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The European Court of Human Rights held its formal ceremony to mark the opening of the judicial year on 19 January 2007. Jean-Paul Costa (inset) succeeded Luzius Wildhaber (main picture) as President of the Court.

Human rights information bulletin

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No. 70, 1 November 2006-28 February 2007

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Contents

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

Treaties and conventions

Signatures and ratifications

Signatures and ratifications of Council of Europe treaties in the field of human rights between 1 November 2006 and 28 February 2007.

See also the simplified table of ratifications, page 86.

Albania

On 6 February 2007 Albania ratified Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances; and on the same date, the Council of Europe Convention on Action against Trafficking in Human Beings.

Ukraine

On 21 December 2006 Ukraine ratified the European Social Charter (revised).

Reservations and declarations

United Kingdom

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

Declaration contained in a letter from the Permanent Representative of the United Kingdom, dated 29 January 2007, and registered at the Secretariat General on 30 January 2007 – Or. Engl.

The Government of the United Kingdom declares that it extends the application of Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms to Anguilla, Bermuda, the Falkland Islands, Gibraltar, Montserrat, St Helena, St Helena Dependencies, South Georgia and the South Sandwich Islands, and the Turks and Caicos Islands, being territories for whose international relations the Government of the United Kingdom is responsible.

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

European Court of Human Rights

The judgments summarised below constitute a small selection of those delivered by the Court. 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.

[The figure in parentheses is due to the fact that a judgment/decision may concern more than one application.]

Court's case-load statistics (provisional), 1 November 2006-28 February 2007:

- 579 (724) judgments on the merits delivered
- 41 (35) applications declared admissible
- 7 977 (5 894) applications declared inadmissible
- 306 (255) applications struck off the list.

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

Grand Chamber judgments

The Grand Chamber (17 judges) deals with cases that raise a serious question of interpretation or application of the Convention, or a serious issue of general importance. A Chamber may relinquish jurisdiction in a case to the Grand Chamber at any stage in the procedure before judgment, as long as both parties consent. Where judgment has been delivered in a case, either party may, within a period of three months, request referral of the case to the Grand Chamber. Where a request is granted, the whole case is reheard.

Judgment of 23.11.2006
Concerns:
Obligation to pay tax surcharges imposed without a hearing
Conclusions of the Court: non-violation

Jussila v. Finland

Right to a fair trial (Article 6)

Facts and complaints

The applicant had been obliged to pay tax surcharges (about €300) based on the fact that his VAT declarations for a fiscal year were regarded as incomplete. He appealed to the County Administrative Court, requesting an oral hearing where the tax inspector in charge of his file and an expert be heard as witnesses. The Administrative Court took an interim decision inviting written observations from the tax inspector and a statement from an expert chosen by the applicant. The tax inspector submitted her statement to the Administrative Court – a copy of which was communicated to the applicant, to get his own observations – and so did the expert.

The Administrative Court held that an oral hearing was manifestly unnecessary in the matter because both parties had submitted all the necessary information in writing. The applicant unsuccessfully appealed.

The applicant alleged that he did not receive a fair hearing.

Decision of the Court

Applicability of Article 6 §1

The Court found that, although the tax surcharges in the case were part of the fiscal regime, they were imposed by a rule whose purpose was deterrent and punitive. The offence was therefore "criminal", within the meaning of Article 6.

Compliance with Article 6 §1

The Court observed that applicant's purpose in requesting a hearing was to challenge the reliability and accuracy of the report on the tax inspection by cross-

examining the tax inspector and obtaining supporting testimony from his own expert since, in his view, the tax inspector had misinterpreted the requirements laid down by the relevant legislation and given an inaccurate account of his financial position. His reasons for requesting a hearing therefore concerned in large part the validity of the tax assessment – which as such fell outside the scope of Article 6 – although there was the additional question of whether the applicant's bookkeeping had been so deficient so as to justify a surcharge.

The Court found force in the Government's argument that any issues of fact and law could be adequately addressed in, and decided on the basis of, written submissions.

Note

The issue which arose in this case was whether the proceedings were "criminal" within the autonomous meaning of Article 6 and thus attracted the guarantees of this provision under that head. To assess the applicability of the criminal aspect, the Court's case-law sets out three criteria (sometimes referred to as "the Engel criteria") : the domestic classification of the offence, its very nature, the degree of severity of the penalty that the person risks incurring.

Separate opinions were expressed. Some considered that if there had been no violation of Article 6 §1 of the Convention it is because this Article was inapplicable as these three criteria were not satisfied. The others said that once it was found (correctly) that the relevant proceedings in this case were criminal, the requirement of a public hearing in respect of them became a sine qua non.

Court/European Commission of Human Rights case-law cited in the judgment
Allan Jacobsson v. Sweden (No 2), Bendenoun v. France, Campbell and Fell v. the United Kingdom, Döry v. Sweden, Ezeh and Connors v. the United Kingdom, Ferrazzini v. Italy, Findlay v. the United Kingdom, Fredin v. Sweden (No 2), Georgiou v. the United Kingdom (dec.), Göç v. Turkey, Guisset v. France, Hakansson and Sturesson v. Sweden, Janosevic v. Sweden, Lundevall v. Sweden, Lutz v. Germany, Martinie v. France, Miller v. Sweden, Morel v. France, Öztürk v. Germany, Pélissier and Sassi v. France, Pirinen v. Finland, Salabiaku v. France, Salomonsson v. Sweden, Schuler-Zgraggen v. Switzerland, Sejdovic v. Italy, Société Stenuit v. France, Sträg Datajänster AB v. Sweden, Västberga Taxi Aktiebolag and Vulic v. Sweden

Marcovic and others v. Italy

Obligation to respect human rights (Article 1), Right to a fair trial (Article 6)

Judgment of 14.12.2006
Concerns: Jurisdiction declined when act of war. Absence of express right to claim reparation from the State for damage sustained as a result of a violation of the rules of international law
Conclusions of the Court: non-violation

Facts and complaints

The application concerned an action in damages brought by ten applicants, nationals of the former Serbia and Montenegro, in the Italian courts in respect of the deaths of their relatives during the Kosovo conflict when an air strike by the NATO alliance was carried out on the headquarters of Radio Televizije Srbije.

The applicants brought an action for damages in the Rome District Court, as they considered that Italy's involvement in the relevant military operations had been more extensive than that of the other NATO members in that Italy had provided major political and logistical support. The defendants to the action were the Prime Minister's Office, the Italian Ministry of Defence and the NATO Allied Forces Southern Europe Command.

The Italian authorities concerned applied to the Court of Cassation for a preliminary ruling on the issue of jurisdiction under Article 41 of the Code of Civil Procedure. In a judgment of 8 February 2002 which brought the applicants' action to an end, the Court of Cassation held that the Italian courts had no jurisdiction because Italy's decision to take part in the air strikes had been a political one and could not, therefore, be reviewed by the courts. Moreover, it said, the legislation that gave effect to the instruments of international law which the applicants relied on did not expressly afford injured parties a right to claim reparation from the State for damage sustained as a result of a violation of the rules of international law.

Decision of the Court

Law: Exhaustion of domestic remedies

The Italian Government had argued that the applicants had not exhausted domestic remedies as they had failed to resume proceedings against NATO. The Court found no concrete example of a civil action having been successfully brought against NATO and was not convinced by the Government's argument

that the proceedings against NATO would have offered better prospects of success than those against the Italian State.

Whether the applicants came within the "jurisdiction" of the respondent State within the meaning of Article 1 of the Convention

Once the applicants had brought a civil action in the Italian courts, there was an indisputable "jurisdictional link" between them and the Italian State for the purposes of Article 1.

Compliance with Article 6 §1

The Court reiterated that it is for the national authorities to interpret and apply domestic law and that that rule also applied where domestic law referred to rules of general international law or international agreements. The Court's role is confined to ascertaining whether the effects of such an interpretation were compatible with the Convention.

The Court noted that the Italian Court of Cassation's comments on the international conventions that had been cited by the applicants did not appear to contain any errors of interpretation and that Italian law permitted preliminary jurisdictional points to be raised. Accordingly, it was not possible to conclude from the manner in which the domestic law had been interpreted or the relevant international treaties applied that a "right" to reparation under the law of tort existed in circumstances such as those in the case before it.

As to the Court of Cassation's ruling, it did not amount to recognition of immunity, but was merely indicative of the extent of the courts' powers of review of acts of foreign policy such as acts of war.

Consequently, the Court considered that the applicants' claims had been fairly examined in the light of the Italian legal principles applicable to the law of tort. The applicants had been afforded access to a court, but that access had been limited in scope, as it did not enable them to secure a decision on the merits.

The Court accordingly held that there had been no violation of Article 6.

Court/European Commission of Human Rights case-law cited in the judgment
A v. United Kingdom, Airey v. Irleand, Ashingdane v. United Kingdom, Bankovic and others v. Belgium and 16 other contracting states, Benthem v. Netherlands, Cocchiarella v. Italy, Ferrazzini v. Italy, Golder v. United Kingdom, James and others v. United Kingdom, Kleyn and others v. Netherlands, Le Compte, Van Leuven and De Meyere v. Belgium, Les Saints Monastères v. Greece, Lithgow and others v. United Kingdom, Masson and Van Zon v. Netherlands, Roche v. United Kingdom, Sejdovic v. Italy, Sporrong and Lönnroth v. Sweden, Streletz, Kessler and Krenz v. Germany, Stubbings and others v. United Kingdom, Tolstoy Miloslavsky v. United Kingdom, Trte Traktörer AB v. Sweden, Van Droogenbroeck v. Belgium, Vo v. France

Note

Although the Court was unanimous in holding Article 6 to be applicable, it was divided on the question whether the decision of the Court of Cassation constituted a disproportionate interference with the applicants' right of access to a court.

For some judges, it would have been clearer to apply the standard principles, such as those arising out of State immunity, which is a limitation to the right of access to a court. Other judges raised the question of the position of the individual when set face to face with authority, and especially the "reason of State."

Chamber judgments

Judgment of 14.12.2006
Concerns: Inadequate medical care leading to prisoner's bleeding to death, and failure to conduct an effective investigation Conclusions of the Court: violation of Articles 2 and 3, non-violation of Article 34

Tarariyeva v. Russia

Right to life (Article 2), Prohibition of inhuman or degrading treatment (Article 3), Right of individual petition (Article 34)

Facts and complaints

During the execution of a sentence of six years' imprisonment, the applicant's son was diagnosed with an acute ulcer and and chronic gastroduodenitis. He received further treatment, but following a new sentence of imprisonment, he was sent back to the Khadyzhensk colony, where, according to the applicant, no medical assistance was provided. He suffered a perforated duodenal ulcer and peritonitis and was operated at the Apsheronsk PublicHospital. Two days later, he was diagnosed with a breakdown of sutures in the duodenum, duodenal fistula and

peritonitis. He was transported to the prison hospital, where, after undergoing further surgery, he died. An autopsy established that the death had been caused by acute anaemia (blood loss) provoked by massive gastrointestinal haemorrhaging.

Charges were brought against medical staff at the two hospitals for negligent manslaughter resulting from incompetent performance of their duties, but the case was abandoned for want of indications of a criminal offence or negligence.

Decision of the Court

Article 2

Failure to protect the right to life

For more than two years preceding his death Mr Tarariyev had been in detention and the custodial authorities had been fully aware of his health problems. The existence of a causal link between the defective medical assistance administered to Mr Tarariyev and his death was confirmed by the domestic medical experts and was not disputed by the Russian Government.

Adequacy of the investigation

The criminal investigation was slow and its scope was restricted, leaving out many crucial aspects of the events. The Russian authorities failed to discharge their positive obligation to determine, in an adequate and comprehensive manner, the cause of death of Mr Tarariyev and to bring those responsible to account.

Article 3

Handcuffing at the civilian hospital

It was not in dispute that Mr Tarariyev had not presented any danger of absconding or causing self-harm or injury to others. He was attached to the bed on the day after complex internal surgery. He was on a drip and could not stand up unaided. There were three police officers, one of them armed with a submachine gun, to guard him. In those circumstances, the Court considered that the use of handcuffs was disproportionate to the needs of security.

Conditions of Mr Tarariyev's transport to the prison hospital

Mr Taraiyev was transported for more than one hundred kilometres in a vehicle designed for the transport of detainees, where he was placed on padded mattresses. He had had internal surgery merely two days beforehand and on the day of transport he was diagnosed with a breakdown of sutures. This transportt must have considerably contributed to his suffering and therefore amounted to inhuman treatment.

Article 34

The applicant complained that her witness had been summoned to the prosecutor's office and interviewed in connection with her application to the European Court of Human Rights.

The Court found that the interviews concerned only the applicant's complaint relating to the use of handcuffs on Mr Tarariyev at Apsheronsk Hospital. It did not amount to pressure, intimidation or harassment which might have induced the applicant to withdraw or modify her application or hindered her in any other way in the exercise of her right of individual petition.

The Court awarded the applicant €25 000 for non-pecuniary damage and certain sums for costs and expenses.

Note

In a dissenting opinion relating to the conclusion of non-violation of the right to individual petition, Judge Borrego Borrego wanted to express his gratitude to the applicant and her friend, who brought her testimony. It is an honour for him, he said, as a judge of the European Court of Human Rights, to work to ensure that people like them have their fundamental rights guaranteed by the enforcement of the Convention.

Court/European Commission of Human Rights case-law cited in the judgment
Akdeniz and others v. Turkey, Akdivar and others v. Turkey, Assenov and others v. Bulgaria, Bilgin v. Turkey, Calvelli and Ciglio v. Italy, Dulas v. Turkey, Glass v. United Kingdom, Hénaf v. France, Isayeva and others v. Russia, Keenan v. United Kingdom, Khudoyorov v. Russia, Kudla v. Poland, Kurt v. Turkey, Lazzarini and Ghiacci v. Italy, Loukanov v. Bulgaria, Mastromatteo v. Italy, Mouisel v. France, Orhan v. Turkey, Peers v. Greece, Perez v. France, Petra v. Romania, Powell v. United Kingdom, Prokopovitch v. Russia, Raninen v. Finland, Ribitsch v. Austria, Salman v. Turkey, Tanrikulu v. Turkey, Vo v. France

Judgment of 7.12.2006
Concerns:
Ill-treatment in police custody
Conclusions of the Court: violation

Sheydayev v. Russia

Prohibition of torture (Article 3)

Facts and complaints

The applicant, who was performing contractual military service in Dagestan, was taken by police officers to the Police Station, supposedly to help them with their enquiries regarding an incident involving acts of violent hooliganism. While at the police station, during four days, the applicant submitted he was continuously beaten by up to five police officers who tried to force him to confess to having committed the offence they were investigating. According to the applicant, they threatened him with different mistreatments. He then conceded to their demands and wrote a confession letter.

A medical report drawn two hours after his release, noted a scabbed abrasion of skin and soft tissue bruises on the head and body. The authorities accepted the findings of the medical report, but it found that the applicant failed to submit persuasive evidence establishing the causal link between his injuries and the actions of the policemen.

Decision of the Court

The validity of the medical report stating the existence of the applicant's injuries had not been disputed before the Court or by the domestic authorities. The report was drawn up by a doctor only two hours after the applicant's release and there was nothing in the case file or the parties' submissions to suggest that the injuries described in the report had been inflicted either before the applicant's arrest or after his release. Neither the authorities at the domestic level, nor the Government in the proceedings before the Strasbourg Court, had advanced any convincing explanation for the applicant's injuries. Therefore the Government had not satisfactorily established that the applicant's injuries were caused otherwise than by the treatment he underwent while in police custody. The acts complained of were such as to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance and were inflicted intentionally. Having regard to the duration of the treatment, its physical or mental effects, the age and state of health of the victim, the ill-treatment amounted to torture.

The Court awarded awarded the applicant 20,000 € for non-pecuniary damage.

Court/European Commission of Human Rights case-law cited in the judgment
Aksoy v. Turkey, Aydin v. Turkey, Bati and others v. Turkey, Dikme v. Turkey, Edwards v. the United Kingdom, Klaas v. Germany, Matyar v. Turkey, Menesheva v. Russia, Ribitsch v. Austria, Salman v. Turkey, Selmouni v. France, Tomasi v. France, Vidal v. Belgium

Note

Article 3 of the Convention distinguishes between inhuman or degrading treatment and torture. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.

Judgment of 18.01.2007
Concerns:
Torture and wrongful detention of Chechnyan applicants. Denial of compensation due to malfunction of judicial system and lack of final decisions ordering discontinuance of criminal proceedings. Denial of effective domestic remedy in respect of ill-treatment by the police.
Conclusions of the Court: violation of Articles 3, 5 and 13; non-violation of Article 38

Chitayev and Chitayev v. Russia

Prohibition of torture (Article 3), Right to liberty and security (Article 5), Right to an effective remedy (Article 13), Obligation to furnish necessary facilities for the examination of the case (Article 38)

Facts and complaints

The facts of the case, particularly those surrounding the period of the applicants' detention, are partially disputed by the parties.

According to the applicants, following the outbreak of hostilities in Chechnya in 1999 between the Russian armed forces and Chechen rebel fighters, they moved their families and valuables to their parents' house in the town of Achkhoy-Martan. Between January and April 2000 the house was searched by officers from the Temporary Office of the Interior of the Achkhoy-Martan District ("the Achknoy-Martan VOVD") a number of times without a warrant being produced. Numerous household

electrical items and personal documents belonging to the applicants were seized. Following one of the searches, the brothers were told they had been arrested. They were then taken into detention at the Achkhoy-Martan VOVD, where they were held in unheated, damp cells with no toilets.

While in custody, they were interrogated about the activities of the Chechen rebel fighters and about kidnappings for ransom, but denied their involvement in any crimes. The applicants alleged that they were ill-treated: they were given electric shocks, forced to stand for a long time in a stretched position, with their feet and hands spread wide apart; that they had their arms twisted; that they were beaten with rubber truncheons and plastic bottles filled with water; that they were strangled with adhesive tape, with a cellophane bag and a gas mask; that dogs were set on them and that parts of their skin were torn away with pliers. Adam Chitayev claimed he was also beaten on his genitals and threatened with shooting.

Later on, the applicants were transferred to the Chernokozovo Detention Centre ("the Chernokozovo SIZO") where they were beaten on arrival. They were not medically examined on arrival, in contravention of the relevant legislation. They alleged that, there, they were again interrogated and tortured to force them to make false confessions: they were beaten, threatened, strangled and subjected to electric shocks and their fingers and toes were squashed with mallets or a door of a safe and their hands and feet tied behind their backs ("swallow" position). Their lawyer was only once given access to them and was only allowed to ask them how they were in Russian and in the presence of a police officer.

The applicants were then brought back to Achkhoy-Martan and informed that they had been charged with kidnapping and participation in an unlawful armed group. Finally, they were released.

The day after their release, they were medically examined. Among other things, they were found to have numerous injuries to their heads and bodies and to be suffering from post-traumatic stress disorder. The doctors noted that the traumas and other medical conditions had apparently been sustained in the Chernokozovo SIZO between April and October 2000.

On 9 October 2000 the prosecutor's office informed the applicants that criminal proceedings against them had been discontinued as their involvement in the imputed offences had not been proved.

From 12 April 2000 onwards the applicants' relatives applied repeatedly to various official bodies (but not a court) concerning the searches in their house and seizure of their property. They also made applications concerning the applicants' arrest and detention. After the applicants had been released, they joined their relatives in those efforts. The prosecutor's office refused to bring criminal proceedings in connection with the applicants' allegations of ill-treatment during their detention from 12 April until 5 October 2000.

According to the Government, on 12 April 2000 the applicants' house was "inspected" by a police officer of the Achkhoy-Martan VOVD. During that "inspection", a number of items had been found that, in the Government's submission, "could be indicative of the applicants' participation in illegal armed groups". According to the Government, the prosecutor's office of the Achkhoy-Martan District instituted criminal proceedings against the applicants and they were placed in detention in the Achkhoy-Martan VOVD, and then to the Chernokozovo SIZO. On 29 October 2003 a decision discontinuing the criminal proceedings against the applicants was quashed by the republican prosecutor's office and the case forwarded for additional investigation. Apparently the proceedings are still pending.

Decision of the Court

Article 3

Detention conditions

The Court held unanimously that it was unable to consider the merits of the applicants' complaint concerning the conditions of their detention, as it had been lodged out of time (more than six months after they were released).

Torture

Having regard to the applicants' consistent and detailed allegations, corroborated by the medical documents, the

Court concluded that the Government had not satisfactorily established that the applicants' injuries were caused otherwise than by the treatment they underwent while in detention.

As to the seriousness of the acts of ill-treatment, the Court found in the applicants' case that their suffering was particularly serious and cruel, which amounted to torture, in violation of Article 3.

Investigation into allegations of torture

The Court considered that the medical evidence and the applicants' complaints together raised a reasonable suspicion that their injuries could have been caused by representatives of the State. Russia was therefore under an obligation to conduct an effective investigation satisfying the requirements of Article 3. However, the authorities failed to carry out a thorough and effective investigation. There had therefore been a violation of Article 3.

Article 5

Given that the applicants were detained by the authorities on 12 April 2000 and the fact that the Government provided no explanation concerning their detention between 12 and 16 April 2000, or any documents by way of justification, the Court concluded that, during that period, the applicants were held in unacknowledged detention in compete disregard of the safeguards enshrined in Article 5, which constituted a particularly grave violation of Article 5.

Article 5 §4

The Court found that the applicants had been unable to take proceedings to challenge the lawfulness of their detention in custody between 17 April and 4 October 2000 (the Government acknowledged that the courts in the Chechen Republic had been inoperative until November 2000) in violation of Article 5 §4.

Article 5 §1 (c)

The Court found one period of the applicants' detention to be lawful and one unlawful, in violation of Article 5 §1 (c).

Article 5 §3.

Given that, during the relevant period of their remand in custody, the applicants were unable to apply for their release and that no evidence justifying their continued detention had been submitted, the Court concluded that they were denied the right to trial within a reasonable time or to release pending trial.

Article 5 §5

Given that the judicial system in Chechnya was not functioning until at least November 2000, and the fact that neither of the decisions ordering the discontinuance of the criminal proceedings against the applicants was final, as well as the fact that the criminal proceedings were still pending, the Court found that applicants had been prevented from seeking compensation for their detention in violation of Article 5 §5.

Article 13

The Court found that the applicants had been denied an effective domestic remedy in respect of the ill-treatment by the police, in violation of Article 13, but that no separate issue arose in respect of Article 13 in connection with Article 5.

Article 38 §1 (a)

The Government having submitted a number of documents, which facilitated the examination of the present case, the Court found no failure on the part of the Russian Government to comply with Article 38 §1 (a).

The Court awarded the applicants €35 000 each for non-pecuniary damage and certain sums for costs and expenses.

Court/European Commission of Human Rights case-law cited in the judgment
Akdivar and others v. Turkey, Aksoy v. Turkey, Assenov and others v. Bulgaria, Bati and others v. Turkey, Bulut and Yavuz v. Turkey, Çakici v. YTurkey, Cennet Ayhan and Mehmet Salih Ayhanv. turkey, Cumber v. United Kingdom, Dikme v. Turkey, Dimitrov v. Bulgaria, Hazar and others v. Turkey, Hutchison Reid v. United Kingdom, Ireland v. United Kingdom, Isayeva and others v. Russia, Khudoyorov v. Russia, Klaas v. Germany, Labita v. Italy, Lietzow v. Germany, Menesheva v. Russia, Popov and Vorobyev v. Russia, Ribitsch v. Austria, Salman v. Turkey, Selmouni v. France, Slivenko v. Latvia, Tanrikulu v. Turkey, Timurtas v. Turkey, Tomasi v. France, Trubnikov v. Russia, Walker v. United Kingdom, Wassink v. Netherlands

Oya Ataman v. Turkey

Judgment of 5.12.2006
Concerns:
Tear gas ("pepper gas") used by the police for breaking up a peaceful demonstration, held without submission of mandatory prior notification
Conclusions of the Court: non-violation of Art. 3, violation of Art. 11

Prohibition of inhuman or degrading treatment (Article 3), Freedom of assembly and association (Article 11)

Facts and complaints

The applicant, president of the Istanbul Human Rights Association, had organised a demonstration in a square in Istanbul, in the form of a march followed by a statement to the press, to protest against plans for "F-type" prisons.

The police asked the group of 40-50 people, who were demonstrating by waving placards, to break up. As the demonstrators refused to obey them, the police dispersed the group using a kind of tear gas known as "pepper spray". They arrested 39 demonstrators, including the applicant, who was released after an identity check.

Decision of the Court

Article 3

The Court first noted that pepper spray was not among the toxic gases listed in the international applicable regulations. It can produce side-effects , but the applicant did not submit any medical reports to show the ill-effects she had suffered after being exposed to the gas. Since she had been released shortly after being arrested, she had not asked for a medical examination either.

Article 11

The Court noted that there had been an interference with the applicant's freedom of assembly. The interference had been prescribed by the Assemblies and Marches Act and had pursued the legitimate aims of preventing disorder and preserving the rights of others and the right to move freely in public without restriction.

The Court observed that the demonstration had been unlawful, and this was not disputed by the applicant. However, an unlawful situation could not justify an infringement of freedom of assembly.

It appeared from the evidence before the Court that the group of demonstrators had been informed a number of times that the march was illegal and would disturb public order at a busy time of day, and that they had been ordered to disperse. The applicant and other demonstrators had not complied with the security forces' orders and had attempted to force their way through. However, there was no evidence to suggest that the group of demonstrators had represented any danger to public order, apart from possibly disrupting traffic. There had been at most fifty people, who had wished to draw public attention to a topical issue. The rally had begun at about midday and had ended with the group's arrest within half an hour. The Court was particularly struck by the authorities' impatience in seeking to end the demonstration, which had been organised under the authority of the Human Rights Association.

In the Court's view, where demonstrators did not engage in acts of violence it was important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by the Convention was not to be deprived of all substance.

In those circumstances, the Court considered that the police's forceful intervention had been disproportionate and had not been necessary for the prevention of disorder within the meaning of the Convention.

The Court considered that the finding of a violation of the Convention constituted in itself sufficient just satisfaction for the non-pecuniary damage.

Court/European Commission of Human Rights case-law cited in the judgment
Assenov and others v. Bulgaria, Chahal v. United Kingdom, Cisse v. France, Djavit An v. Turkey, Kiliçgedik v. Turkey ,Klaas v. Germany, Kudla v. Poland, Labita v. Italy, Nikolova v. Bulgaria, Piermont v. France, Plattform "Ärzte für das Leben" v. Austria, Raninen v. Finland, Selmouni v. France, V. v. United Kingdom

Judgment of 16.01.2007
Concerns:
Refusal of a request by the defendant for the record t indicate that an unlawful exchange had taken place between the advocate-general and members of the jury
Conclusions of the Court: violation

Farhi v. France

Right to a fair trial (Article 6)

Facts and complaints

During the applicant's assize trial, his counsel requested, without success, that the court take formal note of the unlawful communication which had taken place between some members of the jury and the advocate-general during an adjournment of the hearing when the court had retired in order to deliberate, leaving the jurors in the hearing room. The request was rejected on the ground that members of the court had not personally seen these facts, which occured during their absence.

Decision of the Court

The Court considered that, given the role played by the advocate-general in a criminal trial as a representative of the prosecution, the allegation that he had had contact with members of the jury was sufficiently serious to warrant the instigation of an inquiry by the President of the Assize Court. In the Court's view, only by hearing evidence from the jurors would it have been possible to shed light on the nature of the remarks exchanged and the influence they might have had on jurors' opinions.

Furthermore, the decision to reject the applicant's request simply stated that there had been a contradictory debate, without giving any precision on the elements which could have been gathered at the end of this debate. So doing, the verification deprived the applicant of the possibility to raise efficiently his complaint before the upper jurisdiction.

In the circumstances, the Court held unanimously that there had been a violation of Article 6 §1. It considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Court/European Commission of Human Rights case-law cited in the judgment
Azinas v. Cyprus, Berger v. France, Findlay v. the United Kingdom, Fressoz and Roire v. France, Grieves v. the United Kingdom, Incal v. Turkey, Kudla v. Poland, Padovani v. Italy, Pullar v. the United Kingdom, Remli v. France

Judgment of 28.11.2006
Concerns:
Obligation to pay expenses prior to the initiation of enforcement proceedings resulting in indigent creditor being unable to obtain enforcement in his favour
Conclusions of the Court: violation

Apostol v. Georgia

Right to a fair trial (Article 6)

Facts and complaints

The applicant brought a civil action against a private person. The Court allowed his claim and ordered the debtor to pay him arrears and a sum for the costs and expenses. Since the debtor refused to abide by the judgment, the applicant requested the initiation of enforcement proceedings. But the Ministry replied that, pursuant to the Enforcement Proceedings Act, he was to bear "preliminary expenses associated with enforcement measures". Being in receipt of a small pension at the time, the applicant was unable to pay, and he offered to pay the enforcement fee after having received the judgment debt. He was told that the non-payment of the preliminary expenses constituted "an impediment to the enforcement of the judgment". The judgment remained unenforced.

Decision of the Court

Preliminary objection (non-exhaustion of domestic remedies)

The Court considers that a constitutional complaint cannot be regarded with a sufficient degree of certainty as an appropriate remedy.

Compliance with Article 6 §1

The obligation to pay expenses in order to have a final judgment enforced constitutes a restriction of a purely financial

Court/European Commission of Human Rights case-law cited in the judgment
Akdivar and others v. Turkey, Assanidze v. Georgia, Barszcz v. Poland, Burdov v. Russia, Deweer v. Belgium, Fadil Yilmaz v. Turkey, Fuklev v. Ukraine, Golder v. United Kingdom, Hartman v. Czech Republic, Hornsby v. Greece, Horvat v. Croatia, Kreuz v. Poland, Maestri v. Italy, Manoilescu and Dobrescu v. Romania, Merit v. Ukraine, Miailhe (n° 2) v. France, , Papamichalopoulos and others v. Greece, Plotnikovy v. Russia, Podbielski and PPU Polpure v. Poland, Riera Blume and others v. Spain, Sejdovic v. Italy, Sürmeli v. Germany, Tolstoy Miloslavsky v. United kingdom, Van Oosterwijck v. Belgium, Vén v. Hungary, Vernillo v. France, Vodenicarov v. Slovakia, Voggenreiter v. Germany, Waite and Kennedy v. Germany

nature and therefore calls for particularly rigorous scrutiny from the point of view of the interests of justice. It does not flow from the Enforcement Act that the preliminary expenses borne by the creditor are to be fully reimbursed after the enforcement, nor did the Government specify the aim of obliging the applicant to pay for the enforcement. Further, the Enforcement Act obliges the creditor to pay a fee of 7% of the judgment debt retrieved. By shifting onto the applicant the responsibility for financially securing the organisation of the enforcement proceedings, the State tried to escape its positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice. The authorities' stance of holding the applicant responsible for the initiation of enforcement proceedings by requesting him to bear the preliminary expenses, coupled with the disregard for his financial situation, constituted an excessive burden.

The Court held unanimously that there had been a violation of Article 6 §1 on account of the excessive restriction of the applicant's right of access to enforcement proceedings. It further held that Georgia should secure, by appropriate means, the enforcement of the judgment.

Note

The Court recalls that fulfilment of the obligation to secure effective rights under Article 6 §1 of the Convention does not mean merely the absence of an interference but may require taking various forms of positive action on the part of the State. In the present case, the State had to organise a system for enforcement of judgments that is effective both in law and in practice.

Falakaoglu and Saygili v. Turkey

Judgment of 23.01.2007
Concerns:
Conviction for publishing the declarations of an armed terrorist group in a daily newspaper
Conclusions of the Court: violation of Art. 6, non-violation of Art. 10

Right to a fair trial (Article 6), Freedom of expression (Article 10)

This judgment not yet having been translated into English, information will be published in the next issue of the Bulletin.

Tatishvili v. Russia

Judgment of 22.02.2007
Concerns:
Refusal by the authorities to register the applicant as resident at her home address
Conclusions of the Court: violation of the Articles

Right to a fair trial (Article 6), Freedom of movement (Article 2 of Protocol No. 4)

Facts and complaints

The applicant was born in Georgia. She continued to hold citizenship of the former USSR until 31 December 2000 when she became a stateless person. She currently lives in Moscow.

On 25 December 2000 Ms Tatishvili applied to the "Filevskiy Park" Police Station passport department for a flat in Moscow to be registered as her place of residence. She produced her USSR passport, a consent form signed by the flat-owner, proof of payment of house maintenance charges, an extract from the resident's list and an application form for residence registration.

Having been told by the director of the passport department that her application could not be processed because she was not a relative of the flat-owner, Ms Tatishvili challenged the refusal before Dorogomilovskiy District Court of Moscow.

On 13 February 2001 the district court dismissed Ms Tatishvili's claim referring, in particular, to the provisions of the Civil and Housing Codes which regulated municipal-tenancy agreements, and emphasising the fact that there was no family relationship between the applicant and the flat-owner. It also held that the applicant had failed to prove her Russian citizenship or confirm her intention of obtaining it, pointing out that a "treaty" between Russia and Georgia provided for visa-based exchanges.

On 5 March 2001 the district court accepted certain amendments to the hearing record, which reflected Ms Tatishvili's argument that the provisions of municipal-tenancy could not be applied to her situation because the flat was privately owned and the flat-owner had no objection to her registration.

On 19 March 2001 Ms Tatishivili appealed, complaining, in particular, that she had never held Georgian citizen-

ship, making a visa requirement inappropriate in her case, and that, in any event, residence regulations applied uniformly to everyone lawfully residing within the Russian Federation irrespective of their citizenship.

Ultimately, Moscow City Court reiterated the district court's findings and, not addressing the appeal arguments, dismissed the applicant's claim on account of her failure to prove her Russian citizenship or to provide documents confirming her right to move into the flat in question.

Not being formally registered a resident prevented Ms Tatishvili from exercising fundamental social rights, by, for example, hindering her access to medical assistance, social security, an old-age pension, and preventing her from possessing property and marrying.

The applicant complained about the domestic authorities' arbitrary refusal to certify her residence at a chosen address, substantially complicating her daily life. she also complained about the unfair judicial proceedings concerning her claim and, in particular, that the courts had not applied domestic laws correctly.

Decision of the Court

Article 2 of Protocol No. 4

The Court considered that there had been interference with Ms Tatishvili's right to liberty of movement, as the law required her to have her place of residence registered by the police within three days of moving in and, that being refused, she had been exposed to administrative penalties and fines. It also prevented Ms Tatishvili from exercising certain fundamental social rights.

The Government's justification for that interference was based on Ms Tatishvili's presence in Russia being unlawful, and the fact that she had not produced a complete set of documents, also an arbitrary argument because the applicant had submitted over and above the required documents. Indeed, the Court found that it had never been specified which documents exactly were missing and that, if the application had been incomplete, it had been up to the authorities to provide clear instructions on how to rectify it.

The Court also paid special attention to the interpretation in 1998 by the Russian Federation Constitutional Court of the regulations for registering residence, in which it found that it would be unconstitutional if the registration authority did not certify a person's request for living at a given address, noting, in particular, that that authority should not have discretion to review submitted documents' authenticity or their compliance with Russian laws. The Court observed, however, that the binding interpretation of the Constitutional Court appeared to have been disregarded by the domestic authorities in the applicant's case.

In those circumstances, the Court found that the interference with Ms Tatishvili's freedom to choose her residence was not "in accordance with law" and held that there had been a violation of Article 2 of Protocol No. 4.

Article 6 §1

The Court reiterated that Article 6 §1 obliged courts to give reasons for their judgments.

The Court observed that Ms Tatishvili's complaint was dismissed, (i) firstly, because the district court considered that her right to move into the flat was in dispute even though the flat-owner's consent was proved and acknowledged by that same court, and (ii) secondly, because the domestic courts relied on a "treaty" between Russia and Georgia on visa requirements, which didn't actually exist, the visa requirement for Georgian citizens, in fact, not having been introduced by a treaty. Furthermore, the Court found it inconsistent that the district court relied on a "treaty" governing the conditions of entry and residence of Georgian citizens, when it had not been proved that the applicant was indeed Georgian. No evidence to that effect had been produced either in the domestic proceedings or before the Court. The Court further noted that Moscow City Court had endorsed the District Court's findings in a summary fashion, without

Court/European Commission of Human Rights case-law cited in the judgment
Bolat v. Russia, Denizci and others v. Cyprus, Gartukayev v. Russia, Hirvisaari v. Finland, Ruiz Torija v. Spain, Suominen v. Finland, Timishev v. Russia, Tsonev v. Bulgaria

reviewing the arguments in the applicant's statement of appeal.

Accordingly, the Court considered Dorogomilovskiy District Court's reasoning and the Moscow City Court's subsequent endorsement of it on appeal without giving proper reasons of its own, to be manifestly deficient, and that the requirements of a fair trial had not been fulfilled.

The Court awarded the applicant €15 as compensation for an administrative fine she had to pay, €3 000 in respect of non-pecuniary damage and certain sums for costs and expenses.

Note

The Court reiterated that it has found the requirement to report to the police every time applicants wished to change their place of residence or visit family friends to disclose an interference with their right to liberty of movement. It recalled that the Parliamentary Assembly of the Council of Europe expressed concern over this.

Oferta Plus SRL v. Moldova

Judgment of 19.12.2006

Concerns:
Non-enforcement of final judgment and abusive quashing thereof.
Attempts to discourage the applicant from pursuing its application before the European Court of Human Rights.
Lack of confidentiality of lawyer-client communications in the detention centre
Conclusions of the Court: violations of the three Articles

Right to a fair trial (Article 6), Right of individual petition (Article 34), Protection of property (Article 1 of Protocol No 1)

Facts and complaints

The applicant company initiated proceedings against the Ministry of Finance when it refused to pay on a treasury bond issued in its favour. In 1999 a court found in favour of the applicant company and confirmed its right to be paid MDL 20 million. Despite enforcement proceedings the applicant company only received MDL 5 million in 2004. In April that year the applicant company informed the Government Agent about its application to the Court. In June 2004 the Ministry of Finance initiated revision proceedings against the 1999 judgment. The Supreme Court eventually quashed it and the re-opened proceedings ended with a judgment in favour of the Government. Later in 2004 criminal proceedings were initiated against the applicant company's chief executive officer ("the CEO") on charges of alleged embezzlement, but these were discontinued one year later.

In February 2006 the Court communicated the applicant company's case to the respondent Government. In April 2006 the criminal proceedings against the CEO were re-opened and he was formally indicted for alleged misappropriation of MDL 5 million and for alleged attempted misappropriation of a further MDL 15 million. He was arrested and placed in custody in August 2006. He appealed against his detention, claiming that the criminal proceedings against him were a means of pressuring the company to abandon its application before the Court. His appeal was dismissed.

In the meantime, the applicant company's counsel before the Court applied to the Centre for Fighting Economic Crimes and Corruption ("CFECC") to visit the CEO in detention. He asked that the meeting between them take place without a glass partition separating them and submitted that both he and the CEO had reasons to believe that conversations through that partition in the CFECC meeting room were being intercepted. The request having been refused, the CEO declined to discuss any matters relating to pecuniary damage and asked his lawyer to do likewise because their conversation would have related to the whereabouts of the company's accounting documents which he had refused to disclose to the investigators.

Decision of the Court

Article 6

The non-enforcement together with the subsequent abusive quashing of the judgment of 1999 meant that the applicant company was deprived of most of the benefits of a judgment which had been enforceable for a period of almost four years. The proceedings failed to meet the requirement of a fair trial.

Article 1 of Protocol No. 1

The impossibility for the applicant company to obtain execution of the judgment and the subsequent abusive quashing of that judgment constituted an interference with the company's right to the peaceful enjoyment of its possessions and no fair balance was struck between the applicant's interests and the other interests involved.

Article 34

The criminal charges against the applicant company's chief executive and his placement in custody

The criminal charges appeared to be inconsistent with previous factual findings of civil courts. He had been charged for the first time after the Government had been informed about the application to the Court and for the second time after the case had been communicated to the Government. Based on the materials before the Court, there were sufficiently strong grounds to infer that those criminal proceedings had been aimed at discouraging the company from pursuing its case before the Court.

The alleged lack of confidentiality of lawyer-client communications in the detention centre

It had been a matter of serious concern for the entire community of lawyers in Moldova for a long time. The applicant company's CEO and its counsel before the Court could reasonably have had grounds to fear that their conversation in the CFECC lawyer-client meeting room was not confidential. This affected the applicant's right to petition.

According to the applicant company, communication between its CEO and counsel before the Court was hampered to such an extent that the company was unable so far to communicate its claims for pecuniary damage.

Court/European Commission of Human Rights case-law cited in the judgment
Aksoy v. Turkey, Artico v. Italy, Brumarescu v. Romania, Burdov v. Russia, Campbell v. the United Kingdom, Immobiliare Saffi v. Italy, Istrate v. Moldova, Kurt v. Turkey, Popov v. Moldova, Prodan v. Moldova, Rosca v. Moldova, Ruiz Torija v. Spain, Sarban v. Moldova, Waite and Kennedy v. Germany

Judgment of 2.11.2006
Concerns:
Lack of environmental study and failure to suspend operation of a plant generating toxic emissions
Conclusions of the Court: violation

Giacomelli v. Italy

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

Facts and complaints

The applicant has lived since 1950 in a house near a plant for the storage and treatment of "special waste" classified as either hazardous or non-hazardous. The plant began operating in 1982. The applicant brought several sets of proceedings for judicial review of the operating licences awarded by the regional council in respect of the plant. In the course of environmental-impact assessment procedures the Ministry of the Environment found in 2000 and 2001 that there was a health risk for those living near the plant and that its operation was incompatible with environmental regulations. Other competent authorities reached similar conclusions. In December 2002 the district council temporarily rehoused the applicant's family pending the outcome of the judicial dispute with the firm operating the plant. In 2003, on an application by the applicant, the regional administrative court held that the decision to renew the plant's operating licence without having carried out any environmental-impact assessment was unlawful and should be set aside. It also ordered the suspension of the plant's operation. However, its decision was not implemented. In 2004 the Ministry of the Environment gave an opinion in favour of the plant's continued operation provided that it complied with the requirements laid down by the regional council to improve the conditions for operating and monitoring it.

The applicant complained that the persistent noise and harmful emissions from the plant entailed severe disturbance to her environment and a permanent risk to her health and home.

Decision of the Court

Not until fourteen years after the plant had begun operating and seven years after it had commenced its activities involving the detoxification of industrial waste had it been asked to undergo an environmental-impact assessment, as required by law. The State authorities had therefore failed to comply with the relevant domestic legislation and, moreover, had refused to enforce judicial decisions in which the activities in issue had been found to be unlawful. Accordingly, the procedural machinery provided for

Court/European Commission of Human Rights case-law cited in the judgment
Belziuk v. Poland, Buckley v. the United Kingdom, Guerra and others v. Italy, Hatton and others v. the United Kingdom, Immobiliare Saffi v. Italy, López Ostra v. Spain, McGinley and Egan v. the United Kingdom, McMichael v. the United Kingdom, Öcalan v. Turkey, Powell and Rayner v. the United Kingdom, Sardinas Albo v. Italy, Serre v. France, Surugiu v. Romania, Taskin and others v. Turkey

in domestic law for the protection of individual rights had been deprived of useful effect for a very long period. Even supposing that, after 2004, the necessary steps had been taken to protect the applicant's rights, the fact remained that for several years her right to respect for her home had been seriously impaired by the dangerous activities carried out at the plant built 30 metres away from her house. The State had therefore not succeeded in striking a fair balance between the interest of the community in having a plant for the treatment of toxic industrial waste and the applicant's effective enjoyment of her right to respect for her home and her private and family life.

The Court awarded the applicant €12 000 for non-pecuniary damage and certain sums for costs and expenses.

Note

The Court recalled that breaches of the right to respect for the home are not confined to concrete or physical breaches, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious breach may result in the breach of a person's right to respect for his home if it prevents him from enjoying the amenities of his home.The Court already stated that severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.

Leempoel & S.A. Ed. Ciné Revue v. Belgium

Judgment of 9.11.2006
Concerns:
Issue of magazine withdrawn from sale and its further distribution prohibited as it had disclosed documents classified as secret in the context of a parliamentary inquiry
Conclusions of the Court: non-violation

Freedom of expression (Article 10)

Facts and complaints

The case concerned the withdrawal from sale and ban on distribution of an issue of the magazine Ciné Télé Revue which had published notes prepared by an investigating judge for a hearing before a parliamentary commission of inquiry.

The applicants complained that the ruling against them infringed Article 10 of the Convention. They further maintained that Article 25 of the Belgian Constitution, which forbids censorship of the press, afforded a greater degree of protection than Article 10 of the Convention and that its application should accordingly have been safeguarded by Article 53 (safeguard for existing human rights) of the Convention.

Decision of the Court

The applicants' conviction constituted interference with the exercise of their right to freedom of expression, that interference being prescribed by law and pursuing the legitimate aim of the protection of the reputation or rights of others. The Belgian courts had justified the withdrawal from circulation of the offending magazine on the ground that it interfered with Judge D.'s defence rights and with her right to respect for her private life, but also on the basis that the published documents were protected by the confidentiality of the parliamentary inquiry.

The Court found that it had not been unreasonable or arbitrary to consider that Judge D.'s defence rights might be affected. It observed, in particular, that parliamentary commissions of inquiry in Belgium had far-reaching powers, and that testimony given to a commission could have repercussions for the position of the person appearing before it.

The offending article dealt with a subject of public interest which had been widely discussed. The proceedings of the "Dutroux Commission" had contributed to a public debate which was well developed at the material time and was focused on the conduct of the Belgian authorities, and of the judicial authori-

Court/European Commission of Human Rights case-law cited in the judgment
Association Ekin v. France, Bladet Tromso and Stensaas v. Norway, Botta v. Italy, Campbell v. United Kingdom, Campmany y Diez de Revenga and Lopez Galiacho Perona v. Spain, Cantoni v. France,Chauvy and others v. France, Colombani and others v. France, Editions Plon v. France, Erdem v. Germany, Ernst and others v. Belgium, Feldek v. Slovakia, Fressoz and Roire v. France, Gaweda v. Poland, Goodwin v. United Kingdom, Halford v. United Kingdom, Handyside v. United Kingdom, Jaime Campmany and Lopez Galiacho Perona v. Spain, Julio Bou Gibert and El Hogar Y La Moda J.A. v. Spain, Karademirci and others v. Turkey, Keegan v. Ireland, Krone Verlag GmbH & Co KG v. Austria, Lehideux and Isorni v. France, Lingens v. Austria, McVicar v. United Kingdom, Müller v. Switzerland, New Verlags GmbH & Co. KG v. Austria, Perna v. Italy, Rekvényi v. Hungary, Saunders v. United Kingdom, Société Prisma Presse v. France, Steel and Morris v. United Kingdom, Stjerna v. Finland, Stubbings and others v. United Kingdom, Sürek (No. 1) v. Turkey, Tammer v. Estonia, Verliere v. Switzerland, Von Hannover v. Germany, X and Y v. Netherlands, Zana v. Turkey

ties in particular, with regard to the investigations into the disappearance of children. However, it could not be considered that the article had served the public interest, not only because of its content but also because the commission's hearings had been broadcast live and the public at large had thus been fully informed by other means.

Lastly, as regards the interference with private life, the Court found that the article in question contained criticism that was especially directed against the judge's character. In that connection the Court observed in particular that the offending article included a copy of correspondence which was private, in the strictest sense, and which could not be regarded as contributing in any way to a debate of general interest to society. The applicants had not provided any serious grounds to justify their decision to publish this correspondence in full. In addition, the use of the file handed over to the commission of inquiry and the comments made in the article had revealed the very essence of the "system of defence" that the judge had allegedly adopted or could have adopted before the commission. The adoption of such a "system of defence", however, belonged to the "inner circle" of a person's private life and the confidentiality of such personal information had to be guaranteed and protected against any intrusion.

In those circumstances, the Court found that the article in question and its distribution could not be regarded as having contributed to any debate of general interest to society, and considered that the grounds given by the Belgian courts to justify the applicants' conviction were relevant and sufficient. Noting that the interference with the applicants' right to freedom of expression was proportionate to the aim pursued, the Court considered that such interference could be seen as "necessary in a democratic society".

Note

The Court recalled that a right of the public to be informed does exist; it is an essential right in a democratic society, which can even, in certain circumstances, concern aspects of the private life of public persons, inter alia political personalities. However, publications aiming only at satisfying the curiosity of a certain public about details of a person's private life cannot be considered as contributing to a debate of general interest for society.

Judgment of 14.12.2006
Concerns:
Editor-in-chief convicted of defamation
Conclusions of the Court: violation

Karman v. Russia

Freedom of expression (Article 10)

Facts and complaints

The applicant is the director-general and editor-in-chief of the newspaper Gorodskiye Vesti. In 1994 he published an article in which he qualified Mr Terentyev, a public figure, as "the local neo-fascist".

Mr Terentyev successfully brought proceedings for defamation against the applicant and his newspaper.

The applicant appealed, supported by the district prosecutor who submitted, in particular, that the regional prosecutor had opened a criminal investigation on charges of incitement to ethnic hatred by Mr Terentiev's newspaper, Kolokol.

The applicant also asked the court to examine ten issues of Kolokol and to obtain an expert report and requested that the proceedings be adjourned pending investigation of the criminal case against Mr Terentyev. His request was refused.

The proceedings against Mr Terentyev were later discontinued as Mr Terentyev's actions were found to have lacked the constituent elements of a criminal offence.

Later the district court, in a new judgment, found that being designated a "neo-fascist" had defamed Mr Terentyev as a public figure and the son of the Second World War veteran. As Mr Terentyev was not a member of any neo-fascist party and the criminal charge of incitement to ethnic hatred had not been maintained against him, the court held Mr Karman responsible for having failed to prove the truthfulness of that expression.

Decision of the Court

The subject-matter of the article at issue was part of a political debate on a matter

of general and public concern, and very pressing reasons would need to be given to justify any restriction.

The Court could not subscribe to the narrow definition of the term "neo-fascist" adopted by the Russian courts, as solely designating membership of a neo-fascist party. The Court considered that the term "local neo-fascist", should be understood in the sense given to it by the applicant, namely describing a general political affiliation with the ideology of racial distinctions and anti-Semitism.

The Court reiterated that it had constantly held that, while the existence of facts could be demonstrated, the truth of value judgments was not susceptible of proof. The requirement to prove the truth of a value judgment was impossible to fulfil and infringed freedom of opinion itself. Nevertheless, even a value-judgment without any factual basis to support it might be excessive. The Court however noted that the applicant offered documentary evidence, including the past issues of the Kolokol newspaper published by Mr Terentyev and several reports by independent experts. Having examined those publications, the experts unanimously found that they were anti-Semitic in nature and that their ideals were similar to those of National Socialism.

The domestic courts, however, refused to consider that evidence and relied instead on a study carried out in the criminal proceedings against Mr Terentyev on the charge of incitement to ethnic hatred. The Court was struck by the inconsistent approach of the Russian courts, on the one hand, requiring proof of a statement, and, on the other hand, refusing to consider the readily available evidence. It further recalled that the degree of precision for establishing the well-foundedness of a criminal charge by a competent court could hardly be compared to that which ought to be observed by a journalist when expressing his opinion on a matter of public concern, for the standards applied when assessing someone's political opinions in terms of morality were quite different from those required for establishing an offence under criminal law.

In the light of those considerations and taking into account the role of a journalist and the press to impart information and ideas on matters of public concern, even those that might offend, shock or disturb, the Court found that the use of the term "local neofascist" did not exceed the acceptable limits of criticism.

The Court found that the standards applied by the Russian courts were not compatible with the principles embodied in Article 10 since they did not adduce "sufficient" reasons justifying the interference at issue. It therefore considered that the interference was disproportionate to the aim pursued and was not necessary in a democratic society and held unanimously that there had been a violation of Article 10

The Court awarded the applicant €1 000 for non-pecuniary damage.

Court/European Commission of Human Rights case-law cited in the judgment
Frydlender v. France, Garcia Ruiz v. Spain

Radio Twist, A.S. v. Slovakia

Freedom of expression (Article 10)

Judgment of 19.12.2006
Concerns:
Radio station condemned for having broadcast an unlawfully obtained telephone conversation between government officials
Conclusions of the Court: violation

Facts and complaints

At the relevant time the applicant company broadcast on five frequencies in Slovakia and had a daily audience of more than 400,000 listeners. In 1996, the applicant company broadcast, in the news programme "Journal", the recording of a telephone conversation between the State Secretary at the Ministry of Justice and the Deputy Prime Minister which they had received from an unknown source. The recording was accompanied by a commentary by the applicant company's commentator. The dialogue related to the power struggle in June 1996 between two groups each with a political background which had an interest in the privatisation of a major national insurance provider. The Secretary at the Ministry of Justice subsequently filed a civil action against the applicant company for protection of his personal integrity. The District Court ordered the applicant company to offer the plaintiff

a written apology and to broadcast that apology within fifteen days. The applicant company was further ordered to pay compensation for damage of a non-pecuniary nature as well as to reimburse his legal costs. The Regional Court upheld that judgment.

Decision of the Court

The Court recalled that there was little scope in the Convention for restrictions on political speech or on debate on questions of public interest. Moreover, the limits of acceptable criticism were wider as regards a public figure, such as a politician, than as regards a private individual. The Court could not accept the domestic courts' argument that the telephone conversation was private in nature and, therefore could not be broadcast. Questions concerning management and privatisation of State-owned enterprises undoubtedly and by definition represented a matter of general interest. This was even more so in periods of political and economic transition.

The domestic courts attached decisive importance to the fact that the broadcast audio recording had been obtained by unlawful means. They concluded that the fact that such a recording had been broadcast constituted of itself a violation of the plaintiff's right to protection of his personal integrity. The Court noted that at no stage was it alleged that the applicant company or its employees or agents were in any way liable for the recording or that its journalists transgressed the criminal law when obtaining or broadcasting it. It should further be noted that it was not established before the domestic courts that the recording contained any untrue or distorted information or that the information and ideas expressed in connection with it by the applicant company's commentator occasioned as such any particular harm to the plaintiff's personal integrity and reputation. The Court was moreover not convinced that the mere fact that the recording had been obtained by a third person contrary to the law could deprive the applicant company which broadcast it of the protection of Article 10. Finally, it observed that there was no indication that the journalists of the applicant company acted in bad faith or that they pursued any objective other than reporting on matters which they felt obliged to make available to the public.

The interference with the applicant company's right to impart information therefore neither corresponded to a pressing social need, nor was it proportionate to the legitimate aim pursued. It thus was not "necessary in a democratic society".

Note

The Court recalls that the limits of acceptable criticism are wider as regards a public figure, such as a politician, than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his words and deeds by journalists and the public at large, and he must consequently display a greater degree of tolerance.

Court/European Commission of Human Rights case-law cited in the judgment
Barfod v. Denmark, Barthold v. Germany, Bladet Tromso and Stensaas v. Norway , Ceylan v. Turkey, Goodwin v. the United Kingdom, Incal v. Turkey, Janowski v. Poland, Jersild v. Denmark, Nilsen and Johnsen v. Norway, Perna v. Italy, Sunday Times (No. 1) v. the United Kingdom, Sürek (No. 1) v. Turkey

Judgment of 9.01.2007
Concerns:
Newspaper closure without detailed reason or identification of which published phrases threatened national security and territorial integrity
Conclusions of the Court: violation

Kommersant Moldovy v. Moldova

Freedom of expression (Article 10)

Facts and complaints

Between June and September 2001 the applicant published a series of articles criticising the authorities of Moldova for their actions in respect of the breakaway Moldavian Republic of Transdniestria (MRT) and reproducing harsh criticism of the Moldovan Government by certain MRT and Russian leaders.

In November 2001 the Economic Court of Moldova ordered the closure of the newspaper. The court considered that the articles had: "exceeded the limits of publicity set out in Article 4 of the Press Act and endangered the territorial integrity of Moldova, national security and public safety and created the potential for disorder and crime, violating Article 32 of the Constitution". It also stated that systematic violations of the Press Act could be sanctioned by the closure of a newspaper under Article 7 of the same Act.

The court did not specify which expression or phrase constituted a threat. It

maintained, however, that the articles did not represent a fair summary of public statements by public authorities and were therefore liable under Article 27 of the Press Act. The applicant was ordered to pay court fees.

The newspaper was subsequently re-registered under the name "Kommersant-Plus".

Decision of the Court

The Court observed that in their decisions the domestic courts did not discuss the necessity of the interference to the applicant's rights they imposed. It noted, in particular, that they did not specify which elements of the applicant's articles were problematic and in what way they endangered national security and the territorial integrity of the country or defamed the President and the country. The only analysis made was limited to the issue of whether the articles could be considered as reproductions in good faith of public statements for which the applicant could not be held responsible in accordance with domestic law.

The Court considered that the domestic courts did not give relevant and sufficient reasons to justify the interference in question and was not satisfied that they "applied standards which were in conformity with the principles embodied in Article 10" or that they "based themselves on an acceptable assessment of the relevant facts". It therefore found unanimously that there had been a violation of Article 10.

The Court awarded the applicant €8 000 in respect of pecuniary damage and certain sums for costs and expenses.

Court/European Commission of Human Rights case-law cited in the judgment
Amihalachioaie v. Moldova, Bladet Tromso and Stensaas v. Norway, Busuioc v. Moldova, De Haes and Gijsels v. Belgium, Fressoz and Roire v. France, Goodwin v. United Kingdom, Han v. Turkey, Ilascu and others v. Moldova and Russia, Jersild v. Denmark, Lingens v. Austria, Observer and Guardian v. United Kingdom, Sunday Times (n° 1) v. United Kingdom, Thorgeir Thorgeirson v. Iceland

Ramazanova and others v. Azerbaijan

Judgment of 1.02.2007
Concerns:
Repeated delays by authorities in registering an association
Conclusions of the Court:
violation

Freedom of assembly and association (Article 11)

Facts and complaints

On 4 April 2001 the applicants founded a public association, a non-profit-making organisation aimed at providing aid to the homeless and protecting their interests. On 9 April 2001 the applicants filed a request for the association's state registration with the Ministry of Justice ("the Ministry"), with a view to acquiring the status of a legal entity.

On 18 May 2001 the Ministry returned the registration documents to the applicants without issuing a state registration certificate or an official refusal to register the association, noting that the association's charter did not comply with Article 6 of the Law On Non-Governmental Organisations, because it did not include a provision on the territorial area of the association's activity. Between June 2001 and July 2002 the applicants submitted a further three registration requests, all of which were returned to the applicants with rectifications to be made to the association's charter in order for it to comply with the requirements of domestic law. On an unspecified date after January 2003, having redrafted the charter again, the applicants' submitted their fifth registration request.

In the meantime, the applicants applied four times to Yasamal District Court: (i) firstly complaining that the Ministry "avoided" registering their organisation and asking the court to oblige the Ministry to register it; (ii) secondly claiming that the Ministry committed repeated procedural violations and unlawfully delayed the examination of their registration request; (iii) thirdly asking the court to provide legal interpretation as to whether the Ministry had a right under domestic law to repeatedly delay and decline registration, and to forward the matter concerning the Ministry's actions to the Constitutional Court; and, (iv) lastly, complaining about the Ministry's refusal in January 2003 to register their association.

The first lawsuit was dismissed, the second declared inadmissible and the fourth was not admitted because the applicants' appeals in earlier lawsuits were still pending before the higher courts. The Supreme Court upheld this

decision. The applicants' additional cassation appeal with the President of the Supreme Court was also rejected. The applicants' third lawsuit complaining about the domestic courts' judgments was admitted for examination by the Constitutional Court and, on 11 May 2004, it was found that all the judgments and decisions of Yasamal District Court, the Court of Appeal and the Supreme Court were in breach of the judicial guarantees for protection of human rights and freedoms, as guaranteed by the Constitution. The Constitutional Court hence quashed all the domestic judgments and decisions relating to the applicants' case and remitted the case to the courts of general jurisdiction for a new examination.

Finally, on 18 February 2005 the Ministry, in response to the applicants' fifth request, registered the association and issued it with a state registration certificate.

On the same day, Yasamal District Court dismissed the applicants' complaint about the Ministry's unlawful actions and claim for compensation. This judgment was later upheld by the Court of Appeal and by the Supreme Court.

A further lawsuit by the applicants seeking acknowledgment of a breach in domestic law by the Ministry, rejected at first instance, was accepted on appeal, the Ministry's repeated delays in responding to the applicants' registration requests having been found to be in breach of Article 9 of the Law on State Registration of Legal Entities. Three of the four applicants were awarded collectively 800 New Azerbaijani mantas (approximately €705) as compensation for non-pecuniary damage.

Decision of the Court

The Court took note of the Government's argument that, under the domestic law applicable at that time, the return of foundation documents for rectification did not constitute a formal and final refusal to register the association or a total ban on its activities. However, the Court observed that, given that the applicants rectified the deficiencies noted in the Ministry's letters and resubmitted registration requests in a prompt manner, it could not be disputed that the registration procedure was substantially delayed (almost four years between the date of the first registration request and the final registration) by the Ministry of Justice's repeated failure to respond to the applicants' registration requests within the time-limits set by the domestic law on state registration. the Court considered that the repeated failure by the Ministry to issue a definitive decision did in fact amount to a refusal.

Moreover, the Court noted that domestic law effectively restricted the association's ability to function properly as a charity because, not having the status of a legal entity, it could not receive any "grants" or financial donations, one of the main sources of financing for non-governmental organisations in Azerbaijan.

As to whether the interference was justified, the Court found that there had been no basis in domestic law for such significant delays and did not accept as reasonable the Government's excuse that the delays were caused by the Ministry's alleged heavy workload. The Court considered that it was the duty of the Contracting State to organise its domestic state-registration system and take necessary measures to allow the relevant authorities to comply with the time-limits imposed by its own law.

Furthermore, seeing as domestic law did not provide for automatic registration in the event that the Ministry failed to take any action in a timely manner nor did it specify a limit on the number of times the Ministry could return documents without issuing a final decision, the Court considered that domestic law did not afford the applicants sufficient legal protection against the arbitrary actions of the Ministry.

The Court concluded that the significant delays in the association's state registration amounted to an interference by the authorities with the applicants' exercise of their right to freedom of associa-

Court/European Commission of Human Rights case-law cited in the judgment
Adali cv. Turkey, Amuur v. France, APEH Üldözötteinek Szövetsége and others v. Hungary, Assadov and others v. Azerbaijan, Babayev v. Azerbaijan, Chassagnou and others v. France, Dalban v. Romania, Gorzelik and others v. Poland, Hassan and Tchaouch v. Bulgaria, Kazimova v. Azerbaijan, Maestri v. Italy, Marckx v. Belgium, Martins Moreira v. Portugal, Rekvényi v. Hungary, Sidiropoulos and others v. Greece, Union Alimentaria Sanders S.A. v. Spain, Yolcu v. Turkey, Zimmermann and Steiner v. Switzerland

tion which was "not prescribed by law". Accordingly, the Court held that there had been a violation of Article 11.

The Court awarded the applicants a sum of €4 000 for non-pecuniary damage and certain sums for costs and expenses.

Note

The Court reiterated that the right for citizens to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, and that the way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned.

Intersplav v. Ukraine

Judgment of 9.01.2007
Concerns:
State withholding tax refund from applicant company
Conclusions of the Court: violation

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

Since 1998, the applicant has been complaining without success to the Lugansk Regional Tax Administration and the State Tax Administration about the failure of the Sverdlovsk Town Tax Administration to issue certificates for the VAT refunds on time. However, while recognising the existence of the State's debts to the applicant, the authorities found no fault with the Sverdlovsk Town Tax Administration. The applicant also instituted more than 140 sets of proceedings in the Lugansk Commercial Court against the Sverdlovsk Town Tax Administration and the State Treasury Department in order to receive compensation for the delayed refund of the VAT.

The applicant maintained that, as of 18 June 2004, the amount of the State debt to the company confirmed by court decisions was UAH 26 363 200 (around €4 119 250).

Decision of the Court

The Court considered that the interference with the applicant's possession was disproportionate. It found that the constant delays with VAT refund and compensation in conjunction with the lack of effective remedies to prevent or terminate such an administrative practice, as well as the state of uncertainty as to the time of return of its funds, upset the "fair balance" between the demands of the public interest and the protection of the right to peaceful enjoyment of possessions. In the Court's view, the applicant bore and continued to bear an individual and excessive burden. It therefore held that there had been a violation of Article 1 of Protocol No. 1.

It awarded the applicant €25 000 for pecuniary damage and certain sums for costs and expenses.

Court/European Commission of Human Rights case-law cited in the judgment
Beyeler v. Italy, Buffalo S.r.l. en liquidation v. Italy, Lithgow and others v. United Kingdom, Pélissier and Sassi v. France

Yumak and Sadak v. Turkey

Judgment of 30.01.2007
Concerns:
Requirement for political parties to obtain at least 10% of the vote in national elections in order to be represented in Parliament
Conclusions of the Court: non-violation

Right to free elections (Article 3 of Protocol No. 1)

Facts and complaints

In the parliamentary elections of 3 November 2002 the applicants stood as candidates for the political party DEHAP (Democratic People's Party) in the province of Sirnak. As a result of the ballot, DEHAP obtained approximately 45.95% of the vote (47 449 votes) in Sirnak province, but did not secure 10% of the vote nationally. The applicants were not elected, in accordance with section 33 of the Election of Members of Parliament Act (Law No. 2939), which states that "parties may not win seats unless they obtain, nationally, more than 10% of the votes validly cast". Consequently, of the three parliamentary seats allotted to Sirnak province, two were filled by a Party which obtained 14.05% of the vote (14 460 votes), and the third by an independent candidate who obtained 9.69% of the vote (9 914 votes).

Decision of the Court

The Court noted that the 10% threshold for obtaining seats in the Turkish parliament was laid down in section 33 of law No. 2839. It had been introduced well before the elections of 3 November 2002, so that the applicants could have fore-

seen that if their party did not cross the threshold they could not win any parliamentary seats, irrespective of the number of votes they obtained in their electoral constituency.

The Court accepted that the purpose of the measure was to avoid excessive parliamentary fragmentation and reinforce government stability, regard being had in particular to the period of instability which Turkey had been through in the 1970s.

As regards the proportionality of the measure, the Court observed that the Turkish electoral system, which had a high threshold without any corrective counterbalances, had produced, after the elections of 3 November 2002, the least representative parliament since the introduction of the multi-party system in 1946.

However, analysis of the results of parliamentary elections held since the adoption of the threshold showed that it could not as such block the emergence of political alternatives within society. Similarly, the Court noted with interest the Government's argument that the aim of the threshold was to give small parties the possibility of establishing themselves nationally and thus form part of a national political project.

Consequently, while noting that it was desirable for the threshold to be lowered and/or for corrective counterbalances to be introduced to ensure optimal representation of the various political tendencies without sacrificing the objective sought (the establishment of stable parliamentary majorities), the Court considered that it was important to leave the state concerned sufficient latitude. In that connection, it also attached importance to the fact that the electoral system was the subject of much debate within Turkish society and that numerous proposals of ways to correct the threshold's effects were being made both in parliament and among leading figures of civil society. What was more, as early as 1995 the Constitutional Court had stressed that the constitutional principles of fair representation and governmental stability necessarily had to be combined in such a way as to balance and complement each other.

That being so, the Court considered that Turkey had not overstepped its wide margin of appreciation with regard to Article 3 of Protocol No. 1, notwithstanding the high level of the threshold complained of.

Note

In a joint dissenting opinion, two judges considered that the electoral threshold – twice as high as the European average – and the lack of corrective counterbalances do not help to ensure "the free expression of the opinion of the people in the choice of the legislature". They took the view that in the present case the states' wide margin of appreciation was exceeded.

They recalled that the Parliamentary Assembly of the Council of Europe considered that threshold to be manifestly excessive, and invited Turkey,in Resolution 1380 (2004), to lower it.

Court/European Commission of Human Rights case-law cited in the judgment

Etienne Tete v. France, Federación nacionalista Canaria v. Spain, Hirst v. the United Kingdom (No. 2), Labita v. Italy , Marcel Fournier v. France, Mathieu-Mohin and Clerfayt v. Belgium, Matthews v. the United Kingdom, United Communist Party of Turkey and others v. Turkey, Podkolzina v. Latvia, Py v. France, Silvius Magnago and Südtiroler Volkspartei v. Italy

Solemn hearing of the European Court of Human Rights

on the occasion of the opening of the judicial year, Friday, 19 January 2007

Speech by Jean-Paul Costa

President of the European Court of Human Rights

Mr Chairman of the Committee of Ministers, Minister, Presidents, Excellencies, Monsieur le Préfet, Secretary General, Deputy Secretary General, Dear colleagues, Ladies and gentlemen,

I wish to thank you all, on behalf of the Court, for attending in such numbers today this official opening of the judicial year at the European Court of Human Rights. The presence of such a large audience, and the high offices held by its individual members, honour my colleagues and myself. They reflect the respect and esteem in which our Court is held, throughout Europe and even beyond our continent, and they encourage and reassure us at a delicate moment in its already fifty year-old history.

Special significance

Today's ceremony has special significance, first of all because it coincides with the departure of my predecessor, President Luzius Wildhaber, who reached at midnight last night the age-limit fixed for judges by the Convention which governs our institution.

To begin with, and I perform this duty with pleasure and sincerity, I wish to pay the homage he deserves to Luzius Wildhaber. He was elected judge in respect of Switzerland in 1991 and became the Court's president in 1998, thanks to the confidence placed in him by his peers, as expressed

by very comfortable majorities then and on two subsequent occasions. Luzius Wildhaber's accession to the presidency coincided with the entry into force of Protocol No. 11, which effected a thorough-going reform of our system. During his successive terms of office it has undergone an increase which some have described as exponential. The number of new applications has been multiplied by six in eight years, and is now running at around 40 000 per year. Thanks to the untiring efforts of the judges and Registry staff, and also to the additional resources provided to the Court by the member States of the Council of Europe, the Court has been able to cope, even though the current number of pending cases – nearly 90 000 – has reached a level beyond which growth threatens to become unmanageable. I will return to that point.

Competence and wisdom

Luzius Wildhaber has presided over and directed this Court with competence and wisdom, with firmness and humanity, with brio and efficiency. In particular, he has done everything he could, personally, and with no little success to make our institution better known among all national judicial systems and all State authorities, including those in the countries which have entered the European human rights protection system most recently. By his action he has considerably increased awareness throughout Europe of exactly what is at stake behind such protection. For that, and for many other aspects of his activity during his time in Strasbourg I wish to thank him and give him the credit which is his due. Luzius Wildhaber will leave behind him in history the memory not only of an eminent judge and jurist but also of a great president. I know, or rather am beginning to appreciate even more, that to succeed him is an honour and will not be an easy task.

Ladies and gentlemen, according to our tradition, this ceremony provides an opportunity to retrace the activity of the Court over the previous year. I will do that fairly briefly, in order to devote most of my remarks to the prospects for the future.

I know that statistics can be tedious. Therefore, I shall limit myself to giving you some figures in order to provide a picture of the considerable judicial activity carried out during the year 2006. More than 39 000 applications were registered or, to be more precise, were allocated to a decision body, in other words required a judicial decision. Nearly 30 000 were finally disposed of by a decision or a judgment. The difference shows an unfortunate "deficit", amounting to almost 10 000 applications. The number of pending cases, at the beginning of 2007, is practically 90 000, over 65 000 of which have been allocated to a decision body. A comparison with the year 2005 shows a growth in the overall number of new applications of 11%. The number of cases pending at the end of the year increased by 12%. Those figures are alarming, the more so because there is a persistent pattern of growth over the years, even if some progress has been made in reducing the deficit.

More resources on meritorious cases

Faced with such a situation, the Court, of course, has not remained inactive. In 2006 the number of cases terminated rose by 4%, but the number of judgments delivered increased by around 40%, reflecting the Court's policy of concentrating more resources on meritorious cases. In the last two years, the total number of terminated applications has risen by 40%, whilst, obviously, the financial and human resources provided to the Court, even if growing, have not been increased in anything like the same proportion.

In reality, our Court endeavours to increase continuously its efficiency, by rationalising and modernising its functioning. The Registry has carried out a restructuring of the divisions, and has started the implementation of some of the steps recommended by Lord Woolf of Barnes in his report made at the end of his management study of the Court in 2005. A specialised unit has been set up within the Registry in order to deal with the backlog, which consists of the oldest applications. Finally, on 1 April 2006 we established a fifth Section of the Court, the creation of which has reduced the number of Judges in each Section, and the number of Judges who are sitting as substitutes in each case, and has naturally increased the number of cases dealt with by every Judge. I should add that very significant efforts have been made by Judges and the staff in order to ensure that the Court is ready to operate within the context of Protocol No. 14 as soon as it enters into force. Those efforts have targeted the working methods and the Rules of Court. According to a provisional assessment, without any increase in resources, the application of Protocol No. 14 will enable the Court to increase its productivity by at least 25%. This already shows that, although it cannot suffice by itself, the Protocol is indispensable to us. I will come back to it later.

Activity of such intensity as regards the quantitative aspects of our work has not, I believe, diminished the quality of the judgments given by the Court. Even if, as with any court, some decisions may be criticised (and of course our judgments are not all unanimous), it seems to me that observers all concur that the quality and the impact of the rulings given in Strasbourg deserve respect. Some of our judgments, again in 2006, have settled new issues or concerned a wide range of member states.

Recent case-law

I am going to mention just a few examples of our recent case-law.

The case of *Sorensen and Rasmussen v. Denmark* gave the Court the opportunity of considering social rights. The Court held that clauses in employment contracts providing for a trade union monopoly, in other words clauses providing for a "closed shop", were in breach of the negative freedom of association, specifically applied to trade unions, violating Article 11 of the Convention.

In the case of *Giniewski v. France* the Court found a violation of freedom of expression, insofar as the author of an article in a daily newspaper had been convicted of defamation, even if the sanctions were very moderate. The article expressed the opinion that the doctrine of the Catholic Church on Judaism might have led to the contemporary anti-Semitism, thus indirectly resulting in the concentration camps.

In its judgment in *Sejdovic v. Italy*, the Court found to be contrary to the principles of a fair trial the fact that an accused person had been judged *in absentia*, although it had not been shown that he had been attempting to evade justice or had unequivocally waived his right to defend himself in person, no possibility having been offered to him to have a court decide again on the criminal charge against him.

In *Stec v. the United Kingdom*, after having considered that the creation of social allowances, even without contributions by the beneficiary, conferred a patrimonial interest falling within the ambit of Article 1 of Protocol No. 1, concerning protection of property, the Court found that the advantage given to women by the British legislation was not contrary to the prohibition of discrimination under Article 14, taken in conjunction with Protocol No. 1. In reaching that conclusion, the Court made reference in particular to a ruling by the

European Court of Justice, deeming it necessary to give "a specific weight to the highly persuasive value of the conclusion reached by the ECJ".

Like the earlier case of *Broniowski*, the case of *Hutten-Czapska v. Poland* gave the Court the occasion to deliver a pilot-judgment. This procedure, which in my opinion is hopeful for the future, consists of finding the existence of a systemic violation (in the instant case of Article 1 of Protocol No. 1), then of holding that the State, while retaining the choice of the means, must secure in its legal order a mechanism which will redress the systemic violation. In *Hutten-Czapska*, the problem concerned the rent-control system, and the operative paragraphs of the Court's judgment held that Poland had to maintain a fair balance between the interests of landlords and the general interests of the community, in accordance with the standards of protection of property rights under the Convention.

Finally, in *Jalloh v. Germany*, the Court – very divided in its votes – gave a judgment whereby it held that Article 3 had been breached. A public prosecutor had ordered that emetics be administered by a doctor to the applicant, suspected of having swallowed a tiny bag containing drugs. The effect of the medicine was that the applicant vomited, regurgitated the bag, and was eventually convicted of drug-trafficking. The Court found that the applicant had been subjected to inhuman and degrading treatment contrary to Article 3.

Making judicial co-operation a reality

Those examples, among many others which I could have mentioned, show that the huge quantity of cases that the Court must cope with does not prevent it from giving very important and carefully drafted rulings. Despite the absence of an *erga omnes* effect of its judgments, they influence judges and lawmakers in all states parties; they do contribute to harmonising European standards in the field of rights and freedom. In this respect, I would like to pay tribute to domestic courts, which apply more and more readily – and sometimes even anticipate – the Strasbourg case-law, thus making judicial co-operation a reality.

I now turn to what I regard as the essential question: What role does our Court play? What are its future prospects?

To my mind the European Court of Human Rights has a crucial place, through the fact that it exists, and thanks to its case-law, in the slow, gradual improvement in human rights protection. For me, the most important Convention Article is the first: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". The High Contracting Parties are the forty-six member states; but I hope that in the near future the European Union will also become a High Contracting Party. The fact that progress has broken down on the Treaty establishing a Constitution for Europe is a regrettable historical accident, but as a firm believer in the European ideal I am well aware that progress in European construction sometimes stalls or stands still. But as Galileo said about our planet, *eppur, si muove* – "yet it does turn", and so Europe keeps turning and always ends up moving forwards, and not only judicial Europe.

It is primarily for the member states of the Council of Europe to secure respect for the rights and freedoms of persons, whether nationals or aliens, within their jurisdiction for the purposes of Article 1, in the phrase which I have just cited. Might I be accused of optimism, of fastidiously ignoring brutal reality perhaps, if I say that on the whole, since the signature of the Convention in 1950, this obligation to respect human rights has been discharged more and more satisfactorily? Dictatorships have disappeared and given way to democratic regimes in the south of our continent; the Berlin Wall has fallen and the Iron Curtain was lifted, more than fifteen years ago already. Despite serious conflicts such as the war in the former Yugoslavia, the Kurdish and Chechen problems, despite terrorism, which as long ago as 1978 the Court described as a serious violation of human rights against which states have a duty to contend, in the long term and on the whole barbarism is in retreat, democracy is moving forwards, human rights are flourishing.

This process is largely due to the states themselves and their peoples. But, without forgetting the contribution of public opinion, which is more and more international, non-governmental organisations, the press and Bar associations, how can the essential contribution of our Court be denied? The Court did not spring into existence spontaneously; it was called into being by the Convention (and therefore by the states), whose Article 19 is the echo or mirror of Article 1 – "To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention …, there shall be set up a European Court of Human Rights".

Its judgments, whether dismissing an application or finding against a state, are authoritative and trace the demarcation line between what is tolerable and what is not. We – and my colleagues and I are proud of this – are the institution which has the duty and the power to cry

"stop!", and we do so by virtue of the solemn undertaking freely given by the states. I find it admirable, incidentally, that they have given such an undertaking, inasmuch as in doing so they are accepting that justice must take precedence over state interest.

Pascal said: "justice without force is powerless: force without justice is tyrannical", but he went on to say: "justice and force must therefore be brought together; and to that end let what is just be strong or let what is strong be just". It seems to me that the text signed in Rome on 3 November 1950, the Convention, constitutes a wager which I hesitate to call Pascalian, and it is this: to ensure, by abandoning sovereignty, that European justice in the field of human rights is strong, which means respected.

Justice has to be just

But before being strong, justice still has to be just. And I sometimes hear it said that our Court is not just, that its judgments are not legal but political. I myself have heard this accusation on the occasion of various official visits, and experience has taught me that when one explains the true state of affairs calmly the accusation tends to fade away – the accusers desist. I vigorously maintain my innocence, and I believe all my colleagues would also plead not guilty. In a world that is itself politicised as much as it is mediatised, the men and women who make up our Court give justice through their arduous but very honest labours, justice which is based on Law, which is not an exact science, and on fairness, which is an essentially subjective concept. I deny that they give political judgments, or that they practise I know not what double or triple standards, because that is quite simply untrue. Our judgments, as I have said, are open to criticism. We may make mistakes, but we do not give way to any kind of politicisation.

Lastly, I turn to the future of the Strasbourg Court. I note first of all that it is now universally known and respected, even far from the shores of Europe, "old Europe". But its future depends on its effectiveness. If it lacked effectiveness, it would lose its credibility, its moral and legal authority and ultimately its *raison d'être*. That effectiveness certainly depends on us, who are doing everything that ingeniousness and energy can accomplish to find pragmatic ways of cutting down our lengthening list. But it also depends on you. It depends on national courts and authorities, which are primarily responsible for application of the European Convention on Human Rights. The more remedies are applied at national level the less the flood of applications to Strasbourg will be justified, not to mention the indispensable prevention of violations by amending legislation and changing practices.

Let us not be under any illusions: the spring will not run dry anytime soon. But between a spring running dry and a tsunami there is plenty of room for the principle of subsidiarity to make effective progress.

The future of our Court also depends on you, the representatives of the states. I do not intend to speak here and now – for this is neither the time nor the place – of the budgetary and human resources which are indispensable for the Council of Europe and the Court alike, which are both, together – though I am sure there is no need to remind you of this – pillars of greater Europe, and of a still greater Europe. But I am thinking of Protocol No. 14, and in the longer term of the follow-up to the Wise Persons' report.

It was the member states who decided that Protocol No. 14 was needed. It followed on from the work of the Evaluation Group set up by the Rome Interministerial Conference as far back as November 2000, whose report was produced in September 2001. These initiatives formed part of a process that President Wildhaber called a "reform of the reform", because it rapidly became clear that Protocol No. 11 would no longer be sufficient to ensure the effectiveness of the system.

Only one name missing

Protocol No. 14 was drawn up as a result of intergovernmental work. It was finished and opened for signature as long ago as 13 May 2004. Since then the forty-six member states have signed it and forty-five have ratified it. Only one name is still missing, and that is all the more surprising because the highest authorities of the state in question have declared themselves in favour of our Court and its reinforcement. I will not repeat Cato's phrase *delenda est Carthago*, as it is not a question of destroying but of consolidating and building, but I will repeat – and go on repeating – "Protocol No. 14 must be brought into force". And the sooner the better. I firmly believe that this categorical imperative, as Kant might have called it, is also a decision based on practical reason, to mention another concept he discussed. And so I hope – I am sure – that reason will prevail.

Rapid ratification would be all the more logical because at the Third Council of Europe Summit, in May 2005 in Warsaw, the Heads of State and Government decided to set up a Committee of Wise Persons, charged with making proposals on the medium and long-term future of the Court and the European human rights protection system. The Committee's terms of reference even required the Wise Persons to examine in their report the initial

effects of the application of Protocol No. 14! But their report has already been produced, and was officially submitted, two days ago, by its chairman Mr Gil Carlos Rodriguez-Iglesias, former President of the Court of Justice of the European Communities, to the Committee of Ministers of the Council of Europe, and the Ministers' Deputies unanimously praised its quality and breadth. I myself thank the eleven Wise Persons for their work and their proposals, on which our Court will give its opinion. But at the risk of repeating myself I would point out that the Wise Persons' report presupposes Protocol No. 14; it is in no way a substitute for Protocol No. 14, still less a "Plan B" (if I may use such a term).

As you can see then, the Court is confronted with difficult problems, particularly in terms of managing its timetable, which are creating regrettable uncertainty, including uncertainty about the personal situation of my colleagues.

That being said, over and above these technical difficulties, which are soluble, especially if Protocol No. 14 quickly enters into force, it is the future of the system which is at stake. This system is based on a unique mechanism, namely direct access for 800 million people to an international court charged with ensuring as a last resort the protection of their most fundamental rights.

I personally am in favour of the right of individual petition, for which a hard battle had to be fought, and am therefore in favour of retaining it.

But let us not shrink from the truth. I have laid too much emphasis in the past on the principle of reality, looking beyond appearances, not to realise now that, without far-reaching reforms – some would say radical reforms – the flood of applications reaching a drowning court threatens to kill off individual petition *de facto*. In that case, individual petition will become a kind of catoblepas, the animal which, according to ancient fable, used to feed on its own flesh!

In 2006 the Court gave more than 1 500 judgments on the merits, which is almost twice as many in a single year as all the judgments delivered by the former Court in nearly forty years, from 1960 to 1998! But that high number must not hide from view the fact that nearly 95% of adjudications in 2006 took the form not of judgments on the merits but of decisions in which the Court ruled applications inadmissible or struck them out of its list. Does it redound to the glory of a court which has high ambitions and heavy responsibilities to dismiss so many applications as being entirely without foundation? Does ruling on the merits of only one out of every twenty complaints constitute effective defence of human rights? As things stand at present, our Court cannot do otherwise. Let us all strive to make sure that in the future things will be different. And let us start by giving the instruments we need the requisite legal force for them to be able to produce their positive effects.

Ladies and gentlemen, I know that I have spoken at some length. But since January is the month for good wishes, allow me, before I conclude, first to present to all of you on behalf of all my colleagues and myself my best wishes for 2007, and second to express the fervent hope that the greatest system for the protection of rights and freedoms which exists in the world can find a new lease of life and emerge from its present difficulties – with your assistance, I repeat – composed and strengthened.

One of the slogans in May 1968 in France was: "Be realistic, demand the impossible!" It is, on the contrary, because I believe it is possible that I consider my wish to be realistic.

Thank you for your attention.

Speech by Luzius Wildhaber

Former President of the European Court of Human Rights

Mr President of the Committee of Ministers, Ministers, Presidents, your Excellencies, Mr Secretary General, dear colleagues and friends, ladies and gentlemen,

I am here because the time has come to say "au revoir" and to thank you from the bottom of my heart for your collegiality, your faithfulness and your friendship.

A passionately interesting job

It has been my immense privilege to preside over the unique institution which is the European Court of Human Rights for over eight years. A privilege not only because it is a passionately interesting job, because the variety, diversity and richness of the cases that reach us is fantastic, because I have had the pleasure of working in a richly diverse multicultural environment with congenial, committed and enthusiastic colleagues, but above all because of what this Court represents for hundreds of millions of Europeans and beyond. The Court is often described as the jewel in the Council of Europe's crown, but it is more than that. It is the symbol and

indeed the practical expression of an ideal, an aspiration for a society in which the marriage of effective democracy and the rule of law provides the basis for political stability and economic prosperity, while allowing the self-fulfilment of individuals. The European Convention on Human Rights offers a model for an international community linked by respect for common standards and their collective enforcement. It is the legacy of the twentieth century with its battlefields and its camps to the twenty-first century with its new challenges and fears. The rights and freedoms which it guarantees are both timeless and universal.

Involvement of national judges

I therefore believe that it would be hard to overestimate the importance of this Court. But the system set up by the European Convention on Human Rights is not confined to the work of one body. Its effectiveness depends necessarily on the active participation of the other branches of the Council of Europe and on the Governments of the member states working together in the Committee of Ministers. More than that, it also and above all depends on the active and positive participation of the national authorities, particularly the judicial authorities, many of whom are represented here today. That is a message that I have repeated throughout my term of office and I have had the great privilege and pleasure of visiting practically all of the national supreme and constitutional courts who are our partners in this system. My colleagues and I have advocated a continuous dialogue between these courts and Strasbourg and I am delighted to see that today's seminar was so well attended. This shows the high level of interest and involvement of national judges and frankly, this is how it should be. It is your Convention as much as it is ours – it is also your heritage to preserve and nurture and to turn into a living reality which will help and profit your citizens and inhabitants.

Together we have undertaken and accomplished much during these last eight years, and the Court is now firmly established on the map of Europe. Despite certain initial difficulties we managed to merge the former Commission with the former Court. We have fought the good fight against what Lord Woolf of Barnes called an eightfold rise in the number of cases since 1998, and have come off quite well. I firmly believe, in fact, that we have acquitted ourselves very well. We have constantly striven to rationalise our working methods and reorganise our priorities, and thus raise our productivity, but the quality of our judgments has not suffered as a result. It is broadly recognised, likewise, that our Court is well-managed and has a good working atmosphere.

Our case-law, which has always rejected a sterile positivism, preferring to adhere to the doctrine of the living instrument, is a beacon and a symbol visible from well beyond the frontiers of Europe. As I have already mentioned, we have maintained a living dialogue with our colleagues in the national supreme and constitutional courts and in other international courts, and my visits to those courts, almost always in the company of the national judge, have been a priority for me. The Court has adopted guidelines on judges' attendance and their official journeys and will soon, as I very much hope, adopt its code of ethics. The list of accomplishments I could mention is a long one, but I will stop there.

Sweeping changes

Over these eight years the Court has undergone some sweeping changes. "Change" had been our catchword all along. From the beginning in 1998, we were faced with a dramatically rising caseload and the need to adapt working methods. I would like to pay tribute to my colleagues and to the members of the Registry for their efforts and their openness to change, for their willingness to support the complete computerisation of what we might call our "production lines". We should not be complacent, however. More needs to be done. The time taken to process and adjudicate substantial cases is still too long, in some cases unacceptably long, and this undermines the credibility of the system. We knew early on that the Convention mechanism must continue to evolve. Today we still know that it has to continue to evolve. In this respect too efforts have been made, notably the elaboration and adoption of Protocol No. 14 and more recently the Wise Persons exercise. One conclusion from all this activity is that no one has yet discovered the miracle cure, undoubtedly because ultimately the answer lies mostly in the domestic legal systems and to change them is inevitably a slow and lengthy process. In the meantime the Strasbourg machinery has to be made more efficient and that is what Protocol No. 14 is designed to achieve. As you know

we are waiting for one more ratification – that of the Russian Federation – for it to enter into force. I can only stress that the Protocol would have an important contribution to make in enabling the Court to confront the growing volume of cases, while helping to limit the increase in costs. One of the underlying aims of Protocol No. 14, and above all the accompanying recommendations and resolution, is to redress the balance between the international machinery and domestic authorities by strengthening the principle of subsidiarity. Again the idea is that citizens should be able to vindicate their rights in the national courts; however well organised, international protection of human rights can never be as effective as a well-functioning national system of protection.

The Court is ready

Everything would seem to plead for a rapid entry into force of Protocol No. 14. The Court is ready for it, the necessary draft rules have been adopted, the working methods have been adjusted, and this has helped to achieve substantial increases in productivity. We should not have to wait for any further evolution as a result of the Wise Persons report; we should move forward now.

In my last official act as President of the Court in a speech to the Ministers' Deputies I therefore made a plea to the authorities of the Russian Federation to play the game, to be fully part of the Convention system and to give the Court the tools it needs to pursue its drive to increase the efficiency of its processes. Protocol No. 14 is in no way a revolutionary text, but it does offer practical solutions for certain problems, notably the Single Judge mechanism for clearly inadmissible cases and the three Judge Committee for repetitive cases. The Wise Persons report builds on such measures and assumes their implementation.

A "fighting machine" for human rights?

Allow me one final, important question which may appear deceptively simple. How do we think of a European Court of Human Rights? What and how should it be? Should it be an instrument of European integration? Should it do the job of non-governmental organisations? Should it be what I sometimes call a "fighting machine" for human rights or for certain theories concerning human rights? Should it espouse a political role and if so, what sort of a role? Should it, as some American writers would put it, be the defender of the "system", which must presumably mean that the Court should defend the ruling class or governmental system of each member state? These questions would surely deserve elaborate answers, and there is no time for that. But I would give a deceptively simple answer and say that a court should be just that and no more than that: it should be a court. It should, in full independence and impartiality and in orderly, fair and foreseeable procedures decide the issues for which it is competent. If it assigns to itself other roles, if it is less that independent and succumbs to governmental pressures, it cannot really fulfil its beneficial functions and will lose first its credibility and then its usefulness. It is granted that the European Court of Human Rights decides social conflicts and will therefore not always be able to please everybody, and it will not always be popular with Governments. But that is unavoidable, and accepting that is an inescapable part of belonging to the community of democratic states.

Ladies and gentlemen, looking back over my time as President and as Judge, there are so many rich and vivid memories: of my colleagues and friends, of the important cases, of my visits to national courts, of my meetings with fellow judges from throughout the Council of Europe countries. I am ever so grateful for all these memories, for all the support I have been given, for the friendship with which I have been privileged. Of course it is a wrench to leave the Court, but I do so with a sense that we have done the very best we could with the limited resources available to us. I am also confident that I have handed over responsibility to a new President who is perfectly capable of assuming this mission, whose wide experience in the judicial and other domains particularly qualify him for the post and for whom I have the highest respect as a Judge and a person.

Dear Jean-Paul, we all know that you are an experienced judge, quick of thought, with a clear and elegant style, but at the same time precise and lucid, with sound common sense. You have proved yourself at the Court, and before that in the course of a brilliant and impressive career in France. I also know your qualities as a human being and a friend, and am grateful for them. My colleagues and I have placed our trust in you, and it only remains for me to wish you (and Brigitte) good fortune, success and good health, for your own well-being and for the Court's.

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' (ECHR) judgments (Article 46, paragraph 2). The measures to be adopted by the respondent state in order to comply with this obligation vary from case to case in accordance with the conclusions contained in the judgments.

The applicant's individual situation

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

Preventing new violations

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

In view of the large number of cases reviewed by the Committee of Ministers, only a thematic selection of those appearing on the agendas of the 982nd and 987th Human Rights (DH)[1] meetings (December 2006 and February 2007) is presented here. Further information on the below mentioned cases as well as on all the others is available from the Directorate General of Human Rights, as well as on the on the internet site of the Department for the Execution of Judgments of the European Court of Human Rights (DG II).

As a general rule, 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 (see Article 14 of the new Rules for the application of Article 46 §2 of the Convention adopted in 2006[2]).

1. Bimonthly meetings specially devoted to the supervision of the execution of judgments.
2. Replacing the Rules adopted in 2001.

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

Main points examined at the 982nd and 987th DH meetings

During the 982nd and 987th meetings (December 2006 and February 2007), the Committee respectively supervised payment of just satisfaction in some 855 and 876 cases. It also monitored, in some 129 and 80 cases (or groups of cases) respectively, the adoption of individual measures to erase the consequences of violations (such as striking out convictions from criminal records, re-opening domestic judicial proceedings, etc.) and, in some 186 and 46 cases (or groups of cases) respectively, the adoption of general measures to prevent similar violations (e.g. constitutional and legislative reforms, changes of domestic case-law and administrative practice). The Committee also started examining 370 and 147 new Court judgments and considered draft final resolutions concluding, in 46 and 41 cases respectively, that States had complied with the Court's judgments. The Committee notably considered:

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

- **Responses to the 4th Interim Resolution in the case of *Ilaşcu and others v. Russia and Moldova*** where the Court 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) 26 of 10 May 2006);
- **Responses of Turkey to the CM's repeated calls to reopen domestic criminal 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 (*Hulki Güneş*, ResDH (2005) 113); also **Belgium's and Italy's responses to similar problems** were examined respectively in *Goktepe and F.C.B. cases*;
- **Possibility of reopening civil proceedings found to be unfair or other remedial measures** to be taken by certain countries, including **Russia** and **Poland** (paternity proceedings in cases of *Shofman* and *Różański*, respectively) and **provision of medical care to an imprisoned applicant** to prevent ill-treatment (*Popov*) in **Russia**;
- **Continuing obligation to conduct effective investigations into alleged abuses in police custody in France** (*Taïs*), **Switzerland** (*Scavuzzo-Hager*) and **Ukraine** (*Shevchenko*), **into alleged killing by security forces in the north of Cyprus** (*Kakoulli v. Turkey*) and in **Chechnya** (*Khashiyev v. Russia*) as well as progress in the investigations **into a death in a hospital in Poland** also to be examined (*Byrzykowski*);
- **Re-establishing parents' access to or regular relationship with their children**, to remedy violations of their right to family life by **Croatia** (*Karadzić*), the **Czech Republic** (*Reslová* and *Koudelka*), **Germany** (*Görgülü*), **Italy** (Bove), **Poland** (*Zawadka*), **Portugal** (*Reigado Ramos*), **Romania** (Ignaccolo-Zenide; Monory, Lafargue) and **Switzerland** (*Bianchi*);
- **Urgent quashing of the applicant's criminal conviction in Turkey** for a refusal to perform compulsory military service on the ground of his conscientious objection; the applicant is still on the run because of the risk of being imprisoned (*Ülke*);
- **Remedying the persistent infringement of the freedom of association of the applicant association and its members, as found in several judgments since 2001** (*United Macedonian Organisation Ilinden – Pirin and others*; *United Macedonian Organisation Ilinden and others*);
- **Different aspects related to expulsion** in **Latvia** (*Slivenko*) and **Romania** (*Lupsa*);
- Putting an **end to dangerous industrial pollution ordered by court decisions which remain unexecuted in Turkey** (*Taskin, Öçkan, Ahmet Okyay*);

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

- **Turkey's response to the Court's judgment in the case of *Xenides-Arestis*** concerning the property rights of displaced Greek Cypriots in Cyprus; **further developments** on this and other issues (in particular missing persons and living conditions of Greek Cypriots living in the North) raised **in the context of the execution of the *Cyprus v. Turkey* judgment**;
- **Problem of late or non-execution of domestic judicial decisions in Italy, Russia, Romania, Ukraine, Bulgaria, France, Georgia, Greece and "the former Yugoslav Republic of Macedonia"**;
- Prevention of **ill-treatment by the police** in **Hungary** (*Balogh*), **Russia** (*Mikheyev*) and **Moldova** (*Boicenco*);
- **Improvement of the judicial review** and **conditions of pre-trial detention in Russia** (*Klyakhin*, *Kalashnikov*) as well as the **improvement of the conditions of detention** in **Moldova** (*Ostrovar*) and **Croatia** (*Cenbauer*);
- Progress achieved by **recent bankruptcy reform** (case of *Luordo and others*) and the recent developments with a view to resolving the **problem of unlawful expropriation in Italy** (*Belvedere* and other cases);
- Measures to prevent **environmental pollution amounting to violations of the right to private life and/or violating domestic decisions in Russia** (Fadeyeva) **and Turkey** (Taşkin and Ahmet Okyay);
- **The problem of excessive length of judicial proceedings, and/or setting up an effective domestic remedy in this respect, in 31 countries** (cases against Austria, Belgium, Bulgaria, Cyprus, Croatia, the Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Liechtenstein, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Russian Federation, San Marino, Slovakia, Slovenia, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and the United Kingdom);
- Need for adequate **judicial review of expulsions on grounds of national security in Bulgaria** (*Al-Nashif*); in this respect, the contents of relevant **new draft legislation** will be examined.

Texts adopted at DH meetings

After examination of these points, as well as of the other cases on the agenda of the two meetings, the Deputies have notably adopted following texts.

1. Selection of decisions adopted (extracts)

Decision adopted at the 987th meeting
Unfairness of criminal proceedings, lack of individual examination on the question of the extent of the applicant's guilt (existing aggravating circumstances) (Art. 6§1)

Case of Goktepe against Belgium

Goktepe, judgment of 02/06/2005, final on 02/09/2005

"The Deputies,

1. recalled that the applicant was sentenced to 30 years' imprisonment and that the Court found a breach of his right to a fair trial on account of a non-individualised application of aggravating circumstances;

2. took note with interest, in this context, of the progress of the Bill to allow the reopening of criminal proceedings following a judgment of the European Court, which was adopted by the Senate on 14 December 2006 and which in its current wording is also applicable to proceedings criticised by judgments still pending before the Committee of Ministers;

3. welcomed the regime of partial liberty which the applicant has enjoyed since 3 January 2007;

4. decided to resume consideration of this case at their 997th meeting (5-6 June 2007) (DH) in the light of information to be provided on the adoption of the law

on reopening of proceedings and on the applicant's situation, in particular regarding his request for release on parole."

Case of Al-Nashif and others against Bulgaria

Decision adopted at the 987th meeting
No possibility to review lawfulness of detention pending expulsion on national security grounds (Art.5§4), inadequate safeguards in relation to such expulsion (Art. 8), lack of effective remedy against the expulsion (Art. 13)

Al-Nashif and others, judgment of 20/06/02, final on 20/09/02

"The Deputies, having examined the information provided by the Bulgarian authorities on the measures taken or envisaged to comply with the judgment,

1. noted with interest that under the practice well established by the Supreme Administrative Court since the Al-Nashif judgment, it indicates to the competent courts that they must ensure the direct application of the Convention as interpreted by the European Court and thus must examine appeals against deportation orders based on considerations of national security;

2. noted however that the legislation criticised by the Court insofar it did not provide independent supervision of such deportation orders, has not yet been modified;

3. noted with concern in this respect that the draft amendment to the Aliens Law before the Bulgarian Parliament only provides partial abrogation of the criticised provision excluding measures taken based on considerations of national security from courts' competence;

4. invited the Bulgarian authorities to take the necessary measures to change the proposed amendment in line with the Convention, and to achieve the legislative reform rapidly;

5. recalled that the applicants still suffer the consequences of the violations found by the European Court in this case insofar as the first applicant is still prevented from going back to Bulgaria and accordingly invited the authorities to remedy this situation;

6. decided to resume consideration of all the necessary measures for the implementation of this judgment at their 992nd meeting (3-4 April 2007) (DH), if appropriate on the basis of a draft interim resolution to be prepared by the Secretariat."

4 cases against Bulgaria

Decision adopted at the 987th meeting
Infringement of the freedom of association of organisations aiming to achieve "the recognition of the Macedonian minority in Bulgaria" – prohibition of meetings, dissolution of a political party and refusal to register the associations, based on considerations of national security (alleged separatist ideas) although the applicants had not hinted at any intention to use violence or other undemocratic means to achieve their aims (Art. 11 and Art. 13)

United Macedonian Organisation Ilinden – Pirin and others (judgment of 20/10/2005, final on 20/01/2006); United Macedonian Organisation Ilinden and others (judgment of 19/01/2006, final on 19/04/2006); United Macedonian Organisation Ilinden and Ivanov (judgment of 20/10/2005, final on 15/02/2006); Ivanov and others (judgment of 24/11/2005, final on 24/02/2006)

"The Deputies,

1. took note of the commitment of the Bulgarian authorities to ensure without delay full compliance with the judgments of the Court, with a view to preventing any further similar violations of the freedom of association and assembly of the applicant organisations and their members;

2. invited the Bulgarian authorities to continue to keep the Committee of Ministers informed of the progress made in the adoption and implementation of the general measures required, in particular those concerning local authorities and the police;

3. also invited the Bulgarian authorities to continue to keep the Committee of Ministers informed of the applicants' current situation and took note in this context of the document CM/Inf/DH (2007) 8 presented by the Secretariat to the Committee on the issue of individual measures in the case of UMO Ilinden – Pirin and others and decided to declassify it;

4. decided to resume consideration of all the measures necessary for the implementation of these judgments at their 992nd meeting (3-4 April 2007) (DH) in the light of information to be provided, in particular on the development of the registration proceedings of UMO Ilinden – Pirin as a political party."

Decision adopted at the 982nd meeting
Excessive length of proceedings before civil courts; lack of an effective domestic remedy (Art. 6§1 and 13)

13 cases against Cyprus

Gregoriou, judgment of 25/03/2003, final on 09/07/2003 and 12 other cases

"The Deputies,

1. noted with interest the information provided by the Cypriot authorities on the Bill providing for an effective remedy in cases of excessive length of proceedings;

2. noted however that measures adopted so far seem to be insufficient for resolving the systemic problem of excessive length of judicial proceedings in question;

3. invited the Cypriot authorities to give priority to these issues […];

5. decided to resume consideration of these items at the latest at their 997th meeting (5-6 June 2007) (DH), in the light of further information to be provided mainly concerning general, preventive measures."

Decision adopted at the 982nd meeting
Violation by a domestic court of a father's right to custody of and access to his child born out of wedlock in 1999 (Art. 8)

Case of Görgülü against Germany

Görgülü, judgment of 26/02/04, final on 26/05/04, rectified on 24/05/2005

"The Deputies, having considered the information submitted by the German authorities,

1. noted with regret that after some progress made until summer 2006, the applicant has been deprived since September 2006 of the possibility of seeing his son regularly despite an interim domestic court decision explicitly granting him weekly visits;

2. recalled the obligation of the respondent state to 'make it possible for the applicant to at least have access to his child', as explicitly stated in §64 of the judgment of the European Court;

3. invited the authorities of the respondent state to intensify their efforts to rapidly meet their obligations under the judgment and make it possible for the applicant to visit his son regularly;

4. decided to postpone examination of this item to their 987th meeting (13-14 February 2007) (DH) with a view to assessing progress in implementing individual measures, if appropriate on the basis of a draft interim resolution to be prepared by the Secretariat."

Decision adopted at the 982nd meeting
Unjustified interference with the applicant's right to manifest his religion (Art. 9)

2 cases against Greece

Agga No. 3 (judgment of 13/07/2006, final on 13/10/2006); Agga No. 4 (judgment of 13/07/2006, final on 13/10/2006)

"The Deputies,

1. noted with regret that the general measures taken in response to the previous, similar judgments of the Court (Serif; Agga No. 2 – Final Resolution ResDH(2005)88) had proved insufficient to prevent new, similar violations in the present cases;

2. invited the Greek authorities rapidly to take all necessary measures to ensure that Greek courts comply with the European Court's case-law, in particular, in cases concerning freedom of religion;

3. decided to resume consideration of these items […] at their 1001st meeting (3-4 July 2007) (DH), to supervise the general preventive measures adopted and their effect in practice."

Decision adopted at the 982nd meeting
Failure by the administration to enforce administrative organs' decisions regarding demolition of illegal buildings and lack of effective remedy (Art. 1 Prot. 1 and 13); excessive length of proceedings before Supreme Administrative Court (Art. 6§1)

2 cases against Greece

Fotopoulou (judgment of 18/11/2004, final on 18/02/2005); Dactylidi (judgment of 27/03/03, final on 09/07/03)

"The Deputies

1. noted with concern that in the case of Fotopoulou the respondent state has not as yet taken measures for the effective protection of the applicant's property, in conformity with the Court's judgment;

2. called upon the Greek authorities to take the necessary measures to this effect and to provide information in this respect (in the case of Fotopoulou) and concerning general preventive measures;

[…]"

152 cases against Italy

Decision adopted at the 982nd meeting
Failure to enforce judicial eviction orders against tenants – Interim Resolution ResDH(2004)72

Immobiliare Saffi, judgment of 28/07/1999 and 151 other cases

"The Deputies,

1. recalled that in these cases, the European Court found a violation of the Convention stemming from the administrative staggering of evictions, the failure of support by the police forces and the succession of laws suspending the execution of legal decisions of evictions;

2. recalled the measures already taken to ensure conformity of the existing system with the requirements of the European Convention of Human Rights, in particular by improving the execution proceedings and support by the police forces, as well as the introduction of legislative provisions providing compensation for the owners concerned;

3. recalled, however, that the practice of adopting staggering legislation has continued;

4. in this respect noted with interest, judgment No. 155 of 2004 by the Constitutional Court, which stipulated that staggering legislation could only be justified for a limited period;

5. noted the information provided by the government, according to which a new draft legislation is being presented to the Parliament, providing, taking into account the constitutional case-law, a new suspension of the execution of judicial decisions of evictions;

6. also noted that the Italian Parliament had examined this draft in the light in particular of a report on the compatibility with the Convention and the case-law of the European Court, established by its legal department, in conformity with Recommendation Rec (2004) 5;

7. decided to resume examination of this group of cases at the latest at their 992nd meeting (3-4 April 2007) (DH), in the light of clarifications to be provided by the Italian authorities concerning any relevant development, in particular on the scope and content of the proposed new draft legislation; […]"

Case of Metropolitan Church of Bessarabia and others against Moldova

Decision adopted at the 982nd meeting
Failure of the government to recognise the applicant Church (Art. 9) and absence of effective domestic remedy in this respect (Art. 13)

Metropolitan Church of Bessarabia and others, judgment of 13/12/01, final on 27/03/02

"The Deputies,

1. recalled, as far as general preventive measures are concerned, Interim Resolution ResDH (2006) 12 in which the Committee of Ministers urged the Moldovan authorities to adopt, without further delay, the legislation necessary to ensure that Moldovan law on the right of freedom of religion of churches and their members is in conformity with the requirements of the European Convention on Human Rights;

2. regretted the fact that no new law on religious denominations has yet been adopted but noted nevertheless with satisfaction that the procedure for adoption of this law is at a final stage and that the new law is reported to reflect the concerns expressed by the Council of Europe's experts;

3. decided to continue to keep this issue under close supervision and to resume consideration thereof at their 987th meeting (13-14 February 2007) (DH);

4. noted, as far the individual measures are concerned, the replies given by the Moldovan authorities to the concerns expressed by the applicants in March 2006, and the positive developments reported since then. […]"

Case of Ilaºcu and others against Moldova and the Russian Federation

Decision adopted at the 982nd meeting
Unlawful detention of the applicants (Art. 5), ill-treatment inflicted upon them while in detention (Art. 3), breach of their right of individual petition (Art. 34), respective responsibilities of Moldova and the Russian Federation (Art. 1)

Ilaşcu and others (judgment of 08/07/2004, Grand Chamber, Interim Resolutions ResDH (2005) 42, ResDH (2005) 84, ResDH (2006) 11 and ResDH (2006) 26)

"The Deputies,

[…]

2. instructed the Secretary General to communicate Interim Resolution ResDH (2006) 26, adopted on 10 May 2006, to the Secretary General of the United Nations Organisation and the Secretary General of the OSCE, asking them to draw the attention of the com-

petent organs of their respective Organisations to this text."

Decision adopted at the 987th meeting
Interference with the applicant's right to the peaceful enjoyment of his possessions due to the forfeiture of his property to the state authorities without legal basis (Art. 1 Prot. 1)

Case of Baklanov against the Russian Federation

Baklanov, judgment of 09/06/2005, final on 30/11/2005

"The Deputies, having considered the information provided by the applicant,

1. urged the Russian authorities rapidly to implement the domestic judgment at issue in this case so as to put an end to the continuing violation of the applicant's property rights;

2. recalled the authorities' obligation to take the general measures required to prevent new, similar violations;

3. decided to resume consideration of this case at their 992nd meeting (3-4 April 2007) (DH) on the basis of the information to be provided by the authorities."

Decision adopted at the 987th meeting
Concerning notably the insufficient jurisdictional review of the detention and the length of criminal proceedings (Art. 5§3, 5§4, 6§1, 8, 13, 34)

11 cases against the Russian Federation

Klyakhin, judgment of 30/11/05, final on 06/06/05 and 10 other cases

"The Deputies,

1. took note with interest of the measures taken so far by the Russian authorities to resolve the structural problem revealed by the Court's judgments;

2. encouraged the competent Russian authorities to make further efforts to limit use of detention on remand, and in particular to consider the avenues suggested in the Memorandum CM/Inf/DH (2007) 4 with a view to a comprehensive solution of the problem;

3. decided to resume consideration of these cases at their 992nd meeting (3-4 April 2007) (DH) in order to examine the question of the declassification of the Memorandum CM/Inf/DH (2007) 4;

4. decided to postpone consideration of these cases to their 1007th meeting (16-17 October 2007) on the basis of further information to be provided on further progress achieved in the adoption of the general measures."

Decision adopted at the 987th meeting
Failure to comply with interim measures indicated under Rule 39 of Rules of Court (Art. 34)

Case of Olaechea Cahuas against Spain

Olaechea Cahuas, judgment of 10/08/2006, final on 11/12/2006

"The Deputies,

1. stressed that failure by member states to comply with interim measures indicated by the European Court under Rule 39 of the Rules of Court must be considered as a violation of Article 34 of the Convention;

2. agreed to resume consideration of this case at the latest at their 1007th meeting (16-17 October 2007) (DH), in the light of further information to be provided concerning general measures."

Decision adopted at the 982nd meeting
– Living conditions of Greek Cypriots in Karpas region of northern Cyprus (Art. 9, 10, 1 Prot. 1, 2, Prot. 1, 3, 8, 13);
– Rights of Turkish Cypriots living in northern Cyprus (Art. 6)

Case of Cyprus against Turkey

Cyprus against Turkey (judgment of 10/05/01 – Grand Chamber CM/Inf/DH (2006) 6 revised 2, CM/Inf/DH (2006) 6/1 revised 2, CM/Inf/DH (2006) 6/3 revised, CM/Inf/DH (2006) 6/5 revised; Interim Resolution ResDH (2005) 44)

"The Deputies

1. recalled that at the 976th meeting (October 2006), the Committee invited the Turkish authorities to provide, sufficiently in advance to allow the Deputies to have a meaningful debate at the 982nd meeting (5-6 December 2006) (DH), detailed and concrete information on changes and transfers of property at issue in the judgment and on the measures taken or envisaged regarding this situation;

2. noted with regret that the information provided does not contain any really new and decisive element in this regard;

3. urged the Turkish authorities to provide information on measures taken to safeguard the property right of the displaced persons as these have been recognised in the judgment of the European Court;

4. reiterated the necessity not to interfere with the current ongoing judicial process before the Court in the Xenides-

Arestis case and not to pre-empt or influence in any way the assessment the Court will be called on to make in that context;

5. also recalled, concerning the missing persons, the urgency of obtaining concrete and conclusive results, respecting the requirements of effective investigations stemming from the judgment of the Court, both within the framework of the CMP work and by any other appropriate means, and took note of the commitment by the Turkish authorities to keep them regularly informed of progress achieved;

6. took note of the satisfactory level of progress achieved regarding the violations found by the Court in relation with freedom of religion and right to education;

7. agreed to resume consideration of this case at their 987th meeting (13-14 February 2007) (DH), in the light of an Interim Resolution to be prepared by the Secretariat regarding all issues relating to this case, in particular with the view, on the one hand, to urging the Turkish authorities to provide the information required on the issue of property rights of displaced persons and, on the other hand, to closing the examination by the Committee of Ministers of the issues concerning freedom of religion and right to education."

Case of Loizidou against Turkey

Decision adopted at the 987th meeting
Continuous denial of applicant's access to her property in the north of Cyprus and consequent loss of control thereof (Art. 1 Prot. 1)

Loizidou, judgment of 18/12/96 (merits), Interim Resolutions DH (99)6 80, DH (2000) 105, ResDH (2001) 80

"The Deputies,

1. noted that the "Immovable Property Commission", set up in northern Cyprus, invited the applicant to send an application presenting her claims;

2. noted that the applicant invited the Turkish authorities to discuss the follow-up to be given to the judgment;

3. stressed the exceptional character of the individual measures in this case, having regard to the fact that their adoption has been awaited since the judgment of the European Court on the merits delivered in 1996;

4. invited the Turkish authorities to adopt without further delay concrete measures in favour of the applicant; […]

Case of Xenides-Arestis against Turkey

Decision adopted at the 982nd meeting
Denial of the right to respect for applicant's home (Art. 8) and denial of access, control, use and enjoyment of property and of compensation for this interference (Art. 1 Prot. 1)

Xenides-Arestis, judgment of 22/12/2005, final on 22/03/2006

"The Deputies

1. took note of the information provided by the Turkish authorities on the functioning of the Immovable Property Commission, established on the basis of the Law on immovable property;

2. took note of the fact that the European Court will be delivering its judgment in this case on 7 December 2006;

3. also instructed the Secretariat to prepare a memorandum on the issues concerning payment of the just satisfaction; […]

Case of Hulki Güneş against Turkey

Decision adopted at the 987th meeting
Lack of independence and impartiality of state security court, unfairness of proceedings, ill-treatment inflicted on the applicant while in police custody (Art. 6§1 and Art.3

Hulki Güneş, judgment of 19/06/03, final on 19/09/03, Interim Resolution ResDH (2005) 113

"The Deputies,

1. deplored the fact that that the Turkish authorities have taken no individual measure following the judgment, despite the Committee's repeated calls to abide by its obligation, "under Article 46, paragraph 1, of the Convention to redress the violations found in respect of the applicant through the reopening of the impugned criminal proceedings or other appropriate *ad hoc* measures" (Interim Resolution ResDH (2005) 113);

2. noted that the applicant continues to suffer from the grave consequences of certain serious violations of the right to a fair trial found by the Court, which appear to cast serious doubts on the outcome of the domestic proceedings at issue (cf. Recommendation Rec (2000) 2);

3. decided to resume consideration of this case at their 992nd meeting (3-4 April 2007) (DH), in the light of fur-

ther information to be provided on the individual measures taken or envisaged and to consider, if appropriate, a new draft Interim Resolution to be prepared by the Secretariat."

Decision adopted at the 987th meeting
Violations of the applicants' right to their private and family life due to decisions by the executive authorities to allow continuation of gold-mining activities involving environmental hazard (Art. 8) and non-enforcement of court decisions ordering the suspension of risk activities (Art. 6)

3 cases against Turkey

Okyay Ahmet and others (judgment of 12/07/2005, final on 12/10/2005); Taşkın and others (judgment of 10/11/2004, final on 30/03/2005, rectified on 01/02/2005); Öçkan and others (judgment of 28/03/2006, final on 13/09/2006)

"The Deputies

1. adopted Interim Resolution ResDH(2007)4 in the case of Ahmet Okyay and others as it appears in the Volume of Resolutions;

2. decided to resume consideration of these items at their 992nd meeting (3-4 April 2007) (DH):

– in the case of Ahmet Okyay and others: in the light of information to be provided pursuant to the interim resolution;

– in the cases of Taşkın and others and Öçkan and others: in the light of information to be provided in particular on the outcome of the proceedings pending concerning the annulment of the new operation permit of the mining company and the annulment of the urban plan of the mining area, as well as on the general measures."

Decision adopted at the 987th meeting
Killing of the applicants' husband and father by soldiers on guard duty in the cease-fire area of the "TRNC" and lack of an effective and impartial investigation into this killing (Art. 2)

Case of Kakoulli against Turkey

Kakoulli, judgment of 22/11/2005, final on 22/02/2006

"The Deputies,

1. invited the Turkish authorities to continue to provide information as regards the reopening of the investigation into Mr Kakoulli's killing;

2. urged the authorities rapidly to draw up an action plan regarding the general measures taken or envisaged fully to execute the Court's judgment in particular with a view to preventing the use of excessive force by Turkish soldiers on guard duty along the cease-fire lines in Cyprus […];"

Decision adopted at the 987th meeting
Degrading treatment as a result of of the applicant's repeated conviction and imprisonment for refusing to perform compulsory military service on account of his convictions as a pacifist and conscientious objector (Art. 3)

Case of Ülke against Turkey

Ülke, judgment of 24/01/2006, final on 24/04/2006

"The Deputies,

1. deplored the fact that the Turkish authorities had as yet taken no individual measure to put an end to the violation found by the Court, the applicant still being subject to an arrest warrant with a view to the execution of his sentence;

2. decided to resume consideration of this item at their 992nd meeting (3-4 April 2007) (DH), in the light of information to be provided on the individual measures, if appropriate, on the basis of a draft interim resolution to be prepared by the Secretariat;

3. invited the authorities also to provide information on the general measures taken or envisaged to remedy the shortcomings in the Turkish legislation identified by the European Court in this judgment."

2. Interim resolutions

During the period concerned, the Committee of Ministers encouraged by different means the adoption of many reforms and also adopted 3 interim resolutions. These resolutions may notably provide information on adopted interim measures and planned further reforms, or encourage the authorities of the State concerned to make further progress in the adoption of relevant execution measures, or provide indications on the measures to be taken. Interim Resolutions may also express the Committee of Ministers' concern as to adequacy of measures undertaken or failure to provide relevant information on measures undertaken, urge States to comply with their obligation to respect the Convention and to abide by the judgments of the Court or even conclude that the

respondent State has not complied with the Court's judgment.

Interim Resolution ResDH (2007) 2

Ceteroni, judgment of 15/11/96 and 2182 other cases

The Committee of Ministers:

- urged the Italian authorities at the highest level to hold to their political commitment to resolving the problem of the excessive length of judicial proceedings;
- invited the authorities to undertake interdisciplinary action, involving the main judicial actors, co-ordinated at the highest political level, with a view to drawing up a new, effective strategy;
- decided to resume consideration of the progress achieved at the latest before 1 November 2008 and asked the Italian authorities and the Secretariat to keep the Committee informed of the progress made in setting up the new national strategy in this respect.

Adopted at the 987th DH meeting: excessive length of judicial proceedings in Italy

Interim Resolution ResDH (2007) 3

Belvedere Alberghiera S.R.L. (judgment of 30/05/00, final on 30/08/00 and of 30/10/03, final on 30/01/04 and 53 other cases)

The Committee of Ministers:

- encouraged the Italian authorities to continue their efforts and rapidly take all further measures needed to bring an end definitively to the practice of ìindirect expropriationî and to ensure that any occupation of land by the public authority complies with the requirement of legality as required by the Convention;
- invited the authorities to ensure that redress mechanisms are rapid, efficient and able to the fullest possible extent of discharging the Court of its function under Article 41 of the Convention;
- decided to continue supervision of the measures required by the Court's judgments and to resume consideration of the cases at issue in the light of the progress achieved, at the latest at their second human rights meeting in 2008.

Adopted at the 987th DH meeting: systemic violations of the right to the peaceful enjoyment of possessions through "indirect expropriation" by Italy

Interim Resolution ResDH (2007) 4

Ahmet Okyay and others, judgment of 12/07/2005, final on 12/10/2005

The Committee of Ministers:

- urged the Turkish authorities to enforce the domestic court order imposing either closure of the power plants or installation of the necessary filtering equipment without further delay;
- invited the Turkish authorities to furnish information on the general measures envisaged to prevent violations similar to that at issue in the present judgment.

Adopted at the 987th DH meeting: execution of the judgment of the European Court of Human Rights in the case of Ahmet Okyay and others against Turkey

3. Information documents opened to public access

During the period concerned, the Committee of Ministers decided to render the following information documents public:

- *Memorandum CM/Inf/DH (2006) 9 revised 3*

New working methods of the Deputies' Human Rights meetings

- *Memorandum CM/Inf/DH (2006) 20 revised*

Obligation of states to furnish all necessary facilities to the European Court in its investigations with a view to establishing the facts (Article 38 of the Convention) ResDH (2001) 66, ResDH (2006) 45

4. 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 34 Final Resolutions, (closing the examination of 87 cases), among which 24 took note of the adoption of new general measures. Some examples follow:

Final Resolution ResDH (2006) 69

Judgment of the European Court of Human Rights in the case of Mikulic against Croatia (final on 4 September 2002)

Inefficiency of the proceedings in an action to establish paternity due to the impossibility to compel the alleged father to comply with a court order to submit to DNA testing and due to the lack of alternative means of determining the paternity **(Art. 8); excessive length of proceedings (Art. 6§1) and lack of an effective remedy in this respect (Art. 13).**

Extract from the Appendix to Resolution ResDH (2006) 69

Individual measures

The domestic proceedings, the excessive length and inefficiency of which were called into question in the European Court's judgment, were ended by a decision delivered on 19 November 2001 and final on 26 February 2002. The defendant's paternity has been established and the applicant was granted maintenance. The damage the applicant sustained in relation to the violations found was compensated by the European Court through just satisfaction.

General measures

• *Legislative measures in response to the European Court's finding of a violation of Article 8*

On 14 July 2003 the Croatian Parliament adopted the new Family Act. Article 292 provides that courts may request medical tests to establish maternity or paternity, which are to be carried out within three months from the court's order. Where the person concerned refuses to undergo such tests or fails to appear at the appointment, the court shall take this into account in reaching its decision (Article 292§6).

Several examples of domestic case-law dating from before the adoption of the new Family Act were submitted to show a constant practice of the courts – even before this legislative clarification – to consider failure to attend a medical examination to establish paternity to be evidence in favour of the opposing side (decisions of the Supreme Court Nos. Rev-1422/1994-2 of 26/05/94, Rev-1275/1996-2 of 10/07/96, Rev-1422/2002-2 of 22/01/03 and Rev-303/2003-2 of 16/12/03).

The major contribution of the new law is that it directly governs the consequences of such non-compliance and fixes the time-limit for producing this kind of evidence. Thus the authorities consider that the new procedure constitutes a sufficient and adequate means to establish paternity rapidly in cases where the putative father refuses to co-operate in the proceedings.

• *Effective remedy against excessive length of judicial proceedings*

Following the European Court's judgment in the Horvat case (judgment of 26 July 2001, final resolution ResDH (2005) 60), the Constitutional Act on the Constitutional Court of 1999 was amended. New Section 63 in force as from 15 March 2002, provides as follows:

"(1) The Constitutional Court shall examine a constitutional complaint even before all legal remedies have been exhausted in cases when a competent court has not decided within a reasonable time a claim concerning the applicant's rights and obligations or a criminal charge against him […]

(2) If the constitutional complaint ... under paragraph 1 of this Section is accepted, the Constitutional Court shall determine a time-limit within which a competent court shall decide the case on the merits […]

(3) In a decision under paragraph 2 of this Article, the Constitutional Court shall fix appropriate compensation for the applicant in respect of the violation found concerning his constitutional rights […]. The compensation shall be paid from the State budget within a term of three months from the date when the party lodged a request for its payment."

The European Court has found on numerous occasions that this new provision provided an effective remedy in respect of complaints concerning the excessive length of judicial proceedings (see the judgment Radoš and others against Croatia (07/11/2002) and admissibility decisions in the cases of Slaviček (decision of 04/07/2002), Nogolica (decision of 05/09/2002), Plaftak and others (decision of 03/10/2002), Jeftić (decision of 03/10/2002) and Sahini (decision of 11/10/2002)). The effectiveness of this new remedy was subsequently confirmed by the Constitutional Court's practice, and in particular through ensuring direct effect to the European Court's judgments in interpretation of the relevant provisions of Croatian Law (see below).

Finally, it should be noted that following the amendments to the Courts Act, which entered into force on 29 December 2005, the Constitutional Court is no longer competent

to examine complaints against the excessive length of judicial proceedings at first instance. Instead, the court superior to that dealing with the merits of a case will have such competence. Their decisions concerning such complaints may be appealed before the Supreme Court, and the decisions of the latter before the Constitutional Court.

• *Direct effect of the Convention and the European Court's judgments in Croatian law*

According to Article 140 of the Croatian Constitution, the European Convention on Human Rights, ratified by Croatia on 17 October 1997, is part of the domestic legal order and its provisions take priority over provisions of domestic legislation. Several examples of national courts' decisions were submitted to show the development of the direct effect of the Convention and of the case-law of the European Court at national level, and in particular concerning the right to a fair trial (decisions of the Constitutional Court Nos. U-III-727/1997 of 10/01/00, U-I-745/1999 of 08/11/00 and U-IIIA-829/2002 of 24/03/04).

The government encourages state authorities and courts further to enhance the direct effect of the European Court's judgments in order to contribute effectively to the prevention of new violations of the Convention.

For this purpose, the European Court's judgment has been translated and published on the Internet site of the Ministry of Justice (http://www.pravosudje.hr/) and in the Collected Papers of the Zagreb Law School (issue No. 2/2003).

Judgments of the European Court of Human Rights in the cases of Milatová and others and Exel against the Czech Republic (final on 21 September 2005 and on 5 October 2005)

Final Resolution ResDH (2006) 71

Violation of the right to fair civil proceedings (violations of Article 6, paragraph 1) due to the non-communication of certain documents of the file during proceedings before the Constitutional Court (Milatová case) or the absence of a hearing before the Commercial Court and the superior court in bankruptcy proceedings (Exel case).

Extract from the Appendix to Resolution ResDH (2006) 71

Individual measures

1) ***Milatová case***: The European Court found that the finding of a violation was in itself sufficient just satisfaction. Considering the nature of the violation, the damage suffered by the applicants and the fact that their case had been considered on the merits at both first instance and appeal, no specific individual measures would appear to be necessary. In addition, the applicants have submitted no claim for such measures.

2) ***Exel case***: The applicant was declared bankrupt in 1995 and the bankruptcy proceedings are still pending. Since then, oral hearings have been held at which the applicant had the opportunity to participate. Moreover, the applicant has not asked for any further individual measures.

General measures

1) Following the ***Milatová judgment***, the Constitutional Court was invited to review its practice concerning the right of applicants to a fair trial. The issue was discussed by the plenum, which adopted a recommendation on 25 May 2005. According to this recommendation, where parties have been asked to submit observations, reporting judges are invited to communicate them to the applicant for possible comments when they contain, or might contain, new facts, allegations or lines of argument.

2) Following the ***Exel judgment***, the Supreme Court, in its decision of 31 January 2006, defined the circumstances in which first-instance courts are obliged to hold oral hearings to examine requests for the declaration of bankruptcy. It noted that such an obligation may be based on a law or, for instance, on Article 6 of the Convention. The Supreme Court concluded that an oral hearing is not necessary: 1) when the debtor does not object to the declaration of bankruptcy requested by the creditor; 2) when the litigation between the parties concerns only points of law and no point of fact; or 3) when there is a true litigation concerning the facts but the facts may be established on the basis of documentary evidence and the parties to the procedure have renounced their right to an oral hearing.

Moreover, the Czech Parliament has adopted a new law on bankruptcy (Law No. 182/2006) which will enter into force on 1 July 2007. This law provides the right to an oral hearing before the court declaring the bankruptcy (Article 133) according to the principles enumerated by the European Court and the Supreme Court in its decision of 31 January 2006.

The judgments of the European Court have been translated and published on the Internet site of the Ministry of Justice (http://www.justice.cz/) and sent out to national courts with a covering letter.

Final Resolution ResDH (2006) 76

Judgment of the European Court of Human Rights in the case of Iglesias Gil and A.U.I. against Spain (final on 29 July 2003)

Violation of the applicants' right to respect of their family life due to the fact that the national authorities did not deploy adequate or sufficient efforts to guarantee, in conformity with the Hague Convention, the respect of the applicant's custody rights in respect of her son, kidnapped by his father, and the rights of the child to return to his mother (violation of Article 8).

Extract from the Appendix to Resolution ResDH (2006) 76

Individual measures

On 8 June 2000 the child was returned to his mother, and Ms Iglesias thus recovered her custody rights.

General measures

With Organic Law 9/2202 of 10 December 2002, a new Article 225bis was introduced to the Penal Code. This new provision introduces stricter sanctions, qualifies child abduction as an offence other than disobedience and thus makes it easier for the Spanish courts to request international action in this type of case.

The judgment of the European Court was published in the Official Journal of the Ministry of Justice (No. 1958 of 1 February 2004). It has also been disseminated to several of the authorities concerned.

Final Resolution ResDH (2006) 79

Execution of judgments of the European Court of Human Rights pronounced between 8/07/1999 and 27/09/2005 in 32 cases against Turkey concerning freedom of expression following convictions under former Article 8 of Anti-Terrorism Law No. 3713

Unjustified interferences with the applicants' freedom of expression, on account of their conviction by State Security Courts, under former Article 8 of Anti-Terrorism Law, following the publication of articles and books or the preparation of messages addressed to a public audience (violations of Article 10).

Extract from the Appendix to Resolution ResDH (2006) 79

Individual measures

As regards the requirement to erase the consequences of the violations for the applicants, the government stresses that:

– Following the abrogation of Article 8 of the Anti-Terrorism Law No. 3713 on 19/07/2003 by Law No. 4928, any information on criminal records was erased *ex officio* by the General Directorate of Judicial Records and Statistics of Ministry of Justice (in conformity with Article 8 of the Law on Criminal Records, as amended by Law No. 4778 of 2/01/2003);

– As a result of the abrogation of Article 8 of Anti-Terrorism Law and of the erasure of the applicants' convictions from their criminal records, the restrictions on applicants' civil and political rights are also automatically lifted;

– Furthermore, *erasure of convictions*, including all their consequences, is possible, under certain conditions, in cases related to freedom of expression in general, following the entry into force on 10/02/2003 of Law No. 4809 on suspension of proceedings and sentences concerning crimes committed through the press.

General measures

- *Violations of Article 10 relating to convictions under former Article 8 of the Law against Terrorism*

The provision at the origin of the applicants' convictions in all these cases was abrogated on 19/07/2003 by Law No. 4928, in the framework of an extensive programme of reforms aimed at bringing Turkish law in conformity with the Convention's requirements concerning freedom of expression (see Interim Resolution ResDH (2004) 38, for a more comprehensive overview of the general measures adopted or still under way as regards all relevant provisions on freedom of expression).

- *Violations of Article 6 relating to the independence and impartiality of State Security courts*

Measures have already been taken to avoid new violations of this kind, notably through the amendment of Article 143 of the Turkish Constitution which concerns the composition of the National Security Courts (Law No. 4388, adopted on 18 June 1999), and the entry into force, on 22 June 1999, of Law No. 4390, which provides that the functions of the military judges and military prosecutors end at this date (see Resolution DH (99) 555 in the case of Çiraklar against Turkey). Furthermore, on 07/05/2004, the Parliament approved a constitutional amendment abolishing state security courts.

• *Violation of Article 6 relating to the excessive length of criminal proceedings and violations of Article 7 relating to the imposition of sanctions not provided by the law*

These violations do not appear to have a systemic character and have therefore not called for the adoption of specific measures, other than the publication of the judgments and their dissemination to the competent courts, which has been done.

Execution of the judgment of the European Court of Human Rights in the case of Oçalan against Turkey (judgment of the Grand Chamber of 12 May 2005, final on 12 May 2005)

Final Resolution ResDH (2007) 1

Lack of presentation of the applicant promptly before a judge following his arrest (Art. 5§3); Lack of remedy to contest the lawfulness of the continued police custody of the applicant (Art. 5§4, Art. 6§1); Lack of independence and impartiality of the State Security Court due to the presence of a military judge during part of the proceedings (Art. 6§1); Unfair criminal proceedings against the applicant due to the lack of time and facilities to prepare his defence and restrictions on legal assistance of the applicant (Art. 6§1); Inhuman treatment on account of death sentence conviction following unfair proceedings (Art. 3).

Extract from the Appendix to Resolution ResDH (2007) 1

Individual measures – the question of retrial

• *The applicant's request for a retrial*

A formal request for a retrial was lodged on 2 February 2006.

On 5 May 2006, the Ankara 11th Assize Court rejected the request, relying on Article 311/2 of the Turkish Code of Criminal Procedure (CCP), which excludes the possibility of retrial on the basis of European Court judgments rendered during the period when the present judgment was rendered.

The applicant filed an objection to this decision on 29 May 2006 and the case was referred to the Istanbul 14th Assize Court (in accordance with Article 268 CCP). Final judgment was rendered on 21 July 2006. The 14th Assize Court did not find the reliance at first instance on Article 311/2 CCP a sufficient ground for rejecting the request. Stressing the binding nature of the European Court's judgment and Turkey's international obligations under the European Convention on Human Rights, as enshrined in Article 46 of the Convention and acknowledged in the new Article 90 of the Turkish Constitution, the court decided to examine the merits of the applicant's request. The court considered the arguments put forward by the applicant's lawyers in their submissions to it and the contents of the case file as a whole and reached the conclusion that it was not necessary to carry out any additional investigations or further hearings. Having considered the nature of the crime and the evidence in the case file (including the applicant's confessions) and having concluded that the violations established by the European Court could not change the applicant's conviction and that his submissions before it were unsubstantiated, the 14th Assize Court dismissed the request as devoid of merit.

• *The applicant's position regarding the execution of the European Court's judgment in the light of the rejection of his request for a retrial*

In their submissions dated 30 September 2005, 22 February 2006, 10 April 2006, 2 October 2006 and 29 January 2007, the applicant's lawyers in particular asked for:

a) the judgment of the European Court to be executed;

b) the provision excluding a request for a retrial for applicants falling into a certain time period – Article 311/2 of Act No. 5271 – to be removed;

c) the legal provisions of Article 151 of Act No. 5271 and Article 59 of Act No. 5275 which restrict defence rights to be removed;

d) the non-acceptance as individual measure of the decision taken on their request for a retrial as in particular it:

• did not respect the requirements of the Court's judgment in the case;

• was beyond the authority and jurisdiction of the court in question;

• was not adopted after proceedings respecting the applicant's defence rights so that once again the applicant was unable to present the arguments which he had been denied, in violation of the Convention, to present at the original impugned trial;

• had not been independent;

e) an end to any special prison conditions for their client.

The government's position on the above issues is reflected below under Section III.

General measures

1) **Failure to bring the applicant promptly before a judge after his arrest** (Article 5§3): legislative reform commenced in 2001; see case of Sakık and others against Turkey (Final Resolution DH (2002) 110). Article 91 of the Turkish Code of Criminal Procedure, in force since 01/06/2005, today

provides for a right of detainees to see a judge within 24 hours in regular cases and 3 days in exceptional cases, the decision to extend to be taken by the prosecutor and open to an appeal to the court.

2) Lack of a remedy by which the applicant might have the lawfulness of his continued detention in police custody decided promptly by a court (Article 5§4): § 91 of the Turkish Code of Criminal Procedure as of 1/06/2005 now provides for a sufficient remedy, which extends the safeguards previously existing in Turkish law (see aforementioned final resolution in the case of Sakık).

3) ***Independence and impartiality of state security courts***: the presence of military judges was abolished in 1999; see Çiraklar against Turkey (Final Resolution DH (99) 555). Subsequently, state security courts were abolished following the constitutional amendments of May 2004.

4) Unfairness of the trial due to inadequate time and facilities for preparation of defence and restriction on legal assistance (Article 6§1 together with Article 6§3(b) and (c): Shortly before the 960th meeting (March 2006), the respondent state provided information on the new Code of Criminal Procedure, in force since 1/06/2005. This legislation introduced new provisions to guarantee defence rights, providing in particular for a defence lawyer to be assigned automatically in cases with a minimum sentence of 5 years (Article 150 (3)); giving the lawyer access to the case-file (including the right to make copies) from the date the indictment is accepted by the court (Article 153 (4)); and providing that the suspect or the accused may meet with the defence lawyers at any time and in such circumstances that they will not be heard by others, without requiring a power of attorney, and that correspondence between the defence lawyer and the suspect or accused may not be monitored (Article 154).

5) Imposition of the death penalty following an unfair trial, amounting to inhuman treatment (Article 3); Law No. 4771 of 09 August 2002 abolished the death penalty in peacetime.

At the 940th meeting, the Turkish authorities informed the Committee of Ministers that the judgment of the European Court had been translated and published on the web site of the Ministry of Justice and that it will also be published in the *Bulletin of the Ministry of Justice*.

The government's position

The government considered that the above measures have provided adequate individual redress to the applicant and stressed more particularly in its observations of 4 February 2007:

- that the domestic court had refused to apply the temporal limitations in Article 311/2 and had examined the need of a re-trial on the basis of a full re-examination of the case file in the light of the applicant's new submissions before it;
- that the domestic court had acted within its competence;
- that the proceedings had respected the rights of the defence;
- that the domestic court had acted in full independence.

Moreover, the government considered that the applicant's complaints regarding his present prison conditions were unrelated to the execution of the present judgment.

The government also considered that the general measures adopted would prevent new similar violations of the Convention. The government in particular underlined the importance of the direct effect given to the Convention and the Court's case-law under the new Article 90 of the Turkish Constitution. The government expressed its conviction that this direct effect would ensure that the new legislation will continuously be applied in conformity with the Convention's requirements.

Final Resolution ResDH (2007) 6

Execution of the judgment of the European Court of Human Rights in the case of Sørensen and Rasmussen against Denmark, judgment of 11 January 2006

Violation of the applicants' freedom of association due to the obligation imposed on them by their employer to join a particular trade union (violation of Article 11).

Extract from the Appendix to Resolution ResDH (2007) 6

Individual measures

Neither applicant is still working for the same employer or obliged to be a member of a trade union. Thus no individual measure is called for.

General measures

Following the judgment, the government tabled a bill on 2 February 2006 amending the Act on protection against dismissal due to association membership. According to this bill, a person's affiliation to a union or non-

membership of a union must not be taken into account in a recruitment situation or in connection with dismissal. The bill extends the negative freedom of association, i.e. the right not to be a member of a union. As a consequence of the bill, any closed-shop agreements contained in collective agreements will be null and void and may not be concluded in the future. The bill was enacted by the Danish Parliament and entered into force on 29 April 2006.

Furthermore, the authorities indicated that the judgment received massive press coverage in Denmark. The Ministry of Employment issued a press release on its Internet site with links to the judgment. In addition, the judgment has been published in a national law journal (*EU-ret & Menneskeret*) in May 2006.

The government considers that the measures adopted prevent new similar violations of the Convention and that Denmark has thus complied with its obligations under Article 46, paragraph 1, of the Convention in the present case.

Final Resolution ResDH (2007) 10

Execution of the judgment of the European Court of Human Rights in the case of Krumpel and Krumpelová against the Slovak Republic, judgment of 5 July 2005, final on 5 October 2005

Excessive length of certain criminal proceedings to which the applicants were civil parties (violation of Article 6, paragraph 1).

Extract from the Appendix to Resolution ResDH(2007)10

Individual measures

At present the proceedings are pending before the Supreme Court. The attention of the Supreme Court has been drawn to the European Court's findings with a view to accelerating the proceedings as far as possible.

General measures

• *Constitutional reform introducing an effective remedy against the excessive length of proceedings*

As from 1 January 2002, the Constitution of the Slovak Republic was amended to allow individuals and legal persons to complain about alleged violations of their right to have their cases tried without unjustified delay. The Constitutional Court has also been given the power to order the competent authority to proceed with a given case without delay and to grant adequate pecuniary compensation in case of excessive length of judicial proceedings (Article 127, as amended in 2002).

The European Court has already found on several occasions that, having regard to the Constitutional Court's practice in this field (see below), this new constitutional remedy represents an effective remedy in the sense of Article 13 of the Convention (see decisions on the admissibility in the case of Hody, of 6 May 2003, Paška, of 3 December 2002 and Andrášik and others, of 22 October 2002).

• *Legislative measures to accelerate criminal proceedings*

A new Code of Criminal Procedure entered into force on 1 January 2006. Its most important provisions aimed at accelerating of criminal proceedings are as follows:

– the maximum duration of pre-trial detention is limited to 4 years, instead of 5 years under the old Code (Article 71 of the new code). Accordingly, the duration of the pre-trial detention at the preliminary investigation stage may not exceed 2 years, which will stimulate investigation bodies to deal with cases promptly;

– a single judge is competent to decide on placing and keeping an accused in pre-trial detention, as well as to authorise searches, telephone monitoring or other procedural acts during the preliminary investigation stage;

– a shortened procedure was introduced for cases of offences detected immediately after commission (Article 204);

– the possibilities for remittal of a case to the first instance have been limited. The appeal court decides on the merits in all cases, except when gathering of new evidence appears to be particularly difficult;

– the rules governing summonses and communication of documents, which used to cause delays in the criminal proceedings, have been reformed (Articles 88 and 277, paragraph 4);

– a new way of communication of the first instance decisions and new time-limit of 15 days for lodging an appeal against these decisions have been introduced in order to reduce the length of proceedings at this stage of their examination (Article 309);

- an additional remedy allowing complaints against the length of proceedings has been introduced. Interested parties may lodge a complaint with the judge competent to rule on the merits of the case, requesting acceleration of the proceedings. Within 15 days the judge must indicate procedural measures to be taken and the time-limits foreseen for them. If the complainant does not agree with the decision, the request must be sent to the superior court which may give binding instructions to the lower court as regards the acts to be carried out and the time-limits for these acts (Articles 55 and 327, paragraph 1).

Statistical data

Between 2002 and 2005, the average length of the criminal proceedings resulting in convictions was between 4.02 and 5.78 months before the first instance courts and between 23.51 and 28.20 before appeal courts (from the beginning of the proceedings before the instance in question until the decision on the merits).

Publication and dissemination

The judgment of the European Court was published in Justičná· revue, No. 10/2005. With a view to facilitating the development of the direct effect of the Convention and the case-law of the European Court in Slovak law, the Minister of Justice sent this judgment, accompanied by a circular letter, to all Presidents of regional criminal courts, inviting them to send it out to all competent juges in order to avoid similar violations in future.

Final Resolution ResDH (2007) 13

Execution of the judgment of the European Court of Human Rights in the case of Ukrainian Media Group against Ukraine, judgment of 29 March 2005, rectified on 29 March 2005, final on 12 October 2005

Disproportionate interference in the freedom of expression of the applicant company due to its civil conviction for defamation (violation of article 10).

Extract from the Appendix to Resolution ResDH(2007)13

Individual measures

The European Court awarded just satisfaction in respect of all the damages suffered by the applicant company as a consequence of the violation […].

General measures

Even before the judgment in this case was delivered by the European Court, the Ukrainian law on defamation was amended by the Law of 3/04/2003 on the "Insertion of Changes to Certain Laws of Ukraine concerning Ensuring an Unimpeded Realisation of the Human Right to Freedom of Speech". A new Article 47-1 ("Exemption from liability") was added to the Law of Ukraine on Information, exempting value judgments from liability. The term "value judgement" is defined as follows: "value judgements, except for insult or defamation, are expressions which contain no factual data, in particular criticism, assessment of actions as well as statements which cannot be considered as statements of fact due to the nature of the language used, in particular the use of hyperboles, allegories, satire. Value judgements are not subject to proof or refutation".

Other important amendments introduced by the law of 3/04/2003 are as follows:

– State bodies and bodies of local self-government are prohibited from demanding non-pecuniary damages for the publication of false information, although they may demand a right of refutation. Officials acting in their personal capacity may still seek to protect their right to their honour and dignity through the courts.

– The law provides a defence of conscientious publication. It states that a journalist and/or a mass medium are exempt of liability for dissemination of false information if the court rules that a journalist acted in good faith and verified the information.

– The law establishes that a plaintiff must pay to the court a proportion of the amount claimed in compensation when filing a defamation case (through a provision added to the Law on State Duty (Article I.4)). The proportion becomes greater as the amount claimed increases. This has contributed to the reduction of the amounts imposed as awards in defamation cases;

– Compensation for non-pecuniary damage in defamation cases may only be imposed in cases of malicious intent by the journalist or media outlet which disseminated the impugned expression (through the addition of Paragraph 4 to Article 17 of the Law of Ukraine "On State Support of Mass Media and Social Security of Journalists"). Malicious intent is defined as "such attitude to the dissemination of information when a journalist and/or a representative of media outlet realises that the information is false and foresees its dangerous consequences for society." Moreover, in such cases "the court shall also consider the consequences of the use by a plaintiff of the possibilities of pre-trial refutation of the false information, protection of his honour, dignity and settlement of the conflict on the whole".

Furthermore, provisions of the Ukrainian Civil Code concerning defamation have been modified. Articles 277 and 302 of the Civil Code, which were criticised in the judgment, were amended by the Law of 22/12/2005. The amended Article 277 § 3 provides that "negative information shall be deemed to be false unless proven otherwise by the person who disseminated the said information."

The relevant provision of Article 302 provides for that "[a]n individual disseminating information obtained from official sources (information of state bodies, bodies of local self-government, reports, records, etc.) is not

obliged to verify its authenticity and shall not be held liable in the case of its refutation. An individual disseminating information obtained from official sources shall make a reference to its source."

• *Publication and dissemination of the judgment*: The judgment was translated into Ukrainian and placed on the Ministry of Justice's official web-site http://www.minjust.gov.ua/. It has also been published in the official government's publication, the Official Herald of Ukraine [Ofitsiynyi Visnyk Ukrayiny], No. 7, 2006.

Moreover, to ensure a direct effect of the Convention in Ukrainian law as regards defamation proceedings, a summary of the judgment was published in the official publication of the Supreme Court, the *Herald of the Supreme Court of Ukraine* [Visnyk Verkhovnogo Sudu Ukrayiny], No. 9, 2005 – which is distributed to all Ukrainian courts.

Furthermore, a number of round tables and seminars regarding this judgment were held, not least for judges of courts of all levels. The Union of Journalists of Ukraine, with the assistance of the Government Agent, held a special press conference on the judgment.

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.

San Marino announces priorities for Committee of Ministers Chairmanship

On 15 November 2006, Fiorenzo Stolfi, Secretary of State for Foreign Affairs of San Marino, presented the priorities fixed by his country today as it took up the chairmanship of the Council of Europe Committee of Ministers (15 November 2006 to May 2007).

The three main priorities are:

- promoting intercultural and inter-religious dialogue,
- defending and developing human rights and fundamental freedoms, particularly through enhanced effectiveness of the monitoring mechanism of the European Convention on Human Rights,
- strengthening co-operation with the other international organisations.

In order to guarantee **effectiveness of the monitoring mechanism of the European Convention on Human Rights**, San Marino will firmly commit itself to implementing Protocol No. 14 to the Convention and following up the report which the "Group of Wise Persons" has just forwarded to the outgoing Russian chairmanship.

The San Marino chairmanship will attach great importance and give **its backing to the various campaigns** currently run by the Council of Europe: *"Stop domestic violence"*, *"Europe for and with children"*, *"All different, all equal"* and *the campaign against trafficking in human beings*.

Fiorenzo Stolfi, Secretary of State for Foreign Affairs of San Marino

In order to guarantee **complementarity and synergy between the main European organisations**, San Marino will support regular consultation between representatives of all the organisations concerned. The chairmanship will also make efforts to finalise the Memorandum of understanding with the European Union and is committed to strengthening co-operation between the Council of Europe and the United Nations.

Declaration

Declaration of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration

Adopted on 31 January 2007 at the 985th meeting of the Ministers' Deputies

The Committee of Ministers,

[...]

I. Underlines the desirability for effective and manifest separation between the exercise of control of media and decision-making as regards media content and the exercise of political authority or influence;

II. Draws attention to the necessity of having regulatory measures in place with a view to guaranteeing full transparency of media ownership and adopting regulatory measures, if appropriate and having regard to the characteristics of each media market, with a view to preventing such a level of media concentration as could pose a risk to democracy or the role of the media in democratic processes;

III. Highlights the usefulness of regulatory and/or co-regulatory mechanisms for monitoring media markets and media concentration which, *inter alia*, permit the competent authorities to keep abreast of developments and to assess risks, and which could permit them to identify suitable preventive or remedial action;

IV. Stresses that adequately equipped and financed public service media, in particular public service broadcasting, enjoying genuine editorial independence and institutional autonomy, can contribute to counterbalancing the risk of misuse of the power of the media in a situation of strong media concentration;

V. Stresses that policies designed to encourage the development of not-for-profit media can be another way to promote a diversity of autonomous channels for the dissemination of information and expression of opinion, especially for and by social groups on which mainstream media rarely concentrate.

Recommendations to member states

- Recommendation Rec (2007) 1 regarding co-operation against terrorism between the Council of Europe and its member states, and the International Criminal Police Organisation (ICPO-Interpol) (adopted by the Committee of Ministers on 18 January 2007 at the 984th meeting of the Ministers' Deputies)
- Recommendation Rec (2007) 2 on media pluralism and diversity of media content (adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers' Deputies)
- Recommendation Rec (2007) 3 on the remit of public service media in the information society (adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers' Deputies)

The full text of the recommendations can be consulted on the Committee of Ministers' Web site.

Replies to Parliamentary Assembly recommendations

- *Recommendation 1760 (2006) – Position of the Parliamentary Assembly as regards the Council of Europe member and observer states which have not abolished the death penalty*

Reply adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers' Deputies.

- *Recommendation 1759 (2006) – Parliaments united in combating domestic violence against women*

Reply adopted by the Committee of Ministers on 7 February 2007 at the 986th meeting of the Ministers' Deputies.

- *Recommendation 1743 (2006) – Memorandum of understanding between the Council of Europe and the European Union*

Reply adopted by the Committee of Ministers on 18 January 2007 at the 984th meeting of the Ministers' Deputies.

- *Recommendation 1755 (2006) – Human rights of irregular migrants*

Reply adopted by the Committee of Ministers on 13 December 2006 at the 983rd meeting of the Ministers' Deputies.

- *Recommendation 1744 (2006) – Follow-up to the Third Summit: the Council of Europe and the proposed fundamental rights agency of the European Union*

Reply adopted by the Committee of Ministers on 18 January 2007 at the 984th meeting of the Ministers' Deputies.

- *Recommendation 1757 (2006) – Migration, refugees and population in the context of the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005)*

Reply adopted by the Committee of Ministers on 21 February 2007 at the 988th meeting of the Ministers' Deputies.

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

Democracy and legal development

Child victims: stamping out all forms of violence, exploitation and abuse

Resolution 1530 (2007), and Recommendation 1778 (2007), adopted on 23 January 2007 [See document 11118 of the Assembly]

Despite the extensive legal apparatus at international level intended to secure children's rights and combat certain forms of exploitation, it is a fact that there is a glaring discrepancy between the rights secured to children on paper and the reality: some of them are bought and sold, used as commodities, subjected to forced marriages, forced to engage in prostitution, to become soldiers, have their organs removed for the purpose of trafficking,are victims of sexual abuse or maltreatment.

The Assembly deemed it indispensable that, over and above the standard-setting measures already taken, and in view of the multitude of instruments each relating to specific forms of violence, an integrated approach be adopted at the European level in order achieve greater effectiveness and coherence in the protection of children against the intolerable and extremely varied situations of discrimination, violence, exploitation and abuse. It accordingly considered that the existing convention-based system should be strengthened by adopting an approach aimed at integrated protection of children whatever the type of violence, exploitation or abuse committed, and that co-operation between member states in this area should be intensified.

It invited the member states, inter alia, to make all interference with the child's bodily or spiritual integrity a criminal offence; suspend the limitation period for serious offences until the victim has reached the age of majority, and even establish that the most serious ot them may not be subject to limitation; extend states' jurisdiction beyond their borders; introduce speedy civil and criminal law procedures which are suited to children; train specialised judges to conduct the above procedures; establish, or promote , mediation mechanisms.

Threats to the lives and freedom of expression of journalists

Resolution 1535 (2007) and Recommendation 1783 (2007), adopted on 25 January 2007 [See document 11143 of the Assembly]

The Parliamentary Assembly of the Council of Europe is deeply concerned by the numerous attacks and threats to the lives and freedom of expression of journalists in Europe. It recalled that freedom of expression and information in the media – one of the fundamental requirements of a democratic society – includes the right to express political opinions and criticise government and society, expose governmental mistakes, corruption and organised crime, and question religious dogmas and practices.

The Assembly believes that to make democracy meaningful, freedom of expression and freedom of religion should go hand in hand. Violent attacks and threats, by any group invoking their religion, against expressions of opinion by words, speech or visual images, have no place in European democracies.

The Assembly called on national parliaments, inter alia, to abolish laws which place disproportionate limits on freedom of expression and are liable to be abused to incite extreme nationalism and intolerance.

It resolved to establish a specific monitoring mechanism for identifying and

analysing attacks on the lives and freedom of expression of journalists in Europe.

Recommendation 1773 (2006), adopted on 17 November 2006 [See documents 11030 and 11081 of the Assembly]

The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance co-operation and synergy with the OSCE

The Assembly recalled that restrictions on the establishment and functioning of private media broadcasting in minority languages are contrary to Article 10 of the European Convention on Human Rights as developed by the case-law of the European Court of Human Rights.

The Assembly recommended that the Committee of Ministers invite member states to ensure that people belonging to national minorities or using regional or minority languages have a balanced access to public broadcast media and an effective right to establish and use private broadcast media.

The Assembly considered that there is a potential for enhanced co-operation and contacts between the Council of Europe and the Office of the OSCE High Commissioner on National Minorities and encouraged further synergies.

Recommendation 1774 (2006), adopted on 17 November 2006 [See documents 11083 and 11097 of the Assembly]

The Turkish presence in Europe: migrant workers and new European citizens

Multiple and substantial bonds between Turkish migrants with Turkey are not only characterised by economic dynamism and cultural wealth, but also reflect the transmission of European values towards the positive evolution of Turkish democracy and respect for the rule of law and human rights, very well exemplified by Turkey's prospects of accession to the European Union. The substantial Turkish caseload at the European Court of Human Rights is a prime example, with a growing readiness and awareness of complainants of their rights under the Convention.

The Assembly considered that numerous inequalities in treatment have to be addressed and recalled the basic principles and rights enshrined in the instruments of the Council of Europe.

The Assembly was concerned that national policies and practices regarding migrant workers fall increasingly short of meeting international legal standards. Numerous inequalities in treatment have to be addressed which are often associated with casual work, irregular employment, education and professional training, retirement benefits and social security coverage, right of association, family regrouping, returns, transfer of remittances, free movement and the issue of multiple nationality.

Situation in member states

Resolution 1533 (2007), and Recommendation 1780 (2007), adopted on 24 February 2007 [See document 11018 of the Assembly]

Situation in Kosovo

Regardless of the outcome on the status of Kosovo, the Assembly resolved to assist both Serbia and Kosovo in facing the challenges ahead and assisting both in the fields of reference of the Council of Europe, namely good governance, democracy, rule of law, respect for human rights and of the rights of national minorities.

It asked that standards and mechanisms of the European Convention on Human Rights be fully applied and integrated in the Status Agreement for Kosovo.

Resolution 1538 (2007), adopted on 25 January 2007 [See document 11115 of the Assembly]

Honouring of obligations and commitments by Albania

The Assembly welcomed the progress made by Albania and in particular the measures already taken: establish and enforce a zero-tolerance policy in the fight against organised crime, trafficking and corruption; improve the execution of final court decisions and increase the transparency of the government's work. It also praised the open and constructive

policy which Albania has maintained towards Kosovo.

However, the Assembly regretted that Albanian political life has continued to be dominated by confrontation and obstructionism. The poor political climate has again delayed major and urgently required reforms, in particular in the field of election legislation and the media. It attached great importance to the forthcoming local elections, considered a major test for the capacity of the Albanian authorities to organise free and fair elections.

The Resolution statedd a number of concrete measures which the Albanian authorities should take to pursue further reform in the following areas: election legislation, local and regional government, the fight against corruption, domestic violence and trafficking in human beings, the judiciary and electronic media, the prevention of torture and respect of minority and children's rights. The Assembly decided to pursue its monitoring until measures taken or planned in these fields have produced tangible results.

Honouring of obligations and commitments by Armenia

Resolution 1532 (2007), adopted on 23 January 2007
[See Document 11117 of the Assembly]

The Assembly welcomed legislative measures taken so far to implement Armenia's constitutional reform, carried out with Council of Europe assistance. Conditions conducive to the fulfilment of many of the country's commitments have now been created, including: a better balance of powers, the election by Parliament of the Human Rights Defender, the right of access to the Constitutional Court for citizens, the Human Rights Defender and the parliamentary opposition.

However, the Assembly regretted the irregularities that affected the constitutional referendum and the failure to take steps to sanction the cases of observed fraud. It warns that an improved political climate and dialogue between the ruling coalition and opposition would be necessary for the effective implementation of the new system of government provided for in the revised Constitution.

Moreover, implementation of certain reforms, such as the reform of the judicial system and the fight against corruption, pluralism and independence of the media, as well as improvement in detention conditions and police conduct, takes more time than the reform of the legislation itself. The law on alternative service must be revised and the conscientious objectors serving prison sentences must be pardoned.

Armenia must furnish proof of how far it has progressed along the road to democracy and European integration: the forthcoming elections must comply with European standards for free and fair elections and media coverage of the election campaign and the elections must be pluralist and unbiased.

The Assembly decided to pursue its monitoring procedure until the current or proposed reforms in the spheres mentioned in the Resolution have produced tangible results.

Rights of national minorities in Latvia

Resolution 1527 (2006,) and Recommendation 1722 (2006), adopted on 17 November 2006
[See Document 11094 of the Assembly]

Latvia has specific demographic features as 41% of its inhabitants are from different ethnic minorities. This demographic situation is compounded by a legal peculiarity: about one-fifth of the resident population have no nationality whatsoever, whether Latvian or other, even though they were Latvian residents and Soviet nationals when the country became independent.

The Parliamentary Assembly considers that, in these circumstances it should establish its requirements in respect of Latvia in the light of this specific situation, balancing full respect for common European standards with the need for achieving a coherent and cohesive society and Latvian state.

In matters of state succession, citizenship is one of the sensitive questions which underlie all problems related to the status of minorities. According to the Council of Europe's legal instruments, statelessness should be avoided and anyone who, at the time of state succession, had the nationality of the predecessor state has the right to nationality. The Assembly is of the opinion that, regardless of the reasons for which

one state was succeeded by another, the principle to be respected is that of free choice in respect of their new citizenship for the nationals of the predecessor state.

Latvia has undertaken to comply with the Organisation's existing standards, principles and requirements as laid down, in particular, in the European Convention on Human Rights and the European Court of Human Rights' case-law, as well as the Framework Convention for the Protection of National Minorities. The supervision systems of these conventions and the European Court of Human Rights, whenever appropriate, should monitor their implementation and assess their application in Latvia.

The Assembly believes that genuine and constructive efforts must continue to be made by all sides to resolve the statelessness issue as effectively as possible. The naturalisation of individuals appears to be a lasting solution to the problem of statelessness.

The fact that a significant percentage of the adult population does not enjoy voting rights represents a continuing democratic deficit. The Assembly recommends that the right to vote, at least to local elections, be granted to non-citizens.

The Assembly invites the Latvian authorities to ratify, as soon as possible, Protocol No. 12 to the European Convention on Human Rights, which lays down a general prohibition on discrimination, to sign and ratify the European Charter for Regional or Minority Languages, to implement the Framework Convention for the Protection of National Minorities in good faith, and to consider withdrawing the two declarations recorded in the latter's instrument of ratification.

It also invites them, inter alia, to abolish differences in rights between citizens and non-citizens that are not justified or strictly necessary, at least by providing non-citizens with the same rights as are enjoyed by nationals of other European Union member states within the Latvian territory.

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.

Country visits

Official visits

Ukraine
10-17 December 2006

During his visit, the Commissioner met President Viktor Yushchenko, Prime Minister Viktor Yanukovych, and the Ministers of Foreign Affairs, of Justice, of the Interior, of Labour and Social Policy, of Education and Science, and of Youth and Sports. He also held discussions with leading parliamentarians, the Ombudsman, the head of the Supreme Court, law enforcement officials, religious leaders, and members of the human rights NGO community.

The aim of the visit was to make a comprehensive assessment of the Ukrainian human rights situation, especially with regard to the functioning of the judicial system, of law enforcement, of penitentiary institutions, as well as the HIV/AIDS epidemic and the authorities' record on fighting human trafficking. The agenda also included discussions on the treatment of migrants and asylum-seekers, hate crimes against minority groups, discrimination based on religion and sexual orientation, children's rights, violence against women, and the rights of Roma.

Among other things, Commissioner Hammarberg visited police stations, detention centres, secondary schools, shelters for migrants and psychiatric hospitals. Beyond Kyiv, the Commissioner also travelled to Odessa and Lviv.

Contact visits

Turkey
31 October-
4 November 2006

The Commissioner for Human Rights was in Turkey for a four-day contact visit. He discussed human rights issues with senior government leaders, judicial authorities and civil society representatives. Furthermore, he met religious leaders, legal experts, leading human rights NGOs and trade union representatives.

Among other things, Mr Hammarberg discussed problems faced by ethnic and religious minorities, freedom of expression (in particular Article 301 of the Turkish Criminal Code), and the relationship between counter-terrorism and respect for human rights. Also on the agenda were children's rights, violence against women, workers' rights (particularly the right to bargain collectively), the functioning of national human rights structures and the creation of the Turkish Ombudsman institution.

Poland
4-6 December 2006

During this visit, Thomas Hammarberg met representatives of the government, the Supreme Court, the Constitutional Tribunal, as well as ombudsmen and relevant parliamentary commissions. He also met leading civil society institutions and human rights experts.

The discussions focused on the length of pre-trial detentions and judicial proceedings, mechanisms to investigate allegations of police ill-treatment, prison conditions, and the right to assembly. Also on the agenda was Poland's strict abortion law, the policy to screen the public sector for former communist collaborators (lustration), as well as intolerance, discrimination, and anti-Semitism in society.

Other visits

Slovenia
15-16 November 2006

Mr Hammarberg visited Slovenia for talks with the government on the situation of a 31-member extended Roma family which had been relocated to a temporary accommodation centre following threats and protests by local villagers in Ambrus. The Commissioner urged a swift resolution to the problem, and reiterated the need to counter xenophobic tendencies against the Roma population.

Bosnia and Herzegovina
20-22 December 2006

During this visit Thomas Hammarberg met members of the BiH Presidency, the Chairman of the Council of Ministers, the Minister of Human Rights and Refugees, the Minister of Foreign Affairs as well as representatives of the relevant international actors. The discussions focused on the issue of decertified police officers during the UN vetting process by the International Police Task Force (IPTF), between 1996 and 2002.

Georgia
12-18 February 2007

On this visit the Commissioner focused his attention on the human rights situation in the frozen conflicts related to Abkhazia and South Ossetia. The Commissioner met members of the *de facto* governments in these two republics, and visited accommodation centres for internally displaced persons (IDPs), prisons, hospitals and schools. He discussed a wide range of issues including the protection of minorities, the availability of education, and the treatment of arrested and detained people. The aim of the visit was to assess the authorities' respect for their obligations towards the Council of Europe, especially with regard to the treatment of national minorities, internally displaced persons, migrants and asylum-seekers.

Conferences

Events organised by the Office of the Commissioner for Human Rights, or in collaboration with other directorates within the Council of Europe

Workshop "Protecting Migrants' Human Rights", Strasbourg, 8 November 2006

Organised by the Office of the Commissioner for Human Rights, this workshop looked at ways of protecting the rights of irregular migrants – a term encompassing immigrants who have entered the host country clandestinely, asylum seekers who have been denied refugee status, immigrants who find themselves in a situation of *de facto* illegality as well as those whose residence permits have expired.

Bringing together independent consultants as well as experts from international organisations and NGOs, the workshop took place on the eve of the Council of Europe's Social Cohesion Forum 2006 entitled "Achieving Social Cohesion in a Multicultural Europe". It focused on issues relating to protection, namely human rights in the migration cycle, obstacles to protection and fact-finding/data, the prevention of right violations as well as the co-operation between different institutions.

Colloquy "Protecting and supporting human rights defenders in Europe", Strasbourg, 13-14 November 2006

This colloquy was jointly organised by the Office of the Commissioner for Human Rights and the Directorate General of Human Rights. It brought together over a hundred participants and examined the challenges faced by Human Rights Defenders in 46 Council of Europe member states. It also sought to identify measures to support and protect them. The Commissioner expressed his willingness to work in close co-operation and in a complementary manner with other intergovernmental organisations, in particular the OSCE/ODIHR Focal Point for Human Rights Defenders, the European Union and the United Nations, notably through the UN Secretary General's Special Representative on Human Rights Defenders.

Participation in other events

Second plenary assembly of the European Roma and Travellers' Forum, Strasbourg, 6-8 November 2006

In his address, Commissioner Thomas Hammarberg said that national action plans on Roma rights should be continuously monitored, and pledged to review the progress made by governments in implementing the recommendations of his predecessor, Mr Alvaro Gil-Robles, whose report on the Roma, Sinti and Travellers in Europe was released in February 2006. Mr Hammarberg invited the Forum to participate in this review.

Meeting of the World Jewish Congress' Governing Board, Paris, 12 November 2006

In a speech to more than 100 Jewish leaders from around the world, the Commissioner underlined that far-right parties have won the support of more than 10% of the electorate in nine European countries, and that these political groups promote hate crimes in Europe. "Extreme right-wing parties are represented in several national parliaments and do in some countries influence government policies. Far right parties received more than ten per cent of the votes in the latest elections in France, Poland, Italy, Netherlands, Romania, Belgium, Denmark, Austria and Bosnia-Herzegovina. In response, other political parties have unfortunately adjusted their policies in order not to be outflanked by the extremists – with the result that extremist positions have been made 'mainstream'."

Launching Conference of the Council of Europe Campaign to combat violence against women, including domestic violence, Madrid, 27 November 2006

In his address, Commissioner Hammarberg drew attention to the scale of such violence in today's societies and argued that the problem should be dealt with in the context of ending all forms of discrimination, advancing gender equality and empowering women.

According to Mr Hammarberg, "the authorities must do everything they possibly can to prevent the violence, to protect victims, to award compensation and to prosecute and punish the perpetrators".

All Russian NGO Congress and prize conferring ceremony, Moscow, 10-11 December 2006

On International Human Rights Day, Commissioner Hammarberg gave a keynote speech to a major gathering of Russian NGOs in Moscow. The previous day, he participated in a conference and prize conferring ceremony, organised by Russian Ombudsman Vladimir Lukin. The Commissioner also discussed Russia's treatment of NGOs and its commitment to internationally recognised human rights standards with a number of government officials.

Meeting between representatives of the members of the International Ombudsman Institute (European Region) and the Commissioner for Human Rights, Berlin, 11 January 2007

The meeting was part of an ongoing dialogue with national human rights structures – ombudsmen and human rights commissions or institutes – the next major step of which is a conference on 12-13 April 2007 in Athens. Discussions focused on the recommendations of the Group of Wise Persons in their final report dated 15 November 2006. That report suggests that an active network of the Commissioner and national human rights structures could be of assistance to the European Court of Human Rights.

First part of the 2007 Ordinary Session of the Council of Europe Parliamentary Assembly, Strasbourg, 22-26 January 2007

In his address of 23 January, Commissioner Thomas Hammarberg said the work in the field of child protection has to focus on implementation. "The first necessary step is to legally ban any kind of violence against children, whether it takes place in schools, in institutions or at home," he said.

"With its recent modification of its civil law, Greece joined the growing number of Council of Europe member states that have fully and legally banned corporal punishment against children. Today 26 countries in Europe have done either that or firmly committed themselves to completing the prohibition."

"Indeed the pace of legal reform in this area is gaining momentum as we approach 2009, the year set for the complete abolition of corporal punishment against children. We are gradually coming closer to the goal of making Europe a violence-free zone for children. […] We need to bridge the gap between words and deeds, between agreed norms and reality. I pledge to do my best within my mandate to contribute to making our continent safe for our children," the Commissioner told MPs.

In his address of 25 January, Commissioner Hammarberg spoke about the human rights dimension of the HIV/AIDS pandemic.

"A large section of the infected population does not receive the necessary antiretroviral treatment or psychological support. HIV carriers often become victims of discrimination in the areas of medical assistance, education, as well as labour market opportunities."

The Commissioner also said that only comprehensive strategies can stop the disease from spreading, and spoke strongly in favour of Assembly Resolution 1536 on HIV/AIDS in Europe, which recommends that governments establish national action plans.

"I would like to urge the Parliamentary Assembly to rigorously follow up on these recommendations, and secure that governments design action plans which are rights-based, and which integrate special provisions for the most vulnerable groups, including women and children."

Third World Congress against the Death Penalty, Paris, 1-3 February 2007

In his opening address, Commissioner Thomas Hammarberg said that politicians should take a leading role in educating the public about the real nature of the death penalty.

"They should make clear that this punishment does not deter crime and that it is cruel, inhuman and degrading. This is pertinent, as public opinion polls show that many people, even in Europe, still

see the death penalty as a solution to the problem of crime." The Commissioner also stressed the ethical dimension. "Suggesting that social and political problems can be resolved through killing is morally wrong, and brutalising for society."

Following his opening speech, Mr Hammarberg also chaired a panel discussion on the case of the Bulgarian nurses who have been sentenced to death in Libya, and participated in another discussion entitled "The death penalty: an inhuman, cruel and degrading treatment and punishment".

10th Anniversary of the Children's Law Centre, Belfast, 7-8 February 2007

The Commissioner gave a lecture entitled "The impact of conflict on children: healing the past and securing the future". He talked about the necessity to heal the trauma left by 30 years of conflict, and the need to build a violence-free society for children. The lecture took place in Belfast City Hall and was attended by some 150 politicians, social workers, law-practitioners, students as well as representatives of the civic society.

Appeals, statements and speeches

International day of Tolerance, 16 November 2006

On this occasion, Commissioner Thomas Hammarberg stressed that European governments need to take stronger action to ensure that the current increase in Xenophobia, Islamophobia and anti-Tziganism is curtailed.

"I fear that if European governments do not take stronger action, these trends will become irreversible," the Commissioner said. "Governments should actively protect the ideals on which most of Europe has been built. It has to be recognised that the weakened social support structures as well as unemployment are among the root causes of some xenophobic tendencies. Economic policies which ignore the social dimension have destructive consequences. Governments should thus manage Europe's quest for a new place in the globalising world without further damaging this key pillar of the European social system. It is also important to add that firm legal measures are urgently needed to counter hate crimes, and the basic school curricula should be reviewed to include guidance to children on respecting those who are different."

Universal Children's day, 20 November 2006

On this occasion, Commissioner Hammarberg organized **a ceremony in memory of Janusz Korczak**, a Polish paediatrician, author and child pedagogue who died in 1942 together with 190 children in the extermination camp of Treblinka.

"Janusz Korczak's life, work and solidarity with children are permanent lessons on how to practice the principles of the rights of the child. He taught us to listen to children and to allow them to contribute to society," the Commissioner said.

During the ceremony, the Permanent Representative of Poland to the Council of Europe, Mr. Piotr Świtalski, also gave a speech and presented a picture of remembrance to the Commissioner. Mr Hammarberg announced that there would be a Janusz Korczak Lecture in the Council of Europe on 20 November 2007 in order to demonstrate the paramount importance of promoting the rights of children.

In his statement on Universal Children's Day, Thomas Hammarberg also **appealed to governments and local authorities** to take into account the particular vulnerability of children within the migration process.

"Children of irregular migrants demand particular attention," the Commissioner said. "International human rights standards such as the European Convention on Human Rights or the UN Convention on the Rights of the Child are applicable to all children regardless of their migration status."

"Migrant children have a right to housing, to healthcare and to education. It can be difficult for children to enjoy these rights in practice, because of the fear that they will be reported to the authorities and expelled from the respective country."

The Commissioner reminded central and local authorities of the principle of upholding the best interests of the child – which should be a major consideration in all decisions affecting them.

International Day of Disabled Persons, 3 December 2006

The Commissioner stated that Institutions treating or accommodating people with disabilities need to be opened up to independent monitoring across the Council of Europe region.

"Many people who have been transferred to these institutions live entirely cut off from the world, in poor living conditions, on occasion ill-treated, with their freedom of movement restricted. Such facilities must therefore be opened to independent monitoring. In countries, where this has not yet been done, governments should establish national inspection systems, such as those required by the Optional Protocol to the UN Convention Against Torture," the Commissioner said.

Viewpoints

The Commissioner has published a series of "Viewpoints", covering topical issues such as xenophobia, islamophobia, domestic violence, trafficking in human beings, HIV/AIDS, and the rights of children. All these texts are available on the Commissioner's website.

Co-operation

The Committee of Ministers – 988th Meeting of the Ministers' Deputies, Strasbourg, 21 February 2007

Thomas Hammarberg held an exchange of views with Delegates concerning his special visit to Bosnia and Herzegovina on the issue of decertified police officers (20-22 December 2006) and his contact visit to Georgia (12-18 February 2007).

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

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 backgrounds: 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

Azerbaijan

A delegation of the CPT carried out a visit to Azerbaijan. The visit, which began on 20 November 2006, was the CPT's second periodic visit to Azerbaijan.

During the visit, the delegation assessed progress made since the first periodic visit in 2002 towards implementing the CPT's recommendations. It examined the treatment of persons detained by the police and conditions in temporary detention centres. Particular attention was paid to the treatment and regime of life-sentenced and other long-term prisoners. The visit also provided an opportunity to examine the situation in psychiatric establishments and to assess the legal safeguards applicable to involuntary psychiatric patients under the Law on Psychiatric Assistance.

The delegation visited the following places:

Establishments under the Ministry of Internal Affairs

- Temporary detention centre of the Main Department for Combating Organised Crime, Baku
- Temporary detention centre of Narimanov District Police Department, Baku
- Reception and distribution centre for minors of the Main City Police Department, Baku
- Bilajari unit of the Main Transport Police Department, Baku
- Sabayil District Police Department, Baku
- Police station No. 15, Baku

- Police station No. 30, Baku
- Temporary detention centre of Gakh District Police Department
- Temporary detention centre of Shamakhi District Police Department
- Temporary detention centre of Sumgayit District Police Department
- Temporary detention centre of Zagatala District Police Department

Nakhchivan Autonomous Republic

- Temporary detention centre of the Ministry of Internal Affairs, Boyuk Duz
- Sadarak District Police Division
- Sharur District Police Division

Establishments under the Ministry of Justice

- Gobustan Prison
- Investigative Isolator No. 3, Shuvalan
- Strict-regime penitentiary establishment No. 11, Binagadi District, Baku

In addition, the delegation interviewed prisoners at the Central penitentiary hospital in Baku who had recently been transferred from Gobustan Prison, and examined the construction site of the new mixed-regime penitentiary establishment in the Nakhchivan Autonomous Republic.

Establishments under the Ministry of Health

- City Psychiatric Hospital No. 1, Baku
- Regional Psycho-Neurological Dispensary, Sheki

Establishments under the Ministry of Defence

- "Hauptvacht" (disciplinary unit) of Nakhchivan Garrison

Establishments under the State Border Service

- Temporary detention centre for persons who have violated the border regime, State Border Service military unit, Nakhchivan City.

Turkey

The main objective of the visit (22 November-4 December 2006) was to examine the situation of patients held in psychiatric hospitals, in particular as regards living conditions and treatment (including electroconvulsive therapy – ECT). The delegation also looked into the legal safeguards related to involuntary placement procedures and their implementation in practice. For the first time in Turkey, the delegation also visited two social welfare institutions.

The delegation visited the following places of deprivation of liberty:

Psychiatric hospitals

- Bakirköy Mental Health Hospital, Istanbul
- Elazig Mental Health Hospital
- Samsun Mental Health Hospital

Social welfare institutions

- Elazig Home for Persons in Need
- Gaziantep Care and Rehabilitation Centre.

The delegation also visited the temporary detention facilities at Istanbul-Zeytinburnu District Police Headquarters, in order to review the conditions under which foreign nationals were being held there.

In the course of the visit, the delegation met with judges of the civil courts in Elazig and Samsun which are competent for involuntary placement and guardianship procedures. Meetings were also held with representatives of the Psychiatric Association of Turkey, the Turkish Neuropsychiatric Society, the Psychiatric Nurses Association and the NGO "Human Rights in Mental Health".

At the end of the visit, during talks in Ankara, with senior officials from the Ministries of Foreign Affairs, Health, the Interior, Justice and National Defence, as well as with the Deputy Director General for Social Services and Child Protection, the delegation provided the Turkish authorities with its preliminary observations.

Hungary

A delegation of the CPT carried out an *ad hoc* visit to Hungary from 30 January to 1 February 2007. This was the CPT's fifth visit to Hungary.

The main purpose of the visit was to examine the situation at Szeged Prison's Special Regime Unit for prisoners serving lengthy sentences (HSR Unit). In the report on its third periodic visit to Hungary in 2005, the CPT made a

number of recommendations and comments in respect of plans to open a special unit at Szeged Prison for "actual lifers" (i.e. prisoners sentenced to life imprisonment who cannot be released except on compassionate grounds by pardon). In particular, the Committee stressed that it could see no justification for keeping "actual lifers" apart from other prisoners serving lengthy sentences. In their response, the Hungarian authorities informed the CPT of the setting-up of the HSR Unit.

Liechtenstein

A delegation of the CPT carried out a visit to Liechtenstein from 5 to 9 February 2007. This was the Committee's third visit to Liechtenstein.

In the course of the visit, the delegation reviewed the measures taken by the Liechtenstein authorities following the recommendations made by the Committee after its previous visits concerning the treatment of persons in police custody and the conditions of detention in Vaduz Prison. Further, for the first time in Liechtenstein, the delegation visited a nursing home. It also went to Vaduz Hospital, where it examined the conditions of hospitalisation of prisoners as well as involuntary placement procedures for psychiatric patients.

The delegation visited the following places:

- Vaduz Prison, including the police detention facilities
- Secure room of Vaduz Hospital
- Psychiatric ward of Vaduz Hospital
- St. Mamertus Nursing Home, Triesen
- Border post, Schaanwald.

Greece

The main objective of the visit (20-27 February 2007) was to examine the steps taken by the Greek authorities to implement recommendations made by the CPT after the August/September 2005 periodic visit. Particular attention was paid to the issues of safeguards against ill-treatment of persons detained by law-enforcement officials and conditions of detention in police stations and holding facilities for aliens. The delegation also paid a targeted visit to Korydallos Men's Prison in order to examine the conditions of detention in the segregation units and assess developments in relation to the prison's healthcare service.

The delegation visited the following places:

Establishments under the authority of the Ministry of Public Order

Attica prefecture

- Aspropyrgos Police Station
- Akropolis Police Station
- Kolonos Police Station
- Neo Kosmos Police Station
- Omonia Police Station
- Palio Falio Police Station
- Saint Panteilemonos Police Station
- Syntagma Police Station
- Zografas Police Station
- Aspropyrgos Alien detention facility
- Pireaus Alien detention facility
- Petru Rali Street Alien detention facility
- Holding Room at Athens Airport (International Departures)

Evros prefecture

- Alexandroupoli Police Station
- Orestiada Police Station
- Isaakio Border Police Station
- Kiprinos Border Police Station
- Neo Visa Border Guard Station
- Neo Himoni Border Guard Station
- Tychero Border Guard Station
- Filakio Special holding facility for illegal immigrants
- Vrisika Special holding facility for illegal immigrants

Lesvos Prefecture

- Mytilini Special holding facility for illegal immigrants
- Rodopi Prefecture
- Venna Special holding facility for illegal immigrants

Establishments under the authority of the Ministry of Justice

- Komotini Judicial prison
- Korydallos Men's Prison

Other visits

On 14 and 15 January 2007, a delegation of the CPT has carried out a two-day visit to Spain.

The purpose of the visit was to examine the modalities of care and custody of José Ignacio De Juana Chaos, a prisoner on hunger strike who is currently being held in the Doce de Octubre Hospital in Madrid. The CPT was informed that further to a judicial decision the prisoner was being fed against his will.

The delegation interviewed the above mentioned prisoner and held consultations with members of the medical team at the Doce de Octubre hospital, the competent judicial authorities and the Director of Madrid VI Prison, where the prisoner was held before being hospitalised. It also met representatives of the Spanish Medical Association and several lawyers familiar with the case. At the end of the visit the CPT's delegation had talks with the Secretary General of the Ministry of Interior and the Director-General of Penitentiary Institutions.

Reports to 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.

"The former Yugoslav Republic of Macedonia"

Report on the CPT's *ad hoc* visit in July 2004 (published on 15 November 2006)

On this fifth visit to "the former Yugoslav Republic of Macedonia", the CPT's delegation focussed on the treatment of persons deprived of their liberty by the law enforcement agencies, the system of accountability for ill-treatment, and the situation in remand prisons.

The CPT found that, although the magnitude of the problem of ill-treatment of persons in police custody appeared to have diminished, the amount of information indicative of ill-treatment remained significant.

As regards the system of accountability, the CPT found that no effective follow-up action had been taken by the authorities in response to cases raised by the CPT in previous reports. The CPT also examined the effectiveness of action taken by judges and prosecutors in respect of two further cases. It recommended that the authorities ensure that allegations of police ill-treatment are thoroughly and promptly investigated.

No allegations of physical ill-treatment of inmates by custodial staff were heard at Gevgelija or Štip Remand Prisons. However, a few allegations of ill-treatment were received at Skopje Prison. The CPT recommended that the authorities deliver a clear message to custodial staff at Skopje Prison that ill-treatment of prisoners is not acceptable and would be the subject of severe sanctions.

As for material conditions in remand prisons, the CPT called on the national authorities to ensure that all prisoners are granted at least one hour of outdoor exercise daily and one shower weekly. The CPT also made a series of recommendations concerning prison staffing, overcrowding, the lack of activities for prisoners, problems with health care and the importance of proper medical screening upon admission.

In their response, the national authorities describe the various measures taken to implement the CPT's recommendations.

Armenia

Report on the CPT's *ad hoc* visit in April 2004 (published on 16 November 2006)

The main purpose of the visit was to examine the treatment of persons deprived of their liberty in the course of

or following demonstrations organised by opposition parties in Yerevan in April 2004. In its report, the CPT has recommended measures to stamp out ill-treatment by the police, ensure the effective implementation of the existing legal provisions related to police custody, and improve conditions of detention in police and prison establishments.

Belgium

Response of the Government of Belgium (published on 21 November 2006)

In its response, the Belgian Government highlights the numerous measures taken by the authorities in response to the CPT's recommendations, and gives detailed information on a number of other issues raised by the Committee.

Greece

Report of the CPT's visit in August/ September 2005 (published on 20 December 2006)

In the course of the 2005 visit, the CPT reviewed the treatment of persons detained by law-enforcement officials and examined the conditions of detention in police and border guard stations, coast guard posts and in special facilities for illegal migrants. It also looked at the situation in a number of prisons, notably Korydallos, focusing on the issues of overcrowding, health care and the regime for prisoners. A psychiatric hospital on the island of Corfu was also visited.

The CPT has recommended various measures to stamp out ill-treatment by law-enforcement officials; they include investigating allegations of ill-treatment thoroughly and, where appropriate, imposing disciplinary and/or criminal sanctions on the officers concerned, as well as rigorous recruitment and professional training programmes and the establishment of an independent police inspectorate.

The conditions in the detention facilities for illegal migrants in Athens, in the Evros region and on the islands of Chios and Mytilini were of particular concern to the Committee. Most of the facilities visited were in a poor state of repair, unhygienic and lacking in basic amenities.

The CPT noted that prisons in Greece remain overcrowded and offer only an impoverished regime for prisoners. Prison health care services also require further investment. Few cases of physical ill treatment of prisoners by staff were brought to the attention of the CPT; however, inter-prisoner violence appeared to be on the rise.

No major shortcomings were observed in the psychiatric hospital visited.

In their response, the Greek authorities provide information on the measures being taken to address the concerns raised in the CPT's report.

Turkey

Reports on CPT's visits from 1990 to 1996 (published on 11 January 2007)

On 11 January 2007 the CPT published the reports on five visits to Turkey organised between 1990 and 1996, together with the responses of the Turkish Government. These documents have been made public with the agreement of the Turkish authorities.

Technical and workload factors have led to delays in preparing for publication this voluminous material relating to early CPT visits, which the Turkish authorities agreed in August 2001 could be placed in the public domain.

Portugal

Reports on the CPT's visit in 2002 (*ad hoc* visit) and in 2003 (periodic visit) (published on 25 January 2007)

The 2002 ad hoc visit focused on the situation at Oporto Central Prison. In previous visits to this establishment, the CPT had found the prison overcrowded, prisoners' living areas unhygienic, a high level of inter-prisoner intimidation/violence, a wide availability of drugs and inadequate staffing levels. The report on the 2002 visit highlighted that while some improvements had been made, there remained significant challenges.

In the course of the 4th periodic visit to Portugal in 2003 the CPT's delegation examined the treatment of persons detained by law-enforcement agencies

and the fundamental safeguards against ill-treatment offered to such persons. It also reviewed the conditions of detention in prisons, including at Oporto Central Prison, and examined for the first time the treatment of patients in a penitentiary psychiatric hospital.

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

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 21 December 2006, Ukraine ratified the Revised Social Charter. It entered into force in this State on 1 February 2007.

All 46 member States of the Council of Europe have signed the 1961 Charter or the 1996 Revised Charter and 39 have ratified either of these instruments (16 the 1961 Charter and 23 the Revised Charter).

See Appendix: Simplified chart of ratifications of European human rights treaties, page 86.

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 States parties submit a yearly report indicating how they implement the Charter in law and in practice.

As from 2007 states reports relate to one of the four thematic groups (beginning with Theme 1):

- Theme 1: Employment, training and equal opportunities
- Theme 2: Health, social security and social protection
- Theme 3: Labour rights
- Theme 4: children, families, migrants.

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 have complied with their obligations. In the second hypothesis, if a State takes no action on a decision of non-conformity, the Committee of Ministers adopts 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 to 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.

European Committee of Social Rights (ECSR)

On 31 January 2007 (985th meeting) the Committee of Ministers declared the following candidate elected as a member of the ECSR, with immediate effect from 1 January 2007, for a term of office which will expire on 31 December 2012: Mrs Birgitta Nyström (Sweden).

Significant meetings

Major awareness activities

7th Journées d'Etudes du Pôle européen Jean Monnet, Metz (France), 27-29 November 2006

During the 7th *Journées d'Etudes*, organised by the University Paul Verlaine of Metz, the theme of which was "non-discrimination and unequal treatment between persons in Europe", ECSR case-law was presented in detail for participants composed of lawyers and academics. The proceedings will be published.

"les Rendez-vous d'Europe", Rennes (France), 27 February 2007

As part of the cycle of conferences *"les Rendez-vous d'Europe"* (Rennes, 9 January-27 March 2007), the theme "protection of fundamental social rights at the European level", chosen for the Conference of 27 February 2007, reminded participants of the efforts and results achieved by the Council of Europe, especially by the European Convention of Human Rights and the European Social Charter in the development of social rights.

Meetings in the framework of the Action Plan of the 3rd Summit

Croatia, 20-22 November 2006

The seminar, which took place in Zagreb from 20 to 22 November 2006, had results of a political nature. The Secretary of State for Labour stressed the interest for Croatia in signing the Revised Charter.

During exchanges with Government representatives on the first ECSR Conclusions a real willingness has been shown to take measures in order to solve the situations of non-conformity.

Furthermore a Round Table was organised with the aim to to raise awareness of the Committee case-law among the judicial actors.

Joint Programme between the Council of Europe and the European Union

Russia: Moscow, 23-24 January 2007 and Rostov-sur-le-Don, 14-16 February 2007

The preparation of the ratification of the Revised Social Charter is still ongoing and a consensus between the different ministries seems to have been reached.

Significant improvements have been made to legislation especially relating health, social services, social benefits and children's rights.

Ukraine, 1-2 February 2007

This awareness-raising seminar on the Revised European Social Charter, the opening date of which coincided with the entry into force of this treaty in Ukraine, was organised in the framework of the Joint Programme between the Council of Europe and the European Union "Fostering a culture of human rights", in order to train lawmakers, civil servants (national, regional and local), social partners, judges, NGO representatives and other actors to the implementation of rights contained in the Charter and thus improve protection and respect of human rights in law and practice.

Others

Brussels, 16-18 January 2007

A training and advocacy session on the European Social Charter was organised in Brussels (16-18 January 2007) by the Academic Network on the European Social Charter (ANESC).

NGOs, employers' and workers' unions, lawyers and civil servants took advantage of this session to increase their knowledge of the mechanisms of the Charter, especially on the collective complaints procedure and on the development of the case-law of the European Committee of Social Rights.

Collective complaints: latest developments

Decisions on admissibility

- The collective complaint European Council of Police Trade Unions (CESP) v. Portugal (No. 37/2006) was declared admissible by the ECSR on 5 December 2006.

It relates to Article 4 §1 and §2 (right to adequate remuneration and right to increased rate of remuneration for overtime work) and Article 6 §1 and §2 (right to collective bargaining: joint consultation and machinery for voluntary negotiations) of the Revised European Social Charter. It is alleged that the Portuguese state has not observed the democratic rules of collective bargaining, having decided unilaterally to apply to the criminal investigation personnel of the Criminal Police a rule reducing their basic pay by 25%, thus avoiding payment of the on-call bonus.

- The collective complaint *Frente Comum de Sindicatos da Administração Pública* c. Portugal (No. 36/20006), relating to Article 6 §2, was declared inadmissible.

Two new complaints have been registered:

European Council of Police Trade Unions (CESP) v. France (No. 38/2006), registered on 20 October 2006

It relates to Article 4 §2 (right to increased rate of remuneration for overtime work) of the Revised European Social charter. It is alleged that French legislation does not allow the Operational Command Corps of the National Police Force, which is classified as an A-grade body within the national civil service, to receive compensation for the overtime worked as a result of anti-governmental demonstrations held in France in the first half of 2006.

European Federation of National Organisations Working with the Homeless (FEANTSA) v. France (No. 39/2006), registered on 2 November 2006

It relates to Article 31 (right to housing) of the Revised European Social Charter. It is alleged that the manner in which legislation related to housing is implemented in France results in a situation of non-conformity with this article.

Publications

- *The European Social Charter (revised)* in Spanish (exists also in English, French, Bosnian, Croatian, Dutch, German, Italian, Norwegian, Polish, Portuguese, Romanian, Russian, Slovenian)
- *The Social Charter at a glance* in Spanish (exists also in English, French, Albanian, Croatian, Dutch, Georgian, German, Italian, Polish, Romanian, Russian, Slovenian and Turkish).

Website: http://www.coe.int/T/E/Human_Rights/Sce/

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.

Second monitoring cycle

Second **state reports** were received in respect of the United Kingdom on 22 February 2007, Switzerland on 31 January 2007, Azerbaijan on 10 January 2007, Austria on 1 December 2006, Lithuania on 3 November 2006, and Cyprus on 27 October 2006.

Ilze Brands-Kehris, First Vice-President of the Advisory Committee, and Alan Phillips, President of the Advisory Committee

The Advisory Committee visited Spain (20-24 November 2006) and "the former Yugoslav Republic of Macedonia" (27-30 November 2006) in the context of the monitoring of the Framework Convention.

The Advisory Committee for the Protection of National Minorities adopted **second opinions** on **Spain** on 22 February 2007 and "**the former Yugoslav Republic of Macedonia**" on 23 February 2007.

The **second Opinion on Norway**, adopted on 5 October 2006, was made public on 16 November 2006 at the country's initiative.

Advisory Committee's Opinion on Norway

"Since the adoption of the 1st Opinion of the Advisory Committee and of the 1st Resolution by the Committee of Ministers, Norway has continued to pay attention to the protection of national minorities.

The legal and institutional framework for combating ethnic discrimination has been strengthened. Also, positive legislative and practical measures have been taken with regard to the use of minority languages for personal names and topographical indications as well as to promote the revitalization and the teaching of the Kven language. The cultural activities of national minorities have continued to receive government support. Improvements have also been made to the compensatory measures adopted to remedy past injustices.

Gunnar Jansson, Second Vice-President of the Advisory Committee

However, shortcomings remain in different areas. Increased efforts are needed to promote the specific cultures of national minorities in education and in the media and to improve their involvement in decision-making. The situation of the Roma and Romani/Taters remains a challenge for the Government, as

they continue to face difficulties in employment, housing and particularly in education.

Particular efforts have been made in recent years to promote tolerance, mutual understanding and respect for cultural diversity. Integration in society, including as regards growing numbers of persons of immigrant background, is one of the Government's main priorities. Since incidents of intolerance and discrimination against such persons are still reported, it is important for the authorities to remain vigilant."

Resolutions of the Committee of Ministers were adopted in respect of Armenia (7 February 2007) and **Germany** (7 February 2007), **Finland** and **Malta** (31 January 2007) and **San Marino** (31 January 2007).

A **follow-up meeting** on the implementation of the Framework Convention for the Protection of National Minorities was organised in Hungary on 30 November 2006.

Intergovernmental activities

The Committee of Ministers adopted a new mandate for the Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN) at its 984th meeting, 17 and 18 January 2007.

The Framework Convention on the Internet: http://www.coe.int/minorities/

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

Over the past few years, the Steering Committee for Human Rights (CDDH) has accomplished important standards-setting and follow-up work, particularly since the Action Plan was adopted in Warsaw by the Heads of State and Government in May 2005. The main aim is to guarantee the effectiveness of the European Convention on Human Rights and in particular the long – term effectiveness of the Court. A draft recommendation on effective means at domestic level for the rapid execution of the Court's judgments is notably under elaboration. It should be submitted to the Committee of Ministers for adoption by 30 April 2008.

Moreover, the in depth follow-up to the implementation at national level of several Recommendations of the Committee of Ministers to member States continues: 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(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 and Rec(2004)6 on the improvement of domestic remedies. In the follow-up and assessment process of the effectiveness of measures taken at national level, not only the member States governments have been involved, but also civil society actors such as NGOs and national institutions for the protection of human rights. The Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR), which has been particularly entrusted with the follow-up held its 60th meeting on 22-24 November 2006.

This work contributes to helping member States elaborate, promote and implement national legislation and policy in the field of human rights in full compliance with the fundamental values of the Council of Europe.

Development of Human Rights

At its 36th meeting (7-9 February 2007) the Committee of Experts for the Development of Human Rights (DH-DEV) continued examining the question of human rights in a multicultural society. At the end of this meeting, it adopted its final activity report to which it appended two reports on "hate speech" and "the wearing of religious symbols in public areas". It made concrete proposals for follow-up activities, which could be seen as several stages of the same process: (a) manual(s) on the issue of human rights in a multicultural society, particularly on "hate speech" and "the wearing of religious symbols in public areas"; guidelines or targeted recommendation(s); a general Committee of Ministers declaration. The CDDH, to which the final activity report has been transmitted, will consider these proposals at its meeting in April 2007.

Access to public documents

The CDDH is finalising its draft Convention on access to official documents which is aiming at the consolidation of democracy, good governance and the rule of law in member States.

Other events

A colloquy "*Protecting and Supporting Human Rights Defenders in Europe*" was organised in association with the Commissioner for Human Rights (13-14 November 2006). A group of specialists is exploring the follow-up to be given to the colloquy.

An exchange of views with Mr Giorgio Malinverni, former member of the Committee monitoring the United Nations Covenant on Economic, Social and Cultural Rights and elected Judge to the European Court of Human Rights, and Ms Chantal Gallant (Belgium) took place in November 2006 on questions relating to social rights and recent developments in the field of economic and social rights having a possible impact on the system of the European Convention on Human Rights.

European Commission against Racism and Intolerance (ECRI)

The European Commission against Racism and Intolerance (ECRI) is an independent human rights body monitoring issues related to racism and racial discrimination in the 46 member states of the Council of Europe. ECRI's programme of activities comprises three inter-related aspects:
– country-by-country approach;
– work on general themes;
– and activities in relation to civil society.

Country-by-country approach

In the framework of this approach, ECRI closely examines the situation concerning racism and intolerance in each of the member states of the Council of Europe. Following this analysis, ECRI draws up suggestions and proposals addressed to governments as to how the problems of racism and intolerance identified in each country might be overcome, in the form of a country report.

In 2003 ECRI started work on the third round of this country-specific monitoring. The third round reports focus on implementation, by examining whether and how effectively the recommendations contained in ECRI's previous reports have been implemented. The reports also examine in more depth specific issues, chosen according to the situation in each country ECRI's country-by-country approach concerns all Council of Europe member states on an equal footing and covers 8 to 9 countries per year.

On 13 February 2007 ECRI published five new country reports on Armenia, Georgia, Iceland, Portugal and Slovenia.

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

In **Armenia** the authorities have amended the Constitution to provide for equality before the law for everyone under Armenian jurisdiction. But no comprehensive body of civil and administrative anti-discrimination provisions has been passed. The Yezidi minority continues to face problems with regard to land, water and grazing issues and some members of this community have still not acquired property titles for their land.

In **Georgia** new criminal law provisions have been introduced to prohibit racial discrimination and incitement to racial hatred. But members of non-traditional religious minorities can still be exposed to physical attacks on them or their property. A number of shortcomings must be remedied in asylum law and practice. The authorities are insufficiently aware of the situation of some minority groups such as Roma and migrants, and do not monitor it sufficiently.

In **Iceland** the State has assumed increasing responsibility and ownership in the field of meeting asylum-seekers' reception needs. But the legal framework to combat racism and racial discrimination still remains to be strengthened and better implemented. The position of immigrant women who are victims of domestic violence continues to be a cause for concern to ECRI.

In **Portugal** the High Commissioner for Immigration and Ethnic Minorities has been restructured and strengthened (this institution actively works to facilitate the integration of immigrants and to combat racism and racial discrimina-

tion). But Roma/Gypsy communities still suffer from social exclusion. Access to education, to public services and to housing remains problematic for these communities.

In **Slovenia**, the legal framework against racial discrimination has been strengthened through the adoption of primary antidiscrimination legislation covering different areas of life. But the situation of those persons who were unlawfully erased from the register of permanent residents in February 1992 has not yet been solved. In the absence of an overall strategy to simultaneously address all areas where Roma experience disadvantage and discrimination, the members of this group are still in need of special support in order to enjoy equal opportunities with the rest of the Slovenian population.

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

The publication of ECRI's country-by-country reports is an important stage in the development of an ongoing, active dialogue between ECRI and the authorities of member states with a view to identifying solutions to the problems of racism and intolerance with which the latter are confronted. The input of non-governmental organisations and other bodies or individuals active in this field is a welcome part of this process, and should ensure that ECRI's contribution is as constructive and useful as possible.

Work on general themes

ECRI's work on general themes covers important areas of current concern in the fight against racism and intolerance, frequently identified in the course of ECRI's country monitoring work. This work has often taken the form of General Policy Recommendations addressed to the governments of member states, intended to serve as guidelines for policy makers.

ECRI has adopted to date ten General Policy Recommendations, covering some very important themes, including key elements of national legislation to combat racism and racial discrimination; the creation of national specialised bodies to combat racism and racial discrimination; combating racism against Roma; combating Islamophobia in Europe; combating racism on the Internet; combating racism while fighting terrorism; combating antisemitism; and combating racism and racial discrimination in and through school education.

ECRI has also produced compilations of good practices to serve as a source of inspiration in the fight against racism.

General Policy Recommendations

ECRI adopted its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education on 15 December 2006. This recommendation presents member states with a comprehensive set of detailed and practical proposals in order to help governments to ensure compulsory, free and quality education for all, to combat racism and racial discrimination at school and to train all teaching staff to work in a multicultural environment.

With regard to work in progress to prepare ECRI's future General Policy Recommendation No. 11 on combating racial discrimination in policing, at its December plenary meeting ECRI held a general exchange of views on the text of the preliminary draft General Policy Recommendation No. 11 prepared by its working group on combating racial discrimination in policing. It is foreseen that ECRI will adopt General Policy Recommendation No. 11 in June 2007.

Relations with civil society

This aspect of ECRI's programme aims at spreading ECRI's anti-racist message as widely as possible among the general public and making its work known in all relevant spheres at international, national and local level. In 2002 ECRI adopted a programme of action to consolidate this aspect of its work, which involves, among other things, organising round tables in member states and strengthening co-operation with other interested parties such as NGOs, the media, and the youth sector.

Expert Seminar on combating racism while respecting freedom of expression

On 16-17 November 2006 ECRI organised an *ad hoc* expert seminar on the subject of combating racism while respecting freedom of expression, in response to the increasingly racist and inflammatory tone of public discourse and the need to strike the right balance between the repression of racist discourse and the respect of freedom of expression. The seminar aimed to look at how to combat racism while respecting freedom of expression in multicultural societies and which legal and policy measures, in line with existing human rights standards, are the most appropriate to achieve this aim. For this purpose the seminar brought together governmental representatives (from specialised Council of Europe inter-governmental committees), parliamentarians, journalists and representatives of media self-regulatory bodies, researchers, specialised NGOs, minority representatives and ECRI's inter-agency co-operation partners.

Beginning with the identification of the main challenges related to combating racism while respecting freedom of expression, the seminar explored how racist discourse and other forms of racist expression operate and how they can foster and perpetuate ideologies of racism and racial discrimination. Thereafter, a closer examination of the international and national legal framework for combating racist expression in a selected number of Council of Europe member states helped to identify basic principles to be respected in legal proceedings when striking the balance between the right to be free from racism and the right to freedom of expression. Finally, the seminar examined possible legal and policy responses for combating racism while respecting freedom of expression to be adopted by governments and other relevant actors in this field, including the implementation and monitoring of legislative measures against racist and discriminatory speech and expression, the empowerment of minorities, training and awareness-raising and self-regulatory measures.

Seminar with national specialised bodies to combat racism and racial discrimination on positive action

On 22-23 February 2007 ECRI held a seminar with national specialised bodies, ECRI's strategic partners in the fight against racism and racial discrimination, in order to discuss the issue of positive action, a term that covers special measures targeted at particular groups to prevent or compensate for disadvantage or to promote full participation in different areas of life.

This seminar aimed to clarify the concept of positive action and to exchange

good practices in this field. For this purpose the seminar had a closer look at the national and international standards in this field and explored the different types of positive action that have been implemented in various member states of the Council of Europe, as well as their different areas of application. Special emphasis was put on the role of national specialised bodies in this field, in spreading information about positive measures or supervising their enforcement, which was illustrated through a variety of practical examples presented during the seminar.

Publications

- Second Report on Armenia, CRI (2007) 1, 13 February 2007.
- Third Report on Georgia, CRI (2007) 2, 13 February 2007.
- Third Report on Iceland, CRI (2007) 3, 13 February 2007.
- Third Report on Portugal, CRI (2007) 4, 13 February 2007.
- Third Report on Slovenia, CRI (2007) 5, 13 Februray 2007.

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) is responsible for co-ordinating these activities.

Campaign to combat violence against women, including domestic violence

Violence against women, including domestic violence, is one of the most serious forms of gender-based violations of human rights. It deprives women of their ability to enjoy fundamental freedoms. In exposing women, by virtue of their sex, to physical, sexual and/or psychological abuse in the family or domestic unit, violence against women represents a serious obstacle to equality between women and men.

Determined to eradicate this widespread violation of human rights of women, the Heads of State and Government of the Council of Europe member states decided at their Third Summit (Warsaw, 16-17 May 2005) to set up a *Task Force to Combat Violence against Women, including Domestic Violence* and to implement a Campaign on the same issue. The Task Force, composed of eight international experts in the field of combating violence against women, had been set up in early 2006. It developed the Campaign Blueprint, which serves as a roadmap for implementation of the Campaign. This document includes a definition of violence against women, as well as Campaign aims, objectives and messages and lays out activities to be taken to implement the Campaign. The Campaign consists of three dimensions: intergovernmental, parliamentary and local and regional. It is carried out by the Council of Europe as well as its member states, in partnership with intergovernmental organisations and NGOs involved in the protection of women against violence.

Launch of the Campaign

The Campaign was launched during a high-level conference held in the Spanish Senate in Madrid on 27 November 2006. All Council of Europe member states, except Armenia, Belgium, Bosnia and Herzegovina, Liechtenstein, Poland and Switzerland were represented. Canada, the Holy See and Mexico attended as observers.

In total over 400 participants attended the conference, including deputy prime ministers, ministers, deputy ministers, parliamentarians, state secretaries and high-level civil servants and representatives of local and regional authorities dealing with gender equality matters as well as representatives of international intergovernmental and non-governmental organisations and Council of Europe organs and bodies.

The conference aimed at rallying high-level support for the *Council of Europe Campaign to Combat Violence against Women, including Domestic Violence*. Mr René van der Linden, President of the Parliamentary Assembly of the Council of Europe, emphasised the vital role of national parliaments in implementing this Campaign, while Mr Ian Micallef, President of the Chamber of Local Authorities of the Congress of Local and Regional Authorities of the Council of Europe pointed out that local and regional elected representatives are on

the frontline of dealing with domestic violence and therefore key actors in this Campaign.

Calling on governments to "meet their political, legislative and administrative obligations to prevent domestic violence, help the victims and punish the perpetrators", the Secretary General, Mr Terry Davis, recalled their "responsibility to protect the human rights of all its citizens and everyone else in the country". Recognising this, the host of the conference, Prime Minister of Spain, Mr José Luis Rodriguez Zapatero, underlined the fact that violence against women is a human rights violation and "that authorities must take action to prevent this violence, condemn those who perpetrate it and offer protection and recognition to the victims".

The Conference came to an end after a range of presentations by government representatives, parliamentarians, representatives of local and regional authorities as well as researchers and NGO representatives, who were united in their pledge to prevent and combat violence against women.

René van der Linden, President of the Parliamentary Assembly, and José Luis Rodriguez Zapatero, Prime Minister of Spain

The proceedings of the conference will be published by the Equality Division of the Directorate General of Human Rights shortly.

First regional seminar on legal measures to combat violence against women, including domestic violence

The first of five regional seminars dedicated to different objectives of the Campaign Blueprint was held in co-operation with the Dutch Ministry of Justice in The Hague, Netherlands, on 21-22 February 2007. It focussed on legal measures to prevent and combat violence against women, including domestic violence and aimed at providing a forum to exchange information on current developments in the field of law by presenting innovative legal measures through keynote speeches, followed by national experiences in member states. Government and NGO representatives from eight countries, including Austria, Belgium, France, Germany, Ireland, the Netherlands, Spain and the United Kingdom, participated in the seminar.

For more information on this and future seminars, please visit http://www.coe.int/stopviolence/intergov. The proceedings of the seminar will be available soon.

Outlook

Throughout the duration of the Campaign, various Campaign activities will be organised by all three dimensions: intergovernmental, parliamentary and local and regional.

The Campaign will come to an end during a closing conference to be held in the first half of 2008. On this occasion, the *Council of Europe Task Force to Combat Violence against Women, including Domestic Violence*, will present its conclusions and assessment of measures and actions taken at national level to combat violence against women, including domestic violence as well as recommendations to the Council of Europe on future action.

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

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, independent and pluralist media, so safeguarding the proper functioning of a democratic society.

The Steering Committee on the Media and New Communications Services (CDMC)

The CDMC met once during the period covered by this Bulletin, from 28 November to 1 December 2006, during which it approved and transmitted a number of texts to the Committee of Ministers for examination:

- a **declaration on protecting the role of the media in democracy in the context of media concentration**, alerting member states to the risk of misuse of the power of the media in a situation of strong media concentration and its potential consequences to political pluralism and to democratic processes;
- a **recommendation on media pluralism and diversity of media content**, updating existing Council of Europe standard-setting instruments on these subjects having regard to technical developments in the media sector and globalisation (cf. Committee of Ministers Recommendation Rec (2007) 2);
- a recommendation **on the remit of public service media in the Information Society**, with a view to securing that public service can continue to be delivered by public media taking full advantage of recent technological developments in the area of broadcasting and other communications services (cf. Committee of Ministers Recommendation Rec (2007) 3).

The declaration and the two recommendations were adopted by the Committee of Ministers on 31 January 2007.

During the same meeting, the CDMC took note of the results of the 2006 Pan-European Forum on Human Rights in the Information Society "Empowering children and young people" which took place in Yerevan on 5 and 6 October 2006, in particular the lines of action envisaged at the Forum and the general rapporteur's report. These documents contain useful practical guidance for the implementation of the Committee of Ministers Recommendation Rec (2006) 12 on empowering children in the new information and communications environment. At the invitation of the CDMC, the Committee of Ministers, on 31 January 2007, also took note of the above-mentioned lines of action and the general rapporteur's report and decided to bring them to the attention of member states.

The CDMC also prepared the terms of reference for its subordinate groups for 2007/2008 and held a first exchange of views on a possible future mechanism for promoting respect of Article 10 of the European Convention on Human Rights. Interest for such a mechanism was subsequently confirmed in the context of the Parliamentary Assembly's discussion on the threats to the lives and freedom of expression of journalists and the related report and recommendation adopted by the Assembly. A number of other issues were also examined such as copyright in the context of its work, Internet governance and follow up to the World Summit of the Information Society and the role of media in intercultural dialogue.

Standing Committee on Transfrontier Television (T-TT)

The European Convention on Transfrontier Television 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 (T-TT), composed of representatives of the states party to that instrument, is responsible for following the convention's application and may intervene in a process for the friendly settlement of any difficulties.

The T-TT held its 41st meeting on 9 and 10 October 2006, during which it adopted two opinions, respectively on the interpretation of Article 12, paragraph 4, of the European Convention on Transfrontier Television, on the meaning of announcements in the public interest and the interpretation of Article 18, paragraph 3, of the Convention, regarding the prohibition of sponsorship of news and current affairs programme in the context of thematic news channels.

The priority of the T-TT remains the revision of the Convention, in parallel with the legislative process of the Audiovisual Media Services Directive at European Union level. A drafting group was set up to work on the revision of the Convention with a view to submitting a draft text to the Standing Committee at its next meeting in the autumn of 2007.

The Standing Committee took note with satisfaction that the Russian Federation had signed the Convention on 4 October 2006 and welcomed the call made by the Committee of Ministers to Council of Europe member states that have not yet done so to ratify the Convention and noted the various other initiatives that had been taken in respect of both member and non-member states of the Council of Europe with a view to promoting further accessions to the Convention and widening its geographical application. It decided to respond favourably to Morocco's and Israel's requests to participate in the next meeting of the Committee.

The full report of the meeting can be found on the media website in document T-TT (2006) 023.

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

1. At present, the 31 states party to the Convention are: Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germaniy, Hungary, Itlay, 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.

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

Working visit for Chechen officials to the autonomous institutions of Catalonia

Barcelona, Spain, 10-15 December 2006

A group of 8 legislative and law enforcement officials from the Chechen Republic (Russian Federation) visited the autonomous institutions of Catalonia as part of the Council of Europe programme of co-operation with the Russian Federation in the Chechen Republic. The visit was organised by the Catalonian Human Rights Institute and enabled participants to familiarise themselves with legislative, law enforcement and human rights protection institutions in the region.

Study visit for two lawyers of the Office of the Government Agent before the European Court of Human Rights of Ukraine

Strasbourg, 11-15 December 2006

The lawyers familiarised themselves with the work of the European Court of Human Rights, its Registry, and the Secretariat of the Council of Europe, including the Department for the Execution of Judgements.

Study visit for the Government Agent of Bosnia and Herzegovina before the European Court of Human Rights to the office of the Government Agent of the Netherlands

The Hague, The Netherlands, 12-15 December 2006

The visit aimed at enhancing the visitors' knowledge of other member states' experience in running a Government Agent's Office. In addition, it included visits and meetings at the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia and the International Court of Justice, organised in co-operation with the Embassy of Bosnia and Herzegovina in The Hague.

First annual meeting of the European Programme of Human Rights Education for Legal Professionals (HELP)

Strasbourg, 17 October 2006

The European Programme of Human Rights Education for Legal Professionals (HELP) welcomed correspondents from 36 member states to its first annual meeting. The HELP programme, launched in March 2006, is a 3-year initiative aimed at integrating the ECHR and the case-law of the Court into the national training structures of judges and prosecutors in Council of Europe member states. The representatives of the training structures agreed to participate in working groups on development of a standard curriculum on the ECHR, and training materials and a training manual for training of trainers, reflecting the latest techniques and learning methods.

Training on remedies against excessive length of proceedings

Ljubljana, Slovenia, 23-24 October 2006

The Ministry of Justice of Slovenia and HRCAD organised the second of two study sessions for judges and state attorneys on the new « Act on the protection of a right to a fair trial without undue delay » which has entered into force in Slovenia as from 1st January 2007. The standards of the ECHR as regards reasonable time for legal proceedings and the right to an effective remedy before a national authority, as well as experiences

from other European countries in this field, were discussed.

Two training seminars for judges on domestic implementation of the ECHR

Sarajevo, Bosnia and Herzegovina, 7-8 November and 9-10 November 2006

The seminars focused on Articles 5, 6 and 8 and Article 1 of Protocol 1 of the ECHR. They were co-organised by the Directorate General of Human Rights and the Council of Europe Secretariat Office in Sarajevo.

Training seminar for prison officers on the application of the ECHR in the Russian penitentiary system

Kaliningrad, Russian Federation, 9-11 November 2006

Emphasis was placed on the ECHR standards in respect of the human rights of prisoners, with a special focus on the norms developed under Articles 3, 5 and 8 and their application in the Russian Federation. The standards developed by the European Committee for the Prevention of Torture (CPT) were also discussed. The seminar was part of the Joint Programme between the European Commission and the Council of Europe to strengthen the rule of law, human rights and educational standards in the Russian Federation.

Training session on human rights and ethnic minorities for the Russian Militia

Krasnojarsk, Russian Federation, 29 November-1st December 2006

The last of four training sessions carried out in 2006 on human rights and ethnic minorities for the Russian Militia targeted law enforcement officials from the training institutes of the Russian Ministry of the Interior in the region of Krasnojarsk.

Seminar on positive obligations under Articles 2 and 3 of the ECHR

Vilnius, Lithuania, 2-3 December 2006

The seminar was organised for fifty lawyers from Belarus and Bielorussian students from the Humanities University in Vilnius.

Cascade training seminar on Articles 5 and 6 of the ECHR

Peja, Kosovo (Serbia), 4-5 December 2006

The seminar was organised for judges and prosecutors, in co-operation with the Kosovo Judicial Institute. The trainers were local judges and prosecutors who had previously qualified as ECHR trainers under HRCAD's programme.

Workshop on a human rights strategy for Kosovo

Mitrovica, Kosovo (Serbia), 13–14 December 2006

The workshop aimed at making progress in the elaboration of a human rights strategy for Kosovo. The participants were officials from the Kosovo Provisional Institutions of Self-Government (PISG), representatives from minority communities and civil society groups. It was supported and co-organised by the Council of Europe and the Advisory Office for Good Governance within the Prime Minister's Office. The OSCE and the Office of the United Nations High Commissioner for Human Rights also contributed towards the event.

Thematic seminar on how to use the European Convention on Human Rights in domestic legal proceedings

Tbilisi, Georgia, 27-28 February 2007

The seminar was organised for lawyers to familiarise them with European human rights standards and in particular the European Convention of Human Rights and to strengthen their ability to use the Convention in their daily work.

Thematic seminar for lawyers on how to use the European Convention on Human Rights in domestic legal proceedings

Yerevan, Armenia, 24-25 February 2007

This was the first of two seminars organised for lawyers to familiarise them with European human rights standards and in particular the European Convention of Human Rights and to strengthen their ability to use the Convention in their daily work.

Training Course for Law Enforcement Officials "Police and Society" (Train-the-Trainers-Course)

Yerevan, Armenia, 13-16 February 2007

The training course was organised for police officers and focused on ways of integrating human rights into daily policing tasks.

Two seminars for judges and prosecutors on the European Convention of Human Rights

Ankara, Turkey, 12-13 February 2007 and Istanbul, Turkey, 15-16 February 2007

In-depth training seminars for judges and prosecutors on the implementation of the Criminal Code in the light of the European Convention of Human Rights, in particular with regard to freedom of expression.

Seminars on the right to a fair trial and judicial ethics

Ankara, Turkey, 22-23 January; 24-25 January; 29-30 January 2007

Three training seminars for 60 members of the Inspection Board of the Ministry of Justice on the right to a fair trial and judicial ethics aimed at further strengthening the Board's ability to carry out inspections of the functioning of courts effectively, and taking into consideration European human rights standards.

Publications and documents

New translations available on line in the "**Training Material database**":

The **"ECHR Glossary"** in Albanian, Azerbaijani, Bosnian, Georgian, Romanian, Russian, Serbian, and Turkish.

The "**Short Guide to the ECHR**" (3rd ed.) in Bosnian/Croatian/Serbian.

Provision of publications to the Human Rights Library in the Chechen State University in Grozny in the context of the implementation of the Programme of co-operation activities in the Chechen Republic in December 2006. The publications and documents selected deal with human rights issues, and with the case-law of the European Court of Human Rights. Whenever possible priority has been given to documents in Russian.

Contribution to a textbook on the ECHR for lawyers in Serbian

HRCAD contributed to a textbook, intended for lawyers, prepared under an in-depth training programme for 20 lawyers being organised by the London-based NGO Interights and the Serbian Helskinki Committees by providing two chapters written by lawyers of the Registry of the ECtHR (the right to an effective remedy and the right to property). The book contains, in 1200 pages, the text of the ECHR, including its Protocols, chapters on relevant Articles of the ECHR, and presentations on compatibility of domestic legislation with European standards. The book has attracted wide interest among other legal professionals from Serbia.

Web site: 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	**06.02.07**	03.02.06		14.11.02	02.10.96	28.09.99	**06.02.07**
Andorra	22.01.96			22.01.96			26.03.03	17.07.06		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	12.10.06
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	14.09.06	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	14.03.07
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		18.10.06	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			12.10.06	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	21.08.06
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	02.10.06	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		**21.12.06**	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: 05.04.07
Ratifications between **01.11.06** and **28.02.07** are highlighted

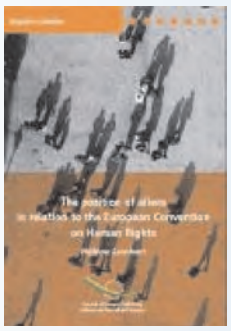
Full information on the state of signatures and ratifications of Council of Europe conventions can be found on the Treaty Office's Internet site: http://conventions.coe.int/

Recent Council of Europe publications

The position of aliens in relation to the European Convention on Human Rights *(2007)*

Author: Hélène Lambert

ISBN 978-92-871-6098-0, 16 x 24 cm, 76 pages, €13/US$20



The law of the Council of Europe Convention on Human Rights relating to aliens has developed significantly over recent time. In 25 years the number of Contracting States has doubled and the scope of rights and freedoms guaranteed under the Convention has broadened with the adoption of new protocols.

Protocol No. 11 has reformed the Convention control bodies and mechanisms in order to accommodate the increasing case-load. Further major amendments are foreseen by Protocol No. 14 to improve the effective operation of the ECHR faced with an ever-increasing volume of applications, whereas Protocol No. 12 has enlarged the non-discrimination clause contained in Article 14 of the ECHR to "any rights set forth by law".

At the same time, important demographic changes have taken place. The growing integration of the states of the European Union has created greater mobility for its citizens, and political and economic pressures have given rise to an increasing number of refugees and asylum-seekers from Europe and beyond.

It is against this backdrop that the position of aliens in relation to the European Convention on Human Rights is re-examined in a third edition.

Co-operation against crime: the conventions of the Council of Europe *(2007)*

ISBN 978-92-871-6085-0, 16 x 24 cm, 338 pages, €23/US$35

For over fifty years, the Council of Europe has progressively developed an important set of common legal instruments to assist states in dealing with crime.

This publication gathers together the main Council of Europe conventions on such co-operation mechanisms as extradition, mutual legal assistance, the transfer of sentenced persons, and the transfer of criminal proceedings. It also includes conventions addressing specific forms of crime which have a cross-border dimension, such as cybercrime, money laundering, terrorism, trafficking in human beings, and corruption.

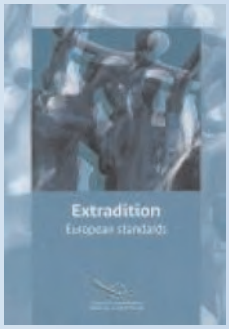
Rights of children at risk and in care *(2007)*

Author: Bragi Gudbrandson

ISBN 978-92-871-5882-6, 16 x 24 cm, 150 pages, €19/US$29

Extradition - European standards *(2007)*

ISBN 978-92-871-6076-8, 16 x 24 cm, 168 pages, €19/US$29



This publication presents notes and comments on the Council of Europe's legal instruments on extradition. It includes the current status of the case law of the European Court of Human Rights on extradition matters and on other transnational criminal proceedings. It also brings together the non-binding instruments on extradition adopted by the Council of Europe's Committee of Ministers. Practitioners, policy makers and researchers dealing with extradition matters will fnd this publication a useful and up-to-date re - ference document.

Manual on human rights and the environment – Principles emerging from the case law of the European Court of Human Rights *(2006)*

ISBN 978-92-871-5980-9, A5, 90 pages, €12/US$18

Human fghts and the environment have become increasingly interconnected. This manual seeks to contribute to a better understanding of this relationship in the light of the relevant case law of the European Court of Human Rights.

Whilst the European Convention on Human Rights does not guarantee a specifc right to a healthy environ - ment, the general standards deriving from it may also apply to environmental matters. The European Court of Human Rights regularly examines complaints in which individuals argue that a breach of their Convention rights is the result of adverse environmental factors. The aim of this manual is to present the principles fowing from this case law in a systematic and accessible way. It has been prepared by government experts from all forty-six member states of the Council of Europe.

The manual is intended to be of practical use not only for public authorities, but also decision makers, legal professionals and the general public.

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