national security and the fight against terrorism prevailed over the interests of the applicants in being advised of the full extent to which information was kept about them on the Security Police register. Accordingly, the Court found that there had been no violation of Article 8.

Articles 10 and 11

The Court considered that the storage of personal data related to political opinion, affiliations and activities that had been deemed unjustified for the purposes of Article 8 § 2 *ipso facto* constituted an unjustified interference with the rights protected by Articles 10 and 11. Having regard to its findings under Article 8, the Court therefore found that there had been violations of Articles 10 and 11 concerning all the applicants except Ms Segerstedt-Wiberg.

Article 13

Considering the applicants' access to an effective remedy under Article 13, the Court observed that the Parliamentary Ombudsman and Chancellor of Justice could receive individual complaints and had a duty to investigate them in order to ensure that the relevant laws had been properly applied. By tradition, their opinions commanded great respect in Swedish society and were usually followed. However, as the Court had found previously, they lacked the power to render a legally-binding decision. In addition, they exercised general supervision and did not have specific responsibility for inquiries into secret surveillance or into the entry and storage of information on the Secret Police register. The Court had already found neither remedy, when considered on its own, to be effective within the meaning of Article 13.

In the meantime, a number of steps had been taken to improve the remedies, notably authorising the Chancellor of Justice to pay compensation, with the possibility of judicial appeal against the dismissal of a compensation claim, and the establishment of the Records Board (empowered to monitor on a day-to-day basis the Secret Police's entry and storage of information and compliance with the Police Data Act). The Data Inspection Board had also been set up. Moreover, a decision by the Security Police whether to advise a person of information kept about him or her on its register could form the subject of an appeal to the County Administrative Court and the Supreme Administrative Court.

The Court noted that the Records Board had no competence to order the destruction of files or the erasure or rectification of information kept in the files.

It appeared the Data Inspection Board had wider powers. It could examine complaints made by individuals. Where it found that data was being processed unlawfully, it could order the processor, on pain of a fine, to stop processing the information other than for storage. The Board was not itself empowered to order the erasure of unlawfully stored information, but could make an application for such a measure to the County Administrative Court. However, the Court had received no information indicating the effectiveness of the Data Inspection Board in practice. It had therefore not been shown that that remedy was effective.

In addition the applicants had no direct access to any legal remedy as regards the erasure of the information in question. In the view of the Court, those shortcomings were not consistent with the requirements of effectiveness in Article 13 and were not offset by any possibilities for the applicants to seek compensation.

The Court found that the applicable remedies, whether considered on their own or together, could not satisfy the requirements of Article 13 and that there had therefore been a violation of Article 13.

Under Article 41 (just satisfaction), the Court awarded EUR 3 000 euros to Ms Segerstedt-Wiberg, EUR 7 000 each to Mr Nygren and Mr Schmid and EUR 5 000 each to Mr Ehnebom and Mr Frejd in respect of non-pecuniary damage as well as certain sums for costs and expenses.

Kaftailova v. Latvia

Article 8 (right to respect for private and family life)

Judgment of 22.6.2006
Concerns: Expulsion order passed on a person resident in Latvia for 22 years, resulting from failings in the request from a residence permit

Principal facts and complaints

The applicant, Natella Kaftailova, is of Georgian origin. She was born in 1958 and lives in Riga (Latvia). She had Soviet nationality until 1991 and currently has no nationality.

In 1982 the applicant, who was then resident in Russia, married a Soviet civil servant, employed by the Ministry of the Interior of the USSR. The couple had a daughter in 1984 and settled in Latvia.

In July 1988 the applicant's husband exchanged the dwelling which he had rented in Kazan (Russia) until that date against the right to rent a state apartment in Riga, into which he and his family then moved. In March 1990 the applicant, who had been registered until then in Volzhsk (Russia), cancelled her official residence registration; the following month her husband registered her, without her knowledge or consent, as resident at their family's new address in Riga, and also registered himself at that address. Having discovered her entry on the register in question, the applicant had it cancelled on 15 June 1990. The couple divorced in October 1990.

In 1991 the Soviet Union broke up and Mrs Kaftailova found herself with no nationality.

In February 1993 the applicant was granted the right to rent a room obtained by her ex-husband in 1987, which was located in a "duty residence" and asked the Department of Nationality and Migration Affairs at the Latvian Ministry of the Interior ("the Department") to register her on the list of residents as a permanent citizen of Latvia. In her request, however, she indicated the address at which her ex-husband had unlawfully registered her, and not the address in Riga at which she then lived.

Initially the Department granted her request. In July 1993, however, the Department cancelled the applicant's registration on the ground that the stamp in her passport was false. On 15 February 1994 the Department struck the applicant out of the list of residents, cancelled her personal identification code and overturned the decision granting her the right to rent the room in which she lived.

On 9 January 1995 the Department served a deportation order on the applicant, ordering her to leave Latvia with her daughter. The Department had noted that on 1 July 1992, the critical date laid down by the Law on the Entry into and Residence of Aliens and Stateless Persons in the Republic of Latvia, the

applicant had not been officially registered as having any permanent residence in Latvia; in those circumstances, she ought to have applied for a residence permit within one month of that law entering into force, failing which she would be subject to a deportation order; however, the applicant had not done so.

None of the administrative and judicial appeals lodged by the applicant with a view to having her situation regularised was successful.

After the European Court had declared this application admissible, the Latvian authorities offered in January 2005 to regularise the applicant's situation by issuing her with a permanent residence permit, and invited her to file the necessary documents to that end. However, it appeared from the case file that the applicant had not submitted the necessary papers by the date of the Court's judgment.

The applicant alleged, in particular, that the Latvian authorities' refusal to regularise her situation constituted a violation of her right to respect for private and family life, guaranteed by Article 8 of the Convention.

Decision of the Court

The Court noted that, during the period in which she lived in Latvia, Mrs Kaftailova had formed and developed personal, social and economic relationships, which constituted the private life of any human being. The Latvian authorities' prolonged refusal to grant her the right to reside lawfully and permanently in Latvia represented an interference in her private life.

That interference was "in accordance with the law" and sought to ensure compliance with the legislation on immigration; it therefore pursued a "legitimate aim", namely "to prevent disorder".

As to whether the disputed measure had been "necessary in a democratic society", the Court noted that the applicant had lived in Latvia for 22 years. Admittedly, she was not of Latvian origin and had spent a significant part of her life in Russia, but that aspect was not decisive in her case. Firstly, there was nothing to show that the applicant was entitled to Russian or Georgian nationality. Furthermore, it was not disputed that since 1984 the applicant had developed sufficiently strong personal and social contacts in Latvia for it to be asserted that she was sufficiently integrated into Latvian society. Equally, the Court noted that, although the applicant had been officially registered as resident in Russia until 1990, it did not appear that she had maintained stable and genuine links with that country since that date. In any event, she had not formed personal and social ties in any other country similar to those that she enjoyed in Latvia.

In those circumstances, only particularly serious grounds could justify the measure in dispute; however, the Court had not found any in the applicant's case. While acknowledging the right of States to take effective measures in order to ensure compliance with the legislation on immigration, the Court considered that a measure such as that imposed on the applicant could be proportionate only where the conduct of the person concerned was particularly dangerous.

Having regard to the circumstances of the case, and in particular to the 11-year period of precariousness and legal uncertainty experienced by the applicant in Latvia, the Court considered that the Latvian authorities had not struck a fair balance between the legitimate aim of preventing disorder and the applicant's interest in protection of her rights under Article 8.

Accordingly, the Court concluded that there had been a violation of Article 8.

Noting that Mrs Kaftailova had not submitted a claim for just satisfaction within the required time-limit, the Court considered that it was not necessary to make an award under Article 41 of the Convention.

Dickson v. the United Kingdom

Article 8 (right to respect for private and family life) and 12 (right to marry)

Judgment of 18.4.2006
Concerns:
Man sentenced to a long detention refused permission for artificial insemination

Principal facts and complaints

In 1994 Mr Dickson was convicted of murder and sentenced to life imprisonment with a tariff (the minimum period to be served) of 15 years. He has no children. In 2001 he married. The couple requested artificial insemination facilities to enable them to have a child together, arguing that it would not otherwise be possible, given Mr Dickson's earliest release date. The Secretary of State refused their application given to the nature and gravity of Mr Dickson's crime and the welfare of any child who might be conceived. The Court further noted that the decision of the Secretary of State was examined by the High Court and the Court of Appeal which found the decision to refuse the facilities was neither unreasonable nor disproportionate.

Decision of the Court

In view of those circumstances, the Court found that it had not been shown that the decision to refuse facilities for artificial insemination was arbitrary or unreasonable or that it failed to strike a fair balance between general interest of the community and the interests of the individual. There had accordingly been no failure to respect the applicants' rights to private and family life.

The Court recalls that an interference with family life which is justified under paragraph 2 of Article 8 of the Convention cannot at the same time constitute a violation of Article 12.

Cases of Albanese, Vitiello and Campagnano v. Italy

Article 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the Convention, Articles 1 and 3 of Protocol No. 1 (protection of property, right to free elections) and Article 12 of Protocol No. 4 (freedom of movement)

Judgment of 23.3.2006
Concerns:
Personal disqualifications imposed on a bankrupt and attached automatically to the bankruptcy order

Principal facts and complaints

In these three cases, the applicants and their companies were declared bankrupt. They alleged that, following the declaration of bankruptcy, they had been deprived of their possessions contrary to Article 1 of Protocol No. 1 , that correspondence sent to them had been given to the receiver contrary to Article 8 and that they had been unable to leave their place of residence contrary to Article 2 of Protocol No. 4. In addition, relying on Article 13, they complained of the lack of an effective remedy by which to complain of the ineligibilities incurred as a result of being made bankrupt. Lastly, they submitted that the loss of their right to vote following their bankruptcy had infringed Article 3 of Protocol No. 1.

The applicants further complained under Article 8 that their right to respect for their private life had been infringed because the entry of their names in the bankruptcy register had prevented them from carrying out professional or commercial activities. They also complained of the fact that they could not apply for rehabilitation, which would put an end to the ineligibilities affecting their personal rights, for five years after completion of the bankruptcy proceedings.

Decision of the Court

In the Albanese and Vitiello cases, the Court declared the applications admissible with regard to the complaints under Article 8 concerning the applicants' right to respect for their private life, and to the complaints under Article 3 of Protocol No. 1 and Article 13, and declared the remainder of the applications inadmissible. In the Campagnano case, it declared the application admissible as to the complaints under Article 8, Article 1 of Protocol No. 1, Article 2 of Protocol No. 4, Article 3 of Protocol No. 1 and Article 13

of the Convention, and found the remainder of the application inadmissible.

As to the interference with the applicants' voting rights

The European Court of Human Rights considered that the measure, which was provided for by Article 2 of Presidential Decree No. 223 of 20 March 1967, served no purpose other than to belittle persons who had been made bankrupt, reprimanding them simply for having been declared insolvent irrespective of whether they had committed an offence. The interference did not therefore pursue a legitimate aim. Furthermore, the Court pointed out that, far from being a privilege, voting was a right protected by the Convention. It therefore held unanimously in all three cases that there had been a violation of Article 3 of Protocol No. 1.

As to the interference with the right to respect for their private life

The Court further considered that, given that the names of bankrupts were entered automatically in the bankruptcy register and that the application of the ineligibilities in question was not the subject of any assessment or judicial review, and in view of the length of time before rehabilitation could be obtained, the interference with the applicants' right to respect for their private life provided for by section 50 of the Bankruptcy Act was contrary to the Convention. The Court therefore held unanimously in all three cases that there had been a violation of Article 8.

Right to an effective remedy

The Court held unanimously in all three cases that there had been a violation of Article 13.

Length of the bankruptcy proceedings

In the Campagnano case, the Court took the view that the length of the bankruptcy proceedings (over three years and nine months) had not upset the balance that had to be struck between the general interest in securing the payment of the bankrupt's creditors and the applicant's personal interest in securing respect for her correspondence, her property and her freedom of movement. The Court therefore held that there had been no violation of Article 8 as to the applicant's right to respect for her correspondence; neither had there been a violation of Article 1 of Protocol No. 1 or Article 2 of Protocol No. 4.

The Court considered that the findings of violations constituted sufficient just satisfaction for the non-pecuniary damage sustained by the applicants, and awarded them certain sums for costs and expenses.

Riener v. Bulgaria

Articles 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the Convention and Article 2 of Protocol No. 4 (freedom of movement)

Judgment of 23.5.2006
Concerns:
Ban preventing a person – having both Austrian and Bulgarian nationalities – from leaving Bulgaria because of unpaid taxes

Principal facts and complaints

The applicant has been an Austrian national and at the time of the events in question, she also had Bulgarian nationality. She was the co-owner and commercial director of a company registered in Austria. She was also registered in Bulgaria as a foreigner conducting economic activities there.

A fiscal authority in Sofia declared, in a decision, that the applicant owed the equivalent of approximately 1 million US dollars in unpaid excise tax and interest. Her passport was confiscated and she was banned from leaving the country. The order relied on section 29(1)(v) of the Law on the Sojourn of Aliens in Bulgaria. The applicant appealed, claiming that she was a Bulgarian citizen and that such measures could not be applied to her. The courts rejected her appeals finding that her obligation to pay the outstanding taxes, as established by the court, was sufficient ground in law to seize any passport used for international travel. The travel ban was lifted since the statutory prescription period for the applicant's debt had expired. Meanwhile, the applicant made

several attempts to renounce her Bulgarian citizenship. Her request was finally granted in December 2004.

The applicant complained, in particular, about the ban preventing her from leaving Bulgaria, the refusal of her request to renounce Bulgarian citizenship and the alleged lack of effective remedies in relation to those events.

Decision of the Court

The Court found that the authorities had failed to give due consideration to the principle of proportionality in their decisions and that the travel ban imposed on the applicant was of an automatic nature and of indeterminate duration. It also noted a lack of clarity in the law and practice with regard to some of the issues. It further noted that the impugned measure was maintained over a lengthy period and was disproportionate to the aim it pursued, i.e. to recover the tax debt. The Court therefore held unanimously that there had been a violation of Article 2 of Protocol No. 4.

In view of that finding the Court held, by six votes to one, that it was unnecessary to examine what amounted essentially to the same facts and decisions with regard to Article 8.

With regard to her complaint regarding the lack of an effective remedy, the Court noted that, although the applicant was, in theory, able to appeal against the travel ban, the domestic courts were only concerned with the formal lawfulness of the prohibition and not the substance of her complaint. Among other things, the duration of the restrictions, the applicant's ability to pay, the right to respect for her private and family life were all deemed irrelevant. The Court therefore found that the scope of review afforded to her in Bulgarian law was too limited, and it held that there had been a violation of Article 13.

However, the Court found unanimously no violation of Articles 8 and 13 with regard to the refusal of the authorities to grant her requests to renounce her citizenship, as those decisions did not interfere with her right to respect for her private life.

The Court awarded the applicant EUR 5 000 in respect of non-pecuniary damage and certain sums for costs and expenses.

Babylonová v. Slovakia

Article 8 (right to respect for private and family life) of the Convention and 1 of Protocol No. 1 (protection of property)

Judgment of 20.6.2006
Concerns:
Impossibility to obtain cancellation of a domiciliation from the permanent residences register

Principal facts and complaints

In August 1995 the applicant and her husband bought a house. Despite his various attempts to have his residence status removed from the official register, Mr D., the former owner of the property, continued to be registered as permanently resident at the house.

Registration of permanent residences was governed by the 1982 Registration of Citizens' Residence Act in conjunction with the Regulation on Enforcement of the Registration of Citizens' Residence Act. Under the terms of the Act, as Mr D. had become homeless and had not applied for registration of a new permanent residence, there was no legal authority under the existing legislation to cancel his previous registration at the applicant's home address.

The applicant submitted that official mail was being sent to the house for Mr D., and that the police had once come to her home looking for him, which she maintained had implications for her reputation among her neighbours. She had also been repeatedly obliged to explain the situation in various official contexts, such as in her claims for housing benefit and fees she was charged for the removal of household waste.

The applicant complained in particular that the impossibility for her to obtain cancellation of Mr D.'s registration as permanently resident in her house disturbed her private life and violated her property rights.

Decision of the Court

The Court found that the impact on the applicant's Article 8 rights, resulting from the fact that D. could not secure his deregistration, was sufficiently serious to amount to an interference with her right to respect for private life and home. It further found that that interference derived directly from the provisions of the 1982 Act, which only permitted a former resident of a house to remove his or her name from the register where that person had established a new permanent residence elsewhere, which in the present case Mr D. was unable to do. The Court found therefore that there had been a failure in the domestic legal system to secure the applicant's rights to respect for her private life and home.

In view of that finding, the Court considered that it was not necessary to examine separately whether there had been a violation of Article 1 of Protocol No. 1.
It awarded the applicant EUR 1,500 for non-pecuniary damage.

Ismir Savaş Karşitlari Dernegi and others v. Turkey

Article 11 (freedom of assembly and association)

Judgment of 2.3.2006
Concerns:
Criminal conviction of an association for having participated in meetings abroad without ministerial authorisation

Principal facts and complaints

The applicants are an association, Izmir Savaþ Karþitlari Dernegi (Izmir Association Against War), and three Turkish nationals who live in Izmir.

In January 1994 various members of the applicant association travelled to different foreign countries to attend meetings.

In June 1996 certain members of the association were sentenced by Izmir Criminal Court under section 43 of Law No. 2908 to three months' imprisonment as they had not sought permission to leave the country from the Ministry of the Interior. That judgment was quashed by the Court of Cassation on the ground that the Criminal Court had failed to commute the prison sentences into fines. The case was remitted to the Criminal Court, which complied with the Court of Cassation's judgment on 14 July 1997.

The applicants complained that their right to freedom of association and to peaceful assembly had been infringed by their criminal convictions.

Decision of the Court

The issue before the Court was whether the interference with the applicants' freedom of association could be considered to have been "necessary in a democratic society". In a democratic society based on the rule of law, political ideas which challenged the existing order and whose realisation was advocated by peaceful means had to be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means. In view of the role played by associations, any measure taken against them affected both freedom of association and, consequently, democracy in the State concerned.

The Court reiterated that the State could not, in the name of protecting "national security" or "public safety", take just any measure it happened to deem appropriate. It further noted that no member State of the Council of Europe possessed legislation similar to section 43 of the Turkish law on associations (which was repealed in 2004).

Accordingly, the Court found that the permission the applicants had been required to obtain in the case before it could not be regarded as pursuing a legitimate aim, namely the protection of national security or public safety. It therefore held unanimously that there had been a violation of Article 11 and awarded to each of the three individual applicants EUR 1 500 for pecuniary damage and certain sums for costs and expenses.

Zarb Adami v. Malta

Article 14 (prohibition of discrimination) in conjunction with Articles 4 (prohibition of slavery and forced labour) and 6 (right to a fair trial)

Judgment of 20.6.2006
Concerns: Discrimination on the ground of sex in the imposition of jury service

Principal facts and complaints

Between 1971 and 1997 the applicant served as both a juror and foreman in three different sets of criminal proceedings. In 1997 he was called again to serve as a juror, but failed to appear and was fined. As he failed to pay the fine, he was summoned before the Criminal Court. He pleaded that the fine imposed on him was unconstitutional. In particularly, it would be discriminatory in terms of Article 45 of the Constitution and Article 14 of the Convention, taken in conjunction with Article 4 § 3 (d), as other people in his position were not subjected to the burdens and duties of jury service.

Considering that the applicant's plea was not merely frivolous and/or vexatious, the Criminal Court referred it to the Civil Court, before which the applicant alleged that the Maltese system penalised men and favoured women; during the preceding five years only 3.05% of women had served as jurors. Moreover, the burden of jury service would have been inequitably distributed: in 1997 the list of jurors represented only 3.4% of the list of voters.

The Civil Court rejected the applicant's claims. It held that in stating that every Maltese who had reached the age of twenty-one years qualified to serve as a juror, the law did not make any distinction between citizens. More specifically, there was no distinction between males and females. As to the practice criticised by the applicant, the latter had not substantiated his allegation that there were other persons eligible to serve as jurors who managed to avoid performing their duties.

The applicant appealed against the judgment to the Constitutional Court. He observed, in particular, that the existence of discrimination was clearly shown by the statistics he had produced. Given this factual background, it was unnecessary to prove an intention to discriminate on the part of the authorities. In his submissions, the applicant recalled that jury service was a burden as it required the person concerned to abandon his or her work in order to attend court hearings regularly; moreover, it imposed a moral burden to judge the innocence or guilt of a person. According to the Constitution of Malta and the Convention, social burdens should be shared by all in an equitable manner.

The Constitutional Court rejected the applicant's appeal and confirmed the judgment of the Civil Court. It acknowledged, however, on the one hand, that the number of women actually called to serve as jurors was very low and, on the other hand, that the manner in which the list of jurors was compiled favoured a situation in which when a person was placed on the list he/she remained on it until the age restriction was reached. Thus the Constitutional Court suggested that the system be amended.

Later on, the applicant was required several times to serve as a juror and his request to be exempted was only accepted in 2005, on the basis of Article 604 (1) of the Civil Code, which provides an exemption for full-time lecturers at the University.

Before the European Court of Human Rights, the applicant complained that he had been the victim of discrimination on the ground of sex, and that he had been obliged to face criminal proceedings in relation to the imposition of a discriminatory civic obligation.

Decision of the Court

Article 14 read in conjunction with Article 4 § 3

Applicability

The Court considered that compulsory jury service as it exists in Malta is one of the "normal civic obligations" envisaged in Article 4 § 3 (d) of the Convention. It further observed that the applicant did not offer himself voluntarily for jury service and that his failure to appear led to the imposition of a fine, which could be converted into a term of imprisonment. On account of its close links with

the obligation to serve, the obligation to pay the fine also fell within the scope of Article 4 § 3 (d). It followed that the facts in question came within the ambit of Article 4 and that Article 14 was accordingly applicable.

Difference in treatment between people in similar situations

The Court observed that it was accepted by the applicant that the difference in treatment complained of did not depend on the wording of Maltese law in force at the relevant time, but was based on what the applicant described as a well-established practice.

The Court reiterated that statistics were not by themselves sufficient to disclose a practice which could be classified as discriminatory. At the same time, the Court considered that discrimination potentially contrary to the Convention might result not only from a legislative measure, but also from a *de facto* situation.

Having examined the number of men and women enrolled on the lists of jurors, the Court was struck by the fact that the figures showed that the civic obligation of jury service, even if it accepted that, since 1997 an administrative process had been set in motion in order to bring the number of women registered as jurors in line with that of men.

Objective and reasonable justification

The Court recalled that if a policy or general measure had disproportionate prejudicial effects on a group of people, the possibility of its being considered discriminatory could not be ruled out even if it was not specifically aimed or directed at that group. However, only very weighty reasons would have to be put forward before it could regard a difference of treatment based exclusively on the ground of sex as compatible with the Convention.

The factors highlighted by the Government only constituted explanations of the mechanisms which had led to the difference in treatment complained of. No valid argument had been put before the Court in order to provide a proper justification for it. In particular, it had not been shown that the difference in treatment pursued a legitimate aim and that there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

The Court therefore found that there had been a violation of Article 14, read in conjunction with Article 4 § 3 (d).

That conclusion dispensed the Court from examining whether the applicant had also been discriminated against *vis-à-vis* other men who, though eligible for jury service, had never been summoned to serve as jurors.

Article 14 read in conjunction with Article 6

The Court observed that the applicant did not allege that the proceedings directed against him were in any way unfair or that any of the rights guaranteed by Article 6 had been violated.

Having regard to its finding that there had been a violation of Article 14 taken in conjunction with Article 4 § 3 (d), the Court did not consider it necessary to examine whether there had also been a violation of Article 14 read in conjunction with Article 6.

Lykourezos v. Greece

Article 3 of Protocol No. 1 (right to free elections) and 8 (right to respect for private life)

Judgment of 15.6.2006
Concerns: Incompatibility of a professional activity with the duties of a member of parliament

Principal facts and complaints

The application concerns a parliamentarian's forfeiture of his seat on the ground that carrying on a professional activity disqualified him from holding such office.

In April 2000 the applicant was elected as a member of parliament for a four-year term. In 2001 a revision of the Constitution made all professional activity incompatible with the duties of a member of parliament. Such a disqualification is provided for in the new Article 57 of the Constitution, although the relevant implementing legislation has yet to be passed.

In February 2003 a constituent lodged a complaint against the applicant with the Special Supreme Court, arguing among other things that, under Article 57 of the Constitution, his practising as a lawyer disqualified him from holding parliamentary office. The Special Supreme Court allowed the complaint and ruled that the applicant had forfeited his seat. In particular, it dismissed the applicant's argument that he could not be deemed to be practising a profession as he no longer received any fees.

The applicant complained that his forfeiture of his parliamentary seat had infringed his right to be elected to the national parliament and had deprived his constituents of the candidate they had elected before his term of office had expired. He also alleged that the fact that he had forfeited his seat in order to be able to carry on his professional activities had amounted to unjustifiable interference with his private and professional life, in breach of Article 8.

Decision of the Court

Right to free elections

It was not the Court's task to state its view on the general prohibition on practising any profession. It confined itself to observing that the disqualification created by the new Article 57 of the Constitution, whereby members of parliament were prohibited from carrying on a professional activity, was rarely encountered in other European states.

However, the Court could not overlook the fact that the applicant had been elected in conditions not open to criticism, in accordance with the electoral system and the Constitution as in force at the time. The applicant's disqualification on professional grounds during his term of office had therefore come as a surprise both to him and to his contituents.

In those circumstances, the Court concluded that by considering the applicant's election under the new Article 57 of the Constitution without taking into account the fact that he had been elected in 2000 in accordance with the law, the Special Supreme Court had caused him to forfeit his seat and had deprived his constituents of the candidate they had chosen freely and democratically to represent them in Parliament, in breach of the principle of legitimate expectation. The Greek Government, moreover, had not advanced any grounds of pressing importance to the democratic order that could have justified the immediate application of the absolute disqualification.

The Court therefore held that there had been a violation of Article 3 of Protocol No. 1.

Right to respect for private life

Having regard to its finding of a violation of Article 3 of Protocol No. 1, the Court did not consider it necessary to consider the case under Article 8 as well.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant EUR 20 000 for pecuniary damage and certain sums for costs and expenses.

Sukhovetsky v. Ukraine

Article 3 of Protocol No. 1 (right to free elections) and 14 (prohibition of discrimination) of the Convention

Judgment of 28.3.2006
Concerns:
Refusal to register the applicant as a candidate for the parliamentary elections due to his failure to pay an electoral deposit

Principal facts and complaints

In January 2002 the Electoral Commission refused to register the applicant as a candidate for the parliamentary elections due to his failure to pay an electoral deposit of UAH 1 041 (equivalent to EUR 218.10 at the time). The applicant claimed he was unable to meet that requirement, his annual income being approximately UAH 960 (EUR 201.13).

The judgment was upheld in the Supreme Court.

The applicant complained that he had been disenfranchised and discriminated against.

Decision of the Court

The Court noted that the electoral law of a number of European states provided for measures to discourage frivolous can-

didates from standing. It also noted that a state's participation in the campaign costs of the registered candidates, aimed at promoting equality among the contestants, was a factor which could not be overlooked. Accordingly, the Court concluded that the law in question pursued the legitimate aim of guaranteeing the right to effective, streamlined representation by enhancing the responsibility of those standing for election and confining elections to serious candidates, whilst avoiding the unreasonable outlay of public funds.

The Court further noted that, among European jurisdictions, the amount of the deposit in Ukrainian law was one of the lowest. It concluded, that the fee required of the applicant could not be considered to have been excessive or such as to constitute an insurmountable administrative or financial barrier for a determined candidate wishing to take part in elections.

The Court held unanimously that there had been no violation of Article 3 of Protocol No. 1 and that there was no need to make a separate examination of the applicant's claim under Article 14.

Execution of the Court's judgments

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' judgments (Article 46 § 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. 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: granting of a residence permit, reopening of criminal proceedings, striking out of convictions from the criminal records, for example.

Preventing new violations

The obligation to abide by the Court's judgments 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.

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 960th and 966th Human Rights (DH)[1] meetings (March and June 2006) is presented here. Further information on the cases mentioned below as well as on all the others is available from the Directorate General of Human Rights, as well as on the new Web site of the Department for the Execution of Judgments of the European Court of Human Rights. 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.*

Department for the Execution of Judgments of the Court: http://www.coe.int/T/E/Human_Rights/execution/
Committee of Ministers: http://www.coe.int/cm/

Main points examined during the March and June meetings

The Committee respectively supervised payment of just satisfaction in some 477/496 cases. It also looked at around 48/146 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) and at 59/179 cases (or groups of cases) involving general measures to pre-

vent similar violations (e.g. constitutional and legislative reforms, changes of domestic case-law and administrative practice). The Committee also started examining 149/312 new Court judgments and considered 11/18 draft final resolutions concluding that states have complied with the Court's judgments. The Committee notably considered:

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

- Responses to the 3rd and 4th Interim Resolutions in the *Ilascu et al. v. Russia & 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 (ResDH (2006) 11 and 26).
- *Italy*'s and *Turkey*'s responses to Committee of Ministers' 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 (cases of Dorigo v. Italy and Hulki Günes v. Turkey, ResDH (2005) 85 and 113)
- Possibility of obtaining reopening of proceedings or other measures to remedy violations of the **right to a fair trial** by *Belgium* (case of Goktepe), *Bulgaria* (case of Stoichkov) and *Italy* (cases of F.C.B., Somogyi and Sejdovic) and supervision of existing possibilities to that effect in *Ireland* (case of Heaney and McGuinness) and the *United Kingdom* (case of Dowsett).
- The remedies to be brought to **immigrants' or asylum seekers' situation** following their unlawful deportation or subjection to expulsion from *Bulgaria* (case of Al-Nashif), *Finland* (case of N.), *Germany* (case of Keles), *Netherlands* (case of Tuquabo-Tekle) and *Sweden* (case of Bader).
- Re-establishing **parents' access to or regular relationship with their children**, to remedy violations of their right to family life, by *Austria* (case of Sylvester), *Croatia* (case of Karadžiæ), *Germany* (case of Görgülü), *Italy* (cases of Bove and Scozzari), *Poland* (case of Zawadka), *Romania* (cases of Ignaccolo-Zenide and Monory) and *Spain* (case of Iglesias Gil and A.U.I.).
- Stopping continuous violations of the applicants' right to private life by **dangerous environmental pollution** in *Russia* (case of Fadeyeva) and *Turkey* (case of Ahmet Okyay and others).
- Remedying the shortcomings in domestic investigations into **abuses by police or security forces** in *Romania* (cases of Bursuc and Anghelscu Barbu No. 1), *Russia* (Khashiyev and two other cases concerning violations in Chechnya), *Turkey* (several cases concerning actions of security forces) and the *United Kingdom* (McKerr group of six cases concerning violations in Northern Ireland).

General measures to prevent new violations similar to those found in the judgments

- Further progress in the **execution of the Cyprus v. Turkey judgment**, inter alia with regard to the issue of missing persons, freedom of religion of Greek Cypriots in the north of Cyprus and property rights of displaced persons.
- Solutions to the systemic problem of **excessive length of judicial proceedings, and/or setting up an effective domestic remedy** in this respect, in 27 countries (cases against *Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine, the United Kingdom*).
- Comprehensive reforms to solve the **structural problems of non-execution of domestic judicial decisions** in *Moldova, Romania, Russia* and *Ukraine,* revealed by numerous judgments and complaints.
- Reforms to protect the **right to liberty or to respect for family or personal life of mentally disabled persons** in *Bulgaria* (Varbanov and two other cases), *Germany* (case of Storck), *Portugal* (case of Magalhaes Pereira No. 2), *Slovakia* (cases of Tám and H.F.), *Russia* (case of Rakevich), *the United Kingdom* (case of Benjamin and Wilson and three other cases) and in the *Netherlands* (cases of Brand and Morsink).

- Measures adopted or under way for the **effective protection of detainees' rights** in sixteen countries (*Bulgaria, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Moldova, Netherlands, Poland, Romania, Russia, Turkey, Ukraine, the United Kingdom*).
- Measures adopted or under way for the protection of **journalists, publishers or NGO members' freedom of expression** in *Finland* (case of Karhuvaara and Iltalehti), *France* (case of Société Plon), *Moldova* (case of Savitchi), *Poland* (case of Sokolowski), *Romania* (case of Cumpănă and Mazăre) and the *United Kingdom* (case of Steel and Morris).
- Responses to be given to the recent **violations of Article 38 of the Convention (co-operation with the Court)** found by the Court.

Texts adopted (selection)

Decisions

Case of Dorigo Paolo (Interim Resolutions DH (99) 258 – finding of a violation –, ResDH (2002) 30, ResDH (2004) 13 and ResDH (2005) 85 – adoption of individual measures)

"The Deputies,

Having examined the information provided by the Italian authorities,

1. noted with interest the continuing efforts made at the judicial level in Italy in order to remedy the consequences of the violations of the Convention found in the case of Dorigo;

2. noted, in particular, that the Court of Appeal of Bologna has referred the case to the Constitutional Court in order to check the constitutionality of the provisions in force, insofar as they do not provide for the re-opening of proceedings when violations of the Convention have been found;

3. welcomed the decision of the Court of Appeal to suspend the execution of the applicant's sentence and its wish to interpret domestic law in the light of the Italy's international commitments, and in particular its obligation to comply with the judgments of the Court under Article 46 of the Convention;

4. encouraged the Italian authorities to find ways, through either case law or legislative reform, in order to eliminate completely the consequences of the violations found in respect of the applicant and to prevent any problems similar to those encountered in the present case in future;

5. decided to resume consideration of this case at their 970th meeting, in the light of the additional information to be provided by the authorities on the individual and general measures envisaged."

Case of Hulki Günes against Turkey (judgment of 19 June 2003, Interim Resolution ResDH (2005) 113)

The Deputies invited the Chairman of the Committee of Ministers to send a letter to his Turkish counterpart in order to convey the Committee's continuing concern at Turkey's failure to comply with the judgment and to urge for appropriate remedial measures in favour of the applicant. They decided to continue to supervise the execution of the Court's judgment in this case at each of their Human Rights meetings.

Three cases against Russia concerning the action of the Russian security forces during military operations in Chechnya in 1999 and 2000: case of Khashiyev and Akayeva, case of Isayeva and case of Isayeva, Yusupova and Bazayeva (judgments of 24 February 2005)

"The Deputies,

1. took note with interest of the information provided on the new ongoing

investigations in these cases, in particular of the further procedural steps reported in the cases of Isayeva, Yusupova and Bazaeva against the Russian Federation and Issayeva against the Russian Federation;

2. noted with satisfaction the information that the Russian authorities have begun to implement general measures to prevent new similar violations, in particular by:

- widely disseminating the judgments of the European Court to all competent authorities concerned and taking comprehensive educational measures at all levels including within the Army;

- taking stock of the efficiency of criminal prosecution of abuses by military personnel in the Chechen Republic;

- starting legislative procedures to ensure compensation for ineffective investigations into the facts of violations of human rights committed in the course of counter-terrorist operations;

3. encouraged the Russian authorities to continue their efforts with regard to both the individual and the general measures required by the judgments;

4. decided to resume consideration of these cases at their 966th meeting, to assess progress in implementation of both individual and general measures required by the judgments of the European Court on the basis of a memorandum to be prepared by the Secretariat."

At the 966th meeting, they notably took note with interest of the information provided on the extension of the ongoing investigations in these cases to other victims of the events impugned by the judgments of the European Court; and decided to resume consideration of these cases at their 970th meeting, on the basis of an update of the aforementioned memorandum.

Case of Cyprus against against Turkey concerning fourteen violations in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in July and August 1974 (judgment of 10 May 2001)

The Deputies decided to resume consideration of the religious freedom aspect, together with the education aspects, at their 982nd meeting with a view to its closure. They also agreed to resume consideration of the home and property of displaced persons issues at their 976th meeting, in the light of information to be provided by the Turkish authorities.

Case of Goktepe against Belgium (judgment of 2 June 2005)

Having examined the information provided by the Belgian authorities concerning the situation of the applicant, the Deputies invited Belgium to ensure as far as possible the restitution in integrum in favour of the applicant who remains in jail serving a sentence imposed in violation to his right to a fair trial. They will resume consideration of this case at their 976th meeting, on the basis of further information to be provided by the authorities of the respondent state.

Case of F.C.B. against Italy (judgment of 28 August 1991, Resolution DH (93) 6 and Interim Resolution ResDH (2002) 30)

"The Deputies,

1. noted with interest the jurisprudential efforts made in Italy to remedy the consequences of the violation found in the F.C.B. case;

2. noted in particular the willingness of the Court of cassation to accept the necessity to interpret the law in the light of the finding of the violation of the Convention in this case;

3. recalled that in the Dorigo case, the domestic court decided to suspend the execution of the applicant's sentence in the light of Italy's international commitments and, in particular, its obligation to conform with the judgments of the Court under Article 46 of the Convention;

4. encouraged the Italian authorities to find ways, either through case-law or legislative reform, to erase the consequences of the violation fond in respect of the applicant;

5. decided to resume consideration of this case at their 970th meeting, in the light of additional information to be provided by the authorities on the general and individual measures envisaged".

Interim Resolutions

During the period concerned, the Committee of Ministers encouraged by different means the adoption of many reforms and adopted three 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. They may also express the Committee of Ministers' concern as to adequacy of measures undertaken or failure to provide relevant information on measures undertaken, urge States to comply with their obligation to respect the Convention and to abide by the judgments of the Court or even conclude that the respondent State has not complied with the Court's judgment.

Interim Resolution ResDH (2006) 12 concerning the judgment of the European Court of Human Rights of 13 December 2001 in the case of Metropolitan Church of Bessarabia and Others against Moldova

The Resolution urges the Moldovan authorities rapidly to finalise the ongoing work with a view to enacting new legislation regulating the registration and functioning of religious denominations. Such legislation is necessary in order to effectively prevent new violations of the Convention similar to the ones found in the present case.

While noting important improvements included in the latest draft Bill which is presently pending before Parliament, the Committee nevertheless pointed to a number of shortcomings which still appear to affect the registration procedure. The Committee therefore encouraged the Moldovan authorities rapidly to solve the outstanding issues, also taking into account the opinions expressed by the Council of Europe experts, in order to achieve a legislative reform compliant with the requirements of the Convention in the field of freedom of religion.

Interim Resolution ResDH (2006) 25 concerning the judgment of the European Court of Human Rights of 5 February 2002 in the case of Conka against Belgium

The Committee of Ministers encourages Belgium to pursue the broad reform of the Conseil d'Etat and of proceedings relating so as to aliens undertaken to ensure full respect of the Convention.

It also notes with satisfaction the interim measures swiftly taken by Belgium to that effect, including the circular of the Minister of the Interior to the Aliens Office and a Royal Decree laying down the system and operating rules of the detention centres managed by the Aliens Office.

The above reforms are in response to the Court's judgment of 12 February 2002, concerning various violations of the Convention relating to the conditions of arrest and detention of a group of asylum seekers and their collective expulsion, as well as the haphazard treatment of the appeals they had lodged in this connection.

Interim Resolution ResDH (2006) 27 on the European Court of Human Rights judgments concerning issues of reafforestation and violations of property rights in Greece

The Committee of Ministers encourages the Greek authorities to complete the national forest and land register in order to comply with the Court' judgments of 2003 and 2004 relating to violations of property rights (cases of Papastavrou and Katsoulis).

The Committee also encourages the rapid development of a domestic remedy for compensation of bona fide possessors of land affected by reafforestation decisions and involved in lengthy litigation pertaining to their ownership of forests. The Committee notes in this respect that in 2005 the Court's case law had been granted direct effect in Greek law in similar cases.

The above-mentioned judgments highlighted the problems inherent in the present lack of a functioning, up-to-date national forest register and found violations of the applicants' property rights due to reafforestations by the respondent State of plots of land considered by it as its own but possessed bona fide by the applicants. The second case also relates to the applicants' right to a fair trial due to excessively lengthy proceedings before the Supreme Administrative Court.

Information documents opened to public access

Group of cases concerning the action of the security forces of the United Kingdom in Northern Ireland: McKerr, Shanaghan, Hugh Jordan, Kelly and others (judgments of 4 May 2001), McShane (judgment of 4 May 2001) and Finucane (judgment of 1 July 2003)

The Deputies authorised the declassification of a memorandum taking stock of the progress in the execution of the judgments and its Addendum summarising up the outstanding issues (document CM/Inf/DH (2006) 4).

The information provided on measures adopted so far indicates that significant improvements in existing procedures and additional safeguards have been introduced in order to prevent new violations similar to those found by the Court. Several questions nonetheless remain outstanding and further information/clarifications are requested on a number of points.

Group of cases concerning the failure or serious delay by the Administration in abiding by final domestic judicial decisions against the state and the violation of the applicants' right to peaceful enjoyment of their possessions (Timofeyev group)

These judgments revealed an important structural problem requiring an urgent and comprehensive solution. The Deputies authorised the declassification of document CM/Inf/DH (2006) 19 rev. This Memorandum examines the special procedure set up in 2006 to improve the enforcement of such judicial decisions and raises a number of questions about its capacity to ensure that Russia meets its obligations under the Convention as established by the Court's judgments. It takes into account the experience of other member states in resolving similar problems in response to the Court's judgments and the conclusions reached on these issues.

The Memorandum points at a number of outstanding problems and proposes a number of avenues that the Russian authorities may consider in their ongoing search for a comprehensive resolution of the aforementioned problem. The main avenues proposed are:

- Improvement of budgetary procedures within the Russian Federation;
- Establishment of a subsidiary mechanism of compulsory enforcement including seizure of state assets;
- Ensuring effective state liability for the non-enforcement of judgments through judicial remedies;
- Introducing adequate default interest in case of non-enforcement;
- Ensuring effective liability of civil servants for non-enforcement;
- Possible reconsideration of the bailiffs' role and increasing their efficiency.

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 28 Final Resolutions, (closing the examination of 51 cases), among which 3 took note of the adoption of new general measures. Some examples follow:

Final Resolution ResDH (2006) 13 concerning actions of police forces in Cyprus (cases of Egmez and Denizci and others of 21 December 2000 and 23 August 2001)

The Resolution concludes the supervision of execution of these two final judgments. The cases concerned notably the applicants' – of Turkish origin – inhuman treatment by Cypriot police forces in 1994 and 1995, lack of an effective investigation into the incidents, the applicants' unlawful arrest and detention by the police and unlawful restriction of their freedom of movement. The Committee of Ministers took into account, inter alia, the following major individual and general measures adopted by Cyprus in compliance with the Court's judgments:

- The initiation by the Attorney General of independent criminal investigations into both cases;
- Interim measures adopted immediately after the Court's judgments, such as the Council of Ministers' decision to empower the Attorney General to appoint independent criminal investigators ex officio and the police training schemes;
- Legislative measures adopted in 2002, 2004 and 2005 mainly improving legal aid and remedies available to victims (and their families) of human rights violations, enhancing protection from ill-treatment of detainees and providing heavier sanctions against offending police officers.

Final Resolution ResDH (2006) 29 concerning excessive length of proceedings before labour courts in the United Kingdom (Davies and three other cases)

The Resolution concludes the supervision of execution by the United Kingdom of these four Court's judgments dating from 2002-2003.

All the domestic proceedings had ended at the time the Court delivered its judgments. The Committee took note, in particular, of the Civil Procedure Rules which entered into force in April 1999, after the facts of the cases at issue. The United Kingdom Government informed the Committee that the said Rules – which are under constant review – have radically changed and accelerated civil proceedings in England and Wales, particularly by introducing:

- pre-action settlement rules in order to avoid litigation;
- a new case-tracking system simplifying and accelerating particularly litigation relating to claims below £15 000;
- active case-management by courts.

Final Resolution ResDH (2006) 28 concerning excessive length of proceedings before civil courts in the United Kingdom (cases of Somjee and Obasa)

The Resolution concludes the supervision of execution by the United Kingdom of two Court's final judgments dating from 2003.

All the domestic proceedings had ended when the Court delivered its judgments. The Committee noted in particular the following major general measures adopted by the UK, that, according to the Government, have effectively accelerated labour court proceedings:

- the introduction in 2002 by the Employment Appeals Tribunal of

internal procedural changes that significantly reduced waiting time;

- the entry into force in 2004 of the revised Employment Tribunals Regulations that introduced case-management discussions and greater case-management powers for Chairpersons of the ETs;

- reinforcement of the Employment Appeals Tribunal resources.

Declaration of the Committee of Ministers on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels

(adopted on 19 May 2006, at the 116th Session of the Committee of Ministers)

"The Committee of Ministers,

Referring to its May 2004 Declaration 'Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels' containing a comprehensive package of coherent measures for the implementation of the Convention;

Stressing that the Declaration remains a key reference for measures needed to preserve the effectiveness of the Convention system in the long-term;

Recalling that the Heads of State and Government of the member states of the Council of Europe in May 2005 in Warsaw reiterated the commitment to implement all these measures in accordance with all the modalities foreseen in the May 2004 Declaration;

Being determined, two years hence, to take stock of progress achieved in the implementation of its May 2004 Declaration;

Welcoming the activity of the European Court of Human Rights in preparing itself for the entry into force of Protocol No. 14 to the Convention as well as in enhancing the efficiency of its internal methods;

Welcoming also the intensive intergovernmental work carried out to prepare for entry into force of Protocol No. 14 and implement the different strands of the reform package of the May 2004 Declaration;

Noting the interim report presented by the Group of Wise Persons charged with making recommendations on the measures to be taken to ensure the long-term effectiveness of the Convention;

Having examined the conclusions and proposals set out in the report submitted by the Ministers' Deputies;

Being determined to ensure further sustained work on the basis of guidelines for priority action,

I. Welcomes the report presented by the Ministers' Deputies on the implementation of the reform package agreed at its 114th Session in May 2004 and the progress recorded therein;

II. Endorses the conclusions and proposals for further sustained action in this report, building on results obtained so far;

III. Urges the remaining States that have not yet done so to ratify Protocol No. 14 to the Convention without delay to enable the Court to benefit from the efficiency and capacity increases that the Protocol's entry into force will bring;

IV. Notes the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements which were recently adopted by the Ministers' Deputies;

V. Stresses that respondent states must execute fully and more rapidly the judgments of the Court;

VI. Reiterates its call to all member states to implement speedily and effectively the five recommendations mentioned in the May 2004 Declaration [references at the end of this text], in full conformity with the principle of subsidiarity and the obligations of member states under Article 1 of the Convention;

VII. Encourages member states to make full use of the possibility to request Council of Europe assistance in this respect;

VIII. Welcomes in this connection the upcoming examination, within the Council of Europe Development Bank, of ways and means to provide a framework tool for member states by facilitating structural measures at national

level to enhance the implementation of the Convention and reduce the workload pressure on the Court;

IX. Invites all member states to take an active part in the implementation of the European Programme for Human Rights Education for Legal Professionals (HELP) to ensure full integration of Convention standards in the professional training of judges and prosecutors by the end of 2008;

X. Instructs the Ministers' Deputies:

a. to intensify their action with regard to taking specific and effective measures to improve and accelerate the execution of the Court's judgments in the face of the increasing case-load of judgments pending execution, inter alia, by carrying forward practical proposals for the supervision of execution of judgments in situations of slow or negligent execution;

b. to draw up a recommendation to member states on efficient domestic capacity for rapid execution of the Court's judgments and to invite representatives of the Parliamentary Assembly to be associated with it;

c. to initiate annual tripartite meetings between representatives of the Committee of Ministers, the Parliamentary Assembly and the Commissioner for Human Rights to promote stronger interaction with regard to the execution of judgments;

d. to carry forward other practical proposals for the supervision of execution of the Court's judgments, including the creation of a global database on such execution;

e. to continue their review of implementation of the five recommendations mentioned in the May 2004 Declaration with a view to obtaining a better assessment of the actual impact of implementation measures on the long-term effectiveness of the Convention;

f. to deepen this review by focusing henceforth on verification of the effectiveness of implementation measures and filling outstanding information gaps, particularly in three priority areas: improvement of domestic remedies, re-examination or reopening of cases following judgments of the Court, and verification of compatibility of draft laws, existing laws and administrative practice with the Convention;

g. to involve in this review other Council of Europe bodies as set out in their report, such as the Parliamentary Assembly, the Court and the Commissioner for Human Rights, as well as non-governmental organisations and national human rights institutions;

h. to follow closely the developing practice of the Court and of the Ministers' Deputies on so-called pilot judgments and, as and when appropriate, to consider developing guidelines for member states on domestic remedies following such judgments;

i. to ensure that arrangements for the enhancement of resources for the Court and other departments concerned are regularly assessed;

j. to carry out a mid-term review of the implementation of the European Programme for Human Rights Education for Legal Professionals (HELP);

XI. Transmits the report presented by the Ministers' Deputies to the Parliamentary Assembly, the Court, the Commissioner for Human Rights and the Group of Wise Persons;

XII. Asks the Ministers' Deputies to report to it on the implementation of this Declaration at the 117th Session in May 2007.

Recommendation Rec (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights; Recommendation Rec (2002) 13 on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights; Recommendation Rec (2004) 4 on the European Convention on human rights in university education and professional training; Recommendation Rec (2004) 5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights; Recommendation Rec (2004) 6 on the improvement of domestic remedies.

New Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

(adopted by the Committee of Ministers on 10 May 2006)

I. General Provisions

Rule 1

1. The exercise of the powers of the Committee of Ministers under Article 46 §§ 2-5 and Article 39 § 4 of the European Convention on Human Rights, is governed by the present Rules.

2. Unless otherwise provided in the present Rules, the general rules of procedure of the meetings of the Committee of Ministers and of the Ministers' Deputies shall apply when exercising these powers.

Rule 2

1. The Committee of Ministers' supervision of the execution of judgments and of the terms of friendly settlements shall in principle take place at special human rights meetings, the agenda of which is public.

2. If the chairmanship of the Committee of Ministers is held by the representative of a High Contracting Party which is a party to a case under examination, that representative shall relinquish the chairmanship during any discussion of that case.

Rule 3

When a judgment or a decision is transmitted to the Committee of Ministers in accordance with Article 46 § 2 or Article 39 § 4 of the Convention, the case shall be inscribed on the agenda of the Committee without delay.

Rule 4

1. The Committee of Ministers shall give priority to supervision of the execution of judgments in which the Court has identified what it considers a systemic problem in accordance with Resolution Res (2004) 3 of the Committee of Ministers on judgments revealing an underlying systemic problem.

2. The priority given to cases under the first paragraph of this Rule shall not be to the detriment of the priority to be given to other important cases, notably cases where the violation established has caused grave consequences for the injured party.

Rule 5

The Committee of Ministers shall adopt an annual report on its activities under Article 46 §§ 2-5 and Article 39 § 4 of the Convention, which shall be made public and transmitted to the Court and to the Secretary General, the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe.

II. Supervision of the execution of judgments

Rule 6

Information to the Committee of Ministers on the execution of the judgment

1. When, in a judgment transmitted to the Committee of Ministers in accordance with Article 46 § 2 of the Convention, the Court has decided that there has been a violation of the Convention or its protocols and/or has awarded just satisfaction to the injured party under Article 41 of the Convention, the Committee shall invite the High Contracting Party concerned to inform it of the measures which the High Contracting Party has taken or intends to take in consequence of the judgment, having regard to its obligation to abide by it under Article 46 § 1 of the Convention.

2. When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46 § 2 of the Convention, the Committee of Ministers shall examine:

a. whether any just satisfaction awarded by the Court has been paid, including as the case may be, default interest; and

b. if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether:

- individual measures have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of

the Convention [*Note: For instance, the striking out of an unjustified criminal conviction from the criminal records, the granting of a residence permit or the re-opening of impugned domestic proceedings –see on this latter point Recommendation Rec (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights*];

ii. general measures have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations [*Note: For instance, legislative or regulatory amendments, changes of case law or administrative practice or publication of the Court's judgment in the language of the respondent state and its dissemination to the authorities concerned.]*

Rule 7

Control intervals

1. Until the High Contracting Party concerned has provided information on the payment of the just satisfaction awarded by the Court or concerning possible individual measures, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, unless the Committee decides otherwise.

2. If the High Contracting Party concerned informs the Committee of Ministers that it is not yet in a position to inform the Committee that the general measures necessary to ensure compliance with the judgment have been taken, the case shall be placed again on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise; the same rule shall apply when this period expires and for each subsequent period.

Rule 8

Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.

2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:

a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 46 § 2 of the Convention;

b. information and documents relating thereto provided to the Committee of Ministers, in accordance with the present Rules, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights.

3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, inter alia, into account:

a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;

b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;

c. the interest of an injured party or a third party not to have their identity, or anything allowing their identification, disclosed.

4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.

5. In all cases, where an injured party has been granted anonymity in accordance with Rule 47 § 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

Rule 9

Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the injured party with regard to payment of the just satisfaction or the taking of individual measures.

2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46 § 2 of the Convention.

3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

Rule 10

Referral to the Court for interpretation of a judgment

1. When, in accordance with Article 46 § 3 of the Convention, the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two- thirds of the representatives entitled to sit on the Committee.

2. A referral decision may be taken at any time during the Committee of Ministers' supervision of the execution of the judgments.

3. A referral decision shall take the form of an interim resolution. It shall be reasoned and reflect the different views within the Committee of Ministers, in particular that of the High Contracting Party concerned.

4. If need be, the Committee of Ministers shall be represented before the Court by its Chair, unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

Rule 11

Infringement Proceedings

1. When, in accordance with Article 46 § 4 of the Convention, the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation.

2. Infringement proceedings should be brought only in exceptional circumstances. They shall not be initiated unless formal notice of the Committee's intention to bring such proceedings has been given to the High Contracting Party concerned. Such formal notice shall be given ultimately six months before the lodging of proceedings, unless the Committee decides otherwise, and shall take the form of an interim resolution. This resolution shall be adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee.

3. The referral decision of the matter to the Court shall take the form of an interim resolution. It shall be reasoned and concisely reflect the views of the High Contracting Party concerned.

4. The Committee of Ministers shall be represented before the Court by its Chair unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

III. Supervision of the Execution of the Terms of Friendly Settlements

Rule 12

Information to the Committee of Ministers on the execution of the terms of the friendly settlement

1. When a decision is transmitted to the Committee of Ministers in accordance with Article 39 § 4 of the Convention, the Committee shall invite the High Contracting Party concerned to inform it on the execution of the terms of the friendly settlement.

2. The Committee of Ministers shall examine whether the terms of the

friendly settlement, as set out in the Court's decision, have been executed.

Rule 13

Control intervals

Until the High Contracting Party concerned has provided information on the execution of the terms of the friendly settlement as set out in the decision of the Court, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, or, where appropriate, on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise.

Rule 14

Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.

2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:

a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 39 § 4 of the Convention;

b. information and documents relating thereto provided to the Committee of Ministers in accordance with the present Rules by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights.

3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, inter alia, into account:

a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;

b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;

c. the interest of an applicant or a third party not to have their identity, or anything allowing their identification, disclosed.

4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.

5. In all cases, where an applicant has been granted anonymity in accordance with Rule 47 § 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

Rule 15

Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the applicant with regard to the execution of the terms of friendly settlements.

2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of the terms of friendly settlements.

3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

IV. Resolutions

Rule 16

Interim resolutions

In the course of its supervision of the execution of a judgment or of the terms of a friendly settlement, the Committee of Ministers may adopt interim resolu-

tions, notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution.

Rule 17

Final resolution

After having established that the High Contracting Party concerned has taken all the necessary measures to abide by the judgment or that the terms of the friendly settlement have been executed, the Committee of Ministers shall adopt a resolution concluding that its functions under Article 46 § 2, or Article 39 § 4 of the Convention have been exercised.

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.

Russian Federation announces priorities for Committee of Ministers Chairmanship

On 19 May 2006, the Russian Federation took over the chairmanship of the Committee of Ministers. Sergey Lavrov, Russia's Minister of Foreign Affairs, presented the programme of the Russian chairmanship. He underlined his country's approach to the Council of Europe as an important European co-operation mechanism aimed at building a Europe without dividing lines and the establishment of a single European legal and humanitarian space. He said the motto for his country's chairmanship would be: "Towards United Europe without dividing lines".

Russia's priorities will be based around five broad themes:

- Reinforcing national human rights protection mechanisms, development of human rights education and protection of rights of national minorities.
- Creating a common European legal space to protect individuals from modern-day challenges.
- Improving access to social rights, protection of vulnerable groups.
- Developing efficient forms of democracy and civic participation, promoting good governance.
- Strengthening tolerance and mutual understanding through the development of dialogue, co-operation in the field of culture, education, science, youth and sports.

Sergey Lavrov, Foreign Minister of the Russian Federation

116th Session of the Committee of Ministers

Strasbourg, 18-19 May 2006

The 116th Session of the Committee of Ministers was an important step in the implementation of the decisions taken at the Council of Europe's Third Summit, one year on. The Committee of Ministers took stock of the progress that had been made in pursuing the objective set in Warsaw of building a Europe without dividing lines on the basis of the common values enshrined in the Statute of the Council of Europe and with the aim of achieving unity based on respect for human rights, the rule of law and pluralist democracy.

In so doing, the Ministers concentrated on the following priority themes:

1. Consolidating the Council of Europe's human rights protection system

The Ministers adopted a declaration on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels. They asked their Deputies to report on the implementation of the declaration at their 117th Session in May 2007. They also took note of the adoption by their Deputies on 10 May 2006 of new Rules for the supervision of the execution of judgments of the Court and of the terms of friendly settlements (reproduced on page 53). They renewed their commitment to improve and accelerate the execution of the Court's judgements.

The Ministers noted the interim report presented to them by the Chairman of the Group of Wise Persons charged with making recommendations on the measures to be taken in the longer term with a view to further guaranteeing the effectiveness of the unique human rights protection system provided by the European Convention on Human Rights. They asked the Group to pursue its efforts in order to present them with a final report before the end of 2006.

The Ministers reiterated the concern expressed at the Third Summit on unresolved conflicts that still affect certain parts of the continent, and expressed their determination to ensure that the persons concerned be able to enjoy the protection of the rights guaranteed by the European Convention on Human Rights.

2. Relations between the Council of Europe and the European Union

The Ministers welcomed the report forwarded by Jean-Claude Juncker to his colleagues, Heads of State or Government, on 10 April 2006 which provides a political overview and is a major contribution to the current negotiations. With a view to considering this report and the recommendations contained therein, the Ministers decided to set up a high-level follow-up group which will include representatives of the relevant bodies of the Council of Europe. They invited the European Union to participate in this process. They asked the group to report on its work in good time so that appropriate decisions could be taken at their session in May 2007.

As regards the Memorandum of Understanding, the Ministers praised the efforts of the Romanian Chair to ensure progress in the work, and welcomed the contributions made by the European Union and by several member states of the Council of Europe as well as by the Secretary General and the Parliamentary Assembly. They took note of the present state of the work, as reflected in the text presented by the Chair on 21 April 2006, and of the amendments submitted to it. They encouraged member states and the relevant bodies of both organisations to maintain the current momentum and continue the discussions on the prospects for co-operation between the Council of Europe and the European Union on this basis, with a view to finalising the text of the Memorandum as soon as possible.

3. Other priority questions deriving from the Third Summit

The Ministers examined more particularly the following questions:

i. Reinforcing the Council of Europe's action in favour of democracy and good governance

ii. The Council of Europe's work on developing intercultural dialogue

iii. The reform process for enhancing transparency and efficiency of the

Council of Europe/Implementation of Chapter V of the Action Plan

The Ministers noted with satisfaction important achievements of the Organisation such as opening for signature of the 200th Convention of the Council of Europe – Convention on the avoidance of statelessness in relation to State succession, the adoption of a 10-year plan to improve the quality of life of people with disabilities in Europe, the launch of pan-European campaigns for the protection of children's rights and for fighting violence against women.

They emphasised the need to pursue the important work of the Council of Europe in the anti-terrorism field and called for earliest entry into force of the new Council of Europe convention on the prevention of terrorism.

Other texts of interest

Declarations of the Committee of Ministers

- Continuation by the Republic of Serbia of membership of the State Union of Serbia and Montenegro in the Council of Europe: Declaration by the Committee of Ministers of the Council of Europe (Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies)
- Request by the Republic of Montenegro for accession to the Council of Europe: Statement by the Committee of Ministers of the Council of Europe (Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies)
- Declaration of the Committee of Ministers on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels (Adopted by the Committee of Ministers on 19 May 2006 at its 116th Session)

Declarations of the Chairman of the Committee of Ministers

- Statement on the situation of civil society in the Transnistrian region of the Republic of Moldova
- Statement of the Council of Europe on the forthcoming Presidential elections in Belarus

Recommendations of the Committee of Ministers to member states

- Recommendation Rec (2006) 10 on better access to health care for Roma and Travellers in Europe (Adopted by the Committee of Ministers on 12 July 2006 at the 971st meeting of the Ministers' Deputies)
- Recommendation Rec (2006) 9 on the admission, rights and obligations of migrant students and co-operation with countries of origin (Adopted by the Committee of Ministers on 12 July 2006 at the 971st meeting of the Ministers' Deputies)
- Recommendation Rec (2006) 6 on internally displaced persons (Adopted by the Committee of Ministers on 5 April 2006 at the 961st meeting of the Ministers' Deputies)

Replies of the Committee of Ministers to Parliamentary Assembly Recommendations

- Human rights of members of the armed forces – Recommendation 1742 (2006) (Reply adopted on 26 April 2006 at the 962nd meeting of the Ministers' Deputies)
- Need for international condemnation of the Franco regime – Recommendation 1736 (2006) (Reply adopted on 3 May 2006 at the 963rd meeting of the Ministers' Deputies)
- Situation in Belarus on the eve of the presidential election – Recommendation 1734 (2006) (Reply adopted on 26 April 2006 at the 962nd meeting of the Ministers' Deputies)
- Human rights violations in the Chechen Republic: the Committee of Ministers' responsibility vis-à-vis the Assembly's concerns – Recommendation 1733 (2006) (Reply adopted on 10 May 2006 at the 964th meeting of the Ministers' Deputies)
- Integration of Immigrant Women in Europe – Recommendation 1732 (2006) (Reply adopted on 21 June 2006 at the 969th meeting of the Ministers' Deputies)

- Activities of the United Nations High Commissioner for Refugees (UNHCR) – Recommendation 1729 (2005) (Reply adopted on 14 June 2006 at the 967th meeting of the Ministers' Deputies)
- Accelerated asylum procedures in Council of Europe member states – Recommendation 1727 (2005) (Reply adopted on 14 June 2006 at the 967th meeting of the Ministers' Deputies)
- Forced marriages and child marriages – Recommendation 1723 (2005) (Reply adopted on 5 April 2006 at the 961st meeting of the Ministers' Deputies)
- Functioning of democratic institutions in Moldova – Recommendation 1721 (2005) (Reply adopted on 10 May 2006 at the 964th meeting of the Ministers' Deputies)
- Education and religion – Recommendation 1720 (2005) (Reply adopted on 24 May 2006 at the 965th meeting of the Ministers' Deputies)
- Enforced disappearances – Recommendation 1719 (2005) (Reply adopted on 21 June 2006 at the 969th meeting of the Ministers' Deputies)
- Promoting a United Nations 5th World Conference on Women – Recommendation 1716 (2005) (Reply adopted on 15 March 2006 at the 958th meeting of the Ministers' Deputies)
- Abolition of restrictions on the right to vote – Recommendation 1714 (2005) (Reply adopted by the Committee of Ministers on 15 March 2006 at the 958th 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)

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

- Written Question No. 484 to Committee of Ministers by Mr Tekelioglu: "Non-implementation of Council of Europe Conventions by member states" – Reply of the Committee of Ministers (CM/AS (2006) Quest484finalE, 7 April 2006).
- Written Question No. 485 to Committee of Ministers by Mr Jurgens: "Human rights violations in the Chechen Republic" – Reply of the Committee of Ministers (CM/AS(2006) Quest485finalE, 7 April 2006).

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

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

Refugees and displaced persons in Armenia, Azerbaijan and Georgia

Resolution 1497 (2006)

Text adopted on 13 April 2006. Document 10835.

The Assembly welcomes the fact that Azerbaijan, Armenia and, to a lesser extent, Georgia have now embarked on programmes for the local integration of their refugees and displaced persons. There are still, however, many obstacles to the success of these programmes: poverty is endemic; unemployment is still very high; access to means of production and to property is problematical; the infrastructure. The Assembly therefore calls on Armenia, Azerbaijan and Georgia:

– to focus all their efforts on finding a peaceful settlement of the conflicts in the region with a view to creating conditions for the voluntary return of refugees and displaced persons, safely and with dignity;

– actively to pursue their policy of locally integrating refugees and displaced persons, but not in the occupied territories;

– to refrain from the use of refugees and displaced persons for political aims;

– to co-ordinate better the efforts of the international and non-governmental organisations on the ground in alignment with governmental policies and development plans;

– to bring their legislation into compliance with the Geneva Convention relating to the Status of Refugees, the European Convention on Nationality (ETS No. 166), and the United Nations Convention on the Reduction of Statelessness by fully implementing their provisions;

– to develop practical co-operation as regards the investigation of the fate of missing persons and to facilitate the return of identity documents and the restitution of property in particular, making use of the experience of handling similar problems in the Balkans.

The Assembly calls on Georgia to grant a more durable status to recognised refugees, including Chechen refugees, to provide them with greater certainty about their future and to facilitate their local integration.

The Assembly calls on Azerbaijan to adopt legislation to provide subsidiary protection to displaced persons fleeing war situations, or to persons in need of international protection and who do not have access to the asylum procedure.

The Assembly welcomes the full implementation of the 1999 Refugee Law by Armenia, providing for a complementary form of protection, and encourages legislative plans to extend the definition of "refugee" in law to include all persons in need of international protection.

Situation in non-member states

Situation in the Middle East

Resolution 1493 (2006)

Texts adopted on 11 April 2006. Document 10882.

The result of the parliamentary elections held in Israel on 28 March 2006 creates a new chance to resume a political dialogue.

The Assembly reaffirms its conviction that the road map continues to be a valid reference for the peace negotiations and a two-state solution.

It is essential that the dialogue and negotiations with a view to a peaceful settlement of the conflict be resumed.

The Assembly strongly urges the leaders of Hamas:

– to clearly and without reservation or delay renounce violence, recognise the state of Israel within secure internationally recognised borders, and express support for the Middle East peace process as outlined in the Oslo Accords;

– to disarm and renounce engagement in the activities of armed groups;

– to condemn terrorist actions;

– to support and enhance the democratic process in the Palestinian Authority.

The Assembly calls on the Government of Israel:

– to express commitment to the resumption of negotiations and political dialogue on the basis of the road map;

– to halt military operations and extra-judicial executions of militants of Palestinian extremist organisations without delay;

– to refrain from unilateral action;

– to put an immediate end to the expansion and construction of illegal settlements;

– to review its position concerning the construction of the security wall taking into account the decision of the International Court of Justice;

– to recognise the rights of the Palestinian people to live freely and safely in their own independent state with internationally recognised borders.

The Assembly resolves to continue facilitating contacts between members of the Palestinian Legislative Council and the Knesset at parliamentary level. In this regard, it reaffirms its support to the establishment of a Tripartite Forum within the Parliamentary Assembly with a view to discussing questions of common interest.

Democracy and legal development

Text adopted on 11 April 2006. Document 10861.

Human rights of members of the armed forces

Recommendation 1742 (2006)

The Assembly notes that, despite its repeated requests to member states, the situation of members of the armed forces in some states vis-à-vis the rights which they enjoy under the European Convention on Human Rights and the case law of the European Court of Human Rights is far from satisfactory.

The Assembly is horrified and appalled by the situation of servicemen in some member states' armies who are subjected to abuse, brutality, institutionalised bullying, violence, ill-treatment and torture, constituting extremely serious violations of their rights.

It recalls that the right of conscientious objection is an essential component of the right to freedom of thought, conscience and religion as secured under the Universal Declaration of Human Rights and the European Convention on Human Rights.

The Assembly asks member states to ensure genuine and effective protection of the human rights of members of the armed forces, and in particular:

– to authorise members of the armed forces to join professional representative associations or trade unions entitled to negotiate matters connected with remuneration and conditions of employment;

– to introduce, where such a facility does not already exist, the autonomous civil institution of military ombudsman responsible for promoting the fundamental rights of members of the armed forces;

– to remove existing restrictions on the electoral rights of members of the armed forces;

– to authorise members of the armed forces and military personnel to join legal political parties;

– to adopt or modify legislation and statutory regulations in order to ensure their conformity with the European Convention on Human Rights and the

case law of the European Court of Human Rights, including military codes and internal military regulations;

– to introduce into their legislation the right to be registered as a conscientious objector at any time, namely before, during or after military service, as well as the right of career servicemen to be granted the status of conscientious objector;

– to urgently adopt the requisite measures to put an end to the scandalous situations and practices of bullying in the armed forces;

The Assembly recommends that the Committee of Ministers prepare and adopt guidelines in the form of a new recommendation to member states designed to guarantee respect for human rights by and within the armed forces, drawing on the European Convention on Human Rights and the case law of the European Court of Human Rights, the previous recommendations of the Committee of Ministers, the recommendations of the Parliamentary Assembly and those of the Commissioner for Human Rights of the Council of Europe.

The Assembly further recommends that the Committee of Ministers reconsider its proposal to introduce the right to conscientious objection to military service into the European Convention on Human Rights by means of an additional protocol.

Stopping trafficking in women before the FIFA World Cup

Text adopted on 12 April 2006. Document 10881.

Resolution 1494 (2006)

The Assembly considers it important to avoid confusing the concepts of trafficking, prostitution and immigration, which must be dealt with separately and appropriately. It reiterates that trafficking in human beings is defined in international conventions as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The Assembly reiterates its firm intention to eradicate this scourge, as reflected in the text of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) adopted on 3 May 2005.

With the World Cup imminent, and given the acute nature of the problem of trafficking, men and women politicians alike, as well as sports organisations, must immediately take all the necessary measures to prevent trafficking and to protect its victims.

Consequently, it urges the member states of the Council of Europe:

– to sign, if they have not already done so, and ratify the Council of Europe Convention on Action against Trafficking in Human Beings as soon as possible;

– to help victims by setting up, for example, multilingual information, reception and assistance centres;

– to consider the possibility of holding responsible those who use the services provided by victims of trafficking.

The Assembly calls upon the European Community to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings as soon as possible.

It calls on FIFA to commit itself to a strong condemnation of trafficking in women, supporting for instance the Council of Europe's campaign to combat trafficking in human beings.

Finally, it encourages the media and professional footballers to condemn trafficking in women and to take part in the above-mentioned campaign.

Combating the resurgence of Nazi ideology

Text adopted on 12 April 2006. Document 10766.

Resolution 1495 (2006)

The Assembly is particularly concerned as regards:

– cases of desecration of memorials and graves of soldiers of the "anti-Hitler coalition";

– attempts to rehabilitate, justify and even glorify those who participated in the war on the Nazi side, especially in

the ranks of groupings found to be criminal organisations at the Nuremberg Tribunal;

– the increasingly common use of Nazi symbols such as the fascist swastika, flags, uniforms, and others which clearly relate to Nazism;

– denying or minimising the significance of the crimes committed by the Nazi regime, in particular of the Shoah.

Furthermore, the Assembly is worried about political and social phenomena which, while making no direct reference to Nazism, should be seen in the light of its ideology, such as:

– the growing number of manifestations of racial, ethnic and religious intolerance in daily life;

– attempts to create, through the media, a negative perception of some ethnic or religious groups;

– growing support for political parties and movements with a xenophobic agenda.

In this context, it welcomes the relevant activities already conducted by various Council of Europe bodies, in particular by the European Commission against Racism and Intolerance (ECRI), but believes that, in order to bring about concrete results, these activities need to be re-oriented to include a wider involvement of society.

The Assembly resolves to organise an international conference in order to carefully study the recurrence of racist and nationalist phenomena in European societies, exchange best experiences and develop common approaches in combating the resurgence of Nazi ideas.

Texts adopted on 27 June 2006. Document 10957.

Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states

Recommendation 1754 (2006)
Resolution 1507 (2006)

The United States of America finds that neither the classic instruments of criminal law and procedure nor the framework of the laws of war (including respect for the Geneva Conventions) have been apt to address the terrorist threat. As a result, it has introduced new legal concepts, such as "enemy combatant" and "rendition", which were previously unheard of in international law and stand contrary to the basic legal principles that prevail on our continent.

Thus, across the world, the United States has progressively woven a clandestine "spider's web" of disappearances, secret detentions and unlawful inter-state transfers, often encompassing countries notorious for their use of torture. Hundreds of persons have become entrapped in this web, in some cases merely suspected of sympathising with a presumed terrorist organisation.

The "spider's web" has been spun out with the collaboration or tolerance of many countries, including several Council of Europe member States. They have also gone to great lengths to ensure that such operations remain secret and protected from effective national or international scrutiny.

The Assembly therefore commends the Secretary General of the Council of Europe for the swift and thorough use of his power of inquiry under Article 52 ECHR. In addition, it calls upon the member States of the Council of Europe to:

– secure that unlawful inter-state transfers of detainees will not be permitted and take effective measures to prevent renditions and rendition flights through the members States' territory and airspace;

– ensure that no one is arbitrarily detained, secretly or otherwise, on a member States' territory or any territory within the members States' effective control;

– ensure that the laws governing state secrecy protect persons who disclose illegal activities of state organs (so-called "whistle-blowers") from disciplinary or criminal sanctions;

– urge the United States to dismantle its system of secret detentions and unlawful inter-state transfers and to co-operate more closely with the Council of Europe in establishing common means of overcoming the threat of terrorism;

– ensure that independent, impartial and effective investigations are carried out into any serious allegation that the

territory, including airports or airspace have been used in the context of rendition or secret detention;

– ensure that any person responsible for human rights violations in connection with rendition or secret detention, including those who have aided or abetted these crimes are brought to justice;

– ensure that all victims of rendition or secret detention have access to an effective remedy and obtain prompt and adequate reparation.

The Assembly also calls on the United States of America and Council of Europe member states, to:

– co-operate more closely in identifying and employing the most effective means with which to prevent and suppress the terrorist threat;

– align its definitions of torture and other cruel, inhuman or degrading treatment with the definition used by the UN Committee Against Torture;

– prohibit the extralegal transfer of persons suspected of involvement in terrorism and all forcible transfers of persons from any country to countries that practise torture or that fail to guarantee the right to a fair trial, regardless of any assurances received;

– issue official apologies and award compensation to the victims of illegal detentions or renditions; and bring to justice those responsible for secret detention or human rights violations in the course of renditions;

The Parliamentarians also urge the Committee of Ministers to draft a recommendation to Council of Europe member States containing:

– common measures to guarantee more effectively the human rights of persons suspected of terrorist offences who are captured from, detained in or transported through Council of Europe member States; and

– a set of minimum requirements for "human rights protection clauses", for inclusion in bilateral and multilateral agreements with third parties, especially those concerning the use of military installations on the territory of Council of Europe member States.

– a proposal be considered, in instances where States are unable or unwilling to prosecute persons accused of terrorist acts, to bring these persons within the jurisdiction of an international court that is competent to try them. One possibility worth considering would be to vest such a competence in the International Criminal Court, whilst renewing invitations to join the Court to the United States and other countries that have not yet done so;

The Assembly invites its Committee on Legal Affairs and Human Rights to continue following up the issues raised in the present resolution and report back to the Assembly as appropriate.

The Assembly recognises, in the context of the present inquiry into secret detentions, that it lacks appropriate investigative powers akin to those provided to parliamentary inquiries in member States, including the powers to subpoena witnesses and compel disclosure of documents, and calls for consideration of this issue.

Human rights of irregular migrants

Recommendation 1755 (2006)
Resolution 1509 (2006)

Texts adopted on 27 June 2006. Document 10924.

The Parliamentary Assembly is deeply concerned by the ever growing number of irregular migrants in Europe.

The Assembly considers that there is an urgent need to provide clarity on the issue of the rights of irregular migrants notwithstanding that it is both a difficult and sensitive issue for member states of the Council of Europe.

There is no single instrument which deals with the rights of irregular migrants. The most relevant international instrument is the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

The Assembly notes that there are many other international and European instruments that have provisions which can be used to guarantee minimum rights of irregular migrants.

It should be possible to extract from these instruments a number of minimum civil and political and economic and social and economic rights to be

applied by member states of the Council of Europe in favour of irregular migrants.

In terms of civil and political rights:

The Assembly considers that the European Convention on Human Rights provides a minimum safeguard. The following minimum rights merit highlighting:

– the right to life should be enjoyed and respected;

– irregular migrants should be protected from torture, inhuman or degrading treatment or punishment;

– irregular migrants should be protected from slavery and forced labour and victims of trafficking should be granted specific rights in line with the Council of Europe Convention on Action against Trafficking in Human Beings (CETS 197);

– detention of irregular migrants should be used only as a last resort and not for an excessive period of time and must be judicially authorised; irregular migrants in detention also have the right to communicate with the consular posts of their country of origin and to be informed, by the authorities of the State where they are detained, of their rights under the 1963 Vienna Convention on Consular Relations;

– the right to asylum and non-refoulement should be respected;

– an irregular migrant being removed from the country should be entitled to an effective remedy before a competent independent and impartial authority; he has the right to an effective access to the European Court of Human Rights;

– collective expulsion of aliens, including irregular migrants, is prohibited;

– irregular migrants have the right to marry and should be entitled to the protection of their property; they should not be discriminated against in accordance with Article 14 of the European Convention on Human Rights and under Protocol No. 12 to the Convention;

In terms of economic and social rights:

The following minimum rights should, inter alia, apply:

– adequate housing and shelter guaranteeing human dignity as well as emergency healthcare should be afforded to irregular migrants;

– social protection through social security should not be denied to irregular migrants;

– in relation to irregular migrants in work, they should be entitled to fair wages, reasonable working conditions, compensation for accidents, access to the courts to defend their rights and also freedom to form and to join a trade union;

In addition, the Assembly recommends that the Committee of Ministers:

– instruct the relevant intergovernmental committees to establish a list of minimum rights for irregular migrants, including civil and political and social and economic rights, with a view to preparing a recommendation or guiding principles for adoption by the Committee of Ministers;

– instruct the European Committee on Migration (CDMG) to hold a round table discussion on the state of ratifications of member states of the Council of Europe of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

– keep under review the effectiveness of the human rights instruments relevant to the protection of the rights of irregular migrants, in particular the European Social Charter and Revised Social Charter.

The Assembly also invites member states of the Council of Europe to support the United Nations Special Rapporteur on the human rights of migrants in his work.

The Assembly furthermore invites the Council of Europe Commissioner for Human Rights to take up the issue of rights of irregular migrants in his contacts with states and with national ombudsmen, and invites him to give priority to the rights of irregular migrants in both his individual country reports and thematic reports.

Freedom of expression and respect for religious beliefs

Texts adopted on 28 June 2006. Document 10970.

Resolution 1510 (2006)

The Assembly is of the opinion that freedom of expression as protected under Article 10 the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of certain religious groups. At the same time, the Assembly emphasises that, hate speech against any religious group is not compatible with the fundamental rights and freedoms guaranteed by the Convention and the case law of the Court.

The Assembly encourages religious communities in Europe to discuss freedom of expression and respect for religious beliefs within their own community and to pursue a dialogue with other religious communities in order to develop a common understanding and a code of conduct for religious tolerance which is necessary in a democratic society.

The Assembly also invites media professionals and their professional organisations to discuss media ethics with regard to religious beliefs and sensitivities. The Assembly encourages the creation of press complaints bodies, media ombudspersons or other self-regulatory bodies, where such bodies do not yet exist, which should discuss possible remedies for offences to religious persuasions.

The Assembly resolves to revert to this issue on the basis of a report on legislation relating to blasphemy, religious insults and hate speech against persons on grounds of their religion, after taking stock of the different approaches in Europe, including the application of the European Convention on Human Rights, the reports and recommendations of the European Commission against Racism and Intolerance (ECRI) and of the Venice Commission and the reports of the Council of Europe Commissioner for Human Rights.

Migration, refugees and population in the context of the third Summit of heads of state and government of member states of the Council of Europe (Warsaw, 16-17 May 2005)

Texts adopted on 28 June 2006. Document 10868.

Recommendation 1757 (2006)
Resolution 1511 (2006)

The Assembly considers that in the light of the Warsaw Declaration and Action Plan, the Council of Europe has an important role to play in tackling issues relevant to migration, refugees and population.

Therefore, the Assembly recommends that the Committee of Ministers:

– encourage its relevant intergovernmental committees, notably the European Committee on Migration (CDMG), the Steering Committee for Human Rights (CDDH) and the European Committee on Legal Co-operation (CDCJ), to give, within their respective areas of competence, priority to, and work closely with, the Parliamentary Assembly on:

• strengthening the rights affecting migrants, refugees, asylum seekers and displaced persons, and ensuring the legal framework affecting them fully respects their rights;

• promoting intercultural dialogue, fostering tolerance and ensuring integration of migrant communities in their host societies;

• managing migration, including regular and irregular migration, while ensuring effective access to a fair asylum procedure to the persons in need of international protection.

– support fully the inter-Secretarial Task Force on Migration as well as the Political Platform on Migration set up by the Committee of Ministers.

The Assembly, in the light of the priorities laid down in the Warsaw Declaration and Action Plan, intends to strengthen its co-operation with external partners working in the field of migration, refugees and population. In this respect it will:

– work with countries of origin, transit and destination, making use of Parliamentary Forums on migration such as for the Mediterranean, Asia and American regions;

– build up co-operation with the European Parliament, notably its Committee on Civil Liberties, Justice and Home Affairs;

– strengthen its ties with relevant United Nations agencies, including,

inter alia, the United Nations High Commissioner for Refugees (UNHCR), the International Labour Office (ILO) and the United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA).

Texts adopted on 28 June 2006. Document 10934.

Parliaments united in combating domestic violence against women

Recommendation 1759 (2006)
Resolution 1512 (2006)

The Assembly resolves to play its part in the a pan-European campaign to combat violence against women, including domestic violence by developing the parliamentary dimension and in particular an initiative entitled "Parliaments united in combating domestic violence against women". This initiative will constitute parliamentary contribution to the Council of Europe's campaign.

Accordingly, the Assembly invites the national parliaments of member states and parliaments having observer status with the Parliamentary Assembly:

– to organise a parliamentary day of action to combat domestic violence against women on 24 November 2006, to coincide with the launch of the campaign and to adopt, that day, a solemn declaration affirming the national parliaments' commitment to combating domestic violence against women;

– encourage members of parliaments to take an individual and public stand on combating domestic violence against women whenever they have the opportunity to do so;

– adopt appropriate legislative and budgetary measures and national plans to bring to an end domestic violence against women;

– make every effort to make the legislative measures adopted and existing arrangements for assisting the victims of domestic violence known to the general public.

The Assembly welcomes the report on the "current situation in combating violence against women and for any future action" adopted on 2 February 2006 by the European Parliament and invites it to join the Parliamentary Assembly's initiative "Parliaments united in combating domestic violence against women" in order to condemn domestic violence as well as the international and regional interparliamentary organisations.

In addition, the Assembly calls on the Committee of Ministers to make the fight against domestic violence a priority activity in 2007/2008 and to ensure that the Parliamentary Assembly continues to be represented on the bodies co-ordinating the Council of Europe campaign.

The Assembly encourages the Committee of Ministers to invite its steering committees to incorporate the aims of the campaign in their activities, particularly with regard to the protection of the rights of immigrant women and police handling of complaints filed by women under its "Police and human rights" programme.

The Assembly calls on the Committee of Ministers to urge member states to support non-governmental organisations in their efforts to raise public awareness and offer protection to victims.

The Assembly calls on the Committee of Ministers to step up its co-operation with the European Union in order to develop a common method for compiling statistics on violence within the family.

Text adopted on 28 June 2006. Document 10911.

Position of the Parliamentary Assembly as regards the Council of Europe member and observer states which have not abolished the death penalty

Recommendation 1760 (2006)

Application of the death penalty is a violation of the most fundamental of human rights, the right to life. Capital punishment must be totally removed once and for all from the legislation of all countries which strive to uphold democracy, the rule of law and human rights.

In respect of countries having observer status with the Council of Europe:

The Assembly refers to Resolutions 1349 (2003) and 1253 (2001), in which it calls on Japan and the United States to place an immediate moratorium on executions and to take the necessary steps to abolish the death penalty. It finds it inadmissible that these appeals have gone unheeded

and that both Japan and the United States continue to apply the death penalty.

In addition, it urgently calls on the Committee of Ministers to:

– engage as a matter of urgency in an active and substantive political dialogue with Japan and the United States to encourage both countries at last to place an immediate moratorium on executions, by stressing the position of principle that it is now impossible for the Council of Europe to accept that states enjoying observer status apply the death penalty;

– urge Japan to abolish the death penalty as soon as possible and in any event before the implementation of its judicial reform and the introduction in 2009 of citizens' juries;

– urge the United States to abolish the death penalty as soon as possible;

– include on its agenda by the end of 2006 the question of the suspension of Japan's and the United States' observer status if no progress on this question has been made by then.

With regard to the Council of Europe member states:

The Assembly recommends that the Committee of Ministers:

– pursue its efforts to ensure that Protocol No. 13 (CETS No. 187) is ratified by all Council of Europe member states as soon as possible;

– oblige the Russian Federation to ratify Protocol No. 6 on the abolition of the death penalty in peacetime (CETS No. 114) without further delay;

– invite Albania and Latvia to amend their domestic legislation so as to abolish the death penalty for crimes committed in wartime or during a state of emergency;

– clarify with Azerbaijan the situation of the prisoners sentenced to death prior to the abolition of capital punishment in that country in 1998, whose sentences have apparently still not been commuted and who therefore continue to be held on death row.

The Council of Europe and the European Union

Follow-up to the 3rd Summit: the Council of Europe and the proposed fundamental rights agency of the European Union

Recommendation 1744 (2006)

Text adopted on 13 April 2006. Document 10894.

The Assembly considers that creation of a new, separate human rights body whose activities duplicate those of the Council of Europe would be entirely inconsistent with the decisions taken at the Warsaw Summit and contrary to the conclusions of the Juncker report.

In that context, the Parliamentarians make the following recommendations to the institutions and member states of the European Union:

– the agency should be explicitly limited, in its mandate, to human rights issues that arise within the European Union's internal legal order;

– the agency should be explicitly required, in its mandate, to refer in its work to the principal human rights instruments of the Council of Europe, namely the European Convention on Human Rights (ETS No. 5), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), the European Social Charter (ETS No. 35), and the Framework Convention for the Protection of National Minorities (ETS No. 157);

– the agency should have no mandate to undertake activities concerning non-European Union member states. Should such a mandate nevertheless be considered absolutely necessary, it should be strictly confined to candidate countries and limited to issues arising from the accession process;

– the agency should be explicitly excluded, in its mandate, from engaging in activities that involve assessing the general human rights situation in specific countries, in particular those that are members of the Council of Europe;

– establishment of the agency should not be accompanied by creation of a new forum for human rights;

– the agency should be explicitly required, in its mandate, to ensure that it avoids duplication of the activities of the Council of Europe;

– the Council of Europe should be represented on the management structures of the agency at a level and with voting rights at least equal to those that it currently enjoys on the management structures of the European Monitoring Centre on Racism and Xenophobia;

– further serious and detailed consideration should be given to the application of the principle of subsidiarity. This should involve detailed comparison of the various activities proposed for the agency with the relevant acts of member states at both national level and in other international fora, including in particular the Council of Europe;

– further serious and detailed consideration should also be given to application of the principle of proportionality, taking into account the exact extent to which the relevant treaty contains objectives of relevance to the activities proposed for the agency;

– given the importance to the legal environment in which the agency would operate of the European Union Charter for Fundamental Rights having binding effect and the European Union acceding to the European Convention on Human Rights – both foreseen in the Treaty establishing a Constitution for Europe – consideration should be given to postponing creation of the agency until the fate of these provisions has been resolved;

– the political will impelling the proposals for the agency should be employed to give new impetus towards European Union accession to the European Convention on Human Rights, which would be the most important step in ensuring that the European Union acts with full respect for human rights;

The Assembly makes the following recommendations to the Committee of Ministers and to the institutions and member states of the European Union:

– work on a co-operation agreement between the agency and the Council of Europe should be deferred until the precise mandate of the agency has been determined;

– final decisions on the creation and mandate of the agency should be deferred until the overarching new framework for enhanced co-operation between the Council of Europe and the European Union (at present being discussed as a "memorandum of understanding") has been defined and agreed upon.

Finally, the Assembly recommends to the Committee of Ministers that, since this issue is of profound significance to the overall European human rights protection system and thus to the Council of Europe in particular, it gives further serious and detailed consideration to the issue, with a view to reaching a common position based on the present recommendation.

Text adopted on13 April 2006. Document 10892

Memorandum of understanding between the Council of Europe and the European Union

Recommendation 1743 (2006)

The Assembly notes that a preliminary draft memorandum of understanding is already under consideration by the Committee of Ministers.

The Assembly recommends to the Committee of Ministers to ensure that the Assembly is fully involved in the decision-making process relating to the final document.

Pending the consultation of the Assembly, it proposes to the European Union to include the following proposals in the memorandum of understanding:

– with a view to avoiding any duplication, systematically take into account the work of Council of Europe bodies in the European Union's action in the relevant areas, in particular when considering the setting-up of European Union agencies;

– acknowledge that the Council of Europe must remain the benchmark for human rights, the rule of law and democracy in Europe;

– accede to the European Convention on Human Rights and thus contribute to the creation of a single legal mechanism for the protection of human rights, applied on an equal basis to all European states and other bodies exercising com-

petence affecting the rights protected by the European Convention on Human Rights;

– study the steps that would lead to the development of a coherent European legal order by incorporating the main Council of Europe standard-setting instruments into the European Union legal system, or by acceding to major Council of Europe legal instruments, which the Committee of Ministers should identify, as has already been repeatedly requested by the Assembly;

– ensure the Commissioner for Human Rights becomes the European institution to which the European Union, like all of the Council of Europe member states, could refer all human rights problems not covered by the existing monitoring and supervisory mechanisms, and urge the Council of Europe member states to increase significantly the resources of the Commissioner's office to enable the Commissioner to carry out this task;

– replace the "disconnection clause" by a "modulation clause", making it clear that European Union member states are to abide by Council of Europe conventions, partly through the exercise of the European Union competence. In the case of inconsistencies, the normal mechanism of reservations should be used;

– integrate the standards and values of the Council of Europe and use its expertise in the European Neighbourhood Policy;

– make the institutional relations between the European Union and the Council of Europe more substantial, with high-level meetings for the co-ordination of activities, focusing on strategic issues and held at regular intervals, and with additional meetings dealing with urgent issues also possible;

– open a permanent office of the European Commission in Strasbourg to ensure closer contact with the Council of Europe and guarantee the participation of its representatives in the relevant working meetings;

– give a major role to the Assembly and the European Parliament in defining future relations between the European Union and the Council of Europe.

Finally, the Assembly considers that the Council of Europe and the European Union should commit themselves to reviewing their memorandum of understanding within five years of the date of signature in order to assess its effectiveness and to take into account developments in the fields of common interest.

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

Commissioner for Human Rights

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

Terms of reference

Functions of the Commissioner for Human Rights

According to the terms of reference assigned to him in 1999, the Commissioner conducts his activity in four main directions:

- He helps to promote education in and awareness of human rights in the member states;
- He encourages the establishment of national structures where they are lacking and stimulates the activities of those in existence;
- He identifies possible shortcomings in the law and practice of states;
- He fosters the effective observance and full enjoyment of human rights as embodied in the instruments of the Council of Europe.

Terms of reference of the second Commissioner for Human Rights

On 3 April 2006 Thomas Hammarberg succeeded Alvaro Gil-Robles as Council of Europe Commissioner for Human Rights after being elected by the Parliamentary Assembly on 5 October 2005.

The beginning of the present mandate is marked by the installation of a new Web site on which Thomas Hammarberg presents the goals of his mandate and sets his signature to periodical "Viewpoints". In these, he discusses topical issues such as the legal means of combating terrorism, discrimination against and abusive conduct towards women, the fundamental rights of migrants, or the close relationship between human rights principles and the morality expressed in religions.

The Commissioner for Human Rights has also published an "issue paper" on Children and corporal punishment. This paper is the first in a series of such documents released periodically which will address cross-cutting European issues.

Publications

Reports on follow-up visits

The first Commissioner for Human Rights, Mr Alvaro Gil-Robles, completed his term of office at the end of March and submitted the last of his reports to the Committee of Ministers on 29 March 2006. These were the follow-up reports concerning 11 countries: Slovakia, Bulgaria, Romania, Slovenia, Finland, Norway, Hungary, Cyprus, Greece, Malta and the Czech Republic. On that occasion he also delivered his final activity report (January 2004-March 2006) and his report on the completion of his mandate (see below). All these documents are available on the Commissioner's Web site.

Country visits

Contact visits

Azerbaijan, 5-7 May 2006

The Commissioner met the Azeri high authorities in order to establish contacts and discuss the human rights situation in the country. He had meetings with Mr Ilham Aliyev, President of Azerbaijan, Mr Ogtay Asadov, Speaker of the Parliament, Mr Elmar Mammadyarov, Minister for Foreign Affairs, and Mr Fikrat Mammadov, Minister of Justice. Thomas Hammarberg also met Mr Ali Hasanov, Deputy Prime Minister and Chair of the State Committee on Refugees and Displaced Persons, members of the national delegation to the PACE as well as representatives of NGOs and civil society.

Hungary, 19-22 May 2006

The Commissioner travelled to Hungary on a contact visit. In Budapest he met the Minister for Foreign Affairs, the Minister of Justice, the Minister for Childhood Issues, Youth, Equal Opportunities and Social Affairs, and the Minister of the Interior.

Follow-up visits

A few years after an official visit, the Commissioner or his Office makes a follow-up visit to the same country to ascertain how far the recommendations made at the time of the first visit have been implemented, and the improvements brought about by the implementation.

Two follow-up visits took place in the first half of 2006:

Lithuania, 31 May-3 June 2006

The visit focused on the police and detention centres, the effectiveness of justice, protection of migrants and minorities, the fight against trafficking in human beings, discrimination, the right to privacy and economic and social rights.

Latvia, 7-11 June 2006

The visit concerned the action of the law enforcement agencies, the functioning of justice and prisons, naturalisation and integration of minorities and non-nationals, the question of de-nationalised housing and protection of vulnerable groups (women, children and the elderly).

The follow-up reports will be published later this year on the Commissioner's Web site.

Co-operation

Council of Europe

The Commissioner's status as an independent institution within the Council of Europe endows him with a unique opportunity to work with its other institutions, including human rights monitoring mechanisms and intergovernmental committees.

Three-year Council of Europe programme "Building a Europe for and with children"

On 5 April in Monaco, in his address to the Launching Conference of the Programme, Thomas Hammarberg said that while progress in the legislative sphere had been achieved in several countries, greater efforts were needed in monitoring and tackling violence towards children and in finally eradicating corporal punishment. The Commissioner stressed the vital importance of the three-year programme, and the high expectations for strong action in this regard.

Committee of Ministers

959 bis meeting of the Ministers' Deputies, Strasbourg, 29 March 2006

On the occasion of his farewell presentation to the Committee of Ministers, the first Commissioner, Alvaro Gil-Robles, delivered his final report which provides a detailed overview of the Commissioner's work during his 6-year mandate, including both the achievements and the challenges ahead. The report also incor-

porates thoughts on the institution of the Commissioner and the resources allocated to the Office.

Exchange of views at the 963rd meeting of the Ministers' Deputies, Strasbourg, 3 May 2006

At this meeting, the incoming Commissioner presented his priorities and his conception of the Commissioner's mandate to the Committee of Ministers. The discussions also concerned the institution of the Commissioner, and went more deeply into the previous office-holder's final report, seeking to draw all necessary conclusions.

116th Session of the Committee of Ministers, Strasbourg, 19 May 2006

Commissioner Hammarberg addressed the Foreign Affairs Ministers of the member states; reaffirming the priorities of his mandate, he emphasised the great hopes placed in the institution. Referring to the Juncker Report on relations between the Council of Europe and the European Union, and to the interim report of the Group of Wise Persons, Thomas Hammarberg stressed how important it was for the Commissioner to be allocated resources to match the expansion of the missions entrusted to him. The Ministers welcomed the new Commissioner for Human Rights and re-emphasised the need to consolidate this institution.

Substantive debate during the 969th meeting of the Ministers' Deputies, 21 June 2006

This debate was held at the request of several delegations in order to discuss the possibilities for bolstering the Office and the action of the Commissioner. The Deputies took note of his presentation concerning the development of the institution's role, and invited their Rapporteur Group on Administrative and Budgetary Questions to pursue examination of the considerations raised concerning the resources of the Office of the Commissioner.

Parliamentary Assembly

On 10 April 2006 in Strasbourg, in his statement to the Council of Europe Parliamentary Assembly, Thomas Hammarberg stressed that the Commissioner "should be a voice of conscience". He emphasised the need for the Commissioner to concentrate henceforth on the application of Council of Europe standards, while acknowledging that the building of a society founded on human rights could not be achieved overnight.

Thomas Hammarberg's statement highlighted the central points of his mandate, among them respect for human rights in combating terrorism, prevention of discrimination, racism and violence against children, and support to ombudsmen.

Secretariat of the European Social Charter

On 3 May 2006 in Strasbourg, Thomas Hammarberg spoke on the occasion of the 10th anniversary of the Revised European Social Charter.

The Commissioner issued an appeal to the governments of the Council of Europe to make further ratifications. Several member states have still not ratified the Revised Charter or Protocol No. 12 to the European Convention on Human Rights on discrimination, although they constitute core standards of the Council of Europe.

He also considered the ratification of the Revised Charter an obligatory step towards the recognition of the indivisibility of rights, and pledged to closely follow the question of ratifications in the future.

Congress of Local and Regional Authorities

The Commissioner delivered a speech before the Congress of Local and Regional Authorities of the Council of Europe plenary session in Strasbourg from 30 May to 1 June.

In his words, for the concrete realisation of human rights the decisions reached at municipal and provincial level are particularly crucial. He stressed, "international treaties on human rights apply to all levels of government", and "it would be proper if central governments or parliaments consulted representatives of local authorities before signing and ratifying international agreements which affect local politics". He sketched out a political programme based on rights at the local and regional level, which would

highlight the empowerment of citizens, non-discrimination, and accountability. The Commissioner concluded with concrete proposals for such a programme: budget review from a human rights perspective, action plans for the rights of vulnerable people, special plans for gender equity and for the rights of the child, and ombudsmen at local and regional levels.

External partners

The Commissioner attaches great importance to regular contacts with governmental and non-governmental organisations for the defence of human rights. In addition, he establishes direct relations with the governments of member states that will facilitate the proper performance of his functions, while he also works with national ombudspersons, other national human rights institutions and NGOs.

Ombudsperson institutions

Thomas Hammarberg visited St Petersburg in the Russian Federation on 4 and 5 June 2006 to attend the annual Round Table of Russian regional Ombudsmen. It brought together most of the 34 regional Ombudsmen and the Federal Ombudsman Mr Lukin. The principal discussions concerned the functioning of the Ombudsmen's offices and the relations they maintained among themselves for ensuring better inter-regional co-operation.

European Union institutions

European Parliament

On 25 and 26 April 2006 Thomas Hammarberg went to Brussels for contacts with eminent European parliamentarians, meeting the European Parliament committee chairs Jean-Marie Cavada, Chair of the Committee on Civil Liberties, Justice and Home Affairs, Carlos Coelho, Chair of the Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, and Hélène Flautre, Chair of the human rights sub-committee.

European Commission

On 16 and 17 May 2006, Thomas Hammarberg met the Vice-President of the European Commission, Franco Frattini and Commissioner Benita Ferrero-Waldner. The Commissioners exchanged views on the creation of the European Union's Agency for Fundamental Rights, EU policy on asylum and immigration, the Framework Decision on procedural rights, and child welfare. They also concurred in stressing the importance of regular contacts and of Commissioner Hammarberg's active participation in the main human rights events organised b y the EU.

European Monitoring Centre on Racism and Xenophobia (EUMC)

On 13 June 2006 in Vienna, during his meeting with the Director Mrs Beate Winkler, the Commissioner emphasised the need for European governments to act more firmly against racism. The exchange concerned the strengthening of co-operation with the EUMC in combating racism and xenophobia.

OSCE

On June 2006, Commissioner Hammarberg had talks in Vienna with high-level OSCE representatives on practical avenues for co-operation between the two institutions. Current priorities were discussed with Ambassador Bertrand de Crombrugghe, Permanent Representative of Belgium to the OSCE and Chairman of the Permanent Council, and other members of the organisation. Ensuring genuine co-operation between

the two organisations was the central topic discussed during the meetings.

Co-operation with the European Roma and Travellers Forum and with other bodies representing Roma

On 27 April 2006 in Strasbourg, Thomas Hammarberg met the President and the Vice-President of the Forum. They discussed the problems relating to human rights which Roma and Travellers face in Europe, such as segregation in education, forced expulsions, the situation of displaced Roma, gypsyphobia and poor appreciation of Roma culture and history among most of the population.

Council of the Baltic Sea States

On 28 April 2006 in Stockholm, Thomas Hammarberg spoke at a conference organised jointly by the Romanian Chairmanship of the Committee of Ministers and the Council of the Baltic Sea States on children in institutions. He stressed the need to consider children's best interests in placement procedures. "The key lesson [of history] is that we should avoid as far as possible placing children in institutions. In particular the old-style, large institutions have a negative effect on children and their development". For that purpose, the Commissioner emphasised the necessary prevention work with the families and the development of alternative facilities on a more human scale.

UNICEF

On 19 and 20 June in Palencia (Spain) the Commissioner took part in the Third UNICEF Intergovernmental Conference on Making Europe and Central Asia Fit for Children. Thomas Hammarberg emphasised the responsibility of states in building a better society for children. "The time has come for governments to refine the tools for realisation of child rights. In concrete action we should prove that we have the political will for genuine change. In that, we do respond to the expectations of children of today".

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.

Improvement of procedures for the protection of Human Rights

Following the 114th Session of the Committee of Ministers (12-13 May 2004), Protocol No. 14 to the European Convention on Human Rights was opened for signature and the Declaration *"Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels"* was adopted. The Steering Committee for Human Rights (CDDH) was entrusted with the follow-up to those texts.

At its 62nd meeting (4-7 April 2006), the CDDH adopted an activity report which presented the work carried out in this respect. It notably focused on the following:

- the revision of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. These Rules were adopted by the Ministers' Deputies on 10 May 2006 – see page 53);
- practical suggestions to address situations of slow or negligent execution of judgments of the European Court of Human Rights;
- the implementation of the five recommendations mentioned in the above Declaration.[1]

At its 116th Session, the Committee of Ministers took note of this activity report and adopted its Declaration *"Sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels"*. Following this Declaration the CDDH have been invited to focus on the improvement, the acceleration and the supervision of the execution of the Court's judgments, as well as on the review of the first recommendation and the last two.

1. Comittee of Ministers' Recommendations:
– Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;
– Rec(2002)13 on the publication and dissemination in the member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights;
– Rec(2004)4 on the European Convention on Human Rights in university education and professional training;
– Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights;
– Rec(2004)6 on the improvement of domestic remedies.

Access to public documents

The CDDH was assigned in 2005 terms of reference in order to prepare a draft legally binding instrument establishing principles regarding access to public documents. This instrument should be based on the provisions of the Recommendation Rec (2002) 2 on access to public documents, adopted by the Committee of Ministers on 21 February 2002.

At its 62nd meeting (4-7 April 2006), the CDDH examined and adopted the interim report of its Group of Specialists on access to official documents (DH-S-AC). In May 2006 this Group started preparing a draft European Convention on access to public documents.

Development of human rights

At its 61st meeting (22-25 November 2005), the CDDH adopted the *Manual on human rights and the environment: Principles emerging from the case-law of the European Court of Human Rights* prepared by its Committee of Experts for the Development of Human Rights (DH-DEV). This manual is an instrument recapitulating the relevant rights as interpreted in the Court's case-law and emphasising the need to strengthen environmental protection at national level, notably as concerns access to information, participation in decision-making processes and access to justice in environmental matters.

Since the publication of this manual, the DH-DEV held a meeting from 16 to 18 May 2006 (35th meeting) during which it started examining a new theme: human rights in a multicultural society. It will also devote its next meeting to it.

Protecting human rights while fighting terrorism

The issue of the use of diplomatic assurances in the context of expulsion procedures, in cases where there is a risk of torture or inhuman or degrading treatment or punishment (Article 3 ECHR) has been examined in detail within the Group of Specialists on Human Rights and the Fight against Terrorism (DH-S-TER), as well as during a plenary meeting of the CDDH.

At its 62nd meeting (4-7 April 2006), the CDDH examined the appropriateness of drafting an instrument in this field. It concluded that the Council of Europe should not draft such an instrument.

Moreover, the CDDH exchanged views with the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering Terrorism. It decided to come back to this item during its next meeting.

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

On 3 May 2006 the Netherlands ratified the Revised Social Charter (CETS No. 163) and the Additional Protocol providing for a system of collective complaints (CETS No. 158).

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 either of these instruments.

See Appendix: Simplified chart of ratifications of European human rights treaties, page 104.

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.

10th anniversary of the Revised Social Charter

On 3 May 2006 the 10th anniversary of the Revised Social Charter was celebrated.

On this occasion, a Seminar on "The European Social Charter – the next ten years" was organised in Strasbourg. The participants, representatives of governments, academics, trade-unions and non-governmental organisations launched a debate on the future of the Charter the aim of which was to identify the main challenges faced and to find practical ways of securing respect for Charter rights.

The General Rapporteur, Mr Colm O'Cinneide (University College,

London), emphasised the need for spreading knowledge of the Social Charter among the judiciary and the civil society in the different countries. He also stressed that the Committee of Ministers should put more pressure on States parties in breach of the Charter.

Among the proposals in the general report, the following ones could be underlined:

- The Parliamentary Assembly and the Committee of Ministers could organise a hearing for candidates for the European Committee of Social Rights (ECSR) as is the case for the judges of the European Court of Human Rights.
- The European Court of Human Rights should more often make more reference to the conclusions and decisions of the ECSR and the Parliamentary Assembly should follow them up through its monitoring procedures and through Parliamentary questions. The Human Rights Commissioner could intervene into the collective complaints procedure or make observations on national reports and refer questions to the ECSR.

- The European Union bodies should refer to the Social Charter and recognise it as a primary instrument for defining the social rights increasingly recognised in the European Union legal order, carrying out the impact assessments on the European legislation.
- Finally, non-governmental organisations and civil society should increase visibility of the Charter, not only through awareness raising, but also using by using its supervision mechanism.

Furthermore, an academic network has been established: the Academic Network on the European Social Charter. It is composed of professors and researchers from universities who include the Social Charter as a subject in university curricula and who publish on this topic. The co-ordinators are: Colm O'Cinneide (United Kingdom), Jean-François Akandji-Kombé (France) and Olivier De Schutter (general co-ordinator, Belgium).

The Network's objectives are to promote an improved understanding and a more widespread use of the Social Charter and its supervision mechanism through teaching and publication and in co-operation with other partners, governmental and non-governmental, as well as a broader knowledge of the case-law of the European Committee of Social Rights by national and international jurisdictions.

The Network plans to hold yearly at least one meeting of its members and to organise training sessions for trade unions and non-governmental organisations, as well as un competition on the Charter for the students. It will publish monographs, articles and will prepare training material.

For more information on the Network, the construction of a website is under way in the website of School of Law, University of Nottingham: http://www.nottingham.ac.uk/law/.

Collective complaints

The complaint lodged by ATD-Quart Monde against France (No. 33/2006) was declared admissible by the European Committee of Social Rights. It relates to Articles 16 (right of the family to social, legal and economic protection), 30 (right to protection against poverty and social exclusion) and 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, that evictions are ordered without the provision of alternative housing and that the rights to appeal are not sufficient.

- The Committee also declared admissible the complaint lodged by the World Organisation against Torture (Organisation Mondiale contre la Torture – OMCT) against Portugal (No 34/2006). OMCT alleges that, in the light of the Supreme Court judgment of 5 April 2006 (O6P468), the situation in Portugal is not in conformity with Article 17 of the Revised Charter since domestic law does not explicitly nor effectively prohibit all corporal punishment of children.
- A new collective complaint registered in the Secretariat on 19 June 2006 was lodged by the Federation of Finnish Enterprises against Finland (No. 35/

2006). It is alleged that Finnish legislation violates the right to organise since it contains stricter provisions for enterprises not belonging to an employers' organisation than for those which belong to such an organisation.

Publications

- *The Social Charter at a glance* in Romanian and Georgian (also exists in Dutch, English, French, German, Italian, Polish, Russian, Slovenian and Turkish).
- *Hudoc CD-ROM:* database on the case-law of the European Committee of Social Rights.

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

Czech Republic

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 the Czech Republic from 27 March to 7 April 2006. It was the Committee's third periodic visit to the Czech Republic.

"CPT" Standards and other material now available in Czech

The visit provided an opportunity to assess the progress made since the previous visit in April 2002. The CPT's delegation focused on the treatment and regime of prisoners sentenced to life imprisonment, and of other prisoners placed in special high security units. It also examined the situation of prisoners on remand. A further area of interest was the treatment of patients in psychiatric hospitals and of social care home residents, special attention being paid to the use of net beds and other means of restraint. The delegation examined the conditions of detention in a number of police stations and explored whether the fundamental safeguards of the right of notification, right of access to a lawyer and right of access to a doctor were functioning in a satisfactory and timely manner.

Armenia

The CPT carried out its second periodic visit to Armenia from 2 to 12 April 2006. The visit provided an opportunity to assess progress made since the previous periodic visit in October 2002. The dele-

gation examined the treatment of persons detained by the police and the situation in penitentiary establishments. Particular attention was paid to the treatment and regime of prisoners sentenced to life imprisonment and the situation of female and juvenile prisoners. A further area of interest was the treatment of persons subjected to involuntary psychiatric hospitalisation.

The delegation visited the following places:

Police establishments

- Holding Centre for Detainees of Yerevan City Police Department
- Erebuni District Police Division, Yerevan
- Kentron and Nork-Marash District Police Division, Yerevan
- Shengavit District Police Division, Yerevan
- Main Department for Combating Organised Crime, Yerevan
- Charentsavan Police Department
- Gavar Police Department
- Goris Police Department
- Hrazdan Police Department
- Sevan Police Department
- Sisian Police Department
- Vanadzor Police Department
- Bazum District Police Division, Vanadzor
- Yeghegnadzor Police Department

Prisons

- Abovyan Prison
- Goris Prison
- Nubarashen Prison (unit for life-sentenced prisoners)
- Vanadzor Prison

Psychiatric establishments

- Sevan Psychiatric Hospital

Ad hoc visits

Moldova

A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment carried out a visit to the Transnistrian region of the Republic of Moldova from 15 to 20 March 2006.

The Transnistrian region unilaterally declared itself an independent republic in 1991. Negotiations aimed at resolving this situation are still taking place.

It was the CPT's third visit to the Transnistrian region, the previous visits having taken place in November 2000 and March 2003. One of the aims of this new visit was to evaluate the situation of prisoners suffering from tuberculosis. In this context, the delegation examined the concrete results of a project aimed at improving the living conditions of such prisoners. This project, implemented by Caritas Luxembourg, has been financed with funds from the Council of Europe. The delegation also examined the treatment of other categories of prisoners.

The CPT's delegation enjoyed full co-operation from the local authorities, which granted access to all places of detention the delegation wished to visit. The delegation visited Prison No. 1 (Glinoe), Colony No. 2 (Tiraspol) and the remand section of Colony No. 3 (Tiraspol) and was able to meet in private all prisoners whom it wished to interview.

The delegation also made a follow-up visit to Prison No. 8 in Bender. This prison, located in the Transnistrian region, is part of the prison system of the Republic of Moldova. Visited by the CPT in November 2003 and February 2004, the establishment continues to be deprived of running water and electricity due to a decision by the Bender municipal authorities. Further, since 2005, the prison has been disconnected from the sewage disposal system.

The delegation held meetings with the local authorities in Tiraspol.

Albania

A delegation of the CPT completed a visit to Albania (28 to 31 March 2006). The main objective of the visit was to examine the steps taken by the Albanian authorities to implement recommenda-

tions made by the CPT after the May/June 2005 periodic visit. Particular attention was paid to the conditions of detention in pre-trial detention facilities under the Ministry of the Interior. The delegation also explored whether the 1996 Mental Health Act, which includes a number of guarantees intended to safeguard the fundamental rights of psychiatric patients, was being effectively implemented.

The delegation visited the following places:

- Pre-trial detention facilities at Durres Police Directorate
- Pre-trial detention facilities at Fier Police Directorate
- Police Station No. 4, Tirana

Monaco

During the four-day visit, which began on 28 March 2006, the CPT examined for the first time the treatment of persons deprived of their liberty in Monaco.

The delegation visited the following places:

Police Establishments

- Central Directorate of Public Security
- Monte-Carlo District Police Station
- Court holding cells

Prisons

- Monaco Remand Prison

Psychiatric Establishments

- Department of Psychiatry and Medical Psychology, Princess Grace Hospital

At the end of the visit, the delegation provided the authorities of the Principality of Monaco with its preliminary observations on its findings.

Russian Federation

The visit took place from 25 April to 4 May 2006 and was the eighth organised by the CPT to this part of Russia since the year 2000. The CPT's delegation examined for the first time the treatment of persons deprived of their liberty in the Republic of Dagestan and also returned to the Chechen and Ingush Republics.

On 1 May 2006, the CPT's delegation took the exceptional measure of interrupting the visit, following a denial of access to Tsentoroy (Khosi-Yurt), a village in the Chechen Republic situated south-east of Gudermes. However, following assurances received from the President of the Chechen Republic, the delegation decided to resume the visit and it gained access to Tsentoroy in the early afternoon of 2 May. The delegation wished to visit the village as it had grounds for believing that one or more facilities that could be used as unofficial places of detention were located there. For similar reasons, the delegation visited the Headquarters of the Vostok Battalion of the 42nd Division of the Ministry of Defence, which are situated close to Gudermes.

The delegation also visited law enforcement and prison establishments

"the former Yugoslav Republic of Macedonia"

A delegation of the CPT carried out a visit to "the former Yugoslav Republic of Macedonia" from 15 to 26 May 2006. It was the Committee's sixth visit to this country.

The visit provided an opportunity to assess the progress made since the previous periodic visit in November 2002. The CPT's delegation focused on the treatment and conditions of detention of sentenced and remand prisoners, as well as of juveniles serving an educational-correctional measure in a closed institution. A further area of interest was the treatment of social care home residents and of patients in a psychiatric hospital, special attention being paid to the use of means of restraint. The delegation also considered the way in which persons are treated when they are deprived of their liberty by law enforcement agencies.

Romania

During the CPT's seventh visit to this country, the delegation reviewed the measures taken by the Romanian authorities following the recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the treatment of persons detained by the police

and the conditions of detention in a number of police establishments and detention facilities for foreign nationals. The delegation also examined in detail various issues related to prisons, especially the regime and security measures applied to life-sentenced prisoners and other prisoners classified as "dangerous".

In the course of the visits to a psychiatric hospital and a medical-social centre, it looked into the legal status of patients/residents and the placement procedures. At the end of the visit, the delegation presented its preliminary conclusions to the Romanian 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.

Poland

Report on the CPT's visit in October 2004 (published 2 March 2006)

The CPT has published the report on its third periodic visit to Poland which took place in October 2004. The report has been made public at the Polish authorities' request.

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).

Czech Republic

Czech response on follow-up given to Committee's recommendations (published 20 March 2006)

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

Building on its initial response and the first follow-up response, which cover the years 2003 and 2004, the Czech Government indicates the steps taken in 2005 to further implement the CPT's recommendations and highlights planned action for the future.

Norway

Report on the CPT's visit in October 2005 (published 11 April 2006)

The CPT has published the report on its fourth visit to Norway in October 2005. The report has been made public at the request of the Norwegian authorities.

The report contains, in particular, recommendations to further strengthen fundamental safeguards against the ill-treatment of persons deprived of their liberty by the police. As for prisons, the CPT has made recommendations regarding restrictions that might be imposed on remand prisoners in the early stages of their detention. In addition, it recalled the need for a systematic medical examination of detainees on their arrival. As regards psychiatry, the CPT recommends that at least one member of the Control Commission of psychiatric institutions should be a qualified psychiatrist, who has no connection with the institution under scrutiny.

Belgium

Report on the CPT's visit in April 2005 (published 20 April 2006)

In its report, the CPT emphasises that the majority of persons met by its delegation did not make allegations of ill-treatment against the police. However, the lack of fundamental safeguards against ill-treatment in police custody is still a cause for concern and the CPT has asked the Belgian authorities to give a high priority to the adoption of relevant legislation (in particular, the right of access to a lawyer). As regards deportation of foreign nationals by air, the CPT welcomes the absolute prohibition of techniques which may cause postural asphyxia.

The CPT's visit to prison establishments took place when a strike by custodial staff had just ended, in particular at Andenne Prison. The CPT observed that, despite the efforts made by the prison management during the strike, the semblance of a decent life could not be guaranteed to prisoners, in spite of recourse to the police and Red Cross and Civil Protection teams. The delegation also examined the circumstances in which two prisoners died during another strike by custodial staff in September 2003, at the same establishment. It has been confirmed that the limits of the prison system are rapidly reached when it is confronted with strike actions by custodial staff, and all the more so when classic negotiation procedures are bypassed and the rules concerning advanced notification of strikes are not respected. The CPT therefore recommended that the Belgian authorities set up a "guaranteed service" in the prison system.

The CPT also carried out a first visit to Namur Prison, where it focused its attention on internees (mental inmates). Their living conditions outside the psychiatric annex are unacceptable. The delegation saw three detainees confined in dark and dilapidated 9 m^2 cells; one of the detainees slept on a foam mattress on the floor. Such promiscuity has a grave effect on communal living conditions (and could give rise to self-harm or acts of violence against others) and has detrimental consequences for hygiene, not to mention the effects on the psychological state of the internees. The CPT recommended that each detainee be provided with a bed and that 9 m^2 cells do not contain more than two detainees. Further, in spite of the commitment of the health care staff and the support of the prison management, the health care services provided to some sixty internees were clearly insufficient.

The CPT also made recommendations concerning "De Grubbe" Closed Centre for the temporary placement of minors in Everberg, Jean Titeca Hospital in Schaerbeek, and the Forensic Psychiatric Departments at the Sint-Kamillus University Psychiatric Centre in Bierbeek.

Italy

Report on the CPT's visit in 2004 and Government's responses (published 27 April 2006)

In its report, the CPT observes that the majority of persons deprived of their liberty met by its delegation did not make any allegation of ill-treatment against law enforcement officers. However, the Committee continues to follow closely the progress of the judicial and disciplinary proceedings following the incidents in Naples (March 2001) and Genoa (July 2001). In addition, it has requested information on the measures taken to avoid such incidents in future.

With regard to holding centres for foreign nationals, the CPT welcomes the closure of the Agrigento Centre, which had serious shortcomings in terms of infrastructure and security. Living conditions at the Lampedusa Centre were generally satisfactory at the time of the visit. This, however, would not be the case if its official capacity were to be exceeded or if foreign nationals were to remain there for a prolonged period.

The CPT also focused its attention on the removal of foreign nationals to Libya which took place at the end of 2004. Numerous failures were brought to light in administrative and judicial procedures provided for by immigration legislation and the Committee requested detailed comments on each of them. The Committee particularly stressed that each individual case should be properly verified to ensure that the persons to be removed would not run a real risk of being submitted to torture or ill-treatment.

Concerning prisons, the CPT examined in detail several special detention

regimes ("Article 41-bis" and "Article 72") and formulated a certain number of recommendations in this field. It stressed once again that it would be a highly questionable practice to use the "41-bis" regime as a means of exerting psychological pressure on prisoners to co-operate. Alarming shortcomings were also observed in the provision of health-care in prisons; in particular, there seems to be a significant disparity between the level of health-care offered to prisoners and that offered to the general public.

Finally, the CPT examined the situation of patients subjected to an involuntary placement measure ("TSO") at the San Giovanni di Dio Hospital at Agrigento and recommended that certain aspects of the administrative and judicial procedures applicable in this field be improved (in particular with regard to the guardianship judge).

Serbia and Montenegro

Report on the CPT's visit in September 2004 and Government's responses (published 18 May 2006)

During the visit, the CPT received numerous allegations of physical ill-treatment of persons detained by the police, both in Serbia and Montenegro. The Committee has recommended a series of measures designed to combat ill-treatment by the police, including stepping up of professional training, diligent investigation of all information regarding possible ill-treatment and subjecting perpetrators of ill-treatment to severe sanctions. Other recommendations aim at improving the practical implementation of the fundamental safeguards of notification of custody to a third party, access to a lawyer and access to a doctor for persons detained by the police.

In Serbia, the CPT paid visits to Sremska Mitrovica Penitentiary Reformatory, Belgrade District Prison and Belgrade Prison Hospital. Inter-prisoner violence was a serious problem at all of them; the Committee has recommended the development of a comprehensive strategy aimed at combating this phenomenon throughout the prison system. Following observations by the CPT, the use of chains and padlocks to restrain patients at the Prison Hospital was stopped. The Committee has also called upon the authorities to carry out an urgent renovation programme at the hospital and to increase the medical staffing levels. In their response, the Serbian authorities make reference to measures taken to improve material conditions and employ more staff.

In Montenegro, the CPT visited Spuž Prison Complex. No allegations of ill-treatment of inmates by staff were received. However, the severe lack of staff at the closed correctional facility, combined with overcrowding, was putting both staff and prisoners at risk. The CPT has recommended a full review of the staffing arrangements. Particular attention was paid to the high-security unit; material conditions in that unit were extremely poor and there were no organised activities, apart from outdoor exercise. Urgent measures to remedy this situation have been proposed by the Committee. In their response, the Montenegrin authorities highlight changes made, such as the taking out of service of the disciplinary cells in the high-security unit and increasing staff levels.

In the area of psychiatry, the CPT examined the situation at "Laza Lazarevic" Hospital in Serbia and Dobrota Special Psychiatric Hospital in Montenegro. Virtually no allegations of deliberate ill-treatment of patients by staff were received at either establishment. However, the CPT has expressed concern about the excessive reliance on physical restraints at "Laza Lazarevic" Hospital. As regards Dobrota Hospital, the authorities have taken steps to improve material conditions in Ward 7, as proposed by the Committee. The visit report also contains recommendations aimed at reinforcing the safeguards surrounding involuntary placement in psychiatric establishments.

Hungary

Report on the CPT's visit in March/ April 2005 and Government's responses (published 29 June 2006)

During the visit, the majority of the persons interviewed by the CPT's delegation indicated that they had been treated correctly when detained by the police. Nevertheless, a few allegations of physical ill-treatment by the police were received. To further strengthen the pro-

tection of persons detained by the police from ill-treatment, the Committee has recommended that they benefit from an effective right of access to a lawyer – including to free legal assistance – from the very outset of their deprivation of liberty. Moreover, in addition to being seen by police doctors, detained persons who present injuries and make allegations of ill-treatment should be seen by an outside medical expert and the case referred to a prosecutor.

Particular attention was paid during the visit to the holding of remand prisoners on police premises. Certain improvements were noted in this respect; nevertheless, the CPT has stressed that the medium-term objective should be to end completely the practice of accommodating remand prisoners in police establishments.

The majority of inmates at the prisons visited stated that staff treated them in a correct manner. However, at Kalocsa and Szeged prisons, relations between prisoners and staff – as well as among prisoners themselves – appeared to be rather tense, a situation compounded by serious overcrowding and low staffing levels. The CPT has recommended that the cell occupancy levels at the two establishments be reduced, the objective being to provide a minimum of 4 m^2 of living space per prisoner. Close attention was also given to prisoners placed under a special security regime (Grade 4) and the so-called "actual lifers" (prisoners who cannot be released except on compassionate grounds or by pardon). In this context, the Committee has stressed the need for refining the approach to risk assessment and reviewing the application of security measures.

The CPT also visited for the first time the Judicial and Observation Psychiatric Institute (IMEI) in Budapest, which is the only high-security psychiatric hospital in Hungary. No allegations of ill-treatment were received and patients' living conditions were found to be, on the whole, adequate. However, the Committee has reservations about the very location of IMEI, within the boundaries of a prison complex; it would be highly desirable for the institute to be relocated.

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.

ECRI's new Chair

Professor Eva Smith-Asmussen, ECRI's new Chair, presided over ECRI's plenary for the first time at its 39th meeting, which was held on 21-23 March 2006. Professor Smith-Asmussen had been elected Chair of ECRI in December 2005 and is ECRI's member in respect of Denmark.

In May 2006, ECRI's new Chair presented ECRI's annual report covering the period 1 January to 31 December 2005 to the Committee of Ministers of the Council of Europe. As well as containing comprehensive information on ECRI's activities carried out in 2005, ECRI's annual report presents the most widespread and worrying trends in manifestations of racism and intolerance identified in the member States of the Council of Europe

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 9 to 10 countries per year.

On 16 May 2006, ECRI published five new country reports, on Cyprus, Denmark, Italy, Luxembourg and the Russian Federation.

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

In **Cyprus**, the legal and institutional framework against racial discrimination has been considerably strengthened. But the continuing lack of a comprehensive immigration and integration policy has resulted in a particular vulnerability of immigrants to human rights violations, exploitation and discrimination. New opportunities for actively promoting dialogue and reconciliation between the members of the Greek and Turkish Cypriot communities still remain to be seized.

Denmark adopted an Act on Ethnic Equal Treatment and created a Complaints Committee for Ethnic Equal

Treatment, whose mandate is to examine complaints of discrimination in all areas, including employment. But the Nationality Act, the Integration Act and the Aliens' Act have been further modified in a manner which disproportionately restricts the ability of members of minority groups to acquire Danish citizenship, to benefit from spousal and family reunification and to have access to social protection on a par with the rest of society.

In **Italy**, the authorities have established a specialised body to combat racial discrimination, which assists victims and raises awareness of this phenomenon among the general public. But immigration legislation has made the situation of many non-EU citizens more precarious, and its implementation, notably in respect of immigrants without legal status, has resulted in the exposure of these persons to a higher risk of human rights violations.

Luxembourg has adopted a new law easing the requirements for foreigners' participation in local elections. But housing conditions for asylum seekers and refugees still leave much to be desired, and no policy has been introduced to integrate communities from an immigrant background in matters such as employment and housing.

In the **Russian Federation**, the criminal law provisions aimed at combating racism, racial discrimination and extremism have been reinforced and there have been some prosecutions for hate speech. But there needs to be greater urgency at both local and national level in tackling the problem. The provisions are not adequately implemented particularly because the racist motive of an offence is not taken sufficiently into account. Visible minorities and members of small religious groups are the main targets of racially motivated attacks.

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.

In Spring 2006, ECRI carried out contact visits to Armenia, Georgia, Iceland, Portugal and Slovenia, as part of the process of preparing third round reports on these countries. The aim of ECRI's contact visits is to obtain as detailed and complete a picture as possible of the situation regarding racism and intolerance in the respective countries, prior to the elaboration of the country reports. The visits provide an opportunity for ECRI's rapporteurs to meet officials from ministries and national public authorities, as well as representatives of NGOs and anyone concerned with issues falling within ECRI's remit.

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.

At its 40th plenary meeting (27-30 June 2006), ECRI considered the text of a draft General Policy Recommendation No. 10 on school education and combating racism. The amended text will be the object of a written consultation process involving all relevant circles (national specialised bodies, concerned NGOs, teachers 'and parents' associations) and will then be submitted to ECRI for final adoption at its 41st plenary meeting (12-15 December 2006).

With regard to work in progress to prepare ECRI's future General Policy Recommendation No. 11 on combating racial discrimination in policing, in-depth discussions were held at ECRI's 39th plenary meeting (21-23 March 2006) concerning areas which should be covered by the future General Policy Recommendation. A consultation meeting with outside experts specialised in the field of combating racial discrimination in policing took place in July 2006.

Relations with civil society

ECRI's Round Table in Spain

On 19 April 2006, ECRI held a Round Table in Madrid. The main themes of this Round Table were: ECRI's Third Report on Spain (published on 21 February 2006); minority groups as victims of racism and racial discrimination; the legislative and institutional framework for combating racism and racial discrimination and the reception of refugees and asylum-seekers in Spain.

These issues were discussed with representatives of the responsible governmental agencies and victims of discrimination in the light of ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and the existing legislative and institutional framework for combating racism and racial discrimination in Spain. A whole session was dedicated to policies and practices as regards the reception of immigrants and asylum-seekers in Spain, with special emphasis on the situation of persons from sub-Saharan Africa trying to gain access to Spanish territory through Ceuta and Melilla. Finally, special attention was also paid to analysing the situation of other vulnerable groups, including Roma, Moroccans and South Americans, who are particularly at risk of being subject to racism and racial discrimination by the general public, but also by certain public authorities.

Inter-Agency Co-operation

On the occasion of the International Day for the Elimination of Racial Discrimination (21 March 2006), ECRI made a joint declaration with the European Union's Monitoring Centre on Racism and Xenophobia (EUMC) and the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), in which all three organisations voiced their common concern about the persistence of racism and racial discrimination in Europe. They stressed the need for effective measures to tackle all manifestations of racism, for everybody to firmly reject racism and racist ideology and the importance of remaining united in fighting against racism.

Co-operation with the Youth Sector

On 29 June 2006, Professor Eva Smith Asmussen, Chair of ECRI, took part in the ceremony held at the Palais de l'Europe to launch the Council of Europe's "All Different, All Equal" Youth Campaign. In her opening speech, she emphasised the vital role the younger generation can play in combating racism and racial discrimination and pledged ECRI's support for the campaign.

Publications

Annual report on ECRI's activities covering the period from 1 January to 31 December 2005, CRI (2006) 32, May 2006

Third Report on Cyprus, CRI (2006) 17, 16 May 2006.

Third Report on Denmark, CRI (2006) 18, 16 May 2006

Third Report on Italy, CRI (2006) 19, 16 May 2006.

Third Report on Luxembourg, CRI (2006) 20, 16 May 2006.

Third Report on the Russian Federation, CRI (2006) 21, 16 May 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.

Human rights and economic challenges in Europe – Gender equality

6th European Ministerial Conference on Equality between Women and Men

Despite significant achievements in Europe in the field of equality between women and men, in both legislation and policy-making, gender equality is still far from being a reality. Violations of women's human rights continue, and are even on the increase. Beyond the important personal and social costs there is also an economic one (medical care, psychological treatment, shelters, legal assistance, legal costs, cost of absence from work and low performance at work, etc.). One of the worst forms of violence against women, and a serious violation of their human rights, is trafficking in human beings.

The Folkets Hus in Stockholm was the venue for the ministerial conference in June 2006

Women are still marginalised in political and public life, paid less for work of equal value and find themselves victims of poverty and unemployment more often than men. These inequalities cause long-term damage to the economy, an effect which is particularly felt when women of retirement age require state support as a result of their insufficient income.

Continuing violations

In a resolution and action plan adopted at the end of the conference, the ministers called on, in particular, the Council of Europe's Committee of Ministers to actively assess the costs (personal, social and economic) of continuing gender inequality in its 46 member states. They also called on all member states to make full use of tools such as gender analysis and sex-disaggregated data when planning, developing and implementing national policies, as well as to integrate a gender perspective into the budgetary process (gender budgeting) in order to achieve *de facto* gender equality.

The proceedings of the ministerial conference are published by the Equality Division of the Directorate General of Human Rights

The Resolution "Achieving gender equality: a challenge for human rights and a prerequisite for economic development" invites governments and all institutions and groups concerned to implement a number of strategies to ensure that equality becomes an integral part of human rights, making full use of tools like gender analysis and gender budgeting.

Resolution calls for specific strategies

Action plan to make equality a reality

Eliminating inequality between women and men requires a strong political will, together with new tools and strategies. The Action Plan takes a dual approach: promoting *de facto* equality as a fundamental aspect of democracy, and aiming to protect women and men against threats to their dignity and integrity.

It will fall to the Steering Committee for Equality between Women and Men to implement the action plan, in co-operation with other Council of Europe bodies and international organisations, both governmental and non-governmental.

Campaign to combat violence against women, including domestic violence

As part of the Council of Europe Campaign combat violence against women, including domestic violence, a Task Force has been created to draw up proposals for action to combat all forms of violence against women, including physical or mental harassment, rape, forced marriages, killings in the name of honour and genital mutilation.

The Task Force is occupied in putting together a programme to fight violence against women, including domestic violence, with the aim of raising public awareness about such violations of human rights, and of inciting the governments of member states to take steps to prevent and abolish them, in the form of legal, political and practical measures.

Member states are asked, in particular, to:

- adopt legal and policy measures which show their willingness to place violence against women high on the political agenda and to devote the necessary resources to fighting it;
- adopt measures to support and protect victims by means of adequate services, legal redress and compensation as well as to prosecute, punish and provide treatment to the perpetrators.
- raise public awareness with a view to challenging prevailing gender stereotypes and discriminatory cultural norms;
- promote the economic independence of women.

Campaign to combat trafficking in human beings

The campaign poster

The Council of Europe Campaign to Combat Trafficking in Human Beings was launched in 2006. It aims to raise awareness among governments, parliamentarians, NGOs and civil society of the extent of the problem of trafficking in human beings in Europe today. The campaign also aims to promote the widest possible signature and ratification of the Council of Europe Convention on Action against Trafficking in Human Beings.

As part of the campaign, a regional seminar was organised in Bucharest (Romania) in April 2006. The proceedings are published by the Equality Division of the Directorate General of Human Rights.

Publications

Forced marriages in Council of Europe member states

CDEG (2005) 1

Gender Budgeting

EG-S-GB (2004) RAP FIN

Action against trafficking in human beings: prevention, protection and prosecution

Proceedings of the regional seminar, Bucharest, Romania, 4-5 April 2006

EG-THB-SEM1

Combating violence against women

Stocktaking study on the measures and actions taken in Council of Europe member states

CDEG (2006) 3

The role of women and men in intercultural and interreligious dialogue for the prevention of conflict, for peace building and for democratisation

EG-S-DI (2004) RAP FIN

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

Framework Convention for the Protection of National Minorities

The Framework Convention is the first ever legally binding multilateral instrument devoted to the protection of national minorities in general. It clearly states that the protection of national minorities forms an integral part of the international protection of human rights.

The Convention

The Framework Convention entered into force in respect of Georgia on 1 April 2006.

The Republic of Montenegro became a Party to the Framework Convention with effect from 6 June 2006.

First monitoring cycle

The evaluation of the adequacy of the implementation of the Framework Convention by the Parties is carried out by the Committee of Ministers, assisted by an Advisory Committee. The Parties are required to file periodically a report containing full information on legislative and other measures taken to give effect to the principles of the Framework Convention.

The Committee of Ministers takes the final decisions (called "conclusions") concerning the adequacy of the measures taken by the State Party. Where appropriate, it may also adopt recommendations in respect of the State Party concerned.

A resolution in respect of Kosovo

In the framework of the First Monitoring Cycle, the Committee of Ministers adopted, on 21 June 2006, a Resolution on the protection of national minorities in Kosovo. It contains conclusions and recommendations, highlighting positive developments but also a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

The Resolution is largely based on the corresponding Opinion of the Advisory Committee on the Framework Convention, which is available on line. It was also developed in the preceding *Bulletin*.

Second monitoring cycle

Second cycle state reports

The following countries submitted a second report: Spain, Ukraine, "The Former Yugoslav Republic of Macedonia" and Sweden.

Advisory Committee's Opinions

The Advisory Committee adopted country-specific Opinions on: Germany, San Marino, Finland, the Russian Federation and Armenia.

The following Opinions, adopted earlier, were made public:

Slovak Republic

The Second Opinion on the Slovak Republic establishes that the country has taken a number of steps to improve the implementation of the Framework Convention. This process has included important changes in law and practice. The Slovak Republic has improved markedly its legal and institutional anti-discrimination framework through the adoption, in May 2004, of the Act on Equal Treatment in Certain Areas and Protection against Discrimination, the scope of which covers a number of societal settings. The overall substantial increase in the allocation of financial support to minorities in recent years deserves to be welcomed.

Shortcomings, however, remain in the legislative framework pertaining to the protection of national minorities, including as regards the financing of minority cultures and instruction in minority languages, where positive practices need to be consolidated through more detailed legal guarantees.

Although improvements have been recorded in recent years as regards inter-community relations and intercultural understanding, prejudices and intolerance against certain groups persist. The continuing occurrence in recent years of a significant number of racially motivated crimes and incidents poses particular challenges.

The situation of the Roma

The overall situation of the Roma continues to be a matter of deep concern. In the field of education, the persistence of various forms of exclusion and segregation affecting Roma children has not been adequately addressed so far. Serious problems persist in different societal settings, such as employment, housing and health care, a domain in which recent legislative changes still need to be fully reflected in practice. Furthermore, the participation of Roma in public affairs remains insufficient.

Malta

The Maltese authorities are asked to expand and consolidate the legal and institutional framework for combating discrimination on ethnic or racial grounds. Existing efforts to promote integration should be strengthened, including by taking further measures to increase awareness about the importance of tolerance and intercultural dialogue in the field of education and the media.

Finland

In its Second Opinion on Finland, the Advisory Committee welcomes legislative measures adopted. The language law, covering the Swedish and Sami languages, is an important development, the implementation of which is now an important challenge.

The development of anti-discrimination legislation and the establishment of the Office of the Ombudsman for Minorities are also significant steps. However, despite these measures, persons belonging to minorities still face incidents of discrimination and manifestations of intolerance in various fields.

Important new channels have been established to support minority participation, including permanent regional advisory boards for Roma affairs. However, current structures do not adequately take account of the needs of the Russian-speaking population.

Disputes over the ownership and use of land in the Sami Homeland need to be tackled with vigour, and the authorities' obligation to negotiate with the Sami Parliament should be carefully observed.

Valuable initiatives in support of minority language media need to be developed further, and minority language education should be expanded.

Education under the Framework Convention

The Advisory Committee undertook a series of thematic papers in relation to various articles of the Framework Convention.

The first in this Series is a Commentary on Education under the Framework Convention.

Its purpose is to summarise the experience of the Advisory Committee at the first cycle of monitoring and to emphasize some of the most crucial issues it has encountered in its work. Focus is put on the role of the Framework Convention in the task of balancing, on the one hand, the maintenance and development of the culture and the essential elements of the identity of persons belonging to national minorities and, on the other hand, their free integration and participation in the societies where they live. The Commentary should be used as a tool in the design and implementation of relevant educational policies in State Parties and also as an additional element in the constructive dialogue it has developed during the first cycle of monitoring with State Parties.

The Framework Convention 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.

The Steering Committee on the Media and New Communications Services (CDMC)

At its last meeting (30 May-2 June), the CDMC adopted and transmitted to the Committee of Ministers a reply concerning the alignment of the laws on defamation in member states with the relevant case-law of the European Court of Human Rights addressing also the issue of decriminalisation of defamation. It also decided to transmit to the Committee of Ministers for consideration and possible adoption:

- a *draft Declaration concerning the implementation by member States of Recommendation No. R (96) 10 of the Committee of Ministers on the guarantee of the independence of public service broadcasting*; as well as
- a *draft Recommendation to Council of Europe member states on empowering children in the new information and communications environment*.

The CDMC also examined a number of other issues such as copyright in the context of its work, Internet governance and ways in which the Council of Europe might actively contribute to the follow-up to the second phase of the World Summit on the Information Society (WSIS).

In order to take stock of the work being carried out with a view to fulfilling the Action Plan resulting from the 7th European Ministerial Conference on Mass Media Policy, Intergration (Kyiv, March 2005), an exchange of views was also held with the Chairs of its respective groups of specialists on public service broadcasting in the Information Society, on media diversity, on human rights in the Information Society, on freedom of expression and information in times of crisis.

The full meeting report can be found on the Media web site (see the address below).

Children and young people: well-being and risk on-line

The Council of Europe gives particular importance to the protection of children and young people from online and related offline services, content and behaviours which may carry a risk of harm. In this context, as part of its evolving work in the field of Human Rights in the Information Society, the Council of Europe has commissioned an independent study to "elaborate the meaning of 'harmful content'" in order to promote coherence in the protection of minors in all media in the Information Society. An abridged version of the study entitled *Young people, well-being and risk on-line* has been prepared to promote the accessibility and discussion of its findings in Council of Europe member states and can be found on the Media web site (see address below). The full version of the study will be released in the coming months. *It is important to note that both the abridged and full versions of this study contain the views of the authors and not necessarily those of the Council of Europe.*

Standing Committee on Transfrontier Television (T-TT)

The European Convention on Transfrontier Television (ECTT), which to date has been ratified by 30 member states of the Council of Europe and by one non-member state[1] provides an international framework for the unhindered transfrontier circulation of television programme services, laying down a set of minimum rules in essential areas of transfrontier broadcasting.

The Convention's Standing Committee, composed of representatives of the Parties, is responsible for following the instrument's application and may intervene in a process for the friendly settlement of any difficulties.

1. At present, the 31 states party to the Convention are: Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, United Kingdom and Holy See. The Convention has also been signed by Georgia, Greece, Luxembourg, the Netherlands, Sweden and Ukraine.

On the occasion of its 40th meeting (10 and 11 April 2006), the Committee T-TT:

- adopted *inter alia*, an opinion on Article 4 of the Convention (Freedom of reception and retransmission),
- examined a report on the measures adopted by states party to the ECTT for implementing its Recommendation on the protection of minors from pornographic programmes and
- pursued its work on the revision of the European Convention on Transfrontier Television, taking due account of the status of the proposal for an audiovisual media services directive in the legislative process of the European Union.

The Standing Committee on Transfrontier Television also emphasised the importance of encouraging non-member states of the Council of Europe to accede to the ECTT with a view to widening the Convention's geographical area of application (especially to non-Council of Europe Mediterranean states).

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. They are intended to facilitate the fulfilment by member states of their commitments in the human rights field.

Training activities

Visit of judges from the Court of Cassation of Turkey

Turkey

Strasbourg, 19-21 June 2006

A delegation of judges from the Court of Cassation of Turkey, led by its President, visited the Council of Europe and the European Court of Human Rights. The delegation conducted fruitful exchanges on the implementation of the European Convention on Human Rights and other human rights standards by higher judicial institutions in Turkey. The President of the Court of Cassation met with the President of the European Court of Human Rights and the judge elected in respect of Turkey. The visiting judges also attended a hearing of the Court. They concluded their visit with a meeting with the new Council of Europe Human Rights Commissioner.

Seminar on European standards on forced returns and on the importance of the European Convention on Human Rights in the protection of asylum seekers and refugees

Ukraine

Kyiv, 21-22 June 2006

The seminar was organised by the Council of Europe and the United Nations High Commissioner for Human Rights. It took into account current legislative developments in Ukraine where a draft law on asylum is being prepared by the Ministry of Justice. It was aimed at raising awareness among government officials and civil society representatives of the most relevant Convention's articles and the Council of Europe standards in the field of refugees and asylum seekers.

Seminar on "Clemency, execution of punishments, the crime connected to the use and sale of narcotics, and juvenile justice"

Russian Federation

Vladimir, 20-21 June 2006

The seminar was the fifth in a series aimed at Russian NGOs and journalists on applicable European human rights standards.

It was carried out within the framework of the current Joint Programme Council of Europe/European Commission on Strengthening the rule of law, human rights and educational standards in the Russian Federation (Russia VIII). It was organised in co-operation with the Office of the Adviser to the President of the Russian Federation on Clemency Issues, the Administration of the Vladimir Region and the Gesellschaft für Technische Zusammenarbeit. It provided the basis for a wide-ranging discussion of European human rights standards and their application by national and local authorities, with particular attention devoted to the problems of the penitentiary system in the Russian Federation. The session focused on Article 6 of the Convention and Article 1 of Protocol No. 1. 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 Convention.

Ukraine

19 Seminars for prosecutors on the European Convention on Human Rights

Ukraine, 20-28 April 2006

These seminars took place in different regions of Ukraine. The objective of the training was to enable the participating prosecutors to apply the Convention and its case law in their daily work. Approximately 1 500 prosecutors, 54 prosecutors-trainers and 20 national experts responsible for the training participated.

All the seminars under this project have been organised in close co-operation with the Association of Prosecutors of Ukraine within the Council of Europe/ European Commission Joint Programme on Strengthening Democratic Stability in Ukraine (Ukraine V).

Legislation and legal expertise

Kosovo, Bosnia and Herzegovina

Expertise on a human rights strategy in Kosovo (MINUK)

2-5 May 2006

Expert support was provided to the Provisional Institutions of Self-Government of Kosovo in their efforts to draw up a strategy for human rights.

Fifth meeting of the working group on the compatibility study of law and practice with the Convention

The Council of Europe experts and the national members of the Working Group discussed the progress achieved so far and the work now required to finalise the report on the compatibility of Bosnia and Herzegovina's law and practice with the requirements of the Convention and the case-law of the Court.

Publications

Convention glossary in Serbian and in Georgian

A glossary of the Convention's terminology has been drawn up and is being translated into the languages of the countries where co-operation activities are being carried out. The objective is to provide reliable translations of terms which can be found in the text of the Convention itself or in the case-law of the European Court of Human Rights. The glossary can be useful for translators and interpreters but also for legal professionals who use the Convention directly in their domestic legal system. The Azerbaijani translation is under way and the next versions to be issued will be in in Turkish and in Albanian.

New publications in Romanian

The "Short guide to the European Convention on Human Rights", as well as three volumes of judgments from the ECtHR , funded by the current CoE/EC Joint Programme for Moldova were translated into Romanian. One of the volumes focuses only on ECtHR judgments against Moldova.

Launching of the book Case-*law of the European Court on Human Rights* (Jurisprudenca e Gjykatës së Strasburgut) in Albanian

This publication, financed by a Council of Europe/European Commission Joint Programme, is principally intended to be used by judges, but it is also a valuable tool of information and reference for lawyers, university professors, students, politicians and journalists. It is the second such volume to be published in Albanian.

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			**19.05.06**		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	**19.05.06**			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	**19.05.06**	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	**07.03.06**	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			**07.06.06**	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	**11.04.06**	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			**07.03.06**	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			**28.03.06**	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	**21.03.06**	**21.03.06**	**21.03.06**	10.10.91		06.09.88		
Malta	23.01.67	23.01.67	05.06.02	26.03.91	15.01.03		03.05.02	04.10.04	04.10.88	27.07.05	07.03.88	10.02.98	

	European Convention on Human Rights	**Protocol No. 1**	**Protocol No. 4**	**Protocol No. 6**	**Protocol No. 7**	**Protocol No. 12**	**Protocol No. 13**	**Protocol No. 14**	**European Social Charter**	**European Social Charter (Revised)**	**CPT** European Convention for the Prevention of Torture	**Framework Conv. for the Protection of National Minorities**	**Convention on Action against Trafficking in Human Beings**
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	**19.05.06**
Monaco	30.11.05		30.11.05	30.11.05	30.11.05		30.11.05	**10.03.06**			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	**03.05.06**	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	**19.05.06**	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	17.07.06	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	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				**15.03.06**	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	**25.04.06**			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	**27.03.06**	11.03.03	**27.03.06**			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: 21.08.06
Ratifications between **01.03.06** and **30.06.06** 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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